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John Marshall

A

C O L L E C T I O N

O F

S E V E R A L C O M M I S S I O N S,

A N D

O T H E R P U B L I C I N S T R U M E N T S,

Proceeding from his Majesty's Royal Authority,

R E L A T I N G T O T H E P R O V I N C E O F Q U E B E C.

A
C O L L E C T I O N
O F
S E V E R A L C O M M I S S I O N S,
A N D
O T H E R P U B L I C I N S T R U M E N T S,
P r o c e e d i n g f r o m h i s M A J E S T Y ' s R o y a l A u t h o r i t y,
A N D
O T H E R P A P E R S,

Relating to the STATE of the PROVINCE in QUEBEC in NORTH AMERICA, since the CONQUEST of it by the BRITISH ARMS in 1760.

C O L L E C T E D B Y
F R A N C I S M A S E R E S, E S Q U I R E,
H i s M A J E S T Y ' s A t t o r n e y G e n e r a l i n t h e s a i d P r o v i n c e.

L O N D O N :

P R I N T E D B Y W. A N D J. R I C H A R D S O N, S A L I S B U R Y C O U R T, F L E E T S T R E E T.

M D C C L X X I I.

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P R E F A C E.

THE following papers have been collected together and printed in one volume, with a view to facilitate and expedite the settlement of the province of Quebec, which has been for some years past, and is still under the consideration of his Majesty's privy council. This settlement, it is conceived, cannot properly be made without a careful perusal and examination of the several instruments of government that have already been passed under his Majesty's authority, or that of his royal predecessors, concerning the said province. These are, first, the articles of capitulation granted to the French governour of Canada by general Amherst upon the intire surrender of it in 1760;—secondly, the fourth article of the definitive treaty of peace, in February, 1763, containing the full cession of the said country by the French king to the crown of Great-Britain, and the stipulation of his present Majesty the King of Great-Britain, in favour of a toleration of the Roman Catholick religion in the same, as far as the laws of Great-Britain will permit;—thirdly, the King's proclamation in October, 1763, for erecting four new governments in the ceded countries in America, whereby his Majesty promises to such of his subjects as shall resort to, and settle in, the said governments, that as soon as the circumstances of those new governments will respectively permit, they shall be governed in the same manner as the subjects of his Majesty's other colonies in America,

America, that are under his immediate government, to wit, by a governour, council, and assembly of the freeholders and planters of the same, and in the mean time, shall enjoy the benefit of the laws of England ;—fourthly, the commission of captain-general and governour in chief of the said province under the great seal of Great-Britain, given to major-general Murray in November, 1764, empowering him, amongst other things, to call an assembly of protestants in the said province, as soon as he shall find it practicable, and, with the consent of such assembly and of the council of the province, to make laws and ordinances for the benefit of the said province, but not giving him any power to make any laws, or ordinances, whatsoever by the advice and consent of the council of the province only ; and empowering him likewise to collate persons (protestant priests, as it is supposed) to all the ecclesiastical benefices in the said province ;—and fifthly, the ordinances made by the said governour of that province, with the consent of the council of the same only, by virtue of an instruction for that purpose under the King's signet and sign manual (purporting to empower him to make rules and regulations in the said province, by the advice and consent of the council of the said province only, provided that the said rules and regulations do not tend to affect either the life, or limb, or liberty of the subject, or to the raising any duties or taxes) for erecting courts of justice in the said province ; in which ordinances the chief justice of the said province, who is the only judge of the court of King's Bench thereby erected, is directed to determine all matters, criminal and civil, according to the laws of England ;

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—and

—and sixthly, the commission of vice-admiral, granted to the said major-general Murray, whereby all the laws of the English court of admiralty were introduced into the said province;—and seventhly and lastly, the statute of the first of Queen Elizabeth, for restoring to the crown of England the antient jurisdiction over the estate ecclesiastical and spiritual; which prohibits all exercise of the Pope's pretended power and jurisdiction in all the dominions of the crown of England, as well in those that hereafter should belong to it, as in those that belonged to it at that time, and consequently in the said province of Quebec; and some other acts of parliament both before and since the conquest of the said province, which manifestly extend to and bind it. All these instruments are evidently necessary to be carefully considered upon this occasion by the members of his Majesty's privy-council; and, if (as there is good reason to hope it will) this important subject should be brought before the two houses of parliament, to be considered also by the members of those houses. Now this could not easily be done without the help of some such collection as the present: because the above-mentioned instruments are no where else to be found printed together; and many of them are not printed at all in any other book, but lie dispersed in the original manuscripts only, or in the records of the several public offices; from which it would be very expensive, and be attended with great delay, to cause a sufficient number of copies for the use of so many persons to be transcribed. It is therefore hoped that the present collection of them will be thought a proper and useful work. It contains, besides the important instruments above-mentioned,

some

some other papers of a public nature, or that have a tendency to explain the present condition of the province of Quebec. Such are the reports concerning the state of the laws in the said province, and the administration of justice in the same, in pages 1—48, and 50—56; the plan for the administration of justice in the said province, in pages 58—67; the draughts of two intended ordinances concerning the laws and the administration of justice, the one for continuing the French laws relating to landed property, in pages 68—70, the other for establishing monthly sessions of the supreme court of justice in the said province, in pages 71—74; the account of the King's iron mines near Three Rivers in the said province, in pages 207, et seq. and the account of the French duties on wine, rum, and brandy, imported into the said province before the conquest of it, and of the trials of the suits instituted at Quebec for the recovery of those duties for the crown in October, 1766, and July, 1769, in pages 288—311; and a few more papers of the like kind, which, it is hoped, will be found to be of some use towards attaining a right knowledge of the condition of the said province. But for a more particular account of the matters comprized in this collection, I must refer the reader to the following table of contents.

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A
D R A U G H T
O F

An Intended REPORT of the Honourable the Governor in
Chief and the Council of the Province of QUEBEC to
the King's most Excellent Majesty in his Privy Council ;

C O N C E R N I N G

The State of the Laws and the Administration of Justice in
that Province.

May it please your Majesty,

IN humble obedience to your Majesty's order in council, of the
28th day of August 1767, wherein your Majesty is pleased to
order that we should report to your Majesty,

First. Whether any, and what, defects are now subsisting in the
present state of Judicature in this your Majesty's province of
Quebec :

And Secondly. Whether the Canadians are, or think themselves,
aggrieved according to the present administration of justice :
wherein, and in what respects ; together with our opinions of
any alterations or amendments that we can propose for the
general benefit of the said province ; and that such alterations
and amendments, for the clearer apprehension thereof, be
transmitted to your Majesty in the form of ordinances, but not
passed as such ; and that such report be returned, signed by
your Majesty's governor, or his *locum tenens*, the chief justice,
and attorney general of the said province ; but that, if they
should not concur, the person or persons differing in opinion
should be required to report the difference of his opinions,
together with his reasons for such difference of opinion, fully
and at large :

We lay before your Majesty the following view of the laws and customs which at present prevail in this province, and of the rules of decision observed by your Majesty's courts of judicature in the administration of justice, together with such observations on these heads as the experience we have had in our respective offices since we have had the honour to serve your Majesty in this province has enabled us to make.

The laws of England are generally thought to be in force in this province.

The commission of the chief justice refers to them.

So does the ordinance of the 17th of September 1764.

Purport of this ordinance.

In the first place, we beg leave to observe to your Majesty, that the laws of England are generally supposed to be in force in this province. All criminal proceedings have been carried on according to these laws: and in civil matters no other laws are cited, or appealed to, or allowed to be of any weight in the courts of justice; though in one or two causes certain customs that prevailed here in the time of the French government have been admitted as the grounds of the decisions, because the causes of action in those litigations had arisen either in the time of the French government, or during your Majesty's government of this province by your military commanders, during which period the ancient laws and usages of the country were supposed to be in force. But since the establishment of civil government your Majesty's chief justice of the province has acted by virtue of a commission that commands him to decide all matters that come before him *according to the laws and customs of that part of your Majesty's kingdom of Great Britain called England, and the laws, ordinances, rules, and regulations of your Majesty's province of Quebec hereafter in that behalf to be ordained and made*: so that he is not at liberty to allow of any other laws or customs but those of England, unless they are expressly introduced or revived by some of the ordinances of the province made since the establishment of the civil government. And further, besides this commission, there is an express ordinance of the province which obliges both your Majesty's chief justice and the other judges of the province to follow the same rule of judgment. This is the ordinance of the 17th of September 1764, passed by the governor and council of the province upon the introduction of the civil government, to erect and constitute the courts of justice by which the said civil government was to be carried on. This ordinance erects, in the first place, one superior court of judicature, called the King's Bench, in which it directs that your Majesty's chief justice of the province shall preside, *with power and authority to hear and determine all criminal and civil causes, agreeable*

agreeable to the laws of England and to the ordinances of this province: and, in the second place, an inferior court of judicature, called the Court of Common Pleas, with power and authority to determine all property above the value of ten pounds, with a liberty to either party to appeal to the superior court, or court of King's Bench, where the matter in contest is of the value of twenty pounds, or upwards; and directs that the judges in this court shall determine the matters before them agreeable to equity, *having regard nevertheless to the laws of England as far as the circumstances and situation of things will permit, until such time as proper ordinances for the information of the people can be established by the governour and council, agreeable to the laws of England*; and it farther directs, that the French laws and customs shall be allowed and admitted in all causes in this court between the natives of this province, where the cause of action arose before the 1st day of October 1764. It then, in the third place, gives powers to justices of the peace to determine matters of property of small value in a summary way, either singly, if the matter in dispute does not exceed the value of five pounds, or in conjunction with each other in weekly and quarterly sessions, where the matter in contest is of a greater value. The words of this ordinance, by which these things are ordained, are of the tenor following:

“ Whereas it is highly expedient and necessary for the well governing of his Majesty's good subjects of the province of Quebec, and for the speedy and impartial distribution of justice among the same, that proper courts of judicature, with proper powers and authorities, and under proper regulations, should be established and appointed; his excellency the governor, by and with the advice, consent, and assistance of his Majesty's council, and by virtue of the power and authority to him given by his Majesty's letters patent under the great seal of Great Britain, hath thought fit to ordain and declare, and his said excellency, by and with the advice, consent, and assistance aforesaid, doth hereby ordain and declare;

The words of the ordinance.

“ That a superior court of judicature, or court of King's Bench, be established in this province to sit and hold terms in the town of Quebec twice in every year, *viz.* one to begin on the 21st day of January, called Hilary term, the other on the 21st day of June, called Trinity term.

“ In this court his Majesty’s chief justice presides, with power
 “ and authority to hear and determine all criminal and civil causes,
 “ agreeable to the laws of England and to the ordinances of this
 “ province; and from this court an appeal lies to the governor and
 “ council, where the matter in contest is above the value of three
 “ hundred pounds Sterling; and from the governor and council an
 “ appeal lies to the King and council, where the matter in contest
 “ is of the value of five hundred pounds Sterling, or upwards.

“ In all trials in this court all his Majesty’s subjects in this colony
 “ are to be admitted on juries without distinction.

“ And his Majesty’s chief justice once in every year to hold a
 “ court of assize and general gaol delivery, soon after Hilary term,
 “ at the towns of Montreal and Trois-Rivieres, for the more easy
 “ and convenient distribution of justice to his Majesty’s subjects in
 “ those distant parts of the province.

“ And whereas an inferior court of judicature, or court of
 “ Common Pleas, is also thought necessary and convenient, it is
 “ further ordained and declared, by the authority aforesaid, that an
 “ inferior court of judicature, or court of Common Pleas, is
 “ hereby established, with power and authority to determine all
 “ property above the value of ten pounds, with a liberty of appeal
 “ to either party to the superior court, or court of King’s Bench,
 “ where the matter in contest is of the value of twenty pounds,
 “ and upwards.

“ All trials in this court to be by juries, if demanded by either
 “ party; and this court to sit and hold two terms in every year at
 “ the town of Quebec, at the same time with the superior court,
 “ or court of King’s Bench. Where the matter in contest in this
 “ court is above the value of three hundred pounds Sterling, either
 “ party may (if they shall think proper) appeal to the governor and
 “ council immediately, and from the governor and council an
 “ appeal lies to the King and council, where the matter in contest
 “ is above the value of five hundred pounds Sterling, or upwards.

“ The judges in this court are to determine agreeable to equity,
 “ having regard nevertheless to the laws of England, as far as the
 “ circumstances and present situation of things will admit, until
 “ such time as proper ordinances for the information of the people
 “ can

“ can be established by the governor and council, agreeable to the
 “ laws of England.

“ The French laws and customs to be allowed and admitted in
 “ all causes in this court between the natives of the province,
 “ where the cause of action arose before the first day of October one
 “ thousand seven hundred and sixty-four.

“ The first process in this court to be an attachment against
 “ the body.

“ An execution to go against the body, lands, or goods of the
 “ defendant.

“ Canadian advocates, proctors, &c. may practise in this court.

“ And whereas it is thought highly necessary for the ease, con-
 “ venience, and happiness of all his Majesty's loving subjects, that
 “ justices of the peace should be appointed for the respective
 “ districts of this province, with power of determining property of
 “ small value in a summary way, it is therefore further ordained
 “ and declared, by the authority aforesaid, and full power is hereby
 “ given and granted to any one of his Majesty's justices of the
 “ peace, within their respective districts, to hear and finally deter-
 “ mine in all causes or matters of property not exceeding the sum of
 “ five pounds current money of Quebec; and to any two justices of
 “ the peace, within their respective districts, to hear and finally
 “ determine in all causes or matters of property not exceeding the
 “ sum of ten pounds said currency; which decisions being within,
 “ and not exceeding the aforesaid limitation, shall not be liable to
 “ an appeal; and also full power is, by the authority aforesaid,
 “ given and granted to any three of said justices of the peace to be
 “ a *quorum*, with power of holding quarter sessions in their respective
 “ districts every three months, and also to hear and determine all
 “ causes and matters of property which shall be above the sum of
 “ ten pounds, and not exceeding thirty pounds current money of
 “ Quebec, with liberty of appeal to either party to the superior
 “ court, or court of King's Bench. And it is hereby ordered, that
 “ the aforesaid justices of the peace do issue their warrants directed
 “ to the captains and other officers of the militia in this province,
 “ to be by them executed, until the provost-marshal, legally
 “ authorized

“ authorized by his Majesty, shall arrive, and other inferior officers
 “ be appointed for that purpose ; all officers, civil and military,
 “ or other his Majesty’s loving subjects, are hereby commanded and
 “ required to be aiding and assisting to the said justices and officers
 “ of militia in the due execution of their duty. And it is further
 “ ordered and directed, by the authority aforesaid, that two of the
 “ said justices of the peace do sit weekly in rotation, for the better
 “ regulation of the police and other matters and things in the
 “ towns of Quebec and Montreal, and that the names of the justices
 “ who are to sit in each week be posted up on the door of the
 “ Session-house by the clerk of the peace, two days before their
 “ respective days of sitting, that all persons may know to whom
 “ to apply for redress.”

The ordinance
 of the 6th of
 November 1764.

Further, by another ordinance of your Majesty’s governour and council, dated the 6th day of November 1764, it is ordained, that until the 10th day of August next, that is, of August 1765, the tenures of lands, with respect to such grants as are prior to the cession of Canada to the Crown of Great Britain by the definitive treaty of peace of February 1763, and the rights of inheritance, as practised before that period, in such lands, shall remain to all intents and purposes the same, unless they shall be altered by some declared and positive law. The words of this ordinance relating to this subject are of the tenor following :

The words of
 this ordinance.

“ Whereas it appears right and necessary to quiet the minds of
 “ the people in regard to their possessions, and to remove every doubt
 “ respecting the same, which may any ways tend to excite and
 “ encourage vexatious law-suits ; and until a matter of so serious
 “ and complicated a nature, fraught with many and great difficulties,
 “ can be seriously considered, and such measures therein taken as
 “ may appear the most likely to promote the welfare and prosperity
 “ of the province in general, his excellency, by and with the
 “ advice and consent of his Majesty’s council, doth hereby ordain
 “ and declare that, until the 10th day of August next, the tenures
 “ of lands, in respect to such grants as are prior to the cession
 “ thereof by the definitive treaty of peace signed at Paris the 10th
 “ day of February one thousand seven hundred and sixty-three,
 “ and the rights of inheritance, as practised before that period, in
 “ such lands or effects, of any nature whatsoever, according to the
 “ custom of this country, shall remain to all intents and purposes
 “ the

“ the same, unless they shall be altered by some declared and
 “ positive law; for which purpose the present ordinance shall serve
 “ as a guide and direction in all such matters to every court of
 “ record in this province. Provided that nothing in this ordinance
 “ contained shall extend, or be construed to extend, to the prejudice
 “ of the rights of the Crown, or to debar his Majesty, his heirs
 “ or successors, from obtaining by due course of law in any of his
 “ courts of record in this province, according to the laws of
 “ Great Britain, any lands or tenements, which at any time here-
 “ after may be found to be vested in his Majesty, his heirs or
 “ successors, and in the possession of any grantee or grantees, his,
 “ her, or their assigns, or such as claim under them by virtue of
 “ any such grants as aforesaid, or under pretence thereof, or which
 “ hereafter may be found to have become forfeited to his Majesty
 “ by breach of all or any of the conditions in such grants respectively
 “ mentioned and contained.”

By this latter ordinance we conceive that all the lands in this
 province, whose owners have died since the 10th day of August 1765,
 are meant to be subjected to the English law of inheritance, and to
 the English custom of dower, and to the English rules of forfeiture
 to your Majesty for high treason, or escheat to your Majesty, or to
 such other lord of whom they are holden, for felony or defect of
 heirs, and to all the other rules of the English law relating to land-
 property, even though the said lands had been originally granted
 before the signing of the definitive treaty of peace; and that all
 lands granted since the said peace were already, at the time of
 making the said ordinance, subject to the said English rules and
 customs, and were so to continue.

Conclusion ne-
 cessarily follow-
 ing from this
 ordinance in fa-
 vour of the in-
 troduction of the
 laws of Eng-
 land.

By these two ordinances, which have been transmitted to your
 Majesty and never disallowed, and are therefore supposed to have
 received the sanction of your Majesty's royal approbation, the
 Canadian laws and customs have been generally supposed to be
 abolished, and the English laws and customs to have been introduced
 in their stead, and the judges of your Majesty's courts of judicature
 in this province have conceived themselves to be in conscience bound
 to administer justice according to the laws of England.

Besides these two ordinances there are several other public instruments
 and acts of government by which the laws of England are supposed

Other public in-
 struments which
 have tended to
 produce the
 same effect.
 to

to have been introduced into this province. Some of these instruments are acts of parliament, which introduce those particular parts of the laws of England, to which they relate, into this province; and others of them are instruments of a high and important nature, that bear the sanction of your Majesty's royal authority, by which it is generally understood to have been your royal pleasure to abolish the former laws and customs of this province, and for the sake of governing your new Canadian subjects in a milder and more indulgent manner than they had heretofore been used to, and associating and connecting them with the greater part of your ancient and natural-born subjects of Great Britain by the strong tie of an union and communion of laws, to introduce the laws of England in their stead. These acts of parliament and other instruments of government are as follows;

Acts of parliament.

The acts of parliament that relate to this province are of two kinds; some of them are prior to the conquest of this province by your Majesty's arms in the year 1760, but extend to your Majesty's future American dominions, as well as those which belonged to the Crown of Great-Britain at the times of passing them, either by express words for that purpose, or by some general words that have been deemed by your Majesty's ministers and law-officers, by just construction in law, to comprehend them; and others of the said acts have been passed by your Majesty's self, by the advice and with the consent of your parliament, since the conquest and cession of this province by the last definitive treaty of peace.

Stat. I. Eliz.
cap. 1.

The most ancient act of parliament of the first kind that we have met with is that of the 1st of Queen Elizabeth, chap. 1, by which the pretended authority of the bishop of Rome was abolished throughout all the dominions of the crown of England. The 16th section of this statute is of the following tenor: " And to the
 " intent that all usurped and foreign power and authority, spiritual
 " and temporal, may forever be clearly extinguished, and never to
 " be used or obeyed within this realm, or any other your Majesty's
 " dominions or countries, may it please your Highness that it
 " may be further enacted, by the authority aforesaid, that no foreign
 " prince, person, prelate, state, or potentate, spiritual or temporal,
 " shall, at any time after the last day of this session of parliament,
 " use, enjoy, or exercise any manner of power, jurisdiction,
 " superiority, authority, pre-heminence, or privilege, spiritual or
 ecclesiastical,

“ ecclesiastical, within this realm, or within any other your Majesty’s dominions and countries that now be, *or hereafter shall be*; but from thenceforth the same shall be clearly abolished out of this realm and all other your Majesty’s dominions for ever; any statute, ordinance, custom, constitutions, or any other matter or cause whatsoever to the contrary in any wise notwithstanding.”

By this section of that statute, and the express words, *any other your Majesty’s dominions and countries that now be, or hereafter shall be*, we humbly apprehend that all exercise of the pope’s authority, or of any ecclesiastical authority derived from him, is prohibited in this province as much as it is in England itself.

The next section of this act of parliament annexes all ecclesiastical jurisdiction to the crown of England.

The 19th section requires all bishops and other ecclesiastical persons, and all ecclesiastical officers and ministers, and all temporal judges, justices, mayors, and other lay or temporal officers and ministers, and every other person having the Queen’s fee or wages, within the realm of England, or *any other her Highness’s dominions*, to take the oath of supremacy.

The 24th section enacts, that every temporal person doing homage for his lands to the Queen, her heirs or successors, or that shall be received into the service of the Queen, her heirs or successors, shall take the same oath.

And the 27th section enacts, that if any person of any degree whatsoever, dwelling within the realm of England, or *in any other the Queen’s realms or dominions*, shall by writing, teaching, or preaching, maintain or defend the authority, spiritual or ecclesiastical, of any foreign prince, prelate, person, state, or potentate whatsoever, heretofore claimed, used, or usurped within the realm of England, or *any dominion or country being within or under the power, dominion, or obedience of the Queen’s highness*, he shall forfeit all his goods and chattels for the first offence.

We submit it to your Majesty that this statute seems, from the whole complexion of it, as well as from the positive words, *your Majesty’s*

Majesty's dominions that hereafter shall be, to have been considered by the legislature that passed it as an indispensable part of the general policy of the English government, and to have been intended to take place in every country that either then made or should thereafter make a part of the dominions of the crown of England.

The next statute that we have met with of this comprehensive nature is the statute of the 15th of Charles the Second, chap. 7, Stat. 15 Car. II. cap. 7. intitled, "An Act for the Encouragement of Trade." In the 7th section of this statute it is enacted, that after the 25th day of March 1664, no commodity of the growth or manufacture of Europe shall be imported into any land, island, plantation, colony, territory, or place to his Majesty belonging, *or which shall hereafter belong unto, or be in the possession of, his Majesty, his heirs and successors,* in Asia, Africa, or America (Tangier only excepted) but what shall be laden and shipped in England, Wales, or the town of Berwick upon Tweed, and in English-built shipping.

Another statute of the same kind is the stat. 7 and 8 Will. III. Stat. 7 and 8 of Will. III. cap. 22. chap. 22, intitled, "An Act for preventing Frauds, and regulating Abuses, in the Plantation Trade;" by which it is enacted and ordained, that after the 25th day of March, in the year 1698, no goods or merchandizes whatsoever shall be imported into, or exported out of, any colony or plantation to his Majesty in Asia, Africa, or America belonging, or in his possession, *or which may hereafter belong unto, or be in the possession of, his Majesty, his heirs or successors,* in any ship or bottom but what is or shall be of the built of England, or of the built of Ireland, or of the built of the said colonies or plantations.

And the other acts of parliament relating to the trade of your Majesty's American colonies, though they have not such strong positive words in them as the three statutes above-mentioned, yet are generally understood to extend to this province as well as to your Majesty's more ancient American dominions; and, agreeably to this opinion, your Majesty has caused a clause to be inserted in your commission to your governour of this province, directing him to take the oath required to be taken by governours of the plantations to do their utmost that the several laws relating to trade and plantations be duly observed; and this oath he hath accordingly taken.

taken. And your Majesty's commissioners of the customs have appointed a collector and comptroller of the customs, and other officers necessary for the collection of them, for this part of Quebec, in order to carry all these acts of parliament into execution.

Another statute that we understand to be in force in this province, though made before the conquest of it, and not extended by express words to the future dominions of the crown of Great Britain, is stat. 2, 12th Ann. chap. 18, intituled, "An Act for preserving all such Ships and Goods thereof which shall happen to be forced on Shore, or stranded, upon the coasts of this kingdom, or any other of her Majesty's dominions." This statute, and another of the 4th of Geo. I. chap. 12, for enforcing and making the former perpetual, have been declared by your Majesty's attorney and solicitor general, in the month of June 1767, in an opinion given by them to your Majesty's lords commissioners of trade and plantations, upon a case stated to them by those lords, to extend to your Majesty's plantations in America: and no exception is made in their opinion of those of your Majesty's dominions in America which have been acquired since the passing of those statutes. And your Majesty's ministers have transmitted the said case and opinion to your Majesty's governour of this province, upon a supposition, as we apprehend, that it extends to this province as well as to all the others.

These are the acts of parliament passed before the conquest and cession of Canada that we conceive to be in force in this province by their own import and operation, and without needing any further act of government to introduce them.

Some of the acts of parliament passed by your Majesty's self since the conquest and cession of Canada relating to this province are these that follow :

The first of these statutes is that of the 4th year of your Majesty's reign, chap. 11, which, amongst other things, enacts, that so much of an act made in the 8th year of King George the First, intituled, "An Act for giving further Encouragement to the Importation of Naval Stores, and for other purposes therein mentioned," as relates to the importation of wood and timber, and of the goods

Stat. 4 Geo. III.
cap. 11.

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commonly

x
Q. P. 1767.

commonly called *Lumber*, therein particularly enumerated, from any of your Majesty's British plantations or colonies in America, free from all customs and impositions whatsoever, shall be continued, beyond the times appointed in former acts, to the 29th of September in the year 1771.

In this statute the words *British plantations* are generally understood to relate to this province as well as to your Majesty's other colonies in America; and a copy of this statute has accordingly been transmitted by the commissioners of your Majesty's customs in London to your Majesty's collector of the customs in this port.

Stat. 4 Geo. III.
cap. 19. The next act of parliament of this kind is of the same 4th year of your Majesty's reign, chap. 19. This statute expressly relates to this province by name, being intitled, "An Act for importing Salt from Europe into the Province of Quebec in America for a limited Time." It enacts, "that it shall be lawful for any of his Majesty's subjects to carry and import salt from any part of Europe into the said province of Quebec in America in British ships and vessels manned and navigated according to the act of navigation; any law, statute, usage, or custom to the contrary in any wise notwithstanding."

By these last words it seems to be supposed that all the former laws and statutes of Great Britain relating to this subject of the importation and exportation of goods and merchandize, made before the conquest of this province, are of force in this province as well as in the other British provinces in America.

Stat. 4 Geo. III.
cap. 15. Another act of parliament passed by your Majesty, and expressly relating to this province, is the statute of the same 4th year of your Majesty's reign, chap. 15, intitled, "An Act for granting certain duties in the British colonies and plantations in America, and for other purposes." By this statute it is enacted, that certain rates and duties therein mentioned shall be paid upon several species of foreign goods therein enumerated that shall, after the 29th day of September 1764, be imported or brought into any colony or plantation in America, *which now is, or hereafter may be*, under the dominion of your Majesty, your heirs and successors; and these duties are accordingly levied and paid in this province.

These

These are the acts of parliament, or at least some of them (for possibly there may be others which have escaped our notice) which by their own import and operation extend, as we conceive, to this province, without the help of any other instrument or act of government to introduce them; and therefore such parts of the laws of England as are contained in these statutes are certainly in force in this province, being introduced into it by the highest authority, that of your Majesty, or your royal predecessors, in conjunction with both houses of parliament. The remaining parts of the laws of England have been introduced, or are generally understood to have been introduced, by a series of public instruments, or acts of government, founded on your Majesty's royal authority alone, without the concurrence of your parliament. These public instruments and acts of government are as follows:

The first of these public instruments is the capitulation granted by your Majesty's general, Sir Jeffrey Amherst, to the inhabitants of Canada at the general surrender of the whole country to your Majesty's arms in the year 1760. In the 42d article of this capitulation it is desired by the French commander, on the behalf of the French and Canadian inhabitants of this province, that they shall continue to be governed according to the custom of Paris and the laws and usages established in this country; to which it is answered by your Majesty's general, that they become subjects to the King: by which it should seem, that these your Majesty's new subjects in this province were put upon the same footing as your Majesty's other subjects in other parts of your Majesty's British dominions with respect to the laws by which they were to be governed, and the power of legislation that was to be exercised over them for the time to come; and that the continuance or abolition of their former laws and customs was to depend entirely upon the future counsels which your Majesty, in your royal wisdom, should find it expedient to pursue.

Articles of capitulation granted to the Canadians by Gen. Amherst, in 1760. Article 42d.

The 27th article of this capitulation demands, that the free exercise of the Roman Catholic religion shall subsist intire, in such manner that all the people shall continue to assemble in the churches and to frequent the sacraments as heretofore, without being molested in any manner, directly or indirectly; and then it goes on and demands, in the second place, that the people shall be obliged by

Article 27th.

the

the English government to pay the priests the tithes and all the taxes they were used to pay under the government of the French king. The general's answer to this article is as follows: "Granted, as to the free exercise of their religion. The obligation of paying tithes to the priests will depend on the King's pleasure." By this answer it is evident that a bare toleration, or permission to exercise freely the Roman Catholic religion, without being molested for so doing by the execution of the penal laws of England upon that subject, is granted to the Canadians, together with a reasonable use of their churches for that purpose, though not, as we conceive, to the intire exclusion of your Majesty's Protestant subjects from making use of the same churches likewise: but a legal establishment of that religion, with a right to exact their tithes from the people as legal dues and not as voluntary contributions, is refused them, until your Majesty's pleasure shall otherwise direct, which your Majesty has not yet judged expedient to do. By this refusal all those parts of the Canadian laws and usages relating to the payment of tithes and other church dues are either abolished or suspended.

Article 31st.

The 31st article of the same capitulation is as follows: "The bishop shall, in case of need, establish new parishes, and provide for the re-building of his cathedral and his episcopal palace; and, in the mean time, he shall have the liberty to dwell in the town or parishes, as he shall judge proper. He shall be at liberty to visit his diocese with the ordinary ceremonies, and exercise all the jurisdiction which his predecessor exercised under the French government, save that an oath of fidelity, or a promise to do nothing contrary to his Britannic Majesty's service, may be required of him." To this article your Majesty's general made the following answer: "This article is comprised under the foregoing." Now the foregoing, or 30th, article is directly refused; therefore this article must be deemed to be refused likewise: and consequently by this refusal all those parts of the Canadian laws and customs that give a right to the bishop of Quebec to establish new parishes, and to provide for the re-building of his cathedral and his episcopal palace, and to visit his diocese with the ordinary ceremonies, and to exercise the jurisdiction which had been exercised by his predecessors under the French government, are abolished; and your Majesty's ecclesiastical supremacy is vindicated and supported in a manner agreeable to that important and universal statute of the 1st of Queen Elizabeth above cited.

The

The next public instrument relating to the condition of this province is the definitive treaty of peace, concluded at Paris on the 10th day of February 1763. In the fourth article of this treaty it is declared, that your Majesty will give the most effectual orders that your 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*. By this reference to the laws of Great Britain it should seem to have been your Majesty's intention that those laws should be the fundamental rule of government in this province.

The definitive
treaty of peace.

The next public instrument relating to this subject, and upon which great stress has been laid by all your Majesty's British subjects that have resorted to this province, is your Majesty's royal proclamation of the 7th of October 1763, which seems to have had principally in view the profit and advantages that might accrue to your Majesty's British subjects by resorting to, or settling in, the countries that had lately been ceded to your Majesty by the definitive treaty of peace. By this very solemn and important instrument, passed under your Majesty's great seal of Great Britain, it is declared, that " your Majesty, being desirous that all your Majesty's loving
" subjects, as well of your kingdoms as your colonies in America,
" may avail themselves, with all convenient speed, of the great
" benefits and advantages that must accrue from the great and
" valuable acquisitions lately ceded to your Majesty in America, to
" their commerce, manufactures, and navigation, has thought fit,
" with the advice of your privy council, to erect four new govern-
" ments to be stiled and called by the names of Quebec, East
" Florida, West Florida, and Grenada; and that, as it will greatly
" contribute to the speedy settling the said new governments that
" your Majesty's loving subjects should be informed of your Majesty's
" paternal care for the security of the liberty and properties of
" those who are or shall become inhabitants thereof, your Majesty
" hath thought fit to publish and declare, by that your Majesty's
" proclamation, that your Majesty has, in the letters patent under
" the great seal of Great Britain by which the said governments
" are constituted, given express power and directions to your
" governours in the said new colonies, that, so soon as the state
" and circumstances of the said colonies will admit thereof, they
" shall, with the advice and consent of the members of your
" Majesty's

The King's pro-
clamation in
October 1763.

“ Majesty’s councils, summon and call general assemblies within
 “ the said governments, in such manner and form as is used and
 “ directed in those colonies and provinces in America which are
 “ under your Majesty’s immediate government; and that your
 “ Majesty has also given powers to the said governours, with the
 “ consent of your Majesty’s said councils, and the representatives
 “ so to be summoned as aforesaid, to make, constitute, and ordain
 “ laws, statutes, and ordinances for the public peace, welfare, and
 “ good government of your Majesty’s said colonies and of the people
 “ and inhabitants thereof, as near as may be to the laws of England,
 “ and under such regulations and restrictions as are used in other
 “ colonies.” And then it is further declared in your Majesty’s said
 proclamation, “ that in the mean time, and until such assemblies
 “ can be called as aforesaid, all persons inhabiting in or resorting to
 “ your Majesty’s said colonies *may confide in your Majesty’s royal*
 “ *protection for the enjoyment of the benefit of the laws of your realm*
 “ *of England*; and that for that purpose your Majesty had given
 “ power under the great seal to the governours of your Majesty’s
 “ said new colonies to erect and constitute, with the advice of your
 “ Majesty’s said councils respectively, courts of judicature and
 “ public justice within the said colonies for the hearing and deter-
 “ mining all causes, as well criminal as civil, according to law and
 “ equity, and, as near as may be, agreeably to the laws of England,
 “ with liberty to all persons who may think themselves aggrieved
 “ by the sentence of such courts, in a civil cases, to appeal, under
 “ the usual limitations and restrictions, to your Majesty in your
 “ privy council.”

The sense in
 which this pro-
 clamations has
 been understood
 by the British
 inhabitants of
 this province;

These are the words of your Majesty’s said proclamation, and by
 them your Majesty’s British subjects in this province declare that
 they have always understood that the laws of England have been
 introduced into this province, and that it was your Majesty’s inten-
 tion to assimilate the laws and civil government of it to those of the
 other American colonies and provinces which are under your
 Majesty’s immediate government, and not to continue the municipal
 laws and customs by which the conquered people had heretofore
 been governed. And through a confidence in this proclamation,
 understood in this sense, they say they have quitted their native
 country to come and settle in this province, expecting to change
 only their climate by such a removal in pursuit of commercial
 advantages,

advantages, and not to become subject to the laws of the conquered people, with which they are wholly unacquainted, and against which (though perhaps without reason) they entertain strong prejudices.

And in this sense was this proclamation understood also by your Majesty's late governour of this province and his council, who did not, in making the important ordinance above mentioned, of the the 17th of September 1764, conceive themselves to be overturning all the ancient laws and customs of this country, and introducing the laws of England in their stead, but meant only to erect and constitute courts of judicature to administer a system of laws already in being, to wit, the laws of England, which they conceived to have been already introduced there by the words of your Majesty's proclamation. And in this sense likewise your Majesty's lords commissioners for trade and plantations, in the month of September 1765, understood these words in your Majesty's proclamation: for in the 7th and last article of a report made by the said lords commissioners, upon certain memorials and petitions from your Majesty's subjects in this province, complaining of the ordinances and proceedings of the governour and council of this province, and of the then present establishment of courts of judicature and other civil constitutions, to the lords of the committee of your Majesty's privy council for plantation affairs, dated on the 2d day of September in the said year, the said lords commissioners of trade propose, *that in all cases where rights or claims are founded on events prior to the conquest of Canada, the several courts shall be governed in their proceedings by the French usages and customs which have heretofore prevailed in respect to such property*; from which words it appears plainly that their lordships understood that in all cases, where rights and claims are founded on events posterior to the said conquest, the several courts of justice were to be governed by the English laws, and that their lordships were solicitous to make an express provision, that this general rule of deciding cases according to the English laws should not be applied to such causes as were founded on events that were prior to the said conquest, in which cases it would be manifestly unjust.

We know at the same time that your Majesty's attorney and solicitor general, in the following month of April 1766, understood The more confirmed sense in which it was understood by his Majesty's

attorney and solicitor general, in April 1766.

stood the words of your Majesty's royal proclamation in a more confined sense, as being introductive of only some select parts of the laws of England that were more particularly beneficial to your Majesty's English subjects, and not of the whole body of those laws. This they took to be the true import of these words in your Majesty's proclamation above-mentioned, *the enjoyment of the benefit* of the laws of England; and they were of opinion that the criminal laws of England were almost the only laws that came under that description; and that the laws of England relating to the descent, alienation, settlements, and incumbrances of real estates, and to the distribution of personal property in case of intestacy, were certainly not comprehended under it. Whether this or the former way of interpreting this part of your Majesty's proclamation is the true one, belongs only to your Majesty to determine, according to the ancient rule of law laid down by the celebrated lawyer *Bracton*, that "*cujus est condere, ejus est interpretari.*" All that we presume to do on this occasion is to lay before your Majesty a full and plain historical account of the several public instruments and acts of government by which the laws of England have either been introduced, or imagined to be introduced, into this province in lieu of those laws and customs which were observed in it heretofore.

The commission given to Gen. Murray in 1764, to be vice-admiral of the province of Quebec.

The next public instrument of this kind is your Majesty's commission to General Murray in the year 1764, to be vice-admiral, commissary, and deputy in the office of vice-admiralty in the province of Quebec. This is a judicial commission, by which the said General was impowered to enquire, by the oaths of honest and lawful men of the said province, of all and singular matters and things which of right, and by the statutes, laws, ordinances, and customs, anciently observed, were wont and ought to be enquired after; and of wreck of the sea; and of goods of felons of themselves; and likewise of goods waived, stowson, jetson, ligan, deodands, derelicts, and other casualties upon the sea, or sea coast, or fresh-water rivers, as far as the tide flows; and also of anchorage, lastage, ballast, and fish royal anciently by right or custom belonging to your Majesty; and to arrest or cause to be arrested, according to the civil and maritime laws and ancient customs of your Majesty's court of admiralty, all ships, persons, and merchandizes for causes arising within the maritime jurisdiction, and to hear and determine

determine the said causes, with all the matters incident thereunto, according to the laws and customs aforesaid; and to fine, chastise, and imprison within any of the gaols of the province the parties that shall be found guilty, according to the rights, statutes, laws, ordinances, and customs anciently observed.

By this commission it is evident your Majesty has introduced into this province all the laws of your Majesty's English court of admiralty, in lieu of the French laws and customs by which maritime causes were decided in the time of the French government.

The next public instrument relating to this subject is your Majesty's commission to General Murray in the year 1764 to be captain general and governour in chief in and over this your Majesty's province of Quebec. This commission, and the instructions that accompanied it, seem every where to pre-suppose that the laws of England were in force in this province, being full of allusions and references to those laws on a variety of different subjects, and do not contain the least intimation of a saving of any part of the laws and customs that prevailed here in the time of the French government.

The commission of governour in chief of this province given to Gen. Murray in 1764, and the instructions that accompanied it.

It seems as if your Majesty had been of opinion, that by the refusal of General Amherst to grant to the Canadians the continuance of their ancient laws and usages, and by the reference made in the fourth article of the definitive treaty of peace to the laws of Great Britain, as the measure of the indulgence intended to be shewn them with respect to the exercise of their religion, sufficient notice had been given to the conquered inhabitants of this province, that it was your Majesty's pleasure that they should be governed for the future according to the laws of England, and that they, after being thus apprised of your Majesty's intention, had consented to be so governed, and had testified their said consent by continuing to reside in the country and taking the oath of allegiance to your Majesty, when they might have withdrawn themselves from the province, with all their effects and the produce of the sale of their estates, within the eighteen months allowed by your Majesty for that purpose.

A probable inference from the stile and purport of the said commission and instructions.

These are the public instruments by which it is generally supposed, by those who have perused them, that the laws of England have been introduced into this province. But as your Majesty's royal proclamation above-mentioned. and your commission to General Murray to be governour in chief of this province, have never been published here in the French language, and as the provincial ordinances above-mentioned of the 17th of September and the 6th of November 1764, which have been published here in the French language, have mentioned this change in the laws in very concise and general terms, without specifying or describing any of the laws of England that were thereby introduced, the greatest part of your Majesty's new subjects remain ignorant of *the extent* of the change to this hour, and imagine that their ancient laws and usages are *in many points* still in force. They still divide their lands upon an inheritance in the same manner as before the conquest; their widows are admitted to the same shares of them as before, without any regard to the English rule of dower, which differs widely from that of the French law; and the personal estates of persons who die intestate are distributed at their decease according to the rules of the French law, which are somewhat different (though not very greatly, as we are informed) from those of the English statute of distributions; and the distributions of their personal estates have likewise been made for the most part by persons authorized thereunto in the manner that was usual under the French government, and not by receiving letters of administration from your Majesty's governour of the province in the manner directed by your Majesty's instructions. Fortunately for the peace of the province no litigations have yet arisen in any of your Majesty's courts of justice to give occasion to decisions that would make them acquainted with the change of the laws in these particulars, which would probably create a great deal of uneasiness.

Some of the ancient laws and usages are still observed by the Canadians.

Yet upon the decease of your Majesty's British subjects in this province, their relations have taken out letters of administration from the governour of the province, agreeably to your Majesty's instruction for that purpose, and, as we believe, have followed the English rule of distribution; and some few, but very few, of your Majesty's new subjects have likewise taken out letters of administration in the same manner, but have followed, as we believe, the

A diversity in the practice of the English and Canadian inhabitants of the province, with respect to letters of administration and the distribution of the effects of persons who die intestate.

the rules of the French law, with respect to the distribution of the effects. We humbly apprehend that this diversity in the practice of your Majesty's subjects in this province may hereafter be the occasion of some confusion, though happily no bad consequences have hitherto followed from it.

There has likewise been a diversity in the practice of your Majesty's old and new subjects with respect to the manner of conveying and mortgaging landed property. Your Majesty's British subjects have bought and sold lands and houses by instruments drawn up by English lawyers according to the English modes of conveyancing; and your Majesty's Canadian subjects have employed Canadian notaries, or scriveners, for the same purposes, who have followed the French forms of conveyancing made use of before the conquest. And it has often happened that the same lands and houses have been sold and bought and mortgaged by both French and English conveyances, as they have passed into the hands of Canadian or British proprietors. This also, we conceive, may hereafter be productive of some confusion.

Another diversity in their practice with respect to the manner of conveying and mortgaging landed property.

Leases have likewise been made of lands near Quebec for twenty-one years by the society of jesuits in this province, though by the French law they can only be made for nine years. This has been done upon a supposition that the restraints upon the power of leasing lands imposed upon the owners of them by the custom of Paris, of which this is one, have no longer any legal existence. Upon the same principle many owners of seigniories, Canadians as well as Englishmen, have made grants of uncleared land upon their seigniories for higher quit-rents than they were allowed to take in the time of the French government, without regard to a rule or custom that was in force at the time of the conquest, that restrains them in this particular. And as the seigniors transgress the French laws in this respect, upon a supposition that they are abolished or superseded by the laws of England, so the freeholders, or peasants, of the province transgress them in other instances upon the same supposition. For example, there was a law made by the French king concerning the lands of this province, ordaining, that no man should build a new dwelling-house in the country (that is, out of the towns and villages) without having sixty French arpents, or about fifty English acres, of land adjoining

In some instances the Canadians have followed the laws of England.

to it, and that, if, upon the death of a freeholder and the partition of his lands amongst his sons, the share of each son came to less than the said sixty arpents of land, the whole was to be sold, and the money produced by the sale divided amongst the children. This was intended to prevent the children from settling themselves in a supine and indolent manner upon their little portions of land, which were not sufficient to maintain them, and to oblige them to set about clearing new lands (of which they had a right to demand of the seigniors sufficient quantities at very easy quit-rents) by which means they would provide better for their own maintenance, and become more useful to the public. But now this law is intirely disregarded; and the children of the freeholders all over the province settle upon their little portions of their father's land, of thirty, or twenty, and sometimes only ten acres, and build little huts upon them, as if no such law had ever been known here: and when they are reminded of it by their seigniors, and exhorted to take and clear new tracts of land, they reply that they understand that by the English law every man may build a house upon his own land whenever he pleases, let the size of it be ever so small. This is an unfortunate practice, and contributes very much to the great increase of idleness, drunkenness, and beggary, which is too visible in this province.

Further, many persons who have purchased seigniories in this province, and amongst them some Canadians, have hitherto declined paying to your Majesty's receiver-general the mutation-fine, or fifth part of the purchase money, due to your Majesty upon the admission of every new seignior by the custom of Paris. The English-purchasers say that this, being part of the custom of Paris, is now abolished by the introduction of the laws of England; and the Canadian seigniors say that it is not due to your Majesty till they have been regularly invested with, or put in possession of, their seigniories, with all the rights and jurisdictions thereunto belonging, by your Majesty's officers of government, and have been admitted to take the oath of fealty and perform the ceremony of homage to your Majesty for the said lands; which has not hitherto been done.

Thus it appears that in many respects the Canadians apprehend the laws of England to be in force in this province, and that they endeavour

endeavour to apply them and put them in practice whenever they take them to be for their advantage; though in other points, and particularly in those of inheritance and dower, and the distribution of the effects of persons who die intestate, they have universally adhered to their former laws and usages.

In criminal proceedings the Canadians as well as English universally suppose the laws of England to be in force. No others are ever mentioned or thought of; and the Canadians seem to be very well satisfied with them. Criminal proceedings.

And in all civil proceedings carried on in the superiour court, or court of King's Bench, the forms of all actions, the stile of the pleadings used in them, the method of trial, and the rules of evidence are those which are prescribed by the English law, and are universally known by the Canadians to be so. Civil proceedings in the court of King's Bench.

In the court of Common Pleas the proceedings are drawn up in any form and stile that the parties, or their advocates, think proper, and sometimes in the French and sometimes in the English language, as the attornies who prepare them happen to be Canadians or Englishmen; and for this reason they are ofteneft in the French language, most of the business in this court being managed by Canadian attornies. Civil proceedings in the court of Common Pleas.

Arrests of the body for debt are used in the first instance both upon suits in the court of King's Bench and suits in the court of Common Pleas, and even upon suits instituted before justices of the peace. This is a part of the English law that a good deal surprized and alarmed the Canadians upon its first introduction, as it carried an appearance of much greater severity than was practised under their own laws, which allowed of imprisonment only in criminal proceedings and in some few civil suits grounded on bills of exchange, or other instruments of a commercial nature, and then only in execution of a judgment of the court, and not in the beginning of the suit; but now they are grown accustomed to this way of proceeding, and frequently put it in practice against each other: and many persons of good sense and character, of both nations, are of opinion that, considering the great credit that has been given by persons in trade in this province, and the knavish and

and trickish disposition that has appeared in many of those to whom it has been given, there is no other method of proceeding by which the creditors can hope to obtain payment of their debts. This is more especially the opinion of your Majesty's British subjects that are concerned in trade in this province, many of whom objected some time since to the execution of even a part of the English law itself, to wit, that part of it which relates to commissions of bankruptcy, upon a supposition of it's being too indulgent to debtors to be useful in this province; yet other persons are of a different opinion, and think arrests of the body in the first instance an unnecessary piece of harshness in civil suits, and wish that it were restrained; and to this opinion we humbly submit it to your Majesty that we are ourselves inclined.

This is, as we conceive, a faithful representation of the present state of the laws in this province, and of the public instruments and acts of government upon which it is founded. We now beg leave to lay before your Majesty certain doubts that have arisen, and may arise, concerning the validity of those instruments, and the extent of their legal operation.

We shall say nothing concerning the validity of your Majesty's proclamation of the 7th of October 1763, and the high legislative authority which your Majesty has therein thought proper to exercise with respect to your Majesty's new colonies, though there are persons who think that this branch of your Majesty's royal prerogative ought rather to have been exercised in conjunction with both houses of parliament: but we should suppose that what your Majesty has thought fit to do in this respect by the advice of your Majesty's privy council must be legal, and consequently that the operation of the words above cited from your Majesty's said proclamation is complete and incontestable so far as the true meaning of them can be ascertained. But if your Majesty in your royal wisdom should interpret them in a different sense from that in which they have been generally understood, and should declare that they were not meant to introduce the whole body of the laws of England that were not in their nature local, but only to introduce some particular parts of them that were more immediately beneficial to your Majesty's subjects, agreeably to the sense in which they were understood by your Majesty's attorney and solicitor general in April 1766;

or,

or, if your Majesty should declare that they were not meant to introduce immediately any part of the laws of England into those provinces, but only to promise and assure your Majesty's British subjects that your Majesty would, in due time and place, and by particular and express promulgations, introduce some select parts of the laws of England that were more immediately conducive to their welfare and satisfaction; in either of these cases we beg leave to submit it to your Majesty's consideration, whether the ordinances above-mentioned, of the 17th of September and the 6th of November, can be deemed of sufficient validity to introduce any part of the laws of England that were not already established by your Majesty's said proclamation. Our reasons for doubting this are as follows :

Your Majesty by your commission to General Murray, dated the 21st day of November in the 4th year of your Majesty's reign, to be governour in chief of this province, was pleased to delegate unto him a certain limited legislative authority, to be exercised by him by and with the advice and consent of your Majesty's council of the province, and of the general assembly of the freeholders and planters in the same therein directed by your Majesty to be summoned, to wit, an authority to make, constitute, and ordain laws, statutes, and ordinances for the public peace, welfare, and good government of the said province, not repugnant, but, as near as may be, agreeable to the laws and statutes of your Majesty's kingdom of Great Britain. But your Majesty did not in any part of the said commission delegate either this or any other legislative power to your said governour to be exercised by him with the advice and consent of the council only, without the concurrence of an assembly. Now no assembly of the freeholders and planters has hitherto been summoned; consequently all the ordinances that have hitherto been made, so far as they have a legislative tendency, have been made without any warrant or authority from your Majesty's commission to your governour, and perhaps may, upon that account, be justly contended to be null and void.

By the King's commission to the governour a certain degree of legislative authority is communicated to him, to be exercised with the advice and consent of the council and assembly;

but none to be exercised without the consent of an assembly.

If this be so, the words in the ordinance of the 17th of September 1764, which direct the court of King's Bench to determine all civil and criminal causes agreeably to the laws of England, and the other words of that ordinance, and of the ordinance of the 6th of

November following, which purport to introduce the laws of England into this province, can have no legal operation to change the laws which were then subsisting in the country; and the ordinance of the 17th of September must be considered only as an executive act of government, erecting and constituting courts of judicature in the province for the administration of the laws in being, whatever those laws might be; and in this view it is certainly a legal and valid ordinance, because your Majesty had, by an express clause in your commission aforesaid, given your said governour full power to erect such courts with the advice and consent of the council only.

A very limited legislative authority is given to the governour by a private instruction, to be exercised by the advice and consent of the council only.

A doubt concerning the legality of this method of communicating a legislative authority.

It is true indeed that your Majesty did give a private instruction to your late governour, purporting to communicate to him a certain degree of legislative authority to be exercised by him, by and with the consent of the council only, without any assembly; to wit, *an authority to make such rules and regulations as shall appear to be necessary for the peace, order, and good government of the said province, taking care that nothing be passed or done that shall any ways tend to affect the life, limb, or liberty of the subject, or to the imposing any duties or taxes.* But we submit it to your Majesty's consideration, whether a power of this kind can be communicated by any other instrument than letters patent under your Majesty's great seal of Great Britain, publicly read and notified to the people, to the end that the acts done by virtue of them may have a just claim to their obedience; for otherwise they may alledge that they are faithful and loyal subjects to your Majesty, and ready to pay obedience to every thing that your Majesty's self shall ordain, and likewise to every thing that shall be ordained by your Majesty's governour by virtue of powers properly communicated to him by your Majesty; that consequently they will obey him in every thing he shall do by virtue of the powers conveyed to him in your Majesty's commission which has been publicly read to them; but that in the things not warranted by the said commission, but said to be done in pursuance of certain private instructions that have not been made known to them, and which they are therefore uncertain whether he has received or not, they cannot presume that he acts by your Majesty's authority, and therefore are not bound to obey him. For this reason we humbly apprehend, that the private instruction before-mentioned cannot have legally conveyed to your Majesty's governour and

and council the legislative authority mentioned in it, small and narrow as it is.

But secondly, if a private instruction should be deemed to be a legal method of communicating a legislative authority, yet the power conveyed to the governour and council of this province by the instruction above-mentioned is much too confined an authority to warrant the general introduction of the English laws; particularly of the criminal laws, which all affect either life, or limb, or liberty; and the process of arrests of the body in civil suits for debt and trespass; and the power of committing persons to prison for contempts of court committed in the presence of your Majesty's judges; and that of granting attachments of the body for disobedience or resistance to the orders of your Majesty's superiour courts of judicature, when such acts of disobedience or resistance are committed out of court; which all immediately affect the personal liberty of your Majesty's subjects in this province.

The legislative authority mentioned in this instruction is too small to warrant the introduction of the laws of England.

These are the reasons upon which, we conceive, the legality of the introduction of the laws of England into this province by the provincial ordinances above-mentioned may be called in question.

But these reasons have no relation to the other high instruments of government by which these laws may be supposed to have been introduced here, namely, the articles of capitulation in 1760, the 4th article of the definitive treaty of peace, and your Majesty's royal proclamation of the 7th of October 1763. If these instruments have introduced the laws of England, they may have a legal existence in this province, notwithstanding the want of legal authority in the two provincial ordinances above-mentioned. But if your Majesty should determine that these instruments have not introduced the laws of England into this province, then, as we conceive, it will follow, that the whole body of those laws has not yet been legally introduced into it, but that those parts only of the laws of England have a legal existence in this province which are contained in the acts of parliament above-mentioned, which by their own import and operation, and without needing any new instrument of government to introduce them, extend to all your Majesty's dominions in America.

Inconveniencies arising from the present state of the laws and administration of justice.

We will now proceed to lay before your Majesty the principal inconveniencies under which the Canadians labour from the present state of the laws and methods of administering justice in this province.

The uncertainty of the laws.

The first and greatest inconvenience arising from the present state of the laws in this province is the uncertainty of them, and the doubts that are entertained concerning the legal continuance of the ancient laws and customs that were observed here in the time of the French government. This is a cause of great uneasiness and anxiety to persons of both nations in many of the ordinary transactions of life; insomuch that it would be a great improvement of the condition of the province if either the English laws, or the old laws and customs of the country, were established by some new act of government, conceived in the most clear and positive words that can be made use of, with an express exclusion or abolition of the other laws, which may be imagined to have hitherto been in force. For by this declaration in favour of either of the systems, your Majesty's subjects would know what they had to expect for themselves and their families with respect to their inheritances, purchases, mortgages, contracts, and other civil rights and privileges from the operation of the laws; and would in consequence thereof proceed to make such regulations of their affairs by particular agreements and settlements, and by their last wills and testaments, as would protect them against the inconveniencies which they might apprehend themselves to be exposed to from such parts of the established system of laws as they did not approve. We do not mean by this to insinuate, that such an immediate establishment of one of these systems of law, to the intire and express abolition and exclusion of the other, would be the best remedy that could be applied to this evil; but only to represent to your Majesty our idea of the greatness of this inconvenience, since even such a cure would be desirable. What is the best remedy that can be applied to this evil is, as we conceive, a point of the greatest difficulty, and fit only to be determined by the wisdom of your Majesty's councils; though in obedience to your Majesty's commands, we shall humbly suggest to your Majesty, in the subsequent part of this report, some of the different methods that, as we apprehend, may be taken for this purpose, with the advantages and disadvantages with which they will be respectively attended. But before we proceed to consider

consider this arduous subject, we beg leave to lay before your Majesty some other and much smaller inconveniencies arising from the present state of the courts in this province, together with a plan for the administration of justice for the time to come, which we humbly conceive to be likely in a great measure to remove them.

These inconveniencies are the expensiveness of law proceedings, which is considerably greater than in the time of the French government, the tediousness of them, and the severity of the present method of proceeding in civil suits by arresting and imprisoning the defendant's body. Other inconveniencies attending the present state of judicature in this province.

The expences attending law-suits arise evidently from two different sources, the fees of the officers of the courts of justice, and those of the attornies and advocates whom the parties employ in the management of their causes. The former are capable of being properly regulated, as the persons to whom they are due are all servants to your Majesty, and under the immediate controul of your Majesty's governour and council; and measures have been already taken to ease your Majesty's subjects in this province of some part of these fees: your Majesty's chief justice and clerk of the crown have remitted those that used to be taken by them in the supreme court; and those of the attorney-general for the conduct of criminal prosecutions have always been charged to your Majesty: and if those which are taken by the clerk of the supreme court for the civil business that is transacted there, and by the provost-marshal, or sheriff, and his bailiffs, for their summonses, arrests, and other ministerial business done by them in the course of the proceedings, and those which are taken in the court of Common Pleas, or the quarterly and weekly courts of the justices of peace, by the several officers of those courts, are found to be unreasonable, it will be easy to reduce them to a more moderate standard by a provincial ordinance for that purpose, if your Majesty will condescend to make such a reasonable addition to the salaries of these several officers as shall be a compensation for such diminution of their fees. The other cause of the expensiveness of law-suits is the rate of the fees of the attornies and advocates. These fees, it is evident, are not capable of a like reduction with the former, but must always be such as the parties and their lawyers shall agree upon; since it is
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the natural right of every man to set what price he pleases upon his labour. All that can be done to keep those fees from growing exorbitant is to prevent a monopoly of law business in the hands of a few lawyers, who might thereby be enabled to exact unreasonable rewards from their clients by the necessity the people would be under of either employing them upon the terms they thought proper to demand, or letting their business remain undone: and this has been already done by your Majesty's wisdom and indulgence in permitting Canadian notaries, attornies, and advocates to practise their respective professions notwithstanding their continuance in the profession of the Romish religion.

Yet when every thing is done that can be done to diminish the expence of law proceedings, it is probable they will still be more expensive than in the time of the French government; which ought not to be a matter of surprize, since the prices of corn and provisions, and of all sorts of labour, are almost double of what they were at that time.

The slowness with which they are conducted upon the present establishment.

The next inconvenience arising from the present establishment of the courts of judicature complained of by the Canadians is the tedious length of law-suits. This is owing to the unfrequency of the terms or sessions of the supreme court of judicature, and of the court of Common Pleas, which sit only three times a year at Quebec and twice at Montreal. In the time of the French government there were three royal courts in the three several districts of Quebec, Three Rivers, and Montreal, vested with full power to determine all matters both criminal and civil: in each of these courts a judge appointed by the French king administered justice, and a king's attorney prosecuted on behalf of the crown: and they used for that purpose to hold two courts in every week throughout the year, except about six weeks in the months of September and October, and a fortnight at Easter: and besides these courts held regularly every week, they would sit on other days of the week, if the business before them made it necessary. From these courts there lay an appeal to the highest court of the province, which was called the superiour council; and this high court also sat every week: so that the difference between the expeditious methods of obtaining justice in the time of the French government, and the slowness of the proceedings upon the present establishment,

is very striking in the eyes of the Canadians, and is esteemed a very considerable inconvenience.

Besides the usual ill consequences arising from the want of dispatch in law-proceedings, this unfrequency of the sessions of the superiour courts of judicature has been a principal cause of the increase of the fees of the Canadian attornies and advocates: for, as their opportunities of pleading causes happen so much seldomer than formerly, they endeavour to make up, by the value of the fees they now receive in the three sessions of the court of Common Pleas, the advantages they formerly derived from the number of them in the time that the French king's courts sat every week.

There is indeed in the present establishment a court of justice in each district of the province that sits every week for the dispatch of business. These are the courts of the justices of peace. This was a very judicious institution, and well suited to the circumstances and disposition of the people. Yet it is liable to some objections. For, in the first place, the justices of the peace, who are the judges of these courts, are not much skilled in judicial proceedings; and, secondly, the same justices not attending constantly at these sessions, it is often necessary, where a matter cannot be decided at one session, but is adjourned to the next, to repeat all the proofs and arguments before the justices at the second session, which had been produced at the former session before the other justices who happened not to be now upon the bench, which occasions an increase of expence and trouble: and, lastly, their jurisdiction extends only to such disputes as relate to sums of money that do not exceed ten pounds. In all contests for greater sums the parties are obliged to have recourse either to the quarterly courts of the justices of the peace, or to the courts of King's Bench and Common Pleas, where the sessions are held but three times a year.

The next inconvenience is the severity of the present method of proceeding in civil actions, by arresting and imprisoning the defendant's body. This, by filling the gaols with unhappy debtors, increases the number of the poor and helpless, and makes the families of the debtors, as well as the debtors themselves, become oftentimes a burden to the publick; and it is generally thought by the Canadians to be an unnecessary degree of harshness.

To remedy these several inconveniencies we beg leave to recommend to your Majesty the following plan for the administration of justice in this province for the time to come; which we have formed in imitation of that which was in use in the time of the French government.

A plan for the administration of justice in this province.

That this province should be again divided into the three districts of Quebec, Three Rivers, and Montreal, as in the time of the French government: which might be called the Shires of Quebec, Three Rivers, and Montreal; and each of these three districts should have separate officers of justice: that a Royal court of judicature should be established in each of the three towns of Quebec, Three Rivers, and Montreal, which are the capital, or rather only, towns of those several shires or districts: and that each of these courts shall consist of one able English judge, appointed by your Majesty, and invested with full powers to hear and determine all matters, both criminal and civil, arising within his jurisdiction, just as your Majesty's chief justice of the province is empowered to do upon the present establishment throughout the whole province.

Three royal judges, one to each shire or district of the province.

These judges to be English barristers at law, of five years standing at the bar.

These English judges should be barristers at law, of at least five years standing at the bar; and they should be such as, besides their skill and knowledge of the law, had a competent knowledge of the French language. And further, to enable these English judges more readily to understand the testimonies of the French witnesses, that would so often be examined before them, and likewise to comprehend the nature and extent of such of the antient laws and customs of the country as your Majesty shall think fit to be either continued or revived, we conceive, that it would be convenient to give each of them a Canadian lawyer for an assessor, or assistant to them in the decision of causes: but the Canadian assessors should have no vote or authority to decide the causes in conjunction with the English judges; but should only assist them with their opinion and advice, the whole power of finally deciding them being vested solely in the English judges. This employment of the Canadian lawyers, even in this subordinate capacity of assistants and advisers, would be thought a very gracious indulgence in your Majesty by all your Majesty's new subjects; and many of them, to whom it has been mentioned, have expressed an entire approbation of it. If they had an equal degree of authority with the English judges in the final decision

Each English judge should have a Canadian lawyer for his assessor, or assistant;

but the sole power of deciding the causes should be vested in the English judges.

decision of causes, they would be much more likely than the English judges to abuse it, by reason of their connections in the country, and the enmities and partialities that these connections would give birth to. And besides, there are other reasons, which would make it inexpedient to trust your new Roman catholick subjects, so lately brought under your Majesty's allegiance, with so great a degree of power. These judges and their assistants should hold their courts every week throughout the year, excepting one month at Christmas, one week at Easter, and another at Whitfunday, which are the three great seasons for holidays observed by Christians. And they should sit on the Tuesday or Wednesday of every week, that the contending parties and their witnesses might not be under a necessity of travelling on Sundays to attend them. If the use of grand juries should be thought fit by your Majesty to be continued in criminal prosecutions, these judges should take cognizance of criminal matters (that is, of such parts of the criminal proceedings as required the attendance of grand juries) only once a month, that the inhabitants might not be too much diverted from the care of their private affairs by their attendance in the courts as grand jurymen. But the other steps of all criminal proceedings that do not require the presence of grand jurymen, and, if the use of grand juries was laid aside, the whole of those proceedings should be carried on in the weekly sessions, as well as all the civil business of the district.

The judges should hold courts once a week, with a very few exceptions.

The method of proceeding in these courts in civil actions might be as follows. The plaintiff might bring a declaration or plaint, in writing, into court, which might be either in the French or English language, as he thought proper, praying the process of the court to cause the defendant to be summoned to answer it; but not to be arrested by his body. This plaint should be read to the judge in open court, in order that he should determine whether or no it contained a good cause of action; and, till he approved it, no summons should be issued upon it. If he approved it, he should order it to be filed amongst the records of the court by the clerk or register of the court, and should award a summons to be sent to the defendant to come and answer the plaintiff's demand, at such a time as he, the judge, should therein appoint. If he neglected to come at the time appointed by the summons, without any good reason for his neglect, he should be condemned to pay the plaintiff a moderate

Method of proceeding in these courts.

sum of money, to be ascertained by the judge, as a compensation to him for his expence and trouble in attending the court, at the time appointed by the summons, to no purpose; and he should be summoned to come and answer the plaintiff's demand on another day. If he then also refused to come, judgment should go against him by default. When the defendant appeared, he should make his answer to the plaint of the plaintiff in writing, and either in the French or English language, as he thought proper: and this answer should be filed amongst the records of the court. The judge should then himself interrogate the parties concerning the facts, in their account of which the parties seemed to differ, and which appeared to him to be material to the decision of the cause: and these interrogatories and the answers of the parties should be reduced to writing by the judge, or by the clerk of the court from the words dictated to him by the judge. When the judge had thus found out in what facts material to the decision of the cause the parties differed, he should himself state these facts in writing, and declare that it was necessary for him to be informed, by proper testimony, whether they were true or false; and should ask the parties whether both, or either of them, desired that he should inquire into the truth of these facts by means of a jury, or by examining witnesses, or other proofs himself. If both, or either of the parties, desired to have a jury, a jury should be summoned to attend, at such following session as the judge should appoint. This jury should be paid for their attendance by the party that desired to have a jury; and if both desired it, then equally by both parties. They should receive five shillings sterling a man. For at present it is a subject of complaint among the Canadians that they are taken from their necessary occupations to attend upon juries (which is by no means an agreeable employment to them) without any consideration for it: and this, if it happened every week without any compensation, would be thought, and perhaps justly, a very heavy burden. But for a reward of five shillings they will serve with great alacrity. These juries should be appointed in nearly the same manner as special juries are in England; that is, the ministerial officer, that executed the process of the court, should return to the court a list of four times as many persons qualified to be jurymen as were necessary to constitute a jury; that is, if a jury was to consist of twelve men, a list of forty-eight persons so qualified; and then each party should strike out twelve of the names contained in this list:

and.

Juries to the summoned, if the parties desired it. They should be paid for their attendance.

Manner of choosing them.

and then the names of the remaining jurymen contained in it should be set down in a new list in an alternate order; that is, first one at the nomination of the plaintiff; then one at the nomination of the defendant; then another at the nomination of the plaintiff; and then another at that of the defendant; and so on: and these persons (whose names were thus set down in this new list, and who would be enough in number to constitute two juries) should all be summoned to attend the court on the day appointed for the trial of the cause, and should be called over in the court in the order in which their names were set down in the new list; and the first twelve, or other number sufficient to make a jury, that appeared in the court should be the jury to try the cause. By this method of chusing a jury the disagreeable and capricious practice of challenging jurymen would be avoided, which is apt to give rise to animosities between the persons challenged and the parties who object to them.

Of the jury so chosen a majority should have a right to determine the verdict: the present rule, of requiring an absolute unanimity amongst all the jurymen, being evidently absurd and unnatural, and, amongst other inconveniencies, productive of one of a very important nature, which is the perjury of some of the jurymen in every third or fourth cause: for it happens at least so often that there is a real difference of opinion amongst the jurymen, and that some of them go over to the opinion of the rest, in opposition to their own sentiments, and contrary to the oath they have taken to give a true verdict according to the evidence; which means, as we presume, according to their judgment of it. And it has sometimes happened, that a great majority of the jurymen has gone over to a small but resolute minority. This therefore calls loudly for a reformation; and more especially in a country where the natural and ordinary differences of opinion, that must frequently happen amongst jurymen, are likely to be greatly heightened by national and religious prejudices. If the agreement of twelve men should be thought necessary to establish the truth of a fact, it would be necessary to impanel twenty-three jurors. But perhaps a bare majority of twelve men may be sufficient to answer all the purposes of justice in civil matters.

A majority of the jury should carry the verdict.

In criminal matters it might be proper to make the agreement of two-thirds of the jury necessary to the conviction of the accused person.

The juries should always give special verdicts.

And as the issues, or points of fact, that were to be proposed to the consideration of the jury, were to be drawn up in a minute and particular manner in words dictated by the judges of the courts, so the verdicts of the juries should be always special verdicts, stating the facts, as the jury find them to have happened, with great exactness and particularity. This would prevent juries from encroaching upon the province of the judges, and determining points of law by means of the short and general issues of "*Guilty or Not Guilty*," "*He did or did not undertake*," "*He does or does not owe the sum demanded*," and the like, that oftentimes involve points of law mixed with matters of fact, and thereby give juries an opportunity of committing these irregularities. Whenever these things happen (whether it be from the ignorance or want of discernment in the jury-men, or from their wilfulness or partiality) it is certain that a real injury is done to the losing party, whose right it is, according to the laws of England, to have the points of law, upon which his cause depends, determined by the learned and able judges whom your Majesty has appointed to fill your courts of justice, as much as it is to have the matters of fact in the cause determined by a jury of honest freeholders in the neighbourhood.

Examination of witnesses.

The witnesses examined in the trial of a cause should be examined *viva voce* in open court, in the presence of both parties, or their attornies and advocates; and cross-examined, if the adverse party thought proper: and should not be allowed to deliver their testimony by written depositions or affidavits taken in private; not even in those trials which were carried on without a jury; unless by the consent of both the parties, or by the particular direction of the judge, upon very strong reasons for so doing, moved and debated in open court.

Execution against the defendant's goods and lands.

When judgment was given for the plaintiff in a civil action, a writ of execution should go against the goods and lands of the defendant, but not against his person; directing the ministerial officer that executed the process of the court, to levy the sum of money awarded to the plaintiff by the judgment, upon the defendant's moveable

able goods and chattels; and, in case they are not sufficient for the purpose, then, but not otherwise, to sell part of his lands, to produce the remainder of the sum. And if the executive officer could not find a sufficient quantity of either moveable or immoveable property belonging to the defendant to raise the sum awarded, and the judge was of opinion, upon affidavits made before him to that purpose, that there was reasonable grounds to suspect that the defendant had secreted or concealed some of his effects, he might require him to deliver in to the court, upon oath, an exact schedule of all his estates and effects of every kind; and if he refused so to do, might commit him to prison till he complied. And if he omitted any part of his effects to the amount of twenty pounds sterling, in the schedule so delivered in to the court, he should be liable to the penalties of perjury.

Upon proper grounds the defendant might be required to deliver in to the court, an exact schedule of his estate and effects upon oath.

The judge should have a power of awarding reasonable costs to either party, according to his discretion.

Costs.

It would be convenient to have a separate ministerial, or executive, officer, to each of the three districts of Quebec, Three Rivers, and Montréal, to be called a Sheriff; which is the common name for such an officer in England, instead of one Provost-marshal for the whole province.

Sheriffs to the three several shires, or districts.

And it would be necessary for your Majesty to have an attorney in each of these courts, to prosecute for your Majesty in all criminal cases, and in suits concerning your Majesty's revenue, and in all other suits in which your Majesty's interest is concerned. If your Majesty should not think proper to appoint an officer expressly for this purpose, the power of carrying on these prosecutions for your Majesty might be vested in the clerk, or register, of the court; just as in your Majesty's court of King's Bench in England; the clerk of the crown (whose principal duty is, to register, or enter, the pleas of the crown in the records of the court) is likewise attorney of your Majesty in that court, and prosecutes in your Majesty's behalf. But we submit it to your Majesty, that it would be convenient, and more suitable to the honour of your Majesty and the dignity of the court, to have a separate officer for this purpose, to be called your Majesty's Attorney for that district, as there was in the time of the French government.

King's attorneys in each of the three courts.

From

Appeals from these courts to the governour and council, and from thence to the King in council.

From these courts there should lie an appeal to the governour and council of the province, and from thence to your Majesty in your privy council. One great use of the appeal to the governour and council would be to preserve an uniformity in the law throughout the whole province, which otherwise might gradually become different in the three different shires or districts of it, by the difference of the decisions that might be given in these several courts of justice, if they were intirely independant of each other, and subject to no common superiour council that might correct the errors of their proceedings.

And for the same reason the decisions of these courts should not be deemed to form precedents of sufficient authority to determine any subsequent disputes; but this authority should be ascribed only to those cases which had been decided by the governour and council of the province upon the appeals brought before them from these shire-courts, or by your Majesty's self in your privy council.

And in order that your Majesty's governour and council might not be destitute of the advice of persons skilled in the laws to assist them in the determination of the appeals that should be brought before them, it might be expedient that your Majesty's judges of these three courts, and perhaps also your Majesty's three attornies in them, should be made members of your Majesty's council of the province; by which means all the best law abilities in the province would be employed in making these important decisions that were to carry with them the force of law: and with this view it might be proper to require your Majesty's judges and attornies of the courts at Three Rivers and Montreal to attend the governour at Quebec for one month about Christmas time, in order to assist at the decision of these appeals, which should therefore be reserved to this season of the year.

The nature of these appeals.

These appeals should be only, as they now are, of the nature of writs of error in England, to correct the errors in law committed in the courts of these shires or districts, and not to re-consider the facts in the cause, unless they had been settled by the judge alone without the assistance of a jury. Where this was the case, the parties might, if they thought fit, cause the evidence itself to be taken down in writing by the clerk of the court, and signed by the witnesses

witnesſes and judge, that it might make a part of the record, as it does upon a trial by a general court martial in England: and, upon the removal of this record before the governour and council, they might re-consider the whole matter, the facts as well as the law, and give ſuch judgment upon it as they thought juſt; but they ſhould not admit any new evidence relating to it. Where the cauſe had been tried by a jury, the loſing party might, if he thought proper, have it tried over again by a ſecond jury, conſiſting of twice as many jurymen as the firſt jury; and the verdict of this ſecond jury ſhould be final with reſpect to the matters of fact determined by it.

A ſecond trial
by a double jury.

When Gaſpey ſhall be ſettled, a fourth judge might be ſent thither, whoſe juriſdiction ſhould extend over a diſtrict lying round about it, to be taken out of the diſtrict of Quebec, which is now immoderately large. Such an eſtabliſhment would be of great convenience to the inhabitants of that part of the province.

Theſe are the outlines of the plan which we humbly beg leave to recommend to your Maſteſty for the adminiſtration of juſtice, and which, we are confident, would be of great advantage, and give very great ſatiſfaction to your Maſteſty's Canadian ſubjects, and effectually remove many of the inconveniencies of which they now complain.

It remains that we conſider the firſt and greateſt inconvenience above-mentioned, which ariſes from the uncertainty of the law in the preſent condition of the province, and that we ſet before your Maſteſty the different methods by which, as we conceive, this inconvenience may be removed, and the laws of the province may be ſettled for the future upon a ſolid and permanent foundation.

Four methods of doing this have occurred to us. The firſt is, to compoſe a code of laws for this province, that ſhall contain all the laws by which it is to be governed for the time to come, to the entire excluſion or abolition of every part both of the laws of England and the French laws that ſhall not be ſet down in the code itſelf.

Four different
methods that
may be taken
to ſettle the laws
of this province.

The.

The second is, to revive or re-establish the whole French law at once, to the exclusion of all the English laws, excepting those few which have been introduced by act of parliament, as above-mentioned, and a few more of the laws of England which are most eminently beneficial and favourable to the liberty of the subject, and to introduce these beneficial laws by a particular ordinance or proclamation, published in the province, in order to make them fully known to the Canadians. Such might be an ordinance to take away the use of the question, or torture, in criminal prosecutions, to change the cruel punishment of breaking on the wheel into hanging or beheading; and to introduce the substance of the English law relating to the writ of *habeas corpus*, by declaring that no person in the province should be committed to prison, or detained in prison, by the order of any magistrate without a warrant in writing under the hand of the magistrate, expressing particularly the cause of his commitment or detention; and that every man so detained in prison should, if he desired it, be brought before one of your Majesty's judges in the province, and either set at liberty, bailed, or remanded to prison, as the cause of his imprisonment, expressed in the warrant by which he is detained in prison, should require. Such an ordinance might be thought to fulfill, in a great measure, the promise given to your Majesty's British subjects by those words in your Majesty's proclamation above-mentioned, *of the enjoyment of the benefit of the laws of England*, supposing that your Majesty should think proper to determine that those words contain only a promise.

The third method of settling the laws of this country, so as to continue to the Canadians the use of several of their ancient customs, is to make the law of England the general law of the province, with an exception of those particular subjects concerning which your Majesty shall please to permit the former customs of the country to subsist, and with respect to those subjects to let the ancient laws of the country subsist in the manner they did at the time of the conquest, and without attempting to reduce them to writing, and enact them anew by particular ordinances, expressly setting them forth in all the extent in which your Majesty thought proper to let them continue.

And

And the fourth method of doing this would be to make (as in the third method) the law of England become the general law of the province, with an exception of those particular subjects, or heads of law, concerning which your Majesty shall please to permit the former customs of the country to continue; and with respect to those subjects, to enumerate and set forth at length, in an ordinance or proclamation to be made for that purpose, the particular customs which your Majesty should think fit to be continued, to the exclusion and abolition of all other customs that should not be contained in the said ordinance or proclamation.

The first of these methods of settling the laws of this province, namely, that of making a code of all the laws by which it shall be governed for the future, to the exclusion of all the laws both of England and France that are not contained in it, would certainly be the most troublesome in the execution to your Majesty's ministers and servants, both in England and in this province. And further, we conceive that it would be objected to by some of the Canadians, who are the most difficult to please, as a rash and dangerous experiment, to which the persons your Majesty should think proper to employ in the compiling this code would be by no means equal. They would frame their objection to such a project in some such manner as this: 'That to reduce the whole law
 ' anew into writing; with a rejection of a great part of it as useless
 ' in the opinion of the compilers, is a task of such extraordinary
 ' difficulty, that not only no person in this province is fit to under-
 ' take it, but even the ablest lawyers in the parliament of Paris, if
 ' they were to devote their whole time and attention to it, would
 ' hardly be able to execute it properly; that if any thing of this
 ' kind is attempted here, many important things will most certainly
 ' be omitted, and others be too concisely, imperfectly, or obscurely
 ' expressed; that in such a code no part of the ancient laws of this
 ' province ought to be omitted, notwithstanding some of them may
 ' never have been put in execution here; for that those laws are
 ' not less a part of the law of this country than those which have
 ' been often put in practice; and that the only reason why
 ' they have not yet been executed is, because the objects of them,
 ' that is, the cases to which they relate, have not yet arisen;
 ' and that when these cases shall arise, here is a wise law already
 ' provided beforehand to decide them; and that therefore no part
 ' of

Advantages and disadvantages with which the first method of settling the laws will be attended.

‘ of the custom of Paris, which was truly and properly the law of
 ‘ this province, ought to be left out of any code that shall be made
 ‘ for the government of it: and further, that there is a strong
 ‘ mutual connection between the different parts of this system of
 ‘ law, that makes it very difficult to change or abrogate any part of
 ‘ it, under a notion of its being usefess, without weakening or
 ‘ rendering ineffectual other parts of it which the compilers may
 ‘ esteem useful; and that therefore the only safe way is to let it
 ‘ stand as it is; and that, in this view of permitting the whole of
 ‘ it to continue, there is no need of a code to express it over again
 ‘ in new words; that it is already expressed in writing in the best
 ‘ manner possible in the text of the custom of Paris itself and in
 ‘ the learned treatises of Monsieur Ferriere and other writers upon
 ‘ it, and in the decisions of the parliament of Paris and of the
 ‘ superiour council of this province, upon the cases that have been
 ‘ contested before them; that indeed such a new code might be of
 ‘ some convenience to an English judge to save him the trouble of
 ‘ studying or consulting the French law-books, but that it would be
 ‘ a most dangerous and pernicious attempt to the rights and liberties
 ‘ of your Majesty’s Canadian subjects.’

These are the objections which will certainly be made by some
 of your Majesty’s Canadian subjects to the measure of compiling a
 new code of laws for this province, which we have stated to your
 Majesty at great length, that they may have all the weight with
 your Majesty which they may deserve. At the same time we beg
 leave to inform your Majesty, that we believe that these objections
 will be made only by a few persons in this province, and that the
 bulk of your Majesty’s new Canadian subjects will be very well
 satisfied with such a code, and this even though it should in a
 great measure be taken from the laws of England, provided only
 that a few of the most important of their ancient laws and customs,
 and that most nearly affect their property and the future situation of
 their wives and children, be contained in it.

On the other hand, the advantages that would arise from this
 measure of compiling such a code of laws for this province would,
 as we conceive, be these that follow.

In the first place, the English judges, who will, as we presume, always be employed to administer justice in this province, would have a short and plain rule to go by, which they would easily be able to make themselves masters of, and would not be liable to be puzzled and misled by artful French lawyers, partially citing and misrepresenting and misapplying the doctrines and cases contained in the French law books.

And in the second place, the English inhabitants in general would have the satisfaction of knowing easily and certainly what the laws of the province were, upon what conditions they purchased lands or houses, what rights of alienating or devising them they thereby acquired, what duties to your Majesty, their lords or their tenants, they were bound to, and in what manner their wives and children would enjoy their possessions after their decease.

These would be no inconsiderable advantages resulting from the composition of such a code, even though done in a very imperfect manner. But there is another and greater advantage with which, as we conceive, this measure would be attended, which is the removing from the minds of the Canadians all idea of the excellency of the French laws and government, and of the superiour skill and ability of French lawyers and judges, bred in the parliament of Paris, and consequently of the happiness of having their law-suits decided by them. For we apprehend that, as long as the French laws and customs subsist at large without being reduced into a code, so that the several French law-books, books of reports, and edicts of the French king are the books of authority upon the subject, to which recourse must be had continually in the decision of points of law, so long will the people of this province retain a reverence for those edicts, reports, and other law-books, and for the authority of the French king who made the edicts, and for the parliament of Paris that has made the decisions reported in the books of reports, and the other learned French authors who have composed the other treatises on this subject; and this reverence will be accompanied with a continuance of their liking for that government from which these good laws and edicts and law-books proceeded, and under which they might be most ably administered, and consequently with a secret wish to return to that government, that is, to return to their

subjection to the French king; whereas, if they continue to enjoy the most important of their ancient laws and customs under a new name, and expressed in a style and phrase somewhat different from the former, and carrying with it the stamp of your Majesty's authority, the idea of their former sovereign, and of the parliament of Paris, and of the wise lawyers that compose it, would by degrees wear out of their minds, and they would think of nothing upon these occasions but the king of Great Britain and his code, and the great favour he had shewn them in permitting their principal laws and customs to continue, and giving them the express sanction of his royal authority. This we take to be a very capital advantage attending this measure of compiling a code of laws.

As to the inconvenience that might arise from the omissions or imperfections of this code (for we readily admit that it would be very imperfect) it must be observed, that they might be continually lessened and remedied by fresh ordinances, from time to time re-enacting those parts of the former laws and customs of this province which appeared to have been forgotten in the code, and which the governour and council thought worthy to be re-established: and in the mean time the code itself (imperfect as we suppose it to be) would still be sufficiently exact to determine all the common cases that occur in the ordinary course of human affairs, such as the rules of inheritance in the direct line, the rules of dower, and of the husband's rights arising from the matrimonial contract, the usual rules about quit-rents, alienation-fines, and other profits due to your Majesty and to other lords, the usual methods of investiture of lands by performing fealty and homage, and the like, which would be sufficient to prevent the country from falling into general confusion.

This code we suppose to contain the whole of the law by which the province is to be governed, criminal as well as civil, to the exclusion of the whole of the English law, as well as the French, except what was contained in the code itself, and the acts of parliament relating to the custom-house duties, and those few other statutes that expressly relate to this colony by name or sufficient words of description since the conquest of it, or which, though made before the conquest of it, yet extend to it by virtue of the
 general

general description of *all his Majesty's dominions now belonging to the crown of Great Britain, or that shall hereafter belong unto the same.*

These are the advantages and disadvantages with which, as we conceive, this first method of settling the laws of this province, by composing a code of laws for that purpose, would be attended.

The second method of settling the laws of this province, by reviving at once the whole French law, and introducing by an ordinance only a few of the laws of England that are most eminently beneficial to the subject, is evidently the shortest and easiest method that can be taken for this purpose; but it would be attended with the following inconveniencies.

Advantages and disadvantages of the second method.

In the first place it would have a tendency to keep up in the minds of the Canadians that respect for the laws of France, and the wisdom of the parliament of Paris, and the excellence of the French government, which has been above described, and which it would be one of the principal advantages resulting from the former measure, of compiling a code of laws, to extinguish.

In the second place it would give disgust to the English inhabitants of this province, who are fond of the laws of England and desirous of having the greatest part of them continued, and think they have a right to the enjoyment of them upon two distinct grounds.

In the first place, they think that every country that becomes subject to the crown of Great Britain (whether by conquest, exchange, or otherwise) becomes immediately subject to the laws of England, and that the laws by which it was formerly governed become immediately and *ipso facto* void and of no effect, being superseded by the laws of England without the aid of any act of parliament or royal proclamation for that purpose. In this we presume they are mistaken; since both the express declarations of the law-books, and those of your Majesty's attorney and solicitor general in their report concerning this province, made in the year 1766, and the dictates of natural reason inculcate a quite contrary doctrine, to wit, that the laws of the conquered people subsist in their full vigour till the will of the conquerour shall expressly

expressly change them. However this opinion, though not well grounded, is pretty general among the English inhabitants of this province.

And in the second place, they say, that, supposing that the laws of England were not of course introduced into this province by the very conquest itself and the subjection of the country to the crown of Great Britain, yet that they have been expressly introduced by your Majesty's proclamation of the 7th of October 1763, in the words that have been mentioned in the former part of this report; in which your Majesty assures them, that they may confide in your Majesty's royal protection for the enjoyment of the benefit of the laws of England.

Advantages and
disadvantages of
the third
method.

The third method of settling the laws of this province, by making the laws of England the general basis of them, and permitting the Canadian customs to continue with respect only to some particular excepted subjects, and this by a general reference to the French law-books in which those customs are contained, without attempting to enumerate and express them anew, would also be a very short and easy one to your Majesty's ministers and servants both in England and in this province; and will be very agreeable and satisfactory to your Majesty's British subjects in this province. Yet it will be attended with the following inconveniencies.

By preserving a considerable part of the French law in the lump, or by a general reference to the French law-books that contain it, it will in some degree keep up in the minds of the Canadians that reverence for the laws and lawyers of Paris, and that consequential opinion of the happiness of being subject to the French government (as being that under which those laws may be most ably administered) which all persons that are zealously attached to your Majesty's government would naturally wish to see extinguished. But this objection will take place in a much less degree against this method, than against the last-mentioned, or second method, by which almost the whole body of the French laws would be revived.

Further, if this third method of settling the laws is pursued, some of the Canadians will probably make the two following objections to it. They will say, in the first place, that the whole body
of

of their laws ought to have been left intire, as there is a strong and well-contrived connexion between all its parts, which makes it dangerous and detrimental to the welfare of the province to alter any of it. And, secondly, they will say, that, if any of the laws of England must be introduced here, they ought not to be introduced by general words, but by special ordinances, enumerating them, and setting them forth at full length, and in the French language, so that the Canadians may know and observe them. But these are objections which we believe will be made only by a few persons, and not by the generality of your Majesty's Canadian subjects.

The fourth method of settling the laws of this province, by making the law of England become the general law of it, with an exception of some particular subjects, or heads of law; and concerning those subjects to revive the ancient customs of the country by an ordinance or proclamation that should particularly set them forth and describe them in all the extent in which your Majesty should think fit to let them continue, without any reference to the law-books in which they were formerly contained, would be preferable to the third method in this respect, that by enumerating and describing, or reciting particularly, the several French laws and customs that were intended to be continued, it would cut off all connection, in the minds of the Canadians, with the French laws, lawyers, and judges, and the government under which they were maintained. The parliament of Paris, and the custom of Paris, and the French king's edicts would be no longer heard of, as being no longer of any authority; but the laws that were permitted to subsist must be cited in the words made use of by your Majesty to express them in the ordinance or proclamation which permitted their continuance. This would be a considerable advantage which this fourth method of settling the laws of this province would have over the third method; but it would be certainly somewhat more troublesome to your Majesty's ministers than that third method, and it would likewise be liable to many imperfections from the inaccurate manner in which the French laws and customs that were intended to be continued would probably be set forth; and it would be further liable to the two latter objections which might be made to the third measure, to wit, that it would give but an imperfect degree of satisfaction to some of the Canadians, by leaving them only a part of their ancient laws and customs, and that it would further

Advantages and disadvantages of the fourth method.

further cause them to complain of the general manner of introducing the laws of England without informing them exactly and particularly what those laws were, that they might know how to obey them. But these are objections which, as we before observed, would probably be made by a few persons only, and not by the generality of your Majesty's new subjects.

Conclusion.

Thus we have set forth to your Majesty at considerable length (but not greater, we hope, than the importance of the subject required) the different methods by which your Majesty's gracious intention of settling the laws of this province upon a solid and permanent foundation for the time to come, and of leaving to your Majesty's new Canadian subjects the enjoyment of some of their ancient laws and customs that are most necessary to their tranquillity and satisfaction, may be carried into execution, together with the several advantages and disadvantages with which we apprehend that each of them will be attended. To weigh these advantages and disadvantages against each other, and draw a final balance in favour of one of these methods in preference to the rest, or to find a new method preferable to them all, is a task to which we find ourselves unequal, and which we apprehend can be successfully performed only by the wisdom of your Majesty's counsels. By residing in the province we may have been able perhaps, by our observation of the state of things here, to furnish your Majesty with necessary information and materials for forming a decisive judgement upon the subject; and that, in obedience to your Majesty's commands, we have endeavoured to do faithfully and fully, and to the best of our abilities, in this report. That our endeavours may be acceptable to your Majesty, and may be esteemed rather according to the zeal and integrity by which they have been directed, than according to the degree in which they may be found to answer the high purposes to which they were intended to be subservient, is the earnest wish of,

Your MAJESTY'S

Most loyal and devoted

Subjects and Servants.

N. B. The foregoing draught of a report, which was prepared by Francis Maseres, Esquire, his Majesty's attorney general of the province of Quebec, by order of Guy Carleton, Esquire, the governour of the said province, was delivered in to the said governour on the 27th day of February 1769, but had not the good fortune to be approved by his excellency. Another report was thereupon drawn up by other hands agreeable to the governour's sentiments, in which his excellency has omitted the consideration of all the public acts and instruments whereby the English law has been introduced, or attempted to be introduced, into that province, together with some other matters contained in the foregoing report; and instead of mentioning several different methods of settling the laws of that province for the future, with the several advantages and disadvantages that would probably attend each of the proposed methods, and leaving it wholly to his Majesty's wisdom to chuse one of the methods in preference to the others, as is done in the foregoing report, his excellency has thought fit to mention only one method of settling the laws of the province, which he strongly recommends to his Majesty, as the only way of doing justice and giving satisfaction to the Canadians, which is, to continue the laws of England with respect to criminal matters, but to revive the whole body of the French laws that were in use there before the conquest with respect to civil matters. The chief justice, William Hey, Esquire, and attorney general of the province, not thinking it either necessary or expedient to revive the whole body of the French laws in civil matters, but only those parts of them (which indeed are very considerable) which related to the tenure, alienation, dower, and inheritance of landed property, and the distribution of the effects of persons who die intestate, delivered in to the governour two additional papers, or lesser reports, containing their reasons for not wholly agreeing to the report made by his excellency. And these three reports were delivered to Maurice Morgan, Esquire, about the 12th of September 1769, to be by him carried to England, and delivered to his Majesty's secretary of state for America. The additional paper, or lesser report, of the attorney general was intitled his opinion concerning the governour's report, and was as follows.

N U M B E R II.

The OPINION of the Attorney General of the Province of QUEBEC concerning the Report made by his Excellency Brigadier-General CARLETON, the Governour in Chief of the said Province, to his Majesty in Council,

C O N C E R N I N G

The State of the Laws and the Administration of Justice in the said Province ;

- W I T H -

The Reasons of his Dissent from some of the Matters contained in the said Report.

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Objections to the proposal of reviving the whole body of the French laws relating to civil matters.

YOUR Majesty's attorney general of this province approves that part of the foregoing report which gives an account of the constitution of the government of this province during its subjection to the French king, and believes the said account to be true in most particulars; but he cannot assent to that part of the said report which suggests to your Majesty the expediency of reviving the whole of the French laws in civil matters, for the following reasons.

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Inconsistency of such a measure with his Majesty's former plan of conduct with respect to the province of Quebec.

In the first place, he thinks it will be a deviation from that plan of conduct which your Majesty has hitherto thought fit to pursue with respect to this province ever since the conquest of it by your Majesty's arms in 1760, which he conceives to have been, to endeavour to introduce the English laws and the English manner of government into it, and thereby to assimilate and associate this province to your Majesty's other colonies in North America, and not to keep it distinct and separate from them in religion, laws, and manners, to all future generations. He conceives that if this latter system had been that which your Majesty had adopted, your Majesty would have given orders to your general, Sir Jeffery Amherst, to whom this province was surrendered, to keep up, from the first moment

moment of the conquest, all the courts of justice that were at that time in being in the colony, and even the several officers that composed them, upon the same footing on which they then subsisted. But as your Majesty's said general did immediately suppress all the former jurisdictions, and erect military councils in their stead, and in the articles of capitulation *refused to promise the inhabitants of this province the continuance of the custom of Paris, and the other ancient laws and usages by which they had been governed*, though requested in that behalf by the French general;—and as your Majesty did afterwards, in the fourth article of the definitive treaty of peace in 1763, engage to indulge your new Canadian subjects even in the delicate and important article of the free exercise of their religion, only *so far as the laws of England will permit*;—and as your Majesty, by your royal proclamation of the 7th of November 1763, did encourage your British and other ancient subjects to go and settle in this and the other new-erected governments, and did promise them, as an excitement thereunto, *the immediate enjoyment of the benefit of the laws of England*;—and as your Majesty did afterwards, by your commission of vice admiral of this province granted to General Murray, *expressly introduce all the laws of the English courts of admiralty into this province*; and by your commission to the same gentleman to be captain general and governour in chief of this province, did direct him to summon an assembly of the freeholders and planters in this province, and in conjunction with them *to make laws and ordinances not repugnant to the laws of England*, by which it seems to be pre-supposed that the laws of England were already introduced there; and did in other parts of the said commission *allude to divers of the laws of England as being already in force here, as particularly the laws relating to the oaths of abjuration and supremacy, and the declaration against transubstantiation*—From these several exertions of your Majesty's royal authority in favour of the laws of England, your Majesty's attorney general of this province humbly collects it to have been your Majesty's gracious intention to assimilate this province in religion, laws, and government to the other dominions belonging to your Majesty's crown in North America; he therefore conceives that the immediate revival of all the French laws relating to civil suits in this province, in the manner suggested in the foregoing report, will have at least the appearance of a deviation from the plan of conduct which your Majesty has hitherto adopted, and of a step towards a preference of

the contrary system of keeping this province distinct from, and unconnected with, all your Majesty's other colonies in North America: and this appearance he humbly conceives to be itself a considerable inconvenience, and very fit to be avoided, unless very strong reasons of justice or policy made such a measure necessary, which he does not conceive to be the case; for, on the contrary, he apprehends that the said total revival of the custom of Paris, and all the other French laws relating to civil suits, will be attended with the following additional inconveniencies.

Other inconveniencies would follow from such a measure.

First inconvenience.

In the first place, it will make it difficult for any of your Majesty's English subjects to administer justice in this province, as it will require much labour and study, and a more than ordinary acquaintance with the French language to attain a thorough knowledge of those laws.

Second inconvenience.

In the next place, it will keep up in the minds of your Majesty's new Canadian subjects the remembrance of their former government, which will probably be accompanied with a desire to return to it. When they hear the custom of Paris, and the parliament of Paris, and its wise decisions, continually appealed to as the measure of justice in this country, they will be inclined to think *that* government to be best, under which those wise laws could most ably be administered, which is that of the French king; which, together with the continuance of their attachment to the Popish religion, will keep them ever in a state of disaffection to your Majesty's government, and in a disposition to shake it off on the first opportunity that shall happen to be afforded them by any attempt of the French king to recover this country by force of arms.

Third inconvenience.

And in the third place, it will discourage your Majesty's British subjects from coming to settle here when they see the country governed by a set of laws, of which they have no knowledge, and against which they entertain (though perhaps unjustly) strong prejudices.

Your Majesty's attorney general of this province is further of opinion, that the body of your Majesty's new Canadian subjects are by no means either so distressed or so discontented by the introduction of

of the English laws into this province as they are represented in the foregoing report : at least he has seen no proofs of either such great distress or high discontent. What he has principally observed to be the subject of their complaints has been, either the expence, or the dilatoriness of our law-proceedings ; which he therefore conceives stand in need of reformation : and he is of opinion, that to establish three courts of general jurisdiction in all matters criminal as well as civil in the province, to sit every week in the year (with a very few exceptions) in the towns of Quebec, Three Rivers, and Montreal, would be the most adequate remedy for these complaints.

The expensiveness and dilatoriness of the English law proceedings are the principal subjects of the complaints of the Canadians.

To erect three royal courts of general jurisdiction to hold their sittings weekly.

And as to the substance of the laws which are to be henceforwards admitted in this province, he conceives that the best way of all to settle these would be to make a code of them, that should contain all the laws of every kind, criminal as well as civil, that were intended to be of force here, to the exclusion of all other laws, both French and English, that were not inserted in the said code ; by which means all pretence would be taken away both from the French and British inhabitants of this province for complaining that they are governed by unknown laws. This he conceives to be a work of difficulty indeed, but by no means impracticable ; and he apprehends that it would be a work of very great utility to the province, even though it should be very imperfectly executed, and many important articles should happen to be omitted in it ; provided only that those things that were inserted in it were useful and reasonable, and set forth in a clear and proper manner : because he apprehends that the rules so inserted would be sufficient to govern at least all the common cases that would happen in the ordinary course of human affairs, such as descents in the right line, the right of representation in grand-children whose parents are dead, the dower of widows, the rents and services due to seigniors, the obligations and duties due from them to their tenants, the seignior's right to the common mutation-fines, his right of pre-emption of his tenant's land when the tenant is disposed to sell it, the rules of evidence in courts of justice, the solemnities necessary to be observed to give validity to a deed or will, and the like obvious and important matters ; which would be sufficient to prevent the province from falling into confusion. And as to the nicer cases which might be omitted in such a code, they might afterwards be supplied by particular ordinances passed from time to time for that purpose.

To make a code of laws for the use of the province.

But

But if this measure of making such a code of laws should not be thought adviseable, your Majesty's attorney general of this province is humbly of opinion that it would be most expedient to let the English law continue to subsist in this province as the general law of the province, and to pass an ordinance to revive those of the former French laws which relate to the tenure, inheritance, dower, alienation, and incumbrance of landed property, and to the distribution of the effects of persons who die intestate. His reasons for thinking that the French laws upon these heads ought to be revived, are as follows.

To revive the old French laws relating to landed property and the distribution of the effects of intestates.

These heads of law are three in number: First, those relating to the tenures of lands in this province, or the mutual obligations subsisting between landlords and tenants with respect to them. Secondly, the laws relating to the power and manner of aliening, mortgaging, and otherwise incumbering landed property. And Thirdly, the laws relating to dower, inheritance, and the distribution of the effects of persons who die intestate. And these several heads of law ought, as he humbly apprehends, to be revived in this province upon separate and distinct grounds.

Laws of tenure.

The laws of tenure, he conceives, ought to be considered as having been already granted by your Majesty to your new Canadian subjects by that article in the capitulation of 1760, by which your Majesty's general granted them *the enjoyment, of all their estates, both noble and ignoble*, and by the permission given them by your Majesty in the definitive treaty of peace in 1763, to continue in the possession of them; these laws being essentially necessary to such possession and enjoyment. Such are the laws relating to the quit-rents due by the freeholders, who hold by rent-service, to the seigniors, the mutation-fines, the right of pre-emption, and the rights of escheat in certain cases; all which constitute the principal part of the property of the seigniors.

Laws relating to the manner of aliening and incumbering landed property.

But the laws relating to the power and manner of aliening, mortgaging, and otherwise incumbering, landed property, are not, as he apprehends, absolutely necessary to the enjoyment of the lands themselves, and therefore ought not to be reckoned quite so sacred and unchangeable as the laws of tenure themselves. Yet he conceives them to be very nearly connected with those laws,

laws, and almost dependant upon them, so that they could not be changed in any considerable degree without diminishing the value of the lands themselves, by means of the practical difficulties that would occur in making use of the new modes of conveying land that would be established in their stead; and therefore he thinks that they ought to be continued. And further, he conceives it will be the more necessary to revive or continue the French laws upon this subject, in order to prevent the introduction of the English laws upon the same subject, namely, the doctrine of estates-tail, the statute *de donis*, the method of defeating that statute by common recoveries, the doctrine of fines, the statute of uses, and the doctrine of uses in general, and other nice doctrines relating to real estates, which are full of so much subtlety, intricacy, and variety, that, if they were to be introduced into this province, they would throw all the inhabitants of it, without excepting even the English lawyers, into an inextricable maze of confusion. For these reasons he apprehends that the English laws upon this subject ought never to be introduced here; and that the former laws of the province relating to it ought for the present to be revived.

The practice of the English laws upon this subject would be highly inconvenient to the province.

Lastly, as to the French laws concerning dower and the inheritance of lands and the distribution of the goods of intestates, with respect to such marriages as have been contracted, and such deaths as have happened, since the establishment of the civil government in this province, your Majesty's attorney general of this province is humbly of opinion, that those laws ought not to be considered as necessary appendages to the property of your Majesty's Canadian subjects in this province, and as having therefore been granted to them by implication in the articles of capitulation and the definitive treaty of peace; because they do not affect the property, or the rights, of the Canadians then in being, to whom alone those grants were made, but only guide and determine the course and devolution of that property after their deaths among persons that were then unborn. This, therefore, he conceives to be a matter upon which the authority of a legislator may properly be exercised. And he further apprehends, that in some time hence a change of the laws relating to these subjects, and especially of those relating to dower and the inheritance of land, would be highly beneficial to this province, the present excessive subdivision of the lands,

Laws of inheritance and dower, and the distribution of the effects of intestates.

lands, by repeated partitions of them amongst numerous families, being productive of considerable inconveniencies. But this, he apprehends, need not be done at present; and he conceives, that, if ever it should be thought adviseable to do it, it ought to be done by a full and express declaration beforehand of the time at which the proposed changes should take place, with a power given to such persons as disliked them to prevent their taking place in their respective families by express provisions and agreements to the contrary, and should be accompanied with such temperaments and modifications as should make the adopting them be in a manner the voluntary act of the persons who were affected by them. But for the present he conceives it might be better to postpone those important changes, and to revive the ancient laws of this province concerning inheritance and dower, and the distribution of intestates estates, as well as those relating to the tenures of land and the power and manner of aliening and mortgaging and otherwise incumbering it. And this one ordinance, reviving the said ancient laws relating to landed property and the distribution of the effects of persons who die intestate, would, as he conceives, be sufficient to preserve the tranquillity of the province, and to give satisfaction to the bulk of the Canadians: at least, he apprehends it would be enough to begin with: and if, upon trial, it should be found necessary to revive some other of the French laws that formerly subsisted in this province, it might be done by another ordinance or two, that might be passed for that purpose, when the necessity of them should become apparent. By such an ordinance as is above-mentioned passed at present, and by the establishment of an easy and cheap method of administering justice in this province with sufficient expedition, he conceives that the far greater part of your Majesty's Canadian subjects would be contented. This therefore is what he humbly presumes to recommend to your Majesty as the best method which he can suggest for the settlement of the laws of this province, after the fullest consideration of this difficult and important subject.

FRANCIS MASERES,
Attorney General.

QUEBEC,
September 11th, 1769.

N. B. In

N. B. In the foregoing short report, or opinion, of the attorney general of the province of Quebec, the particulars of the plan therein recommended for the administration of justice in the province of Quebec are not set forth, [but only the general substance of it is briefly mentioned in these words: “ What he has principally observed to be the subject of the “ complaints of the Canadians has been either the expence or “ the dilatoriness of our law-proceedings, which he therefore “ conceives stand in need of reformation: and he is of “ opinion, that to establish three courts of general jurisdiction, “ in all matters criminal as well civil, in the province, to sit “ every week in the year (with a very few exceptions) in “ the towns of Quebec, Three Rivers, and Montreal, would “ be the most adequate remedy for these complaints.” Now the particulars of this plan are as follows.

N U M B E R III.

P L A N
O F AConvenient METHOD of administering JUSTICE in the
Province of QUEBEC.

[N. B. This plan is the same with that in the foregoing draught of an intended report of the governour and council of the province of Quebec, which the governour rejected, page 32, *et seq*; with a few additional remarks]

IT is conceived that the following method of administering justice would be that which would best suit the circumstances of the province of Quebec and the temper of its inhabitants, and be upon the whole the fittest of any to be carried into execution there, being nearly the same with that which took place there in the time of the French government.

The province should be divided into three districts, or shires.

Each shire should have a separate sheriff.

A separate royal court of judicature should be erected in each district, or shire;

which should consist of one English judge and a Canadian assessor.

In the first place, it would be proper to divide the province again into the three districts of Quebec, Three Rivers, and Montreal, as in the time of the French government; and to call them shires, which is the name of the districts into which England is divided; and to appoint a separate ministerial or executive officer of justice to each of these shires or districts, to be called, as in England, the sheriff of the shire, instead of having an officer of this kind, called a provost-marshal, for the whole province, as is now the case.

In each of these shires, or districts, there should be a separate royal court of judicature, which should hold its session in the chief, or rather the only town, in the district; for the towns of Quebec, Three Rivers, and Montreal are the only towns in the province. These courts should consist of one English judge, to be appointed by his Majesty, and a Canadian assessor, to be named by the governour of the province. These courts should have full power

power to hear and determine all matters, both criminal and civil, arising within their respective jurisdictions, just as the chief justice of the province is empowered to do upon the present establishment throughout the whole province. The English judges should be barristers at law of at least five years standing at the bar; and they should be such as, besides their skill and knowledge in the law, had a competent knowledge of the French language. This would be almost a necessary qualification, in order that they might be able to understand the evidence given by the French witnesses who would so often be examined before them: and to enable them to do this more readily, and likewise to comprehend the nature and extent of such of the ancient laws and customs of the country as his Majesty shall think fit to revive or continue, would be the principal use of giving them the assessors above-mentioned, who should be Canadian lawyers or notaries of good character and ability. But these Canadian assessors should only assist them with their opinion and advice, without having any vote or authority to decide the causes in conjunction with the judges; but the whole power of finally deciding them should be vested solely in the English judges.

This employment of the Canadian lawyers, even in this subordinate capacity of assistants and advisers, would be thought a very gracious indulgence in his Majesty by all his Majesty's new Canadian subjects: and many of them, to whom it has been mentioned, have expressed an intire approbation of it. If they were to have an equal degree of authority with the English judges in the final decision of causes, they would be much more likely than the English judges to abuse it, by reason of their connections in the country, and the enmities and partialities that those connections would give birth to: and, besides this, there are other reasons which would make it inexpedient for his Majesty to trust his new Roman Catholic subjects, so lately brought under his allegiance, with so great a degree of power.

These judges and their assistants should hold their courts every week throughout the year, excepting one month at Christmas, one week at Easter, and another at Whitsun-tide, which are the three greatest seasons for holydays observed by Christians. And they should sit on the Tuesday or Wednesday of every week, to the end that

These courts to sit every week.

that the contending parties and their witnesses might not be under the necessity of travelling on Sundays to attend them.

If the use of juries should be thought fit to be continued in criminal prosecutions, they should be summoned only once a month, that the inhabitants might not be too much diverted from the care of their private concerns by their attendance on the courts in that capacity. But all those parts of the criminal prosecutions that do not require the attendance of juries, and, if the use of juries was laid aside, the whole of those proceedings should be carried on in the the weekly sessions, as well as all the civil business of the districts.

Method of proceeding in civil actions.

The method of proceeding in these courts in civil actions might be as follows. The plaintiff might bring a declaration, or plaint, in writing into court (which might be either in the French language or the English, as he thought proper) praying the process of the court to cause the defendant to be summoned to answer it, but not to be arrested by his body. This plaint should be read to the judge in open court, in order that he should determine whether or no it contained a good cause of action: and till he approved it, no summons should be issued upon it. If he approved it, he should order it to be filed amongst the records of the court by the clerk or register of the court, and should at the same time award a summons to be sent to the defendant to come and answer the plaintiff's demand at such future day as the judge should therein appoint.

If the defendant neglected to appear in court at the time appointed by the summons, without any good reason for such neglect, he should be condemned to pay to the plaintiff a moderate sum of money, to be ascertained by the judge, and which should not exceed the sum of five shillings Sterling, as a compensation to the plaintiff for his expence and trouble in attending the court, at the time appointed by the said summons, to no purpose; and he should be summoned a second time, to come and answer the plaintiff's demand at another time: and if he then also neglected to come, judgment should be given against him by default.

When

When the defendant appeared, he should make his answer to the plaintiff in writing, and either in the French or English language, as he thought proper: and his answer should of course, and without the judge's approbation of it, be filed amongst the records of the court. And then (as it is not probable that the plaintiff and answer would be drawn so ably, in this country of dulness and ignorance, as to affirm and deny clearly and pointedly the several facts mentioned in them) the judge himself should interrogate the parties concerning those facts which were material to the decision of the cause, in their account of which the contending parties seemed to differ: and the'e interrogatories made to the contending parties, and the answers made to them by the parties, should be reduced to writing by the judge, or by the clerk of the court, from words dictated to him by the judge. And when the judge had thus found out in what points of fact, material to the decision of the cause, the parties differed, he should himself state these facts in writing, and declare to the parties, that it was necessary for him to be informed by proper testimony whether they were true or false; and should thereupon ask the parties whether both, or either of them, desired that he should inquire into the truth of those facts by means of a jury, or by examining witnesses, or other proofs, himself.

The issues, or facts, in which the contending parties disagreed, should be drawn up in writing by the judge.

If both, or either of the parties desired to have a jury, a jury should be summoned to attend at such following session of the court as the judge should appoint. This jury should be paid for their attendance by the party at whose request they were summoned; and if both parties desired to have a jury, then equally by both parties. They should receive about five shillings Sterling a man. For at present it is a subject of complaint among the Canadians that they are taken from their necessary occupations to attend upon juries (which is by no means an agreeable employment to them) without any consideration for it; and this, if it happened every week, and without any compensation, would be thought (and perhaps justly) a very heavy burthen. But for a reward of five shillings they will serve with great alacrity.

Juries to be summoned at the desire of either of the parties. They should be paid for their attendance.

These juries should be appointed in, nearly, the same manner as special juries are in England: that is, the sheriff should present to the court a list of four times as many persons qualified to be jurymen as were.

Manner of appointing the juries.

were necessary to constitute a jury ; that is, if a jury was to consist of twelve men, a list of forty-eight persons so qualified ; and then each party should strike out the names of twelve persons from the said list ; after which the names of the twenty-four remaining jurymen should be set down in a new list in the following order ; to wit, first one at the nomination of the plaintiff, then one at the nomination of the defendant ; then another at the nomination of the plaintiff, and then another at the nomination of the defendant ; and so on ; each of the parties alternately nominating one, till the whole number was exhausted. And these persons (whose names were thus set down in this new list in the aforesaid order, and who would be enough in number to constitute two juries) should all be summoned to attend the court on the day appointed for the trial of the cause, and should be called over in the court in the order in which their names were set down in this new list. And if there appeared six or more of the twelve nominated by each of the parties, then the first six of those nominated by the plaintiff that appeared when their names were called over, and the first six of those nominated by the defendant that appeared at the same time, should constitute the jury to try the cause. If fewer than six of those nominated by one of the parties, as, for instance, only three, appeared in the court when the names in the jury-list were called over, those three, or other number of persons smaller than six, should make a part of the jury which should try the cause ; and the other nine, or other number requisite to make a full jury, should be the first nine, or other such requisite number, of the twelve nominated by the other party that appeared upon this occasion. The reason of summoning twice as many persons as would be sufficient to compose a jury is to provide against the non-attendance of several of them. If it was found by experience that the persons summoned usually attended very punctually, it might be sufficient to summon only fourteen or fifteen, or perhaps only twelve, or the very number necessary to constitute a jury. In this last case the original list given in by the sheriff should consist of only twenty-four names ; out of which each of the parties should strike six names, and the remaining twelve persons should be summoned to try the cause. By this method of appointing a jury the disagreeable and captious practice of challenging jurymen would be avoided, which is apt to give rise to animosities between the persons challenged and the parties who object to them.

Of the jurymen so chosen a majority should have a right to determine the verdict; the present rule of requiring an absolute unanimity amongst all the jurymen being evidently absurd and unnatural, and, amongst other inconveniencies, productive of one of a very important nature, which is the perjury of some of the jurymen in every third or fourth cause that is tried: for it happens at least so often that there is really a difference of opinion amongst the jurymen, and that some go over to the opinion of the rest in opposition to their own sentiments, and consequently contrary to the oath which they have taken to give a true verdict according to the evidence, which doubtless means according to their judgment of it. And it has sometimes happened that a great majority of the members of a jury has gone over to a small, but resolute, minority. This therefore calls loudly for a reformation, and more especially in a country where the natural and ordinary differences of opinion that must frequently happen amongst jurymen are likely to be greatly heightened by national and religious prejudices.

A majority of the jurymen to carry the verdict.

If the agreement of twelve men is thought necessary to establish the truth of a fact, it would be necessary to impanel twenty-three jurors. But perhaps a bare majority of twelve men may be sufficient to answer all the purposes of justice in civil matters; and if so, it would be proper that juries should consist of thirteen men, that there might in all cases be a majority on one side or the other. In criminal matters it might be proper to make the agreement of two thirds of the jury necessary to the conviction of the accused person; or, if still greater tenderness to the prisoner was thought expedient, it might be proper to make the unanimous consent of the whole jury necessary to his conviction, but not upon that account to insist upon the jury's bringing in an unanimous verdict, but to consider the dissent of one juryman to the verdict given by the other eleven against the prisoner, after deliberating upon their verdict for twenty-four hours, as a sufficient ground of an acquittal.

And as the issues, or points of fact, that were to be proposed to the consideration of the jury, should be drawn up in a minute and particular manner in words dictated by the judge of the court, so the verdicts of the juries should be always special verdicts, stating the facts as the jury find them to have happened, with great exactness and particularity. This would prevent jurors from encroaching upon the province of the judge and determining points

All the verdicts of jurors to be special verdicts.

of law by means of the short and general verdicts of, “ *Guilty or not guilty* ;” “ *he did or did not undertake* ;” “ *he does or does not owe the sum demanded* ;” and the like, that oftentimes involve points of law mixed with matters of fact, and thereby give juries an opportunity of committing these irregularities. Whenever these things happen (whether it be from the ignorance and want of discernment of the jurymen, or from their wilfulness and partiality) it is humbly apprehended that a real injury is done to the losing party, whose right it is, according to the laws of England, to have the points of law, upon which his cause depends, decided by the able and learned judges whom the King has appointed to fill the courts of justice, as much as it is to have the matters of fact in the cause determined by a jury of honest freeholders of the neighbourhood.

Examination of witnesses.

The witnesses examined in the trial of a cause should be examined *viva voce* in open court, in the presence of both the parties, or their attorneys or advocates; and cross-examined, if the adverse party thought proper: and they should not be allowed to deliver their testimony by written depositions or affidavits taken in private; not even in those trials that were carried on without a jury; unless by the consent of both the parties, or by the particular direction of the judge, upon very strong reasons for so doing, moved and debated in open court.

Execution against goods and lands.

When judgement was given for the plaintiff in a civil action, whereby a sum of money was ordered to be paid him by the defendant, either as a debt justly due to him by contract, or by way of compensation for some damage and injury that had been done to him, a writ of execution should go against the goods and lands of the defendant, but not against his person; directing the sheriff, or other ministerial officer that executed the process of the court, to levy the sum of money awarded to the plaintiff upon the defendant's moveable goods and chattels; and, in case they should not be sufficient for the purpose, then, but not otherwise, to sell part of his lands to produce the remainder of that sum. And if the executive officer should not find a sufficient quantity of either moveable or immoveable property belonging to the defendant to raise the sum awarded, and the judge should be of opinion, upon affidavits made before him for that purpose, that there was reasonable ground

ground to suspect that the defendant had secreted or concealed some of his effects, he might require him to deliver in to the court upon oath an exact schedule of all his estate and effects of every kind, and of the places where they were to be found ; and, if he refused so to do, might commit him to prison till he complied. And if he omitted to set down in this schedule any part of his effects to the amount of twenty pounds Sterling, he should be liable to the penalties of perjury

The defendant might be compelled to deliver in a schedule of all his estate and effects upon oath.

Further, where a man had bound himself to another to do a particular thing, and it was just and reasonable that he should perform such his covenant, nothing having since intervened that rendered such performance either impracticable or unreasonably burthensome and difficult, the judge should have a power to award that the party should make a specific performance of such covenant, and might compel him to do so, in case he refused to do it, by imprisoning him till he complied.

The court should have power to decree a specific performance of a covenant.

Also. the judge should have a power to award reasonable costs to either party according to his discretion.

It would be necessary to have in each of these three courts a king's attorney to prosecute for the king in all criminal cases, and in all suits concerning the king's revenue, and in all other suits in which the king's interest is concerned. If his Majesty should not think proper to appoint an officer in each court expressly for this purpose, the power of carrying on these several prosecutions on the behalf of the crown might be vested in the clerk, or register, of the court ; just as in the court of King's Bench in England the clerk of the crown (whose principal duty is to register, or enter, the pleas of the crown amongst the records of the court) is likewise the king's attorney in that court, and prosecutes in his Majesty's behalf. But it would be more convenient, and more suitable to the honour of the crown and the dignity of the court, to have a separate officer for that purpose, to be called the king's attorney for that shire or district, as there was in the time of the French government.

A king's attorney in each of the three courts.

From these courts there should lie two appeals : an appeal to the governour and council of the province, and another from thence to the king

Appeals from these courts to the governour and council, and

from thence
to the King in
council.

king in his privy council. One great use of the appeal to the governour and council would be to preserve an uniformity in the law throughout the whole province, which otherwise might gradually become different in the three different shires, or districts, of it, by the difference of the decisions that might be given in these three different courts of justice, if they were not subject to be revised by some common superiour court that might correct the errors that should be found in them.

And for the same reason, the decisions of these courts should not be deemed to form precedents of sufficient authority to determine any subsequent disputes; but this authority should be ascribed only to those cases which had been decided by the governour and council of the province upon the appeals brought before them from these shire-courts, or by the King himself in his privy council.

And to the end that the governour and council of the province might not be destitute of the advice of persons skilled in the laws to assist them in the determination of the appeals that should be brought before them, it might be expedient to make the three judges of these courts, and perhaps also the three king's attornies in them, members of his Majesty's council of the province; by which means all the best law-abilities in the province would be employed in making these important decisions that were to carry with them the force of law. And with this view it might be proper to require the judges and the king's attornies of the courts of Three Rivers and Montreal to attend the governour of Quebec for one month about Christmas-time, in order to assist at the decision of these appeals, which should therefore be reserved to this season of the year.

The nature of
these appeals.

These appeals should be only, as they now are, of the nature of writs of error in England, to correct the errors in law committed in the courts of these shires or districts, and not to re-consider the facts in the cause, unless they had been settled by the judge alone without the assistance of a jury. When the facts were settled in that manner, the parties might, if they thought fit, cause the evidence itself to be taken down in writing by the clerk of the court and signed by the witnesses, that it might make a part of the record, as it does upon a trial by a general court martial in England: and, upon the removal of this record before the governour and council, they

might re-consider the whole matter, the facts as well as the law, and give such judgment upon it as they thought just; but they should not admit any new evidence relating to it. Where the cause had been tried by a jury, the losing party might, if he thought proper, and the judge, before whom it was tried, thought it reasonable, have it tried over again by a second jury, consisting of twice as many jurymen as the first jury; and the verdict of this second jury should be final with respect to the matters of fact determined by it. A second trial by a double jury.

When Gaspey shall be settled, a fourth judge might be sent Gaspey. thither, whose jurisdiction should extend over a district lying round about it, to be taken out of the district of Quebec, which is now immoderately large. Such an establishment would be of great convenience to the inhabitants of that part of the province.

These are the outlines of a plan for the administration of justice, which, I conceive, would be well suited to the circumstances of this province, and would remove many of the inconveniencies of which the Canadians now complain, and give them very great satisfaction.

FRANCIS MASERES,
Attorney General.

N. B. This plan of a method of administering justice in the province of Quebec was delivered in to Lord Hillsborough about the month of April 1770.

F. MASERES.

N U M B E R I V.

IN the spring of the year 1767, his excellency Guy Carleton, Esquire, at that time lieutenant-governour, now governour in chief, of the province of Quebec, being justly apprehensive of the ill consequences that might arise from a rigorous construction of the several instruments of government by which it was supposed that the laws of England had been introduced into that province, and more especially of the ordinance of the 17th of September 1764, by which the chief justice of the province was directed to determine all matters criminal and civil that were brought before him, according to the laws of England and the ordinances of the province, directed Francis Maseres, Esquire, the attorney general, to prepare a draught of an ordinance for reviving or continuing the several ancient laws of the province that had subsisted there immediately before the conquest of it in the year 1759, with respect to the landed property of the province that was holden under grants made by the French king; who accordingly prepared the following draught of such an ordinance, which his excellency, on account of it's great extent and importance, did not think it expedient to bring into the council in order to be passed without his Majesty's previous consent and approbation, and therefore he immediately transmitted it to the Earl of Shelburne, at that time one of his Majesty's principal secretaries of state. This draught of an ordinance was as follows.

A DRAUGHT of an ORDINANCE for continuing and confirming the Laws and Customs relating to the Tenure, Inheritance, and Alienation of Lands, that were in Force in this Province in the Time of the French Government.

Preamble.

WHEREAS certain doubts have arisen and may arise, from the extensive words used in the great ordinance of this province, dated the seventeenth of September in the year of our Lord one thousand seven hundred and sixty-four, intitled, *An Ordinance for regulating and establishing the Courts of Judicature, Justices of the Peace, Quarter Sessions, Bailiffs, and other Matters relative to the Distribution of Justice in this Province*, by which the courts of justice established thereby

thereby in this province are directed to proceed in their decisions according to the laws of England and the ordinances of this province; that in consequence thereof the rules of inheritance of lands in this province, and the terms and conditions of the tenures thereof, and the rights, privileges, and emoluments thence arising, either to the King or to divers of his Majesty's subjects that were owners of land in the said province, were in whole or in part abolished, and the laws and customs of England relating to the said points at once introduced in their stead; which great and sudden alteration of the laws concerning these important subjects would not only be in no wise useful to the said province, but, by unsettling men's ancient and accustomed rights and natural expectations founded thereon, would be attended with innumerable hardships and inconveniencies to the inhabitants thereof, and produce a general confusion: In order therefore to prevent these evils, and to quiet the minds of the inhabitants with respect to them, *It is ordained and declared* by his excellency the lieutenant-governour of this province, by and with the advice and consent of the council of the same, that all the laws and customs that prevailed in this province in the time of the French government in the month of August in the year of our Lord one thousand seven hundred and fifty-nine, relating to the tenures of lands held either of the King, or of other lords, and to the terms and conditions of such tenures; and to the rights, privileges, and pre-eminences annexed, or belonging, to any of the said tenures; and to the inheritance and succession to the same; and to the forfeiture, confiscation, re-annexation or re-uniting to the demesne of the lord, escheat, reversion, or other devolution of the same whatsoever, either to the King or any other lord; and to the power of devising, or bequeathing, any lands by last will and testament; and to the power of alienating the same by the proprietors in their life-time; and to the manner of making such alienation; and to the power and manner of limiting, mortgaging, hypothecating, charging, and incumbring, any lands in the said province; shall continue in force and vigour until they are changed in some of these particulars by special ordinances expressly mentioning such changes, and setting forth in a full and distinct manner the laws introduced in the stead of those which shall be so changed or abolished. And further, the said French laws and customs hereby continued and confirmed shall be deemed and taken to have continued without interruption from the time of the conquest of this country by the British

Enacting part of
the ordinance.

British arms to the present time; any laws, customs, or usages of England, or any ordinance of this province to the contrary hereof in any wise notwithstanding.

This ordinance shall extend only to such lands as were granted away by the French king before the conquest of this country by the British arms, and to the grants made thereof by the said French king to his several grantees, and the under-grants made of divers parts of the same by the said grantees of the French king, or their heirs or assigns, or other persons claiming under them, to inferior tenants or vassals either before or since the said conquest, but not to grants of land made by the king's Majesty since the conquest.

Given by his excellency the honourable Guy Carleton, Esquire, lieutenant-governour and commander in chief of the province of Quebec, brigadier-general of his Majesty's forces, &c. &c. in council at the castle of St. Lewis in the city of Quebec, on _____ in the seventh year of his Majesty's reign, and in the year of our Lord one thousand seven hundred and sixty-seven.

By the lieutenant-governour's command.

N. B. This is such an ordinance as is meant by the attorney general above-mentioned in his paper above recited, intituled, *His opinion concerning the report made by Governour Carleton*, where he says, page 50, that, if the measure he had before suggested of making a code of laws for the use of that province should not be thought adviseable, he is humbly of opinion that it would be most expedient to let the English law continue to be the general law of the province, and to pass an ordinance to revive those of the former French laws which relate to the tenure, alienation, and incumbrance, of landed property.

N . U M B E R V.

SOON after the arrival of General Carleton as lieutenant-governour, William Hey, Esquire, as chief justice, and Francis Mafères, Esquire, as attorney general, of the province of Quebec, in that province (which was in September 1766) Mr. Hey conceived a design of holding very frequent sessions of the supreme court, or court of King's Bench (of which he was the only judge) in order to render his office as useful as possible to his Majesty's subjects in that province, and to gratify the Canadians in their desire of having the proceedings of the courts of justice carried on with more expedition than had yet been used, and in a manner that might bear some resemblance to the diligence they had been accustomed to see in the time of the French government, when all their courts of justice sat once a week. This design General Carleton highly approved, and accordingly directed the attorney general to prepare a draught of an ordinance for establishing twelve sessions of the supreme court in every year, whereof ten were to be holden at the town of Quebec, and the other two at the town of Montreal. He accordingly prepared the following draught of an ordinance for this purpose: but (for reasons which it is not necessary to mention on this occasion) it has never been passed. This draught was as follows.

A DRAUGHT of an ORDINANCE for Regulating the Times and Number of the Sessions of the Supreme Court of Judicature in the Province of Quebec.

WHEREAS it is judged expedient for the due administration of ^{Preamble.} justice in this province, that there should be frequent sessions of the supreme court of judicature in the same, to the end that his Majesty's subjects in the said province may prosecute their just claims and complaints in the said court with expedition, and obtain final judgment and execution thereon within a reasonable time, and that persons falsely accused of capital or other great offences may have a speedy opportunity of making their innocence appear and obtaining a discharge from their imprisonment for the same, and those who are guilty be speedily brought to condign punishment;

his

Twelve sessions of the supreme court shall be held in every year, to wit; ten at Quebec,

his excellency the lieutenant-governour of this province, by and with the advice and consent of his Majesty's council in the same, doth hereby ordain and declare, that in the year next ensuing, to wit, the year of our Lord one thousand seven hundred and sixty-seven, and in every year then after following, there shall be held twelve sessions of the supreme court of judicature of the province of Quebec before the chief justice of the said province, whereof ten sessions shall be held at the town of Quebec, and the other two at the town of Montreal, on the days hereafter following; to wit, at the town of Quebec on

The 2d day of January,
 The 1st day of March,
 The 1st day of April,
 The 2d day of May,
 The 1st day of June,
 The 1st day of July,
 The 1st day of August,
 The 1st day of October,
 The 2d day of November, and
 The 1st day of December,

except when the second day of any of the months of January, May, and November, or the first day of any of the other months before-named, shall happen to be a Sunday or Lord's-Day; and in such cases the said sessions shall be held on the third days of the months of January, May, and November, and on the second days of the other months before-named.

and two at Montreal.

And the other two sessions of the supreme court of judicature shall be held at the town of Montreal on the first days of the months of February and September, except when those days happen to be Sundays or Lord's-Days: and in those cases the said sessions shall be held on the third day of February and second day of September.

Power of adjourning the session.

And the said supreme court of judicature shall continue to sit day after day on every day of the week, except Sundays and the days appointed to be observed as feast-days in the church of England, until the business of the said court shall be finished, unless the chief justice shall think fit at any time to adjourn the said court unto some further day in the same session, or unto the first day of the next

next monthly session, which adjournments he is hereby impowered to make according to his own discretion.

Also it shall be lawful to the said chief justice, whensoever he shall think fit so to do, to change the beginning of the next ensuing monthly session from the usual day herein above-appointed to any other day in the same month, by giving public notice of such change in the Quebec Gazette a fortnight before the usual first day of the said session next ensuing.

and of changing the beginning of the next ensuing session.

And in the said sessions of the supreme court of judicature holden at Montreal, all indictments for offences committed within the town and district of Montreal shall be found and presented to the court, and be there determined by lawful jurors of the said district. But judgement may be given, and motions may be made in arrest of judgement, and any other steps wherein the presence of a jury is not necessary, may be taken with respect to such indictments in the sessions holden at Quebec.

Indictments to be found and tried in the district in which the offence has been committed.

And in all civil actions, wherein the cause of action shall have arisen within the district of Montreal, it shall be lawful for the parties to enter their declarations, pleas, and demurrers in the said supreme court of judicature, and to take all other steps in the said actions whereto the presence of a jury shall not be necessary, in any of the sessions of the said court held either at Montreal or Quebec, in order to prevent unnecessary delays in the said actions. But the issues joined in the said actions shall be tried only at the sessions of the said supreme court held at Montreal by lawful jurors of the district of Montreal, unless both the parties shall consent that the said issues shall be tried at the sessions at Quebec, and such consent be entered upon the record of the said court; and in that case the said issues may be tried at the sessions at Quebec by lawful jurors of the district of Quebec.

Trials in civil actions.

And in all inquests to be taken at Quebec the jurors shall be housekeepers of good repute of the district of Quebec; or, if they are not housekeepers, they shall be persons that are owners of land to the amount of sixty French arpents of cleared land, or upwards; or are worth in money, or goods, the sum of one hundred pounds, or upwards, of lawful money of Great Britain;

Qualifications of jurors.

and they shall be upwards of twenty-five years old. And in all inquests to be taken at Montreal the jurors shall in like manner be housekeepers of good repute of the district of Montreal, or persons possessed of land in the said district to the amount of at least sixty French arpents of cleared land, or of money, or goods, to the value of one hundred pounds, or upwards, of lawful money of Great Britain, and shall be upwards of twenty-five years of age.

Oaths of jurors. Also the oaths which are taken by jurors shall be administered to them in the manner usually practised in England, by touching and kissing the holy gospels, and in no other manner whatsoever.

Returns of writs. And all writs and precepts directed to any provost-marshal, deputy provost-marshal, sheriff, coroner, or other ministerial officer, which are returnable into the supreme court of judicature of the said province, shall be returned into the said court on the first days of the said several monthly sessions thereof.

Given by his excellency the honourable Guy Carleton, Esquire, lieutenant-governour and commander in chief, &c. (as in page 70.)

Remark on the foregoing ordinance.

Many people in the province were sorry to see that this ordinance did not pass at the time it was proposed; and more have been sorry for it since, upon considering more attentively the advantages it might have produced. And it seems now to be of more importance than ever that it should be passed, in order to make the proceedings of the supreme court keep pace in some measure with those of the court of Common Pleas, from which there lies an appeal to the supreme court; and which now, by an ordinance made in the month of March 1770, holds a session every week. This is advanced upon a supposition that his Majesty shall not think proper to adopt the plan above-mentioned in No. III. page 57, for the administration of justice in that province, by erecting three separate and independent courts for the three districts of Quebec, Three Rivers, and Montreal, with an English judge and a Canadian assessor, a clerk, or register, of the court, a king's attorney, and a sheriff, for each district. For that, I conceive, to be by much the best method that can be taken for that purpose.

N U M B E R VI.

ARTICLES of CAPITULATION granted by
SIR GEOFFRY AMHERST to the CANADIANS,

U P O N T H E

Surrender of MONTREAL and the whole Province of CANADA
to the British Arms in September 1760.[N. B. The articles that are here omitted are intirely of a temporary nature, and no
ways affect the present constitution of the province.]

Article IV. **T**HE militia, after being come out of the above towns, forts, and posts, shall return to their homes, without being molested, on any pretence whatsoever, on account of their having carried arms.

Granted.

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 Trois Rivieres, as in the forts and posts mentioned in the third article, shall be delivered up, according to exact inventories, to the commissioners 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 XII. The most convenient method that can be found shall be appointed to carry the Marquis de Vaudreuil, by the straightest passage, to the first sea-port in France. The necessary accommodations shall be made for him, the Marquis de Vaudreuil, M. de Rigaud, governor of Montreal, and the suite of this general. This vessel shall be properly victualled at the expence of his Britannic Majesty; and the Marquis de Vaudreuil shall take with him his

papers, without their being examined, and his equipage, plate, baggage, and also those of his suite.

Granted, except the archives which shall be necessary for the government of the country.

Article XXI. The English 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 expence 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 to us.

Article XXIV. The provisions and other kind of stores which shall be found in the magazines of the commissary, as well in the town of Montreal and of Trois Rivieres 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 or English.

Every thing that is actually in the magazines, destined for the use of the troops, is to be delivered to the English commissary for the King's forces.

East-India com-
pany.

Article XXV. A passage to France shall likewise be granted on board 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 chuse 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 scarlatines and castors, which they may have in the town of Montreal; they shall not be touched under any pretence whatever, and the necessary facilities 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 English 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 Catholick, Apostolick, Free exercise of the Roman Catholic religion. and Roman religion, shall subsist intire, in such manner that all the states and 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 Payment of tithes and other church-dues. pay to the priests the 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. L

Article XXVIII. The chapter, priests, curates, and missionaries shall continue with an intire liberty their exercise and functions of their 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 death of the future bishop, of which mention will be made in the following article. Power of the grand vicars to exercise ecclesiastical jurisdiction.

Granted, except what regards the following article.

Article

Nomination of
the future
bishops.

Article XXX. If by the treaty of peace Canada should remain in the power of his Britannic Majesty, his most Christian Majesty shall 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.

Their power.

Article XXXI. The bishop shall, in case of need, establish new parishes, and provide for the re-building of his cathedral and his episcopal palace; and, in the mean time, he shall have the liberty to dwell in the town or parishes, as he shall judge proper. He shall be at liberty to visit his diocese with the ordinary ceremonies, 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.

Communities of
Nuns.

Article XXXII. The communities of Nuns shall be preserved in their constitution and privileges. They shall continue to observe their rules. They shall be exempted from lodging any military; and it shall be forbid to trouble them in their religious exercises, or to enter their monasteries: safeguards shall even be given them, if they desire them.

Granted.

Jesuits, Recollet
Monks, and
priests of Saint
Sulpicius.

Article XXXIII. The preceding article shall likewise be executed with regard to the communities of Jesuits and Recollets, and of the house of the priests of Saint 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.

Property of the
religious com-
munities and
the priests.

Article XXXIV. All the communities, and all the priests, shall preserve their moveables, the property and revenues of the seigniories, and other estates which they possess in the colony, of what nature soever they may 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 ceremony of the foreign missions, and of Saint Sulpice, as well as the Jesuits and the Recollets, chuse to go to France, passage shall be granted them in his Britannic Majesty's ships; and they shall all 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.

Liberty to all the priests and monks to go to France; and to sell their estates.

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 26th article. And such of the said priests who chuse to go this year shall be victualled during the passage at the expence of his Britannic Majesty, and 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, Accadians, merchants, and other persons who chuse to retire to France, shall have leave to do so from the English general, who shall procure them a passage. And nevertheless, if, from this time to that decision, any French or Canadian merchants, or other persons, shall desire to go to France, they shall likewise have leave from the English 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 town 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 intire peaceable property and possession of their goods, noble and ignoble, moveable and immoveable, merchandizes, furs, and other effects, even their ships: they shall not be touched, nor the least damage done to them, on any pretence whatsoever. They shall have liberty to keep, let, or sell them, as well to the French as to the English, 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

Property of the laicity of Canada.

paying the freight, as in the 26th 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 parts.

Granted, as in the 26th article.

The Accadians.

Article XXXVIII. All the people who have left Accadia, and who shall be found in Canada, including the frontiers of Canada on the side of Accadia, 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 privilege as the Canadians.

Article XXXIX. None of the Canadians, Accadians, or French, who are now in Canada, and on the frontiers of the colony on the side of Accadia, Detroit, Michilimakinac, and other places and posts of the countries above, the married and unmarried soldiers remaining in Canada, shall be carried or transported into the English colonies, or to Old England, and they shall not be troubled for having carried arms.

Granted, except with regard to the Canadians.

The Indians in alliance with the French.

Article XL. The savages, or Indian allies of his most Christian Majesty, shall be maintained in the lands they inhabit, if they chuse 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 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 Accadians, of what state or condition soever, who shall remain in the colony, shall not be forced to take arms against his most Christian Majesty or his allies,

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. Continuance of the French laws.

Answered by the preceding articles, 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. Papers of the government.

Granted, with the reserve already made.

Article XLIV. The papers of the intendancy, of the office of comptroller of the marine, of the ancient and new treasurers of the King's magazines, of the office 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. Papers of the intendant's office, and other public papers.

The same as to this article.

Article XLV. The registers and other papers of the supreme council of Quebec; of the provost, and admiralty of the said city; those of the royal jurisdictions of Trois Rivières and of Montreal; those of the seigneurial 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. The registers of the supreme council of Quebec, and of the other courts of justice in the province.

Granted.

Liberty of trading in the same manner as the King's British subjects.

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 in the interior of the colony.

Granted.

Negroes and Paris slaves.

Article XLVII. The negroes and Paris 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.

Liberty to all persons to appoint attorneys to take care of their affairs;

Article XLVIII. The Marquis de Vaudreuil, the general and staff officers of the land forces, the governours 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 attorneys 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 dominion, these officers or other persons, or attorneys for them, shall have leave to sell their manors, houses, and other estates, their moveables and effects, &c. to carry away or send to France the produce, either in bills of exchange, specie, furs, or other returns, as is mentioned in the 37th article.

and to sell their lands and goods, and send the produce to Old France.

Granted.

Those, whose goods have been damaged contrary to the capitulation of the city of Quebec, shall have justice done them for such injuries.

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 representation 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 *bondâ fide* on both sides, notwithstanding any infraction, and any other pretence with regard to the preceding capitulations, and without making use of reprisals.

Granted.

N U M B E R VII.

The FOURTH ARTICLE of the DEFINITIVE
T R E A T Y of P E A C E,

C O N C L U D E D

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

C O N T A I N I N G

The Cession of Canada to the Crown of Great Britain.

Cession of Nova
Scotia, or Acca-
dia.

HIS most Christian Majesty renounces all pretensions which he has heretofore formed, or might form, to Nova Scotia, or Accadia, in all it's parts, and guarantees the whole of it, and all it's dependencies, to the King of Great Britain.

Cession of Cana-
da and Cape
Breton, and the
islands and
coasts in the
gulf and river
of St. Lawrence.

Moreover, his most Christian Majesty cedes and guarantees to his said Britannic Majesty, in full right, Canada, with all it's dependencies, as well as the island of Cape Breton, and all the other islands and coasts in the Gulf and River of Saint Lawrence, and, in general, every thing 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 possessions above-mentioned.

Liberty of the
Catholic re-
ligion to the
Canadians.

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

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 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 debts, 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.

Liberty to the French king's subjects to retire from Canada within the space of eighteen months.

N U M B E R VIII.

B Y T H E K I N G.

A P R O C L A M A T I O N.

G E O R G E R.

WHEREAS we have taken into our royal consideration the extensive and valuable acquisitions in America, secured to our crown by the late definitive treaty of peace concluded at Paris the tenth day of February last; 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, we have thought fit, with the advice of our privy council, to issue this our royal proclamation, hereby to publish and declare to all our loving subjects, that we have, with the advice of our said privy council, granted our letters patent under our great seal of Great Britain, to erect within the countries and islands ceded and confirmed to us by the said treaty, four distinct and separate governments, stiled and called by the names of Quebec, East Florida, West Florida, and Grenada, and limited and bounded as follows, viz.

Government of
Quebec.

First, The government of Quebec, bounded on the Labrador coast by the river St. John, and from thence by a line drawn from the head of that river, through the lake St. John, to the south end of the lake Nipissim; from whence the said line, crossing the river St. Lawrence and the lake Champlain in forty-five degrees of north latitude, passes along the high lands, which divide the rivers that empty themselves into the said river St. Lawrence from those which fall into the sea; and also along the north coast of the *Baye des Chaleurs*, and the coast of the gulf of St. Lawrence to Cape Rosieres, and from thence crossing the mouth of the river St. Lawrence by the west end of the island of Anticosti, terminates at the aforesaid river St. John.

Secondly,

Secondly, The government of East Florida, bounded to the westward by the gulf of Mexico and the Apalachicola river; to the northward, by a line drawn from that part of the said river where the Catahouchee and Flint rivers meet, to the source of St. Mary's river, and by the course of the said river to the Atlantic Ocean; and to the east and south by the Atlantic Ocean and the gulf of Florida, including all the islands within six leagues of the sea-coast. Government of East Florida.

Thirdly, The government of West Florida, bounded to the southward by the gulf of Mexico, including all islands within six leagues of the coast from the river Apalachicola to lake Pontchartrain; to the westward by the said lake, the lake Maurepas, and the river Mississippi; to the northward, by a line drawn east from that part of the river Mississippi which lies in thirty-one degrees of north latitude, to the river Apalachicola, or Catahouchee; and to the eastward by the said river. West Florida.

Fourthly, The government of Grenada, comprehending the island of that name, together with the Grenadines, and the islands of Deminica, St. Vincent, and Tobago. Grenada.

And to the end that the open and free fishery of our subjects may be extended to, and carried on upon, the coast of Labrador and the adjacent islands, we have thought fit, with the advice of our said privy council, to put all that coast, from the river St. John's to Hudson's Streights, together with the islands of Anticosti and Madelaine, and all smaller islands lying upon the said coast, under the care and inspection of our governour of Newfoundland. Enlargement of the government of Newfoundland.

We have also, with the advice of our privy council, thought fit to annex the islands of St. John and Cape Breton, or Isle Royale, with the lesser islands adjacent thereto, to our government of Nova Scotia. Enlargement of the government of Nova Scotia.

We have also, with the advice of our privy council aforesaid, annexed to our province of Georgia all the lands lying between the rivers Attamaha and St. Mary's. Enlargement of Georgia.

And

And whereas it will greatly contribute to the speedy settling our said 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 governours 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 our 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 governours, with the consent of our said council, 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 mean time, 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 governours 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.*

Power to the governours of the new governments to summon general assemblies.

Power to make laws with the consent of such assemblies.

The laws of England shall be observed in the mean time.

Power to grant lands.

We have also thought fit, with the advice of our privy council as aforesaid, to give unto the governours and councils of our said three new colonies upon the continent 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

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 acknowledgements as have been appointed and settled in other colonies, and under such other conditions as shall appear to us to be necessary and expedient for the advantage of the grantees, and the improvement and settlement of our said colonies.

And whereas we are desirous, upon all occasions, to testify our royal sense and approbation of the conduct and bravery of the officers and soldiers of our armies, and to reward the same, we do hereby command and empower our governours of our said three new colonies, and other our governours of our several provinces on the continent of North America, to grant, without fee or reward, to such reduced officers and soldiers as have served in North America during the late war, and are actually residing there, and shall personally apply for the same, the following quantities of land, subject at the expiration of ten years, to the same quit-rents as other lands are subject to in the province within which they are granted, as also subject to the same conditions of cultivation and improvement, viz.

Lands to be granted to reduced officers and soldiers.

To every person having the rank of a field officer, 5000 acres.

To every captain, 3000 acres.

To every subaltern or staff officer, 2000 acres.

To every non-commissioned officer, 200 acres.

To every private man, 50 acres.

We do likewise authorize and require the governours and commanders in chief of all our said colonies upon the continent of North America to grant the like quantities of land, and upon the same conditions, to such reduced officers of our navy of like rank as served on board our ships of war in North America at the times of the reduction of Louisbourg and Quebec in the late war, and who shall personally apply to our respective governours for such grants.

And likewise to reduced officers of the navy.

And whereas it is just and reasonable, and essential to our interest, and the security of our colonies, that the several nations or tribes of Indians, with whom we are connected, and who live under our protection, should not be molested or disturbed in the possession of such parts of our dominions and territories as, not

or purchased by

No governours shall make grants of lands that have not been ceded or sold to the King by the Indians.

having been ceded to us, are reserved to them, or any of them, as their hunting grounds; we do therefore, with the advice of our privy council, declare it to be our royal will and pleasure, that no governour or commander in chief in any of our colonies of Quebec, East Florida, or West Florida, do presume, upon any pretence whatever, to grant warrants of survey, or pass any patents, for lands beyond the bounds of their respective governments, as described in their commissions; as also that no governour or commander in chief of our other colonies or plantations in America do presume, for the present, and until our further pleasure be known, to grant warrants of survey, or pass patents, for any lands beyond the heads or sources of any of the rivers which fall into the Atlantic Ocean from the west or north-west, or upon any lands whatever, which, not having been ceded to or purchased by us as aforesaid, are reserved to the said Indians, or any of them.

in any

All the lands not included in the new governments shall be reserved for the use of the Indians.

And we do further declare it to be our royal will and pleasure, for the present, as aforesaid, to reserve under our sovereignty, protection, and dominion, for the use of the said Indians, all the land and territories not included within the limits of our said three new governments, or within the limits of the territory granted to the Hudson's Bay Company; as also all the land and territories lying to the westward of the sources of the rivers which fall into the sea from the west and north-west as aforesaid; and we do hereby strictly forbid, on pain of our displeasure, all our loving subjects from making any purchases or settlements whatsoever, or taking possession of any of the lands above reserved, without our especial leave and licence for that purpose first obtained.

All persons settled on the grounds reserved for the Indians are required to retire from such settlements.

And we do further strictly enjoin and require all persons whatsoever, who have either wilfully or inadvertently seated themselves upon any lands within the countries above described, or upon any other lands which, not having been ceded to or purchased by us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such settlements.

And whereas great frauds and abuses have been committed in the purchasing lands of the Indians, to the great prejudice of our interests, and to the great dissatisfaction of the said Indians; in order therefore to prevent such irregularities for the future, and

to

to the end that the Indians may be convinced of our justice and determined resolution to remove all reasonable cause of discontent, we do, with the advice of our privy council, strictly enjoin and require, that no private person do presume to make any purchase from the said Indians of any lands reserved to the said Indians within those parts of our colonies where we have thought proper to allow settlement; but if at any time any of the said Indians should be inclined to dispose of the said lands, the same shall be purchased only for us, in our name, in some public meeting or assembly of the said Indians, to be held for that purpose by the governour or commander in chief of our colony, respectively within which they shall lie: and in case they shall lie within the limits of any proprietaries, conformable to such directions and instructions as we or they shall think proper to give for that purpose. And we do, by the advice of our privy council, declare and enjoin, that the trade with the said Indians shall be free and open to all our subjects whatever; provided that every person who may incline to trade with the said Indians do take out a licence for carrying on such trade from the governour or commander in chief of any of our colonies respectively where such person shall reside, and also give security to observe such regulations as we shall at any time think fit, by ourselves or commissaries to be appointed for this purpose, to direct and appoint for the benefit of the said trade: and we do hereby authorize, enjoin, and require the governours and commanders in chief of all our colonies respectively, as well those under our immediate government, as those under the government and direction of proprietaries, to grant such licences without fee or reward, taking especial care to insert therein a condition that such licence shall be void, and the security forfeited, in case the person to whom the same is granted shall refuse or neglect to observe such regulations as we shall think proper to prescribe as aforesaid

No private person shall purchase any lands of the Indians.

at
Government,
they shall be purchased
only in the name of
the use of such
proprietaries,
 The trade with the Indians shall be free to all the King's subjects.

by our

taking especial
care to insert therein
a condition that
such licence shall
be void

And we do further expressly enjoin and require all officers whatever, as well military as those employed in the management and direction of the Indian affairs within the territories reserved, as aforesaid, for the use of the said Indians, to seize and apprehend all persons whatever, who standing charged with treason, misprision of treason, murder, or other felonies or misdemeanors,

Power to military officers and others to seize, and send back under a guard, criminals who fly from justice into the Indian country.

shall fly from justice and take refuge in the said territory, and to send them under a proper guard to the colony where the crime was committed of which they shall stand accused, in order to take their trial for the same.

Given at our court at St. James's, the 7th day of October 1763,
in the third year of our reign.

G O D Save the K I N G.

N U M B E R IX.

COMMISSION OF CAPTAIN GENERAL and GOVERNOUR in
CHIEF of the Province of QUEBEC.

G. R.

GEORGE the THIRD, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth, to our trusty and well-beloved JAMES MURRAY, Esquire, Greeting :

WE, reposing especial trust and confidence in the prudence, Commission to be captain general and governour in chief of the province. courage, and loyalty of you, the said James Murray, of our especial grace, certain knowledge, and mere motion, have thought fit to constitute and appoint, and by these presents do constitute and appoint, you, the said James Murray, to be our Captain General and Governour in Chief in and over our province of Quebec in America ;

Bounded on the Labrador Coast by the river St. John ; and from thence by a line drawn from the head of that river through the lake St. John to the south end of the lake Nipissim, from whence the said line crossing the river St. Lawrence and the lake Champlain, in forty-five degrees of northern latitude, passes along the high lands which divide the rivers that empty themselves into the said river St. Lawrence from those which fall into the sea ; and also along the north coast of the *Baye des Chaleurs* and the coast of the gulf of St. Lawrence to Cape Rosieres ; and from thence crossing the mouth of the river St. Lawrence by the west end of the island of Anticosti, terminates at the aforesaid river St. John : Boundaries of the province.

Together with all the rights, members, and appurtenances whatsoever thereunto belonging.

And we do hereby require and command you to do and execute all things in due manner that shall belong to your said command and the trust we have reposed in you, according to the several powers and directions granted or appointed you by this present The governour is to act according to the powers and directions of this commission, and according to the King's instructions. commission

commission and the instructions and authorities herewith given unto you, or by such other powers, instructions, and authorities as shall at any time hereafter be granted or appointed under our signet and sign manual, or by our order in our privy council, and according to such reasonable laws and statutes as shall hereafter be made and agreed upon by you with the advice and consent of the council and assembly of our said province under your government, in such manner and form as is herein after expressed.

Oaths to be taken by the governour.

Those appointed by 1 Geo. I.

Declaration against transubstantiation, stat. 25 Car. II.

Oath of office.

Oath to observe the laws relating to trade and plantations.

Oaths to be taken by the counsellors and lieutenant-governours of Montreal and Trois Rivieres.

And our will and pleasure is, that you, the said James Murray, do, after the publication of these our letters patent, and after the appointment of our council for our said province in such manner and form as is prescribed in the instructions which you will herewith receive, in the first place, take the oaths appointed to be taken by an act passed in the first year of the reign of King George the first, intituled, “ An Act for the further security of his Majesty’s person and government, and the succession of the crown in the heirs of the late Princess Sophia, being Protestants, and for extinguishing the hopes of the pretended Prince of Wales, and his open and secret abettors ;” as also that you make and subscribe the declaration mentioned in an act of parliament made in the twenty-fifth year of the reign of King Charles the second, intituled, “ An Act for preventing dangers which may happen from Popish Recufants ;” and likewise that you take the oath of office usually taken by our governours in the other colonies for the due execution of the office and trust of our Captain General and Governour in Chief in and over our said province, and for the due and impartial administration of justice ; and further, that you take the oath required to be taken by the governours of the plantations to do their utmost that the several laws relating to trade and plantations be duly observed : which said oaths and declarations our council of our said province, or any three of the members thereof, have hereby full power and authority, and are hereby required to tender and administer to you.

All which being duly performed, you shall yourself administer to each of the members of our said council, and to the lieutenant-governours of Montreal and Trois Rivieres, the said oaths mentioned in the said act, intituled, “ An Act for the further security of his Majesty’s person and government, and the succession of the crown

“ crown in the heirs of the late Princess Sophia, being Protestants,
 “ and for extinguishing the hopes of the pretended Prince of
 “ Wales, and his open and secret abettors;” and also cause them
 to make and subscribe the afore-mentioned declaration, and also
 shall administer unto them the usual oaths for the due execution of
 their places and trust.

And we do further give and grant unto you, the said James Murray, full power and authority from time to time and at any time hereafter, by yourself, or by any other to be authorized by you in this behalf, to administer and give the oaths mentioned in the said act
Power to administer, or to authorize others to administer, to any person in the province the oaths appointed by stat. 1 Geo. 1.
 “ for the further security of his Majesty’s person and government,
 “ and the succession of the crown in the heirs of the late Princess
 “ Sophia, being Protestants, and for extinguishing the hopes of
 “ the pretended Prince of Wales, and his open and secret abettors,”
 to all and every such person or persons as you shall think fit, who
 shall at any time or times pass into our said province, or shall be
 resident or abiding there.

And we do hereby authorize and empower you to keep and use the public seal which will herewith be delivered to you, or shall be hereafter sent to you, for sealing all things whatsoever that shall pass the great seal of our province.
Power to keep and use the public seal.

And we do hereby give and grant unto you, the said James Murray, full power and authority, with the advice and consent of our said council to be appointed as aforesaid, so soon as the situation and circumstances of our said province under your government will admit thereof, and when and as often as need shall require, to summon and call general assemblies of the freeholders and planters within your government, in such manner as you in your discretion shall judge most proper; or according to such further powers, instructions, and authorities as shall be at any time hereafter granted or appointed you under our signet or sign manual, or by our order in our privy council.
Power to call an assembly of the freeholders.

And our will and pleasure is, that the person thereupon duly elected by the major part of the freeholders of the respective parishes or precincts, and so returned, shall, before their sitting, take the oaths mentioned in the said act, intituled, “ An Act for the
The members of such assembly shall take the oaths appointed by stat. 1 Geo. 1.

“ further security of his Majesty’s person and government, and
 “ the succession of the crown in the heirs of the late Princess
 “ Sophia, being Protestants, and for extinguishing the hopes of
 “ the pretended Prince of Wales, and his open and secret abettors;”

and the declaration against transubstantiation.

as also make and subscribe the fore-mentioned declaration; which oaths and declaration you shall commissionate fit persons under the public seal of that our province to tender and administer unto them; and, until the same shall be so taken and subscribed, no person shall be capable of sitting, though elected.

And we do hereby declare, that the persons so elected and qualified shall be called *The assembly of that our province of Quebec*; and that you, the said James Murray, by and with the advice and consent of our said council and assembly, or the major part of them, shall have full power and authority to make, constitute, and ordain, laws, statutes, and ordinances, for the public peace, welfare, and good government of our said province, and of the people and inhabitants thereof, and such others as shall resort thereunto, and for the benefit of us, our heirs and successors; which said laws, statutes, and ordinances are not to be repugnant, but, as near as may be, agreeable to the laws and statutes of this our kingdom of Great Britain.

Power to make laws,

not repugnant to the laws of Great Britain.

Provided that all such laws, statutes, and ordinances, of what nature or duration soever they be, shall be, within three months, or sooner, after the making thereof, transmitted to us, under our seal of our said province, for our approbation or disallowance of the same, as also duplicates thereof, by the next conveyance.

The laws so made to be transmitted to England within three months.

If disallowed by the King, they shall thenceforth become void.

And in case any, or all, of the said laws, statutes, and ordinances, not before confirmed by us, shall at any time be disallowed and not approved, and so signified by us, our heirs and successors, under our, or their, signet and sign manual, or by order of our, or their, privy council, unto you, the said James Murray, or to the commander in chief of our said province for the time being, then such and so many of the said laws, statutes, and ordinances as shall be so disallowed and not approved, shall from thenceforth cease, determine, and become utterly void and of no effect; any thing to the contrary thereof notwithstanding.

And

And to the end that nothing may be passed or done by our said council or assembly to the prejudice of us, our heirs and successors, we will and ordain that you the said James Murray shall have and enjoy a negative voice in the making and passing all laws, statutes, and ordinances as aforesaid; and that you shall and may likewise from time to time, as you shall judge necessary, adjourn, prorogue, or dissolve all general assemblies as aforesaid.

The governour shall have a negative voice against both council and assembly.

And we do by these presents give and grant unto you the said James Murray full power and authority, with the advice and consent of our said council, to erect, constitute, and establish such and so many courts of judicature and public justice within our said province under your government as you and they shall think fit and necessary, for the hearing and determining of all causes, as well criminal as civil, according to law and equity, and for awarding execution thereupon, with all reasonable and necessary powers, authorities, fees, and privileges belonging thereto; as also to appoint and commissionate fit persons in the several parts of your government to administer the oaths mentioned in the aforesaid act, intituled, "An act for the further security of his Majesty's person and government, and the succession of the crown in the heirs of the late Princess Sophia, being Protestants, and extinguishing the hopes of the pretended Prince of Wales, and his open and secret abettors;" as also to tender and administer the aforesaid declaration to such persons belonging to the said courts as shall be obliged to take the same.

Power, with the consent of the council, to erect courts of judicature.

Power to commissionate fit persons to administer the oaths appointed by stat. 1 Geo. 1. and the declaration against Popery, to persons belonging to such courts.

And we do hereby grant unto you full power and authority to constitute and appoint judges, and, in cases requisite, commissioners of oyer and terminer, justices of the peace, and other necessary officers and ministers, in our said province, for the better administration of justice and putting the laws in execution; and to administer, or cause to be administered, unto them such oath or oaths as are usually given for the due execution and performance of offices and places, and for clearing the truth in judicial causes.

Power to appoint judges, commissioners of oyer and terminer, justices of the peace, sheriffs, and other officers of justice.

And we do hereby give and grant unto you full power and authority when you shall see cause, or shall judge any offender or offenders in criminal matters, or for any fines or forfeitures due unto us, fit objects of our mercy, to pardon all such offenders, and

Power to pardon criminals.

remit all such offences, fines, and forfeitures, treason and wilful murder only excepted; in which cases you shall likewise have power, upon extraordinary occasions, to grant reprieves to the offenders until, and to the intent that, our royal pleasure may be known therein.

Power of collating to ecclesiastical benefices.

And we do by these presents give and grant unto you full power and authority to collate any person or persons to any churches, chapels, or other ecclesiastical benefices within our said province, as often as any of them shall happen to be void.

Power to levy troops, and employ them against enemies, pirates, and rebels;

And we do hereby give and grant unto you, the said James Murray, by yourself, or by your captains and commanders by you to be authorized, full power and authority to levy, arm, muster, command, and employ all persons whatsoever residing within our said province; and, as occasion shall serve, them to march, embark, or transport, from one place to another, for the resisting and withstanding of all enemies, pirates, and rebels, both at land and sea; and to transport such forces to any of our plantations in America, if necessity shall require, for the defence of the same against the invasion or attempts of any of our enemies; and such enemies, pirates, and rebels, if there should be occasion, to pursue and prosecute in or out of the limits of our said province; and, if it shall so please God, them to vanquish, apprehend, and take; and, being taken, according to law to put to death, or keep and preserve alive, at your discretion; and to execute martial law in time of invasion, war, or other times when by law it may be executed; and to do and execute all and every other thing and things which to our Captain General and Governour in Chief doth, or of right ought to belong.

and to execute martial law in time of war.

Power, with the consent of the council, to build forts and castles;

and to fortify and furnish them with arms, &c.

And we do hereby give and grant unto you full power and authority, by and with the advice and consent of our said council, to erect, raise, and build in our said province, such and so many forts, platforms, castles, cities, boroughs, towns, and fortifications as you, by the advice aforesaid, shall judge necessary; and the same, or any of them, to fortify and furnish with ordnance, ammunition, and all forts of arms fit and necessary for the security and defence of our said province; and by the advice aforesaid, the

same again, or any of them, to demolish or dismantle as may be most convenient.

and to demolish or dismantle them.

And forasmuch as divers mutinies and disorders may happen by persons shipped and employed at sea during the time of war, and to the end that such as shall be shipped and employed at sea during the time of war may be better governed and ordered, we hereby give and grant unto you, the said James Murray, full power and authority to constitute and appoint captains, lieutenants, masters of ships, and other commanders and officers; and to grant to such captains, lieutenants, masters of ships, and other commanders and officers, commissions to execute the law martial during the time of war, according to the directions of an act passed in the twenty-second year of the reign of our late royal grandfather, intituled, "An Act for amending, explaining, and reducing into one act of parliament the laws relating to the government of his Majesty's ships, vessels, and forces by sea;" and to use such proceedings, authorities, punishments, corrections, and executions upon every offender or offenders who shall be mutinous, seditious, disorderly, or any way unruly, either at sea or during the time of their abode or residence in any of the ports, harbours, or bays in our said province, as the case shall be found to require, according to martial law and the said directions, during the time of war, as aforesaid.

Power in time of war to appoint captains and other officers of ships, and to grant them commissions to execute the law martial according to the Stat. 22 Geo. II.

Provided that nothing herein contained shall be construed to the enabling you, or any by your authority, to hold plea, or have any jurisdiction, of any offence, cause, matter, or thing committed or done upon the high sea, or within any of the havens, rivers, or creeks of our said province under your government, by any captain, commander, lieutenant, master, officer, seaman, soldier, or person whatsoever who shall be in actual service and pay in, or on board of, any of our ships of war, or other vessel acting by immediate commission or warrant from our commissioners for executing the office of high admiral of Great Britain, or from our high admiral of Great Britain for the time being, under the seal of our admiralty; but that such captain, commander, lieutenant, master, officer, seaman, or soldier, or other person so offending, shall be left to be proceeded against and tried as their offences shall require, either by commission under our great seal of this kingdom, as the statute of Great Britain, accord-

This shall not affect any seaman or other persons on board ships commissioned by the admiralty when they commit offences either on the high sea, or in any river, creek, or haven.

But these persons shall be tried either by commissions under the great seal of Great Britain, accord-

ing to the stat.
28 Hen. VIII. or
by commission
from the admiral-
ty, according
to the stat. 22
Geo. II.

the twenty-eighth of Henry the Eighth directs, or by commission from our said commissioners for executing the office of high admiral of Great Britain, or from our high admiral of Great Britain for the time being, according to the afore-mentioned act, intituled, “ An Act for amending, explaining, and reducing into one act of parliament the laws relating to the government of his Majesty’s ships, vessels, and forces by sea,” and not otherwise.

But for offences committed on shore these persons shall be tried and punished according to the laws of the place where the offence shall be committed.

Provided nevertheless, that all disorders and misdemeanors committed on shore by any captain, commander, lieutenant, master, officer, seaman, soldier, or other person whatsoever belonging to any of our ships of war, or other vessels, acting by immediate commission or warrant from our commissioners for executing the office of high admiral of Great Britain, or from our high admiral of Great Britain for the time being, under the seal of our admiralty, may be tried and punished according to the laws of the place where any such disorders, offences, and misdemeanors shall be committed on shore, notwithstanding such offender be in our actual service and borne in our pay on board any of our ships of war, or other vessels, acting by our immediate commission or warrant from our commissioners for executing the office of high admiral of Great Britain, or from our high admiral of Great Britain for the time being as aforesaid, so as he shall not receive any protection for the avoiding of justice for such offences committed on shore from any pretence of his being employed in our service at sea.

Power, with the consent of the council, to dispose of public money for the support of the government.

And our further will and pleasure is, that all public monies raised, or which shall be raised, by any act hereafter to be made within our said province, be issued out by warrant from you, by and with the advice and consent of our council as aforesaid, for the support of the government, and not otherwise.

Power, with the consent of the council, to grant lands.

And we likewise give and grant unto you full power and authority, by and with the advice and consent of our said council, to settle and agree with the inhabitants of our said province for such lands, tenements, and hereditaments as now are, or hereafter shall be, in our power to dispose of, and them to grant to any person or persons upon such terms and under such moderate quit-rents, services, and acknowledgements, to be thereupon reserved unto us, as you, with the advice aforesaid, shall think fit; which said

ſaid grants are to paſs and be ſealed by our public ſeal of our ſaid province, and, being entered upon record by ſuch officer or officers as ſhall be appointed thereunto, ſhall be good and effectual in the law againſt us, our heirs and ſucceſſors.

The grants to be under the public ſeal, and to be regiſtered.

Provided the ſame be conformable to the inſtructions herewith delivered to you, or to ſuch other inſtructions as may hereafter be ſent you under our ſignet and ſign manual, or by our order in our privy council; which inſtructions, or any articles contained therein, or any ſuch order made in our privy council, ſo far as the ſame ſhall relate to the granting of lands as aforeſaid, ſhall from time to time be publiſhed in the province, and entered on record in like manner as the ſaid grants are hereby directed to be entered.

Theſe grants muſt be made conformable to the King's inſtructions. And theſe inſtructions relating to the granting of lands ſhall be publiſhed.

And we do hereby give you, the ſaid James Murray, full power and authority to order fairs, markets, and markets, and alſo ſuch and ſo many ports, harbours, bays, havens, and other places for the conveniency or ſecurity of ſhipping, and for the better loading and unloading of goods and merchandizes, in ſuch and ſo many places as, by and with the advice and conſent of our ſaid council, ſhall be thought fit and neceſſary.

Power, with the conſent of the council, to appoint fairs and markets, harbours and wharfs.

And we do hereby require and command all officers and miniſters, civil and military, and all other inhabitants of our ſaid province, to be obedient, aiding, and aſſiſting unto you, the ſaid James Murray, in the execution of this our commiſſion and of the powers and authorities therein contained; and, in caſe of your death or abſence from our ſaid province and government, to be obedient, aiding, and aſſiſting to the commander in chief for the time being; to whom we do therefore by theſe preſents give and grant all, and ſingular the powers and authorities herein granted, to be by him executed and enjoyed during our pleaſure, or until your arrival within our ſaid province.

All officers civil and military, and other inhabitants of the province, are to be aiding and aſſiſting to the governor in the execution of his commiſſion; and in caſe of death or abſence of the governor, to the commander in chief for the time being.

And in caſe of your death or abſence from our ſaid province, our will and pleaſure is, that our lieutenant-governour of Montreal or Trois Rivieres, according to the priority of their commiſſions of lieutenant-governour, do execute our ſaid commiſſion with all the powers and authorities therein mentioned, as aforeſaid. And in caſe of the death or abſence of our lieutenant-governours of Montreal

and

Who ſhall be commander in chief of the province in caſe of the death or abſence of the governor.

and Trois Rivieres from our said province, and that there shall be no person within our said province appointed by us to be lieutenant-governour or commander in chief of our said province, our will and pleasure is, that the eldest councillor, who shall be, at the time of your death, or absence, residing within our said province, shall take upon him the administration of the government, and execute our said commission and instructions, and the several powers and authorities therein contained, in the same manner to all intents and purposes as other our governour or commander in chief should or ought to do, in case of your absence, or until your return, or in all cases until our further pleasure be known.

This office of captain general and governour in chief to be held only during the King's pleasure.

And we do hereby declare, ordain, and appoint, that you, the said James Murray, shall and may hold, execute, and enjoy the office and place of our Captain General and Governour in Chief in and over our said province of Quebec and all the territories depending thereon, with all and singular the powers and authorities hereby granted unto you, for and during our will and pleasure. In witness whereof we have caused these our letters to be made patent. Witness ourself at Westminster the twenty-first day of November, in the fourth year of our reign.

By writ of privy seal. (Signed) YORKE & YORKE.

Recorded at the Treasury Chambers, Whitehall, the 28th day of November 1763.

(Signed) T. TOMKYN S.

Recorded in the Register's Office in Quebec, the 7th day of June 1766.

(Signed) J. GOLDFRAP, D. Regr.

N U M B E R X.

OATHS of Allegiance and Abjuration of the Pope's Power, and the Pretender's Right to the Crown of GREAT BRITAIN;

Mentioned in the foregoing Commission of Captain General and Governour in Chief.

I. The OATH of ALLEGIANCE.

I A. B. do sincerely promise and swear, that I will be faithful, and bear true allegiance, to his Majesty King George.

So help me G O D.

II. The OATH of ABJURATION of the POPE'S POWER.

I A. B. do swear, that I do from my heart abhor, detest, and abjure, as impious and heretical, that damnable doctrine and position, that princes excommunicated or deprived by the Pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever.

And I do declare, that no foreign prince, person, prelate, state, or potentate, hath, or ought to have, any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm.

So help me G O D.

III. The OATH of ABJURATION of the PRETENDER'S RIGHT to the CROWN of GREAT BRITAIN.

I A. B. do truly and sincerely acknowledge, profess, testify, and declare in my conscience, before God and the world, that our Acknowledgement of the King's right to the crown of Great Britain.

Sovereign

Sovereign Lord King George is the rightful King of this realm, and all other his Majesty's dominions thereunto belonging.

Declaration against the pretender's title to the crown ;

And I do solemnly and sincerely declare, that I do believe in my conscience, that the person pretended to be Prince of Wales, during the life of the late King James, and since his decease pretending to be, and taking upon himself the style and title of, King of England, by the name of James the Third, or of Scotland, by the name of James the Fifth, or the style and title of King of Great Britain, hath not any right or title whatsoever to the crown of this realm, or any other the dominions thereto belonging : and I do renounce, refuse, and abjure any allegiance or obedience to him.

and renunciation of all allegiance or obedience to him.

Promise to defend the King against all traitorous conspiracies :

And I do swear, that I will bear faith and true allegiance to his Majesty King George, and him will defend, to the utmost of my power, against all traitorous conspiracies and attempts whatsoever, which shall be made against his person, crown, or dignity. And I will do my utmost endeavour to disclose and make known to his Majesty, and his successors, all treasons and traitorous conspiracies which I shall know to be against him, or any of them.

and to disclose to him all such conspiracies.

Promise to maintain the Protestant succession to the crown, according to the act of settlement.

And I do faithfully promise, to the utmost of my power, to support, maintain, and defend the succession of the crown against him the said James, and all other persons whatsoever, which succession, by an act, intituled, " An Act for the further limitation of the crown and better securing the rights and liberties of the subjects," is and stands limited to the Princess Sophia, electress and dutchess dowager of Hanover, and the heirs of her body, being Protestants.

Sincerity of all these declarations and promises according to the plain meaning of the words in which they are expressed.

And all these things I do plainly and sincerely acknowledge and swear, according to these express words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation, mental evasion, or secret reservation whatsoever. And I do make this recognition, acknowledgement, abjuration, renunciation, and promise, heartily, willingly, and truly, upon the true faith of a Christian.

So help me G O D.

The

The foregoing oath of abjuration is that mentioned in the commission above-recited of Captain General and Governour in Chief of the province of Quebec, granted to General Murray, which was passed in the life-time of the person pretending to be the son of King James the Second. Since the death of that pretender it has been necessary to make some alterations in the wording of it; and this has been done by the statute of the 6th year of the reign of his present Majesty, by which the following oath of abjuration is enjoined to be taken instead of the former.

IV. The OATH of ABJURATION of the RIGHT of any of the DESCENDANTS of the late King JAMES the SECOND to the CROWN of GREAT BRITAIN:

Appointed by the stat. 6 Geo. III. cap. 53.

I A. B. do truly and sincerely acknowledge, profess, testify, and declare, in my conscience, before God and the world, that our Sovereign Lord King George is lawful and rightful King of this realm, and all other his Majesty's dominions and countries thereunto belonging.

Acknowledgement of the King's right to the crown of Great Britain.

And I do solemnly and sincerely declare, that I do believe in my conscience, that not any of the descendants of the person who pretended to be Prince of Wales during the life of the late King James the Second, and, since his decease, pretended to be, and took upon himself the style and title of, King of England, by the name of James the Third, or of Scotland, by the name of James the Eighth, or the style and title of King of Great Britain, hath any right or title whatsoever to the crown of this realm or any other the dominions thereunto belonging. And I do renounce, refuse, and abjure any allegiance or obedience to any of them,

Declaration against the title of any of the descendants of the late pretender to the said crown.

and renunciation of all allegiance or obedience to them.

And I do swear that I will bear faith and true allegiance to his Majesty King George, and him will defend, to the utmost of my power, against all traitorous conspiracies and attempts whatsoever, which shall be made against his person, crown, or dignity. And I will do my utmost endeavour to disclose and make known to his

Promise to defend the King against all traitorous conspiracies;

and to disclose to him all such conspiracies.

O

Majesty,

Majesty, and his successors, all treasons and traitorous conspiracies which I shall know to be against him, or any of them.

Promise to maintain the Protestant succession to the crown, according to the act of settlement.

And I do faithfully promise, to the utmost of my power, to support, maintain, and defend the succession of the crown against the descendants of the said James, and all other persons whatsoever; which succession, by an act, intituled, "An Act for the further limitation of the crown, and better securing the rights and liberties of the subject," is and stands limited to the Princess Sophia, electress and duchess dowager of Hanover, and the heirs of her body, being Protestants.

Sincerity of all these declarations and promises according to the plain meaning of the words in which they are expressed.

And all these things I do plainly and sincerely acknowledge and swear, according to these express words by me spoken, and according to the plain common sense and understanding of the same words, without any equivocation, mental evasion, or secret reservation whatsoever. And I do make this recognition, acknowledgement, abjuration, renunciation, and promise, heartily, willingly, and truly, upon the true faith of a christian.

V. The DECLARATION against TRANSUBSTANTIATION,
Mentioned in the foregoing commission of Captain General and
Governour in Chief;

And appointed by stat. 25 Car. II. c. 2. sect. 9.

I A. B. do declare, that I do believe that there is not any transubstantiation in the sacrament of the Lord's Supper, or in the elements of bread and wine, at or after the consecration thereof by any person whatsoever.

Five years after the appointment of this declaration against transubstantiation, to wit, in the 30th year of the reign of King Charles the Second, and A. D. 1679, another declaration against some of the principal errors of Popery was appointed to be taken on certain occasions, which is usually called *The Declaration against Popery*, and is as follows.

VI. The

VI. The DECLARATION against POPERY,

Appointed to be taken in certain cases by the stat. 30 Car. II. stat. 2.

I A. B. do solemnly and sincerely, in the presence of God, profess, testify, and declare, that I do believe, that in the sacrament of the Lord's Supper there is not any transubstantiation of the elements of bread and wine into the body and blood of Christ, at, or after the consecration thereof by any person whatsoever: and that the invocation or adoration of the Virgin Mary, or any other saint, and the sacrifice of the mass, as they are now used in the church of Rome, are superstitious and idolatrous.

No transubstantiation of the elements of bread and wine in the sacrament of the Lord's Supper. The worship of the Virgin Mary and the saints, and the sacrifice of the mass, are superstitious and idolatrous.

And I do solemnly, in the presence of God, profess, testify, and declare, that I do make this declaration, and every part thereof, in the plain and ordinary sense of the words read unto me, as they are commonly understood by English Protestants, without any evasion, equivocation, or mental reservation whatsoever, and without any dispensation already granted me for this purpose by the Pope, or any other authority or person whatsoever, or without any hope of any such dispensation from any person or authority whatsoever, or without thinking that I am, or can be acquitted before God or man, or absolved of this declaration, or any part thereof, although the Pope, or any other person or persons, or power whatsoever, shall dispense with, or annul, the same, or declare that it was null and void from the beginning.

Sincerity of this declaration according to the plain meaning of the words in which it is expressed.

TRANSLATIONS of the foregoing Oaths and Declarations into the FRENCH LANGUAGE.

Les susdits Serments et Déclarations en François.

I. *Serment de Ligeance, ou Fidelité.*

JE, A. B. promets & jure sincerement que je serai fidèle et garderai une véritable ligeance envers sa Majesté le Roi George.

Ainsi DIEU me soit en aide.

II. Serment d'Abjuration à la Puissance du Pape.

ET je jure que j'abhorre du fond de mon cœur et que je déteste et abjure, comme étant impie et pleine d'herésie, cette doctrine et maxime affreuse que les princes qui sont excommuniés, ou privés de leur royaumes ou territoires, par le Pape, ou par aucune autorité du siège de Rome, peuvent être détronés ou mis à mort par leurs sujets ou par d'autres personnes quelconques.

Et je déclare que nul prince, personne, prélat, état, ou potentat étranger a, ou devrait avoir, aucune juridiction, pouvoir, supériorité, prééminence, ou autorité ecclésiastique ou spirituelle dans ce royaume.

Ainsi DIEU me soit en aide.

III. Serment d'Abjuration du prétendu Fils du Feu Roi Jacques Second.

Reconnaissance du droit du Roi Georges III. aujourd'hui regnant, à la couronne de la Grande Bretagne.

JE, A. B. en toute vérité et sincérité avoüe, professe, témoigne, et déclare, dans mon âme et conscience, devant Dieu et les hommes, que notre souverain seigneur le Roi Georges est Roi légitime et de droit de ce royaume, et de toutes les seigneuries et territoires qui y sont appartenants.

Declaration que le prétendant n'a aucun droit ou titre à la ditte couronne.

Et je déclare solennellement et sincèrement que je croi dans mon âme et conscience que la personne, qui prétendoit être Prince de Galles durant la vie du feu Roi Jacques Second, et qui depuis la mort de ce Roi a prétendu être, et a pris sur lui le stile et titre de, Roi d'Angleterre par le nom de Jacques le Troisième, ou de Roi d'Ecosse par le nom de Jacques le Huitième, ou le stile et titre de Roi de la Grande Bretagne, n'a point aucun droit ou titre quelconque à la couronne de ce royaume ou à aucune des seigneuries qui en dépendent. Et je renonce, refuse, et abjure tout ligençe ou obéissance envers lui.

Renonciation de toute fidélité, ou obéissance, envers lui.

Promesse de défendre le Roi Georges contre toutes conjurations et attentats de trahison ; et de lui révéler toutes conjurations de cette nature.

Et je jure que je garderai la fidélité et la véritable ligençe envers sa Majesté le Roi Georges, et que je le défendrai de tout mon pouvoir contre toutes conjurations et attentats de trahison qui seront formés ou entrepris contre sa personne, sa couronne, et sa dignité. Et je ferai tout ce qui sera dans mon pouvoir pour révéler et faire connoître à sa Majesté et à ses successeurs, toutes trahisons et toutes conjurations dans lesquelles

lesquelles un dessein sera formé de commettre la trahison, que je sçaurai être entrepris contre lui ou aucun d'eux.

Et je promets fidèlement de soutenir, maintenir, et défendre de tout mon pouvoir la succession de la couronne encontre lui le dit Jacques et toutes autres personnes quelconques; laquelle succession est établie dans la personne de la feuë Princesse Sophie, électrice et duchesse douairiere d'Hanovre et ses héritiers issus de son corps, tant qu'ils seront Protestants, par un acte de parlement, intitulé, " Un acte pour désigner jusqu'à de nouveaux degrés de succession les personnes qui devront succéder à la couronne, " et pour mieux assurer les privileges et les franchises des sujets.

Promesse de maintenir la succession à la couronne dans la ligne Protestante, selon l'acte de parlement qui l'a ainsi établie.

Et toutes ces choses j'avoüe et je jure avec sincérité et bonne foi, selon les termes exprés que je viens de prononcer, et selon le sens et l'acceptation ordinaires de ces termes, sans aucune interprétation équivoque, évasion mentale, ou réservation secretae quelconque. Et je fais cette reconnoissance, aveu, abjuration, renonciation, et promesse, de bon cœur, volontairement, et véritablement, sur la véritable foi d'un Chrétien.

Sincérité de toutes ces déclarations et promesses selon le sens naturel et ordinaire des termes dans lesquels elles sont exprimées.

Ainsi DIEU me soit en aide.

Tel étoit le serment d'abjuration du prétendu fils du feu Roi Jacques Second, qui est ordonné par la commission précédente de Capitaine Général et Gouverneur en Chef de la province de Québec faite au Général Murray, qui fut passée du vivant de ce prétendant. Depuis la mort de cette personne il a été nécessaire de faire quelque changement dans cette abjuration; et par l'acte de parlement de la sixieme année du regne de sa Majesté le Roi Georges III. aujourd'hui regnant, chapitre 53. on y a substitué le serment d'abjuration qui s'ensuit.

IV. Serment d'Abjuration des Descendants du Feu Roi Jacques Second;

Prescrit par le statut du 6 de Geo. III. chap. 53.

JE, A. B. en toute vérité et sincérité, avoüe, professe, témoigne, et déclare, dans mon âme et conscience, devant Dieu et les hommes, que notre souverain seigneur le Roi Georges est roi légitime et de droit de ce royaume, et de toutes les seigneuries et territoires qui y sont appartenants.

Reconnoissance au droit du Roi Georges III. aujourd'hui regnant, à la couronne de la Grande Bretagne.

Et

Déclaration que les descendants du feu prétendant à la couronne de l'Angleterre ou de l'Ecosse, ou de la Grande Bretagne, n'ont aucun droit à aucune des dites couronnes.

Et je déclare solennellement et sincèrement que je croi dans mon âme et conscience, que pas aucun des descendants de la personne qui prétendoit être Prince de Galles durant la vie du feu Roi Jacques Second, et qui après la mort du dit roi, prétendoit être, et prenoit sur lui le stile et titre de, Roi d'Angleterre par le nom de Jacques le Troisième, ou de Roi d'Ecosse par le nom de Jacques le Huitième, ou le stile et titre de Roi de la Grande Bretagne, n'a aucun droit, ou titre, quelconque à la couronne de ce royaume, ou à aucune des seigneuries ou territoires qui en dependent. Et je renonce, refuse, et abjure toute ligençe ou obéissance envers aucun d'eux.

Renonciation de toute fidélité, ou obéissance, envers eux.

Promesse de défendre le Roi Georges contre toutes conjurations et attentats de trahison ;

et de lui révéler toutes conjurations de cette nature.

Et je jure que je garderai la fidélité et la véritable ligençe envers sa Majesté le Roi Georges, et que je le défendrai de tout mon pouvoir contre toutes conjurations et attentats de trahison qui seront formés ou entrepris contre sa personne, sa couronne, et sa dignité. Et je ferai tout ce qui sera dans mon pouvoir pour révéler et faire connoître à sa Majesté, et à ses successeurs, toutes trahisons et toutes conjurations dans lesquels un dessein sera formé de commettre la trahison, que je sçaurai être entrepris contre lui ou aucun d'eux.

Promesse de maintenir la succession à la couronne dans la ligne Protestante, selon l'acte de parlement qui l'a ainsi établie.

Et je promets fidelement de soutenir, maintenir, et défendre de tout mon pouvoir la succession de la couronne encontre les descendants du dit Jacques et toutes autres personnes quelconques ; laquelle succession est établie dans la personne de la feüe Princesse Sophie, électrice et duchesse douairiere d'Hanovre, et ses héritiers issus de son corps, tant qu'ils seront Protestants, par un acte de parlement, intitulé, " Un acte pour désigner jusqu'à de nouveaux degrés de succession les personnes qui devront succéder à la couronne, et pour mieux assurer les privilèges et les franchises des sujets."

Sincérité de toutes ces déclarations et promesses selon le sens naturel et ordinaire des termes dans lesquels elles sont exprimées.

Et toutes ces choses j'avoüe et je jure avec sincérité et bonne foi, selon les termes exprés que je viens de prononcer, et selon le sens et l'acceptation ordinaires de ces termes, sans aucune interprétation équivoque, évasion mentale, ou réservation secrète quelconque. Et je fais cette reconnoissance, aveu, abjuration, renonciation, et promesse, de bon cœur, volontairement et véritablement, sur la véritable foi d'un Chrétien.

Ainsi DIEU me soit en aide.

V. *Déclaration contre la Transubstantiation, ou Présence réelle du Corps de Jésus Christ dans la Sainte Cène ;*

Mentionnée dans la commission précédente de Capitaine Général et Gouverneur en Chef de la province ;

Et prescrite par un acte de parlement du 25 de Charles II. chapitre 2, article 9.

JE, A. B. déclare que je croi qu'il n'y a pas dans le sacrement de la sainte cène de nôtre seigneur Jésus Christ, aucune transubstantiation des éléments de pain et de vin, ni dans le moment de leur consécration, ni après leur consécration, par quelque personne que ce soit.

En certains cas une autre déclaration contre d'autres erreurs de l'église de Rome aussi bien que celui de la présence réelle, c'est à dire, contre l'adoration de la Vierge Marie et des saints, et le sacrifice de la messe, est prescrite par un autre acte de parlement du même Roi Charles II. dans la 30 année de son regne. Elle est appelée ordinairement La Déclaration contre le Papisme ; elle est de la forme qui s'ensuit.

VI. *Déclaration contre le Papisme,*

Prescrite à certaines personnes par le statut du 30 de Charles II. stat. 2.

JE, A. B. professe, témoigne, et déclare, solennellement et sincèrement dans la présence de Dieu, que je croi que dans le sacrement de la Sainte Cène de notre Seigneur Jésus Christ il n'y a pas aucune transubstantiation des éléments de pain et de vin en le corps et le sang de Jésus Christ dans le tems, ou après le tems de leur consécration par quelque personne que ce soit ; et que l'invocation, ou l'adoration, de la Vierge Marie, et de tout autre saint, et le sacrifice de la messe, comme elles sont aujourd'hui pratiquées dans l'église de Rome, sont superstitieuses et idolatreuses.

Contre la transubstantiation des éléments de pain et de vin en le corps et le sang de Jésus Christ.

Contre l'invocation, ou l'adoration, de la Vierge Marie et des saints, et contre le sacrifice de la messe.

Et

Sincérité de cette
déclaration selon
le sens naturel
et ordinaire des
termes dans les-
quels elle est ex-
primée.

Et je professe, témoigne, et déclare, que je fais cette déclaration et chaque partie d'icelle, dans le sens naturel et ordinaire des mots qui m'ont été lus, comme ils sont entendus communément par les Anglois Protestants, sans aucune évasion, interprétation équivoque, ou réserve mentale quelconque, et sans aucune dispense déjà accordée à moi pour cette occasion par le Pape, ou par aucune autre authorité, ou personne quelconque, et sans aucune espérance d'obtenir une dispense pour cette occasion de par aucune personne, ou authorité quelconque, et sans penser que je suis, ou que je puisse être, devant Dieu ou les hommes, censé, libre de l'obligation de cette déclaration, ou que je puisse être absous d'icelle, ou d'aucune partie d'icelle, quoique le Pape, ou toute autre personne, ou personnes, ou puissance quelconque, m'en dispensât ou l'annullât, ou déclarât qu'elle a été nulle et de nulle validité depuis son commencement,

N U M B E R XI.

COMMISSION of VICE-ADMIRAL.

GEORGE the THIRD, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, To our beloved JAMES MURRAY, Esquire, our Captain General and Governour in Chief in and over our Province of Quebec, in America, Greeting :

WE, confiding very much in your fidelity, care, and circumspection in this behalf, do, by these presents, which are to continue during our pleasure only, *constitute and depute* you, the said James Murray, Esquire, our Captain General and Governour in Chief aforesaid, *our Vice-Admiral, Commissary, and Deputy in the Office of Vice-Admiralty* in our province of Quebec aforesaid, and territories thereon depending, and in the maritime parts of the same and thereto adjoining whatsoever; with power of taking and receiving all and every the fees, profits, advantages, emoluments, commodities, and appurtenances whatsoever due and belonging to the said office of Vice-Admiral, Commissary, and Deputy in our said province of Quebec, and territories depending thereon, and maritime parts of the same and adjoining to them whatsoever, according to the ordinances and statutes of our high court of admiralty in England.

Commission to be Vice-Admiral, Commissary, and Deputy in the office of Vice-Admiralty in the province of Quebec.

And we do hereby remit and grant unto you, the aforesaid James Murray, Esquire, our power and authority in and throughout our province of Quebec aforesaid, and territories thereof, and maritime parts whatsoever of the same and thereto adjacent, *and also throughout all and every the sea-shores, public streams, ports, fresh-water rivers, creeks, and arms as well of the sea as of the rivers and coasts whatsoever of our said province of Quebec*, and territories dependent thereon, and maritime parts whatsoever of the same and thereto adjacent, as well within liberties and franchises as without; to take cognizance of, and proceed in, all causes civil

To what places the vice-admiral's jurisdiction shall extend.

In what causes:

P

and

Between what
persons.

and maritime, and in complaints, contracts, offences, or suspected offences, crimes, pleas, debts, exchanges, accounts, charter-partys, agreements, suits, trespasses, injuries, extortions, and demands, and business civil and maritime whatsoever, commenced or to be commenced between merchants, or between owners and proprietors of ships and other vessels, and merchants or others whomsoever with such owners and proprietors of ships and all other vessels whatsoever employed or used within the maritime jurisdiction of our vice-admiralty of our said province of Quebec, and territories depending on the same, or between any other persons whomsoever, had, made, begun, or contracted for any matter, thing, cause, or business whatsoever, done or to be done within our maritime jurisdiction aforesaid, together with all and singular their incidents, emergencies, dependencies, annexed or connexed causes whatsoever or howsoever; and such causes, complaints, contracts, and other the premises above said, or any of them, which may happen to arise, be contracted, had, or done, to hear and determine according to the rights, statutes, laws, ordinances, and customs anciently observed.

And moreover, in all and singular complaints, contracts, agreements, causes, and businesses, civil and maritime, to be performed beyond the sea, or contracted there, howsoever arising or happening; and also in all and singular other causes and matters, which in any manner whatsoever touch or any way concern, or anciently have and do, or ought to, belong unto the maritime jurisdiction of our aforesaid vice-admiralty in our said province of Quebec, and territories thereon depending, and maritime parts thereof and to the same adjoining whatsoever; and generally in all and singular all other causes, suits, crimes, offences, excesses, injuries, complaints, misdemeanours, or suspected misdemeanours, trespasses, regrating, forestalling, and maritime businesses whatsoever, throughout the places aforesaid within the maritime jurisdiction of our vice-admiralty of our province of Quebec aforesaid, and territories thereon depending, by sea or water, or the banks or shores of the same, howsoever done, committed, perpetrated, or happening.

To enquire by a jury of such matters as of right, and by ancient laws and usages, ought to be enquired of;

And also to enquire by the oaths of honest and lawful men of our said province of Quebec, and territories dependent thereon, and maritime parts of the same and adjoining to them whatsoever, dwelling both within liberties and franchises and without, as well
of

of all and singular such matters and things which of right, and by the statutes, laws, ordinances, and customs anciently observed were wont and ought to be enquired after, as of wreck of the sea, and of all and singular the goods and chattels of whatsoever traitors, pirates, manslaughterers, and felons howsoever offending within the maritime jurisdiction of our vice-admiralty of our province of Quebec afore-mentioned, and territories thereunto belonging, and of the goods, chattels, and debts of all and singular their maintainers, accessaries, counsellors, abettors, or assistants whomsoever.

and of wreck of the sea, and the goods of traitors and felons;

And also of the goods, debts, and chattels of whatsoever person or persons felons of themselves, by what means or howsoever coming to their death within our afore-mentioned maritime jurisdiction, wheresoever any such goods, debts, and chattels, or any part thereof, by sea, water, or land in our said province of Quebec, and territories thereon dependent, and maritime parts of the same and thereto adjacent whatsoever, as well within liberties and franchises as without, have been or shall be found forfeited, or to be forfeited, or in being.

and of the goods of felons of themselves.

And moreover, as well of the goods, debts, and chattels of whatsoever other traitors, felons, and manslaughterers wheresoever offending, and of the goods, debts, and chattels of their maintainers, accessaries, counsellors, abettors, or assistants, as of the goods, debts, or chattels of all fugitives, persons convicted, attainted, condemned, outlawed, or howsoever put, or to be put, in exigent for treason, felony, manslaughter, or murder, or any other offence or crime whatsoever; and also concerning goods waived, flotson, jetson, lagon, shares and treasure found or to be found; deodands, and of the goods of all others whatsoever taken or to be taken as derelict, or by chance found, or howsoever due or to be due; and of all other casualties, as well in, upon, or by the sea and shores, creeks or coasts of the sea or maritime parts, as in, upon, or by all fresh waters, ports, public streams, rivers, or creeks, or places overflown whatsoever within the ebbing and flowing of the sea or high water, or upon the shores and banks of any of the same within our maritime jurisdiction afore-mentioned, howsoever, whensoever, or by what means soever arising, happening, or proceeding, or wheresoever such goods, debts, and chattels, or

Also of goods waived, flotson, jetson, lagon, deodands, derelicts, and other casualties, upon the sea, or sea-coasts, or fresh-water rivers as far as the tide flows.

other the premises, or any parcel thereof, may or shall happen to be met with or found within our maritime jurisdiction aforesaid.

Also of anchorage, lastage, ballast, and fishes royal.

And also concerning anchorage, lastage, and ballast of ships, and of fishes royal, namely, sturgeons, whales, porpoises, dolphins, kiggs, and grampusses, and generally of all other fishes whatsoever which are of a great or very large bulk or fatness, anciently by right, or custom, or any way appertaining or belonging to us.

Power to receive and preserve to the King's use all the profits above-mentioned; and all fines imposed by any court of admiralty held in this province, and recognizances forfeited therein:

And to ask, require, levy, take, collect, receive, and obtain for the use of us, and to the office of our high admiral of Great Britain aforesaid for the time being, to keep and preserve the said wreck of the sea, and the goods, debts, and chattels of all and singular other the premises, together with all and all manner of fines, mulcts, issues, forfeitures, amerciaments, ransoms, and recognizances whatsoever, forfeited, or to be forfeited, and pecuniary punishments for trespasses, crimes, injuries, extortions, contempts, and other misdemeanors whatsoever, howsoever imposed or inflicted, or to be imposed or inflicted, for any matter, cause, or thing whatsoever in our said province of Quebec, and territories thereunto belonging, and maritime parts of the same and thereto adjoining, in any court of our admiralty there held, or to be held, presented, or to be presented, assessed, brought, forfeited, or adjudged; and also all amerciaments, issues, fines, perquisites, mulcts, and pecuniary punishments whatsoever, and forfeitures of all manner of recognizances, before you or your lieutenant, deputy, or deputies, in our said province of Quebec, and territories thereunto belonging, and maritime parts of the same and thereto adjacent whatsoever, happening, or imposed, or to be imposed or inflicted, or by any means assessed, presented, forfeited, or adjudged, or howsoever, by reason of the premises, due or to be due in that behalf to us, or to our heirs and successors.

and to take recognizances and bonds, either for the King's use, or that of private subjects:

And further, to take all manner of recognizances, cautions, obligations, and stipulations, as well to our use as at the instance of any party's, for agreements, or debts, or other causes whatsoever, and to put the same into execution, and to cause and command them

them to be executed ; and also to arrest, and cause and command to be arrested, according to the civil and maritime laws and ancient customs of our said court, all ships, persons, things, goods, wares, and merchandizes, for the premises, and every of them, and for other causes whatsoever concerning the same, wheresoever they shall be met with or found throughout our said province of Quebec, and territories thereunto belonging, and maritime parts thereof and thereto adjoining, as well within liberties and franchises as without ; and likewise for all other agreements, causes, or debts, howsoever contracted or arising, so that the goods or persons may be found within our jurisdiction aforesaid.

and to award execution upon them ; and to arrest ships, goods, and persons for causes arising within the maritime jurisdiction :

And to hear, examine, discuss, and finally determine the same, with their emergencies, dependancies, incidents, annexed and connexed causes and businesses whatsoever ; together with all other causes civil and maritime, and complaints, contracts, and all and every the respective premises whatsoever above-expressed, according to the laws and customs aforesaid, and by all other lawful ways, means, and methods, according to the best of your skill and knowledge.

and to hear and determine the said causes, with all the matters incident thereto :

And to compel all manner of persons in that behalf, as the case shall require, to appear and to answer, with power of using any temporal correction, and of inflicting any other penalty, or mulct, according to the laws and customs aforesaid.

and to compel persons to appear and answer :

And to do and administer justice according to the right order and course of the law, summarily and plainly, looking only into the truth of the facts.

And to fine, correct, punish, chastise, reform, and to imprison, and cause and command to be imprisoned, in any gaols, being within our province of Quebec aforesaid, and territories thereunto belonging, the parties guilty, and the contemners of the law and jurisdiction of our admiralty aforesaid, and violaters, usurpers, delinquents, and contumacious absenters, masters of ships, mariners, rowers, fishermen, shipwrights, and other workmen and artificers whatsoever, exercising any kind of maritime affairs, according to the

and to fine and to imprison, in any of the gaols of the province, the parties that shall be found guilty :

and to deliver
and discharge
from prison per-
sons imprisoned
for the same,
when they ought
to be so dis-
charged;

the rights, statutes, laws, and ordinances, and customs anciently observed; and to deliver and absolutely discharge, and cause and command to be discharged, whatsoever persons imprisoned in such cases, who are to be delivered.

and to preserve
public streams,
ports, and
rivers.

And to preserve, or cause to be preserved, the public streams, ports, rivers, fresh waters, and creeks whatsoever, within our maritime jurisdiction aforesaid, in what place soever they be in our province of Quebec aforesaid, and territories thereunto belonging, and maritime parts of the same and thereto adjacent whatsoever, as well for the preservation of our navy royal, and of the fleets and vessels of our kingdom and dominions aforesaid, as of whatsoever fishes increasing in the rivers and places aforesaid.

And also to keep, and cause to be executed and kept, in our said province of Quebec, and territories thereunto belonging, and maritime parts thereof and thereto adjacent whatsoever, the rights, statutes, laws, ordinances, and customs anciently observed.

And to do, exercise, expedite, and execute all and singular other things in the premises, and every of them, as they by right, and according to the laws and statutes, ordinances and customs aforesaid, should be done.

and to reform
nets that are too
close, and other
unlawful en-
gines for catch-
ing fish;

And moreover, to reform nets too close, and other unlawful engines or instruments whatsoever for the catching of fishes where-soever, by sea, or public streams, ports, rivers, fresh waters, or creeks whatsoever, throughout our province of Quebec aforesaid, and territories depending thereon, and maritime parts of the same and thereto adjacent, used or exercised within our maritime jurisdictions aforesaid wheresoever.

and to punish
those who make
use of them:

And to punish and correct the exercisers and occupiers thereof, according to the statutes, laws, ordinances, and customs aforesaid.

and to pro-
nounce sen-
tences in all
causes relating
to the sea, and
put the same in
execution:

And to pronounce, promulge, and interpose all manner of sentences and decrees, and to put the same in execution; with
cognizance

cognizance and jurisdiction of whatsoever other causes, civil and maritime, which relate to the sea, or which any manner of ways respect or concern the sea, or passage over the same, or naval or maritime voyages, or our said maritime jurisdiction, or the places or limits of our said admiralty, and cognizance afore-mentioned, and all other things done or to be done.

With power also to proceed in the same, according to the statutes, laws, ordinances, and customs aforesaid anciently used, as well of mere office mixt or promoted, as at the instance of any party, as the case shall require and seem convenient: and likewise with cognizance and decision of wreck of the sea, and of the death, drowning, and view of dead bodies of all persons howsoever killed, or drowned, or murdered, or which shall happen to be killed, drowned, or murdered, or by any other means come to their death in the sea or public streams, ports, fresh waters, or creeks whatsoever, within the flowing of the sea and high-water mark throughout our aforesaid province of Quebec, and territories thereunto belonging, and maritime part of the same and thereto adjacent, or elsewhere within our maritime jurisdiction aforesaid.

and to proceed in the said causes as well of mere office as at the instance of parties :
and to have cognizance of wreck of the sea, and view of dead bodies of persons coming to their deaths upon the sea, or within the maritime jurisdiction :

Together with the cognizance of mayhem in the aforesaid places, within our maritime jurisdiction aforesaid, and flowing of the sea and water there happening; with power also of punishing all delinquents in that kind according to the exigences of the law and customs aforesaid.

and to have cognizance of mayhem within the maritime jurisdiction.

And to do, exercise, expedite, and execute all and singular other things which in and about the premises only shall be necessary or thought meet, according to the rights, statutes, laws, ordinances, and customs aforesaid.

With power of deputing and surrogating in your place for the premises one or more deputy or deputies, as often as you shall think fit; and also with power from time to time of naming, appointing, ordaining, assigning, making, and constituting whatsoever other necessary, fit, and convenient officers and ministers under you for the said office and execution thereof in our said province

Power to make one or more deputies, and to appoint inferior officers.

vince of Quebec, and territories thereunto belonging, and maritime parts of the same and thereto adjacent whatsoever.

Saving the right of the high court of admiralty, and of the judge and registrar thereof; and saving the right of appealing thereto from any sentence of the court of vice-admiralty at Quebec.

Saving always the right of our high court of admiralty of England, and also of the judge and registrar of the said court, from whom, or either of them, it is not our intention in any thing to derogate by these presents; and saving to every one who shall be wronged or grieved by any definitive sentence or interlocutory decree which shall be given in the vice-admiralty court of our province of Quebec aforesaid, and territories thereunto belonging, the right of appealing to our aforesaid high court of admiralty of England.

Provido that the vice-admiral shall yearly certify under the seal of his office the proceedings had in his court to the judge of the high court of admiralty:

Provided nevertheless, and under this express condition, that if you, the aforesaid James Murray, Esquire, our Captain General and Governour in Chief, shall not yearly (to wit) at the end of every year, between the feasts of St. Michael the archangel and All Saints, duly certify, and cause to be effectually certified (if you shall be thereunto required) to us, and our lieutenant official, principal, and commissary general and special, and judge and president of the high court of our admiralty of England aforesaid, all that which from time to time by virtue of these presents you shall do and execute, collect, or receive in the premises, or any of them, together with your full and faithful account thereupon, to be made in an authentic form, and sealed with the seal of our office remaining in your custody, that from thence and after default therein these our letters patent of the office of vice-admiralty aforesaid, as above granted, shall be null and void, and of no force or effect.

and upon default made herein these letters patent shall be void.

All officers, civil and military, and all other subjects whatsoever, are enjoined to be assisting to the vice-admiral and his deputies in the execution of this office.

Further we do, in our name, command all and singular our governours, justices, mayors, sheriffs, captains, marshals, bailiffs, keepers of all our gaols and prisons, constables, and all other our officers and faithful liege subjects whatsoever, and every of them, as well within liberties and franchises as without, that in and about the execution of the premises, and every of them, they be aiding, favouring, assisting, submissive, and yield obedience in all things as is fitting to you, the aforesaid James Murray, Esquire, our Captain General and Governour in Chief of our province of Quebec aforesaid,

said, and to your deputy whomsoever, and to all other officers by you appointed, and to be appointed. of our said vice-admiralty in our province of Quebec aforesaid; and territories thereunto belonging, and maritime parts of the same and thereto adjoining, under pain of the law, and the peril which will fall thereon.

Given at London in the high court of our admiralty of England aforesaid, under the great seal thereof, the nineteenth day of March in the year of our Lord one thousand seven hundred and sixty-four, and of our reign the fourth.

(Signed)

GODF. LEE TARRANT,
Registrar.

N U M B E R XII.

C O M M I S S I O N
O F

L I E U T E N A N T G O V E R N O U R .

G E O R G E R .

GEORGE the THIRD, by the Grace of God, King of Great Britain, France, and Ireland, Defender of the Faith, and so forth; To our trusty and well-beloved GUY CARLETON, Esquire, Greeting :

Appointment of Guy Carleton, Esq; to be Lieutenant Governour of the province of Quebec during the King's pleasure.

WE, reposing especial trust and confidence in your loyalty, integrity, and ability, do, by these presents, constitute and appoint you to be our Lieutenant Governour of our province of Quebec, in America; to have, hold, exercise, and enjoy the said place and office during our pleasure, with all rights, privileges, profits, perquisites, and advantages to the same belonging or appertaining.

Authority to exercise the powers contained in the commission of Governour in Chief in case of the death, or during the absence of, the governour.

And further, in case of the death, or during the absence, of our captain general and governour in chief of our said province of Quebec, now, and for the time being, we do hereby authorize and require you to exercise and perform all and singular the powers and directions contained in our commission to our captain general and governour in chief, according to such instructions as he has already received from us, and such further orders and instructions as he, or you, shall hereafter receive from us.

Command to all officers, ministers, and other subjects to yield due obedience to him.

And we do hereby command all and singular our officers, ministers, and loving subjects in our said province, and all others whom

whom it may concern, to take due notice hereof, and to give their ready obedience accordingly.

Given at our court at St. James's, the seventh of April 1766,
in the sixth year of our reign.

By his Majesty's command.

(Signed) H. S. CONWAY.

Guy Carleton, Esquire, Lieutenant Governour of Quebec.

Entered as follows.

Entered at the Treasury.

(Signed) THO^s. TOMKYN.

Entered in the office of the Lords Commissioners
for Trade and Plantations.

(Signed) S. BRADBURY.

N U M B E R XIII.

The KING'S MANDATE to the Governour, or
Commander in Chief, of the Province of QUEBEC,
requiring him to appoint WILLIAM HEY, Esquire,
Chief Justice of the said Province.

G E O R G E R.

TRUSTY and well-beloved; we greet you well. Whereas we have taken into our royal consideration the loyalty, integrity, and ability of our trusty and well-beloved William Hey, Esquire, we have thought fit, hereby, to authorize and require you forthwith to cause letters patent to be passed under the seal of our province of Quebec, in America, constituting and appointing him, the said William Hey, our chief justice of, and in our said province, to have, hold, exercise, and enjoy the said office unto him the said William Hey, for and during our pleasure and his residence within our said province, together with all and singular the rights, profits, privileges, and emoluments unto the said place belonging, in the most full and ample manner, with full power and authority to hold the supreme courts of judicature at such places and at such times as the same may and ought to be held within our said province. And for so doing this shall be your warrant. And so we bid you farewell.

Given at our court at St. James's the third day of February
1766, in the sixth year of our reign.

By his Majesty's command.

(Signed) H. S. CONWAY.

*To our trusty and well-beloved James Murray, Esquire,
our Captain General and Governour in Chief in and over
our province of Quebec, in America; and, in his absence,
to the Commander in Chief of our said province for the
time being.*

COMMISSION

COMMISSION of the CHIEF JUSTICE.

QUEBEC ff.

GEORGE the THIRD; by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth; To our trusty and well-beloved WILLIAM HEY, Esquire, Greeting:

KNOW ye; that we, having taken into our royal consideration your loyalty, integrity, and ability, have assigned, constituted, and appointed, and we do hereby assign, constitute, and appoint you, the said William Hey, our Chief Justice of and in our province of Quebec, in America, to enquire, by the oaths of honest and lawful men of the province aforesaid, and by other lawful ways, methods, and means, by which you can or may the better know, as well within liberties as without, of whatsoever treasons, misprisions of treason, insurrections, rebellions, murders, felonies, homicides, killings, burglaries, rapes of women, unlawful congregations and assemblies, words spoken, misprisions, confederacies, false allegations, trespasses, riots, routs, escapes, contempts, falsties, negligencies, concealments, maintenances, oppressions, champarties, deceits, and other misdoings, offences, and injuries whatsoever; as also of the accessaries thereto within the province aforesaid, as well within liberties as without, by whomsoever and howsoever had, done, perpetrated, or committed, or which hereafter may happen to be done, perpetrated, or committed, and by whom, to whom, when, where, and how, and of all other articles and circumstances the premises, or any of them, any wise concerning: and the said treasons and other the premises to hear and determine, according to the laws and customs of that part of Great Britain called England, and of our said province of Quebec hereafter to be made.

Commission to be chief justice of the province of Quebec. Power to inquire of all treasons, felonies, and other offences;

and the same to hear and determine, according to the laws of England and the ordinances of the province hereafter to be made.

Therefore we command, that at such certain days and places as you shall appoint, you make diligent inquiry of the premises; and all and singular the premises you hear and determine; and the same do

do and fulfil in form aforesaid, doing therein that which to justice doth belong or appertain, according to the laws and customs of that part of our kingdom of Great Britain called England, and of our said province of Quebec hereafter to be made; saving to us our amerçiements and other things thereby to us belonging: for we will command all and every our sheriffs and provost-marshal of our province aforesaid, that at such certain days and places as you, our chief justice, shall make known to him, them, or any of them, they cause to come then and there before you such and so many honest and lawful men of our said province, as well within liberties as without, by whom the truth of the matter may be the better known and inquired of.

Power to deliver
gaols of prison-
ers therein con-
fined.

And further know ye, that we have assigned, constituted, and appointed, and by these presents do assign, constitute and appoint you, the said William Hey, our gaol of our province aforesaid of the prisoners therein hereafter to be to deliver. And therefore we command you that, at such certain days and places as you shall appoint, you come to our court-house of our said province the gaol in our said province of the prisoners hereafter therein to be to deliver, doing therein what to justice doth, or may, belong or appertain, according to the laws and customs of that part of our kingdom of Great Britain called England, and of our said province of Quebec hereafter to be made; saving to us our amerçiements and other things thereby to us belonging; for we will command all and every our sheriffs and provost-marshal of our said province of Quebec, that, at such certain days and places as you, our said chief justice, shall make known to him, them, or any of them, they cause to come then and there before you, our said chief justice, all the prisoners of the same gaol and their attachments.

Power to hear
and determine
all civil suits
and actions,
whether real,
personal, or
mixt, either be-
tween the King
and a subject, or
between subject
and subject.

And further know ye, that we have assigned, constituted, and appointed, and by these presents do assign, constitute, and appoint you, the said William Hey, our Chief Justice of our supreme court of judicature of our said province of Quebec, to inquire, by the oaths of honest and lawful men of the province aforesaid, and by other lawful ways, methods, and means by which you can or may the better know, as well within liberties as without, of all civil pleas, actions, and suits, as well real and personal as mixed, be-
tween

between us and any of our subjects, or between party and party, by whomsoever had, brought, sued, and commenced, and of all other articles and circumstances the premises, or any of them, any wise concerning: and the said pleas, actions, and suits, and every of them, to hear and determine in manner and form aforesaid, doing therein that which to justice doth belong and appertain, according to the laws and customs of that part of our kingdom of Great Britain called England, and the laws, ordinances, rules, and regulations of our said province of Quebec hereafter in that behalf to be ordained and made.

Therefore we command you, that, at such certain days and places as you shall appoint, you make diligent inquiry of the premises; and all and singular the premises to hear and determine in manner and form aforesaid; doing therein that which to justice doth belong or appertain, according to the laws and customs of that part of our kingdom of Great Britain called England, and the laws, ordinances, rules, and regulations of our said province of Quebec hereafter in that behalf to be made; for we will command all and every our sheriffs or provost-marshal of our province aforesaid, that at such days and places as you, our said chief justice, shall make known to him, them, or any of them, they cause to come then and there before you such and so many honest and lawful men of our said province, as well within liberties as without, by whom the truth of the matter may be the better known.

General command to inquire into, hear, and determine the premises.

To have, hold, and exercise the said office of our chief justice of and in our said province of Quebec, for and during our royal will and pleasure and your residence within our said province; together with all and singular the rights, profits, free privileges, and emoluments to the said office belonging, * in as full and ample manner as any other chief justice of any of our provinces in America hath heretofore held and enjoyed, or of right ought to have, hold, or enjoy, the same, with full power and authority to hold the supreme

This office to be held during the King's pleasure and the chief justice's residence in the province.

* Quere, Whether it would not have been better to leave out these words, "in as full and ample manner as any other chief justice of any of our provinces in America hath heretofore held and enjoyed, or of right ought to have, hold, or enjoy, the same," which refer to all the provinces in America without specifying any one in particular, as being too vague and general, and tending to produce confusion rather than certainty.

courts of judicature at such places and times as the same may or ought to be held within our said province.

In testimony whereof we have caused these our letters to be made patent, and the great seal of our said province of Quebec to be hereunto affixed, and to be entered on record in one of the books of patents in our register's office of inrollments of the said province.

Witness our trusty and well-beloved the honourable Guy Carleton, Esquire, our Lieutenant Governour and Commander in Chief in and over our said province of Quebec, and the territories thereon depending in America, at our Castle of St. Lewis in our city of Quebec, the twenty-fifth day of September in the year of our Lord one thousand seven hundred and sixty-six, and in the sixth year of our reign.

L. S. (Signed) GUY CARLETON.

By the lieutenant-governour's command.

(Signed) J. GOLDFRAP,
D. Secretary.

FIAT of the within Commission.

Recorded in the Register's Office at Quebec the 25th day of September 1766.

(Signed) J. GOLDFRAP, D. Registrar.

N U M B E R XIV.

COMMISSION of ATTORNEY GENERAL.

QUEBEC ff.

GEORGE the THIRD, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith; To all to whom these Presents shall come, Greeting:

KNOW ye, that we, having taken into our royal consideration Appointment. the loyalty, integrity, and ability of our trusty and well-beloved Francis Maseres, have constituted and appointed, and by these presents do constitute and appoint him, the said Francis Maseres, our Attorney General of and in our province of Quebec, in America, in the room of George Suckling, Esquire:

To have, hold, exercise, and enjoy the said office unto him, the Habendum. said Francis Maseres, during our pleasure, together with all and singular the rights, fees, profits, privileges, and advantages there- Fees and Advantages. unto belonging or appertaining, in as full and ample manner as the said George Suckling hath held and enjoyed the same, or as any other attorney general in our Leeward Caribbee Islands doth hold and enjoy the said office.

Provided always, that the said Francis Maseres shall be actually Proviso. resident within the said province, and shall execute the said office in his own proper person, except in case of sickness or incapacity.

In testimony whereof we have caused these our letters to be made patent, and our great seal of our said province of Quebec to be hereunto affixed, and the same to be entered on record in one of the books of patents in our register's office of inrollment of our said province.

R

Witness

Witness our trusty and well-beloved the Honourable Guy Carleton, Esquire, our Lieutenant-Governour and Commander in Chief in and over our said province of Quebec, and the territories depending thereon in America, at our Castle of St. Lewis in our city of Quebec, the twenty-fifth day of September in the year of our Lord one thousand seven hundred and sixty-six, and in the sixth year of our reign.

(Signed) GUY (L. S.) CARLETON.

By the lieutenant-governour's command,

(Counterigned) J. GOLDFRAP,
D. Secretary.

F I A T.

Recorded in the Register's Office at Quebec the 25th day of September 1766.

(Signed) J. GOLDFRAP, D. Registrar.

N U M B E R XV.

COMMISSION of the PROVOST MARSHAL.

GEORGE the THIRD, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, &c. To all to whom these Presents shall come, Greeting :

KNOW ye, that we, for divers good causes and considerations Grant of the office of Provost Marshal.
 us hereunto moving, of our especial grace, certain knowledge, and mere motion, have given and granted, and by these presents for us, our heirs and successors, do give and grant, unto our trusty and well-beloved Nicholas Turner, Esquire, the office or place of Provost Marshal of our said province of Canada, and him the Appointment
 said Nicholas Turner, Provost Marshal of our said province of Canada, we do, for us, our heirs and successors, make, ordain, and constitute by these presents :

To have, hold, exercise, and enjoy the said office or place by Mabenduna:
 himself, or his sufficient deputy or deputies (who shall be resident in our said province, and for whom he shall be answerable) during the natural life of the said Nicholas Turner, with all fees, rights, Fees and Advantages.
 profits, privileges, and advantages whatsoever thereunto belonging, in as full * and ample manner as any other provost marshal of any other our provinces or colonies in North America does hold and enjoy, or of right ought to hold and enjoy, the same.

Lastly, we will, and by these presents for us, our heirs and successors, do grant unto the said Nicholas Turner, that these our Grant that these letters shall be good in law notwithstanding any imperfections or defects.
 letters patent, or the inrollment thereof, shall be in and by all things good, firm, valid, sufficient, and effectual in the law; any omission, imperfection, defect, matter, cause, or thing whatsoever to the contrary hereof in any-wise notwithstanding.

* This general reference to all the colonies in North America, without mentioning any one of them in particular, is productive of doubt and uncertainty.

In witness whereof we have caused these our letters to be made patent.

Witness ourself at Westminster the twenty-third day of September, in the third year of our reign.

By writ of privy seal.

(Signed)

C O C K S.

These are to certify that the foregoing is a true copy from the entry of the original upon record in the office of the Lords Commissioners for Trade and Plantations.

Whitehall,
March 1st, 1764.

(Signed)

JOHN POWNALL,
Secretary.

N U M B E R. XVI.

A COMMISSION to be SECRETARY of the Province of CANADA, and CLERK of the COUNCIL, and COMMISSARY OF STEWARD-GENERAL of Provisions and Stores, and CLERK of the INROLLMENTS..

GEORGE the THIRD, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, &c. To all to whom these Presents shall come, Greeting :

KNOW ye, that we, reposing especial trust and confidence in the faithfulness, experience, and ability of our trusty and well-beloved Henry Ellis, Esquire, of our especial grace, certain knowledge, and mere motion, have given and granted, and by these presents for us, our heirs and successors, do give and grant unto the said Henry Ellis the offices and places of Secretary and Clerk of the Council of our province of Canada, and of Commissary or Steward-General of all such provisions and stores as are or shall be from time to time provided and sent for the forces of us, our heirs or successors, in our said province, and of Clerk of the Inrollments for the inrolling and registering all deeds and conveyances made and passed in that our province, and also all bills of sale and letters patent, or other acts or matters usually inrolled, or which by the laws of that province shall be directed to be inrolled.

Grant of the offices of Secretary and Clerk of the Council, and Commissary of the Stoves, and Clerk of the Inrollments.

And him, the said Henry Ellis, Secretary and Clerk of the Council of our said province of Canada, and Commissary or Steward-General of all such provisions and stores as are or shall be from time to time provided and sent for the forces of us, our heirs or successors, in our said province of Canada, and Clerk of the Inrollments for inrolling and registering of all deeds and conveyances made and passed in that our province, and also all bills of sale and letters patent, or other acts or matters usually inrolled, or which by the laws of that our province shall be directed to be inrolled, we do make, ordain, and constitute by these presents.

Appointments

Habendum.

To have, hold, exercise, and enjoy the said offices and places unto him, the said Henry Ellis, by himself, or his sufficient deputy or deputies (who shall reside in our said province, and for whom he shall be answerable) for and during the term of the natural life of the said Henry Ellis, together with all the salaries, fees, profits, perquisites, and advantages whatsoever to the said offices and places, or any of them, jointly or severally in any-wise belonging, or which are or shall be established or allowed for or in respect of the exercise or execution of the said offices and places respectively, in as full and ample manner, to all intents and purposes, as any * other secretary or clerk of the council of any of our provinces in North America does hold and enjoy, or of right ought to hold and enjoy, the same.

Fees and Advantages.

Grant that these letters patent shall be good in law notwithstanding any imperfections or defects.

Lastly, we will, and by these presents for us, our heirs and successors, do grant unto the said Henry Ellis, that these our letters patent, or the inrollment thereof, shall be, in and by all things, good, firm, valid, sufficient, and effectual in the law, notwithstanding any omission, imperfection, defect, matter, cause, or thing whatsoever to the contrary hereof in any-wise notwithstanding.

In witness whereof we have caused these our letters to be made patent.

Witness ourself at Westminster the thirtieth day of April, in the third year of our reign.

By writ of privy seal.

(Signed) C O C K S.

These are to certify that the foregoing is a true copy of the entry of the original upon record in the office of the Lords Commissioners for Trade and plantations.

(Signed) RICH^d. ROGERS, Dep. Secretary.

Whitehall, March 26, 1764.

The foregoing is a true copy of the original registered and examined by

J. G O L D F R A P, Dep. Register.

This reference seems very vague and uncertain.

N U M B E R. XVII.

A COMMISSION under the Public Seal of the Province of QUEBEC to Captain SCHLOSSER. to be a JUSTICE of the PEACE for the District of MONTREAL, in the said Province.

GEORGE the THIRD, by the Grace of God, King of Great Britain, and the Territories thereunto belonging, Defender of the Faith, and so forth; To JOHN SCHLOSSER, Esquire, Captain of a Company in the First Battalion of the Royal American Regiment of Foot, sendeth Greeting :

KNOW all men by these our present letters, that we have assigned you, John Schlosser, Esquire, captain of a company in the first battalion of our royal American regiment of foot, to be one of our Justices to keep our peace in our district of Montreal in our province of Quebec, and to keep and cause to be kept all ordinances and statutes for the good of the peace and for preservation of the same, and for the quiet rule and government of our people made, in all and singular their articles according to the force, form, and effect of the same; and to chastise and punish all persons that offend against the form of those ordinances or statutes, or any one of them, in the aforesaid district, as it ought to be done according to the form of those ordinances and statutes; and to cause to come before you all those who to any one or more of our people concerning their bodies or the firing of their houses have used threats, to find sufficient security for the peace, or their good behaviour, towards us and our people; and, if they shall refuse to find such security, then them in our prisons, until they shall find such security, to cause to be safely kept.

Power to keep the peace, and cause the statutes and ordinances to be kept;

and to take security for the peace or good behaviour.

And:

Power, in con-
junction with
one or more
justices, to in-
quire of felonies
and other of-
fences by the
oath of a grand
jury;

And we have likewise assigned you, in conjunction with one or more of the justices assigned to keep our peace in the district of Montreal aforesaid in our province of Quebec, properly by us authorized thereunto, to inquire the truth more fully by the oath of good and lawful men of the aforesaid district, by whom the truth of the matter shall be the better known, of all and all manner of felonies, poisonings, trespasses, forestallings, regratings, and extortions whatsoever; and of all and singular other crimes and offences, of which the justices of our peace may and ought lawfully to inquire, by whomsoever, and after what manner soever in the said district done or perpetrated, or which shall happen to be there done or attempted; and also of all those who in the district aforesaid in companies against our peace, in disturbance of our people, with armed force have gone or rode, or hereafter shall presume to go or ride; and also of all those who have there lain in wait, or hereafter shall presume to lie in wait, to maim, or cut, or kill our people; and also of all victuallers, and all and singular other persons who in the abuse of weights and measures, or in selling victuals against the form of the ordinances and statutes of of England or our said province of Quebec, or any one of them, therefore made or introduced into our said province for the common benefit of our said province of Quebec and our people thereof, have offended or attempted, or hereafter shall presume in the said district to offend or attempt; and of all and singular articles and circumstances, and all other things whatsoever that concern the premises, or any of them, by whomsoever and after what manner soever in our aforesaid district done or perpetrated, or which hereafter shall there happen to be done or attempted in what manner soever; and to inspect all indictments so before you and one or more of our said justices for our said district of Montreal, properly by us authorized thereunto, taken or to be taken, or before others late our justices of the peace in the aforesaid district made or taken, and not yet determined; and to make and continue processes thereupon against all and singular the persons so indicted, or who before you and our other justices of our district aforesaid hereafter shall happen to be indicted, until they can be taken, surrender themselves, or be outlawed; and to hear and determine all and singular the felonies, poisonings, trespasses, forestallings, regratings, ingrossings, extortions, unlawful assemblies, indictments aforesaid, and

and to inspect
all indictments
so taken either
before them or
any former
justices;

and to make
processes against
the persons so
indicted;

and to hear and
determine all the
said felonies and
other offences.

and all and singular other the premises, according to the laws and statutes of that part of our kingdom of Great Britain called England, and the ordinances of our said province of Quebec, as in the like case it has been accustomed or ought to be done; and the same offenders, and every of them, for their offences, by fines, ransoms, amerciements, forfeitures, and other means, as according to the laws and customs of England, or form of the ordinances and statutes of England and of our province of Quebec aforesaid, it has been accustomed or ought to be done, to chastise and punish.

Provided always, that if a case of difficulty upon the determination of any of the premises before you conjointly with any one or more of our justices of the peace of our district of Montreal aforesaid, properly by us authorized thereunto, shall happen to arise, that then you let judgement in no wise be given thereon before you in conjunction with one or more of our justices of our said district, unless in the presence of our chief justice of our said province of Quebec.

Provide that in cases of difficulty the justices shall ask the advice of the chief justice of the province.

And therefore we command you, that to the keeping the peace, ordinances, and statutes aforesaid, and all and singular other the premises, you diligently apply yourself; and that at certain days and places as you and any one or more, or any other two, of our justices assigned to keep the peace in and for our district of Montreal aforesaid in our province aforesaid, shall appoint for these purposes, into the premises ye make inquiries, and all and singular the premises hear and determine, and perform and fulfill them in the aforesaid form, doing therein what to justice appertains, according to the laws and customs of England and the ordinances of our province of Quebec aforesaid; saving to us the amerciements and other things to us therefrom belonging.

Command to the justice to apply himself to the execution of his commission.

In witness whereof we have caused these our letters to be made patent, and our public seal of our province of Quebec to be affixed thereunto, this sixth day of August in the seventh year of our reign, and in the year of our Lord one thousand seven hundred and sixty-seven.

S

Given

Given at our Castle of Saint Lewis at Quebec, in the district of Quebec, in the province of Quebec, this sixth day of August in the seventh year of our reign, and in the year of our Lord one thousand seven hundred and sixty-seven.

(Witness)

GUY CARLETON,
Lieutenant Governour and
Commander in Chief.

N U M B E R XVIII.

A D R A U G H T of a Form of a WRIT of
DEDIMUS POTESATEM to administer the
Oaths to a Justice of the Peace in the Province of
Q U E B E C.

GEORGE the THIRD, by the Grace of God, King of Great Britain,
and of all the Territories thereunto belonging, Defender of the
Faith, and so forth; To our trusty and well-beloved
and of the District of Quebec, in the Province of
Quebec, Esquires, Greeting:

KNOW ye, that we have thought fit to empower you, and we do hereby give and grant unto you full power and authority to tender and administer unto A. B. Esquire, whom we have constituted and appointed a justice of the peace for the district of Quebec in our said province, the oaths appointed to be taken by an act passed in the first year of the reign of King George the First, intituled, "*An Act for the further security of his Majesty's person and government, and the succession of the Crown in the heirs of the late Princess Sophia, being Protestants, and for extinguishing the hopes of the pretended Prince of Wales, and his open and secret abettors;*" and by an act passed in the sixth year of our reign, intituled, "*An Act for altering the oath of abjuration and the assurance, and for amending so much of an act of the seventh year of her late Majesty Queen Anne, intituled, 'AN ACT FOR THE IMPROVEMENT OF THE UNION OF THE TWO KINGDOMS,' as, after the time therein limited, requires the delivery of certain lists and copies therein mentioned;*" and to tender and administer unto him, and receive from him, the declaration appointed to be made in an act of parliament passed in the twenty-fifth year of the reign of King Charles the Second, intituled, "*An Act for preventing dangers which may*"

Power to administer the oaths appointed by stat. 1 Geo. I. and stat. 6 Geo. III.;

and the declaration against transubstantiation appointed by stat. 25 Car. II.;

“ happen

and the oath of office. “ *happen from Popish Recusants;*” and also to receive from him his subscription to the oaths and declaration; and likewise to administer unto him an oath for the due execution and performance of the office of a justice of the peace of the said district of Quebec in our said province in the usual form.

And of what you shall do herein you are to make return forthwith into the office of the Register of our High Court of Chancery of our said province, together with this our writ.

Witness our trusty and well-beloved the Honourable Guy Carleton, Esquire, our Captain General and Governour in Chief in and over our said province of Quebec, and Keeper of our Public Seal of our said province, at our castle of Saint Lewis in our city of Quebec this day of May in the ninth year of our reign, and in the year of our Lord one thousand seven hundred and sixty-nine.

(Signed)

GUY CARLETON.

N U M B E R X I X .

A DRAUGHT of a Form of the OATH of OFFICE of a JUSTICE of the PEACE of the District of QUEBEC, in the Province of QUEBEC; made by the Order of Governour CARLETON.

YOU shall swear that, as a justice of the peace for the district of Quebec in the province of Quebec, you will do equal right to the poor and to the rich in all articles in the King's commission to you directed, according to your cunning, wit, and power, and according to the laws and customs of that part of the kingdom of Great Britain which is called England, and to the statutes of England and of Great Britain, and to the ordinances of this province of Quebec, thereof made. And that you shall not be of counsel in any Quarrel hanging before you. And that you will hold your sessions after the form of the statutes and ordinances of the said province thereof made.

To do equal
justice to all
persons.

To hold
Sessions.

And the issues, fines, and ameraciements that shall happen to be made, and all forfeitures which shall fall before you, you shall cause to be entered, without any concealment or embezzling, and truly send them to the receiver general of his Majesty's revenue in this province. You shall not let for gift or other cause, but well and truly you shall do your office of a justice of the peace in that behalf.

Fines and amer-
ciaments.

And you shall take nothing for doing your said office of a justice of the peace, but of the King and the fees accustomed and costs limited by statute or ordinance of this province.

Fees.

And you shall not direct, or cause to be directed, any warrant by you to be made, to the parties; but you shall direct them to the bailiffs of the district, or other the King's officers or ministers, or other indifferent persons, to do execution thereof.

Warrants.

So help you. G O D .

N U M B E R XX.

An ORDER of the KING in Council, difallowing and repealing an Ordinance of the Commander in Chief and Council of the Province of QUEBEC, passed on the 17th of July 1766, concerning LICENCES to retail SPIRITUOUS LIQUORS.

AT the COURT at St. JAMES's, the 26th day of June 1767,

P R E S E N T

The KING's most Excellent MAJESTY,

Archbishop of Canterbury,	Earl of Harcourt,
Lord President,	Earl of Shelburne,
Duke of Grafton,	Viscount Townshend,
Duke of Queensberry,	Viscount Howe,
Lord Steward,	Viscount Barrington,
Earl of Huntingdon,	Viscount Clare,
Earl of Denbigh,	Viscount Villiers,
Earl of Litchfield,	Lord Sandys,
Earl of Cholmondeley,	James Stuart Mackenzie, Esq;
Earl of Marchmont,	James Oswald, Esq;
Earl of Bristol,	Sir Edward Hawke.
Earl of Ashburnham,	

WHEREAS the governour of his Majesty's province of Quebec, with the advice of the council of the said province, is authorized and impowered (until the situation and circumstances of our said province will admit of calling general assemblies) to make such rules and regulations as shall appear to be necessary for the peace, order, and good government of the said province, taking care that nothing be passed, or done, that shall any ways tend to affect

affect the life, limb, or liberty of the subject*, or to the imposing any duties or taxes; which rules and regulations are directed to be transmitted to his Majesty for his approbation or disallowance :

And whereas in pursuance of the said powers the following ordinance was passed in the said province on the 17th of July 1766, and transmitted, intituled as follows, viz.

“ An Ordinance for granting Licences for retailing Rum and
 “ other Spirituous Liquors, and for suppressing unlicensed
 “ Houses;”

which ordinance, together with a representation from the lords commissioners for trade and plantations thereupon, having been referred to the consideration of a committee of the lords of his Majesty's most honourable privy council for plantation-affairs, the said lords of the committee did this day report to his Majesty that the said ordinance ought to be repealed :

His Majesty is thereupon pleased, with the advice of his privy council, to declare his disallowance of the said ordinance. And, pursuant to his Majesty's royal pleasure thereupon expressed, the said ordinance is hereby repealed, declared void and of none effect. Whereof the governour, or commander in chief, of his Majesty's province of Quebec for the time being, and all others whom it may concern, are to take notice, and govern themselves accordingly.

ROBERT WALPOLE.

* This very great restriction of the legislative power delegated by his Majesty to the governour and council of the province is generally thought to be very inconvenient: Few ordinances can be made that tend neither to affect the life, limb, or liberty of the subject, or to the imposing duties or taxes.—See above, pages 26, 27.

N U M B E R XXI.

AN ORDER of the KING in Council, confirming the BOUNDARY LINE between the Provinces of New York and Quebec, fixed by Sir Henry Moore, the Governour of New York, and Brigadier-General Carleton, Lieutenant-Governour of Quebec, at a Meeting held for that Purpose; and regulating the Claims made by his Majesty's new Canadian Subjects to Lands situated on the South Side of that Line.

AT the COURT at St. JAMES's, the 12th day of August 1768,

P R E S E N T,

The KING's most Excellent MAJESTY,

Duke of Grafton,
 Duke of Rutland,
 Duke of Queensberry,
 Marquess of Granby,
 Earl of Litchfield,
 Earl of Hillsborough,
 Earl of Shelburne,
 Viscount Weymouth,

Viscount Falmouth,
 Viscount Barrington,
 Viscount Villiers,
 Lord North,
 James Stuart M^c Kenzie, Esq;
 Thomas Harley, Esq;
 Sir Edward Hawke.

WHEREAS there was this day read at the board a report from the right honourable the lords of the committee of council for plantation-affairs, dated the ninth of this instant, upon considering a report made by the lords commissioners for trade and plantations, upon an extract of a letter from Sir Henry Moore, governour of New-York, to the Earl of Shelburne, dated the 16th of January last, relative to the settling the boundary-line between that province and Quebec; by which report it appears, that

it having been mutually agreed upon between Sir Henry Moore and the commander in chief of the province of Quebec, at a meeting for that purpose appointed, that the line of division between these provinces should be fixed at the 45th degree of North latitude, conformable to the limits laid down in his Majesty's proclamation of October 1763. And it having been ascertained and determined by proper observations where the said line would pass, it is therefore proposed that these proceedings above stated should be confirmed by his Majesty.

His Majesty taking the said report into consideration, was pleased, with the advice of his privy council, to approve thereof, and doth hereby confirm the said proceedings above stated, and order that the said line of division be run out and continued as far as each province respectively extends.

Confirmation of the line of division between the two provinces of Quebec and New York.

Provided that nothing herein contained shall extend to affect the properties of his Majesty's new subjects having possessions under proper titles on those parts of the lands on the south side of this line, the dominion of which was not disputed on the part of the crown of Great Britain.

Provision concerning lands possessed by the Canadians on the south side of that line, in parts not formerly claimed by the crown of Great Britain.

And provided also, that this determination shall not operate wholly to deprive his Majesty's new subjects of such concessions on the south side of the said line, on which they may have made actual settlement and improvement, although the lands may have been disputed by the crown of Great Britain; but that such possessors shall be intitled to so much of the said concessions as shall be proportioned to their improvements, at the rate of fifty acres for every three acres of improvement, provided they take out grants for the same under the seal of the province of New York, subject to the usual quit-rents.

Provision concerning them in parts that were claimed by the crown of Great Britain.

And provided also, that the grant to no one person shall exceed twenty thousand acres.

And the governours or commanders in chief of his Majesty's said provinces of New York and Quebec for the time being, and all others whom it may concern, are to take notice of his Majesty's pleasure hereby signified, and govern themselves accordingly.

(Signed)

STEPH. COTTRELL.

T

N U M B E R XXII.

The OPINION of the Attorney and Sollicitor General concerning Two Acts of Parliament made for the Preservation of Ships and Goods that are forced on Shore or stranded upon the Coasts of Great Britain, or other Dominions of his Majesty.

To the Right Honourable the Lords Commissioners for Trade and Plantations.

May it please your Lordships,

IN obedience to your lordships commands signified to us by Mr. Pownall's letter of the 12th day of this instant June, that we would take into our consideration an act of parliament passed in the 12th year of Queen Anee, stat. 2, cap. 18, intituled, "*An Act for the preserving all such Ships and Goods thereof which shall happen to be forced on Shore, or stranded upon the Coasts of this Kingdom, or any other of her Majesty's Dominions:*" also one other act of parliament passed the 4th George I. cap. 12, intituled, "*An Act for enforcing and making perpetual an Act of the 12th Year of her late Majesty, intituled, 'An Act for preserving all such Ships and Goods thereof which shall happen to be forced on Shore or stranded upon the Coasts of this Kingdom, or any other of her Majesty's Dominions; and for inflicting the Punishment of Death on such as shall wilfully burn and destroy Ships:*" and that we would give our opinion whether the said acts do extend to and are in force in his Majesty's colonies and plantations in America :

We have taken the same into our consideration, and are of opinion, that as the title of the act 12 Anne, stat. 2, cap. 18, expressly imports to be an act for preserving ships and goods forced on shore or stranded upon the coasts of this kingdom, *or any other of her Majesty's dominions*, and the enacting part has words extending to *her Majesty's dominions in general*, that the said act of 12th Anne extends

extends to and is in force in his Majesty's colonies and plantations in America, notwithstanding the special promulgation of the law, and some other provisions in it, are applicable only to this kingdom.

We are likewise of opinion, that so much of the act of 4th Geo. I. cap. 12, as declares the 12th of Anne to be perpetual, extends to America.

But the third clause of that act, which introduces a new crime, by a provision altogether independent of the former part of the act, and made to render an act of the 1st Anne more effectual, we are inclined to think does not extend to his Majesty's colonies and plantations in America, that clause being expressed in general terms, without any reference to the colonies; and the 11th Geo. I. cap. 29, s. 7, which directs the mode of the prosecution of these offences, when committed within the body of any county of this realm, or upon the high seas, making no mention of the manner of trial if such offences should be committed in any of his Majesty's plantations or colonies in America.

All which is submitted to your lordships consideration.

(Signed) W^M. DE GREY.

June 25th, 1767.

E. WILLES.

N. B. This opinion of his Majesty's attorney and solicitor-general was transmitted to the governour of the province of Quebec by his Majesty's secretary of state for the American department; and therefore is considered as having had the sanction of his Majesty's approbation, and as making part of the law of that province.

N U M B E R XXIII.

IN the year 1768 his most excellent Majesty was pleased to issue three mandates to the governour, or commander in chief, of the province of Quebec for the time being, requiring him to constitute and appoint three clergymen of the church of England Rectors of the parish-churches of Quebec, Three Rivers, and Montreal, which are the three principal, or rather only, towns in the province. The reverend Mr. David Francis de Montmollin, a native of Switzerland, that had resided more than twenty years in England, was to be appointed rector of Quebec; the reverend Mr. Veyssiere, a late convert (and, I doubt not, a very sincere one) from the Romish religion, who had some time before been a Recollet-Monk in the convent of that order in Quebec, was to be appointed rector of the Parish of Three Rivers; and the reverend Mr. De Lisle, a native of Old France, but who had always been bred a Protestant, and who had received part of his education at Geneva, and is a powerful and eloquent preacher in the French language, was to be rector of the Parish of Montreal, where he had already resided two years in the character of chaplain of the garrison. Upon the receipt of these three mandates the lieutenant-governour, Guy Carleton, Esquire, (now governour in chief of that province) was pleased to order Francis Maseres, Esquire, the attorney-general, to prepare a draught of a commission for Mr. de Montmollin to be rector of the church and parish of Quebec in pursuance of the King's mandate for that purpose for his examination and perusal; which the said attorney-general accordingly did. But upon more fully considering the peculiar and delicate situation of the province with respect to the article of religion, and some claims of property in the churches, made on the behalf of the Roman Catholic inhabitants of those parishes, which required a very serious and deliberate discussion, his excellency did not think it expedient to grant these gentlemen commissions of this form under the seal of the province; but in lieu thereof gave them licences to preach and perform divine service according to the ceremonies of the church of England in the respective parishes of Quebec, Three Rivers, and Montreal, under his hand and private seal. Nevertheless as it may hereafter, when the Protestant religion shall have gained more footing in the province, be both safe and expedient to give Protestant clergymen some of the

the benefices of the province in the manner directed by these royal mandates, I shall here insert a copy of one of these mandates and of the draught of a commission made by the said attorney-general in pursuance of it, that it may undergo the examination of his Majesty's ministers of state and law-officers, and receive such corrections and alterations at their hands as it shall appear to them to want. In a new province we have no precedents to direct us; every thing requires to be settled with care and attention.

The KING'S MANDATE to the Governour, Lieutenant-Governour, or Commander in Chief of the Province of QUEBEC, to collate and admit the Reverend Mr. DE MONTMOLLIN to the Parish-Church of QUEBEC.

To our trusty and well-beloved JAMES MURRAY, Esquire, our Captain-General and Governour in Chief in and over our Province of Quebec, in America; and, in his Absence, to our Lieutenant-Governour, or Commander in Chief of our said Province for the Time being.

GEORGE R.

TRUSTY and well-beloved, we greet you well.

We, having received a good report of the loyalty; abilities, prudent conduct, and sober conversation of our trusty and well-beloved David Francis de Montmollin, clerk, have thought fit hereby to signify our will and pleasure to you that, forthwith upon receipt hereof, you do collate and admit the said David Francis de Montmollin, clerk, to the church and parish of Quebec, in our province of Québec, in America:

To have, hold, and enjoy the same unto him, the said David Francis de Montmollin, during his natural life, with all rights, dues, profits,

profits, and privileges thereunto belonging in as full and ample manner as the ministers of churches in any of our colonies in America have usually held and enjoyed, or of right ought to hold and enjoy, the same. And for so doing this shall be your warrant. And so we bid you heartily farewell.

Given at our court at Saint James's, the 12th day of February 1768, in the eighth year of our reign.

By his Majesty's command.

HILLSBOROUGH.

N. B. This royal mandate seems to be founded upon a supposition that the King is general patron of all the ecclesiastical benefices in the province, agreeably to the clause to that purpose in the commission of captain-general and governour in chief. See above, page 98.

A DRAUGHT of a COMMISSION to the Reverend Mr. DAVID FRANCIS DE MONTMOLLIN to be Rector of the Church of QUEBEC, made in pursuance of, and conformably to, the King's Mandate for that Purpose, dated on the 12th Day of February 1768.

GEORGE the THIRD, by the Grace of God, King of Great Britain and the Territories thereunto belonging, Defender of the Faith, and so forth; To all to whom these Presents shall come, sendeth Greeting:

WHEREAS the church of Quebec, in our province of Quebec, is now vacant; and whereas the gift, collation, and free disposition of the said church doth fully and intirely belong to us in right of our crown of Great Britain: and whereas we have received a good report of the piety, learning, and abilities, and likewise

likewise of the loyalty, prudent conduct, and sober conversation of our trusty and well-beloved David Francis de Montmollin, clerk, and are persuaded that he is a fit person to fill the said church, and to have the care of the souls of our good subjects in the parish of the same committed to him :

Now know ye that we, for these and other good reasons and causes us thereunto moving, and of our especial grace, certain knowledge, and mere motion, have given, conferred, and granted, and by these our present letters, do give, confer, and grant the said church of Quebec to the said David Francis de Montmollin; and do ordain, make, and constitute him, the said David Francis, curate and rector of the same, and minister of the holy gospel in the parish of the same; provided that he, the said David Francis, shall, before he takes possession of the said church, take an oath upon the holy gospels of Almighty God to pay lawful and canonical obedience to our right trusty and well-beloved Richard, the lord bishop of London, and his successors, bishops of London, under whose spiritual jurisdiction we have thought proper to place our aforesaid province of Quebec; and likewise that, by another solemn oath upon the holy gospels, he shall renounce, deny, and reject all, and all manner of foreign jurisdiction, power, authority, and superiority whatsoever, spiritual as well as temporal, and shall acknowledge our royal authority to be supreme in all causes and matters whatsoever, ecclesiastical as well as temporal, according to the force, form, and effect of a certain statute of the parliament of the realm of England in that case made and provided: which oaths the said David Francis shall take before the chief justice of our said province of Quebec in open court, at one of the sessions of the supreme court of judicature holden before the said chief justice, whom we do hereby authorize and require to administer the said oaths unto the said David Francis :

Gift, or collation, of the church of Quebec to Mr. de Montmollin. Appointment of him to be curate and rector of the same.

Oath of canonical obedience to the bishop of London.

Oath of abjuration of the Pope's power and all foreign jurisdiction, and of acknowledgment of the King's ecclesiastical supremacy.

To have, hold, and enjoy the said church of Quebec, together with all rights, dues, profits, and privileges thereunto belonging, in as full and ample a manner as any ministers of churches in any of our colonies in * America have usually held and enjoyed, or of right

Habendum.

* This clause of general reference to all the colonies in America, without mentioning any one in particular, seems to be very vague and uncertain, and was inserted only in order to make the commission intirely conformable to the royal mandate on which it was founded. See above, pages 127, 131, 134.

ought to hold or enjoy, the same, for and during the natural life of him, the said David Francis de Montmollin.

In witness whereof we have caused these our letters to be made patent, and the public seal of our province to be affixed thereunto this day of July, in the eighth year of our reign, and in the year of our Lord Jesus Christ one thousand seven hundred and sixty-eight.

Given at our castle of Saint Lewis at Quebec in our province of Quebec aforesaid, on the day and year above-mentioned.

(Witness)

GUY CARLETON,

Lieutenant Governour and
Commander in Chief.

✂ This commission has not been passed,—July 10, 1769.

N. B. In making the foregoing draught of a commission to Mr. de Montmollin to be rector of the church of Quebec, or rather of the collation, or gift, of the said church to Mr. de Montmollin, I have followed the words of the King's mandamus as closely as possible, and have supplied what was further wanting to it from two precedents in the appendix to bishop Gibson's codex, the one of a donation of a donative church or chapel, the other of the collation or gift of a church by a bishop, to whom the right of giving it away is devolved from the patron of it by lapse of time.

N U M B E R XXIV.

COMMISSION of RECEIVER GENERAL.

G E O R G E R.

GEORGE the THIRD, by the Grace of God, King of Great Britain, France, and Ireland, Defender of the Faith, and so forth; To all to whom these Presents shall come, Greeting:

KNOW ye that we, reposing especial trust and confidence in the ability and prudent circumspection of our trusty and well-beloved Thomas Mills, Esquire, and his fitness for the performance of the trust hereby intended by us to be committed unto him, have constituted and appointed, and by these presents do constitute and appoint, him, the said Thomas Mills, to be, during our pleasure, the Receiver General and Collector of all the royal patrimony, rents, revenues, farms, taxes, tithes, duties, imposts, profits, and casualties whatsoever (our revenue of customs always excepted) belonging unto us, and which have arisen or shall arise within our province of Quebec.

L. S.
Appointment.
L. S.
Habendum.
L. S.

Hereby giving and granting unto the said Thomas Mills full power and authority to ask, demand, and receive all sums of money so due, and to become due, unto us, and to give acquittances for the same, and (if need be) to pursue and prosecute the recovery of the said rents, duties, imposts, profits, and other things above-mentioned, by all just and lawful ways and means.

Intra in officio auditoris
recept. Scaccarii 1mo
die Aprilis 1766.
BARTH. LUCAS.

And we do hereby require him, the said Thomas Mills, in the execution of the trust hereby committed unto him, and in all things concerning the same, to observe and follow, and govern himself according to, such orders, rules, and instructions as he shall receive from us by any warrant or writing under our royal sign manual, countersigned by the commissioners of our treasury for the time being, or from the said commissioners of our treasury, or our high treasurer for the time being.

The receiver-general is to act according to such instructions as he shall receive from the commissioners of the treasury.

U

And

And he is to account in the Exchequer for all the monies he receives.

And also to render into our Exchequer, according to the due course thereof, an account of, and duly answer unto us, all monies which he shall have received in virtue hereof.

Salary 200l. per annum.

And in consideration of the labour, pains, charges, and expences which the said Thomas Mills may be at in the execution of the said office, and for the whole charge thereof and in lieu of all fees, profits, and advantages on account of the said office, we do hereby grant and allow to him, the said Thomas Mills, a yearly salary or allowance of two hundred pounds Sterling, to be retained by him out of the said rents, revenues, and incomes, and to commence from the day of the date hereof, and to be accounted payable unto him for and during his continuance in the said office.

And we do hereby command and require all our officers and ministers and loving subjects whatsoever, in their several and respective stations and places, to be aiding and assisting to the said Thomas Mills in all things to be done and performed by him in the due execution of this our commission.

Security to be given in the Exchequer for the due execution of this office.

And the said Thomas Mills is strictly required not to enter upon the execution of the said office until he shall have given security in our Exchequer to the good liking of the commissioners of our treasury for the due execution thereof.

Given at our court at St. James's this 10th day of July 1765, in the 5th year of our reign.

By his Majesty's command.

(Signed) GEORGE GRENVILLE.
NORTH.
JOHN TURNER.

Thomas Mills, Esq; to be Receiver and Collector of the Revenues in the Province of Quebec.

N. B. The salary of this office has been since increased to 400l. per annum.

INDORSE-

I N D O R S E M E N T S.

This is inrolled in the remembrances of the Exchequer at Westminster of our Sovereign Lord King George the Third, of the sixth year of his reign, to wit, among the common matters of Michaelmas term, the first roll in the custody of the King's Remembrancer.

King's Remembrancer's Office, WOOD for ARBUTHNOT.
19th July 1765.

These are to certify that the within-named Thomas Mills, Esquire, hath given security in the office of his Majesty's Remembrancer of the Exchequer at Westminster, for the due execution of his within-mentioned office of Receiver General of the Revenues in the Province of Quebec, pursuant to a warrant from the Right Honourable the Lords Commissioners of his Majesty's Treasury in that behalf.

WOOD for ARBUTHNOT.

KING'S COMMISSION—Thomas Mills, Esquire, to be Receiver and Collector of the Revenues in the Province of Quebec :

Entered in the office of the Lords Commissioners for Trade and Plantations.

(Entered) J. POWNALL.

Entered in the office of Mr. Cholmondeley, Auditor General of America, this 19th August 1765.

DAVID BALFOUR.

Received into the Register's Office in Quebec, on Wednesday the 2d day of July 1766, at twelve o'clock at noon.

J. GOLDFRAP, D. Register.

Registered in said office on Thursday the 3d day of July 1766, at ten o'clock forenoon, in register A. page 175.

J. GOLDFRAP, D. Register.

I N S T R U C T I O N S.

HIS Majesty having by his commission under his royal sign manual, dated the roth day of July 1765, appointed you Receiver General and Collector of all the patrimony, estates, revenues, farms, taxes, tithes, duties, imposts, profits, and casualties whatsoever (his revenue of customs always excepted) belonging to his Majesty, and which had arisen or should arise within his Majesty's province of Quebec; and his Majesty having in the same commission required you to follow such orders, rules, and instructions as you should receive from his Majesty, as therein is mentioned, or from the commissioners of his Majesty's treasury, or his Majesty's high treasurer for the time being; we the Commissioners of his Majesty's Treasury, now being, have thought fit to give unto you the orders, rules, and instructions herein after contained for your government in the execution of the trust committed to you in and by the said recited commission; that is to say:

Whereas it appears unto us that the following duties were raised, payable, and paid for the support of government there while the country was subject to the French king; that is to say,

		In Sterling money.				
		<i>Livs.</i>	<i>Sols.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
The duties paid in the time of the French government.	Wine by the hoghead	12	0	0	10	0
	Rum by ditto	24	0	1	0	0
	Brandy by veldt, or measure of two gallons	3	4	0	1	0
	Ordinary wine bottled, <i>per</i> bottle,	0	1	0	0	0 $\frac{1}{2}$
	Bottled sweet wine, <i>per</i> bottle,	0	3	0	0	1 $\frac{1}{2}$
	Eau de vie de liqueur, <i>per</i> gallon,	0	10	0	0	5
	Dry goods imported, three <i>per cent.</i> on their valuation.					
	Dry goods exported, a duty of three <i>per cent.</i>					

To demand and receive the old duties that were payable in the time of the French government.

We do hereby order and instruct you to demand and receive the said several duties, and that in so doing you do strictly conform yourself to the ancient customs and usages of the said country before it was conquered by his Majesty; and that you demand and take all such and the like papers, orders, and instructions for the regulation of your conduct in the said office as formerly and usually were given to

to those who had the management of the revenue of that country before the conquest thereof; taking care that English and other brandies, eau de vie de liqueur, rum, and wines, from whatever parts they may arrive and be imported into the said province, do pay the like duties and rates thereupon as were formerly and usually paid as aforesaid; and that the like rule be observed by you in respect of dry goods imported or exported, and allowing such and the like exemptions of duties and taxes as have formerly and usually been allowed in the said country whilst in the possession of the French king.

And whereas it is necessary that regular accounts should be made and exhibited by such of his Majesty's officers, who have had the management of any of his estates and revenues in the said province since the conquest thereof, you are hereby strictly enjoined to demand of all the said officers exact and complete accounts of all sums of money, of the duties, fines upon alienations, taxes, and revenues of the crown whatsoever, which have arisen and grown due to his Majesty, and have been received for his Majesty's use by the said officers, or any of them; and if any such duties and revenues are outstanding in the hands of the inhabitants who ought to have paid the same, you are further strictly directed to make use of all legal methods for the recovery thereof; and you are generally to pursue and use all such legal ways and methods as may be necessary for the accounting for and recovering all monies due to his Majesty for any his said duties and revenues of and in the said province from any person or persons whatsoever.

To demand an account of all public money in the hands of any former officers who have received the same;

and to demand and recover of the inhabitants any of the King's duties that remain unpaid.

We do likewise instruct and authorize you to suspend any officer or officers belonging to the revenues under your charge for any misbehaviour in their departments; which suspensions are to be forthwith by you notified to the commissioners of his Majesty's treasury, you appointing others in the mean while to do the duty of the persons so to be suspended.

Power to suspend inferior officers of the revenue.

And it is his Majesty's pleasure that no greater number of officers shall be employed than what may be sufficient to take care of the revenues and estates under your charge; and that no greater or further allowances or salaries shall be given to them than such as were annexed to their several offices while the said country was subject to the French king.

The number of his Majesty's officers shall be as small as possible; and their salaries and profits no greater than under the French government.

To inquire concerning the King's posts, whether or no it is most expedient to lay them open.

We having been informed that the posts and places of resort, to which the Indians and savage nations used at stated times of the year to come with their furs and peltries, were formerly kept as part of the King's domain and estate, but that a lease of the said posts and places hath been granted by Governour Murray to a company of merchants for a term of years upon the same plan as when the country was subject to the French king: you are hereby strictly directed to examine into the nature and condition of that lease, and acquaint us for his Majesty's information, whether, in your opinion, by the continuance of the said lease the confidence of the savages may be gained, and their affections to his Majesty's government be conciliated and preserved in the most effectual manner, or whether the said purposes may not be better answered and obtained by opening a free intercourse of trade between them and the province.

Lands of religious houses.

And whereas the lands of several religious societies in the said province, particularly those of the society of the Jesuits, are, or will become, part of his Majesty's revenue, you are therefore to endeavour, by agreements to be made with the persons interested for the present in any the said estates, to take the said estates into your charge, giving unto them respectively such competent allowance thereout for their lives as you may judge proper, taking care that these lands may not be sequestered or alienated from his Majesty. You are from time to time to acquaint the lords of the treasury of your proceedings herein.

And, for better enabling the proper officer to collect the duties upon importation and exportation within the said province, you are upon your arrival in Canada to give him the most exact accounts and lists of the duties upon importation and exportation which were raised whilst the country was subject to the French king, so that he may conform in every thing to what was the ancient usage of the country before the conquest: and he is to account with you from time to time, and to pay the clear amounts of receipts into your hands *for defraying the expences of civil officers and contingencies of government in that province.*

Application of the monies received by the receiver general.

You are to apply the monies which shall come to your hands of the said duties and revenues, in the first place, *for and towards defraying the necessary expences of government, and the necessary charges of*

managing the revenue under your care; remitting home by good bills of exchange the surpluses of the monies which from time to time shall remain in your hands after payment of those expences, in order that the same may be applied to the reimbursing the public here the monies which have been necessarily advanced for that province by reason that the aforesaid duties and taxes have not been levied within the two years last past.

The overplus above what is necessary for the public expences at Quebec is to be remitted to England.

And lastly, we charge and require you annually to transmit to the commissioners of his Majesty's treasury for the time being exact accounts of all your receipts and payments, and other your transactions in the premises, taking care that duplicates thereof be sent by different ships to prevent the consequences of any miscarriages by dangers of the seas.

Annual accounts of all receipts and payments are to be sent to England.

Given under our hands at the Treasury Chambers in Whitehall, this tenth day of March one thousand seven hundred and sixty-six.

(Signed) W^M. DOWDESWELL...
 J^s. CAVENDISH.
 G E O. O N S L O W..

*To our very loving friend Thomas Mills, Esquire,
 Receiver General and Collector of his Majesty's
 Revenues arising within the province of Quebec
 (the revenues of customs excepted),*

Instructions to the King's Receiver in the Province of Québec.

N U M B E R XXV.

GRANT of the Office of SURVEYOR and AUDITOR GENERAL of the King's Revenues arising in AMERICA to the Honourable ROBERT CHOLMONDELEY, Esquire, by Letters Patent under the Great Seal of Great Britain, dated 20 November, 1752.

GEORGE the SECOND, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, &c. To all to whom these Presents shall come, Greeting :

Recital of the
reversionary
grant of the
office to George
Lord New-
burgh, after-
wards Earl of
Cholmondeley,
his heirs and
executors, in
5 Geo. I.

from and after
the death or
other determi-
nation of the
estate of Horace
Walpole the
younger ;
during the lives
of James and
George Chol-
mondeley, sons
of the said Lord
Newburgh.

WHEREAS our late royal father, King George the First, of glorious memory, did by his letters patent under his great seal of Great Britain, bearing date at Westminster on or about the sixth day of September in the fifth year of his reign, for himself, his heirs and successors, give and grant unto his right trusty and well-beloved George Lord Newburgh, afterwards George Earl of Cholmondeley, his heirs, executors, or administrators, to be executed by himself, or by his or their sufficient deputy or deputies, from and immediately after the death, surrender, forfeiture, or other determination of the estate and interest of his trusty and well-beloved Horatio Walpole the younger, Esquire, therein, for and during the natural lives of James Cholmondeley and George Cholmondeley, sons of the said George Lord Newburgh, afterwards George Earl of Cholmondeley, together with the annuity, or yearly salary, of five hundred pounds Sterling, payable as therein is mentioned, for and during the natural lives of the same James Cholmondeley and George Cholmondeley.

Devise of the
afore said rever-
sionary grant by
the said grantee
to his grand-
children Robert

And whereas the said George, late Earl of Cholmondeley, did by his last will and testament, bearing date the fourteenth day of August 1732, give and bequeath the reversionary grant which he had

had of the said office of surveyor and auditor-general of our plantations in America unto his grand-children Robert Cholmondeley and Frederick Cholmondeley, who is since deceased, younger sons of the Lord Viscount Malpas, now George Earl of Cholmondeley:

and Frederick, Cholmondeley by his last will made in August 1732.

And whereas the said Robert Cholmondeley, Esquire, grandson and devisee of the said George late Earl of Cholmondeley, and the said George Earl of Cholmondeley, eldest son and heir at law of the said George late Earl of Cholmondeley, and the honourable James Cholmondeley, Esquire, together with George James Guidott, Esquire, the only surviving executors of the last will and testament of the said George late Earl of Cholmondeley, by an instrument in writing under their hands and seals, bearing date the fourteenth day of October in the twenty-fifth year of our reign, and duly enrolled in our high court of Chancery, have surrendered and yielded up into our hands all their right, title, and interest, both in law and equity, in or to the said office of surveyor and auditor-general of all the revenues of us, our heirs and successors, arising in America, with the fees, profits, perquisites, and advantages aforesaid, together with the annuity or yearly salary of five hundred pounds Sterling, and the said letters patent themselves to be cancelled and vacated; which said surrender we have accepted, and by these presents do accept:

Surrender of the letters patent aforesaid, and of the reversionary right to the office therein granted, to the King, by the surviving devisee of the office and the surviving executors of the aforesaid grantee, in October 25 Geo. II.

As by the said recited letters patent, will, and surrender, relation being thereunto respectively had, may more fully and at large appear.

NOW KNOW YE that we, in consideration of the said surrender, and for divers other good causes and considerations us hereunto moving, of our especial grace, certain knowledge, and meer motion, have given and granted, and by these presents for us, our heirs and successors, do give and grant unto our trusty and well-beloved the said Robert Cholmondeley the said office or offices of Surveyor and Auditor-general of all the revenues of us, our heirs and successors, arising in America, together with all such fees, profits, perquisites, and advantages as are now lawfully had, received, and enjoyed by our trusty and well-beloved counsellor the said Horatio Walpole by virtue of the said office.

Grant of the said office to Robert Cholmondeley.

Power to audit
the accounts of
the King's re-
venue arising in
America :

And we do also give to him the said Robert Cholmondeley full power and authority to inspect, examine, state, and audit, and with the allowance, authority, and consent of the commissioners of the Treasury, or high treasurer, and chancellor of the Exchequer of us, our heirs and successors for the time being, to determine all and singular accounts of all such rents, revenues, prizes, fines, escheats, forfeitures, duties, and profits whatsoever as are by reason or cause of any matter or thing happened or fallen since the beginning of the first war that was between our late royal predecessor Charles the Second, king of England, &c. and the States General of the United Netherlands since his restoration, and not before, and which shall at any time hereafter happen, fall, become, or be due, payable, or accruing unto us, our heirs and successors, during the continuance of this grant, and which shall not be accounted for before the commencement thereof, in or from all or any of the several foreign dominions, islands, colonies, and plantations in America of us, our heirs and successors ; as also by all lawful ways and means to cause to be recovered and paid to the proper officers, to the use of us, our heirs and successors, all such rents, revenues, prizes, fines, escheats, forfeitures, duties, and profits as are now, or shall be hereafter, due or owing to us, our heirs and successors, and which shall not be accounted for as aforesaid within or from the said foreign dominions in America ; and to do and perform all and every such other matter, cause, or thing, in relation to the said accounts and revenues, which to the office and place of our surveyor-general, or any our auditors of our Exchequer in England doth or may belong or appertain as to our accounts and revenues in England : and him, the said Robert Cholmondeley, Surveyor and Auditor-general of the rents, duties, revenues, prizes, fines, forfeitures, escheats, and profits aforesaid, we do by these presents for us, our heirs and successors, make, ordain, and constitute :

and to cause the
same to be re-
covered by law-
ful means :

and to act in the
same manner
with relation to
this revenue as
the surveyor-
general or audi-
tor of the Ex-
chequer in Eng-
land may law-
fully act with
respect to the
King's revenue
in England.

Habendum.

To have, hold, enjoy, and exercise the said office or offices of surveyor and auditor-general, with the fees, profits, perquisites, and advantages aforesaid, unto him the said Robert Cholmondeley, his heirs, executors, and administrators, from and immediately after the death, surrender, forfeiture, or other determination of the estate and interest therein of the said Horatio Walpole, for and during the natural lives of George Cholmondeley, commonly called Lord Viscount Malpas, and the said Robert Cholmondeley ; and to be

be executed by the said Robert Cholmondeley, his heirs, executors, and administrators, or by his or their sufficient deputy or deputies, such deputy or deputies being first approved by the commissioners of the Treasury, or high treasurer for the time being of us, our heirs and successors.

Power to execute the said office by a deputy approved by the commissioners of the Treasury.

And for the better encouragement of him, the said Robert Cholmondeley, diligently and faithfully to execute the said office and employment of surveyor and auditor-general as aforesaid, we have given and granted, and by these presents for us, our heirs and successors, do give and grant, unto the said Robert Cholmondeley the annuity, or yearly salary, of five hundred pounds Sterling, to have, hold, receive, and enjoy the said annuity, or yearly salary, of five hundred pounds Sterling, to him the said Robert Cholmondeley, his heirs, executors, or administrators, from and immediately after the death, surrender, forfeiture, or other determination of the estate and interest of the said Horatio Walpole in the said office, for and during the natural lives of the said George Cholmondeley, commonly called Lord Viscount Malpas, and Robert Cholmondeley, out of the said rents, revenues, prizes, fines, forfeitures, escheats, duties, and profits, arising, or growing due or payable, as aforesaid, in or from the said dominions, colonies, and plantations of America, of us, our heirs and successors, by the hands of the treasurers, receivers, collectors, or other officers or persons of us, our heirs and successors for the time being, out of such the treasure of us, our heirs and successors, as shall be remaining in their hands, after and according to the portions following; that is to say, Out of all or any the rents and other duties and profits aforesaid arising in and from our dominion and colony of Virginia the sum of one hundred pounds; out of our island of Barbadoes the sum of one hundred and fifty pounds; out of our islands, commonly called the Leeward Caribbee Islands, the sum of one hundred pounds; and out of our island of Jamaica the sum of one hundred and fifty pounds, to be allowed them on their respective accounts, and to be received by the said Robert Cholmondeley, his heirs, executors, or administrators as aforesaid, quarterly, at the four most usual feast-days in the year; that is to say, the Feast of Saint Michael the Archangel, the Birth of our Lord Christ, the Annunciation of the blessed Virgin Mary, and the Nativity of Saint John the Baptist, by even and equal portions; and the said payments to commence from and immediately after the death,

Grant of a salary of 500l. Sterling a year.

Habendum.

This salary to be paid out of the said revenue arising in America.

From Virginia 100l.—Barbadoes 150l.—Leeward Islands 100l.—Jamaica 150l.

To be paid by quarterly payments:

and to begin from the death,

mination of the
estate of the
aforesaid Horatio
Walpole in the
said office.

death, surrender, forfeiture, or other determination of the estate and interest of the said Horatio Walpole in the said office, and to be paid and payable in proportion, after the rate of five hundred pounds by the year, to him the said Robert Cholmondeley, his heirs, executors, and administrators, at and upon such of the said feasts which shall first and next happen after the said office shall become vacant as aforesaid.

And we do hereby authorize, will and direct all officers and persons whom it may concern, to make due payment and allowance of the said annuity, or salary, of five hundred pounds Sterling in manner as aforesaid, according to the purport, true intent, and meaning of these presents, for which the acquittance of the said Robert Cholmondeley, his heirs, executors, or administrators shall be to such officers and persons a sufficient discharge.

The grantee of
this office must
obey the direc-
tions of the
commissioners
of the Treasury
and the chan-
cellor of the
Exchequer :

And to the end that the said office or offices of our surveyor and auditor-general may be duly and rightfully executed, we do hereby, for us, our heirs and successors, will and command the said Robert Cholmondeley, his heirs, executors, and administrators, and his and their deputies, to be obedient to and observe such orders, rules, and directions for and concerning the same, or relating thereunto, as the commissioners of the Treasury, or high treasurer, and the chancellor of the Exchequer of us, our heirs and successors for the time being, shall from time to time direct and appoint: which directions and orders shall be unto him the said Robert Cholmondeley, his heirs, executors, and administrators at all times

and shall deliver
to them from
time to time a
state of the ac-
counts received
from the officers
of the revenue
established in the
plantations :

a good and sufficient warrant and discharge: and that he the said Robert Cholmondeley, his heirs, executors, or administrators, do deliver unto them respectively from time to time a fair and just state of all such accounts as he shall receive from the respective officers settled or established, or to be settled or established, within the said plantations, colonies, and dominions in America aforesaid :

and make pro-
posals to them
for the improve-
ment of the
King's revenue.

and that the said Robert Cholmondeley, his heirs, executors, or administrators, do also from time to time offer and present to the commissioners of the Treasury, or high treasurer of us, our heirs and successors for the time being, such proposals and observations concerning our said duties and revenues as may any ways tend to our service.

And

And for the more effectual execution and performance of the premises, we do hereby further for us, our heirs and successors, impower and authorize the said Robert Cholmondeley and his heirs, executors, and administrators, from time to time to constitute and appoint, by any writing under his or their hands and seals, such inferior officers, for the better expediting and carrying on the service in relation to the said office, as by nomination, warrant, and direction from the commissioners of the Treasury, or high treasurer of us, our heirs and successors for the time being, the said Robert Cholmondeley, his heirs, executors, or administrators, shall be directed; and them from time to time to suspend, remove, and displace, as to him the said Robert Cholmondeley, his heirs, executors, or administrators, with the allowance or direction of the commissioners of the Treasury, or high treasurer of us, our heirs and successors for the time being, shall be thought necessary and expedient.

Power to appoint inferior officers for carrying on the business of this office, by the direction of the commissioners of the Treasury:

and to suspend or displace them by the allowance of the said commissioners.

And further, it is our express will and pleasure that by the name and stile of rents, revenues, prizes, fines, escheats, forfeitures, duties, and profits arising, due, and payable unto us, our heirs and successors, within the said dominions, be understood and comprized to all intents and purposes, amongst other things, all, and all manner of arrears of monies, rents, revenues, prizes, and prize-goods, fines, forfeitures, escheats, duties, and profits which have arisen within our said dominions of America, and which are due, payable, and accountable unto us, our heirs and successors, by any person or persons whatsoever by cause or reason of any matter or thing happened, or done, since the beginning of the first war which was between his said late Majesty King Charles the Second and the States General of the United Netherlands since his restoration, and not before, and that shall hereafter happen, fall, or become due to us, our heirs and successors, during the continuance of this grant, and also all seizures and forfeitures since that time lawfully belonging, or which shall at any time hereafter belong, unto us, our heirs and successors, by virtue of any law or statute of England or of Great Britain, or other law which is or shall be in force in any of our said dominions in America respectively, not hereby directed to be otherwise accounted for, or by reason of any special licence, grant, or charter held of us, whether the same be made on land or upon the sea, in any part or parts whatsoever lying or situate, or commonly accounted

All arrears of rents, prizes, fines, duties, and other branches of the King's revenue, that have become due since the beginning of the first Dutch war after the Restoration, shall be recovered, stated, and audited by the grantee.

accounted or esteemed to be lying or situate, within the limits and bounds of America aforesaid.

All governours and other officers of the crown belonging to the plantations in America are to be aiding and assisting to the grantee in the execution of this office.

And we do hereby for us, our heirs and successors, require and command all governours, deputy-governours, councillors, and commanders in chief, and their and every of their subordinate officers and ministers of us, our heirs and successors respectively, and all and every collectors, receivers, treasurers, and all other officers and persons whatsoever, of, in, or appertaining to, our said colonies and dominions in America, from time to time to observe, obey, and fulfil our will and pleasure in all things concerning the premises, and to be aiding, favouring, and assisting the said Robert Cholmondeley, his heirs, executors, and administrators, and his or their deputy or deputies, in the due execution thereof.

An exception of the customs or duties on goods imported into Great Britain from colonies in America:

And our will and pleasure is, and we do hereby declare our royal intention to be, that these presents, or any thing herein contained, shall not extend, or be construed to extend, to empower the said Robert Cholmondeley, or his heirs, executors, or administrators, or any other person or persons whatsoever, to act or intermeddle in or with the customs, imposts, or duties arising in Great Britain for or upon any wares, goods, or merchandizes imported into Great Britain from our said islands, colonies, and plantations in America, or with any bond or obligation, taken or to be taken in pursuance of any act of parliament at any time heretofore made in England or Great Britain, or with any rates or duties payable unto us, our heirs and successors, for goods transported from one plantation to another by virtue of an act of parliament made in the twenty-fifth year of his said late Majesty's reign; any thing herein contained to the contrary notwithstanding.

and of duties payable for goods transported from one plantation to another, by virtue of the stat. 25 Car. II.

These letters patent, or the exemplification thereof, shall be good in law for the benefit of the grantee, notwithstanding any mis-recital of the former letters patent or other imperfection.

And lastly, we do by these presents for us, our heirs and successors, grant unto the said Robert Cholmondeley, his heirs, executors, and administrators, that these our letters patent, or the inrollment or exemplification thereof shall be good and effectual in the law, and shall be allowed of as well in all courts of record as elsewhere in England, as also within any of our said islands, plantations, territories, and dominions whatsoever, for his, the said Robert Cholmondeley's, his heir's, executor's, and administrator's exercising and enjoying the said office, profits, perquisites, advantages, and annuity

or salary, according to the purport and true intent of these presents; without any further or other warrant in that behalf; notwithstanding the not fully or truly reciting the said recited letters patent, or the date thereof, or any other imperfection, defect, matter, cause, or thing whatsoever to the contrary thereof notwithstanding.

In witness whereof we have caused these our letters to be made patent.

Witness ourself at Westminster the twentieth day of November in the twenty-fifth year of our reign.

By writ of Privy Seal.

C O C K S.

N. B. It might perhaps be doubted whether this commission comprehended the revenues of the province of Quebec, as that province did not belong to the crown of Great Britain at the time it passed the great seal, and there are no words in it that expressly mention the future dominions of the crown in America: but the approbation hereafter following of the deputy-auditor appointed by Mr. Cholmondeley for this province by the lords commissioners of his Majesty's Treasury, and the instruction given by his Majesty himself to the governour of this province to cause a docket of every warrant he shall issue for the surveying of lands, in order to their being granted, to be entered in the auditor's office, seem to be either a constructive determination that it does extend to this province, or an actual extension of it for that purpose.

The Auditor-General's LETTER to the Lords Commissioners of the Treasury, recommending and presenting to their Lordships Mr. JOHN BROOK, Clerk, as a fit Person to be the AUDITOR's DEPUTY for the Province of QUEBEC.

To the Right Honourable the Lords Commissioners of his Majesty's Treasury.

My Lords,

THE office of Surveyor and Auditor-General of his Majesty's revenues arising in America being vested in me by virtue of the late King's letters patent, bearing date the 20th day of November in the twenty-fifth year of his reign, to have, hold, and exercise the same by myself or my sufficient deputy or deputies, such deputy or deputies being first approved by the right honourable the lords commissioners of his Majesty's Treasury, or the lord high treasurer, for the time being; I do humbly present to your lordships John Brook, of Quebec, Clerk, as a fit person to be my Deputy for executing the office of Surveyor and Auditor in his Majesty's province of Quebec and all the territories dependant thereon.

I am, with true respect,

Your Lordships

Most obedient,

And most humble Servant,

ROBERT CHOLMONDELEY,
Auditor-General.

Auditor's Office,
January 11th, 1764.

The

The ANSWER of the Lords Commissioners of the Treasury, approving and confirming the foregoing Nomination.

To our very loving Friend ROBERT CHOLMONDELEY, Esquire, Surveyor and Auditor-General of his Majesty's Revenues arising in America.

AFTER our hearty commendations we approve of your presentment foregoing; and do hereby, pursuant to the power to us reserved in this behalf, authorize and empower you to constitute and appoint the therein-named John Brook, to be your Deputy for executing the office of Surveyor and Auditor-General in his Majesty's province of Quebec, and all the territories dependent thereon, as by you proposed. And for so doing this shall be your warrant.

GEORGE GRENVILLE.
NORTH.

Whitehall, Treasury Chamber, JOHN TURNER.
the 12th day of January 1764.

Mr. ROBERT CHOLMONDELEY's APPOINTMENT of
Mr. JOHN BROOK to be his DEPUTY for the
Province of QUEBEC.

To all Christian People to whom these Presents shall come, The Honourable and Reverend ROBERT CHOLMONDELEY, Surveyor and Auditor General of all his Majesty's Revenues arising in America, sendeth Greeting:

WHEREAS his late Majesty, by his letters patent under the great seal of Great Britain bearing date the twentieth day of November in the twenty-fifth year of his reign, was graciously pleased

Recital of the grant of the office of Surveyor and Auditor-General of his Majesty's Revenues arising in America.

Y

pleased to give and grant unto him the said Robert Cholmondeley the office of Surveyor and Auditor General of all his Majesty's revenues arising in America; to have and to hold the same from and immediately after the death, or other determination of the estate and interest, of Horatio Walpole, Esquire, afterwards Lord Walpole, therein, with full power and authority to inspect, examine, state, and audit, and, with allowance and consent of the lord high treasurer, or commissioners of the Treasury, and chancellor of the Exchequer for the time being, to determine all and singular accounts of all such rents, revenues, prizes, fines, escheats, forfeitures, duties, and profits whatsoever as are by reason of any matter, or thing, happened or fallen, and which shall at any time thereafter become due and payable to his Majesty, his heirs and successors, during the continuance of the said letters patent, in or from all or any of his Majesty's foreign dominions, islands, colonies, and plantations in America, and by all lawful ways and means to cause the same to be recovered and paid to his Majesty's use, and also to exercise and enjoy the said office to him the said Robert Cholmondeley by himself or his sufficient deputy or deputies (such deputy or deputies being first approved by the commissioners of the Treasury, or high treasurer for the time being) for and during the natural lives of George Cholmondeley, commonly called Lord Viscount Malpas, and the said Robert Cholmondeley :

Recital of the death of Horatio Lord Walpole, the former grantee of the office, in 1757.

And whereas the said Horatio, Lord Walpole, departed this life on the 5th day of February 1757, whereby the said office became vested in the said Robert Cholmondeley, his heirs, executors, or administrators, during the term aforesaid :

Appointment of Mr. John Brook to be deputy to Mr. Cholmondeley for the province of Quebec.

NOW KNOW YE, that the said Robert Cholmondeley, for the more effectual execution and performance of the premises, and the better expediting and carrying on his Majesty's service, hath constituted and appointed, and, by these presents, doth constitute and appoint, John Brook, of Quebec, Clerk, to be his Deputy within his Majesty's province of Quebec, and all the territories dependant thereon, for the purposes and to the ends hereafter mentioned, and no other; that is to say, that he the said John Brook shall, and the said Robert Cholmondeley doth hereby give and grant full power and authority to the said John Brook to inspect, examine

The deputy shall have power to examine and state the accounts of the revenue;

examine, and state all accounts of all such rents, revenues, prizes, fines, escheats, seizures, forfeitures, duties, and profits whatsoever as have not already been examined, stated, and finally determined, or shall hereafter happen, fall, become due or payable, or accruing unto his Majesty, his heirs and successors, within the said province, with full power and authority to and for him, the said John Brook, by all lawful ways and means, to cause to be recovered and paid unto the proper officers, to his Majesty's use, all such rents, revenues, prizes, fines, escheats, seizures, forfeitures, duties, and profits whatsoever, as aforesaid, as have accrued, or shall hereafter accrue, to his Majesty, his heirs and successors, as aforesaid, within the said province, and have not been, or shall not be, answered or satisfied and paid to the proper officers, to his Majesty's use; to have and to hold the said office of Deputy Surveyor and Auditor unto the said John Brook so long as by him the said Robert Cholmondeley shall be thought fit.

and to cause the several branches of the revenue to be recovered by all lawful means, and paid to the proper officers.

To hold the said office of deputy-surveyor and auditor during Mr. Cholmondeley's pleasure.

And the said Robert Cholmondeley doth hereby require from the said John Brook; and the said John Brook doth, by his acceptance of this present grant, agree to and with the said Robert Cholmondeley; that he, the said John Brook, shall once in every six months, or once in every year at least, during which he shall be deputy to the said Robert Cholmondeley by virtue of these presents, transmit and send over unto him the said Robert Cholmondeley, with duplicates thereof to the lord high treasurer, or lords commissioners of the Treasury for the time being, fairly written, and by the said John Brook under his hand attested, all such accounts of the rents, revenues, prizes, fines, escheats, seizures, forfeitures, duties, and profits aforesaid, as he the said John Brook shall from time to time have inspected, examined, and stated, and also duplicates thereof by the next conveyance; and shall at the same time certify and make known unto the said Robert Cholmondeley all such sum and sums of money, if any such shall be, as he hath by the ways and means aforesaid caused to be recovered and paid to the proper officers, to his Majesty's use: and the said John Brook shall in all and every other matter and thing relating to the said office observe such rules and instructions as the said Robert Cholmondeley shall at any time or times give or transmit unto him.

The said deputy shall, at least once in every year, send over attested copies of all the accounts which he shall have examined and stated, to Mr. Cholmondeley and to the commissioners of the Treasury;

and he shall make known to Mr. Cholmondeley all such sums of money as he shall have caused to be recovered and paid to the proper officers; and he shall in all other thing relating to the said office observe the directions of Mr. Cholmondeley.

All acts done by the said deputy by virtue of this deputation shall be of the same force as if they had been done by Mr. Cholmondeley himself.

And lastly, the said Robert Cholmondeley doth hereby ratify, confirm, and allow all and every act and acts, thing and things, that shall be done and executed by the said John Brook, deputy to the said Robert Cholmondeley, by virtue of these presents, and doth hereby grant that they and every of them shall be of equal force and authority as if they had been done, executed, and performed by the said Robert Cholmondeley himself in his proper person.

In witness whereof the said Robert Cholmondeley hath hereunto set his hand and seal this 14th day of January 1764, in the fourth year of the reign of his Majesty King George the Third, of Great Britain, &c. King, and so forth.

(L. S.) ROBERT CHOLMONDELEY.

Sealed and delivered, being first duly stamped, in the presence of

JOHN HATCH.
DAVID BALFOUR.

INSTRUCTIONS to the Reverend Mr. JOHN BROOK,
Deputy-Auditor of his Majesty's Revenues arising in
the Province of QUEBEC.

WHEREAS, in pursuance of the approbation of the right honourable the lords commissioners of his Majesty's Treasury signed the 12th day of January 1764, I have, by instrument under my hand and seal bearing date the 14th day of the same month, constituted and appointed you to be my Deputy in the province of Quebec, and all the territories dependant thereon, for the examining and stating all the accounts of the public revenue arising within that province.

You

You are, in the execution of the powers given to you by the said instrument or deputation, to apply yourself to the inspecting, examining, and stating all accounts of all such rents, revenues, prizes, fines, escheats, seizures, forfeitures, duties, and profits whatsoever as have not been already examined, stated, and determined.

You are, for that purpose, to inform yourself in the best manner you can, of what rents, revenues, prizes, fines, escheats, seizures, forfeitures, duties, and profits in that province have any ways accrued or become due to the crown, or which shall hereafter accrue to his Majesty, his heirs and successors, within the same, and have not been, or shall not be, duly answered, paid, or satisfied to the proper officers of the crown, and to endeavour by all lawful ways and means that the same may be recovered and answered, or paid, to the proper officers to his Majesty's use.

And you are to transmit unto me attested copies of all such acts, or public orders, as shall at any time be passed or made, any ways relating to the public revenues or profits in that province, which are to be delivered to you by the secretary of the said province upon your application to the governor, or commander in chief, for his directions to him therein.

And whereas a considerable part of his Majesty's revenues in the said province arises from the quit-rents, that it may be more certainly known what is rightfully due to the King on that head, you are to procure by the best ways and means a true state and rent-roll of the said quit-rents, which may be allowed of by the governor in council, so as to be an authentic charge upon the receiver of the revenue, whereof you are to send over to me authentic copies to remain in my office; and so from time to time, as any further grants of land shall be made.

To procure a true state of the quit-rents due to the King.

And you are by letters to inform me from time to time, by all opportunities, of all such monies or other profits as at any time shall have been recovered, or shall be recovered, for his Majesty's use, or whereof you have received, or shall at any time receive, information that the same is of right accruing or belonging to his Majesty,

Majesty, or of any other matter or thing which shall come to your knowledge, which may be of advantage to his Majesty's revenues..

You are further to take notice, that the several accountants are to make oath to the truth of their respective accounts before his Majesty's governour, or commander in chief, of that province: which accounts, being certified by the said governour to have been sworn to before him by the said receiver, and regularly audited by you every six months or oftener, you are to transmit unto me, with their proper vouchers, by the first and best opportunity, and duplicates thereof to the lord high treasurer, or lords commissioners of the Treasury for the time being, and duplicates of the same by the next conveyance to both respectively.

Auditor's Office,
January 14th, 1764.

ROBERT CHOLMONDELEY.

N U M B E R XXVII.

EXTRACTS from his Majesty's INSTRUCTIONS
to JAMES MURRAY, Esquire, Captain General and
and Governour in Chief of the Province of QUEBEC,
relating to GRANTS of LANDS. Given under
his Majesty's Signet and Sign Manual.

AND whereas nothing can more effectually tend to the speedy settling our said colony, the security of the property of our subjects, and the advancement of our revenues, than the disposing of such lands as are our property upon reasonable terms, and the establishing a regular and proper method of proceeding with respect to the passing of grants of such lands; it is therefore our will and pleasure, that all and every person and persons, who shall apply to you for any grant or grants of lands, shall, previous to their obtaining the same, make it appear before you in council that they are in a condition to cultivate and improve the same, by settling thereon, in proportion to the quantity of acres desired, a sufficient number of white persons and negroes: and in case you shall, upon a consideration of the circumstances of the person or persons applying for such grants, think it adviseable to pass the same, in such case you are to cause a warrant to be drawn up, directed to the surveyor-general, or other proper officers, empowering him or them to make a faithful and exact survey of the lands so petitioned for, and to return the said warrant within six months at furthest from the date thereof, with a plot or description of the lands so surveyed thereunto annexed; provided that you do take care that, before any such warrant is issued as aforesaid, a docket thereof be entered in the auditor's and register's office.

Method to be used in passing grants of lands.

Petition for lands shall be made to the governour in council.

Warrant to survey the land-petitioned for.

And when the warrant shall be returned by the said surveyor or other proper officer, the grant shall be made out in due form, and the terms and conditions required by these our instructions be particularly and expressly mentioned in the respective grants.

Grant to be made in due form, and to contain all the proper conditions in express words.

And

To be registered
within six
months in the
office of the
clerk of the
inrolments,
and a docket of
it to be entered
in the auditor's
office.

And it is our will and pleasure, that the said grants shall be registered within six months from the date thereof in the register's office there, and that a docket thereof be also entered in our auditor's office there, in case such establishment shall take place in our said province; or that, in default thereof, such grant shall be void: copies of all which entries shall be returned regularly by the proper officer to our commissioners of our Treasury and to our commissioners for Trade and Plantations within six months from the date thereof.

Inconveniencies
have arisen
from granting
away excessive
quantities of
land to particu-
lar persons.

And whereas great inconveniencies have arisen in many of our colonies in America from the granting excessive quantities of land to particular persons, who have never cultivated nor settled it, and have thereby prevented others more industrious from improving the same; in order therefore to prevent the like inconveniencies for the future, you are to take especial care that in all grants to be made by you by and with the advice and consent of our council, to persons applying for the same, the quantity be in proportion to the ability to cultivate. And you are hereby directed to observe the following directions and regulations in all grants to be made by you, *viz.*

In what quan-
tities and pro-
portions lands
shall be granted
to the petition-
ers.

That one hundred acres of land be granted to every person, being master or mistress of a family, for himself or herself, and fifty acres for every white or black man, woman, or child of which such person's family shall consist at the actual time of making the grant. And in case any persons applying to you for grants of lands shall be desirous of taking up a larger quantity than the actual number of persons in his or her family would intitle such persons to take up; it is our will and pleasure, and you are hereby allowed and permitted, to grant unto every such person or persons such further quantity of land as they may desire, not exceeding one thousand acres over and above what they are intitled to by the number of persons in their respective families, provided it shall appear to you, that they are in a condition and intention to cultivate the same; and provided also, that they do pay the receiver of our quit-rents or to such other officer as shall be appointed to receive the same, the sum of five shillings only for every fifty acres so granted, on the day of the date of the grant:

That

That all grantees be subject to the payment of two shillings ^{Quit-rent.} Sterling for every hundred acres, to commence at the expiration of two years from the date of such grant, and to be paid yearly and every year, or in default of such payment the grant be void :

That every grantee, upon giving proof that he or she has fulfilled the terms and conditions of his or her grant, shall be intitled to another grant, in the proportion and upon the conditions above-mentioned :

That for every fifty acres of land accounted plantable, each ^{Conditions of cultivation.} patentee shall be obliged, within three years after the date of his patent, to clear and work three acres at the least in that part of his tract which he shall judge most convenient and advantageous ; or else to clear and drain three acres of swampy or funken grounds, or drain three acres of marsh, if any such be within the bounds of his grant :

That for every fifty acres of land accounted barren, every patentee shall be obliged to put and keep on his land, within three years after the date of his grant, three neat cattle, which number he shall be obliged to continue on his land, until three acres for every fifty be fully cleared and improved :

That if any person shall take up a tract of land wherein there shall be no part fit for present cultivation without manuring and improving the same, every such grantee shall be obliged, within three years from the date of his grant, to erect on some part of his land one good dwelling-house, to contain at least twenty feet in length and sixteen feet in breadth, and also to put on his land the like number of three neat cattle for every fifty acres :

That if any person shall take up any stony or rocky grounds, not fit for planting or pasture, and shall within three years after the passing of his grant, begin to employ thereon, and so continue to work for three years then next ensuing, in digging any stone quarry or other mine, one good and able hand for every hundred acres of such part, it shall be accounted a sufficient cultivation and improvement :

That every three acres which shall be cleared and worked as aforesaid, and every three acres which shall be cleared and drained as aforesaid, shall be accounted a sufficient seating, planting, cultivation, and improvement to save for ever from forfeiture fifty acres of land in any part of the tract contained within the same patent, and the patentee shall be at liberty to withdraw his stock, or to forbear working in any quarry or mine, in proportion to such cultivation and improvement as shall be made upon the plantable lands, or upon the swamps, sunken grounds, and marshes which shall be included in the same patent :

Proof may be made of the cultivation of granted lands in a court of justice ;

That when any person, who shall hereafter take up and patent any lands, shall have seated, planted, and cultivated or improved the said land, or any part of it, according to the directions and conditions above-mentioned, such patentee may make proof of such seating, planting, cultivation, and improvement in the general court, or in the court of the country, district, or precinct where such lands shall lie, and have such proof certified to the register's office, and there entered with the record of the said patent, a copy of which shall be admitted, on any trial, to prove the seating and planting such land :

and a certificate of such proof by the judges of such court of justice shall be entered in the office of the register or clerk of the inrolments.

The surveyor shall give in accounts of the quality of the lands that are to be granted.

And lastly, in order to ascertain the true quantity of plantable and barren land contained in each grant hereafter to be made within our said province, you are to take especial care that, in all surveys hereafter to be made, every surveyor be required and enjoined to take particular notice, according to the best of his judgment and understanding, how much of the lands so surveyed is plantable, and how much of it is barren and unfit for cultivation, and accordingly to insert in the survey and plot by him to be returned into the register's office the true quantity of each kind of land :

Breadth of the granted lands to be only one third of the length.

And it is our further will and pleasure, that in all the grants of land to be made by you as aforesaid, regard be had to the profitable and unprofitable acres, so that each grantee may have a proportionable number of one sort and the other ; as likewise that the breadth of each tract of land to be hereafter granted be one third of the length of such tract ; and that the length of every tract do not extend along the banks of any river, but into the main land, that thereby the said grantees may have each a convenient share

of

of what accommodation the said river may afford for navigation or otherwise.

And whereas it has been represented to us that many parts of ^{Hemp and flax.} the province under your government are particularly adapted to the growth and culture of hemp and flax; it is therefore our will and pleasure that, in all surveys of land for settlement, the surveyors be directed to report whether there is any or what quantity of lands contained within such survey fit for the production of hemp and flax; and you are to take particular care to insert a clause in every grant of land where any part thereof is fit for such production, obliging the grantee annually to sow a proportionable part of his grant with hemp or flax seed.

And whereas it hath been further represented to us, that a great ^{Lands near lake Champlain abounding with timber shall be reserved to the King.} part of the country in the neighbourhood of lake Champlain, and between that lake and the river Saint Lawrence, abounds with woods producing trees fit for masting our royal navy, and other useful and necessary timber for naval construction, you are therefore expressly directed and required to cause such parts of the said country, or any other within your government that shall appear upon a survey to abound with such trees, and shall lie convenient for water-carriage, to be reserved to us, and to use your utmost endeavour to prevent any waste being committed upon the said tracts, by punishing in due course of law any persons who shall cut down and destroy any trees growing thereon; and you are to consider and advise with our council whether some regulation, that shall prevent any saw-mills whatever from being erected within your government, without a licence from you or the commander in chief of our said province for the time being, may not be a means of preventing all waste and destruction in such tracts of land as shall be reserved to us for the purposes aforesaid.

And whereas it appears from the representations of our governour ^{Iron-works of St. Maurice near Three Rivers.} of the district of Trois Rivieres, that the iron-works at Saint Maurice in that district are of great consequence to our service; it is therefore our further will and pleasure, that no part of the lands upon which the said iron-works were carried on, or from which the ore used in such works was procured, or which shall appear

appear to be necessary and convenient for that establishment, either in respect to a free passage to the river Saint Lawrence, or for producing a necessary supply of wood, corn, and hay, or for pasture for cattle, be granted to any private person whatever; and also that as large a district of land as conveniently may be, adjacent to and lying round the said iron-works, over and above what may be necessary for the above purposes, be reserved for our use, to be disposed of in such manner as we shall hereafter direct and appoint.

N U M B E R XXVIII.

AS all the following grants of land are made with a reservation of fealty and certain rent, it may be proper to insert in this place a short account of the oath of fealty and the manner in which it ought to be taken, together with the words of the oath itself.

An ACCOUNT of the OATH of FEALTY
according to the Law of ENGLAND.

ALL the freehold lands in England are at this day held by fealty either of the King or some other lord, notwithstanding the abolition of military tenures by the statute of the 12 *Car.* II. And every new tenant of a piece of freehold land ought regularly, when he comes to the possession of it, to take the oath of fealty to the lord of whom it is held. This he ought to do in all cases, whatever be the title by which he claims the land, whether it be by descent upon the death of his father or other ancestor, by devise, or by purchase: though it must be confessed that this ceremony is now very much neglected and almost gone out of use; which is owing in great measure to its being a naked ceremony unaccompanied by any pecuniary advantage to the lord. Yet perhaps it would be better to revive it, and to require it to be universally observed, as it would tend to keep in sight that fundamental maxim of the British constitution, that all lands are held of the King either mediately or immediately, and may escheat or fall back to him as the original owner or lord of them, either upon the extinction of the family of the last possessor and those of the other intermediate lords between him and the crown, or upon their committing those more atrocious crimes which the law of England has distinguished by the name of felonies; a maxim very useful in a monarchical government, and obviously tending to preserve union and subordination throughout the kingdom. This oath of fealty was taken in the following manner.

The freeholder who was to take the oath of fealty went to the lord's manor-court, or court-baron, and holding his right hand upon

Manner of
taking the oath
of fealty.

upon a book containing the holy gospels, pronounced these words to the lord of whom he held the land, or, if the lord himself was absent, to the steward of the lord's court in his stead.

The oath of fealty.

“ Hear you this, my lord, that I will be faithful and true to
 “ you, and bear you faith for the tenements I claim to hold
 “ of you, and that I will truly perform to you the customs
 “ and services which I ought to perform unto you, and at
 “ the times assigned for the same.

“ So help me God.”

And then he kissed the book.

Difference between fealty and homage.

‘ But (saith Littleton) he shall not kneel when he maketh his
 ‘ fealty, nor make such humble reverence as in doing homage.
 ‘ For homage may not be made but to the lord himself; but the
 ‘ steward of the lord's court or the lord's bailiff may take fealty
 ‘ for the lord. Also tenant for term of life shall make fealty, but
 ‘ he shall not do homage: and there are many other differences
 ‘ between fealty and homage.’

See Littleton's Tenures, book 2, chap. 2.

A GRANT of a small Plot of Ground, of Three Hundred Feet in Length and One Hundred Feet in Breadth, situated in the Peninsula on the North Side of the Bay of GASPEY in the Province of QUEBEC, to Mr. EDWARD MANWARING, his Heirs and Assigns, for ever, under the Public Seal of the Province of QUEBEC.

GEORGE the THIRD, by the Grace of God, King of Great Britain and the Territories thereunto belonging, To all to whom these Presents shall come, sendeth Greeting:

The preamble of the grant.

WHEREAS our loving subject Edward Manwaring, wailer and searcher of our port of Quebec, and principal officer of our customs for the port of Gaspey in our province of Quebec in America,

America, did by a petition presented to our trusty and well-beloved Petition to the lieutenant-governour and council. Guy Carleton, Esquire, our lieutenant-governour and commander in chief of our said province of Quebec, and our council of the same, on the eleventh day of April last, humbly request us to grant unto him the said Edward a certain piece of land situated in the peninsula on the north side of the bay of Gaspey in our said province of Quebec; and our said lieutenant-governour and council of our Their approbation of it as to part of the land petitioned for. province aforesaid, having duly and maturely considered the said petition, did approve thereof as to a part of the land petitioned for, and did adjudge it to be reasonable and adviseable that we should grant the said part of the said land to the said Edward and his heirs and assigns for ever upon the terms and conditions prescribed by our royal instructions in this behalf, and did thereupon, on the Their order to the deputy surveyor-general to set off the said part for the petitioner. third day of this instant month of May, make an order that our surveyor-general of our said province of Quebec, or his deputy, should set off for him the said Edward the said part of the land in the said petition mentioned; and in pursuance of the said order our The deputy-surveyor's setting off of the said part for the petitioner, and his certificate concerning the same. loving and faithful subject John Collins, Esquire, the deputy surveyor-general of our said province of Quebec, hath set off for him the said Edward the said part of the land in the said petition mentioned from an original plan of Gaspey taken by him upon an actual survey, and hath also certified to our lieutenant-governour and council aforesaid, that the said part or piece of land so set off did not appear to him to interfere with the lands reserved for our use:

NOW KNOW YE that we, judging this request of the said Grant. Edward Manwaring, so far as it relates to the said part or piece of land so set off, to be reasonable, and being therefore willing to gratify him therein, and of our especial grace, certain knowledge, and mere motion, have given, granted, and confirmed, and by these our present letters under our public seal of our province of Quebec aforesaid, do give, grant, and confirm unto the said Edward Manwaring the said part or piece of land so set off as aforesaid, being a rectangular plot of ground of three hundred feet in length and one hundred feet in breadth, situated in the peninsula on the Description of the land granted. north side of the bay of Gaspey in our province of Quebec aforesaid, beginning at a cedar-post standing at the upper corner of a store-house erected by the said Edward Manwaring, and thence running due north one hundred feet to a second post as aforesaid, which makes the first corner boundary; thence due east three hundred

hundred feet to a third post, which makes the second corner boundary; thence due south one hundred feet to a fourth post, which makes the third corner boundary; and thence to the first station or cedar-post aforesaid, which makes the fourth and last corner boundary; as by a certain plan thereof made by the said John Collins, deputy-surveyor of our said province, and given under his hand on the fifth day of this instant May (which is hereunto annexed) may more clearly appear :

Habendum and
tenure of the
said land.

Quit-rent.

To have and to hold the said plot or piece of land of us, our heirs and successors, to him the said Edward Manwaring, his heirs and assigns for ever, in free and common socage, to wit, by fealty, and the rent of one farthing of lawful money of Great Britain in lieu of all manner of services, to be paid every year at the Feast of Saint John the Baptist to our receiver-general of our revenue for our said province of Quebec, or, in case of his absence from the said province, to the deputy of our surveyor and auditor-general of our revenues arising in America appointed by the said surveyor and auditor-general to inspect and audit the accounts of our revenue in our province of Quebec aforesaid, or, in case of the absence of both the said receiver-general and deputy-auditor from the said province, to our captain-general and governour in chief, or our lieutenant-governour, or other our commander in chief of our said province for the time being, for the use of us, our heirs and successors.

And we do hereby give and grant for us, our heirs and successors, to the aforesaid Edward Manwaring, his heirs and assigns for ever, full power and liberty to use, occupy, cultivate, and enjoy the premises aforesaid, in any manner he or they shall think fit, as well by cutting down any trees growing upon the said premises (large timber-trees fit for building ships not excepted) and by digging for, opening, and working any mines that may happen to be found in the said premises, excepting only mines of gold and silver, as by cultivating the surface of the ground therein, and to apply the produce and profits thence arising to his and their own use and benefit, paying only to us, our heirs and successors, the rent aforesaid of one farthing of lawful money of Great Britain every year.

Reservation of
mines of gold
and silver.

But if any mines of gold or silver shall be found upon the said premises, we do hereby expressly reserve them to ourselves, our heirs

heirs and successors, so that they shall belong to us and them in as full and ample manner as if the present grant had never been made. And we do likewise reserve to ourselves, our heirs and successors, full power, right, and authority to make and use all such roads, ways, and passages over the rest of the said premises hereby granted, and also to take, stop, divert, and use any rivers, streams, ponds, or bodies of water, as shall by us, or them, be judged necessary for the working and improving the said mines.

And further, if any mine or mines of gold or silver, which we have thus reserved to ourselves, our heirs and successors, shall be found on the premises hereby granted, the said Edward Manwaring, or his heirs or assigns, shall, within the space of six months after the discovery of such mine, give notice thereof to our receiver-general of our revenue in the said province of Quebec, or to our deputy-auditor before-mentioned, or to our governour in chief, lieutenant-governour, or other our commander in chief of our said province for the time being: and, if he or they shall neglect so to do, the present grant shall at the end of the said six months become void, and the whole premises hereby granted shall revert or escheat to us; our heirs or successors, and shall become the absolute and intire property of us, or them, in the same manner as if the present grant had never been made.

Notice thereof to be given to the King's officers within six months after their discovery

under the penalty of forfeiting the whole premises hereby granted in case of a neglect thereof.

Also it is hereby provided, that if the rent afore said of one farthing of lawful money of Great Britain every year be behind and unpaid for the space of one whole year after it shall have become due, the present grant shall at the end of the said year become void, and the whole premises hereby granted shall revert or escheat to us, our heirs and successors, and shall become the absolute and intire property of us, or them, in the same manner as if the present grant had never been made.

If the rent here in reserved is left unpaid for the space of a year, the present grant shall become void at the end thereof.

And further, we do hereby direct and appoint that this grant shall, within one month after the date thereof, be registered and entered of record in the office of our clerk of the inrolments of deeds for the said province of Quebec, kept in the city of Quebec in the said province, in one of the books of patents remaining in the said office, and that a docket thereof shall also be entered in the office of

the deputy-auditor of the accounts of our revenues in the said province kept at the said city of Quebec.

And we do moreover for us, our heirs and successors, grant to and covenant with the said Edward Manwaring, his heirs and assigns, that this our present grant, after it shall have been enrolled and registered, and a docket thereof shall have been made in the manner hereby directed, shall be good and effectual in the law to all intents and purposes whatsoever against us, our heirs and successors, notwithstanding any mis-recital or mis-naming of any thing in the said grant recited or named; or meant to be recited or named, or any other imperfection in the same.

In witness whereof we have caused these our letters to be made patent, and our public seal of our said province of Quebec to be thereunto affixed, this twentieth of May in the seventh year of our reign, and in the year of our Lord one thousand seven hundred and sixty-seven.

(Witness)

GUY CARLETON,
Lieutenant-Governour.

A GRANT of a Piece of Land in the Province of QUEBEC, containing somewhat more than Two Hundred Acres, situated on the North Side of the Bay of GASPEY, to Mr. EDWARD MANWARING, his Heirs and Assigns for ever, under the Public Seal of the Province of QUEBEC.

GEORGE the THIRD, by the Grace of God, King of Great Britain and the Territories thereunto belonging; To all to whom these present Letters shall come, sendeth Greeting:

The preamble

WHEREAS our loving subject Edward Manwaring, wailer and searcher of our port of Quebec, and principal officer of our customs in the port of Gaspey in our province of Quebec in America, did,

did, by petition presented to our trusty and well-beloved Guy Carleton, Esquire, our lieutenant-governour and commander in chief of our said province of Quebec, and our council of the same, on the eleventh day of April last, humbly request us to grant unto him the said Edward two hundred acres of land situated on the north side of the bay of Gaspey in our said province of Quebec; and our said lieutenant-governour and council of the province aforesaid, having duly and maturely considered the said petition, did approve thereof, and did adjudge it to be reasonable and adviseable that we should grant two hundred acres of land, situated as aforesaid, unto the said Edward Manwaring, and his heirs and assigns for ever, upon the terms and conditions prescribed by our royal instructions in this behalf, and did thereupon order the deputy surveyor-general of our province aforesaid to set off for the said Edward Manwaring two hundred acres of land; and at the same time to certify the nature and quality of the land so set off; and, in pursuance of the said order, our loving and faithful subject John Collins, Esquire, the deputy surveyor-general of our said province, hath set off from an original plan of Gaspey, taken by him the said deputy surveyor-general upon an actual survey, a certain piece or lot of land containing about two hundred and two acres, and hath also certified to our lieutenant-governour and council aforesaid, that the greater part of the said land so set off is rocky and barren and unfit for the production of hemp or flax :

Petition to the lieutenant-governour and council.

Their approbation of it.

Their order to the deputy surveyor to set off a piece of land for the petitioner.

His setting off a certain piece of land for the petitioner, and his certificate concerning the quality thereof.

NOW KNOW YE that we, judging this request of the said Edward Manwaring to be reasonable, and being willing to gratify him therein, and of our especial grace, certain knowledge, and mere motion, have given, granted, and confirmed, and by these our present letters under our public seal of our province of Quebec aforesaid do give, grant, and confirm for us, our heirs and successors, unto the said Edward Manwaring, his heirs and assigns, the said piece or lot of land so set off for him as aforesaid, being a four-sided piece of ground in the province of Quebec aforesaid, situated on the north side of Gaspey Bay, and beginning at the mouth of a small river called *The Watering Place*, adjoining to the eastern boundary of the lands of *Benjamin Price, Esquire*, and running from thence in a strait line, the direction of which is five degrees to the west of the north, for a length of four thousand two hundred feet, to a birch-tree, which makes the first corner-boundary; thence

The grant:

Description of the land granted

in a strait line, the direction of which is eighty-five degrees to the east of the north, for a length of two thousand one hundred feet, to a cedar-tree, which forms the second corner-boundary; thence in a strait line, the direction of which is five degrees to the east of the south, for a length of four thousand two hundred feet, to a spruce fir-tree standing on the bay, which forms the third corner-boundary; thence up the bay in a line running the several courses of the water, to the first station or mouth of the small river called *The Watering Place*, which makes the fourth and last corner-boundary; as by a certain plan thereof made by the said John Collins, deputy surveyor of our said province, and given under his hand on the fifth day of this instant month of May, may more clearly appear:

Habendum and
tenure.

Quit-rent.

To have and to hold the said piece of land so set off and bounded, containing somewhat more than two hundred and two acres, of us, our heirs and successors, to him the said Edward Manwaring, and his heirs and assigns for ever, in free and common socage, to wit, by fealty and the rent of four shillings and one half-penny of lawful money of Great Britain in lieu of all manner of services, to be paid every year at the feast of Saint John the Baptist to our receiver-general of our revenue for our said province of Quebec, or, in case of his absence from the said province, to the deputy of our surveyor and auditor-general of our revenues arising in America, appointed by the said surveyor and auditor-general to inspect and audit the accounts of our revenues in our province of Quebec aforesaid, or, in case of the absence of both the said receiver-general and deputy-auditor from the said province, to our captain-general and governour in chief, or our lieutenant-governour, or other our commander in chief of our said province for the time being, for the use of us, our heirs and successors; the first payment of which rent shall be made at the feast aforesaid of Saint John the Baptist in the year of our Lord one thousand seven hundred and sixty-nine.

And we do hereby give and grant for us, our heirs and successors, unto the said Edward Manwaring, his heirs and assigns for ever, full power and liberty to use, occupy, cultivate, and enjoy the premises aforesaid in any manner he or they shall think fit, as well by cutting down any trees growing upon the said premises (large timber-trees fit for building ships not excepted) and by digging for, opening, and working

working any mines that may happen to be found in the said premises, excepting only mines of gold and silver, as by cultivating the surface of the ground on the same, or by any other method of improving it whatsoever; and to apply the produce and profits thence arising to his and their own use and benefit, paying only therefore to us, our heirs and successors, the rent above reserved of four shillings and one half-penny of lawful money of Great Britain every year.

But if any mines of gold and silver shall be found upon the premises, we do hereby expressly reserve them to ourselves, our heirs and successors, so that they shall belong unto us and them in as full and ample manner as if the present grant had never been made: and we do likewise reserve to ourselves, our heirs and successors, full power, right, and authority to make and use all such roads, ways, and passages over the rest of the said premises hereby granted, and also to take, stop, divert, and use all such rivers, streams, ponds, or bodies of water on the same as shall by us, or them, be judged necessary and convenient for the working and improving the said mines.

Reservation of all mines of gold and silver.

And further, if any mine or mines of gold or silver shall be found upon the premises hereby granted, the said Edward Manwaring, or his heirs or assigns, shall, within the space of six months after the discovery thereof, give notice of such discovery to our receiver-general of our revenue in the said province of Quebec, or to the deputy-auditor of the accounts of our revenue in the said province, or to our governor in chief, lieutenant-governor, or other our commander in chief of the said province for the time being: and if he or they shall make default herein, the present grant shall at the end of the said six months become void, and the whole premises hereby granted shall revert or escheat to us, our heirs and successors, and shall become the absolute and intire property of us, or them, in the same manner as if the present grant had never been made.

Notice thereof to be given to the King's officers in six months.

Penalty of making default therein.

Also, if the yearly rent aforesaid of four shillings and one half-penny of lawful money of Great Britain shall be behind and unpaid for the space of one whole year, the present grant shall at the end of the said year become void, and the whole premises hereby granted shall revert or escheat to us, our heirs and successors, and be the absolute

Penalty for non-payment of the quit-rent.

absolute and intire property of us, or them, in the same manner as if the present grant had never been made.

Condition con-
cerning the im-
provement of
the premises.

And whereas our loving and faithful subject John Collins, Esquire, the deputy-surveyor of our province of Quebec aforesaid, hath certified to our lieutenant-governour and council of our said province, that the greater part of the premises hereby granted is rocky and barren, and unfit for the production of hemp or flax; and as therefore they ought rather to be employed in feeding of neat cattle, or to be improved by digging for and working stone-quarries, or mines of some other useful mineral, than to be planted, sown, or cultivated; and whereas it is our royal will and pleasure that the persons to whom we make grants in our said province should improve them in some one of these ways, as has been more fully declared in our royal instructions to our trusty and well-beloved James Murray, Esquire, our captain-general and governour in chief of our said province, which have been published by him in our said province by a proclamation dated the first day of March in the year of our Lord one thousand seven hundred and sixty-five; we do therefore require of the said Edward Manwaring, his heirs and assigns, as a condition necessary to the continuance of the present grant, that, within three years from the day of the date of this grant, he the said Edward, or his heirs or assigns, do either put twelve neat cattle on the premises hereby granted, and continue them thereon, till twelve acres of the said premises shall be fully cleared and improved, or begin to employ on the said premises two good and able labouring men in digging some stone quarry or other mine (mines of gold and silver only excepted) and continue him at work thereon for three years then next ensuing, or put six neat cattle on the said premises, and continue them thereon till six acres of the said premises shall be fully cleared and improved, and likewise employ on the same one good and able labouring man in digging some stone quarry or other mine (mines of gold and silver only excepted) and continue him at work thereon for three years then next ensuing.

Penalty in case
of a breach of
this condition.

And if the said Edward Manwaring, or his heirs or assigns, shall neglect to fulfil this condition, the present grant shall immediately upon the breach of this condition become void, and the premises hereby granted shall revert or escheat to us, our heirs and successors,

A GRANT of a Piece of Land in the Province of QUEBEC, containing about Five Hundred Acres, situated on the Head of the North-west Arm of GASPEY BAY on the South Side, Ten Miles above the Entrance thereof, to Mr. EDWARD MANWARING, his Heirs and Assigns for ever, under the public Seal of the Province of QUEBEC.

GEORGE the THIRD, by the Grace of God, King of Great Britain and the Territories thereunto belonging; To all to whom these present Letters shall come, sendeth Greeting:

Preamble.

Petition to the lieutenant-governour and council.

Their approbation thereof.

Their order to the deputy-surveyor to set off the land.

His obedience to order.

WHEREAS our loving subject Edward Manwaring, waiter and searcher of our port of Quebec, and principal officer of our customs for the port of Gaspey in our province of Quebec in America, did, by a petition presented to our trusty and well-beloved Guy Carleton, Esquire, our lieutenant-governour and commander in chief of our said province, and our council of the same, on the eleventh day of April last, humbly request us to grant unto him the said Edward five hundred acres of land on the south side of the bay of Gaspey on the north-west arm thereof, about ten miles above the peninsula in the said bay; and our lieutenant-governour and council aforesaid, having duely and maturely considered the said petition, did approve thereof, and did adjudge it to be reasonable and adviseable that we should grant unto the said Edward Manwaring, and his heirs and assigns for ever, the quantity of land so petitioned for upon the terms and conditions prescribed by our royal instructions in this behalf, and did thereupon order the deputy surveyor-general of our said province of Quebec to set off for him the said Edward Manwaring the said quantity of five hundred acres in the place in the said petition mentioned, and at the same time to certify to them the said lieutenant-governour and council the nature and quality of the land so set off; and in pursuance of the said order, our loving and faithful subject John Collins, Esquire, the deputy-

deputy-surveyor of our province of Quebec, hath set off a certain piece or lot of land containing about five hundred acres, situated on the head of the north-west arm of Gaspey Bay on the south side, ten miles above the entrance thereof, from an original plan of Gaspey taken by him upon an actual survey, for the said Edward Manwaring; and hath at the same time certified to our lieutenant-governour and council aforesaid, that the said five hundred acres of land are unfit for the production of hemp or flax: Quality of the land set off.

NOW KNOW YE that we judging this request of the said Edward Manwaring to be reasonable, and being therefore willing to gratify him therein, and of our especial grace, certain knowledge, and mere motion, have given, granted, and confirmed, and by these our present letters under our public seal of our province of Quebec, do give, grant, and confirm, for ourselves, our heirs and successors, unto the said Edward Manwaring, his heirs and assigns, the said piece or lot of land so set off for him, situated in our province of Quebec, on the head of the north-west arm of Gaspey Bay on the south side, about ten miles above the entrance thereof, being a four-sided piece of land whereof three of the sides are strait lines, and which is included within a bounding line which begins in the following place, and runs in the following directions; to wit, it begins at a fir-tree standing on the bank of the said river, or north-west arm of Gaspey Bay, and thence runs in a direction sixty degrees to the west of the south for the length of six thousand six hundred feet to a pine-tree, which makes the first corner-boundary; and thence in a direction thirty degrees to the west of the north for a length of three thousand three hundred feet to a spruce-tree, which makes the second corner-boundary; and thence in a direction sixty degrees to the east of the north for a length of six thousand six hundred feet to a birch-tree, which makes the third corner-boundary; and thence along the banks of the said river, or north-west arm of Gaspey Bay, following the several courses of the water, to the first station or fir-tree standing on the bank of the said river, which makes the fourth and last corner-boundary of the said piece of land. The grant:
Description of the land granted.

To have and to hold the said piece of land of us, our heirs and successors, to him the said Edward Manwaring, and his heirs and assigns for ever, in free and common socage, to wit, by fealty, and Habendum and tenure of the said land.

Quit-rent.

the certain rent of ten shillings of lawful money of Great Britain every year in lieu of all manner of services, to be paid every year on the feast of Saint John the Baptist to our receiver-general of our revenue in our said province of Quebec, or, in case of his absence from the said province, to our governour in chief, lieutenant-governour, or other our commander in chief of our said province for the time being, for the use of us, our heirs and successors; the first payment of which rent shall be made on the feast aforesaid of Saint John the Baptist in the year of our lord one thousand seven hundred and sixty-nine.

And we do hereby give and grant for us, our heirs and successors, unto the said Edward Manwaring, his heirs and assigns for ever, full power and liberty to use, occupy, cultivate, and enjoy the premises aforesaid, in any manner he or they shall think fit, as well by cutting down any trees growing upon the said premises (large timber-trees fit for building ships not excepted) and by digging for, opening, and working any mines that may happen to be found in the said premises, excepting only mines of gold and silver, as by cultivating the surface of the ground on the same, or by any other method of improving it whatsoever, and to apply the produce and profits thence arising to his and their own use and benefit, paying only therefore to us, our heirs and successors, the rent above reserved of ten shillings of lawful money of Great Britain every year.

Reservation of
mines of gold
and silver.

But we do hereby expressly reserve to ourselves, our heirs and successors, all mines of gold or silver that may happen to be found upon the said premises, so that the said mines shall belong unto us, and them, in as full and ample manner as if the present grant had never been made. And we do likewise reserve to ourselves, our heirs and successors, full power, right, and authority to make and use all such roads, ways, and passages over the rest of the said premises hereby granted, and also to take, stop, divert, and use all such rivers, streams, ponds, and bodies of water, as shall by us, or them, be judged necessary or convenient for the working and improving the said mines.

Notice thereof
to be given to
the King's
officers within
six months
after their
discovery

And further, if any mine or mines of gold or silver shall be found upon the said premises hereby granted, the said Edward Manwaring, or his heirs or assigns, shall, within the space of six months after the

the discovery thereof, give notice of such discovery to our receiver-general of our revenue in the said province of Quebec, or to the deputy-auditor of the accounts of our revenue in the said province, or to our governour in chief, lieutenant-governour, or other our commander in chief of our said province for the time being: and, if he or they shall make default herein, the present grant shall at the end of the said six months next ensuing after such discovery of a gold or silver mine, become void, and the whole premises hereby granted shall revert or escheat to us, our heirs and successors, and shall become the absolute and intire property of us, or them, in the same manner as if the present grant had never been made.

under the penalty or forfeiting the whole premises hereby granted in case of a neglect thereof.

Also, if the yearly rent aforesaid of ten shillings of lawful money of Great Britain shall be behind and unpaid for the space of one whole year, the present grant shall at the end of the said year become void, and the whole premises hereby granted shall revert or escheat to us, our heirs and successors, and be the absolute and intire property of us, or them, in the same manner as if the present grant had never been made.

If the rent herein reserved is left unpaid for the space of a year, the present grant shall become void at the end thereof.

And whereas our loving and faithful subject John Collins, Esquire, the deputy-surveyor of our province of Quebec aforesaid, hath certified to our lieutenant-governour and council of our said province, that the premises hereby granted are unfit for the production of hemp or flax; and as therefore they ought rather to be employed in the feeding of neat cattle, or to be improved by opening and working stone-quarries, or mines of some other useful mineral, than to be planted, sown, or cultivated; and whereas it is our royal will and pleasure that the persons to whom we make grants of land in our said province should improve the lands so granted to them in some one of these ways, as has been more fully declared in our royal instructions to our trusty and well-beloved James Murray, Esquire, our captain-general and governour in chief of our said province, which have been published by him in our said province by a proclamation dated the first day of March in the year of our Lord one thousand seven hundred and sixty-five: we do therefore require of the said Edward Manwaring, his heirs and assigns, as a condition necessary to the continuance of the present grant, that, within three years from the day of the date of this grant, he the said Edward, or his heirs or assigns, do either put thirty neat cattle

Condition concerning the improvement of the premises.

on the premises hereby granted, and continue them thereon, till thirty acres of the said premises shall be fully cleared and improved, or begin to employ on the said premises five good and able labouring men in digging some stone quarry or other mine (mines of gold and silver only excepted) and continue them at work thereon for three years then next ensuing, or put twenty-four, or eighteen, or twelve, or six neat cattle on the said premises, and continue them thereon till twenty-four, or eighteen, or twelve, or six acres of the said premises shall be fully cleared and improved, and likewise employ on the same one, or two, or three, or four good and able labouring men respectively; that is to say, if he keeps twenty-four neat cattle on the premises, then to employ one good and able labouring man thereon; if eighteen neat cattle, two labouring men; if twelve neat cattle, three labouring men; and, if six neat cattle, four labouring men; in digging some stone quarry or other mine (mines of gold and silver only excepted) and continue them at work thereon for three years then next ensuing.

Penalty in case
of a breach of
this condition.

And if the said Edward Manwaring, or his heirs or assigns, shall neglect to fulfil this condition, the present grant shall immediately upon the breach of this condition become void, and the premises hereby granted shall revert or escheat to us, our heirs and successors, and become the absolute property of us, or them, in the same manner as if the present grant had never been made.

This grant shall
be registered
within six
months in the
office of the
clerk of the
inrolments,
and a docket of
it entered in
the auditor's
office.

And we do hereby direct and appoint, that within six months from the day of the date of these presents, a copy of this grant shall be registered in the office of our clerk of the inrolments of deeds and patents in our said province of Quebec, kept in the city of Quebec in the said province, together with a copy of the plan of the premises hereby granted made by the aforesaid John Collins the deputy-surveyor of our said province; and likewise that a docket of this grant be entered in the office of our deputy-auditor of the accounts of our revenue in the said province: and if this grant be not registered in the office of the clerk of the inrolments, and a docket thereof entered in the office of the said deputy-auditor in the space of six months, in the manner hereby directed and appointed, it shall at the end of the said six months become void; and the whole premises hereby granted shall revert or escheat to us, our heirs and successors, and become the absolute property of us,

or

of them, in the same manner as if the present grant had never been made.

And lastly, we do hereby for ourselves, our heirs and successors, grant to and covenant with the said Edward Manwaring, his heirs and assigns, that the present grant, after it and the plan thereto belonging shall have been registered in the office of the clerk of the inrolments, and a docket thereof shall have been entered in the office of the deputy-auditor as aforesaid, shall be good and effectual in the law against us, our heirs and successors, according to the true and plain meaning and intent thereof, notwithstanding any misrecital or mis-naming of any thing in the same recited or named, or meant and intended to be recited or named, or any other imperfection or mistake in the same whatsoever.

When duly registered, it shall be valid, notwithstanding any mistakes or imperfections.

In witness whereof we have caused these our letters to be made patent, and our public seal of our said province of Quebec to be affixed unto them, this twentieth of May, in the seventh year of our reign, and in the year of our Lord one thousand seven hundred and sixty-seven.

(Witness)

GUY CARLETON,
Lieutenant Governour.

A GRANT of Three Pieces of Land in the Province of QUEBEC, whereof the Two First contain about Eleven Hundred Acres, and the Third about Two Hundred Acres, situated on the South-west Branch of GASPEY BAY, called YORK RIVER, to FELIX O'HARA of GASPEY, Esquire, and JOHN MAC-CORD of QUEBEC, Merchant, and the Heirs and Assigns of each of them for ever, under the Public Seal of the Province of QUEBEC.

GEORGE the THIRD, by the Grace of God, King of Great Britain and the Territories thereunto belonging; To all to whom these present Letters shall come, sendeth Greeting:

The preamble.

Petition to the lieutenant-governour and council.

Their approbation of it.

Order to the deputy surveyor general to set off the land petitioned for, and to certify its quality.

WHEREAS our loving subjects Felix O'Hara of Gaspey, in our province of Quebec, Esquire, and John Mac-Cord of the city of Quebec, in the province aforesaid, merchant, have, by a petition presented to our trusty and well-beloved Guy Carleton, Esquire, our lieutenant-governour and commander in chief of our said province, and our council of the same, humbly requested us to grant unto them the said Felix and John, and their heirs and assigns for ever, thirteen hundred acres of land situated on the south-west branch of Gaspey Bay called York River; and our said lieutenant-governour and council of the province aforesaid, having duely and maturely considered the said petition, have approved the same, and have adjudged it to be reasonable and adviseable that we should grant the said quantity of thirteen hundred acres, situated as aforesaid, unto the said Felix O'Hara and John Mac-Cord, and their heirs and assigns for ever, upon the terms and conditions prescribed by our royal instructions in this behalf; and have thereupon ordered our loving and faithful subject, John Collins, Esquire, the deputy surveyor-general of our said province of Quebec, to set off for the said Felix and John the said quantity of thirteen hundred acres of land, situated as aforesaid, and

and at the same time to certify to our said lieutenant-governour and council the nature and quality of the land so set off; and, in pursuance of the said order, the said John Collins hath set off three separate pieces or lots of lands, that together contain about thirteen hundred acres, situated as aforesaid, from an original plan of Gaspey, taken by him the said John Collins upon an actual survey, and hath also certified to our lieutenant-governour and council aforesaid, that the said three pieces of land appear to be poor and barren and unfit for the production of hemp or flax, and that the woods on them consist chiefly of birch, spruce, and pine-trees of an inferieur kind, but produce neither oak nor pine fit for his Majesty's use :

His obedience to
the said order.

Quality of the
land so set off.

NOW KNOW YE that we, judging this request of the said Felix O'Hara and John Mac-Cord to be reasonable, and being therefore willing to gratify them therein, and of our especial grace, certain knowledge, and mere motion, have given, granted, and confirmed, and by these our present letters under our public seal of our province of Quebec do give, grant, and confirm for ourselves, our heirs and successors, unto the said Felix O'Hara and John Mac-Cord, and the heirs and assigns of each of them, the said three pieces or lots of land so set off for them, situated in our province of Quebec; to wit, the first piece, which is a four-sided figure, whereof three of the sides are strait lines, and which is situated on the south branch of the south-west branch of Gaspey Bay, called York River, and is included within a bounding line which begins in the following place and runs in the following directions; to wit, it begins at a birch-tree standing near the mouth of a small creek called Mill-Creek, and thence runs in a direction thirty-two degrees to the west of the south for a length of six thousand nine hundred and thirty feet to a poplar-tree, which makes the first corner-boundary of the said piece of land; and thence the said bounding-line runs in a direction fifty-eight degrees to the west of the north for a length of three thousand four hundred and sixty-five feet to a cedar-tree, which makes the second corner-boundary; and thence in a direction thirty-two degrees to the east of the north for a length of six thousand nine hundred and thirty feet to another cedar-tree standing on the bank of the river, which makes the third corner-boundary; and thence runs along the bank of the said south branch of the said river called York River, following the several courses of the said branch or small river to the

Grant.

Description of
the first piece of
land hereby
granted.

first station or birch-tree standing near the mouth of the said small creek called Mill-Creek, which makes the fourth and last corner-boundary of the said first piece or lot of land; which said first piece or lot of land contains about five hundred and fifty acres.

Description of
the second piece
of land hereby
granted.

And the second piece, or lot, of land, which is likewise a four-sided figure, whereof three of the sides are strait lines, and which is situated on the north branch of the aforesaid south-west branch of Gaspey Bay called York River, and included within a bounding-line which begins in the following place and runs in the following directions; to wit, it begins at a birch-tree standing on the bank of the said north branch of York River, in the right line formed by continuing the line that forms the western side of the aforesaid first piece, or lot, of land across the south branch aforesaid of York River, and across the marsh that lies between the south and north branches of the said river, and across the north branch of the same to the northern bank of the said north branch, and it runs from the said birch-tree in the direction aforesaid, to wit, in a direction thirty-two degrees to the east of the north for a length of six thousand nine hundred and thirty feet to a pine-tree, which makes the first corner-boundary of the said second piece, or lot, of land; and thence the said boundary-line runs in a direction forty-one degrees to the east of the south for a length of three thousand six hundred and eighty feet to another birch-tree, which makes the second corner-boundary; and thence runs in a direction thirty-two degrees to the west of the south for a length of six thousand nine hundred and thirty feet to a maple-tree standing on the said north bank of York River, which makes the third corner-boundary; and thence runs along the bank of the said north branch of the said river, following the several courses of the said branch, to the first station or birch-tree standing on the bank of the said north branch in the line or direction afore-described, which said birch-tree forms the fourth and last corner-boundary of the said second piece, or lot, of land; which said second piece, or lot, of land contains about five hundred and fifty acres.

Description of
the third piece
of land hereby
granted.

And the third piece, or lot, of land, which is likewise a four-sided figure, whereof three of the sides are strait lines, and which is situated on the broad part of the river aforesaid called York River, before it divides into the two branches that include the marshy ground

ground before-mentioned called above the North and South Branches of the said river, which said third piece or lot of land is included within a bounding-line, which begins in the following place and runs in the following directions; to wit, it begins at a fir-tree standing on the northern bank of the said river called York River, at the mouth of a spring-branch near the Winter House of the said Felix O'Hara, and thence runs due north for a length of four thousand two hundred feet to a cedar-tree, which makes the first corner-boundary of the said third piece or lot of land; and thence runs in a direction seventy-one degrees to the west of the north for a length of two thousand one hundred feet to a birch-tree, which makes the second corner-boundary; and thence runs due south to a spruce-tree standing on the bank of the said river called York River, which makes the third corner-boundary; and thence runs along the bank of the said river, following the several courses of the said river, to the first station or fir-tree standing on the north bank of the said river at the mouth of a spring-branch near the house of the said Felix O'Hara, which said fir-tree makes the fourth and last corner-boundary of the said third piece, or lot of land; which said third piece, or lot of land contains somewhat less than two hundred acres.

To have and to hold the said three pieces, or lots, of land hereby granted, of us, our heirs and successors, to them the said Felix O'Hara and John Mac-Cord, and their heirs and assigns, and the heirs and assigns of each of them, for ever, to be holden, occupied, and enjoyed by them the said Felix and John, and their heirs and assigns, as tenants in common and not as joint-tenants, in free and common socage, to wit, by fealty and the certain rent of twenty-six shillings of lawful money of Great Britain every year, in lieu of all manner of services, to be paid every year on the feast day of Saint John the Baptist to our receiver-general of our revenue in our said province of Quebec, or, in case of his absence from the said province, to our governour in chief, lieutenant-governour, or other our commander in chief of our said province for the time being, for the use of us, our heirs and successors; the first payment of which rent shall be made on the aforesaid feast day of Saint John the Baptist in the year of our Lord one thousand seven hundred and sixty-nine.

Habendum and
tenure.

Quit-rent.

And we do hereby give and grant for us, our heirs and successors, unto the said Felix O'Hara and John Mac-Cord, and each of them, their heirs and assigns, and the heirs and assigns of each of them, full power and liberty to use, occupy, cultivate, and enjoy the premises aforesaid, in any manner he or they shall think fit, as well by cutting down any trees growing upon the said premises (large timber-trees fit for building ships not excepted) and by digging for, opening, and working any mines that may happen to be found on the said premises (excepting only mines of gold and silver) as by cultivating the surface of the ground on the same, or by any other method of improving it whatsoever, and to apply the produce and profits thence arising to his and their own use and benefit, paying only therefore to us, our heirs and successors, the rent above reserved of twenty-six shillings of lawful money of Great Britain every year.

Reservation of
all mines of
gold and silver.

But we do hereby expressly reserve to ourselves, our heirs and successors, all mines of gold or silver that may happen to be found upon the said premises, so that the said mines shall belong unto us, and them, in as full and ample manner as if the present grant had never been made. And we do likewise reserve to ourselves, our heirs and successors, full power, right, and authority to make and use all such roads, ways, and passages over the rest of the said premises hereby granted, and also to take, stop, divert, and use all such rivers, streams, ponds, and bodies of water, as shall by us, or them, be judged necessary or convenient for the working and improving the said mines.

Notice thereof
to be given to
the King's
officers within
six months
after their
discovery.

And further, if any mine or mines of gold or silver shall be found upon the said premises hereby granted, the said Felix O'Hara and John Mac-Cord, or one of them, or their heirs or assigns, or one of them, shall, within the space of six months after the discovery thereof, give notice of such discovery to our receiver-general of our revenue in the said province of Quebec, or to the deputy-auditor of the accounts of our revenue in the said province, or to our governour in chief, lieutenant-governour, or other our commander in chief of our said province for the time being: and, if he or they shall make default herein, the present grant shall at the end of the said six months next ensuing after such discovery of a gold or silver mine, become void, and the whole premises hereby granted shall revert or escheat to us, our heirs and successors, and shall

Penalty of a
neglect herein.

shall become the absolute and intire property of us, or them, in the same manner as if the present grant had never been made.

Also, if the yearly rent aforesaid of twenty-six shillings of lawful money of Great Britain shall be behind and unpaid for the space of one whole year, the present grant shall at the end of the said year become void, and the whole premises hereby granted shall revert or escheat to us, our heirs and successors, and be the absolute and intire property of us, or them, in the same manner as if the present grant had never been made.

Penalty for non-payment of the quit-rent.

Condition concerning the improvement of the premises.

And whereas our loving and faithful subject John Collins, Esquire, the deputy-surveyor of our province of Quebec aforesaid, has certified to our lieutenant-governour and the council of our said province, that the premises hereby granted are poor and barren and unfit for the production of hemp and flax; and as therefore they ought rather to be employed in the feeding of neat cattle, or to be improved by opening and working stone-quarries, or mines of some other useful mineral, than to be planted, sown, or cultivated; and whereas it is our royal will and pleasure that the persons to whom we make grants of land in our said province, should improve the lands so granted to them in some one of these ways, as has been more fully declared in our royal instructions to our trusty and well-beloved James Murray, Esquire, our captain-general and governour in chief of our said province, which have been published by him in our said province by a proclamation dated the first day of March in the year of our Lord one thousand seven hundred and sixty-five: we do therefore require of the said Felix O'Hara and John Mac-Cord, and their heirs and assigns, as a condition necessary to the continuance of the present grant, that within three years from the day of the date of this grant, they the said Felix and John, or one of them, or their heirs and assigns, or the heirs or assigns of one of them, do either in the first place, put seventy-eight neat cattle on the premises hereby granted, and continue them thereon till seventy-eight acres of the said premises shall be fully cleared and improved; or in the second place, that they shall within the said three years begin to employ on the said premises thirteen good and able labouring men in digging some stone quarry or other mine, (mines of gold and silver only excepted) and continue them at work thereon for three

years then next ensuing; or, in the third place, that they shall within the same time employ only twelve hundred acres or eleven hundred acres, or some smaller number of hundreds of acres, of the said premises in feeding neat cattle, at the rate of three neat cattle to every fifty acres, and continue the said number of neat cattle thereon till the said number of acres, to wit, three acres for every fifty, shall be fully cleared and improved; and likewise employ on the said premises one, or two, or some greater number of good and able labouring men, at the rate of one labouring man for every hundred acres so improved, in digging some stone quarry, or other mine (mines of gold and silver only excepted) and continue them at work thereon for three years thence next ensuing. And if the said Felix O'Hara and John Mac-Cord, or their heirs or assigns, shall neglect to fulfil this condition, the present grant shall immediately upon the breach or non-performance thereof become void, and the premises hereby granted, or such part thereof as hath not been cultivated in the manner here described and directed, shall revert or escheat to us, our heirs and successors, and become the absolute property of us, or them, in the same manner as if the present grant had never been made.

Penalty in case of a breach of this condition.

Reservation of a right to make roads through the premises hereby granted.

And whereas it may hereafter become expedient for the inhabitants of the said province of Quebec that one or more public roads, or highways, may be made through some parts of the premises hereby granted, we do therefore hereby reserve to us, our heirs and successors, a right of making any number of public roads, or highways, of a breadth not exceeding one hundred feet, through any parts of the said premises, excepting such parts whereon any dwelling houses or other buildings shall be erected, whenever it shall be thought adviseable by our governour in chief, or lieutenant-governour, or other our commander in chief of our said province for the time being, by and with the advice and consent of our council of the same, to cause such public roads, or highways, to be made.

Reservation of a right to build fortifications on the premises hereby granted.

And whereas it may likewise at some time hereafter become expedient for the peace and safety of our said province of Quebec to erect and build forts, or fortresses, or to make other works of military defence in various parts of the said province, we do therefore also reserve to ourselves, our heirs and successors, full power, right, and authority to erect and build any forts or fortresses, and

to make any other works of military defence on any parts of the said premises hereby granted, and to take, use, and occupy, and retain in our hands as long as we shall think fit, such parts of the said premises as may be necessary for the said purposes, whenever we, or our heirs or successors, shall signify it to be our, or their pleasure so to do by an order given by us, or them, in our, or their privy council in Great Britain, or it shall be judged to be adviseable and expedient so to do by our governour in chief, lieutenant-governour, or other our commander in chief of our said province of Quebec, by and with the advice and consent of our council of the same.

Provided nevertheless, that, if any dwelling houses, or other buildings erected on the said premises by the said Felix O'Hara and John Mac-Cord, or their heirs or assigns, be destroyed or taken into the hands of us, our heirs or successors, for the purposes last-mentioned, by virtue of the said power and authority hereby reserved, a reasonable compensation shall be given to the said grantees, or their heirs or assigns, for the loss and damage they shall have thereby sustained, by us, our heirs, or successors; and this compensation, shall be given them before the said houses or buildings shall be taken from them, if it shall be done in time of peace; and if it shall be done in time of war, within one year after the said houses and buildings shall be taken from them.

And we do hereby direct and appoint, that within six months from the day of the date of these presents, a copy of this grant shall be registered in the office of our clerk of the inrolments of deeds and patents in our said province of Quebec, kept in the city of Québec in the said province, together with a copy of the plan of the premises hereby granted, made by the aforesaid John Collins, the deputy-surveyor of our said province; and likewise that a docket of this grant be entered in the office of our deputy-auditor of the accounts of our revenue in the said province: and if this grant be not registered in the office of the clerk of the inrolments, and a docket thereof entered in the office of the said deputy-auditor in the space of six months, in the manner hereby directed and appointed, it shall at the end of the said six months become void; and the whole premises hereby granted shall revert or escheat to us, our heirs and successors, and become the absolute property of us,

This grant shall be registered within six months in the office of the clerk of the inrolments, and a docket of it entered in the auditor's office.

or

or them, in the same manner as if the present grant had never been made.

When duly registered, it shall be valid, notwithstanding any mistakes or imperfections.

And lastly, we do hereby for ourselves, our heirs and successors, grant to and covenant with the said Felix O'Hara and John Mac-Cord, and their heirs and assigns, and the heirs and assigns of each of them, that the present grant, after it and the plan thereto belonging shall have been registered in the office of the clerk of the inrolments, and a docket thereof shall have been entered in the office of the deputy-auditor as aforesaid, shall be good and effectual in law against us, our heirs and successors, according to the true and plain meaning and intent thereof, notwithstanding any misrecital or mis-naming of any thing in the same recited or named, or meant and intended to be recited or named, or any other imperfection or mistake in the same whatsoever.

In witness whereof we have caused these our letters to be made patent, and our public seal of our said province of Quebec to be affixed unto them, this twentieth of May, in the seventh year of our reign, and in the year of our Lord one thousand seven hundred and sixty-seven.

(Witness)

GUY CARLETON,
Lieutenant Governour.

N. B. The four preceding grants of land, to wit, the three grants to Mr. Edward Manwaring, and this to Mr. O'Hara and Mr. Mac-Cord, are all that passed the public seal of the province during the three years that I resided in the said province, to wit, from September 1766, to September 1769.

F. M.

A short

N U M B E R XXIX.

A short ACCOUNT of the GRANTS made by the KING of FRANCE of a Liberty to work the Iron Mines near the Town of Three Rivers, usually known by the Name of *les Forges de Saint Maurice*, and mentioned in his MAJESTY'S Instructions above recited, concerning GRANTS of Land, Page 175, so far as it may be collected from the Instruments that have come to my Knowledge, and which hereafter follow.

March 22, 1730, the king of France granted a licence to work these mines (called a privilege in the order of council of April 22, 1737) to Mr. *Francheville*. It does not appear clearly whether this privilege was granted to Mr. *Francheville* alone, or to him and others conjointly. But on

January 16, 1733, a partnership seems to have been entered into for working these mines between Mr. *Francheville*, Mr. *Peter Poulin*, Mr. *Gamelin*, and Mr. *Cugnet*; Mr. *Peter Poulin* was at this time, jointly with his brothers, the proprietor of the fief and seigniory of *Saint Maurice*, which is contiguous to the Forges, and gives name to them. The Forges are not actually upon this seigniory, but upon another seigniory of a small extent called the seigniory of *Préville*.

October 23, 1735, the widow of Mr. *Francheville* and Mr. *Poulin*, Mr. *Gamelin*, and Mr. *Cugnet* made a surrender to the king both of the privilege of working the iron mines of *Saint Maurice*, and of the seigniory of *Saint Maurice*, and the buildings erected upon it for the use of the mines.

October 15, 1736, *Peter Poulin* and *Louisa de Boulanger* his wife, and *Michael Poulin*, his brother (a priest and one of the canons of the cathedral of Quebec) sold the fief and seigniory of *Saint Maurice* (which was necessary to the working the mines)

mines) to Mr. *Francis Stephen Cugnet*, Mr. *Peter Francis Olivier de Vezain*, Mr. *James Simonnet*, and *Ignatius Gamelin*, a Merchant of Montreal, their heirs and assigns for ever, for the sum of six thousand French livres; which they might delay the payment of as long as they thought fit, provided they paid a yearly interest of three hundred livres for it.

It seems on this occasion that the widow *Francheville* and Mr. *Peter Poulin* thought fit to give up their concern in the adventure of the mines, and Mr. *Gamelin* and Mr. *Cugnet* resolved to go on with it; and that they therefore entered into a new partnership with each other, and three new undertakers, Mr. *Olivier de Vezain*, Mr. *James Simonnet*, and Mr. *Thomas James Taschereau*, to go on with this undertaking: that for this Purpose the whole former company of adventurers, to wit, the widow *Francheville*, Mr. *Peter Poulin*, Mr. *Gamelin*, and Mr. *Cugnet* made a surrender of their grant to the king, in order that a new grant of the liberty of working them might be made to the new undertakers, that is, to Mr. *Cugnet*, Mr. *Gamelin*, Mr. *Olivier de Vezain*, Mr. *Simonnet*, and Mr. *Taschereau*, and for the same purpose the proprietors of the seigniory of Saint Maurice (the possession of which was necessary to the carrying on the adventure of the mines) sold it to the first four of the new company of adventurers, namely, Mr. *Cugnet*, Mr. *Gamelin*, Mr. *Olivier de Vezain*, and Mr. *Simonnet*.

April 22, 1737, The king of France accepted the surrender that had been made on the 23d of October 1735, and made a new grant to the new company of adventurers, that is, to Mr. *Cugnet*, Mr. *Gamelin*, Mr. *Olivier de Vezain*, Mr. *Simonnet*, and Mr. *Taschereau*, of the liberty of working any iron mines they might meet with in the tract of country extending from the seigniory of *Yamachiche* to the seigniory of the *Cape de la Madeleine*, including both those seigniories. Within this extent of country they may work any iron mines they can find, in whose ground soever they may lie, without any molestation from the said owners of the soil, or any rent or indemnification to be made them on this account, unless where they spoil some of their cultivated lands; in which case they shall make

them amends for the actual damage they do to these cultivated grounds, but no more. And the grantees shall enjoy this liberty of working these mines for a term of twenty years, without paying the king any rent, or profit, or consideration, on this account, whatsoever; without even the tenth part of the produce of the mines, which in such cases is lawfully due to him. But all this the king intirely remits and releases, and gives the undertakers full power to turn all the produce of these mines to their own advantage. He further gives them power to take any rivers or streams of water, and stop them, so as to make bodies, or reservoirs, of water for the use of the iron works, in whosoever ground they may happen to be, making amends to the owners of the ground for the actual damage, if there is any, thereby done to lands already cultivated, but nothing more. He then orders that all disputes between the undertakers and the owners of the land where such mines and waters are found, shall be decided in a summary method, without any expence to the parties, by the intendant of the province, or in his absence by the commissary of the marine, whom by this order of council he authorizes and commissions to this purpose. He then promises, by way of encouragement to this undertaking, to advance to the undertakers the sum of 100,000 French livres, including about 42,900 which he had already advanced to them on this account in Canada, for which they had given him an acknowledgement, and bound themselves to the payment of it by a bond dated at Quebec, the 18th of October 1736. In the same bond they had likewise undertaken to repay to the king the further sum of 10,000 French livres, which the king had before advanced to the first company, of *Francheville* and *Poulin*, *Gamelin* and *Gugnet*, for erecting the buildings and other preparatory works necessary to the same undertaking; which sum of money the second company of adventurers undertakes to repay to the crown in consideration of their taking possession of the buildings and other works thereby erected, and reaping the advantages they were intended to produce. And the king, by the present order, accepts of the new adventurers bond for the repayment of this 10,000 livres, and acquits and discharges the widow *Francheville* and *Mr. Poulin* from all obligation to repay it. He further orders that, as to the rest of the sum he has promised to advance to them (which is the difference between the two sums already advanced and 100,000,

or between 52,900 livres, and 100,000 livres, that is, about the sum of 47,000 livres) they shall give his officers bonds for the repayment of it as fast as it is advanced to them, in the same manner they have done for the sum of 52,900 livres already advanced. He further orders the new company of adventurers to pay the widow Francheville, and Mr. Poulin the money they have expended in the working of the mines, by which I suppose is meant the money they have laid out in buying utensils, or tools, and erecting permanent buildings for the carrying on those works. He then directs the new undertakers to buy the feigniory of Saint Maurice of Mr. Peter Poulin and the other joint-proprietors of it for an annual rent of 300 French livres, redeemable for 6000 livres, if it has not been done already, as in truth it had by the afore-mentioned deed of sale on the 15th of October 1736.

May 1st 1743, the king re-united the establishment of the Forges with its dependances to his demesne by an order of his council of state. By this general expression of the *establishment of the Forges and their dependances*, which the king re-united to his demesne, I suppose is meant the privilege or liberty granted to the new undertakers to open and work the mines, and all the buildings, utensils, and tools of all sorts, prepared by them for that undertaking, and likewise the feigniory of Saint Maurice, as being in a manner necessary to the carrying on the business of the mines, whenever it should be attempted again, either by the king himself or a new set of adventurers. For it is certain the feigniory of Saint Maurice was afterwards considered as belonging to the king in the same manner and upon the same terms as it had belonged to the second company of adventurers after the sale of it to them by Mr. Peter Poulin and his brother on the 15th of October 1736, that is, upon condition that he should pay to Mr. Poulin a yearly rent of 300 French livres till he thought fit to redeem this rent by paying him at once 6000 livres. For after this surrender of the grant and works made by the second company of undertakers in 1743, the king of France ordered the mines to be wrought at his own expence and for his own profit, and one Mr. Giles Pommereau of Three Rivers was employed as treasurer and paymaster of the money allotted by the king to this undertaking: and by a certificate signed by this Mr. Pommereau on the 4th of September 1764,

it appears, that while he served the king of France in this employment he paid every year, by order of Monsieur Bigot, the intendant, the sum of 300 French livres, as a rent due to Mr. Poulin for the seigniory of Saint Maurice.

These are all the particulars relating to these iron mines that I have been able to collect from the instruments that have been put into my hands.

Quebec, June 1st,
1767.

FRANCIS MASERES,
Attorney-General.

A Deed of Sale of the Fief and Seigniory of Saint Maurice near Three Rivers by PETER POULIN of QUEBEC, and LOUISA DE BOULANGER his Wife, and MESSIRE MICHAEL POULIN, Priest, Proprietors of the same, to Mr. FRANCIS STEPHEN CUGNET, PETER FRANCIS OLIVIER DE VEZAIN, JAMES SIMONNET, and IGNATIUS GAMELIN, Merchant of Montreal, their heirs and assigns, dated the 15th of October 1736.

PAR devant les notaires royaux en la prévôté de Québec, y rési-^{Noms des Ven-}
dents, sous-signés, furent présents en leurs personnes le sieur *Pierre Poulin*, marchand de cette ville, y demeurant rue sous le fort, ^{deurs.}
et damoiselle *Louise de Boulanger*, son épouse, qu'il autorise à l'effet des présentes, et *Messire Michel Poulin*, prêtre, chanoine de l'église cathédrale de cette ville, et faisant les fonctions curiales par voye de mission en la paroisse de Nôtre Dame de la Nativité, seigneurie de Beauport ;

Lesquels de leur bon gré et volonté, solidairement l'un pour l'autre ^{La Vente.}
et l'un d'eux seul pour le tout, sans division ni discussion, renonçant
D d 2 audits

audits bénéfiques, ont reconnu et confessé, avoir vendu, cédé, quitté, transporté et délaissé, comme de fait vendent, cèdent, quittent, transportent, & délaissent, par ces présentes, des maintenant & à toujours, avec promesse par la dite voye solidaire de garantir de tous troubles, dettes, hypothèques, dons, doüaire, éviction, aliénation & autres empêchements généralement quelconques, au sieurs

Noms des acqué-
reurs.

François Etienne Cugnet, premier conseiller au conseil supérieur de Québec et directeur du domaine d'occident en Canada, demeurant au dit Québec, *Pierre François Olivier de Vezain*, *Jacques Simonnet*, maître de Forges, de présent en cette ville, et *Ignace Gamelin*, négociant à Montréal, y demeurant ordinairement, aussi de présent en cette ville, à ce présents et acceptants, acquéreurs ;

Habendum.
Description des
terres vendues.

Pour eux, leurs hoirs, et ayant cause; sçavoir, le fief nommé *Saint Maurice* contenant une lieüe de front sur la rivière des *Trois Rivières*, à prendre du côté du sud-ouëst aux confins de la seigneurie appartenante aux heritiers *La Fond* en descendant la dite rivière, sur deux lieües de profondeur, avec droit de pesche sur la dite rivière vis à vis la dite lieüe de front, circonstances et dependances; sans par les dits sieurs vendeurs en rien réserver ni retenir, quand même la dite seigneurie se trouveroit de plus grande étendue ;

Titre des ven-
deurs.

Et auxquels dits sieurs vendeurs la dite seigneurie appartient: comme héritiers de feu sieur *Maurice Poulin* et de défunte damoiselle *Jeanne Jalope*, leurs ayeul et ayeule, et à laquelle dite damoiselle *Jeanne Jalope*, pour lors veuve du dit sieur *Maurice Poulin*, le dit fief auroit été accordé tant en son nom qu'au noms de ses enfants, par Monsieur *Du Chesneaux* ci-devant intendant en ce païs, et par titre de concession du quatorze Août, mille, six cents, soixante, seize; lequel titre et autre papiers concernant la propriété du dit fief les dits sieurs vendeurs promettent remettre incessamment aux dits sieurs acquéreurs.

La présente
vente se fait
pour le prix de
6000 livres
Tournois.

Cette vente, cession, et transport ainsi fait à la charge par les dits sieurs acquéreurs des droits et redevances dont le dit fief se trouve chargé envers le domaine de sa majesté, quitte des dits droits en passé jusqu'à ce jour; outre ce, pour et moyennant le prix et somme de six mille livres de prix principal :

Rente de 300
l vres par an
constituée sur le
dit prix de
300 livres.

Laquelle dite somme de six mille livres, du consentement des sieurs vendeurs, est demeurée en mains des dits sieurs acquéreurs, qui l'ont

l'ont retenu à constitution de trois cents livres de rente annuelle et perpétuelle rachetable à toujours; que les dits sieurs acquéreurs promettent et s'obligent solidairement, l'un pour l'autre et l'un d'eux seul pour le tout, bailler et payer aux dits sieurs vendeurs, ou à leurs ayants cause, jusqu'au parfait rachapt d'icelle; qui ne pourra être fait qu'en un seul payement, et par la dite somme principale de six mille livres avec les arrérages de rente qui seront dûs alors; la dite rente échéante au premier jour du mois de Janvier de chaque année. Et fera due par les dits sieurs acquéreurs aux dits sieurs vendeurs au premier jour de Janvier prochain la somme de sept cents, cinquante livres pour arrérages de la dite rente, attendu la possession qu'ils ont eu ci-devant du dit fief, étant convenu avec la damoiselle *Tereze de Couagne*, veuve du sieur *François Poulin de Francheville*, de lui payer la somme de quatre cents, cinquante livres pour arrérages de la même rente à elle due par l'acte de cession et abandon, qu'elle auroit fait et consenti devant les notaires sous-signés en date de ce jour des droits qu'elle avoit dans le privilège de la mine de fer, qui se trouve sur l'étendue du dit fief et autres lieux accordés par sa majesté au dit feu sieur *Francheville* son mari, et ce au profit des dits sieurs acquéreurs.

Et pour sureté de la dite rente constituée et fort principale d'icelle, les dits sieurs acquéreurs par la dite voye solidaire ont obligé, affecté, et hypothéqué tous leurs biens généralement quelconques, présents et futurs, et spécialement le susdit fief présentement vendu, sans que les obligations générale et spéciale dérogent l'une à l'autre.

Et au moyen de ce que dessus les dits sieurs *Pierre Poulin* et son épouse, et le dit sieur *Michel Poulin* ont cédé et transporté, cèdent et transportent routs droits de propriété, fonds, très fonds, noms, raisons, et actions qu'ils peuvent avoir et prétendre dans le dit fief, droits de justice et autres, au profit des dits sieurs acquéreurs, leurs hoirs, et ayants cause, pour en jouir, faire et disposer comme de leurs propres biens et loyal acquêt en vertu des présentes.

Voulant et consentant, &c. promettant, &c. obligant, &c. renonçant, &c.

Fait et passé au dit Québec en l'étude de *Pinguet*, l'un des dits notaires, ou est resté la minute des présentes, le quinze Octobre, mille,

mille, sept cents, trente, six, apres midi. Et ont les dits sieurs vendeurs et acquéreurs et notaires sous-signés signé, lecture faite suivant l'ordonnance.

Ainsi signé à la minute des présentes {POULIN, prêtre,
POULIN.

LOUISE DE BOULANGER POULIN,

IGNACE GAMELIN,

SIMONNET,

OLIVIER DE VEZAIN,

CUGNET, avec paraphe,

BOISSEAU, Notaire, avec paraphe,

.Et de nous, Notaire sous-signé,

P I N G U E T.

Compagnie des Forges de Saint Maurice.

JE sous-signé, l'un des intéressés en l'exploitation des Forges de Saint Maurice, reconnois avoir reçu du sieur *Pierre Poulin*, marchand de cette ville, les titres, et papiers concernant la propriété du fief et seigneurie de *Saint Maurice*, consistant, sçavoir,

1. Un contract de concession de la dite seigneurie par Monsieur *Du Chesneau*, lors intendant en ce pays, en date du 14 Août, 1676.

2. Un acte contenant donation par *Jeanne Jalope*, veuve de *Maurice Poulin* sieur de la *Fontaine*, au profit de *Michel Poulin* son fils, et transaction entre le dit *Michel Poulin*, et ses frères et sœur, en date du 19 Janvier, 1683.

3. Une quittance du sieur *Jean Baptiste Poulin de Courval* au dit sieur *Michel Poulin* son frère, en date du 30 Avril, 1683, en conséquence de la dite transaction.

4. Une

4. Une autre quittance du sieur *François le Maître de la Morille* au dit sieur *Michel Poulin* son beau-frère, en date du 28 Novembre, 1690, aussi en conséquence de la dite transaction.

5. L'acte de foi et hommage du dit sieur *Pierre Poulin* tant pour lui que pour ses frères, pour le dit fief et seigneurie de Saint Maurice en date du 4 Avril, 1725.

6. L'aveu et dénombrement du dit fief de Saint Maurice donné par le dit sieur Pierre Poulin le 5 du dit mois d'Avril, 1725, et un procès verbal d'arpentage fait par un arpenteur juré, le 25 Avril, 1726, pour la séparation du dit fief et seigneurie de *Saint Maurice* d'avec le fief de *Sainte Marguerite*.

De la remise des quels titres et papiers en conséquence du contrat de vente ci-devant et des autres parts transcript, je quitte et décharge le dit sieur Pierre Poulin et tous autres, tant pour moi que pour mes associés en la compagnie des Forges de Saint Maurice, acquéreurs du dit fief.

Fait à Québec le 27 Décembre, mille, sept cents, trente, six.

CUGNET et Compagnie.

An Order of the Council of State of the King of FRANCE, empowering the Sieurs CUGNET, TASCHEREAU, OLIVIER DE VEZAIN, SIMONNET and GAMELIN, to open and work the Iron Mines contained within the Tract of Land that reaches from the Seigniorie of YAMACHICHE to the Seigniorie of the CAPE DE LA MADELEINE, including both those Seigniories, dated April 22, 1737.

EXTRAIT du conseil d'état du roi du 22 Avril 1737, portant permission aux sieurs *Cugnet, TascHEREAU, Olivier de Vezain, Simonnet, et Gamelin*, de faire l'ouverture des mines de fer dans l'étendue de païs qui se trouve depuis et compris la seigneurie d'*Yamachiche* jusques et compris *la cape de la Madeleine*.

Et sa majesté voulant pourvoir à l'establissement solide de l'exploitation des dites mines de fer, pour procurer à la colonie de la Nouvelle France les avantages que cet establissement peut produire, et ayant égard aux représentations qui lui ont été faites de la part des dits *Cugnet, TascHEREAU, Olivier de Vezain, Simonnet, et Gamelin*, et aussi à l'avis des sieurs *Marquis de Beaubarnois*, gouverneur et lieutenant-général pour sa majesté en la Nouvelle France, et *Hocquart*, intendant au dit païs, le roi, étant en son conseil, a autorisé, agréé, et accepté, autorisé, agréé, et accepte, la cession et remise faite par la dite veuve *Francheville* et par les dits sieurs *Pculin, Gamelin, et Cugnet*, par le dit acte du vingt-trois Octobre, mille, sept cents, trente, cinq, du privilège accordé au dit feu sieur *Francheville* par le dit brevet du vingt-cinq Mars, mille, sept cents, trente, de la dite seigneurie de Saint Maurice, et des establissements faits pour l'exploitation des dites mines :

The king accepts the surrender of the liberty granted to the former undertakers; which surrender was made by a deed dated October 23, 1735.

Grant of the liberty to dig and work the iron mines.

En conséquence a accordé et accorde aux dits sieurs *François Etienne Cugnet, Thomas Jacques TascHEREAU, Pierre François Olivier de Vezain, Jacques Simonnet, et Ignace Gamelin*, tant pour eux que pour leurs héritiers et ayant cause, la permission de faire l'ouverture

l'ouverture des dites mines de fer dans l'étendue de pays qui se trouve depuis et compris la seigneurie d'*Yamachiche*, jusques et compris la seigneurie du *cap de la Madeleine*, et de les faire fouler et travailler à leur profit, à l'exclusion de tous autres, et d'y faire construire les forges, fourneaux et autres ouvrages qu'il conviendra, pendant l'espace de vingt années consécutives, à compter seulement du jour que le fourneau sera allumé et chargé pour la première fois suivant le procès verbal qui en sera dressé par le lieutenant général de la juridiction des *Trois Rivières* que sa majesté a commis à cet effet.

within a certain tract of country.

Sans que les propriétaires des terres, sur lesquelles les dites mines seront ouvertes, puissent y rien prétendre; à la charge de leur rembourser les prix des terres qui se trouveront cultivées suivant l'estimation qui en sera faite par experts convenus entre les dits *Cugnet, Taschereau, Olivier de Vezain, Simonnet, et Gamelin*, et les dits propriétaires, ou qui seront nommés d'office; et sans que les dits *Cugnet, Taschereau, Olivier de Vezain, Simonnet et Gamelin* soient tenus à aucun remboursement pour l'ouverture et exploitation des dites mines sur les terres qui n'auront point été cultivées.

Leur permet aussi sa majesté de faire les prises et retenues d'eaux nécessaires à la dite exploitation dans les endroits et sur les terrains qui se trouveront les plus commodes, à condition d'indemniser pareillement les propriétaires des terres sur lesquelles les dites prises et retenues d'eaux seront faites, s'il y a lieu à dédommagement, et ce à dire d'experts convenus ou nommés d'office.

Sans que pour raison de la dite exploitation les dits sieurs *Cugnet, Taschereau, Olivier de Vezain, Simonnet et Gamelin* soient tenus de payer à sa majesté, ni à ses successeurs rois, aucune finance ni indemnité pour quelque cause, ni sous quelque prétexte que ce soit; dont sa majesté leur a fait par le présent arrêt don et remise, même du droit de dixième à elle appartenante.

The grantees shall pay no rent or profit whatsoever to the king for this liberty of working the mines; not even the tenth part of the produce of them, which properly is due to him.

Veut sa majesté que tous les procès, différends, et contestations qui pourroient intervenir pour raison de la dite exploitation entre eux et les propriétaires, tant des terres sous lesquelles les dites mines seront ouvertes, que de celles sur lesquelles il sera fait des prises et retenues d'eaux pour servir à l'exploitation des dites mines, soient jugées sommairement et sans fraix par l'intendant de la Nouvelle

Disputes between the grantees of the mines and the owners of the land they shall make use of shall be determined in a sum-

mary way by the intendant or commissary of the marine.

France; ou en son absence par le commissaire de la marine ordonnateur au dit pays, que sa majesté a commis et commet à cet effect, leur attribuant pour raison de ce toute cour, juridiction, et connoissance en première instance, (sauf l'appel au conseil de sa majesté,) et icelle interdisant à toutes ses cours et autres juges; permettant au dit intendant ou commissaire ordonnateur, de subdéléguer sur les lieux telles personnes qu'ils aviseront pour faire l'instruction des procès qui nâîtront à l'ouverture des dites mines.

The king will advance to the grantees a sum of 100,000, livres, including about 42,000, advanced by him already;

the receipt of which 42,000 livres they have acknowledged by a bond made at Quebec the 18th of October 1736.

Et pour faciliter aux dits sieurs *Cugnet, Taschereau, Olivier de Vezain, Simonnet, et Gamelin*, les moyens de faire les établissements nécessaires, à l'exploitation des dites mines, sa majesté veut bien leur faire l'avance qui leur est nécessaire d'une somme de cent milles livres, y comprise celle de quarante deux milles, neuf cents; soixante et dix livres, seize sols, neuf deniers, qui leur a été remise de ses deniers par le commis en Canada des trésoriers généraux de la marine, ainsi qu'ils l'ont reconnu par l'obligation qu'ils ont passée devant Pinguet et son confrère, notaires, à Québec le dit jour dix-huit Octobre, mille, sept cents, trente-six, laquelle obligation sa majesté a agréée et approuvée tant pour la dite somme de quarante deux milles, neuf cents, soixante-dix livres, seize sols, cinq deniers, que pour celle de dix milles livres avancée pour le même établissement au dit feu sieur *Francheville*, et du paiement de laquelle la veuve *Francheville* et le dit sieur *Poulin* demeurent en conséquence quittés et déchargés.

This sum of money so advanced by the king shall be repaid him in three years by three different yearly payments.

The grantees shall give bonds to the king for the due repayment of the rest of the 100,000 livres as soon as they receive it from the officers of the king's revenue.

They shall reimburse the former grantees of the mines the expences they have incurred in working them;

Veut et entend sa majesté qu'ils fassent le remboursement des dites avances en telle nature de paiement qu'elle jugera à propos de régler, soit en fers provenant des forges ou en argent; et ce dans trois années, à commencer le premier remboursement dans le courant de l'année mille, sept cents, trente-neuf, et ainsi d'année en année jusqu'au parfait paiement; pour la seureté duquel ils seront tenus de passer obligation au profit de sa majesté de ce qui reste à leur avancer jusqu'à concurrence de la dite somme de cent milles livres, à fur et à mesure que la remise en sera faite sur les ordres qui en seront donnés par sa majesté.

Seront pareillement tenus, si fait n'a été, de rembourser à la dite veuve *Francheville* et au dit sieur *Poulin* les dépenses par eux faites, ou par le dit feu sieur *Francheville*, pour l'exploitation des dites mines, à raison de l'intérêt qu'ils ont l'un et l'autre en la dite société
du

du seize Janvier, mille, sept cents, trente-trois; et de passer aussi, si fait n'a été, au dit *Pierre Poulin* et autres copropriétaires de la dite seigneurie de *Saint Maurice* contract de constitution de trois cent livres de rente, rachetable à toujours et à principal de six milles livres pour le prix et l'acquisition de la dite seigneurie.

and they shall purchase of them the seigniority of Saint Maurice.

Et fera le présent arrêt enrégistré au greffe du conseil supérieur de Québec.

Fait au conseil d'état du roi, sa majesté y étant, tenu à Versailles, le vingt deux Avril, mille, sept cents, trente-sept.

Signé PHELIPPEAUX.

L'arrêt du conseil d'état du roi, ci-devant et des autres parts transcrit, a été enrégistré (ouy et ce requerrant le procureur général du roi,) suivant l'arrêt de ce jour Québec à le vingt-six Aoust, 1737.

Signé DAINE.

Mr. Francis Stephen Cugnet, one of the grantees above-mentioned, was first counsellor of the superiour council at Quebec, and director of the king of France's revenue in Canada. After his decease an inventory was made of the public papers in his custody by Mr. Barolet, a notary, who is likewise since dead. And this Mr. Barolet's papers, and amongst others, this inventory of the public papers, found in Mr. Cugnet's custody, are now in the hands of Mr. Panet, the notary, who has been authorised to take an account of the papers of all notaries deceasing in the district of Quebec. In this inventory of the papers found in Mr. Cugnet's custody there is the following passage.

Item, un arrêt du conseil d'état du roi du premier May, 1743, signé par collation *Varin*, par lequel le roi ordonne que l'establissement des forges avec ses dépendances sera et demeurera réuni à son domaine, pour en disposer ainsi qu'elle avisera, &c : Ensuite du quel est l'exploit d'assignation d'icelui fait, à la requête de Monsieur *Varin*, commissaire et controlleur de la marine, à mon dit feu sieur *Cugnet* par l'huissier *Pilote* le 23 Fevrier, 1744.

La dite pièce cottée, paraphée, et inventoriée, sous No. 52,
cy - - - - - 52.

Item, une ordonnance rendue par *Messieurs de Beauharnois* et *Hocquart*, gouverneur et intendant, le 15 Octobre, 1741, et 21 du dit mois et an, à l'occasion des forges, pour en dresser l'état.

La dite pièce cottée, paraphée et inventoriée, sous le No. 53,
cy - - - - - 53.

Item, une liasse contenant vingt-cinq pièces d'écriture, qui sont les titres du fief et seigneurie de *Saint Maurice*.

Toutes les dites pièces cottées et paraphées depuis la première jusqu'à la dernière, et inventoriées sous les No. 58, &c.

Collationné et vidimé par nous, écuyer, greffier, notaire, avocat, et dépositaire des minutes des notaires décédés dans le district de Québec, sur la minute originale du dit inventaire fus-datté resté aux archives. En témoin de quoi nous avons signé à Québec le onze Avril, mille, sept cents, soixante-sept.

Signé PANET.

These are the French instruments relating to these iron works. In the year 1767 brigadier general Carleton, at that time lieutenant-governour, now governour in chief of the province of Québec, being desirous of having them repaired in a manner fit for use, of which they stood in the greatest need, made a lease of them for a term of sixteen yeárs, under the public seal of the province, to a set of gentlemen at Québec who undertook to repair them thoroughly and deliver them up to the king at the end of that term in good condition: and, in consideration of the great expence this would necessarily put them to, he reserved to the king only a small rent of eighteen pounds, fifteen shillings, a year. This lease was as follows.

N U M B E R XXIX.

A Lease of a Tract of Land near the Town of Three Rivers, comprizing the Spot on which the Iron Works, usually known by the Name of *The Forges of Saint Maurice*, are situated, from the KING to Mr. CHRISTOPHER PELISSIER of QUEBEC, and Eight other Persons, for a Term of Sixteen Years, with Liberty to open and work the said Iron Mines, or any other Iron Mines they may find upon the Tract thereby demised to them, for their own Profit and Advantage, rendering therefore to the KING a yearly Rent of Eighteen Pounds, Fifteen Shillings, of lawful Money of GREAT BRITAIN.

GEORGE the THIRD, by the Grace of God, of Great Britain and the Territories thereunto belonging, King, Defender of the Faith, and so forth; To all to whom these Presents shall come, sendeth Greeting:

WHEREAS it has been humbly represented to our trusty Preamble. and well-beloved *Guy Carleton*, our lieutenant-governour and commander in chief of our province of Quebec in America, and our council of the said province, by *Christopher Pelissier* and *Alexander Dumas*, and other our faithful subjects in the said province, that divers advantages might be derived to our said province by working certain iron mines, belonging to us in right of our crown, situated in the said province, near the town of Three Rivers in the same, and commonly known by the name of *The Forges of Saint Maurice*; and that they the said *Christopher* and *Alexander*, together with certain other of our loving subjects, are willing and desirous to undertake to work the said mines, at their own risque and expence, if we will grant to them a sufficient interest in the profits that may thence arise to induce them thereunto:

NOW:

L'inf.

NOW KNOW YE that we, being willing to encourage so useful and laudable an undertaking, which will be attended with a considerable expence, as we are informed, to the undertakers, have, of our especial grace, certain knowledge, and mere motion, granted and demised and by these present letters under our public seal of our said province of Quebec (made out and passed under the same, by order of our trusty and well-beloved Guy Carleton, Esquire, lieutenant-governour and commander in chief of our said province, by and with the advice and consent of our council of the same) do grant and demise, for us, our heirs and successors, unto the said *Christopher Pelissier*, of the town of Quebec, in our said province, merchant; the said *Alexander Dumas*, of the same place, merchant; *Thomas Dunn*, of the same place, Esquire, one of the members of our council of the said province; *Benjamin Price*, of Montreal in the province aforesaid, Esquire, also one of the members of our council aforesaid; *Colin Drummond*, of the town of Quebec, Esquire; *Dumas Saint Martin*, of Montreal in the province aforesaid, Esquire, one of our justices assigned to keep the peace in the said province; *George Alsop*, of the town of Quebec, in the province aforesaid, merchant; *James Johnston*, of the same place, merchant; and *Brook Watson*, of London in our kingdom of Great Britain, merchant; a large tract of land near the town of *Trois Rivières*, in our said province of Quebec, containing the spot in which the iron mines usually known by the name of *Les Forges de Saint Maurice* are situated, and comprising within it the fief and seigniory of *Saint Maurice*, and other lands adjacent to, and convenient to be enjoyed with, the said iron mines, and bounded by the following boundaries, to wit, on the north side, by the river which falls into the river *Saint Lawrence* at the said town of *Trois Rivières*; on the south side by the lands of *Mr. Tonnancour*; on the east side by the eastern boundary of the said seigniory of *Saint Maurice*; and on the west side by a line drawn parallel to the line joining the two extremities of the western boundary of the said seigniory of *Saint Maurice*, and at the distance of three leagues from it.

Names of the
Lessees.Description of
the land leased.

Habeudum.

To have and to hold, enjoy and occupy the said premises hereby demised, to them the said *Christopher Pelissier*, *Alexander Dumas*, *Thomas Dunn*, *Benjamin Price*, *Colin Drummond*, *Dumas Saint Martin*, *George Alsop*, *James Johnston*, and *Brook Watson*, their executors, administrators, and assigns and the executors, administrators, and assigns of each of them, as tenants in common

common; and not as joint-tenants, for a term of sixteen years, from the day of the date of these presents to be fully compleat and ended; rendering and paying therefore unto us, our heirs and successors, the yearly sum of twenty-five pounds of lawful money of our said province of Quebec, or eighteen pounds, fifteen shillings, of lawful money of Great Britain, by equal payments to be made in our said province of Quebec, at the feasts of Saint John the Baptist, Saint Michael the Archangel, the nativity of our blessed Saviour, and the annunciation of the Virgin Mary, to the receiver-general of our revenue in our said province, or in case of the absence of our said receiver-general, to the deputy auditor of our said revenue appointed by the surveyor and auditor-general of our revenue arising in our plantations in America to inspect and audit the accounts of our revenues arising in our province aforesaid, or, in case of the absence of our said receiver-general and the said deputy-auditor from our said province, to our governour, lieutenant-governour, or commander in chief of the said province for the time being; whereof the first payment shall be made on the feast of Saint Michael the Archangel: next ensuing the day of the date of these presents.

Rent reserved.

Provided always that, if at any time the said rent, or any part thereof, shall be behind and unpaid during the space of a whole year after it shall have become due, it shall be lawful for us, our heirs and successors, or our receiver-general of our revenue in our said province, or the aforesaid deputy-auditor of the accounts of our said revenue, or our governour, lieutenant-governour, or other our commander in chief of the said province for the time being, in our behalf, to re-enter into the said premises, and all the said lessees, their executors, administrators, and assigns, therefrom to expel and remove; and the said premises to seize again into our hands for our own immediate use, profit, and disposal, and likewise to seize and sell all the utensils, tools, stock of iron, timber, and other goods, merchandizes, and effects of all kinds, corn or hay, cut or uncut, that shall be found upon the said demised premises, and them to sell or cause to be sold, and out of the money thereby produced to retain to our use the rent that shall be so due, together with all the charges of making the said seizure and sale.

Penalty of non-payment of the rent for one whole year.

Power to seize and sell the goods and stock upon the premises in order to produce the rent that is due.

Provided also, that the said lessees shall put the buildings and works already erected on the said premises into good repair, and

The lessees shall put and keep in good repair the buildings and works upon the premises.

and shall afterwards keep them in good repair during the whole time of the said lease; and shall likewise preserve the utensils and tools that are now there, or replace them with others of equal or superiour goodnes; so as to deliver up the said premises at the expiration of the said term of sixteen years in as good a condition, with respect to the number and goodnes of the said utensils and tools, as they are in at the day of the date of these presents, or were on the ninth day of March last past, according to a certain inventory of them signed and acknowledged to be a true one by the above-mentioned *Christopher Pelissier* on the said ninth day of March last, and which is annexed to the copy of these presents remaining in the hands of our receiver-general of our revenue for our said province, and with the buildings that are now erected on the said premises, or that appear to have been standing on the same on the said ninth day of March last in the inventory aforesaid, in a good condition of repair.

Power to cut
down timber on
the premises :

And for the better enabling the said lessees to carry on their intended project of working the said iron mines, we do hereby give and grant, for us, our heirs and successors, unto them the said lessees, their executors, administrators, and assigns, full power and authority to cut down any trees that they shall find growing upon the said demised premises, and to erect upon the said premises any buildings they shall think proper, and to use and cultivate the surface of the premises in any manner they shall judge to be most for their advantage, whether by feeding cattle thereon, or by sowing it with corn of any kind, or any other useful seed or plant, or otherwise howsoever; and likewise to work the aforesaid iron mines, commonly known by the name of *the forges of Saint Maurice*, and dispose of the produce thereof to their own advantage; and in like manner to open and work any other iron mines they may find upon the said premises, and any mines of lead, or tin, or copper, or coals, or any other metal or fossil whatsoever, excepting only mines of gold and silver, and to dispose of the produce thereof to their own advantage, without paying to us, our heir and successors, any part thereof, or any rent or profit in lieu thereof, or any consideration whatsoever for the various advantages they may derive from the present demise of the premises aforesaid, excepting the annual rent aforesaid of twenty-five pounds of lawful money of the province of Quebec, or eighteen pounds, fifteen shillings of lawful money of Great Britain; any right, due, or claim, that might belong to us, our heirs and successors, in right of

and to dig and
work iron, and
divers other,
mines on the
same.

our crown, either by the laws of that part of our kingdom of Great Britain called England, or by the French laws and customs that prevailed in this our province of Quebec in the time of the French government, or upon any other ground or pretence whatsoever, to the contrary hereof in any wise notwithstanding.

And we do hereby order and direct that a copy of these our letters be made out and kept by our receiver-general of our revenue of the said province of Quebec, which shall be signed and sealed by the lessees above-mentioned in token of their acceptance of the present grant and demise to them made, and their consent to perform the conditions therein contained; and that another copy thereof shall be made out and kept by the clerk of the inrollments of deeds in our said province, or his deputy, and preserved amongst the said inrollments.

In witness whereof we have caused these our letters to be made patent, and our public seal for our said province of Quebec to be thereunto affixed, this ninth day of June in the seventh year of our reign, and in the year of our Lord one thousand, seven hundred, and sixty-seven.

Given at the castle of Saint Lewis at Quebec in the province of Quebec on the day and year aforesaid by the lieutenant-governour and commander in chief of the said province by and with the advice and consent of the council of the same.

N. B. This measure of granting a lease of these iron works to these nine lessees has been attended with good consequences to his majesty's service. The buildings necessary for carrying on these works, which were before in a wretched condition, have been put into excellent repair by the lessees at the expence of more than four thousand, five hundred, pounds sterling; and a great quantity of very good iron has been made. But I have been told that the profits arising from the sale of it have not answered the expectations of the undertakers, and have hardly even paid them their expences.

Before the foregoing Lease was passed, another Draught of a Lease was prepared for the Perusal and Consideration of the Lieutenant-governour, containing the Privilege that had been granted by the French King to the former Company of Adventurers, of working iron mines on other Grounds that did not belong to the Crown. This Draught was as follows :

A Draught of a Lease of a Tract of Land near the Town of Three Rivers, comprizing the Spot on which the Iron Mines, usually known by the Name of *The Forges of Saint Maurice*, are situated, from the KING to Mr. CHRISTOPHER PELISSIER of QUEBEC, and Eight other Persons, for a Term of Sixteen Years, with Liberty to open and work the said Iron Mines, or any other Iron Mines they may find upon the Tract thereby demised to them, for their own Profit and Advantage, rendering therefore to the KING a yearly Rent of Eighteen Pounds, Fifteen Shillings, of lawful Money of GREAT BRITAIN. And a Grant of the Liberty of opening and working any Iron Mines within another Tract of Country bounded differently from the Tract demised to them, and comprizing within it some Lands not belonging to the Crown, but to private Proprietors, so far as the KING has a Right to work such Mines, or to grant to others the Liberty of working them, by virtue of the Reservations made of all Mines and Minerals in the Original Grants of those Lands from the FRENCH KING or his Predecessors, to the Proprietors of the said Lands, or their Predecessors, or otherwise.

GEORGE the THIRD, by the Grace of God, of Great Britain and the Territories thereunto belonging, King, Defender of the Faith, and so forth ; To all to whom these present Letters shall come, sendeth Greeting :

Preamble.

WHEREAS it has been humbly represented to our trusty and well-beloved *Guy Carleton*, our lieutenant-governour and commander in chief of our province of Quebec in America, and our

our council of the said province, by *Christopher Pelissier* and *Alexander Dumas*, and others our faithful subjects in the said province, that divers advantages might be derived to our said province by working certain iron mines belonging to us in right of our crown, situated in the said province, near the town of *Three Rivers* in the same, and commonly known by the name of *The Forges of Saint Maurice*; and that they the said *Christopher* and *Alexander*, together with certain other of our loving subjects, are willing and desirous to undertake to work the said mines at their own risque and expence, if we will grant to them a sufficient interest in the profits that may thence arise to induce them thereunto:

NOW KNOW YE that we, being willing to encourage so use-^{Le. 16.}ful and laudable an undertaking, which will be attended with a considerable expence, as we are informed, to the undertakers, have, of our especial grace, certain knowledge, and mere motion, granted and demised, and by these present letters under our public seal of our said province of Quebec (made out and passed under the same, by order of our trusty and well-beloved Guy Carleton, Esquire, lieutenant-governour and commander in chief of our said province, by and with the advice and consent of our council of the same) do grant and demise, for us, our heirs and successors, unto the said *Christopher Pelissier*, of the town of Quebec, in our said province, ^{Names of the} *merchant*; the said *Alexander Dumas*, of the same place, ^{Lessees.} *merchant*; *Thomas Dunn*, of the same place, Esquire, one of the members of our council of the said province; *Benjamin Price*, of Montreal in the province aforesaid, Esquire, also one of the members of our council aforesaid; *Colin Drummond*, of the town of Quebec, Esquire; *Dumas Saint Martin*, of Montreal in the province aforesaid, Esquire, one of our justices assigned to keep the peace in the said province; *George Alsop*, of the town of Quebec, in the province aforesaid, *merchant*; *James Johnston*, of the same place, *merchant*; and *Brook Watson*, of London in our kingdom of Great Britain, *merchant*; a large tract of land near the town of *Trois Rivieres*, in our said province of Quebec, containing the spot in ^{Description of} which the iron mines usually known by the name of *Les Forges de Saint Maurice* are situated, and comprising within it the fief and seigniory of *Saint Maurice*, and other lands adjacent to, and convenient to be enjoyed with, the said iron mines, and bounded by the following boundaries, to wit, on the north side, by the river which ^{falls}

falls into the river *Saint Lawrence* at the said town of *Trois Rivières*; on the south side by the lands of *Mr. Tonnancour*; on the east side by the eastern boundary of the said seigniorie of *Saint Maurice*; and on the west side by a line drawn parallel to the line joining the two extremities of the western boundary of the said seigniorie of *Saint Maurice*, and at the distance of three leagues from it.

Maintenance.

To have and to hold, enjoy and occupy the said premises hereby demised, to them the said *Christopher Pelissier, Alexander Dumas, Thomas Dunn, Benjamin Price, Colin Drummond, Dumas Saint Martin, George Alsop, James Johnston, and Brook Watson*, their executors, administrators, and assigns, and the executors, administrators, and assigns of each of them, as tenants in common, and not as joint-tenants, for a term of sixteen years, from the day of the date of these presents to be fully compleat and ended;

Rent reserved.

rendering and paying therefore unto us, our heirs and successors, the yearly sum of twenty-five pounds of lawful money of our said province of Quebec, or eighteen pounds, fifteen shillings, of lawful money of Great Britain, by equal payments to be made in our said province of Quebec, at the feasts of Saint John the Baptist, Saint Michael the Archangel, the nativity of our blessed Saviour, and the annunciation of the Virgin Mary, to the receiver-general of our revenue in our said province, or in case of the absence of our said receiver-general, to the deputy-auditor of our said revenue appointed by the surveyor and auditor-general of our revenue arising in our plantations in America to inspect and audit the accounts of our revenues arising in our province aforesaid, or, in case of the absence of both the receiver-general and the said deputy-auditor from our said province, to our governour, lieutenant-governour, or commander in chief of the said province for the time being; whereof the first payment shall be made on the feast of Saint Michael the Archangel next ensuing the day of the date of these presents.

Remedy for the crown in case of non-payment of rent.

Provided always that, if at any time the said rent, or any part thereof, shall be behind and unpaid during the space of a whole year after it shall have become due, it shall be lawful for us, our heirs and successors, or our receiver-general of our revenue in our said province, or the aforesaid deputy-auditor of the accounts of our said revenue, or our governour, lieutenant-governour, or other our commander in chief of the said province for the time being, in our behalf,

to re-enter into the said premises, and all the said lessees, their executors, administrators, and assigns, therefrom to expel and remove, and the said premises to seize again into our hands for our own immediate use, profit, and disposal, and likewise to seize and sell all the utensils, tools, stock of iron, timber, and other goods, merchandizes, and effects of all kinds, corn and hay, cut and uncut, that shall be found upon the said demised premises, and them to sell or cause to be sold, and out of the money thereby produced to retain to our use the rent that shall be so due, together with all the charges of making the said seizure and sale.

Provided also, that the said lessees shall put the buildings and works already erected on the said premises into good repair, and shall afterwards keep them in good repair during the whole time of the said lease; and shall likewise preserve the utensils and tools that are now there, or replace them with others of equal or superiour goodness; so as to deliver up the said premises at the expiration of the said term of sixteen years in as good a condition, with respect to the number and goodness of the said utensils and tools, as they are in at the day of the date of these presents, or were in on the ninth day of March last past, according to a certain inventory of them signed and acknowledged to be a true one by the above-mentioned *Christopher Pelissier* on the said ninth day of March last, and which is annexed to the copy of these presents remaining in the hands of our receiver-general of our revenue for our said province, and with the buildings that are now erected on the said premises, or that appear to have been standing on the same on the said ninth day of March last in the inventory aforesaid, in a good condition of repair.

Provide, that the lessees shall put the buildings on the premises hereby demised into good repair, and keep them so during the whole term.

And for the better enabling the said lessees to carry on their intended project of working the said iron mines, we do hereby give and grant, for us, our heirs and successors, unto them the said lessees, their executors, administrators, and assigns, full power and authority to cut down any trees that they shall find growing upon the said demised premises, and to erect upon the said premises any buildings they shall think proper, and to use and cultivate the surface of the premises in any manner they shall judge to be most for their advantage, whether by feeding cattle thereon, or by sowing it with corn of any kind, or any other useful seed or plant, or otherwise howsoever;

Power to cut down trees on the said premises, and otherwise use and enjoy them.

and

and likewise to work the aforesaid iron mines, commonly known by the name of *The Forges of Saint Maurice*, and dispose of the produce thereof to their own advantage; and in like manner to open and work any other iron mines they may find upon the said premises, and any mines of lead, or tin, or copper, or coals, or any other metal or fossil whatsoever, excepting only mines of gold and silver, and to dispose of the produce thereof to their own advantage, without paying to us, our heirs or successors, any part thereof, or any rent or profit in lieu thereof, or any consideration whatsoever for the various advantages they may derive from the present demise of the premises aforesaid, excepting the annual rent aforesaid of twenty-five pounds of lawful money of the province of Quebec, or eighteen pounds, fifteen shillings of lawful money of Great Britain; any right, due, or claim that might belong to us, our heirs and successors, in right of our crown, either by the laws of that part of our kingdom of Great Britain called England, or by the French laws and customs that prevailed in this our province of Quebec in the time of the French government, or upon any other ground or pretence whatsoever, to the contrary hereof in any-wise notwithstanding.

Right of the French king to all the mines that should be found in the lands granted by him in this province.

Transfer of the said right to the king of Great Britain by the conquest and cession of the province.

Grant of a certain privilege to the former company of adventurers in these mines, made by the French king in the year 1737.

And whereas by the several grants made of land in our said province of Quebec by our predecessors in the possession of the said province, the French kings, a reservation was made to the said French kings of the mines that should be found in the lands so granted; which reservation, together with all the other rights and possessions of the French king in the said province of Quebec, hath been transferred to us by the conquest which, by the blessing of Almighty God upon our arms, we have made of the said province, and the cession thereof made to us by the said French king by the definitive treaty of peace concluded at Paris in the year of our Lord one thousand, seven hundred, and sixty-three, and doth now lawfully belong to us, in right of our crown of Great Britain: and by virtue of the said reservation we have a just and manifest right either to cause any mines that may be found in any such granted lands to be wrought for our benefit and advantage, or to empower any of our subjects to work them upon such terms and conditions as we shall think proper; and whereas the said French king, our predecessor in the possession of this province, did, by a certain order made in his council of state at Versailles in the month of April in the year of our Lord one thousand, seven hundred, and thirty-seven, exercise this

right

right in favour of a company of adventurers consisting of the five persons following, to wit, the sieurs *Francis Stephen Cugnet*, *Peter Francis Olivier de Vezain*, *James Simonnet*, *Ignatius Gamelin*, and *Thomas James Taschereau*, who at that time undertook to work the aforesaid iron mines called *Les Forges de Saint Maurice*, and did by the said order grant unto the said persons, their heirs and assigns, for a term of twenty years, the liberty or privilege of opening and working any iron mines that they might find within the tract of country that extends from the seigniory of *Yamachiche* to the seigniory of the *Cape de la Madeleine*, including both those seigniories, in whose lands soever such iron mines might happen to lie, with the right of making use of any rivers or streams of water on the said lands, and stopping them in order to make bodies and reservoirs of water for the purpose of working the said iron mines :

NOW KNOW YE that we, for the greater encouragement of the lessees aforesaid in their laudable undertaking, which we are persuaded will prove highly beneficial to the inhabitants of our said province of Quebec, and of our special grace, mere motion, and certain knowledge, have given and granted, and by these present letters do give and grant unto the aforesaid *Christopher Pelissier*, *Alexander Dumas*, *Thomas Dunn*, *Benjamin Price*, *Colin Drummond*, *Dumas Saint Martin*, *George Alsop*, *James Johnson*, and *Brook Watson*, their executors, administrators, and assigns, and the executors, administrators, and assigns of each of them, to be enjoyed by them as tenants in common, and not as joint-tenants, a power and liberty of opening and working any iron mines they may find within the aforesaid tract of country, extending from the seigniory of *Yamachiche* to the seigniory of the *Cape de la Madeleine*, and including both those seigniories, in whose lands soever the said iron mines may happen to be, and of taking and stopping and otherwise using any rivers and streams of water which they may find within the aforesaid tract of country, for the purpose of carrying on the business of the said iron mines, for and during the term aforesaid of sixteen years, from the date of these presents, during which the demise aforesaid is to continue, or, if the said demise shall be determined sooner than by the expiration of the said sixteen years, then and in such case for and during the continuance of the said demise, and until the said earlier determination thereof.

Grant of a similar privilege to the present lessees.

Habendum of
this privilege or
power.

To have, use, exercise, and enjoy the said power and liberty during the said time in as full and ample a manner as the said five undertakers, in the year of our lord one thousand, seven hundred, and thirty-seven, lawfully did, or lawfully might, use, enjoy, and exercise the same liberty by virtue of the said order of the king of France in the said year, without paying any rent or consideration whatsoever for the said liberty of working the said iron mines, or for the use of the said rivers and streams of water to the owners of the lands in which the said mines or the said rivers and streams of water are situated, unless where the cultivated grounds of the said owners of those lands are thereby hurt and damaged (and in that case the said grantees shall pay the said owners of the land a reasonable compensation for the actual damage, thereby done to their said cultivated grounds, and nothing more); and without paying to us, our heirs, or successors, any rent or payment whatsoever, or any share of the produce of the said mines, or of the profit thence arising, in consideration of our present grant of this power and liberty. But they shall only pay the yearly rent aforesaid of eighteen pounds, fifteen shillings, of lawful money of Great Britain unto us, our heirs and successors, in consideration of the demise of the premises in these letters first above-mentioned, and not in consideration of this additional power and liberty, that by the latter part of these our letters we have just now granted unto them.

(Copies to be
made and kept
of these letters
patent.

And we do hereby order and direct that a copy of these our letters be made out and kept by our receiver-general of our revenue of the said province of Quebec, which shall be signed and sealed by the lessees above-mentioned in token of their acceptance of the present grant and demise to them made and their consent to perform the conditions therein contained; and that another copy thereof shall be made out and kept by the clerk of the inrollments of deeds in our said province, or his deputy, and preserved amongst the said inrollments.

In witness whereof we have caused these our letters to be made patent, and our public seal for our said province of Quebec to be thereunto affixed, this ninth of June, in the seventh year of our reign, and in the year of our Lord one thousand, seven hundred, and sixty-seven.

Given

Given at the castle of Saint Lewis at Quebec in the province of Quebec on the day and year aforesaid by the lieutenant-governour and commander in chief of the said province by and with the advice and consent of the council of the same.

N. B. This lease has not been made, but was only proposed by the lessees to the lieutenant-governour and council, in case they had been inclined to grant them the same privileges as were enjoyed by the former adventurers by virtue of the aforesaid order of the king of France in council, dated the twenty-second of April one thousand, seven hundred, and thirty-seven.

N U M B E R . XXX.

A Remark on the ill Consequences arising from the too great Subdivision of the Lots of Land belonging to the Freeholders of CANADA, by repeated Partitions of them upon Inheritances.

THE importance of these ill consequences in the judgement of the Canadians, who best understand the condition of the province, will appear from the following passage of a short preface prefixed to an abstract of the laws of police that prevailed in the province of Québec in the time of the French government, made by a set of Canadian gentlemen of great knowledge and abilities at the desire of his excellency governour *Carleton*, and brought over by the said governour for the perusal of his majesty's ministers.

L' inobservation de quelques unes des loix de police depuis neuf ou dix ans a déjà fait des torts considérables au défrichement des terres: et, sans vouloir entrer dans aucun détail, on pourroit assurer que l'inexécution seule de l'arrêt du conseil d'état du 28 Avril 1745, est une des principales causes de la disette que nous éprouvons depuis quelque temps. Cet arrêt défend aux habitants de s'établir sur moins de terre qu'un arpent et demi de front sur trente ou quarante de profondeur. Il a été rendu sur ce que les enfants, en partageant les biens de leurs pères, s'établissent chacun sur une portion de la même terre insuffisante pour les faire subsister: ce qui nuisoit également à la subsistence des villes et au défrichement des terres. Le gouvernement précédent avoit jugé ce point si important qu'il faisoit démolir les maisons-construites contre la disposition de cet arrêt. Cependant aujourd'hui rien de si commun que ces sortes d'établissements.

This passage is inserted as a confirmation of the remark made upon this subject in the above draught of an intended report, No. I. Page 22, and in the opinion of the attorney-general concerning the governour's report, No. II. Page 55, where it is suggested that a change

change in the laws of inheritance in that province may probably become expedient in some time hence, in order to avoid the inconveniences therein alluded to and complained of in the foregoing French passage.

The law of inheritance, which the said attorney-general conceives would be most beneficial to the province, may be expressed as follows :

“ If there be only one piece, or lot, of land, that is holden by only one original deed of grant from the lord of whom it is holden, (whether the said piece of land be holden of the king, or of any other lord, and whether it be holden by fealty and homage, as the feignories and fiefs in the said province, or by rent-service, or any other tenure whatsoever); and the person so dying intestate, leaves either one son, and one or more daughters, or several sons, and several daughters, the said piece, or lot of land, shall descend to such only, or eldest, son alone, to the exclusion of all the other sons and daughters, agreeably to the law of England. ”

The law of inheritance, when there is only one lot of land, holden by one original deed of grant, shall be by primogeniture.

And if there be no sons, but only daughters, the said piece or lot of land shall descend to the eldest daughter alone, to the exclusion of all the other daughters, notwithstanding that in this case the law of England would direct an equal partition to be made thereof amongst all the daughters. And the reason hereof is, that great inconveniences have been already found, and more are likely to arise in the said province, from the too great subdivision of these original lots of land, by repeated partitions thereof amongst the coheirs and coheirettes of their last owners; the said lots of land being for the most part, in their first establishment by the grants of the lords of whom they are holden, made only of such a moderate extent and magnitude, as is best adapted to the convenient maintenance of the inhabitants of the said province, and the increase of it's cultivation.

But if there be two or more pieces or lots of land, holden by two or more separate original deeds of grant, whether they are holden of the same, or of different lords, and there be several children of the person so dying intestate, they shall not in this case all go to the eldest son, or daughter, to the exclusion of all the others,

Law of inheritance when there are two or more lots of land holden by different original deeds of grant.

as in the former case; but shall be distributed in separate original lots to all, or several of the said children, according to the following rules.

If the number of the several distinct original lots of land, holden by different original deeds of grant, is equal to the number of children of the intestate, each child shall have one lot, the eldest son chusing the first lot, then the second son chusing another, then the third a third, and so on, till all the sons shall have chosen their several lots; and then the daughters shall chuse the remaining lots in the same manner, every elder daughter chusing before the younger,

If the number of lots of land is smaller than that of the children, the eldest son shall chuse one lot, then the second son another, and so on, through the several sons in order of their seniority, and afterwards through the elders of the daughters, till all the lots are exhausted, and the remaining sons or daughters, after all the said lots of land shall be thus exhausted, shall have no share or interest whatsoever in the said lands.

If the number of lots of land is greater than that of the children, the remaining lots, after each of the sons and daughters shall have chosen one, shall be distributed among the said children a second time in the same manner as before, the sons chusing before the daughters, and the elders of each sex before the younger of the same sex; and so for a third and fourth time, or oftener, until all the said lots shall be exhausted.

And if there are both children and grand-children of the person so dying intestate, the grand-children shall represent their respective parents, and succeed to the lands of such intestate in their stead; each set of grand-children taking that part of the said lands which their deceased father or mother would have taken if they had been living at the death of such intestate. And the said part of the said lands shall descend among the said grand-children in the same manner and order of succession and distribution as if their father or mother had first out-lived the said intestate, and succeeded to the said part, and then died immediately after him. And the same rule of representation

Grand-children shall succeed to the shares of their deceased parents by right of representation.

sentation shall take place with respect to great grand-children, and other more remote descendants of the person so dying intestate.

And if there are no children, or grand-children, or other more remote descendants of the person so dying intestate, but his father is alive, his father shall inherit all his lands; and if the father be dead, but the mother be living at the death of such intestate, his mother shall inherit them; any custom or law of England to the contrary hereof in any-wise notwithstanding.

In default of descendants of the person dying intestate, his parents shall inherit his lands.

And if there be no children, or grand-children, or other more remote descendants of the person so dying intestate, living at the time of his death, and his father and mother are likewise dead before the said time, the brothers and sisters of the said intestate shall succeed to his said lands in the same manner and order of succession and distribution as his sons and daughters would have succeeded to the same, if he had left any. And if some of the brothers and sisters of the said intestate shall be dead, and have left children, or grand-children, or other more remote descendants who shall be living at the time of the death of the said intestate, these children, or grand-children, or other more remote descendants, shall succeed to their ancestor's share of the lands of the said intestate by right of representation, in the same manner as the grand-children, or other descendants of the intestate himself are appointed to succeed to their ancestor's share of the lands of such intestate in the case of a direct lineal descent.

In the next place, the brothers and sisters of the intestate, and their descendants, shall succeed to them.

And if there are no children, nor grand-children, nor other more remote descendants of the person so dying intestate, and his father and mother are both dead at the time of his decease, and there are no brothers or sisters, or children, grand-children, or other more remote descendants of any brothers or sisters of the said intestate living at the time of his decease, his father's father shall succeed to his lands; and in default of his father's father, his father's mother shall succeed to them; and in default of her also, the children and grand-children, and other more remote descendants of the intestate's father's father shall succeed to them in the same manner and order of succession and distribution as the intestate's own children and their descendants would have succeeded to them, if he had happened to leave any.

Then the father's father.

Then the father's mother. Then the children and other descendants of the father's father.

And:

Then the father and mother of the intestate's paternal grand-father.

Then the children and other descendants of the said father of the intestate's paternal grand-father.

And in default of all the relations before-mentioned, the father of the father of the intestate's father shall succeed to his said lands; and in default of him, the mother of the father of the intestate's father shall succeed to them; and in default of her also, the children and grand-children, and other more remote descendants of the said father of the father of the intestate's father, shall succeed to them in the same manner and order of succession and distribution as the intestate's own children and their descendants would have succeeded to them, if he had happened to leave any.

Then the father of the intestate's mother.

Then the mother of his mother.

Then the children and other descendants of the said father of the intestate's mother.

And in default of all these relations by the father's side, recourse shall be had to the relations on the intestate's mother's side; and the father of the intestate's mother shall succeed to his said lands; and in default of him, the mother of the said intestate's mother shall succeed to them; and in default of her also, the children and grand-children, and other more remote descendants of the father of the said intestate's mother shall succeed to them in the same manner and order of succession and distribution as the intestate's own children and other descendants would have succeeded to them, if he had happened to leave any.

Then the father and mother of the intestate's maternal grand-father.

Then the children and other descendants of the said father of the intestate's maternal grand-father.

And in default of these also, the father of the father of the intestate's mother shall succeed to his said lands; and in default of him, the mother of the father of the intestate's mother shall succeed to them; and in default of her also, the children and grand-children, and other more remote descendants of the father of the father of the said intestate's mother, shall succeed to them in the same manner and order of succession and distribution as the intestate's own children and their descendants would have succeeded to them, if he had happened to leave any.

In default of all the foregoing relations, the lands of the intestate shall escheat to the lords of whom they are holden.

And if all the relations before-mentioned are wanting to the intestate, his lands shall escheat or revert to the several lords of whom they are holden respectively.

N U M B E R XXXI.

IT is said in the foregoing opinion of the attorney-general of the province of Quebec concerning the report of the governour of the said province (see Number II. Page 50) *That he conceives it to have been his majesty's design in the plan of conduct he has hitherto thought fit to pursue with respect to the province of Quebec, ever since the conquest of it in 1760, to endeavour to introduce into it the English laws, and the English manner of government, and thereby to assimilate and associate it to his majesty's other colonies in North America, and not to keep it distinct and separate from them in religion, laws, and manners to all future generations.* Now that this has been his majesty's intention will appear by comparing the commission of captain-general and governour in chief of the province of Quebec, which his Majesty was pleased to grant to general Murray (and of which that since granted to governour Carleton is but a copy) with a commission of the like kind for the neighbouring province of New York. For it will be seen that the powers contained in these two commissions are almost entirely the same. To enable the readers of these papers to make this comparison with the greater ease, I shall here insert a copy of the commission granted by the late king to Sir Danvers Osborn, in the year 1754, to be captain-general and governour in chief of the said province of New York, which I have taken from Mr. Smith's excellent history of New York, page 229, *et seq.* The commission to general Murray may be seen above, in page 93, *et seq.*

A Commission of his late Majesty King GEORGE the Second to Sir DANVERS OSBORN, Baronet, to be Captain-General and Governour in Chief in and over the Province of NEW YORK in AMERICA, in the Year 1754.

GEORGE the SECOND, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth; To our trusty and well-beloved Sir Danvers Osborn, Baronet, Greeting:

WHEREAS we did by our letters patent under our great seal of Great Britain, bearing date at Westminster the third day of July in the fifteenth year of our reign, constitute and appoint the honourable George Clinton, Esq; captain-general and governour in chief in and over our province of New York and the territories depending thereon in America for and during our Will and Pleasure, as by the said recited letters patent (relation being thereunto had) may more fully and at large appear: Now know you that we have revoked and determined, and by these presents do revoke and determine, the said recited letters patent and every clause, article, and thing therein contained.

Revocation of the patent of the last governour.

Appointment of the new governour.

And further know you that we, reposing especial trust and confidence in the prudence, courage, and loyalty of you, the said Sir Danvers Osborn, of our especial grace, certain knowledge, and meer motion, have thought fit to constitute and appoint you, the said Sir Danvers Osborn, to be our captain-general and governour in chief in and over our province of New York and the territories depending thereon in America: and we do hereby require and command you to do and execute all things in due manner that shall belong unto your said command and the trust we have reposed in you, according to the severall powers and directions granted or appointed you by this present commission and instructions herewith given you,

or

or by *such further powers**, instructions, and authorities, as shall at any time hereafter be granted or appointed you under our Signet and Sign manual, or by our order in our privy council, and according to such reasonable laws and statutes as now are in force or hereafter shall be made and agreed upon by you, with the advice and consent of our council and the assembly of our said province under your government, in such manner and form as is herein after expressed.

And our will and pleasure is, that you the said Sir Danvers Osborn, after the publication of these our letters patent, do in the first place take the oaths appointed to be taken by an act passed in the first year of our late royal father's reign, intituled, "*An act for the further security of his majesty's person and government, and the succession of the crown in the heirs of the late princess Sophia, being protestants, and for extinguishing the hopes of the pretended prince of Wales and his open and secret abettors;*" as also that you make and subscribe the declaration mentioned in an act of parliament made in the twenty-fifth year of the reign of king Charles the Second, intituled, "*An act for preventing dangers which may happen from popish recusants;*" and likewise that you take the usual oath for the due execution of the office and trust of our captain-general and governour in chief in and over our said province of New York and the territories depending thereon, for the due and impartial administration of justice; and further that you take the oath required to be taken by governours of plantations to do their utmost that the several laws relating to trade and the plantations be observed: which said oaths and declaration our council in our said province, or any three of the members thereof, have hereby full power and authority, and are required, to tender and administer unto you, and in your absence to our lieutenant-governour, if there be any upon the place; all which being duly performed you shall administer unto each of the members of our said council, as also to our lieutenant-governour, if there be any upon the place, the oaths mentioned in the said act, intituled, "*An act for the further security of his Majesty's person and government, and the succession of the crown in the heirs of the late princess Sophia, being protestants, and for extinguishing the hopes of the pretended prince of Wales and his open and secret abettors;*" as also

Oaths to be taken by the governour.

Those appointed by stat. 1 Geo. 1.

The declaration against transubstantiation, mentioned in stat. 25 Car. II.

Oath of office.

Oath concerning the law of trade.

Oaths to be taken by the members of the council. Those appointed by stat. 1. Geo. 1.

* *Quere*, Whether such powers would be legally delegated by an instrument under the king's signet and sign manual.

Declaration
above-mention-
ed.
Oath of office.

to cause them to make and subscribe the afore-mentioned declaration, and to administer to them the oath for the due execution of their places and trusts.

Power of sus-
pending the
members of the
council.

And we do hereby give and grant unto you full power and authority to suspend any of the members of our said council from sitting, voting, or assisting therein, if you shall find just cause for so doing; and, if there shall be any lieutenant-governour, him likewise to suspend from the execution of his command, and to appoint another in his stead until our pleasure be known. And if it shall at any time happen that by the death, departure out of our said province, or suspension of any of our said councillors, or otherwise, there shall be a vacancy in our said council (any three whereof we do hereby appoint to be a quorum) our will and pleasure is, that you signify the same unto us by the first opportunity, that we may under our signet and sign manual constitute and appoint others in their stead. But, that our affairs may not suffer at that distance for want of a due number of councillors, if ever it should happen that there be less than seven of them residing in our said province, we do hereby give and grant unto you, the said Sir Danvers Osborn, full power and authority to chuse as many persons out of the principal freeholders, inhabitants thereof, as will make up the full number of our said council to be seven, and no more; which persons so chosen and appointed by you shall be to all intents and purposes councillors in our said province, until either they shall be confirmed by us, or that, by the nomination of others by us under our sign manual and signet, our said council shall have seven or more persons in it.

Power to ap-
point new coun-
cillors till the
number of the
members is
seven.

Power with the
consent of the
council, to call
an assembly.

And we do hereby give and grant unto you full power and authority, with the advice and consent of our said council, from time to time as need shall require, to summon and call general assemblies of the said freeholders and planters within your government according to the usage of our province of New York. And our will and pleasure is, that the persons thereupon duly elected by the major part of the freeholders of the respective counties and places and so returned, shall, before their sitting, take the oaths mentioned in the said act intituled, "*An act for the further security of his Majesty's person and government, and the succession of the crown in the heirs of the late princess Sophia, being protestants, and for extinguishing the hopes of the pretended prince of Wales and his open and secret abettors;*" as

Oaths to be
taken by the
members
thereof.

also

also make and subscribe the afore-mentioned declaration (which oaths and declaration you shall commissionate fit persons under our seal of New York to tender and administer unto them): and until the same shall be so taken and subscribed, no person shall be capable of sitting, though elected.

The declaration afore-mentioned is to be subscribed by them.

And we do hereby declare that the persons so elected and qualified shall be called and deemed *The general assembly* of that our province and the territories depending thereon.

Name of the members so elected and qualified.

And you, the said Sir Danvers Osborn, by and with the consent of our said council and assembly, or the major part of them respectively, shall have full power and authority to make, constitute, and ordain, laws, statutes, and ordinances for the public peace, welfare, and good government of our said province, and of the people and inhabitants thereof, and such others as shall resort thereto, and for the benefit of us, our heirs, and successors: which said laws, statutes, and ordinances are not to be repugnant, but, as near as may be, agreeable to the laws and statutes of this our kingdom of Great Britain.

Power to make laws;

which shall not be repugnant to the laws of Great Britain.

Provided that all such laws, statutes, and ordinances, of what nature or duration soever, be, within three months or sooner after the making thereof, transmitted unto us under our seal of New York for our approbation or disallowance of the same; as also duplicates thereof by the next conveyance.

The laws so made shall be transmitted to England within three months.

And in case any or all of the said laws, statutes, and ordinances, being not before confirmed by us, shall at any time be disallowed and not approved, and so signified by us, our heirs, or successors, under our, or their, sign manual and signet, or by order of our, or their, privy council unto you, the said Sir Danvers Osborn, or to the commander in chief of our said province for the time being; then such and so many of the said laws, statutes, and ordinances as shall be so disallowed and not approved, shall from thenceforth cease, determine, and become utterly void and of none effect; any thing to the contrary thereof notwithstanding.

If they are at any time after disallowed by the king, they shall thenceforth become void.

And, to the end that nothing may be passed or done by our said council or assembly to the prejudice of us, our heirs, or successors,

The governour shall have a negative voice a-

ga'inst both
council and
assembly.

Power of ad-
journing, pro-
roguing, and
dissolving the
assembly.

Power to keep
and use the pub-
lic seal.

cessors, we will and ordain that you, the said Sir Danvers Osborn, shall have and enjoy a negative voice in the making and passing of all laws, statutes, and ordinances as aforesaid: and you shall and may likewise from time to time, as you shall judge it necessary, adjourn, prorogue, and dissolve all general assemblies as aforesaid.

And our further will and pleasure is, that you shall and may use and keep the public seal of our said province of New York for sealing all things whatsoever that pass the great seal of our said province under your government.

Power to admin-
ister, or to au-
thorize others to
administer, to
any person in
the province
the oaths ap-
pointed by stat.
1 Geo. I.

And we do further give and grant unto you, the said Sir Danvers Osborn, full power and authority from time to time and at any time hereafter, by yourself, or by any other to be authorized by you in that behalf, to administer and give the afore-mentioned oaths to all and every such person and persons as you shall think fit, who shall at any time or times pass into our said province or shall be resident or abiding there.

Power, with the
consent of the
council, to erect
courts of judica-
ture,

And we do further by these presents give and grant unto you, the said Sir Danvers Osborn, full power and authority, with the advice and consent of our said council, to erect, constitute, and establish such and so many courts of judicature and public justice within our said province under your government, as you and they shall think fit and necessary for the hearing and determining of all causes, as well criminal as civil, according to law and equity, and for awarding execution thereupon, with all reasonable and necessary powers, authorities, fees, and privileges belonging thereunto: as also to appoint and commissionate fit persons in the several parts of your government to administer the oaths mentioned in the aforesaid act, intituled, "*An act for the further security of his Majesty's person and government, and the succession of the crown in the heirs of the late princess Sophia, being protestants, and for extinguishing the hopes of the pretended prince of Wales and his open and secret abettors;*" as also to tender and administer the aforesaid declaration, unto such persons belonging to the said courts as shall be obliged to take the same.

and to commis-
sionate fit per-
sons to adminis-
ter the oaths ap-
pointed by stat.
1 Geo. I. and
the declaration
against transub-
stantiation, to
persons belong-
ing to such
courts.

Power to ap-
point judges,
commissioners
of Oyer and
Terminer, ju-

And we do hereby authorize and empower you to constitute and appoint judges, and in cases requisite commissioners of Oyer and Terminer, justices of the peace, and other necessary officers and ministers

ministers in our said province for the better administration of justice and putting the laws in execution, and to administer, or cause to be administered, unto them such oath or oaths as are usually given for the due execution and performance of offices and places, and for the clearing of truth in judicial causes.

offices of the peace, and other officers of justice.

And we do hereby give and grant unto you full power and authority, where you shall see cause or shall judge any offender or offenders in criminal matters, or for any fines or forfeitures due unto us, fit objects of our mercy, to pardon all such offenders, and to remit all such offences, fines, and forfeitures, treason and wilful murder only excepted, in which cases you shall likewise have power upon extraordinary occasions to grant reprieves to the offenders until, and to the intent that, our royal pleasure may be known therein.

Power to pardon crimes.

And we do by these presents authorize and empower you to collate any person or persons to any churches, chapels, or other ecclesiastical benefices within our said province and territories aforesaid, as often as any of them shall happen to be void.

Power to collate to ecclesiastical benefices.

And we do hereby give and grant unto you, the said Sir Danvers Osborn, by yourself or by your captains and commanders by you to be authorized, full power and authority to levy, arm, muster, command; and employ all persons whatsoever residing within our said province of New York and other the territories under your government, and, as occasion shall serve, to march them from one place to another, or to embark them, for the resisting and withstanding of all enemies, pirates, and rebels both at sea and land; and to transport such forces to any of our plantations in America, if necessity shall require, for the defence of the same against the invasions or attempts of any of our enemies; and such enemies, pirates, and rebels, if there shall be occasion, to pursue and prosecute in or out of the limits of our said province and plantations, or any of them, and, if it shall so please God, them to vanquish, apprehend, and, being taken, either according to law to put to death or keep and preserve alive at your discretion: and to execute martial law in time of invasion, or other times when by law it may be executed: and to do and execute all and every other thing and things which to our captain-general and governour in chief doth, or ought of right to, belong.

Power to levy troops, and employ them against enemies, pirates, and rebels.

And to execute martial law in time of war.

And

Power, with the consent of the council, to build forts and castles;

and to fortify and furnish them with arms, &c.

and to demolish or dismantle them.

And we do hereby give and grant unto you full power and authority, by and with the advice and consent of our said council, to erect, raise, and build in our said province of New York and the territories depending thereon, such and so many forts and platforms, castles, cities, boroughs, towns, and fortifications as you, by the advice aforesaid, shall judge necessary; and the same, or any of them, to fortify and furnish with ordnance, ammunition, and all sorts of arms fit and necessary for the security and defence of our said province; and, by the advice aforesaid, the same again, or any of them, to demolish or dismantle, as may be most convenient.

Power to appoint captains and other officers of ships, and to grant them commissions to execute the law-martial according to the stat. 13 Car. II. and 18 Geo. II.

And forasmuch as divers mutinies and disorders may happen by persons shipped and employed at sea during the time of war; and to the end that such as shall be shipped and employed at sea during time of war may be better governed and ordered, we do hereby give and grant unto you, the said Sir Danvers Osborn, full power and authority to constitute and appoint captains, lieutenants, masters of ships, and other commanders and officers, and to grant to such captains, lieutenants, masters of ships, and other commanders and officers, commissions to execute the law martial during the time of war according to the directions of two acts, the one passed in the thirteenth year of the reign of king Charles the Second, intituled, "*An act for the establishing articles and orders for the regulating and better government of his Majesty's navies, ships of war, and forces by sea;*" and the other passed in the eighteenth year of our reign, intituled, "*An act for the further regulating and better government of his Majesty's navies, ships of war, and forces by sea, and for regulating proceedings upon courts martial in the sea service;*" and to use such proceedings, authorities, punishments, corrections, and executions upon any offender or offenders who shall be mutinous, seditious, disorderly, or any way unruly, either at sea, or during the time of their abode or residence in any of the ports, harbours, or bays of our said province and territories, as the case shall be found to require, according to the martial law and the said directions during the time of war as aforesaid.

This shall not affect any officers, seamen, or other persons on board ships

Provided that nothing herein contained shall be construed to the enabling you, or any by your authority, to hold plea or have any jurisdiction of any offences, cause, matter, or thing, committed or

done

done upon the high sea or within any of the havens, rivers, or creeks of our said province and territories under your government, by any captain, commander, lieutenant, master, officer, seaman, soldier, or other person whatsoever, who shall be in our actual service and pay in, or on board, any of our ships of war, or other vessels, acting by immediate commission or warrant from our commissioners for executing the office of our high admiral, or from our high admiral of Great Britain for the time being, under the seal of our admiralty; but that such captain, commander, lieutenant, master, officer, seaman, soldier, or other person so offending shall be left to be proceeded against and tried as their offences shall require, either by commission under our great seal of Great Britain as the statute of the twenty-eighth of Henry the Eighth directs, or by commission from our said commissioners for executing the office of our high admiral, or from our high admiral of Great Britain for the time being, according to the afore-mentioned acts.

commissioned by the admiralty, when they commit offences either on the high sea, or in any river, creek, or haven.

But these persons shall be tried for such offences either by commissions under the great seal of Great Britain according to the stat. 28 Hen. VIII. or by commission from the admiralty according to the afore-mentioned acts. But for offences committed on shore, these persons shall be tried and punished according to the laws of the place where the offence shall be committed.

Provided nevertheless, that all disorders and misdemeanours committed on shore by any captain, commander, lieutenant, master, officer, seaman, soldier, or other person whatsoever belonging to any of our ships of war or other vessels, acting by immediate commission or warrant from our said commissioners for executing the office of our high admiral, or from our high admiral of Great Britain for the time being, under the seal of our admiralty, may be tried and punished according to the laws of the place where any such disorder, offence, and misdemeanor shall be committed on shore, notwithstanding such offenders be in our actual service and born in our pay on board any such our ships of war, or other vessels acting by immediate commission or warrant from our said commissioners for executing the office of our high admiral, or from our high admiral of Great Britain for the time being, as aforesaid, so as he shall not receive any protection for the avoiding of justice for such offences committed on shore from any pretence of his being employed in our service at sea.

And our further will and pleasure is, that all public monies raised or which shall be raised by any act to be hereafter made within our said province and other the territories depending thereon, be issued out by warrant from you, by and with the advice and

Power, with the consent of the council, to dispose of all public monies raised in the province for the support of the government.

consent

consent of our council, and disposed of by you for the support of the government, and not otherwise.

Power, with the consent of the council, to grant lands.

And we do hereby likewise give and grant unto you full power and authority, by and with the advice and consent of our said council, to settle and agree with the inhabitants of our province and territories aforesaid for such lands, tenements, and hereditaments as now are, or hereafter shall be, in our power to dispose of, and them to grant to any person or persons upon such terms and under such moderate quit-rents, services, and acknowledgments, to be thereupon reserved unto us, as you, by and with the advice aforesaid, shall think fit: which said grants are to pass and be sealed by our seal of New York, and, being entered upon record by such officer or officers as are or shall be appointed thereunto, shall be good and effectual in law against us, our heirs, and successors.

The grants to be under the public seal and to be registered.

Power, with the consent of the council, to appoint fairs and markets, harbours and wharfs.

And we do hereby give you, the said Sir Danvers Osborn, full power to order and appoint fairs, marts, and markets, as also such and so many ports, harbours, bays, havens, and other places for the convenience and security of shipping, and for the better loading and unloading of goods, and merchandizes, as by you, with the advice and consent of our said council, shall be thought fit and necessary.

All officers, civil and military, and all other inhabitants of the province, are to be aiding and assisting to the governour in the execution of this commission;

And we do hereby require and command all officers and ministers civil and military, and all other inhabitants of our said province and territories depending thereon, to be obedient, aiding, and assisting unto you, the said Sir Danvers Osborn, in the execution of this our commission and the powers and authorities herein contained; and, in case of your death or absence out of our said province and territories depending thereon, to be obedient, aiding, and assisting unto such person as shall be appointed by us to be our lieutenant-governour or commander in chief of our said province; to whom we do therefore by these presents give and grant all and singular the powers and authorities herein granted, to be by him executed and enjoyed during our pleasure or until your arrival within our said province and territories.

and, in case of the death, or absence, of the governour, to the lieutenant-governour or commander in chief for the time being.

In case of the death or absence of the go-

And if, upon your death or absence out of our said province and territories depending thereon, there be no person upon the place commissioned

commissionated or appointed by us to be our lieutenant-governour or commander in chief of our said province, our will and pleasure is, that the eldest counsellor, whose name is first placed in our said instructions to you, and who shall at the time of your death or absence be residing within our said province of New York, shall take upon him the administration of the government, and execute our said commission and instructions and the several powers and authorities therein contained, in the same manner and to all intents and purposes as other our governour and commander in chief of our said province should or ought to do in case of your absence until your return, or in all cases until our further pleasure be known therein.

vernour, and if there be no lieutenant-governor in the province, the command of the province shall devolve upon the eldest counsellor.

And we do hereby declare, ordain, and appoint that you, the said Sir Danvers Osborn, shall and may hold, execute, and enjoy the office and place of our captain-general and governour in chief in and over our province of New York and the territories depending thereon, together with all and singular the powers and authorities hereby granted unto you, for and during our will and pleasure.

This office of captain-general and governour in chief of the said province shall be held only during the king's pleasure.

And whereas there are divers colonies adjoining to our province of New York, for the defence and security whereof it is requisite that due care be taken in time of war; we have therefore thought it necessary for our service and for the better protection and security of our subjects inhabiting those parts, to constitute and appoint, and we do by these presents constitute and appoint, you, the said Sir Danvers Osborn, to be our captain-general and commander in chief of the militia and of all the forces by sea and land within our colony of Connecticut and of all our forts and places of strength within the same; and for the better ordering, governing, and ruling our said militia and all our forces, forts, and places of strength within our said colony of Connecticut, we do hereby give and grant unto you, the said Sir Danvers Osborn, and, in your absence, to our commander in chief of our province of New York, all and every the like powers as in these presents are before granted and recited for the ruling, governing, and ordering our militia and all our forces, forts, and places of strength within our province of New York, to be exercised by you, the said Sir Danvers Osborn, and in your absence from our territories and dominion of New York, by our

Grant of the office of captain-general and commander in chief of the militia and other forces both by sea and land of the colony of Connecticut.

commander in chief of our province of New York, within our said colony of Connecticut, for and during our pleasure.

In Witness whereof we have caused these our letters to be made patent.

Witness ourself at Westminster the first Day of August in the twenty-seventh year of our reign.

By writ of privy seal,

YORKE *and* YORKE.

With the same view of shewing the resemblance of the civil constitutions given to the two provinces of Quebec and New York by his Majesty's commissions and instructions to his governours of them, I shall likewise insert the following copy of a grant of lands in the province of New York made in pursuance of his Majesty's instructions for that province, which will be found to be but little different from the grants of land in the province of Quebec that have been herein above recited.

D R A F T

DRAFT of Letters Patent for a Tract of Land in the Province of NEW YORK, erecting the same into a Township.

GEORGE the THIRD, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth; To all to whom these Presents shall come, Greeting:

WHEREAS our loving subjects A, B, C, D, &c. by their humble petition presented unto our trusty and well-beloved Sir Henry Moore, baronet, our captain-general and governour in chief of our province of New York and the territories depending thereon in America, chancellor and vice-admiral of the same, and read in our council for our said province on the twenty-first day of June now last past, did set forth that the petitioners had discovered a vacant tract of land [*here recite to the end of the Petition*].

Petition of divers persons to the governour for a grant of a tract of land.

Which petition having been then and there referred to a committee of our council of our said province, our said council did afterwards on the same day, in pursuance of the report of the same committee, humbly advise and consent that our said captain-general and governour in chief should by our letters patent grant to each of the said petitioners, and their respective heirs, the quantity of one thousand acres of the tract of land aforesaid under the quit-rent, provisos, limitations, and restrictions prescribed by our royal instructions.

Reference of the said petition to a committee of the council of the province.

Advice of the council to the governour to grant 1000 acres of the tract of land petitioned for to each of the petitioners.

Wherefore, in obedience to our said royal instructions, our commissioners appointed for the setting out all lands to be granted within our said province have set out for them the said A, B, C, D, &c. all that certain tract or parcel of land within our province of New York, situate, lying, and being in the county of Albany, on the east side of Schohary, adjoining to the patent of Schohary and other patented

The commissioners for setting out all lands to be granted in the province have set out a tract of land for the petitioners. Description of the land so set out.

patented lands there; which said tract or parcel of land is part of a tract of land purchased by the said A, B, and others, of the native Indian proprietors thereof, as appears by the Indian deed filed in the secretary's office bearing date the sixth day of June one thousand seven hundred and sixty-four; which said tract or parcel of land begins at the north-east corner of the northernmost of two tracts of land formerly granted to *Lambertus Starnbergber* and *Adam Starnbergber*; and runs from thence north, twenty-seven degrees east, ninety-two chains; then south, sixty-six degrees east, one hundred and fifty five chains; then south, thirty-one degrees east, two hundred and ten chains; then south, thirty-two degrees west, two hundred and eighty-four chains; then north, fifty degrees west, two hundred and eighty chains; then south, twenty-seven degrees west, one hundred and fifty-four chains; then north, fifty-nine degrees west, one hundred and thirty-seven chains; then north, twenty-five degrees east, twenty-eight chains, to the southernmost of the said two tracts of land granted to the said *Lambertus* and *Adam Starnbergber*; and then, along the southerly and easterly bounds of the said southernmost tract, to a tract of land granted to *Johannes Lawyer* and *Philip Bergh*; and then, along the southerly, easterly, and northerly bounds of this last-mentioned tract, as they run, to the first mentioned tract granted to the said *Lambertus* and *Adam Starnbergber*; and then, along the east bounds of this last-mentioned tract, north, twenty-five degrees east, one hundred and forty chains, to the place where this tract of land first began; containing eight thousand acres of land and the usual allowance for highways.

And in setting out the said tract, or parcel, of land, our said commissioners have had regard to the profitable and unprofitable acres, and have taken care that the length thereof doth not extend along the banks of any river otherwise than is conformable to our said royal instructions, as by a certificate thereof under their hands, bearing date the eighth day of this instant month of July, and entered on record in our secretary's office for our said province, may more fully appear.

Which said tract of land, set out as aforesaid, according to our said royal instructions, we being willing to grant to the said petitioners,

tioners, their heirs, and assigns for ever, with the several privileges and powers herein after-mentioned:

KNOW YE that, of our special grace, certain knowledge, and meer motion, we have given, granted, ratified, and confirmed, and do by these presents for us, our heirs and successors, give, grant, ratify, and confirm, unto them the said A, B, C, D, &c. their heirs and assigns for ever, all that the tract, or parcel of land aforesaid, set out, abutted, bounded, and described in manner and form as above-mentioned, together with all and singular the tenements, hereditaments, emoluments, and appurtenances thereunto belonging, or appertaining: and also all our estate, right, title, interest, possession, claim, and demand whatsoever, of, in, and to, the same lands and premises and every part and parcel thereof: except and always reserved out of this our present grant unto us, our heirs and successors for ever*, all mines of gold and silver, and also all white or other sorts of pine trees fit for masts, of the growth of twenty-four inches diameter and upwards at twelve inches from the earth, for masts for the royal navy of us, our heirs and successors.

Grant of the tract of land above described.

Reservation of all mines of gold and silver; and of all pine trees of a certain size.

To have and to hold one full and equal eighth part (the whole into eight equal parts to be divided) of the said tract or parcel of land, tenements, hereditaments, and premises by these presents granted, ratified, and confirmed, and every part and parcel thereof, with their and every of their appurtenances (except as is herein before excepted) unto each of them our grantees above-mentioned, their heirs and assigns respectively, to their only proper and separate use and behoof respectively for ever, as tenants in common and not as joint tenants.

Habendum.

To be holden of us, our heirs and successors, in free and common socage, as of our manor of *East Greenwich* in our county of Tenure.

It stood thus in the draft, but the council altered it as above to the very words of the king's instructions.

* All mines of gold and silver and all royal mines whatsoever, and also all white pine trees, and all other sorts and species of pine trees whatsoever fit for masts of the diameter of twenty-four inches and upwards at twelve inches from the ground for masts, &c.

Kent,

Quit-rent.

Kent, within our kingdom of Great Britain; yielding, rendering, and paying therefore, yearly and every year for ever, unto us, our heirs and successors, at our custom-house in our city of New York, unto our, or their, collector or receiver-general there for the time being, on the Feast of the Annunciation of the blessed Virgin Mary, commonly called Lady-Day, the yearly rent of two shillings and six pence sterling * for each and every hundred acres of the above granted lands, and so in proportion for any lesser quantity thereof (saving and except for such part of the said lands allowed for highways as above-mentioned) in lieu and stead of all other rents, services, dues, duties, and demands whatsoever for the hereby granted lands and premises, or any part thereof. And we do, of our especial grace, certain knowledge, and meer motion, create, erect, and constitute the tract, or parcel, of land herein granted, and every part and parcel thereof, a township for ever hereafter to be, continue, and remain, and by the name of _____ for ever hereafter to be called and known.

Erection of the tract of land hereby granted into a township.

Grant, to the inhabitants of the said township, of all the powers and privileges legally belonging to the inhabitants of any other township in the said province.

And, for the better and more easily carrying on and managing the public affairs and business of the said township, our royal pleasure is, and we do hereby for us, our heirs and successors, give and grant to the inhabitants of the said township all the powers, authorities, privileges, and advantages heretofore given and granted to, or legally enjoyed by, all, any, or either, our other townships within our said province.

Establishment of officers to be chosen annually by the inhabitants of the said township.

Day of election.

Place of election.

And we also ordain and establish, that there shall be for ever hereafter in the said township one supervisor, two assessors, one treasurer, two overseers of the highways, two overseers of the poor, one collector, and four constables, elected and chosen out of the inhabitants of the said township yearly and every year, on the first Tuesday in May, at the most public place in the said township by the majority of the freeholders thereof then and there met and assembled for that purpose; hereby declaring that wheresoever the first election in the said township shall be held, the future elections

The council would confine themselves to the very words of the king's instructions.

* Of good and lawful money of Great Britain.

shall

shall for ever thereafter be held in the same place, as near as may be; and giving and granting to the said officers so chosen power and authority to exercise their said several and respective offices during one whole year from such election and until others are legally chosen and elected in their room and stead, as fully and amply as any the like officers have, or legally may use or exercise their offices in our said province.

And in case any or either of the said officers of the said township should die, or remove from the said township, before the time of their annual service shall be expired, or refuse to act in the offices for which they shall respectively be chosen, then our royal will and pleasure further is, and we do hereby direct, ordain, and require the freeholders of the said township to meet at the place where the annual election shall be held for the said township, and chuse other, or others of the said inhabitants of the said township in the place and stead of him, or them, so dying, removing, or refusing to act, within forty days next after such contingency.

Accidental vacancies in the said offices by the death, or removal of the persons who held them, or their refusal to act in them, shall be filled up by new elections within forty days after they have happened.

And to prevent any undue election in this case, we do hereby ordain and require, that upon every vacancy in the office of supervisor, the assessors, and in either of the other offices, the supervisor of the said township, shall, within ten days next after any such vacancy first happens, appoint the day for such election, and give public notice thereof in writing under his, or their hands, by affixing such notice on the church door, or other most public place, in the said township, at the least ten days before the day appointed for such election: and in default thereof, we do hereby require the officer, or officers, of the said township, or the survivor of them, who, in the order they are herein before-mentioned, shall next succeed him, or them, so making default, within ten days next after such default, to appoint the day for such election, and give notice thereof as aforesaid; hereby giving and granting, that such person or persons as shall be so chosen by the majority of such of the freeholders of the said township as shall meet in manner hereby directed, shall have, hold, exercise, and enjoy, the office, or offices, to which he, or they, shall be so elected and chosen, from the time of such election, until the first Tuesday in May then next following, and until other, or others, be legally chosen in his, or their place and

Method of proceeding in the occasional elections.

stead,

stead, as fully as the person, or persons, in whose place he, or they, shall be chosen, might, or could, have done by virtue of these presents. And we do hereby will and direct that this method shall for ever hereafter be used for the filling up all vacancies that shall happen in any or either of the said offices between the annual elections above directed.

Condition that the grantees shall within the space of three years settle at least one family for every thousand acres upon the premises. Condition that they shall within the space of three years cultivate at least three acres for every fifty of the premises. Condition, not to destroy the pine trees reserved in this grant to the crown, without the king's leave.

Provided always, and upon condition nevertheless, that, if our said grantees, their heirs, or assigns, or some, or one, of them, shall not, within three years next after the date of this our present grant, settle on the said tract of land hereby granted so many families as shall amount to one family for every thousand * acres of the same tract; or, if they our said grantees, or one of them, their, or one of their, heirs, or assigns, shall not also, within three years to be computed as aforesaid, plant and effectually cultivate at the least three acres for every fifty acres of such of the hereby granted lands as are capable of cultivation; or if they our said grantees, or any of them, their, or any of their, heirs, or assigns, or any other person, or persons, by their, or any of their, privity, consent, or procurement, shall fell, cut down, or otherwise destroy any of the pine trees by these presents reserved to us, our heirs and successors, or hereby intended so to be, without the royal licence of us, our heirs or successors for so doing first had and obtained, that then, and in any of these cases, this our present grant and every thing therein contained shall cease and be absolutely void, and the lands and premises hereby granted shall revert to, and vest in, us, our heirs and successors, as if this our present grant had not been made; any thing herein before contained to the contrary in anywise notwithstanding †.

Provided

* The clause requiring one family to be settled on every thousand acres, stands on an order of the governour and council.

The following clause was here inserted in the original draft; but was struck out by the council as improper, it being considered as a construction or explanation of the king's instructions, which they thought should be left to the construction of law.

† Declaring nevertheless that neither this reservation or exception herein contained of all white pine-trees and of all other sorts and species of pine-trees whatsoever fit for masts, of

Provided further, and upon condition also nevertheless, and we do hereby, for us, our heirs and successors, direct and appoint that this our present grant shall be registered and entered on record within six months from the date thereof in our secretary's office in our city of New York, in our said province, in one of the books of patents there remaining, and that a docket thereof shall be also entered in our auditor's office there for our said province; and that in default thereof this our present grant shall be void and of none effect; any thing before in these presents contained to the contrary thereof in any-wise notwithstanding.

This grant shall be registered in the secretary's office, and a docket thereof entered in the auditor's office,

And we do moreover, of our especial grace, certain knowledge, and meer motion, consent and agree, that this our present grant, being registered, recorded, and a docket thereof made, as before directed and appointed, shall be good and effectual in the law to all intents, constructions, and purposes whatsoever, against us, our heirs and successors, notwithstanding any mis-reciting, mis-bounding, mis-naming, or other imperfection or omission, of, in, or in any-wise concerning, the above granted, or hereby mentioned, or intended to be granted, lands, tenements, hereditaments, and premises, or any part thereof.

When duly registered and entered, this grant shall be good and valid in law against the king, notwithstanding any mistakes or imperfections in it.

In testimony whereof we have caused these our letters to be made patent, and the great seal of our said province to be hereunto affixed.

of the diameter of twenty-four inches and upwards at twelve inches from the ground, for masts for the royal navy of us, our heirs and successors, nor the restriction, or proviso, afore-mentioned to prevent the felling, cutting down, or otherwise destroying the same, nor any other reservation, exception, matter, or thing herein before contained, shall extend, or be construed to extend, to prohibit, or in any-wise hinder, the said A, B, C, D, &c. or either of them, their, or either of their, heirs, or assigns, from such felling, or cutting down, of any of the said trees on the hereby granted lands, as shall be necessary and conducive to the clearing and effectually cultivating the same or any part thereof, or to or for their, or any of their, own necessary use or uses, on the same lands; but to prevent their, or any, or either, of their, cutting down, felling, or otherwise destroying, any of the said pine-trees on any part of the hereby granted lands, when not clearing to be cultivated and necessary for the cultivation thereof; and to preserve all such trees on every part of the same lands, when out of cultivation, for the use of us, our heirs and successors, as aforesaid.

Witness our said trusty and well-beloved Sir Henry Moore, baronet, our said captain-general and governour in chief in and over our said province of New York and the territories depending thereon in America, chancellor and vice-admiral of the same, at our fort in our city of New York the twentieth Day of July in the year of our Lord one thousand, seven hundred, and sixty-nine, and of our reign the ninth,

C L A R K E,
H. M O O R E.

N U M B E R XXXII.

IN the foregoing paper, Number II. intituled, *The opinion of the attorney-general of the province of Quebec concerning the report of the governour of the said province on the state of the laws and administration of justice in the same*, Page 53, it is recommended as a practicable and useful measure to make a code of all the laws that his Majesty shall think fit to be observed in the said province, to the exclusion of all other laws, whether French or English, that are not contained in the said code. As a proof of the practicability of this measure, and as a specimen of such a code with respect to one head of law, which had been the subject of several regulations in the time of the French government, I shall here insert the draught of an ordinance for repairing and amending the public highways and bridges in the province of Quebec, which was prepared by the said attorney-general, by the order of the governour and council of the said province in the year 1769, but has not yet been passed. It is a collection of the most useful provisions contained in several French ordinances that had been passed at different times upon the subject, with some additions to them, and very particular directions about the manner of recovering the pecuniary penalties appointed for neglects and breaches of it, in order to render the execution of it easy and certain; which directions are in a great measure the causes of it's length.

A DRAUGHT of an ORDINANCE for repairing
and amending the public Highways and Bridges in the
Province of QUEBEC.

Preamble.

WHEREAS it has been found by the experience of more than three years, that the several provisions made by an ordinance of the governour and council of this province, and dated on the twenty-seventh day of March in the year of our Lord one thousand, seven hundred, and sixty-six, and intituled, “ *An Ordinance for repairing and amending the highways in this province,*” have not had the desired effect of causing the said highways to be duly repaired and amended; but that, notwithstanding the said ordinance, the said highways continue to be in a condition that is not only inconvenient, but even dangerous, to travellers: and it is now the opinion of his excellency the governour of this province and the council of the same, that a set of provisions and regulations for this purpose, nearly resembling those which were observed in this province in the time of the French government thereof, and which the inhabitants of the said province were for many years accustomed to follow, would be more likely to be carried into due execution, and to answer the beneficial ends so much to be desired: it is therefore ordained and enacted by his excellency the captain-general and governor in chief of this province, by the advice and with the consent of the council of the same, that,

S E C T I O N I.

Repeal of the ordinance of the 27th of March, 1766;

and likewise of all other laws relating to the public highways and bridges.

The aforesaid ordinance dated on the twenty-seventh day of March in the year of our Lord one thousand, seven hundred, and sixty-six, intituled, “ *An Ordinance for repairing and amending the highways in this province,*” shall be from the day of the publication of this ordinance utterly void and of no effect; and that all other laws, statutes, ordinances, and customs whatsoever, whether they be laws of England or any other laws whatsoever, concerning the manner of repairing and amending public highways, and the building and repairing public bridges in this province, which may either

either have been in force, or have been supposed to be in force in this province before the present time, shall in like manner be, from the day of the publication of this ordinance, utterly void and of no effect: and that from that day forwards the following rules and directions for the repairing and amending the public highways and bridges in this province shall be observed in their stead.

S E C T. II.

Whereas there are three sorts of public highways in this province, to wit, first, those called in the time of the French government of this province *Chemins Royaux*, or *Chemins du Roy*, that is, royal highways, or king's highways, the soil of which belonged formerly to the French king, and now belongs to his most excellent Majesty our sovereign lord the king of Great Britain; which royal highways are usually carried along the fronts of the several feignories, or large tracts of land granted by the crown, and holden of the same by the several grantees thereof, by the tenure of fealty and homage, between the said feignories and the river Saint Lawrence, or other rivers near which the said feignories lie; and, secondly, those called in the time of the French Government *Chemins de Ceinture et de Traverse*, the soil of which for the most part belongs to the owners of the feignories, and which may therefore with propriety be nominated *seigneurial highways*; which run either at the back of the said feignories, so as to inclose or surround them from behind, or through the said feignories at the end of one, or two, or three, or more rows of the small lots of land granted by the feigniors to their tenants, to be holden of them by rent-service, and which are nearly parallel to the former highways called the king's or royal highways; and, thirdly, those public highways which, during the time of the French government, were called *Chemins de Sortie et de Communication*, and which run across the two former sets of roads called the *Chemins du Roy*, or royal highways, and the *Chemins de Ceinture et de Traverse*, or seigneurial highways, nearly at right angles, and in directions parallel, or nearly parallel, to the sides, or depths, of the several feignories through which, or between which, they pass, and which were made principally for the convenience and benefit of the several peasants, or tenants by rent-service, that inhabit the said feignories, as outlets for them to pass from the said

There are three sorts of public highways in this province: 1st. Royal highways.

2^d. Seigneurial highways.

3^d. Peasants roads, or bye-roads.

faid feigniorics into the royal and feigneurial highways before-mentioned, and, for the most part, passed through and upon the soil of some of the said peasants, and which may therefore with propriety be denominated *Peasants Roads*, or *Bye-roads*, and will be so denominated in the subsequnt part of this ordinance : it is hereby ordained and declared by the authority aforesaid, with respect to all public highways of the two first kinds above-mentioned, to wit, royal highways and feigneurial highways, or the *Chemins de Ceinture et de Traverse*, in this province, that every person who occupies any land adjoining to any royal or king's highway, or to any feigneurial highway in this province, shall keep in good repair so much of the said highway as is contiguous to the land occupied by him throughout one half of the breadth of the said highway.

Every occupier or owner of land adjoining to any royal or feigneurial highway, shall keep the said highway in repair before his own land.

And where any lands adjoining to any such highway happen to be unoccupied, the owner of the said lands shall be obliged to keep the said highway in good repair for the distance through which the said lands are contiguous to the said highway in the same manner as the occupiers thereof would have been, if the said lands had happened to be occupied. And the owners of such lands shall be bound to this duty in all cases, as well when the said lands are in their natural state, and covered with wood, as when they have been cleared.

All owners of such lands without exception shall be bound to perform this duty.

And all owners of such lands whatsoever, as well those who hold them in a joint capacity, such as the religious societies of monks and nuns that still subsist in this province, as those who hold them in a separate and private capacity; and likewise all persons who hold lands for the use of others, such as the managers and directors of hospitals; and likewise those who hold lands in the right of others, such as the guardians of children not yet come to years of discretion, and of lunatic persons, shall be bound to perform this duty of repairing and keeping in good repair the aforesaid royal and feigneurial highways adjoining to the lands in their possession in the manner above directed. And those who hold such lands for the use of, or in the right of, others, may deduct in their several accounts with the persons to whom they are accountable, such reasonable expences as they shall have incurred in performing, or causing to be performed, this necessary duty.

S E C T.

S E C T. III.

And whereas the lots of land granted to the several peasants, or tenants by rent-service, in this province, are for the most part of a great depth in comparison of their breadth or front (being oftentimes of the depth of thirty, and sometimes of forty, French arpents, and of the breadth of only three of the said arpents); and the several public highways in this province of the third class above-mentioned, which are called in this ordinance bye-roads, or peasants roads, run through the said lots of land in the directions of their depths or longer dimensions; by means whereof it would be unreasonably burthensome to the owners and occupiers of the lands adjoining to such bye-roads to be obliged to repair the said bye-roads throughout the whole space or length in which they are contiguous to their said lands: it is therefore ordained and declared by the authority aforesaid, that the occupiers and owners of the lands adjoining to such bye-roads, or peasants roads, shall not be obliged to repair such parts of the said bye-roads as are contiguous to their said lands; but that the said roads shall be repaired and kept in good repair by a much greater number of the occupiers and owners of land in the respective parishes in which the said bye-roads lie, to wit, by such of the occupiers and owners of land in the said parishes, whether they live near the said bye-roads or at a distance from them, as shall be commanded to repair them by the surveyor-general of the highways for the district in which they lie, who shall appoint them thereunto in the following manner.

Of bye-roads, or peasants roads.

Bye-roads, or peasants roads, are not to be repaired by the occupiers and owners of the adjoining lands: but by a much greater number of the occupiers and owners of land in the parishes in which the said bye-roads lie, appointed thereunto by the surveyors-general of the highways.

The surveyor-general of the highways of each district of the province shall visit and examine every such bye-road in his district, in company with the bailiff and sub-bailiffs of the parish in which it lies, and of at least six more of the most honest and discreet occupiers of land in the said parish, in order to know the length and breadth of the said bye-road, and the nature of it's soil, and the degree of difficulty of keeping it in good repair, and it's distance from each extremity of the said parish, and to discover to which of the inhabitants it will be most especially useful. And after having made such view thereof, the said surveyor-general of the highways shall draw up a written order for repairing the said bye-road, in

Manner of their apportioning a bye-road, or peasants road, among the several persons who are to repair it.

which he shall direct that the occupiers or owners of certain lots of land in the said parish (which lots of land he shall particularly describe in the said order, and mention therein the names of the present owners and occupiers of them) being in his judgement those who reap the most considerable benefit from the said bye-road, shall thenceforwards be bound to keep the said bye-road in repair : and, if he is of opinion that the said bye-road is highly beneficial to all the occupiers and owners of land in the said parish, he shall in such case direct in the said order that all the said occupiers and owners of land, that is to say, all the occupiers of occupied land, and owners of unoccupied land, in the said parish, shall thenceforwards be so bound : excepting only in both cases the occupiers or owners of those lots of land out of which the soil of the said bye-road was taken, who, in consideration that they, or their predecessors in the possession of the said lots of land, whose estate therein they have, did heretofore furnish the soil of the said bye-road out of their said lands for the use of the public, shall be exempted from the labour of keeping the same in repair. And further the said surveyor-general of the highways shall, in his said written order for repairing the said bye-road, assign, or allot, to each of the said occupiers and owners of land that shall be so bound by the said order to keep the said bye-road in repair, a particular portion of the said bye-road, to be kept by him in good repair. And each of the said persons shall keep the said portion of the said bye-road so allotted to him in constant good repair throughout the whole breadth of the said bye-road.

Those persons who furnished the soil of any bye-road shall be exempted from the burden of repairing it.

Bye-roads shall be kept in the same kind of repair by the persons amongst whom they are apportioned, as royal and seigneurial highways by the occupiers and owners of the lands adjoining to them.

And all the rules hereafter-mentioned concerning the kind of repair in which the royal and seigneurial highways above-mentioned are to be kept by the occupiers and owners of the lands adjoining to them, shall extend equally to these bye-roads, or peasants roads: and the several persons, to whom the several portions of these bye-roads should be allotted by the surveyors-general of the highways in the manner here mentioned, shall be under the same obligations with respect to those portions of the said bye-roads, and liable to the same penalties for any neglect of their duty concerning them, as the owners of land adjoining to the said royal and seigneurial highways are with respect to those parts of the said highways which are contiguous to their respective lands.

And

And when the said surveyor-general of the highways shall have made such a written order as aforesaid for repairing any bye-road and apportioning it among the several persons who are to repair it, he shall cause two copies of the said order to be made upon parchment, either in print or in a very fair character of hand-writing, and shall subscribe his name to them; and then shall deliver one of these copies of the said order to the high bailiff of the parish in which such bye-road lies, to be by him carefully kept during his continuance in his office, and then delivered over to the next high bailiff of the said parish, and so on to the following high bailiffs in succession; and shall deliver the other copy of the said order to the governour and council of the said province to be kept among the records of the said council.

Two copies of the surveyor-general's said order for repairing and apportioning such a bye-road shall be made upon parchment, and subscribed by the said surveyor-general: and one of them shall be delivered to the high bailiff of the parish in which the said bye-road lies, and be kept by him and his successors; and the other shall be delivered to the governour and council of the province, to be kept among the records of the council. Persons aggrieved by the surveyor-general's apportionment of a bye-road may be relieved by an application to the governour and council of the province.

And if any of the said occupiers or owners of land in any parish in this province, to whom the charge and burthen of repairing certain portions of a bye-road in the said parish shall have been thus assigned by the surveyor-general of the highways for the district in which it lies, shall think themselves aggrieved by such apportionment, they may complain thereof in a memorial to the governour and council of the said province, who will thereupon duly consider the grounds and merits of the said complaint, and either quash, amend, or confirm the said order of the surveyor-general of the highways for repairing and apportioning the said bye-road, as they shall find occasion.

And in like manner where it shall happen in process of time, by the increase of the number of the occupiers and owners of land in any parish, that a former apportionment of a bye-road in the said parish, though made at first with equity and discretion, becomes inconvenient to the inhabitants of the said parish, and a new apportionment thereof becomes necessary, the inhabitants of the said parish shall apply to the governour and council of the province by a memorial, setting forth the inconveniences they labour under from the apportionment then in force, and desiring the said governour and council to cause the surveyor-general of the highways of the district in which such bye-road lies, to take a view of the said parish and bye-road, and to make a new order for repairing and apportioning the said bye-road more suitable to the then circumstances of the

The like method must be taken when by length of time and the increase of the number of inhabitants in the parish, a new apportionment of a bye-road is become necessary.

said parish; and the said governour and council shall take such order therein as shall be fitting.

S E C T. IV.

Ditches shall be made on both sides of every public highway, and kept open and clean during the summer season.

And it shall be deemed a necessary part of the duty of repairing and keeping in good repair any public highway, to make a ditch on each side of it, and to keep the same open and clean during the whole summer season. And these ditches shall be at least two feet in depth, and two feet in breadth at their tops and one foot in breadth at their bottoms; and in some places they shall be made of a greater depth and breadth, according to such directions as shall be given for that purpose by the high bailiffs of the several parishes in which they lie, agreeably to the powers that are given to the said high bailiffs in this behalf in the subsequent part of this ordinance.

S E C T. V.

The surface of every public highway shall be made even, by digging down heaps and filling up holes: and loose stones and other nuisances shall be removed.

And it shall be deemed another necessary part of the said duty of repairing and keeping in good repair the said public highways, to keep the surface thereof as even as may be; and, for that purpose, to fill up all the holes that shall be found therein, and to dig down all the rising heap; of snow or earth that may be formed thereon, and to spread the materials thereof upon the lower parts of the said highways; and to remove all obstacles that may happen to be on the said highways, such as loose pieces of wood, broken carriages, dead horses, or dogs, or other animals, and loose stones of more than three inches in length, and, in general, every thing that may be any hindrance or inconvenience to persons that shall travel on the same.

S E C T. VI.

Small bridges over streams of water not more than four feet wide shall be built and kept in repair by the persons who are

And where a little stream, or rivulet, not more than four feet wide, runs across any public highway, it shall be the duty of the person or persons who is or are obliged by the second or third section of this ordinance to keep in repair that portion of the said highway in which such rivulet runs across it, to make and keep up in constant

constant good repair a strong and safe bridge over such stream, or rivulet, of the same breadth with the said highway, so as to reach from the ditch on one side of such highway to the ditch on the other side thereof. But bridges over rivers, or streams of water, that are more than four feet wide, and that run across public highways, shall be made and kept in repair by the joint labour and at the joint expence of all the inhabitants of the parishes in which they are situated, who shall follow and execute the directions that shall be given them for that purpose by the high bailiffs of the said parishes respectively, in pursuance of the powers given to the said bailiffs by the subsequent clauses of this ordinance.

bound to repair those parts of the public highway: in which they are situated. But bridges over larger streams of water shall be built and repaired by the joint labour of all the inhabitants of the parishes in which they are situated.

S E C T. VII.

And to the end that the public highways of this province may receive the full benefit of the sun-shine and wind in summer, and be thereby kept as dry as may be, and that the snow may not be gathered upon them in great and dangerous heaps in winter, all occupiers and owners of land adjoining to any public highways in the said province are hereby required to cut down, and grub up by the roots, and carry away all the wood, both trees and shrubs and other underwoods that may be growing on their said lands for the space of thirty feet on each side of such highway (excepting fruit trees, and all such trees and plants as may be growing in any gardens or orchards, or before any houses on the said highway); under pain of forfeiting the sum of two Spanish dollars in case any wood be found growing on their said lands within the said space of thirty feet from either side of any of the said highways, on or after the first day of June next, and other two Spanish dollars for every subsequent six months during which the said wood shall be left upon the said lands within the said distance of thirty feet from such highway.

The ground shall be cleared of trees and shrubs for the space of thirty feet on each side of every public highway.

S E C T. VIII.

And it shall be the duty of the owners and occupiers of the lands adjoining to any royal or seigneurial highway, and of those persons to whom the duty of repairing any bye-road shall belong by virtue of any such order of apportionment as is described in the third

The persons whose duty it is to repair the public highways shall beat down the snow on the said

highways with
spades and
shovels after
every new fall
of snow.

section of this ordinance, after every new fall of snow in the winter season, to beat down the snow on the said several public highways with spades and shovels, or other implements proper for that purpose, and to drive their slays, or sleds, or other carriages, over them, for the space of one half hour; to the end that the snow on the said highways may be thereby made close and hard, so as to be fit to bear the carriages of such persons as may have occasion to travel on the said highways. And this they shall do for the breadth of ten feet, to wit, five feet on one side of the road, and five feet on the other, leaving between the paths so beaten and pressed down a middle space of at least two feet in breadth, in which the snow shall either be left in its natural state without being beaten and pressed down at all, or at least shall be less beaten and pressed down than the snow in the other two tracks above-mentioned of the breadth of five feet each; so that the said two tracks may make two different and distinct roads manifestly separated from each other by the said middle space of looser snow; to the end that persons who are travelling in contrary directions on the said highways may travel on different parts thereof, to wit, in the said two separate tracks, and may by that means be enabled to pass by each other without any inconvenience. And, in order thereunto, all persons who shall travel on any public highway in this province are hereby enjoined and commanded to keep themselves, as much as possible, on that side of the said highway which lies upon their right hands as they are travelling; by means whereof those who are travelling on the same highway in contrary directions will always be on different sides thereof. And this rule shall be observed by all travellers on the said public highways in all parts of the year, the summer as well as the winter.

All travellers
on the public
highways shall
keep on those
sides thereof
which lie on
their right-
hands as they
are travelling.

And if any person that is travelling on any of the said public highways in this province, either on horseback, or in a slay or sled, or calash, or cart, or any other carriage, shall happen, contrary to the rule here laid down, to be on that side of the said highway which lies upon his left-hand as he is travelling, and shall meet another person coming the contrary way, either on horseback, or in a slay, or sled, or calash, or cart, or any other carriage, on the same side of the said highway, so that they cannot safely and conveniently pass by each other, without turning aside from the track in which they are going, it shall be the duty of the first of the
said

said persons, who is on the left-hand side of the road, to yield the way to the other, and to go without delay to the right-hand side of the said highway : and if he shall refuse so to do, he shall forfeit the sum of one Spanish dollar for such his refusal, and shall likewise be answerable in an action at law to the other person aforesaid for all the damage which shall accrue to such other person, or to the horses of such other person, or to his carriage or carriages, or to any of the things contained in them, in consequence of such refusal. And the said forfeiture of one Spanish dollar may be sued for and recovered by any person whatsoever before any one justice of the peace of the district in which such refusal shall be made, by an information made before such justice, who is hereby authorized and required to hear and determine such information in a summary manner, and upon the oath of one credible witness (being some other than the informer himself who sues for the said penalty) and to levy the said sum, together with the costs of suing for the same, upon the goods and chattels of such offender. And half the said sum of one Spanish dollar shall belong to the said informer who shall have sued for the same, and the other to the king's majesty. But no prosecution of this kind shall be brought after the space of two weeks from the time of committing the said offence.

S E C T. IX.

And further, to the end that the snow may be always kept hard and well pressed down in the two tracks above-mentioned on the several royal and seigneurial highways in this province throughout the winter season, it shall be the duty of every occupier and owner of land adjoining to any of the said royal and seigneurial highways (over and above the before-mentioned duty of beating down the snow on the two tracks in the said highways above described, with spades or shovels, or other proper implements, immediately after every new fall of snow in the manner prescribed in the last section) to come out, or to send out some person for him, with a horse and a sly, or sled, every day in the winter season during the continuance of the snow upon the ground, at some time in the forenoon ; or if he has no horse and carriage at home, to come out in like manner, or send some person for him, with his cows or oxen, and to drive, or cause to be driven, the said horse and sly, or sled, or the said cows and oxen, at least six times over that part of the said highway.

Sleds, or slys, or horned cattle, shall be driven over the several royal and seigneurial highways in this province at least six times every day in the winter, to keep the snow down.

under pain of
forfeiting one
fourth part of a
Spanish dollar.

highway which he is obliged to keep in good repair, to wit, three times in one direction, and as often in the contrary direction; unless he be hindered from so doing by the continual falling of snow, or rain, during the whole forenoon, or by sickness, or by some other cause that may reasonably excuse him therefrom. And whosoever shall neglect so to do without a reasonable excuse for such neglect, shall forfeit the fourth part of one Spanish dollar for every such neglect, which sum may be sued for and recovered by the high bailiff, or either of the sub-bailiffs of the parish in which such offence shall have been committed, at any time within one month after the commission thereof, by information before any one justice of the peace of the district in which it shall have been committed, who is hereby authorized and required to hear and determine such information in a summary manner, and upon the oath of one credible witness, and in case of a conviction, to levy the said sum of the fourth part of one Spanish dollar, together with the costs of suing for the same, by a warrant in writing under his hand, upon the moveable goods and chattels of such offender.

S E C T X.

Sleds and other
carriages going
to market with
firewood shall be
furnished with
hoes or shovels.

And in order to diminish, as much as possible, the great number of heaps and hollows in the public highways in this province, which are formed by the drifting and irregular settling of the snow upon the said highways in the winter season, and which are found to be very inconvenient to travellers, it shall be the duty of every person that brings a load of firewood to market in any sled or other carriage to either of the towns of Quebec, Three Rivers, or Montreal, during the continuance of the snow upon the ground, to carry with him an hoe or a shovel, to the end that he may be able to remove the heaps of snow, and fill up the corresponding hollows that he shall happen to meet with in his journey to such market-town. And if any such person shall neglect to carry with him an hoe or a shovel on any such occasion, he shall forfeit for every such neglect the sum of one half of a Spanish dollar; which may be sued for and recovered, within one month after such neglect, by the clerk of the market of the town to which such load of firewood shall have been carried, or his sufficient deputy, or, where it happens that there is no clerk of the market, by the high bailiff of the parish

parish to which such town belongs, by information before any one justice of the peace of the district in which such town is situated, who is hereby authorized and required to hear and determine such information in a summary manner upon the oaths of two credible witnesses, and, in case of a conviction, to cause the said sum of one half of a Spanish dollar, together with the costs of suing for the same, to be levied, by a warrant or order in writing under his hand, upon the goods and chattels of such offender.

S E C T. XI.

And it shall be the duty of the several owners and occupiers of land adjoining to any of the royal or seigneurial highways in this province, and of the several persons who shall be bound to keep any bye-road in the same in repair by virtue of any such order of apportionment as is described in the third section of this ordinance, during the winter season in every year, reckoning the same from the first day of November to the first day of May, to fix in the ground, and keep up during the said winter season, long poles, or thin branches, or slips of trees, of the height of eight feet, on both sides, and likewise in the middle, of the said highways between the two tracks before-mentioned of the breadth of five feet each, at the distance of thirty feet one from the other, in order to mark out the road to travellers when the ground is covered with snow. In the royal and seigneurial highways each person shall fix and keep up these poles and branches on that side of every such highway which is nearest to the lands he owns or occupies throughout that part of the said highway which is contiguous to his said land; and shall likewise fix and keep up one half of the poles, or branches that are to be set up in the middle of the said highway between the two tracks above-mentioned, to wit, every other pole, or branch, in the said middle row of poles, beginning from that which lies farthest on the right-hand of such owner or occupier of land as he stands on his own ground with his face towards such highway. And in the peasants roads, or bye-roads, each of the persons amongst whom any bye-road is apportioned, shall fix and keep up all the said three rows of poles, or branches, throughout that portion of the said bye-road which he is bound to repair.

Long poles or branches of trees, shall be set up on both sides, and in the middle, of all public highways in this province.

And

And when any of these poles, or branches of trees on any of the said public highways happen to be blown down by the wind, or to be thrown down by any other accident, or to be carried away, the persons who are bound to fix them and keep them up as aforesaid, shall, as soon as possible, and, at farthest, within the space of seven days after such accident, set the said poles, or branches, up again, or set others in their room; under pain of forfeiting one Spanish dollar, if for the space of seven days together one or more of these poles shall be wanting in the places where they are bound to fix them and keep them up.

No person whatsoever shall be exempted from this duty.

And all owners and occupiers whatsoever of lands adjoining to any of the said royal or seigneurial highways, and likewise all those persons amongst whom any bye-road shall have been apportioned in the manner above described, as well those described in the latter part of the second section of this ordinance as others, shall be obliged to perform, or cause to be performed, this duty of fixing in the ground and keeping up these poles and branches, as aforesaid.

S E C T. XII.

The bailiffs and sub-bailiffs of the parishes shall be way-wardens, or overseers of the public highways, in their respective parishes.

And to the end that the above-mentioned regulations, and all others that shall hereafter be made concerning the public highways in this province, may be duly observed and carried into execution, it is hereby ordained and declared, that all the high bailiffs and sub-bailiffs of the several parishes in this province shall be way-wardens, or overseers of the public highways, in their respective parishes, and shall examine the state and condition of all the said highways, as well those called bye-roads, or peasants roads, as the royal and seigneurial highways, as often as they can; and shall exhort and admonish the several inhabitants and owners of land in the said parishes to do their several duties relating to the said public highways; and shall use their utmost endeavours to cause the regulations herein above-mentioned, and the directions herein after-mentioned concerning the said public highways, and all such directions as shall be given by any future ordinance concerning the same, to be carried fully into execution.

There shall likewise be one or more surveyors-

And over these bailiffs and sub-bailiffs, who are hereby appointed way-wardens of their respective parishes, there shall be one or more
general

general overseers, or surveyors of the public highways in the province, to whom these bailiffs of the parishes shall from time to time make reports of the state and condition of the said highways in their respective parishes, and from whom they shall receive orders and directions relating thereunto.

general of highways province.

S E C T. XIII.

And it shall be the duty of the high bailiff of every parish in the said province to assign to each of the sub-bailiffs of the same parish a certain portion, or division, of the same parish, in which the overseeing the several public highways and the repairs thereof shall be the object of the particular care and attention of such sub-bailiff. And it shall be the duty of each of these sub-bailiffs to go through and inspect all the public highways in the said division of the parish, so assigned to him by the high bailiff thereof, once in every fortnight, and to make a report to the high bailiff of the said parish, immediately after, or, at farthest, within one week after, such inspection, concerning the state and condition of the said highways. And if any sub-bailiff of a parish shall neglect thus to visit and inspect the several highways committed to his care once in every fortnight, or to make the said report concerning the condition of them to the high bailiff within the space of one week after such inspection, he shall forfeit the sum of four Spanish dollars for every such neglect; which sum shall be sued for and recovered by the said high bailiff of the parish within the space of one month after the time when such report ought to have been made to him, by information before any one justice of the peace of the district within which such parish is situated, who is hereby authorized and required to hear and determine the said information in a summary manner, and, in case of a conviction, to levy the said sum of four Spanish dollars, together with the costs of suing for the same, by an order in writing under his hand to seize and sell so much of the said offender's moveable goods and chattels as shall be sufficient for that purpose. And as this offence consists in the omission of a duty enjoined by this ordinance, and not in the commission of any positive act, it shall lie upon the sub-bailiff, in every information brought against him for such omission, to prove by the oaths of two credible witnesses, that he did perform the said duty by visiting and inspecting all the

Each sub-bailiff shall have a certain division of the parish allotted to him, in which it shall be his more especial duty to oversee the public highways. He shall visit and inspect all the public highways in his division once in every fortnight, and make a report of their condition to the high bailiff. Penalty of a neglect hercof, four Spanish dollars.

public highways in the division of the parish allotted to his care by the high bailiff, and afterwards making a report of their state and condition to the said high bailiff within the space of one week after such inspection: and if he fails to prove either of these facts before the said justice of the peace by the oaths of two credible witnesses, he shall be deemed not to have done it, and shall be convicted accordingly. And if the said high bailiff of the parish shall neglect to bring such information within the aforesaid space of one month after the time that such report concerning the state of the said highways ought to have been made to him, it shall be lawful for any other person whatsoever to bring it within the space of two months next ensuing the said month allowed to the high bailiff, but not afterwards: and the said information brought by the said common informer shall be heard and determined in exactly the same manner, and upon the same evidence, as when it is brought by the high bailiff. And half the said sum of four dollars so forfeited by the sub-bailiff upon such conviction shall belong to the high bailiff, or other informer who shall have sued for the same; and the other half shall belong to the king's majesty, and shall be paid by the said justice of peace, by whose warrant it shall have been levied, to the receiver-general of his majesty's revenue in this province.

S E C T. XIV.

The high bailiff shall visit all the public highways in his parish once in every four weeks; and shall make a report of their state and condition to the surveyor-general of the highways once in every three months.

And it shall be the duty of the high bailiff of every parish in the said province to go in like manner over all the public highways in the whole parish, and examine the state and condition thereof, once in every four weeks, and to make a report to the surveyor-general of the highway for the district in which such parish is situated once in every three months concerning their state and condition, and the repairs and amendments that may be necessary to be made in them. And if any high bailiff of a parish shall fail to make such perambulation over, and inspection of, the several public highways of the parish of which he is high bailiff, once in every four weeks; or, having made the said perambulation, shall fail to make such report of the state and condition of the said highways to the surveyor-general of the highways for the district in which such parish is situated, during the space of more than three months, he shall forfeit the sum of eight Spanish dollars for every such failure, or offence;

Penalty of a neglect hercof, eight spanish dollars.

which

which sum of eight Spanish dollars may be sued for and recovered by information before any one justice of the peace of the district in which such parish is situated, by the said surveyor-general of the highways, within one month after the offence shall have been committed (that is, within one month after the failure to make such perambulation and inspection of the said highways, or within one month after the failure to make such report concerning the state and condition of the said highways to the said surveyor-general, according as the said high bailiff shall have been guilty of making the one or the other failure) or, if the said surveyor-general shall neglect to prosecute for the same within the said space of one month, by any other person within the space of two months then next ensuing, to be computed from the expiration of the month allowed to the said surveyor-general: which information the said justice of the peace is hereby authorized and required to hear and determine in a summary manner, and in case of a conviction, to levy the said sum of eight Spanish dollars, together with the costs of suing for the same, by a warrant, or order in writing, under his hand to seize and sell so much of the moveable goods and chattels of such offender as shall be sufficient for that purpose. And, as this offence consists in an omission of a duty, and not in the commission of a positive act, it shall lie upon the said high bailiff, in every information brought against him for such omission, to prove by the oaths of two credible witnesses that he did perform the said duty, which he is accused of having neglected; and, upon his failing in such proof of his performance of the said duty, he shall be deemed to have neglected it, and shall be convicted accordingly. And half the said sum of eight Spanish dollars so forfeited by such high bailiff shall belong to the surveyor-general of the highways, or other informer who shall have sued for the same; and the other shall belong to the king's majesty, and be paid to the said justice of the peace by whose warrant it shall have been levied, and by him to the receiver-general of his majesty's revenue in this province.

S E C T. XV.

And the surveyors-general of the highways in the several districts of this province shall visit the several public highways of the districts respectively committed to their care twice in every year, to wit,

districts twice
in every year.

And shall make
reports concern-
ing the condi-
tion thereof
to the gover-
nour and coun-
cil.

Penalty for a
neglect hereof
one hundred
Spanish dollars.

once in the month of January, and a second time in the month of June; and after each of these journies, or visitings, they shall make reports in writing to the governour and council of the province concerning the state and condition of the said highways, and shall deliver in the said reports to the governour and council before the ends of the months of March and August. And if the surveyor-general of the highways in either of the districts of this province shall neglect either to make such journey through his district in the said months of January and June, in order to inspect the highways thereof, or to make such reports in writing to the governour and council of the province concerning the condition of the said highways before the ends of the said months of March and August, he shall forfeit the sum of one hundred Spanish dollars for every such neglect: which may be sued for and recovered by information before the chief justice of this province by the clerk of the council of the said province, or, in case of his absence from the said province, by his deputy, within the space of two months after the said neglect shall have been committed: and in case the said clerk of the council, or his deputy, shall neglect to sue for the same within the said space of two months, by any other person whatsoever within the space of four months then next ensuing, to be computed from the expiration of the said two months allowed to the said clerk of the council, or his deputy. And the said chief justice of the province is hereby authorized and required to hear and determine the said information in a summary manner at any time whatsoever (whether in or out of the usual times of the sessions of the supreme court of judicature of this province holden before the said chief justice) whensoever application is made to him in that behalf, and to levy the said sum of one hundred Spanish dollars, together with the costs of suing for the same, by a warrant in writing under his hand to seize and sell so much of the goods and chattels of such offender as shall be sufficient for that purpose. And one half of the said sum of one hundred Spanish dollars shall belong to the said clerk of the council, or his deputy, or to such other informer as shall have sued for the same; and the other half to the king's majesty, and shall be paid by the said chief justice to the receiver-general of his majesty's revenue in this province.

S E C T. XVI.

And it shall be the duty of the sub-bailiffs of the several parishes in this province, whenever they observe any of the public highways, in the divisions of the said parishes committed to their care and inspection, to be out of repair, and to stand in need of being mended, to admonish the persons whose duty it is to keep them in good condition, to repair and amend the same without delay, according to the directions given in this behalf in the foregoing part of this ordinance. And if any such person, being so admonished, shall refuse to repair such highway in the part so mentioned to him by the sub-bailiff (being in that part of the said highway which he is bound to repair) or shall neglect to do so for the space of seven days after such admonition, he shall forfeit the sum of one Spanish dollar, which may be sued for and recovered by such sub-bailiff, at any time within one month after such refusal or neglect, by information before any one justice of the peace of the district in which such part of the said highway so neglected to be repaired is situated; who is hereby authorized and required to hear and determine such information in a summary manner, and to levy the said sum of one Spanish dollar, together with the costs of suing for the same, by a warrant in writing under his hand to seize and sell the goods and chattels of such offender. And if the said sub-bailiff shall neglect to bring such information within the said space of one month after such refusal or neglect, it shall be lawful for the high bailiff of the said parish to bring it at any time within the space of two months then next ensuing; and in case of his omission to bring it within the said two months, it shall be lawful for the surveyor-general of the highways of the district in which such highway is situated, to bring it at any time within the space of three months next ensuing after the expiration of the said two months allowed to the said high bailiff. And one half of the said forfeiture of one Spanish dollar shall belong to such sub-bailiff of the parish, high bailiff of the same, or surveyor-general of the highways, as shall have sued for the same; and the other half thereof shall belong to the king's majesty, and shall be paid into the hands of the justice of the peace by whose warrant it shall have been levied, and by him to the receiver-general of his majesty's revenue in this province.

Wherever any sub-bailiff of a parish shall observe that any public highway in his division of the parish stands in need of being mended, he shall admonish the person who is bound to keep it in good repair, immediately to repair it; and if any person shall neglect to do so for the space of seven days after such admonition, he shall forfeit the sum of one Spanish dollar.

And.

And further, the sub-bailiff shall cause the said highway to be mended by some other person, who shall be paid for his labour by him who shall have been guilty of such neglect.

And further, the said sub-bailiff of the parish, after the neglect of the person, so admonished as aforesaid, to repair the said highway for seven days together after such admonition; shall without further delay cause the said highway to be repaired in a proper and convenient manner by some other person whom he shall hire at a reasonable price for that purpose. And the said person so employed by the said sub-bailiff shall have a right to demand payment of the price of his labour in making such repair of the said highway from the former person whose duty it was to have repaired it in pursuance of the sub-bailiff's admonition.

Every absent person, who, by reason of his ownership of lands, shall be bound to keep a part of a public highway in repair, shall depute a person that resides in the parish to repair such highway in his stead.

And where it shall happen that any person, whose duty it is to keep some part of a public highway in good repair in consequence of the second and third sections of this ordinance, shall not live in the parish in which that part of the said public highway which he is bound to repair is situated, it shall be the duty of such absent person to appoint some other person who shall reside in the said parish to be his representative, or deputy, to do his duty in relation to the repairing of the said highway in his stead: and he shall notify such his appointment to the high bailiff of the said parish at some time in the months of October and November in every year. And the person so appointed by him to be his deputy in this behalf shall be considered in the same light as the principal himself, who appoints him, would be considered in if he were resident in the parish; and shall be liable to be admonished by the sub-bailiff of the parish to repair the said public highway in the part thereof that falls to the share of his principal, and to pay the forfeiture of one Spanish dollar, and the charges of causing the said part of the said highway to be repaired by some other person that the sub-bailiff shall employ for that purpose, in case he shall refuse or neglect to repair the same for the space of seven days after an admonition of the sub-bailiff, in the same manner as his principal would be if he were resident in the said parish.

And if he neglects to appoint such a deputy, he shall forfeit twenty Spanish dollars for such neglect.

And if any such absent person as is above-mentioned shall neglect to make such appointment of a representative, or deputy, to do his duty with respect to the highways in the said parish in his stead, or to notify such appointment to the high-bailiff in the months of October and November, as is aforesaid, he shall forfeit the sum of twenty Spanish dollars for such his neglect; which may be sued for

for and recovered by the high bailiff of the said parish at any time within the space of two months after such neglect shall have been committed, or, in case the said high bailiff shall neglect to sue for the same during the said two months, by the surveyor-general of the highways for the district in which such parish is situated at any time within the space of four months then next ensuing after the expiration of the said two months allowed to the said high bailiff, by information before any one justice of the peace of the district in which such parish is situated; who is hereby authorized and required to hear and determine the same in a summary manner, and to levy the said sum of twenty Spanish dollars, together with the costs of suing for the same, by a warrant in writing under his hand to seize and sell the goods and chattels of such offender. And of these twenty dollars so forfeited, four dollars shall belong to the said high bailiff of the parish, or surveyor-general of the said highways who shall have sued for the same, and the other sixteen dollars shall be delivered to the said high bailiff of the parish, and shall be employed by him in repairing and amending the several highways of the said parish, and more especially those parts of them which it was the duty of such offender to keep in repair, and shall be accounted for by such high bailiff to the surveyor-general of the highways of the district in which such parish is situated in the next report which such high bailiff shall make to such surveyor-general in pursuance of the fourteenth section of this ordinance.

S E C T. XVII.

And whereas it will be of great and general convenience to the inhabitants of this province that the several public highways thereof should be of a sufficient width for several carriages to pass by each other easily on the same, without danger of running either against each other, or into the ditches which shall have been made on each side of the said highways, in endeavouring so to do: it is therefore ordained and declared by the authority aforesaid, that the surveyors-general of the highways in this province shall have full power and authority to cause any of the public highways in this province to be widened to the extent of forty English feet, exclusive of the breadth of the ditches on each side thereof; and to cause the ditches that are already made on the sides of such highways to be filled up and levelled,

The surveyors general of the highways in this province may cause any public highway to be widened to the breadth of forty english feet, if he shall judge it necessary to the public convenience.

levelled, and other ditches to be made in their stead at the said distance of forty English feet from each other, or at such lesser distances from each other as the said surveyors-general shall think fit. And these new ditches shall be of such depths and breadths as the said surveyors-general shall appoint, being not less than the depth of two English feet, and the breadth of one foot at the bottoms of the said ditches, and two feet at their tops. But these changes and improvements are not hereby absolutely enjoined to be made in all the highways in this province: but it is left to the judgement and discretion of the said surveyors-general of the highways to cause, or not to cause, them to be made, as they shall think them to be necessary, or not necessary, to the public convenience.

These changes shall be made by the joint labour of all the inhabitants of the parishes through which the highways so to be widened pass, under the direction of the high bailiffs of the said parishes.

And whenever the said surveyors-general of the highways in this province shall think it necessary to widen any of the said highways to a greater extent than it had before, and to cause the old ditches to be filled up and levelled, and new ditches to be made in their stead, the manner of proceeding in order thereunto shall be as follows. The surveyors-general of the highways for the district in which such highway, so intended to be widened, is situated, shall give directions in writing to the high bailiff of the parish in which it is situated concerning the extent to which it's width is to be increased, the length of that part of the said highway which is to be so widened, the situation, depth, and breadth of the new ditches that are to be made, and the other particulars of the intended improvement, and shall likewise appoint the time at which the said changes shall be begun to be made. And thereupon the said high bailiff shall communicate these directions to the inhabitants of the said parish, and shall cause all the men in the said parishes between the ages of eighteen and sixty, who are not hindered therefrom by sickness or some other reasonable cause, to come, at the time appointed by the said surveyor-general, with spades, shovels, pickaxes, hatchets and other necessary implements, and by their joint labour make the said changes and improvements in the said highways. And the said high bailiff may either cause all the said inhabitants of such parish to come together and undertake this work at one and the same time, or to come and undertake the same in different parties by turns one after another, as the said high bailiff shall judge to be most expedient for the performance of the intended work.

work. And if any such inhabitant of such parish, being duly required by the high bailiff thereof to come and perform his share of such joint labour, shall refuse or neglect to do so, and shall likewise neglect to send an able man to do the said work in his stead, (which he is hereby permitted to do, if he does not find it convenient to attend the said duty in his own person;) he shall forfeit the sum of one Spanish dollar for every day during which he shall have neglected to attend such parish labour: which forfeitures may be sued for and recovered by the said high bailiff of the said parish at any time within two months after such refusal or neglect, or, if the said high bailiff shall forbear to sue for the same within the said two months, by the surveyor-general of the highways for the district in which such parish is situated, at any time within the next four months after the expiration of the said two months allowed to the said high bailiff, by information before any one justice of the peace of the same district, who is hereby authorized and required to hear and determine the said informations in a summary manner, and to levy the said forfeitures by warrants in writing under his hand to seize and sell the goods and chattels of such offenders. And one half of every such forfeiture shall belong to the said high bailiff, or surveyor of the highways, who shall have sued for the same, and the other half to the king's majesty.

Those inhabitants who refuse or neglect to perform their share of such joint labour, shall forfeit one Spanish dollar for every day during which they shall have been guilty of such neglect.

S E C T. XVIII.

And whereas the highways on the sides of divers high hills in this province are not only much too narrow for the safety and convenience of travellers, but are likewise highly dangerous to them by means of the great steepness of the precipices on the lower sides of the said highways and the want of any hedge, or paling, or bank, or other fence, to preserve the said travellers from falling down the said precipices by their horses taking any sudden fright, or by some other accident: it is therefore hereby ordained and declared that the surveyor-general of the highways of the district in which any public highway passes over any hill in this province, shall have full power and authority not only to cause the said highway to be widened to any extent that he shall think proper, not exceeding the breadth of forty English feet, exclusive of the breadth of the ditches on each side,

Roads over hills shall be dug down to the depth of four feet, leaving a bank of earth of the breadth of six feet on the side next to the precipice.

N n agreeably

agreeably to the last foregoing section of this ordinance, but likewise to cause the said highway where it passes over such hill, to be lowered, or dug down to the depth of four feet, leaving a bank of earth of the breadth of six, or more, feet, and of the said height of four feet on the side towards the precipice. And the said surveyor-general of the highways shall give the necessary directions for this purpose to the high bailiffs of the several parishes in which the said hills are situated, who shall thereupon cause the inhabitants of the said parishes to assemble and do the said necessary work by their joint labour in the manner described in the last section, and under the same penalties of forfeiting one Spanish dollar for every day during which any of the said inhabitants, being duly summoned thereunto by the said high bailiff, shall neglect to do his said duty either by himself in his own person, or by some able substitute in his stead. And the said forfeitures shall be sued for and recovered in the same manner, and by the same persons, and within the same times, and shall be applied to the same uses, as those mentioned in the said last foregoing section. And the said highways over the said hills may be widened to any extent that the said surveyor-general shall think proper, not exceeding the said breadth of forty English feet, exclusive of the breadths of the said banks of earth on the sides of the roads that are next to the precipices, and of the breadths of the ditches on both sides of the said highways.

S E C T. XIX.

The surveyor-general of the highways shall have power to cause the whole surface of any public highway to be dug up and new-laid more evenly than before, by the joint labour of the inhabitants of the parish in which it is situated.

And whereas it may sometimes be necessary to dig up the whole surface of a public highway, in order to new-lay it more evenly than before, and to raise the middle of it to a convenient height above the sides thereof, so as to form a gentle slope towards the ditches on each side of such highway, by means whereof the water that shall fall on the said highway may speedily run off from it into the said ditches: it shall be lawful for the surveyor-general of the highways in this province to cause this to be done, wherever they judge it to be necessary in their respective districts, by the joint labour of all the inhabitants of the parishes through which such highways pass. And for this purpose they shall communicate their directions in writing to the high bailiffs of the said parishes, who shall thereupon cause the said directions to be carried into execution

by

by the inhabitants of the said several parishes respectively in the manner and under the penalties prescribed in the seventeenth section of this ordinance.

And if no particular mention is made in the said directions of the proportion which the height of the middle of any such highway that is to be new-laid above the sides or edges thereof adjoining to the ditches, ought to bear to the breadth of the said highway, the said height of the middle of such highway above its sides shall be one-twelfth part of the breadth of the said highway contained between the two ditches.

S E C T. XX.

And where any bridge built in any public highway over any river, or stream of water, that is more than four feet wide, shall stand in need of being repaired, it shall be the duty of the several inhabitants of the parish in which such bridge is situated to repair the same by their joint labour, at such times and in such manner as the surveyor-general of the highways of the district in which such bridge is situated shall direct, and under the inspection of the high bailiff of the said parish, to whom the said surveyor-general shall communicate his said directions in writing: and they shall be liable to the same penalties for any neglects herein as are mentioned in the seventeenth section of this ordinance: and the said penalties shall be sued for, recovered, and levied by the same persons, and in the same manner, and within the same times, and shall be applied to the same uses as those mentioned in the said seventeenth section.

Bridges over rivers more than four feet wide shall be repaired by the joint labour of all the inhabitants of the respective parishes in which they are situated.

And it shall be lawful for the said surveyor-general of the highways, in giving his directions, as aforesaid, for repairing such public bridge, to require such of the inhabitants of the parish in which such bridge is situated as he thinks proper, to furnish each a reasonable quantity of timber and other materials for carrying on the said repairs without any pecuniary compensation for the same, provided that the said timber or other materials are to be found upon the lands of the said inhabitants from whom the surveyor-

The surveyor-general of the highways may require some of the inhabitants of the parish to furnish timber and other materials towards making these repairs:

and in consideration thereof shall exempt them from a part of the labour which they must otherwise have contributed towards them.

general shall so require them in the said parish. And the said surveyor-general of the highways, and the high bailiff of the parish in executing his orders, shall thereupon exempt such inhabitants from the labour, or a part of the labour, which they would otherwise be bound to contribute towards the repairing of the said bridge, in consideration of the timber and other materials which they shall have furnished thereunto, and in proportion to the value of such timber and other materials, reckoning a quantity of materials that is worth one-fourth part of a Spanish dollar to be equivalent to one day's labour. But these exemptions from labour shall only be temporary, or relate to those particular occasions on which they have furnished such materials, and not to future occasions of repairing the same bridges.

S E C T. XXI.

But such bridges shall not be either built or rebuilt by the single authority of the surveyor-general of the highways ;

but by the particular order of the governour and council of the province.

But wherever the surveyor-general of the highways of any district of this province shall be of opinion that a public bridge over any river, or stream of water, in his district, that is more than four feet wide, is in so ruinous a condition that it cannot easily be repaired, and that it therefore ought to be taken intirely down, and a new bridge built in its stead ; or where such surveyor-general shall be of opinion that it would be highly expedient and advantageous to the public that a bridge should be built over any river, or stream of water, that is more than four feet wide, in any public highway in his district, in a place where there was no bridge before : in either of these cases it shall not be lawful for the said surveyor-general of the highways, by his own authority only, to cause such bridge to be built ; but he shall refer the matter to the governour and council of the province, for them to take such order therein as shall be fitting : and the manner of his proceeding herein shall be as follows. He shall draw up and present to the said governour and council a memorial containing his reasons for thinking such a work to be expedient to the public convenience, together with an estimate of the labour, the quantity of materials, and the expence that will be requisite to complete it, and an account of the parishes that are nearest to it, and that will reap the greatest benefit from it, and of the number of men between the ages of sixteen

sixteen and sixty in the said several parishes respectively, and of the time and manner in which he would propose to carry the said design into execution: upon the receipt of which memorial from the said surveyor-general of the highways, the said governour and council of the province shall send proper notice of it to the inhabitants of the parish or parishes, by whose labour and expence the said surveyor-general shall have proposed to have the said work done, to the end that, if they do not approve it, they may remonstrate against the execution of it before the said governour and council. And three months shall be allowed them to make such remonstrances against such proposal, before it is finally ordered to be carried into execution; at the expiration of which time the said governour and council shall take such order therein as they shall think fitting, and, if they shall judge it to be expedient that such a bridge should be built, shall make a particular ordinance for that purpose, directing the time and manner in which such work shall be performed, and by whose labour and at whose expence it shall be done.

S E C T. XXII.

And whereas it may in many places be necessary to the preservation and amendment of the public highways of this province to change the courses of small rivers and streams of water; it is hereby ordained and declared, that this likewise shall be done by particular ordinances of the governour and council of this province made expressly for such purpose, and not by the single authority of the surveyor-general of the highways. But wherever the surveyor-general of the highways of any district in this province shall judge it to be necessary for the public convenience that the course of any river, or stream of water, in his district should be changed, he shall represent the matter to the governour and council of the province in a memorial which he shall deliver in to them concerning it; and in this memorial he shall set forth his reasons for thinking such change to be expedient, and a plan of the new channel into which he proposes to turn the water of the said stream, or river, and an estimate of the expence and labour of making such new channel, and an account of the parish, or parishes, to the inhabitants of which such change will be most especially beneficial, and the

The courses of rivers and streams of water shall not be changed by the single authority of the surveyor-general of the highways, but by particular ordinances of the governour and council of the province.

number:

number of inhabitants in the said parishes, and all the other circumstances that will attend such change. And upon the receipt of this memorial the said governour and council of the province shall send proper notice of it to the inhabitants of the parish, or parishes, by whose labour, and at whose expence the said surveyor-general shall have proposed to have the said change made; to the end that, if the said inhabitants do not approve it, they may remonstrate against the execution of it before the said governour and council. And three months shall be allowed them to make these remonstrances before the said proposal of the said surveyor-general of the highways is finally ordered to be carried into execution; at the expiration of which time the said governour and council of the province shall take such order concerning the said proposal as they think fitting; and, if they shall judge it to be expedient that such change of the course of the said stream, or river, should be made, shall make a particular ordinance for that purpose, directing the time and manner in which such work shall be performed, and the persons by whose labour and at whose expence it shall be done.

S E C T. XXIII.

New public highways shall not be made by the single authority of the surveyors-general of the highways, but by particular ordinances of the governour and council of the province.

And wherever it shall be necessary to make a new public highway either in the stead of one already subsisting, or in a place where none has yet been made, whether the said new public highway be a royal or seigneurial highway, or a peasant's road or bye-road; it is hereby ordained and declared, that this likewise shall be done by a particular ordinance of the governour and council of this province made expressly for such purpose, and not by the single authority of the surveyors-general of the highways. This shall be done either upon an application of the inhabitants of any parish in the said province to the said governour and council, by a memorial setting forth their desire that such new highway should be made, and their readiness to contribute towards the labour and expence of making it; or upon a representation made to the said governour and council by the surveyor-general of the highways of one of the districts of this province of the advantages that will accrue to the public from a new highway that should pass through such and such places: upon either of which applications the

the said governour and council of the province shall take such order concerning such new, or proposed, highway as shall be fitting, and, if they shall judge it to be expedient that such new highway should be made, shall make a particular ordinance for that purpose, appointing the time and manner of making such new highway, and the persons by whose labour and at whose expence it shall be made. And when such new highway is made, it shall ever after be kept in repair in the manner directed by the second and third sections of this ordinance.

N U M B E R XXXIII.

An Account of the Duties that were paid in the Province of QUEBEC during the French Government thereof, on BRANDY, RUM, and WINE, imported into the said Province, and on DRY GOODS imported into, and exported out of, the same.

An account of the trial at Quebec in October, 1766, concerning the duty on British brandy demanded by the crown.

IN pursuance of the instructions above-mentioned in Number XXIV, Page 156, given by the commissioners of his Majesty's treasury to *Thomas Mills*, Esquire, his Majesty's receiver-general of the province of Quebec, in March, 1766, the merchants of the town of Quebec, who had then lately imported wine and brandy into the province, were required by the said receiver-general of the revenue to pay the king a duty upon the same according to the rates set forth in the said instructions, to wit, six pence, sterling, for every gallon of brandy, and ten shillings, sterling, for every hoghead of wine; which were declared to have been the rates established on the importation of the same liquors in the time of the French government. But the merchants refused to pay them. Upon this *George Suckling*, Esquire, the then attorney-general of that province, by the direction of the said *Thomas Mills*, Esquire, his Majesty's receiver-general, filed informations in the supreme court, or court of king's bench, in that province against some of the merchants, who had refused to pay these duties, for defrauding the king of the said duties; to which they pleaded the general plea of *Not guilty*; and upon this issue was joined. One of these informations, which was against Mr. *Dupré*, a French merchant of the town of Quebec, who had imported a large quantity of British brandy, was tried in the month of October, 1766, by a special jury consisting intirely of Englishmen (or such as had been his Majesty's subjects before the conquest of that province) before Mr. *Hey*, the new chief justice of the province, who had arrived in the province in the preceding month of September. The trial lasted several hours; and the evidence as to the facts in the cause

was strong and clear in favour of the crown, it being clearly proved, in the first place, that Mr. *Dupré* had imported the quantity of British brandy stated in the information; and, secondly, that he had refused to pay any duty upon it; and, thirdly (which was the main fact to be proved) that a certain duty, though somewhat less than that which was demanded in the information, had been constantly paid for a great many years past in the time of the French government, and universally considered by the Canadians as legally due to the French king. Consequently the only doubt that remained upon the subject was concerning the question of law, whether, or no, by the conquest of the country by the British arms in 1759 and 1760, and the subsequent intire cession of it to the king of Great Britain by the definitive treaty of peace in February, 1763, the king of Great Britain became lawfully intitled to the same duties upon British brandy imported into the province, as had been legally due and paid to the French king upon French brandy imported into it immediately before the conquest. As this was a point of law of great novelty and difficulty, the chief justice exhorted the jury to find a special verdict, if they were satisfied with the evidence by which the facts of the cause had been supported, that he might himself have full time to consider and examine it before he pronounced his judgement upon it, and that it might afterwards undergo the more able discussion of his Majesty's principal judges in England upon a removal of the proceedings by writ of error, or appeal, before his Majesty in council. But the jury found a verdict for the defendant. The substance of the evidence produced and delivered on the part of the crown upon this trial was as follows:

The question of law upon this trial.

The chief justice exhorts the jury to find a special verdict.

But they find a verdict for the defendant. An account of the evidence produced and delivered on the part of the crown at this trial. The Old French duties upon wine, brandy, and rum.

In the first place it plainly appeared that there had been established in this province for a great many years past the following duties on liquors imported into it from Old France and the other dominions of the French king; to wit,

First, Nine French livres, or 7s. 6d, sterling, upon every *barrique*, or hoghead of wine,

Secondly, Sixteen French sols and eight deniers, or eight pence and $\frac{1}{4}$ of a penny, sterling, upon every *veldt*, or measure containing two gallons, of brandy.

And thirdly, Fifteen French livres; or 12 s. 6 d. sterling, upon every *barrique*, or hoghead; of *guildree*, or rum.

These duties had been paid for at least fifty years, as some old witnesses testified; and no one pretended to know the beginning of them: so that there seems to be no reason to doubt that these were legal taxes subsisting in this province at the time of the conquest of it by the British army. Yet the original edict by which they were imposed could not be found; nor could the old witnesses give any account, even from hearsay, of the time and occasion of their being first laid on, nor of the edict, or other instrument, by which they were established. They only declared that they had always considered them as constant and permanent duties, levied for the support of the civil government in all its various branches; as the administration of justice, the supporting public schools, the maintaining foundling children, the furnishing and sending out parties of men to oppose the incursions of the Indians, who were then very troublesome to the colony; and the like. These duties it will be convenient to call the *old duties*, because they were latterly increased by an edict of the French king, of which we are now to give some account.

They were augmented by an edict of the French king in 1747.

This edict of augmentation was published in the year 1747, and ordains; that the duty of nine livres, or 7 s. 6 d. sterling, per hoghead, upon wine, shall be augmented to 12 livres, or 10 s. sterling, per hoghead; that of 16 sols, 8 deniers, or 8 pence, and $\frac{3}{4}$ of a penny, upon every two gallons of brandy, to 1 livre or 4 sols, or 1 s. and that of 15 livres, or 12 s. 6 d. upon every hoghead of rum, to 24 livres, or 20 s. And these increased duties are appointed to continue for three years. And the motive for making this augmentation of these duties is declared to be to reimburse the treasury of the king of France for the expence of building the wall round the city of Quebec, and also to defray the expence, or part of it, of what still remained to be done to put the fortifications of Quebec in a proper state of defence. This edict was produced at the trial, and was dated the 23d of January, 1747.

But this augmentation was to continue only for three years.

Yet these augmented duties continued to be paid after the

These increased duties were accordingly paid: and they continued to be so beyond the three years appointed by the edict (which ended in 1751) even down to the time of the conquest of the country

country by the British arms in 1759. But this continuation of these duties was done without an order of the king of France to warrant it, and therefore was illegal, even according to the rules of that despotic government; because no intendant or governour of a province under the French king has the power of imposing taxes ever committed to him; but it is always exercised by the king himself by his royal edicts for that purpose: and even those edicts are not deemed valid, or ever carried into execution, until they have been registered in the parliament of the district to which the tax relates; as is well known. And accordingly some of the French witnesses at this trial said, that they had always conceived this continuation of the augmented duties beyond the time appointed by the edict to be an illegal measure, and an oppression committed upon the French subjects in Canada by the intendant; and that it had been represented as such to the French king, or his ministers, who had given them hopes that it should be redressed.

expiration of the three years, and till the conquest of the country in 1759; but illegally.

By this edict of augmentation, as well as by the testimony of the old witnesses examined at this trial, it may be collected that there were before 1747 the duties which I have above called the *old duties*, upon wine, brandy [*eau de vie*] and rum [*guildive*] imported into Canada from Old France, or the other dominions of the French king.

Another edict was produced at this trial, which, though it does not, as I apprehend, affect the duties upon liquors, is yet proper to be mentioned on this occasion. This edict was passed in February, 1748, which was one year after the former. By this edict the king of France imposed a duty of three per cent. upon all goods whatsoever imported into Canada, either from Old France, or the other French colonies, except the liquors mentioned in the edict before-mentioned of the 23d. of February, 1747; and with respect to those liquors, he confirms the former edict, and directs the duties established by it to be paid. The edict then goes on, and imposes likewise a duty of three per cent. upon all goods of the growth of Canada that shall be exported from thence either to Old France or to the other French colonies, excepting the skins of orginals (or American elks) upon which it ordains that the same duties shall be paid as were paid before.

Edict of February 1748, imposing a duty of 3 per cent. upon dry goods.

Then there follows an exception of corn, meal, and certain other goods exported from Canada, which it declares to be free from this duty on exportation; and then follows another exception of some particular kinds of goods imported into the colony, which are freed from the duty on importation.

Then there follows in the last place a set of regulations and directions concerning the manner of collecting these duties.

This is the substance of this second edict; concerning which it is proper to observe, that the words made use of throughout the whole of it are, *All goods imported into Canada from old France or the French colonies, and not all goods imported into Canada from any part of the world.* And further it must be observed, that it appeared clearly upon the trial, from the testimony of all the witnesses to whom the question was put, that no *eau de vie*, or brandy, was brought into the province from any country but old France, and that all other brandy was contraband goods and would have been confiscated.

Edict of March, 1748, suspending the execution of the last edict till the ensuing peace should be known in Canada.

This second edict was made in February, 1748, to defray the expence that had been incurred in the war then on foot with Great Britain in defending Canada. But in the very next month, that is, in March 1748, the execution of it was suspended by another edict till the war should be at an end and the peace should be known in Canada. This suspension continued till the following year 1749, when the peace of Aix la Chapelle (which was concluded in 1748) was known in that country; and then it expired, and the Canadians paid the duty of three per cent. upon goods imported and exported imposed by the second edict above-mentioned, passed in February, 1748, and continued to pay them till the year 1759, when the country was conquered by the British arms.

In this third edict of the sixth of March, 1748, which suspends the execution of the edict of February in the same year, there is a clause expressly declaring that this suspension does not extend to the duties on wine, brandy, and rum, imposed by the edict of January, 1747, but that those duties shall continue to be paid according to the form and tenor of that edict. But there is nothing that makes that edict perpetual, or extends the payment of the duties imposed by it beyond

'beyond the three years mentioned in it. There is indeed in the second edict, of February, 1748, that imposes the duty of three per cent. upon dry goods, an expression by which there is some pretence for supposing that the augmented duties upon wine, brandy, and rum established in the foregoing year 1747, were meant to be made perpetual. This expression occurs immediately after the exception made of wine, brandy, and rum, from the commodities that are to pay the new duty of three per cent. imposed by that edict: for it is then said, *that these liquors shall continue to be charged with the duties imposed by the aforesaid edict of augmentation of January, 1747.* Now this expression "*shall continue to be charged,*" may be construed to mean either, that the duties imposed by the edict of augmentation shall be continued beyond the three years appointed by that edict, and made perpetual, or that they shall continue to be paid only during that time agreeably to the directions of that edict. But the former of these seems a harsh construction of this clause, and the latter to be it's true meaning.

This is a pretty full account of the contents of these edicts of the French king, and of the evidence given at the trial of Quebec in October, 1769; from which we may draw the following conclusions; to wit, Conclusions drawn from the foregoing trial.

First, That there were legally existing in the province of Quebec First conclusion. at the time of it's being conquered by the British arms, the following duties upon wine, brandy, and rum imported into it from Old France, and the other dominions of the French king; to wit,

- 7s. 6d. sterling per hoghead, upon wine.
- 4 $\frac{1}{2}$ per gallon, upon brandy.
- 12. 6 per hoghead, upon rum.

Secondly, That by an edict of the king of France passed in January, 1747, were increased to the following quantities; to wit, Second conclusion.

- 10s. sterling per hoghead, upon wine.
- 6d. per gallon, upon brandy.
- And 11. per hoghead, upon rum.

And

And that this augmentation of these duties was made for a special and temporary purpose, namely to defray the expence of the fortifications of Quebec, and was appointed to continue only for three years, or till the year 1751.

Third conclusion.

Thirdly, That these augmented duties, notwithstanding this limitation of time appointed by the edict that augmented them, did yet continue to be levied and paid by the Canadians after the expiration of the said three years, and down to the time of the conquest of Quebec in 1759. But that there was no authority for this continuation of them by any edict of the king of France, except those doubtful expressions above-mentioned in the edict of February, 1748.

Fourth conclusion.

Fourthly, That therefore these augmented duties were raised illegally from 1751 to 1759; and that during that period the French officers of government in Canada ought only to have raised the old duties upon those commodities mentioned in the first of these conclusions.

These are the conclusions which may be drawn from the trial in October 1766, concerning the payment of these duties in the time of the French government. It is now proper to mention what had been done with respect to them since the conquest of the province by the British arms in 1759 and 1760, and before the demand of them above-mentioned, which was followed by the trial in October, 1766.

Duties on strong liquors imposed by major-general Murray in 1761 during his military government of Canada.

In the year 1761 major-general Murray, who was left in Canada in the chief command of the king's troops there, imposed, by his own authority arising from that military command, the following duties on strong liquors imported into that country; to wit,

First, Five shillings of current money of Halifax in Nova Scotia, or four shillings and six pence sterling, upon every hoghead of wine imported into that country.

Secondly, Six pence of the same money, or $\frac{2}{3}$ of six pence sterling, or something less than five pence half-penny sterling, upon every gallon of either rum or brandy imported into Quebec, except British brandy, or corn-spirits made in Great Britain, which, in favour of the trade with Great Britain, he exempted from this duty.

And thirdly, Four pence of the same money, or nearly three pence three farthings sterling, upon every gallon of shrub.

These duties were regularly paid for four years, to wit, from the year 1761 to the year 1765, when the military authority by which general Murray had imposed them was at an end, and the country was governed by the same person in the character of civil governour by virtue of his majesty's commission of captain-general and governour in chief of the said province (now called, by a new name, *The Province of Quebec*) which had been received and published in the said province in the month of August, 1764; and then they ceased to be collected. And the whole amount of them for these four years was 12,223 l. of Halifax currency, or $\frac{2}{3}$ of the same sum, that is, 11,000 l. 14 s. sterling; as I collect from an account of these duties drawn up by the direction of the said general Murray, and delivered by the commissioners of his Majesty's treasury in the year 1768 to the receiver-general of the province of Quebec.

These duties, it must be observed, were not precisely the same with those which had been paid in the time of the French govern-
Comparison of these duties with the French duties.
ment. The duty on wine, which was only 4 s. 6 d. sterling per hoghead, was much less than even the old French duty on wine before the augmentation in 1747; for that was 7 s. 6 d. sterling, per hoghead. The duty on brandy (other than British brandy, which was exempted from it) which was between $5 \frac{1}{2}$ d. and $5 \frac{1}{4}$ d. sterling, per gallon, was a little greater than the old French duty upon the same commodity before the augmentation in 1747, which was only $4 \frac{1}{8}$ d. sterling per gallon; but it was somewhat less than the augmented duty on it, which was 6 d. sterling, per gallon. And the duty on rum, which was the same with that on brandy, or nearly $5 \frac{1}{2}$ d. sterling, per gallon, was more than double the old French duty on the same commodity before the augmentation in 1747; for that was only 12 s. 6 d. sterling, or 150 pence, sterling, per hoghead, and consequently only the $\frac{63}{150}$ part of 150 pence, sterling, or less than $2 \frac{1}{2}$ d. sterling, per gallon. And it was greater than even the augmented French duty upon that commodity (which was 1 l. or 20 s. or 240 pence, sterling, per hoghead, and consequently about $3 \frac{1}{4}$ d. sterling, per gallon) in nearly the proportion of three to two.

These

These duties, though paid by the merchants of Quebec, in obedience to the orders of general Murray (which during the continuance of the military government in that province could not easily be disputed) were thought by many of them to have been illegally imposed; more especially where they exceeded the duties that had been paid on the same commodities in the time of the French government. And in consequence of this opinion, when general Murray returned to England in the year 1766, five English merchants who had imported French brandy and New-England rum into Quebec during the continuance of these duties so imposed by the said general, and had paid the said duties to the general's collector at Quebec, resolved to bring actions against him to recover back these duties, of which they conceived themselves to have been illegally deprived. Accordingly in the month of January, 1768, they brought four different actions against the said general upon this account in the court of Common-Pleas in England, demanding by their declarations the whole of the sums they had thus paid, as duties upon the said commodities, to the said general's collector, as being money had and received by the said general to their use, and which he had therefore undertaken and promised to pay them, but then refused to do so: to all which actions the said general pleaded the general plea, that he did not undertake to pay them the said sums of money, being in no wise indebted to them.

Actions brought against general Murray in January, 1768, in the court of Common-Pleas in England for the money he had collected from the plaintiffs.

Opinion of the attorney and solicitor-general in favour of the French duties; given February 10, 1768.

On the 10th of February, 1768, two days before the end of Hilary term, his Majesty's attorney and * solicitor-general gave their opinion that the French duties might legally have been collected, but that the excess of the duties collected by general Murray above the French duties ought to be refunded, and that the plaintiffs would not be able to recover more than that surplus, or excess, in their actions. This opinion of the attorney and solicitor-general I have not seen; but I take this account of it from a paper containing an account of these duties, and of the proceedings had in the court of Common-Pleas in England relating to them, which was drawn up by the direction of the said general Murray, and delivered by the commissioners of his Majesty's treasury to the receiver-general of the province of Quebec.

* N. B. Mr. Dunning was at this time solicitor-general, having been appointed to that office on the 20th of the preceding month of January.

The

The plaintiffs in these actions obtained an order for a special jury, and gave notice for the trial of them on the 24th day of February, 1768; and they came on accordingly to be tried on that day. The gentlemen, who were of counsel for the plaintiffs, insisted that the general, who was military governour of Canada during the time that these duties were collected, had no authority by his commission to levy any duties upon his Majesty's subjects in that province; and that it was inconsistent with the laws of England to collect them without the authority of either the British parliament, or an assembly of that province for so doing; and that consequently the whole sums so collected ought to be refunded. On the behalf of the defendant, general Murray, it was proved by means of the original French custom-house books (which the general had brought over with him from Quebec upon his late return to England, and which were now produced in court, and the signatures of the French officers thereto proved by witnesses) that the aforesaid French duties had really existed and been paid in the time of the French government according to the rates above stated. Upon seeing this so clearly proved, the plaintiffs in these actions consented to an offer which had before been made them by the defendant, but then refused, to let the jury give a verdict for the excess of the duty on rum imposed by the defendant above the duty upon the same commodity in the time of the French government; meaning, as I understand the account, the augmented duty of one pound, sterling, per hogshead, or $3\frac{1}{4}$ d. sterling, per gallon, which was imposed by the edict of 1747: for the paper above-mentioned makes no mention of any distinction between the said augmented duty and the old duty of 12 s. 6 d. per hogshead, that existed antecedently to that edict. And so these causes ended.

Trial of these actions on the 24th of February, 1768.

The jury, by the consent of both parties, give a verdict for the plaintiffs for the excess of the duty on rum imposed by general Murray above the French duty on it.

It is further added in the paper above-mentioned, that, as the counsel for the plaintiffs in these actions were convinced that the said duties had been legally collected, so far as they did not exceed the French duties that were payable at the time of the conquest of Canada by the British arms, and had therefore accepted the offer of the excess of the duty on rum imposed by general Murray above the French duty on it, as the whole of what their clients could legally insist on, it became unnecessary for the defendant's counsel to argue the legality of levying the French duties before the judge who tried these causes, who was the very able and learned Sir

EARLY WILMOT, at that time lord chief justice of the court of Common Pleas: but that his lordship seemed to entertain no doubt upon the question of law, and hinted that the plaintiffs counsel did wisely to accept the terms that had been offered them. And it is further added, that the jury who tried these causes, and who were some of the principal merchants of the city of London, were so fully satisfied of the justice of their verdict, as comprehending the full amount of the plaintiffs just demands, that, of their own accord, they deducted from the offer made on the behalf of the defendant, the difference of the exchange between London and Quebec, which was eight or nine per cent. and allowed the same in the damages found by them for the plaintiffs on account of the excess of the rum-duty.

The lords commissioners of his Majesty's treasury resolve to have a new suit instituted at Quebec for the recovery of the French duties on strong liquors imported into the province of Quebec.

In consequence of the event of these actions, by which it seemed to be generally admitted by the judge, and jury, and counsel concerned in the trial of them, that the king had a legal right to collect the French duties upon rum and other liquors imported into the province of Quebec, the lords commissioners of his Majesty's treasury (of whom the duke of Grafton was then the first) resolved to demand the payment of them once more of the merchants of Quebec, notwithstanding the ill success of the trial in October, 1766; imagining, that the authority of the chief justice of the Common Pleas, and of the special jury of London merchants who had tried the actions, and of the plaintiffs counsel in them, who had consented to the verdicts above-mentioned, might prevail upon them to accede to the same opinions, and acknowledge the king's right to these duties. And in this hope they directed Thomas Mills, Esquire, the receiver-general of the province of Quebec, who was then and is still in England, to proceed immediately to Quebec, and institute a new suit for the recovery of the duties above-mentioned, which were claimed by his Majesty as having heretofore belonged to the French king, and gave him some new additional instructions relating to them, which were as follows:

They thereupon give additional instructions to the receiver-general of that province relating to them.

Instructions to THOMAS MILLS, Esquire, Receiver and
Collector of the Revenues in the Province of QUEBEC.

UPON your arrival at Quebec, you are to act and conduct your-
self in the following manner, until you receive further instruc-
tions from this board. Tenor of the
said additional
instructions.

In case a verdict, or verdicts, shall be obtained in favour of the
crown, you shall collect all the duties that appear to have been
collected by the French government in 1757, except the following;
that is to say, To collect the
French duties.

On all British brandies, and other spirits imported from Great
Britain, and being the manufacture thereof, you shall collect no
more than one half of the duty which was levied by the French
government in 1757 on brandies and spirits of the like quality im-
ported into Canada. To collect only
half the French
duties on British
spirits.

You shall forbear to collect any part of the duties which were
levied by the French king in 1757 upon dry goods imported and
exported, except the duties upon tobacco and snuff imported; No duty to be
collected on dry
goods, except
upon snuff and
tobacco.

His Majesty being graciously pleased to remit one moiety of the
duties on British brandies and spirits, and the whole of the duties
on dry goods imported and exported, except as before excepted,
as well in tenderness to his subjects in the province of Quebec, as in
favour of the manufacturers of Great Britain.

Given under our hands at the treasury-chambers in Whitehall
the 21st day of May, 1768.

(Signed) G R A F T O N,
N O R T H,
C. J E N K I N S O N.

These instructions were sent by the said Thomas Mills, Esquire,
receiver-general of the province of Quebec, to Hector Theophilus
Cramahé, Esquire, who, upon Mr. Mills's departure from the
province These instruc-
tions are sent
to Quebec in
the Summer,
1768.

province in 1767, had been appointed temporary receiver-general of the revenue in his stead and during his absence by a commission under the public seal of that province, there being no power in Mr. Mills's commission of receiver-general to appoint a deputy in that office. See above, pages 153, 154. And with these instructions were sent the paper above-mentioned concerning the duties that had been collected by general Murray's order from the year 1761 to the year 1765, and concerning the causes that had been tried in the court of Common Pleas in England in the preceding month of February, 1768, and a letter from Grey Cooper, Esquire, one of the secretaries of the treasury, to Guy Carleton, Esquire, at that time lieutenant-governour and commander in chief of the province of Quebec, desiring him, in the name of the lords commissioners of the treasury, to give all the aid and assistance in his power to the said Hector Theophilus Cramahé, Esquire, during Mr. Mills's absence, and to Mr. Mills himself upon his arrival in the province, towards carrying the said instructions into execution.

Public notice is given in the Quebec gazette in February, 1769, that the French duties will be demanded upon the strong liquors imported in the ensuing season.

These instructions were received at Quebec about the end of October, 1768: and, in consequence of them, Mr. Cramahé, the temporary receiver-general of the revenue, gave public notice in the Quebec gazette in the February following, that is, in February, 1769, that these duties on rum, brandy, and wine would be demanded and required of the importers of those liquors upon all the quantities they should import of them in the ensuing spring and summer, according to the rates appointed by the last instructions received from the commissioners of the treasury. And when the ships arrived with these strong liquors, he accordingly demanded these duties. But none of the importers would consent to pay them. Upon this an information was filed by the attorney-general of the said province by the direction of the said lieutenant-governour, and the said temporary receiver-general of the revenue, against the two principal importers of rum from the New-England Colonies, Mr. *Isaac Werden* and Mr. *John Mercier*, who were partners in trade and had imported sixty-two hogheads and a half of New-England rum. This information was as follows.

An information is brought for the duty upon rum against two partners that imported sixty-two hogheads and a half in May, 1769.

An information filed in the supreme court of the province of Quebec, before William Hey, Esquire, the chief justice of the said province, by Francis Maseres, Esquire, the attorney-general of

of the same, in the session of the said court holden at the city of Quebec in July, 1769, against Isaac Werden and John Mercier, of the said city of Quebec in the said province, merchants, for refusing to pay to his Majesty's receiver-general of the revenue of the said province of Quebec the sum of sixty-two pounds, ten shillings, of lawful money of Great-Britain, as a duty due to his Majesty upon the importation of sixty-two hogsheads and a half of rum imported by them into the said province of Quebec from certain others of his Majesty's dominions in North America.

PROVINCE AND
DISTRICT OF
QUEBEC. }

Be it remembered that Francis Maseres, Esquire, attorney-general of our lord the King in the province of Quebec in America, who professeth for our said lord the King in the said province, being present here in court on the twentieth of July in the ninth year of the reign of our said lord the King, for and in behalf of our said lord the King, gave the court to understand and be informed that, whereas the said province of Quebec, which was formerly called and known by the name of Canada, was heretofore, that is to say, in the year of our Lord Jesus Christ one thousand, seven hundred, and fifty-eight, and long before, a part of the dominions of the French king, and subject to his authority; and that during many years of the subjection of the said province to the said French king, and at the time immediately preceding the conquest thereof by the arms of our late sovereign lord George the second, late King of Great-Britain, grandfather of our lord the now King, in the year of our Lord Jesus Christ one thousand, seven hundred, and fifty-nine, certain duties and imposts were lawfully levied by, and paid to, the said French king upon certain strong liquors then imported into the said province from Old France, and the other American colonies then subject to the said French king; which duties were as follows; to wit, first, a duty of twenty-four French livres upon every barrel containing somewhat less than sixty-four gallons of English measure of a strong liquor then called guildive, made by distillation from molasses, imported into the said province from Old France, or the other colonies then subject to the said French king; and secondly, a duty of one French livre and four sols upon every measure called a veldt, being equal to two gallons and:

The tenor of the said information.

A state of the duties on strong liquors imported into the province in the time of the French government.

The duty on guildive, or rum--
The duty on cab: de vie, or brandy.

The duty on wine.

and three twenty-fifth parts of a gallon of English measure, of a strong liquor then called eau de vie, made by distillation from wine and divers kinds of fruits, imported into the said province from Old France, or the other colonies then subject to the said French king; and, thirdly, a duty of twelve French livres upon every barrel, containing somewhat less than sixty-four gallons of English measure, of wine imported into the said province from Old France, or the other colonies then subject to the said French king.

Transfer of the right to the said duties from the French king to the late King George the second by the conquest of the province.

Descent of the right to the said duties from King George the second to the present King. Confirmation of the present king's right to the said duties by the cession of Canada in the treaty of peace in February, 1763.

And whereas the said duties upon the said liquors did, immediately upon the conquest of the province by the arms of our said late sovereign lord King George the second, grandfather of our lord the now King, become, by right of war, lawfully vested in, and payable to, our said late lord King George the second, and his heirs and successors, Kings of Great-Britain, as parcel of the revenue of the crown of Great-Britain; and, upon the demise of our said late lord King George the second, the right to the said duties did descend to our sovereign lord the now King, as parcel of the revenue of his crown of Great-Britain; and were afterwards further confirmed to be the rightful and lawful property of our said lord the now King by the final and absolute cession of the said province, and of all the rights, dues, and revenues of the said French king arising in and from the said province, made to our said lord the now King by the said French king by the definitive treaty of peace concluded at Paris in the year of our Lord Jesus Christ one thousand, seven hundred, and sixty-three; and have ever since continued, and still do continue, to be lawfully due and payable to our said lord the now King, as parcel of the revenue of the crown of Great-Britain.

Notice given in February, 1769, in the Quebec Gazette, that the said duties would be demanded on the rum, wine, and brandy, that should be imported into Quebec in the following season.

And whereas Hector Theophilus Cramahé, Esquire, the temporary receiver-general of the revenue of our lord the now King in the said province of Quebec during the absence of Thomas Mills, Esquire, the receiver-general of the said province appointed by letters patent of our said lord the now King, from the said province, did, on the seventh day of February last in the ninth year of the reign of our said lord the now King, and on divers other days in the said month of February, and in the following months of March and April, give public notice to all the merchants and others whom it might concern in this province by an advertisement in the public news-paper of this province called the Quebec Gazette, that, in pursuance of orders lately received in that behalf from the lords commissioners of his Majesty's treasury, he the said temporary

receiver-general did propose to demand and collect from all vessels that should arrive in the port of Quebec in the ensuing season, a duty of ten shillings of lawful money of Great-Britain (being equal in value to twelve French livres) upon every hogshead of wine that should be imported into the said province in the said vessels, and a duty of twenty shillings of like lawful money of Great-Britain (being equal in value to twenty-four French livres) upon every hogshead of rum that should be imported into the said province in the said vessels, and a duty of one shilling of like lawful money of Great-Britain (being equal to one French livre and four sols) upon every veldt, or measure of two gallons, of brandy, that should be imported into the said province in the said vessels, being respectively equal to the several duties above-mentioned that were lawfully levied and paid to the French king aforesaid, during his possession of the said province, upon wine, and upon the strong liquors above-mentioned, called guildive and eau de vie, imported into the said province from Old France and the other colonies then subject to the French king : That Isaac Werden and John Mercier, of the town of Quebec in the said province, merchants, not ignorant of the premisses, but wickedly and craftily intending to deprive and defraud his said Majesty the now King of the duties aforesaid, and to diminish and im:overish the revenue of his said Majesty, justly belonging to him in right of his crown of Great-Britain, did at some time after the twenty-fifth day of May, in the ninth year of the reign of our said lord the now King, and before the day of exhibiting this information, cause to be imported into the aforesaid port of Quebec in a certain sloop or vessel called The Polly, whereof Alexander Houston was the master, from certain of his said Majesty's colonies in North America, twelve large casks of rum, containing about one hundred and fifteen gallons each, and eighty smaller casks of the same liquor, containing about thirty-two gallons each, all which larger and smaller casks together contain upwards of three thousand nine hundred and forty gallons of the said liquor, or somewhat more than sixty-two hogsheads and a half, of sixty-three gallons to each hogshead, upon which a duty of 62l. 10s. sterling, was due to the King: upon which a duty of 62l. 10s. sterling, was due to the King: and that they have caused the same to be landed without paying the said duty.

That Isaac Werden and John Mercier have imported into Quebec sixty-two gallons and a half of rum;

upon which a duty of 62l. 10s. sterling, was due to the King:

and that they have caused the same to be landed without paying the said duty.

behalf,

And that, though often required to pay the said duty, they have always refused, and still refuse to do so.

Damage thereby accruing to the revenue of the crown of Great Britain, five hundred pounds.

behalf and for the use of our said lord the now King, the said duty of sixty-two pounds, ten shillings, of lawful money of Great-Britain, so due as is aforesaid thereupon, or any part thereof; but that they the said Isaac and John, though they have been often required by the said Hector Theophilus Cramahé to pay the said sum of sixty-two pounds, ten shillings, of lawful money of Great-Britain, to him the said Hector Theophilus, on the behalf and for the use of our said lord the now King, have nevertheless always refused, and still do refuse, and each of them hath refused and still doth refuse, so to do; in contempt of our said lord the now King, and to the evil example of others who may hereafter offend herein, and to the impoverishment of the crown of our said lord the King of Great-Britain, and the damage of the revenue thereunto belonging, to the value of five hundred pounds of lawful money of Great-Britain. Whereupon the said attorney-general of our said lord the King for the said province of Quebec prays the advice of this honourable court in the premisses, and that due process of law may be issued against them the said Isaac Werden and John Mercier, to cause them to appear in the said court and answer to our said lord the King touching and concerning the premisses.

FRANCIS MASERES,
Attorney-general.

Plea of Not guilty.

Observations made to the jury by the counsel for the crown.

To this information the defendants pleaded the general plea of *Not guilty*; and upon this plea issue was joined, and in the same month of July the cause was tried at Quebec by a special jury before the chief justice of the province. On this occasion it was represented to the jury by those gentlemen who were of counsel for the crown, "That, whatever might have been asserted to the contrary, in order to inflame the passions of the people, and prejudice the minds of the jury against these duties, the King did not, in requiring the payment of them, mean to exert any prerogative of imposing taxes upon his subjects in this province by his own single authority, and without the consent of either a provincial assembly or, the general assembly of the whole British empire, the parliament of Great Britain, in derogation of the famous petition of right in the third year of king Charles the Ist and of other fundamental statutes of England; but that his Majesty only claimed
" these

“ these duties, as being taxes that were legally subsisting in the pro-
 “ vince at the time of the conquest of it by the British arms, and
 “ which had consequently been transferred by the said conquest
 “ from the French king to the King of Great-Britain, together
 “ with the sovereignty of the province, and the other branches of
 “ the public revenue of it, or property that had belonged to the
 “ former sovereign; such as the castle of Saint Lewis, which had
 “ been the French governour’s palace, the intendant’s palace, the
 “ barracks for the soldiers, and other buildings that had belonged
 “ to the French king; and the quit-rents and fines upon aliena-
 “ tion that were due to the French king from the owners and pur-
 “ chasers of all lands and houses that were holden immediately of
 “ him: all of which were almost universally acknowledged to have
 “ been transferred by the conquest from the French king to the
 “ King of Great-Britain: and that this was the manner in which
 “ the King’s claim to these duties had been stated in the informa-
 “ tion itself, in order to shew that nothing more was aimed at.—
 “ That therefore this requisition of the duties did in no degree en-
 “ danger the public liberty of the inhabitants of that province, and
 “ and the privileges they claimed either as Englishmen in general,
 “ or under the King’s proclamation of October, 1763, by which his
 “ Majesty had promised them the enjoyment of the benefit of the
 “ laws of England; and consequently that it ought not to be an
 “ object of their jealousy.—That if the subject was considered with
 “ a view to expedience and policy, it seemed to be agreed by most
 “ people that the payment of those moderate duties upon spirituous
 “ liquors was not only in itself just and reasonable, but was likely
 “ to prove beneficial to the province by checking the drunkenness
 “ and debauchery that the too common use of them gave rise to—
 “ That whether, or no, these duties were legally due to the King
 “ upon the ground above stated, was a new and a nice point of
 “ law, that required a very ample discussion, and a mature confi-
 “ deration of all the arguments that might be alledged either for
 “ or against it, by judges of the greatest learning and ability: and
 “ that therefore, if the facts in the cause should be proved to
 “ their satisfaction, it would be proper for them to find a special
 “ verdict on this information, to the end that the said arduous
 “ matter of law might be properly considered and determined.”

Facts proved on the trial.

After this address to the jury, the witnesses for the crown were called and examined, and all the facts in the cause were fully and clearly proved; to wit, first, that the said duties on rum, wine, and brandy had existed and been paid in the time of the French government in the manner that has been above stated in the account of the former trial in October, 1766; and secondly, that the defendants had lately imported into the province sixty-two hogheads and a half of rum from New England, and landed them without paying the duty, or giving security to pay it; and thirdly, that they had been required by the temporary receiver-general of the revenue to pay the said duty, but had refused to pay it: so that the only remaining doubt in the cause was concerning the point of law above-mentioned, *whether, or no, in consequence of the conquest of the country, and the transfer of the sovereignty over it from the French king to the King of Great Britain, these duties were become legally due to the King of Great-Britain.*

The chief justice exhorts the jury to find a special verdict.

When the evidence was gone through on both sides, the chief justice summed it up to the jury with great judgement and perspicuity, and exhorted them (as he had done the former jury in October, 1766) to bring in a special verdict, that the matter of law, which he considered as very new and difficult, might be fully and maturely examined both by himself and the other higher tribunals to which it might, if the parties so thought fit, be removed by writ of error, and that, in consequence thereof, it might be at last rightly decided. But the jury (though they consisted of some of the most respectable inhabitants of Quebec, and of such as were most moderate in their principles and disposition) could not be persuaded either by this exhortation of the chief justice of the province, or by the example of the jury of London-merchants who tried the actions against general Murray in February, 1768, and the concurrent opinions of the chief justice of the Common Pleas in England and the counsel for the plaintiffs in those actions in favour of the King's right to the French duties, to find either a verdict for the crown, or a special verdict; but without much deliberation they gave a general verdict for the defendants, that they were not guilty of the charge.

But they find a general verdict for the defendants.

It will be highly expedient not to sue for these duties any more.

Such was the event of this second trial for these duties: after which, I presume, it may be concluded that they can never be recovered

covered by suing for them in the courts of Quebec, and consequently that no English minister will ever hereafter endeavour to recover them in this way; since every attempt of this kind that is not attended with success, has a pernicious tendency to weaken the authority of government in the eyes of the Canadians, and lessen their reverence for the crown. If the King's ministers persevere in their resolution to have these duties collected, they had better at once get them imposed anew by an act of the British parliament.

As by this determined resolution of the inhabitants of Quebec to find verdicts against the crown whenever these duties shall be sued for, the question concerning the King's legal right to them is become a matter of mere curiosity and speculation, it can be of no prejudice, either to the crown or to the importers of rum and brandy into the province of Quebec, to inquire a little into the merits of it, and to mention some reasons that have sometimes inclined me to doubt whether this claim of the crown is justly founded.

An inquiry into the legal grounds of the King's claim to these duties.

I shall readily upon this occasion admit the proposition upon which I conceive this claim to be grounded, to be an undoubted maxim of law; to wit, that every tax that was lawfully due to the King of France under the French government in this province, as well as every seigneurial and territorial right that had belonged to him (such as the right to the castle of Saint Lewis, the intendant's palace, the barracks for the soldiers, and all the ungranted lands in the province, and the quit-rents and mutation-fines arising from those that are granted) becomes, *ipso facto*, by the change of the sovereignty of the country, upon the conquest and subsequent final cession of it by the definitive treaty of peace in February, 1763, the legal due of the King of Great-Britain; unless some act of the King of Great-Britain himself, or his predecessors, done either before or after the cession of it, shall have abridged his rights in this respect: and consequently that any internal tax (such as a tax on horses, or windows, or houses) that should have existed legally under the French government at the time of the conquest, would clearly and certainly now belong to the King of Great-Britain, unless, as is above-mentioned, some act of his own, or his predecessors, had destroyed his right to it. This I admit as a fundamental maxim, by which this question is to be governed; but yet have a doubt

The fundamental proposition upon which this claim is grounded.

Reasons for
doubting whe-
ther the King's
claim of these
duties is legal.

whether it can be applied to the duties on the importation of wine, rum, and brandy into the province of Quebec, so as to support the King's claim of them, for the reasons following.

First reason.

In the first place, the acts of parliament relating to trade and the customs to be paid in the American plantations, expressly comprehend, by words put in for that purpose, all his Majesty's territories in America either then belonging, at the several times of passing those acts, or that afterwards should belong to the crown of Great-Britain: so that here is a system of laws relating to the customs upon goods imported into, and exported out of, this and all the other colonies in America, that is ready made, and exists before-hand with respect to every new acquisition in that country, and therefore must take place and be carried into execution in every such new colony from the moment at which it becomes a part of the dominions of the crown of Great-Britain. Now this system of duties on goods imported and exported, thus imposed or appointed before the acquisition of every new colony, seems to be intended to supersede all the other duties that may be subsisting in it at the time of it's becoming a part of the dominions of the crown of Great-Britain: and, if so, it will follow that these acts of parliament, which have been passed, or assented to, by the King, or his royal predecessors, ought to be considered as acts by which they have before-hand renounced, resigned, and given up, their future right to any custom on goods imported into, or exported out of, any new territory in America, that shall be found legally subsisting in such territory at the time of their acquisition of it, and which would otherwise have accrued to them by virtue of the above-mentioned maxim of law. And this renunciation of the said right is not made *gratis*, or without a valuable consideration, but in exchange for certain other duties, or customs, imposed by those plantation-acts of parliament in their stead.

Second reason.

Secondly, In a statute made since the conquest and cession of this province, namely, the stat. 4 Geo. III. c. 15. certain duties are imposed upon Madeira wine and Spanish wine, and upon foreign molasses and syrups, imported into the American colonies: but no mention is made of a duty upon British spirits. And as to French, and other foreign spirits, they are absolutely prohibited in it. Now this

this statute seems to be intended to regulate the whole system of the customs to be paid in America. And therefore it seems reasonable to suppose that, if his Majesty had intended, at the time of passing this act, to levy the French duties upon strong liquors, he would have inserted in it a declaratory clause for that purpose; as thus; “ and it is further enacted, by the authority aforesaid, that in the “ province of Quebec in America the following duties shall be levied “ upon wine, rum, and brandy, imported into the said province; “ to wit, a duty of ten shillings, of lawful money of Great-Britain, “ per hoghead, upon wine; a duty of six pence per gallon, upon “ brandy; and a duty of twenty shillings, per hoghead, upon rum; “ being the same duties as were levied upon the same liquors “ respectively, under the French government, immediately before “ the conquest of the said province by the British arms: and that “ the said duties shall be paid in the said province of Quebec over “ and above the other duties before imposed on the said province “ in common with the other colonies in North America.” The want of such a clause as this in the aforesaid act of parliament, at a time when the parliament (of which the King is the head) were deliberating upon the duties that were fit to be imposed in America, seems to afford a ground for concluding that his Majesty at the time of passing this act had no intention that these duties should be levied in this province.

Thirdly, If no such act as the 4 Geo. III. cap. 15. had ever been passed, and if no general system of custom-house laws, relating equally to all the different provinces of North America, the new ones as well as the old, had been enacted before-hand, as is above-mentioned; yet, with respect to British brandy, which general Murray intirely exempted from all duty, it may be alledged that the King’s having omitted to demand a duty upon that commodity for several years, to wit, from the conquest of the country till the year 1766, ought to be construed as a resignation, or relinquishment, of that duty, for the benefit of his new subjects in Canada, and in order to put them in as good a condition as their neighbours in the adjoining provinces of New England and New York with respect to their trade with Great-Britain for that commodity. The reviving a tax which had been dropt for a considerable time, is not very different from imposing a new tax. But this reason relates only

*Third reason,
relating chiefly
to British spirits.*

only in a small degree to the duty on wine, which general Murray did not remit, but only lessened, and not at all to the duty on rum, which he augmented.

Fourth reason,
relating only to
British spirits.

Lastly, With respect to brandy it may be said that the commodity itself, which is the subject of the duty, is no longer the same as in the time of the French government. For then only French brandy, which is a liquor made from wine, was allowed to be imported into Quebec: now only British brandy, which is a liquor made from wheat, or other corn, is imported thither. Now these can hardly be considered as the same liquors, except in name; since they differ from each other at least as much as either of them differs from rum: and consequently the legal existence of a tax upon the former in the time of the French government cannot be a sufficient ground for demanding, as a legal due, a like tax upon the latter at present.

These are the reasons that have induced me to doubt whether the claim of the crown to these duties is justly founded: yet I dare not absolutely conclude that it is not so, out of regard to the opinion of a very learned and able lawyer of my acquaintance, who, notwithstanding the foregoing reasons (which he has seen and considered) and a well-known zeal for the liberties and privileges of his fellow-subjects in all parts of the British dominions, yet thinks that these duties are legally due to the crown. The person I mean, is Mr. DUNNING, who is mentioned above in page 296, as having been appointed his Majesty's solicitor-general on the 20th of January, 1768, and having given an opinion in conjunction with the then attorney-general in favour of the King's claim to these duties on the 10th of February, in the same year 1768; to whose judgment, upon every subject of law, I am always ready to pay the highest deference. But I will venture to observe that, in a claim of this kind made by the crown to an ancient duty, good policy requires that the justice and legality of it should not only be discernible to the acutest and most learned lawyers, but should be apparent and manifest to the understandings of common men, so that every body may immediately perceive and acknowledge it, and the crown take possession of the duty which is the object of the claim, with a general consent and approbation. Where
this

this is not the case, as it evidently is not with respect to the duties above-mentioned, it is better to resort to the legislative authority of the nation for a new law either to revive the duties, which are the objects of such disputed claim, or to impose such other duties and taxes as the people, upon whom they are to be levied, are easily able to bear, and the exigencies of government make it necessary to levy upon them. And the only authority by which this can be done in the province of Québec, where no assembly of the people has yet been established, seems to be that of the British parliament. The authority of this supreme legislature and general representative body of the whole British empire has not yet been disputed in this province: and from the loyal deportment of his Majesty's new Canadian subjects there is reason to hope that every act of government that shall be founded on that high authority, will meet with a ready obedience on their part.

The best way of imposing either these or any other duties, or taxes, in the province of Québec, is by an act of the British parliament.

F I N I S.