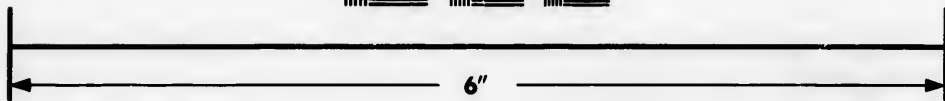
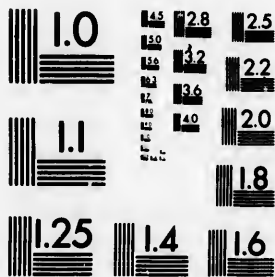
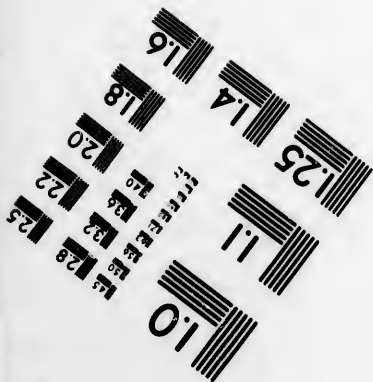


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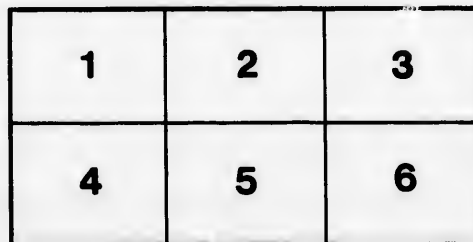
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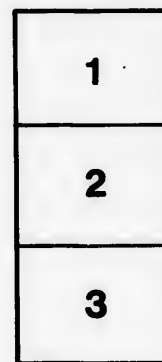
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AND AN APPENDIX OF MUCH USEFUL MATTER.

Itur in antiocham S. vian. stata alta ferarum  
Procumbunt pices, coniecta curibus illex  
Fraxineaeque trabes, cumq; et mille robur  
Scinditur: adstant ingentes montibus ondo. Virgil.

BY PLINIVS SEVNDUS.



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# Curia Canadenses.

Victoris domus hic cunctis dominabitur oris,  
 Et nati natorum, et qui nascentur ab illis.

## LOWER CANADA.

ANSTEY,<sup>1</sup> a fragment of ny soul,  
 How it would help the present scroll !  
 If from the distant Avon's banks  
 I now could hear of Gudgeon's pranks,  
 When to the Courts poor John a Gull  
 Was taken with a broken skull :  
 Could'st thou but migrate to this world,  
 See its Tribunes, hear Judgment's hurl'd,  
 Fresh inspiration thence would spring  
 John Doe's new lurkings sweet to sing,  
 And old Ontario's shores repeat  
 The note her sons would laugh to greet.  
 Tho' sans thy guidance essay's vain  
 To picture here, the Judges Fane,  
 Or of its Sectæ,<sup>2</sup> give narrations  
 Its growing power, or fresh creations ;

1. Mr. Anstey, an amusing author, wrote the Bath and Pleader's Guides. The latter contains an entertaining description of a trial for an election assault between John a Gull, and John a Gudgeon. The scene of the affray is described at "Toadland's end."

2. Blackstone,—in the third volume of his Commentaries,—gives the genealogy of the ancient families of John Doe and Richard Roe. In former times, (the same learned author states,) the law would not put the defendant to the trouble of answering a charge, till the plaintiff had made out a probable case by witnesses; and therefore the plaintiff, in his complaint or declaration, concludes with these words, "And therefore he brings suit, &c.," *inde producit sectam, &c.*; by which words suit, or *sectam*, (*a sequendo*), were anciently understood the witnesses or followers of the plaintiff.

No musing Tale of Toadland's deeds  
 Nor speech in Court, when Counsel pleads,  
 My verse, pretends alone to tell,  
 Of new Halls built, or old that fell.

QUEBEC<sup>3</sup> first raised the legal Courts,  
 For Roes and Does to hold their sports.  
 CONSEIL SOUVERAIN, with Judges seven  
 Intendant, Bishop, (who to Heaven  
 Points out the way), and Councilmen,  
 In number just one half of ten,  
 For Causes civil, and Offence,  
 To suitors, justice did dispense.  
 But this, on last and Grand Appeal.—  
 Quebec, Three Rivers, Montreal,  
 In smaller rights the Sceptre swayed,  
 And Justice' even balance weighed :

3. Soon after the conquest of Canada, by the French, the judicial institutions of France were introduced there. These frequently were embraced in the commissions to the respective Governors, or in acts, or letters patent granted to companies, created for advancing the newly acquired Colony. The numerous ecclesiastics sent out to convert the inhabitants to the Catholic faith, possessed also considerable authority over the judicial establishments.—See *Acte pour l'établissement des cents Associes; Etablissement de la Compagnie des Indes Occidentales, pour le Commerce du Canada, 29th August, 1627; and Edits de Création d'une Justice Royal à Montréal.*—The Conseil Souverain was created in 1663. The King, in the Edit, April, 1663, thus eloquently declares the objects of judicial institutions, “Nous avons cru ne pouvoir prendre un meilleure resolution qu' en établissant une justice réglé, et une Conseil Souverain dans le dits pays, pour y faire fleurir les lois, maintenir et appuyer les bons, chatier les méchants, et contenir chacun en son droit.”

This Court sat in Quebec before the Governor, Bishop and five Councillors, who heard and determined all causes, civil and criminal. A Court was held at Montreal and Three Rivers for like causes, before the Lieutenant Governor, with appeal to the Conseil Souverain. The form and method of proceeding in these Courts were simple; regulated by the civil code, dividing causes, as in modern times, into principal and summary causes: causes purely personal under 400 livres, and certain others under 1000 livres, were deemed summary. See Arrêt, April, 1617.

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Then if by chance, or worse intent,  
 The stream by tortuous motive bent  
 Gave to the law unjust restriction,  
 The "Conseil" was the jurisdiction.  
 The Holy Band of St. Sulpice  
 Better to keep in paths of peace,  
 No longer, Dies Fasti hold  
 To judge on matters, bought and sold,  
 But to their Royal Master tender  
 The judgment Throne, and Courts surrender;  
 The King, by motion act of grace,  
 For Nouvelle France, and all her race  
 New Seats creates, Causes to try,  
 Before a JUSTICE-ROYAL—ty.

For<sup>4</sup> grosser wickedness, and sin,  
 As Robbing, Murder, drinking Gin,  
 The true deserts, were to be found.  
 In Courts, (in France they much abound)  
 Before a Judge, called MARECHAUSSE,  
 In England named the Marshalsea.

---

On the first establishment of the Conseil Souverain, the Intendant did not exist. The first Intendant de la Justice, was by commission from the Crown, 23rd March, 1665.

3a. The Seminary of St. Sulpice, in Paris, to which had been attached the territories of the newly-acquired Colony, granted to the Seminary of St. Sulpice, in Canada, the Island of Montreal, which forms the Seigniorship of that name. This Society possessed judicial patronage, created courts of law and justice, and appointed the officers. The object of this Seminary was the education of youth in the higher branches of Philosophy and the Mathematics. It was founded about the year 1657, by the Abbé Quetus, commissioned by the Seminary of St. Sulpice at Paris, to superintend the settlement and cultivation of their property on the Island, and also to erect a Seminary there, upon the plan of their own. In March, 1693, by an arrêt of the Council of State, made at Versailles, the King accepts the surrender, by this Seminary, of all the property and judiciary powers possessed by them, and creates *un juge Royal* with appeal to the Conseil Souverain. The ecclesiastics, however, retained the appointment of the judge, for the first time, after the surrender, and that of greffier or registrar

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If<sup>s</sup> Lords and vassals took delight  
 In Pastime now and then to fight,  
 Or tenants wanted, *en roture*,  
 Titles to hold, or to assure ;

of the said court in perpetuity. It is probable that this St. Sulpitius was Sulpitius Severus, an ecclesiastical historian who was born in Aquitain, about A. D. 363. He left a Sacred History, extending from the creation of the world to the year 410, A. D. ;—also a Life of St. Martin of Tours, and some Dialogues and Epistles.

The Seminary of St. Sulpice, at Montreal, was incorporated in 1839, See 2 Vic. c. 50.

3b. The Dies Fasti, among the Romans, were the days when the courts of justice were open, during which it was lawful to transact business.

4. The Edit for the *creation de, 'office de Prévot de la Maréchaussée*, is dated 9th May, 1677.

This officer took cognizance of robberies, murders, and low offences. He appointed, and had for assistants, six constables, or *officiers d' archers*.

5. See Letters Patent, *en forme d'Edit*, July, 1714.

The Seigneurs, by the old laws, that have now become obsolete, were entitled to constitute Courts and preside as judges therein, in what is denominated *haute, moyen, et basse justice*, which takes cognizance of all crimes committed within their jurisdiction, except murder and treason: this privilege has lain dormant ever since the conquest.—*Bouchette, p. 377*.

One of the reasons, for the division of Canada into two Provinces, was the difference of the tenure by which the lands in the two departments were held; the whole of the earlier French settlements being occupied by seigniorial grants under the feudal system, whilst the disbanded troops, and more recent settlers, held their lands *in free and common soccage*.

The seigniorial tenure, in Lower Canada, is strictly feudal; the lands granted being held by the Seigneurs, or Lords of the soil, *en fief*, that is, in vassalage to the Crown, under a condition of homage or service; and, again, the portions conceded by the Seigneurs to their tenants, or vassals, called *censitaires*, are held by the latter, under the Seigneurs, *en roture*, that is, not as freeholders, but subject also to some particular conditions of service to him, as well as to a small annual rent in money or in produce, which forms the income of this Feudal Chief, who is considered somewhat like the ancient Lord of the Manor in England.

These Seigneurs were regarded, under the old French regime, more as agents for the settlement of the Province, than Barons for its defence or war-service; and the Canadian Seigneur regranted his leases in perpetuity, at a rent certain, not to be raised, and whenever the grantee sold his lease to another, the Seigneur was entitled to one-twelfth of the sale price, as an alienation fine, but to no fine by inheritance: the Seigneur is bound to build a grist-mill, and have it going or able to grind every week-day in the

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5 a. See *Rég*  
 Sir Lionel J  
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Relief on shortened terms, was granted,  
 By BAILLI'S COURT, who wrong supplanted.  
 A COURT OF ADMIRALTY,<sup>5a</sup> for Tars,  
 And wrongs on Seas, or in the Wars,  
 At divers Ports, now hold their stations  
 Decrees to give, by Law of nations.

year, and to make the roads required by law; and the tenant is obliged also to grind his corn at the Seigneur's mill, where one-fourteenth part is taken as *mouture*, or payment for grinding. Whenever a Seignior is disposed of, an alienation fine of one-fifth of the sale price is paid to the Crown, called "*Quints*," and the one-twelfth to the Seigneur, his *lods et ventes*.

The Act of 41 Geo. III., c. 3, was passed for the relief of persons holding lands of the King *en roture*.

The total quantity of land granted *en seigneurie* in the Province of Lower Canada exceeds 15,390 square miles; that laid out in townships under *free and common soccage*, amounts to 6,300,000 acres, of which, in 1829, not more than half was actually granted, and is generally known under the denomination of Waste Lands of the Crown, and, as such, liable to be granted *en fief* and *seigneurie*, or *in soccage*.

The soccage tenure, which is the *franc aleu roturier* of the feudal system; *Franc aleu roturier, est terre sans justice, ou seigneurie, pour laquelle, le détenteur, ne doit cens, rentes, lots et ventes, ni autres redevances.*—*Coutume de Paris*, art 68. The landholder being wholly unshackled by any condition whatsoever, neither rents, corvées, mutation fines, banalité, or the obligation of grinding his corn at the seigniorial mill; in fact, the soccage freeholder is bound to no other obligations than those of allegiance to the King and obedience to the laws. The word Soccage is of Saxon derivation, from the word "Soc," which signifieth liberty or privilege, and being joined to a usual termination, is called Socage, in Latin *Socagium*.

By the Act of the Imperial Parliament, 6 Geo. IV., c. 59, the conversion of the feudal into the free and common soccage tenure is contemplated, for which purpose the proprietors of fiefs and seignories are authorized to apply to his Majesty for a commutation of the burthens that attach to the tenure, and to receive a re-grant of the same, under free and common soccage. This commutation the Seigneur is himself bound to grant to his censitaires, should any application be made to that effect, in consideration of any indemnity to be amicably agreed upon, or fixed by experts or appraisers.

5 a. See *Règlement concernant les Sièges d'Amirauté*, 12c Janvier, 1717. Sir Lionel Jenkins observes, that besides *the four seas*, which are the peculiar care of the Crown of England, the King has a concern and autho-

To<sup>6</sup> quicken Justice in her paces,  
 Were officers of many places;  
 First Procureur, the public Right,  
 And Royal office to keep bright;  
 Then Greffiers,<sup>7</sup> Huissiers, to record,  
 Or. seize the culprit at a word:

ity, in concurrence with all other Sovereign Princes who have ships and subjects on the sea, to preserve the public peace, and to maintain the security of navigation all the world over: so that not the utmost bound of the Atlantic Ocean, nor any corner of the Mediterranean, nor any port in any sea, can prevent, but if the peace be violated upon any of his subjects, and the offender be afterwards brought up or laid hold on, in any of his Majesty's ports, such breach of the peace is to be enquired of and tried, in virtue of a Commission of Oyer and Terminer, in such county or place as his Majesty shall please to direct.

He then insists, as he had done in other places, with respect to the civil jurisdiction of the Admiralty, that the enquiries and presentments in this Court are to be of things done upon the sea, or in any haven, river, creek, or place where the Admiral hath, or pretends to have power, authority, or jurisdiction.

The word pretend, he observes, has been thus commented upon by Lord Coke, and the uncertainty it seems to import cleared up: that between the high and low-water marks the Admiral hath jurisdiction, *super aquam*, when the sea does flow, and as long as it flows; but the land is *infra corpus comitatus* at the reflow. So that of one place, there is *divisum imperium* at several times. But not content with this exposition, Judge Jenkins insists on the words of the Commission, which directs enquiry of the things done, not only upon the sea, and in havens, creeks, and rivers, as in the Statute, but also, in all places whatsoever within the flowing of the water, to the full sea-mark, and in all great rivers, from those bridges downwards that are next the sea.—*Browne's Elements of Civil Law*, b. 2, p. 464.

The *Quatuor Mara*, as they are called by foreigners, and in modern treatises, the British Seas, are those which surround Great Britain:—1. The Channel South, between England and France; 2. The Irish or St. George's Channel, and the Deucaledonian Sea, washing the West of Scotland; 3. The Caledonian, or the North of Scotland; 4. The German Ocean, washing the East of Britain.

6. Procureur, in the sense here used, was an officer resembling the Solicitor or Attorney General. He derived his appointment by commission from the Crown.

7. Registrar and Usher.

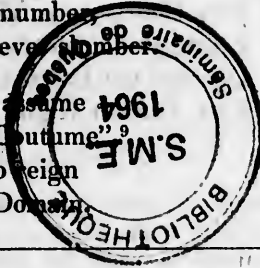
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Notaires, and Avocats in number  
*A tout temps prêts, they never*

A British King, see now  
 Judicial Sovereignty,<sup>8</sup> "Coutume"<sup>9</sup>  
 And that of Paris ceased to reign  
 Throughout the Canada Domain



8. The Articles of Capitulation, for the evacuation of Canada by the French, were signed by *Commander-in-Chief* Major General Amherst, on the part of his Britannic Majesty, and the Marquis de Vaudreuil, on that of the French, 8th September, 1760, and by Proclamation issued from St. James's, on the 7th October, 1763, Courts of Justice were proclaimed in the Colony, "for hearing and determining all causes, as well criminal as civil, according to law and equity, and as near as might be agreeable to the laws of England." Canada was at the same time formed into one Province, called the Province of Quebec, and so continued till 1791, when it was divided into the Provinces of Lower and Upper Canada, by the Act 31 Geo. III., c. 31. In 1774, the Quebec Act, 14 Geo. III., c. 33, was passed, by section eighth of which, it is provided, "That in all matters of controversy, relative to property and civil rights, resort shall be had to the laws of CANADA, as the rule for the decision of the same, and all causes, that shall hereafter be instituted in any of the Courts of Justice, to be appointed, within, and for the said Province, by his Majesty, his heirs and successors, shall, with respect to such property and rights, be determined agreeably to the said laws and customs of Canada."

By section eleven, the criminal law of England is to be administered and observed as law in the Province. The laws of Canada, at the time of the conquest, were those of France, comprehending those national customs, known as the *COUTUME DE PARIS*, and those institutions of the French nation deriving their authority from the *ROMAN CIVIL LAW*; this, as received in the western part of Europe, and adopted by the French with other Gothic nations, embraced the Institutes, containing the elements of the Roman law, the Digests or Pandects, containing the opinions and writings of eminent lawyers, a collection of Imperial Constitutions, and the Novels, or New Constitutions, posterior in time to the other books, and amounting to a supplement to the code.

9. La Coutume de la Prévôté et Vicomté de Paris, was the great body of French Customary Law. Before the revision of the customs of France, the judges in that kingdom were obliged to conform their judgments to the different customs which prevailed in the several provinces, following the Ordinance of King St. Louis, in the year 1278. These customs had been revised, digested and reduced into writing, under letters patent of Charles



New Courts arise, but the bright Crown  
 Fearing to tarnish its renown,  
 Decreed the Laws should be IN FRENCH,  
 Lest Ancient Right it should retrench.

the Seventh. The first instance of this arrangement was that of Ponthieu, after the death of this King, under Charles the Eighth, in 1443; and the others afterwards, under the Kings his successors; that of Paris, was reduced into writing in the year 1510, under Louis the Twelfth. Towards the end of the sixteenth century, and at the commencement of the seventeenth, many customs had been modified, in consequence of the defects which had been found to exist among them. That of Paris was revised in 1580, and Paris, anciently a Comté, and the Counts of Paris possessing great authority, Capet, son of Hugues Capet, Count of Paris, abolished this dignity with the name of the Count of Paris, united the Comté to the Throne, and ordained that, thereafter, the territory of Paris should be called Vicomte, the judge who presided in this district Prevôt, and the jurisdiction Prevoté et Vicomté de Paris.—*Vide Commentaire sur la Coutume, M. Claude de Ferriere, v. 1, p. 2.*

The progress of our Common Law, till the reign of Edward I., bears a strong resemblance to that of Rome. The primitive maxims and customs were applied to all new cases, which, appearing similar to them, it was natural and convenient to subject to like rules. Courts in England, private lawyers, juridical writers, and absolute monarchs at Rome, in delivering opinions concerning specific cases, extended the analogy from age to age, until an immense fabric of jurisprudence was at length built upon somewhat rude foundations. The legislature itself occasionally interposed to amend customs, to widen or narrow principles; but these occasional interpositions were no more than petty repairs in a vast building. From the reign of Edward I., we possess the Year Books, annual notes of the cases adjudged by our Courts, who exclusively possessed the power of authoritative interpretation, scarcely to be distinguished from the legislation which the tribunals of Rome shared with the imperial ministers, and with noted advocates,—*Edicta Prætoris, Rescripta Principum, Responsa Prudentum.* In a century after him, elementary treatises, methodical digests, and works on special subjects, were extracted from these materials by Lyttleton, Fortescue, and Brooke. So conspicuous a station at the head of the authentic history of our uninterrupted jurisprudence, has contributed more than his legislative acts to procure for Edward the ambitious name of the English Justinian. The Science of Law, which struggles to combine inflexible rules with transactions and relations perpetually changing, can obtain no part of its object without the exercise of more ingenuity, and the use of distinctions more subtle than might be deemed suitable to the

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*Mackintosh, p. 2*  
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To bring home justice to the door  
 Of the rich Suitor, or the poor,  
 The Province into *Districts three*<sup>10</sup>  
 Canadians now are made to see.

QUEBEC, the first and foremost City,  
 Begets the Royal Master's pity:  
 Then MONTREAL, for its great trade,  
 A Judgment Seat is quickly made:  
 And RIVIERES TROIS, from old connexion  
 With Indian fur, demands protection.  
 At each a Queen's Bench was erected,  
 With Chief, and Puisnes, three selected  
 All civil rights and crimes to try,  
 Of great amount or deepen'd die;  
 With power to two in every year,  
 At *Terms Superior* Debts to clear

regulation of practice. In time the lawyers, who were commonly ecclesiastics, were still farther warped, by the excessive refinements of the scholastic philosophy, which had reached its zenith under Aquinas, and seemed to have overshot it in the hands of his disciple and antagonist, Duns Scotus. A proneness to uninstrucive acuteness, and to distinctions purely verbal, tainted it from the cradle.—*History of England, Sir James Mackintosh, p. 274.*

10. By 34th Geo. III., c. 6, Lower Canada was divided into three districts, viz., QUEBEC, MONTREAL, THREE RIVERS. In each district a Court of King's Bench was established, with a Chief and three Puisne Justices, having power to hear, try, and determine all matters, civil and criminal: two or more of these justices held annually, in the cities of Quebec and Montreal, four *Superior Terms*, on the first twenty juridical days of February, April, June, and October; the first and every other juridical day being return days for all writs and process. These justices took cognizance of causes exceeding *ten pounds* sterling; or, if relating to GASPE', to *twenty pounds*. These Superior Terms were empowered to grant emancipation to minors, on the counsel of near relations or friends, to hear and determine all matters for the rescision of all contracts and deeds, conformable to the usage prior to the conquest; and to hear and determine all suits and demands which might have been heard in the *Courts of Prévôté Justice Royale, Intendant, or Supreme Council*, under the Governor, prior to 1759.

By section eleven, a Court of King's Bench was erected in the district of Three Rivers, to be held by two Justices of the Court of King's Bench for

Above Ten Pounds, whate'er the ground  
 On which the contract might be found :  
*Inferior Terms* too, Six in number,  
 When little debts poor men encumber ;  
 But on complaint of their decision  
 Those always quick had supervision ;  
 By plaint to Judge, and meek Petition,  
 And costs secured, with much contrition.

Then from each District, once a-year  
 One Justice did all Counties clear,  
 In *Circuits* form'd; save Counties four,  
 Which other jurisdiction bore.  
 No Cause however, here was brought,  
 If Plaintiff at these Courts e'er sought  
 More than Ten Pounds, for Goods, or work,  
 No matter, or for *Beef*,<sup>10a</sup> or *Pork*.

Quebec and Montreal, and the Provincial Judge of Three Rivers. The Court was held in the town of Three Rivers, from the 13th to the last days of March and September. By 10th and 11th Geo. IV., c. 7, the 34th Geo. III., c. 6. was repealed, as regarded the appointment of the Provincial Judge; and one of the Justices of King's Bench for Three Rivers was directed to be *resident*, and to be called the *RESIDENT JUDGE* of Three Rivers.

*Six Inferior Terms* were at the same time appointed in the cities of Quebec and Montreal, to hear and determine, without appeal, civil suits, where the amounts claimed did not exceed ten pounds.

By section ten, if, in the *Inferior Terms*, there was any exception by the defendant, the exception was entered of record, and the process, suit and demand removed into the *Superior Terms*.

By section nineteen, *Circuits* were held annually, by one at least of the Justices of King's Bench, to sit in each county, except the counties of *Quebec, Montreal, Orleans, and Gaspé*, to hear and determine all matters under ten pounds.

By section fourteen, a Provincial Court was established in the *INFERIOR DISTRICT OF GASPE'*, to try, in a summary manner and without appeal, suits not exceeding twenty pounds sterling; and by section seventeen, a Provincial Judge was appointed. By 2nd Geo. IV., c. 5, the jurisdiction of this Court was extended to cases not exceeding *one hundred pounds*.

10a. Articles of considerable commerce in Canada. The Statutes regulating which are numerous.

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GASPE', a distinct Province made,  
 Where justice summary was display'd,  
*Twenty Pounds* first, then *five times over*  
 Its jurisdiction well could cover.  
 ST. FRANCIS<sup>11</sup> too, so far away  
 From Quebec's City, bred delay,  
 A District form'd, and Justice seat  
 Is reared, the Suitors' *Plaint* to meet.

But now the growings of the State  
 Arrangements new, do soon create.  
 Old things must pass away, and other  
 Take up their place, and make fresh pother.

Instead of Districts Three, now *Four*<sup>12</sup>  
 All Lower Canada explore;  
 QUEBEC, MONTREAL, take the lead,  
 GASPE', and SHERBROOKE then succeed.

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11. By 3rd Geo. IV., c. 17, from the great extent of the District of Montreal and Three Rivers, and the increased population in those parts, the DISTRICT OF ST. FRANCIS was formed, and a Judge appointed to hold a Provincial Court, to take cognizance of causes purely personal, not exceeding twenty pounds. The Court was held at the Village of Sherbrooke. By 10 and 11th Geo. IV., c. 7, the distance of the inhabitants from the Superior Courts of Montreal and Three Rivers, and the loss of time occasioned in attending the Superior Courts, led to the establishment of a new Court, to be held at Sherbrooke, before one of the Justices of King's Bench of Quebec or Montreal, the Provincial Judge of Three Rivers, and the Provincial Judge of St. Francis, in two terms in every year, viz., the 26th February to 8th March, 25th August to 4th September.

Square Miles. Inhabitants.

In 1829, the District of Quebec contained	.....	125,717...	143,761
“ Montreal	“	.....	268,631... 49,769
“ Three Rivers	“	.....	51,657... 15,811
“ Gaspé	“	.....	7,777... 7,389

—See *Bouchette*, p. 358.

12. By 4th Vic., c. 45, the 34th Geo. III., c. 6, 3rd Geo. IV., c. 17, and 10th and 11th Geo. IV., c. 7, and so much of any other Act as confers on the Courts of King's Bench and Provincial Courts, or on the Judges

For all, there's now but one *Queen's Bench*,  
 One Chief, two Puisnes knowing French,  
 With Power-appellate, to decide  
 O'er all Provincial Courts beside ;  
 Subject alone, no higher Head,  
 To British Queen by Council led.

Four times a year K. B. does sit  
 As with the Seasons to befit :  
 For fifteen days in month November,  
 August and May, but not September ;  
 And month of Janus, sleighing weather,  
 Collects the Judges all together.

any powers, were repealed; Lower Canada is divided into four principal territorial divisions, namely, QUEBEC, MONTREAL, SHERBROOKE, AND GASPE'; a Court of Queen's Bench, or Supreme Court of Record, is to be held by the Chief Justice of the Province and two Puisne Justices; to have original criminal jurisdiction throughout the Province of Lower Canada, in like manner as her Majesty's Court of King's Bench in England; with supreme appellate jurisdiction, as a Court of Error. This Court was to be held at any place within the Province, appointed by the Governor and Executive Council, four times in the year, namely, the first fifteen days of January, May, August, and November.

By the same Act, a *Court of Common Pleas* was established, composed of nine Justices, appointed by Letters Patent under the Great Seal, to have original civil jurisdiction throughout the Province, to take cognizance of all civil pleas, causes, and matters whatsoever. The Justices were to sit in *Divisions*, to be distinguished by *numbers*, holding Superior and Inferior Terms.

The First Division of Superior Terms, consisting of three or more Justices, was to sit at Quebec, from 1st ..... to ..... 20th February,  
 1st ..... to ..... 20th April,  
 1st ..... to ..... 20th June,  
 1st ..... to ..... 20th October.

The Second Division, of the like number of Justices, at Montreal, on the same days.

The Third Division, of *two* or more Justices, at Sherbrooke, on the same days.

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Another Court now, and most civil,  
 Defeats the cheatings of the Devil,  
 Called *Common Pleas*, held in *Divisions*,  
 To hear all Causes, give Decisions;  
 Nine Justices declare the Laws,  
 Correct abuses, mend all flaws.

*Divisions four* are thus set out;  
 First at Quebec, they go about  
 Four times a year; pounds above *twenty*,  
 Make causes numerous, justice plenty.  
 The second, third, and fourth likewise,  
 At Montreal, Sherbrooke, Gaspé rise;  
 Twenty whole days the Judges sit,  
 Counsel to hear their cause submit.

*Inferior Terms* they now set up,  
 To fill the famished client's cup,  
 When *twenty pounds* he claims or less:  
 One Justice here will grant redress.  
 Good suitor! let thy claim be small;  
 Appeal's shut out alike to all.

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The Fourth Division, of *one* or more Justices, to sit at New Carlisle,  
 from 1st ..... to ..... 20th March,  
 from 11th..... to ..... 30th September,

At Carleton..... from 1st ..... to ..... 10th July,  
 At Percé ..... from 1st ..... to ..... 10th August,  
 At Douglas Town..... from 16th ..... to ..... 25th August.

In these territorial divisions, Courts were to be held, until 1843, by one  
 or more of the Justices, to take cognizance, without appeal, of all causes  
 not exceeding twenty pounds, in Terms, called *Inferior Terms*.

These Inferior Terms were to be held in the cities of Quebec, Montreal,  
 and town of Sherbrooke, from 21st ..... to ..... 31st January,  
 from 11th..... to ..... 19th March,  
 from 21st..... to ..... 31st May,  
 from 20th..... to ..... 30th June,  
 from 21st..... to ..... 31st August,  
 from 21st..... to ..... 30th November.

—See 6th Vic. c. 13.

Descend we somewhat lower still,  
 And view the Courts for lighter ill,  
 Courts of *Request*,<sup>13</sup> made to dispense  
 All *five pound* rights by common sense.  
 If Farmer<sup>14</sup> found his hedges broke,  
 By ruthless cattle, wilful stroke,  
 A Justice measured out deserts,  
 By summons granted to *Experts*;  
 Hearing the truth of the complaint,  
 Lay'd penalty, or else distraint;  
 Mended the fences, filled up ditches,  
 Cured country ills by legal stitches.

This Justice law 's soon set aside,  
*Commissioners*<sup>15</sup> the causes tried,  
 Where feuds thought little now were ended  
 By neighbours sent and recommended.

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13. By 47th Geo. III., c. 13, in the townships and seigneuries of Dunham, Stanbridge, Sutton, Potton, Shefford, Stukely, Compton, and Hatley, and seigneuries of Foucault, and St. Armand, and such other townships as the Governor should think fit, the Governor, by Commission under the Great Seal, was empowered to appoint such Justices of the Peace, acting in such Townships, as to him should seem meet, to take cognizance of all causes, not exceeding five pounds, and to hear and determine agreeable to equity and good conscience.

14. By 57th Geo. III., c. 14, for the benefit of parties engaged in *Agriculture*, and in matters concerning fences and ditches, and damage done by beasts of any description, persons aggrieved were to make application to the nearest Justice of the Peace, within the county; who was authorized to summon the offender, and, after hearing the parties, to refer the matter to four experts, two to be named by the plaintiff and two by the defendant; and upon their report, the Justice, in the case of fences and ditches, was to condemn the party to perform the works, or to pay damage, not exceeding three pounds currency.

15. By 1st Geo. IV., c. 2, the Governor is empowered by commission, to appoint such and so many persons, in each parish or township, as he should think fit, to take cognizance of all causes not exceeding four pounds three shillings and four pence.—*See 9th Geo. IV., c. 22.*

16. The 9th Geo. IV., c. 17, 2nd Vi

17. By 4th Lower Canad TRICTS; to ap with a Judge wherein the *shillings*, and *of five years'* Inferior Dist exceeding *si* the form of p officers, and t

18. Fees p

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The Statute book gives much provision<sup>16</sup>  
 For minor wrongs with quick decision;  
 To-day, a Justice held the seals,  
 To-morrow laid him by the heels,  
 Till the small fry of Courts of Conscience,  
*Victoria's fourth and fifth*, made nonsense.<sup>17</sup>

Now plodding tradesman, country squire,  
 To Justice seats no more aspire.  
 The learned, versed in legal story,  
 By LITTLETON and COKE made hoary,  
 Men who the CIVIL CODE have read,  
 Alone may sit to hear and plead.

Five Summers' standing and no less  
 Presides, and may award redress;  
 The "DISTRICTS" the *large cause* explore,  
 "DIVISIONS," *six pounds five*, no more.

If either party error sees,  
 Appeal 's to Court of Common Pleas.  
 Bailiffs,<sup>18</sup> now bound, surround the Hall,  
 With *fees* defined, no doubt thought small:

16. The 59th Geo. III., c. 10, 3rd Geo. IV., c. 22, 6th Geo. IV., c. 2, 9th Geo. IV., c. 22, 3rd Wm. IV., c. 34, 4th Wm. IV., c. 2, 6th Wm. IV., c. 17, 2nd Vic., c. 58, 4th Vic, c. 43, were all of them Acts passed creating for a short period, Courts for small causes, or continuing existing Acts.

17. By 4th and 5th Vic., c. 20, the Governor is authorized to divide Lower Canada, except the Inferior District of Gaspé, into INFERIOR DISTRICTS; to appoint DISTRICT COURTS, to be held in each Inferior District, with a Judge, to take cognizance in a summary manner of all civil suits, wherein the sum of money, or the value, shall exceed *six pounds five shillings*, and not exceed twenty pounds. The Judges are to be *Advocates of five years' standing*. DIVISION COURTS are also erected in each of the Inferior Districts, to be held before the District Judge, for causes not exceeding *six pounds five shillings*. This Act very minutely points out the form of proceedings before the two Courts, the duties and powers of all officers, and the fees and costs to be taken.

18. Fees payable to Bailiffs under 4th and 5th Vic., c. 20.

LOWER CANADA.

For service of process.....	1s. Od.
For seizure of goods.....	4 0
For sale, including every expence while travelling...	4 0



*The Official's Fund* destroys temptation,  
For human heart of quick creation.

Two other Courts, 'twere sin to miss,  
The Province helps to legal bliss;  
Of ENQUETEURS<sup>19</sup> complete to sift,  
And draw from witness what his drift;  
The Court of ESCHEATS<sup>20</sup> lands when lost  
Will give the Seigneur with some cost.

	s.	d.
For return writs of execution.....	0	6
For mileage, per mile, including returning .....	1	0

## UPPER CANADA.

For the service of every summons, order, &c. ....	0	6
For taking goods .....	2	0
For every mile more than two.....	0	4
For taking prisoner to gaol.....	0	6

The fees relating to Upper Canada are regulated by a different Act.

19. THE COURT OF ENQUETES somewhat resembles the Examiners in the Court of Chancery. It is a Court for examining witnesses only. By 9th Geo. IV., c. 5, the Governor was authorized to appoint two Commissioners, *Enquêteurs*, to sit at Montreal, and to whom, or one of whom, were to be referred the *Enquêtes*, i. e. enquiries or examinations, taken in in causes pending in the Superior Terms.

By 1st Wm. IV., c. 2, the *Enquêtes* are to be taken before a single Judge or more, as well in term as in vacation. This Act is made perpetual by 3rd Vic., c. 9.

20. The 6th Geo. IV., c. 59, created the COURT OF ESCHEATS, and authorized the Governor, Lieutenant Governor, or person administering the government, to constitute one or more Commissioners of Escheats and Forfeitures of Land within the said Province. These Commissioners are empowered to enquire from time to time, on information being made and filed by the Attorney or Solicitor General of the Province, into the liability of the lands to escheat, by reason of the non-performance of the conditions of settlement, and the verdict of a jury of twelve men is to be obtained of the fact, whereupon the forfeited lands become revested in her Majesty.— Under this Act a Commissioner of Escheats has been appointed, and the Court otherwise organized.

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Gens que virūm truncis et duro robore nata.—VIRGIL.

UPPER CANADA.

These legal seats of divers ranks,  
 Have limit to St. Laurent's banks;  
 But all beyond, down to Detroit,  
 Becomes new ground for fresh exploit.  
 The scene of action now surveyed,  
 Is UPPER CANADA, where 'twas said  
 In *four divisions*<sup>21</sup> 'twould be found,  
 From Eastern to the Western bound;

21. Before the division of the Province, the Superior Courts of the Province of Quebec were the Courts to which the inhabitants of Upper Canada resorted, with such additional judicatory as the 27th Geo. III., c. 4, and 29th Geo. III., c. 3, provided, when directing the formation of the "New Districts." These districts were *Mecklenburgh, Luneberg, Hesse, and Nassau*, since then changed by proclamation. In 1792, the Courts of Common Pleas, in actions under ten pounds, were abolished. See 32nd Geo. III., c. 3.—The Courts and proceedings in actions above ten pounds, at this time, were regulated by the Act of the Province of Quebec, 25th Geo. III., c. 2. By 34th Geo. III., c. 2, the Court of King's Bench was established for Upper Canada, as a Court of Record of Original Jurisdiction, to hold pleas in all manner of actions, or suits, criminal, civil, real, personal, and mixed, in such manner as the King's Bench, Common Pleas, or Exchequer in England. This Court was, by this Act, to be held at a place certain, where the Governor resided, before a Chief and two Puisne Justices. There are now four Puisne Justices, and the Court is held in the city of Toronto. By 6th Geo. IV., c. 1, the following were the Terms: Hilary Term—First Monday after the 25th December, ending Saturday of the ensuing week. Easter Term—First Monday next after the 16th April, ending Saturday in the ensuing week. Trinity Term—Third Monday in the month of June, and ending Saturday in the week ensuing. Michaelmas Term—First Monday in November, and ending Saturday in the week ensuing.

The present Terms are :

Easter Term..... From 6th to 18th February.  
 Trinity Term ..... From 12th to 24th June.  
 Michaelmas Term..... From 7th to 19th August.  
 Hilary Term..... From 6th to 18th November.

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Of German names, for sake of Founder,  
 Which, for more clearness, follow under:  
*Mecklenburgh* first, then *Luneberg* second,  
*Nassau* and *Hesse* t'others were reckoned.  
 A COMMON PLEAS was there erected,  
 Where Subject's Rights should be protected.  
 Then a QUEEN'S BENCH forthwith arose,  
 The Suitor's injuries to dispose,  
 With a Chief Judge and Puisnes four,  
 At every Term to ope the door:  
 Four times a year, beginning Monday,  
 And always ending next to Sunday;  
 Cum BANCO SITTINGS<sup>22</sup> for Judgments, Pleadings,<sup>23</sup>  
 To be digested after readings;

The first and last days of every Term, and every alternate day from the first, not including Sunday, are return days.

The Court sits in *Banco* on the 28th February, 1st March, 4th and 5th July, 29th and 30th August, 28th and 29th November.

22. *Jus dicere et non jus dare*, is a favourite doctrine of the common lawyers.—See per Lord Kenyon, 7, T. R. 696. It is rather however speculatively, than practically correct. "A Court," (says Mr. Ram, in his valuable *Treatise on Legal Judgments*), "when it constructs a *judgment*, "forms it of certain materials, which are law; those materials the Court "does not make, and so far the judgment is not creative of law. But the "*judgment*, or body into which the materials are wrought, is law; and is "law, though the materials are ill chosen, or improperly applied." 1 Taunt. "292. 14 Ves., 175." In some degree therefore, it would seem, that a *judgment* is creative of law. This opinion is upheld by the known Fulk, that so long as a judgment, which a Court of Westminster Hall has delivered, stands unreversed, the *case is law*, although a "shocking decision," (1 Taunt., 292), an "extraordinary case," (14 Ves., 175).—Warren, p. 216.

23. Special Pleading, Special Pleadings,—*plée* in French, in English, *plea*,—were anciently used to signify suit or action. While used in this sense, they gave rise, respectively, to the words *pléder* and to *plead*; of which the primary meaning was, accordingly, to litigate; but which, in the later English law, have been taken in the limited sense of making allegation in a cause.—Stephen on Pl. Warren in note, p. 273. See Appendix I.

*2. jus pronuntiat Reitor etiam cum false decernit.*

24. By 34  
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 CIRCUITS  
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District  
 Eastern ....  
 Ottawa .....  
 Bathurst .....

Victoria .....  
 Prince Edward  
 Midland .....  
 Johnstown ..

Newcastle ..  
 Colborne.....

Niagara .....  
 Gore .....  
 Talbot .....  
 Brock .....

Wellington ..  
 Huron.....  
 London .....  
 Western .....

And as *Mortalium nemo sapit*,—  
 APPEAL COURT<sup>24</sup> then the RECORD *capit*,  
 Where great and gravest heads do meet,  
 To make the Law still more complete.  
 Then skill and science to acquire,  
 Experience and forensic fire,

24. By 34th Geo. 3, c. 2, the Court of Appeals was to be composed of the Governor, Lieutenant Governor, or Chief Justice of the Province, together with any two or more members of the Executive Council, and, since the establishment of the Court of Chancery, of the Vice Chancellor.

CIRCUITS are held in this Province twice a year, namely, between *Easter and Trinity Terms*, and *Michaelmas and Hilary Terms*. The following was the arrangement for the Spring Circuit of 1842 :

EASTERN CIRCUIT.

His Honor the CHIEF JUSTICE.

District.	Town.	
Eastern .....	Cornwall.....	Monday, 16th May.
Ottawa .....	L'Original .....	Tuesday, 24th May.
Bathurst .....	Perth .....	Tuesday, 31st May.

MIDLAND CIRCUIT.

His Honor Mr. JUSTICE HAGERMAN.

Victoria .....	Belleville .....	Monday, 2nd May.
Prince Edward.....	Picton .....	Monday, 9th May.
Midland .....	Kingston.....	Monday, 16th May.
Johnstown .....	Breckville .....	Thursday, 26th May.

HOME CIRCUIT.

His Honor Mr. JUSTICE MACAULAY.

Newcastle .....	Cobourg.....	Monday, 25th April.
Colborne.....	Peterborough .....	Thursday, 5th May.

NIAGARA CIRCUIT.

His Honor Mr. JUSTICE JONES.

Niagara .....	Niagara .....	Tuesday, 3rd May.
Gore .....	Hamilton .....	Tuesday, 17th May.
Talbot .....	Simcoe .....	Wednesday, 1st June.
Brock .....	Woodstock.....	Monday, 6th June.

WESTERN CIRCUIT.

His Honor Mr. JUSTICE McLEAN.

Wellington .....	Guelph .....	Tuesday, 10th May.
Huron.....	Goderich .....	Monday, 16th May.
London .....	London .....	Monday, 23rd May.
Western .....	Sandwich ..	Wednesday, 1st June.

*decernit.*

A PRACTICE COURT<sup>25</sup> behold appended,  
 That Forms and Rules may be amended.  
 Now, too, is heard from legal forts  
 A regular volley of *Reports*,<sup>26</sup>  
 After command from Osgoode's<sup>27</sup> Benches,  
 And charge from Chiefs in open Trenches.  
 Thrice happy soil, where, without measure,  
 Enjoyment may flow o'er with pleasure!

## HOME DISTRICT CRIMINAL COURT.

Monday, 28th March.

His Honor the CHIEF JUSTICE.

ASSIZE AND NISI PRIUS.

Tuesday, 12th April.

His Honor Mr. JUSTICE JONES.

25. The business of the Common Law Courts of Upper Canada is carried on in the offices of the *Clerk of the Crown and Pleas*, and *Clerk of the Practice Courts*. By 2nd Geo. IV., c. 1, the Clerk of the Crown and Pleas is directed to have in each district, except the *Ottawa*, a Deputy, from which all proceedings, before final judgment, and writs of *capias ad satisfaciendum*, after, may issue.

The RULES OF PRACTICE, passed Hilary Term, 4th Wm. IV., and the Provincial Statutes, 7th Wm. IV., c. 3, and 6th Vic., c. 19, govern the proceedings. The principal Statutes and Rules, regulating the Practice of the Courts at *Westminster*, by the Imperial Parliament, are 1st Wm. IV., c. 7, 2nd Wm. IV., c. 39, 3rd and 4th Wm. IV., c. 36, 3rd and 4th Wm. IV., c. 44; and the RULES, Hilary Term, 4 Wm. IV.

26. In 1823, by Provincial Act 4th Geo. IV., c. 3, a REPORTER is directed to be chosen from among the Members of the Law Society, selected by the Governor. He is made an officer of the Court, and to submit, on the first day of each Term, a fair Report of all the decisions given by the Court, and noted by him, during the last preceding Term; which Report, after due examination and correction by the whole Court, was, by this Act, directed to be signed by all the Judges in open Court.

The gentleman who held this office first was Thomas Taylor, Esq., followed by Mr. Draper and Mr. Sherwood, and the present Reporter, John Hillyard Cameron, Esq.—See Appendix II.

27. Judge Osgoode gave the name to the large handsome building at the top of York Street, in Toronto, now called Lawyer's Hall, from its having been occupied by the Law Society.

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For SARATOGA,<sup>28</sup> or its drinks,  
The WHIRLPOOL,<sup>29</sup> or NIAGARA'S<sup>30</sup> brinks,

28. Saratoga, in the State of New York, celebrated for its springs and waters, called the Congress Waters, and being of the class called "acidulous saline chalybeate," from having carbonic acid gas, salt, and iron in them all. Saratoga affords the best opportunity that a stranger can enjoy for seeing American society on the largest scale. The rich merchant from New Orleans, and the wealthy planter from Arkansas, Alabama, and Tennessee, with the more haughty and more polished land-owner from Georgia, the Carolinas, and Virginia; the successful speculator in real estate from Kentucky, Ohio, Missouri, and Michigan; the rich capitalist from Boston and New York; the grave Quaker from Providence and Philadelphia; the Official Functionary from Washington, and the learned Professor from New Haven, Cambridge, and Hartford, all mingle together in strange variety, and present such strikingly different, yet truly characteristic features, that the whole Union is brought before the eye of the stranger at one view.—Buckingham's Travels in America, v. 2, p. 99.

29. Nearly midway between the Falls of Niagara and the village of Lewiston, there is a sudden turn in the river. On the American side a point projects into the stream, and a deep indenture is worn into the bank on the Canada side; on the promontory facing the South and West the basin of the Whirlpool is presented, and for a long distance above, the rough waters of the river are seen rushing forward, with an impetuosity irresistible, and with a loud and terrific noise. The banks of the river are here upwards of 200 feet high.—*Legend of the Whirlpool, Buffalo, 1840.*

30. Niagara River, upon which the Falls are situated, receives the water of all the upper Lakes, as Erie, St. Clair, Huron, Michigan, Superior, and a number of smaller ones. The most distant source of the Niagara is, it is supposed, the river St. Louis, which rises *twelve hundred and fifty* miles North-West of the Falls, and *one hundred and fifty* miles West of Lake Superior. It is *twelve hundred* feet above the level of the ocean, and falls *five hundred and fifty-one* feet before it reaches the Lake. Lake Superior is *four hundred and fifty-nine* miles long, by *one hundred* wide, and *nine hundred* feet deep. It is discharged into Lake Huron, by the Strait St. Mary, *sixty* miles in length, making a descent of *forty-five* feet. This Lake receives the waters of about *forty* rivers. Lake Michigan is *three hundred* miles, by *fifty*, and about *nine hundred* feet deep, and empties into Huron, through the Straits of Mackinac *forty* miles in length. Connected with Michigan on the South-west side, is Green Bay, *one hundred* miles in length, by about *twenty* in width. Lake Huron is *two hundred and eighteen* miles, by *one hundred and eighty*, and *nine hundred* feet deep, and is discharged into Lake Erie, through the rivers St. Clair and Detroit, *ninety*

Or CALEDONIA'S<sup>31</sup> far-famed Springs,  
 Or the ten hundred sparkling RINGS<sup>32</sup>  
 That deck St. Lawrence, mighty river,  
 Guarding its spangled tide for ever,  
 The Judge, from toil may well relieve,  
 Until his wonted strength retrieve.—

miles, making a descent of *thirty-one* feet. Lake Erie is *two hundred and ninety* miles, by *sixty-three*, and *one hundred and twenty* feet deep, and *five hundred and sixty-four* above the level of the sea: it empties itself through Niagara River, *thirty-five* miles in length, into Lake Ontario, making a descent of *three hundred and thirty-four* feet, namely, from the Lake to Schlosser *twelve* feet, thence down the Rapids *fifty-two* feet, the perpendicular Falls, *one hundred and sixty-four* feet, from the Falls to Lewiston *one hundred and four* feet, and thence to Lake Ontario *two* feet. Lake Ontario is *one hundred and eighty* miles by *thirty-one*, and *five hundred* feet deep, and discharges itself through the River St. Lawrence into the Atlantic Ocean, *seven hundred and ten* miles distant. These great Lakes, or inland seas, with the countless currents, great and small, that flow into them, cover a surface of *one hundred and fifty thousand* square miles, and contain nearly half the fresh water on the surface of the globe. From these sources of the Niagara, some idea may be formed of the immense quantity of water, constantly rushing over the Falls.—*Steele's Book of Niagara Falls*, 1840.

Warren, in his Law Studies, thus alludes to the Falls:—"The little Instrument by which the modern Conveyancer secures £20 a year, to Mary Higgins and her children, is in truth the lever, by which a King might have been hurled from his throne, which was applied with consummate craft to the destruction of the banded power of the aristocracy, of the huge and gloomy fabric of ecclesiastical domination. Thus the water, which might at first have been seen forming part of the magnificent confluence of NIAGARA, and then precipitated, amid clouds of mist and foam, down its tremendous falls, after passing over great tracts of country, through innumerable channels and rivulets, serves at length quietly to turn the peasant's mill."—p. 171.

31. Caledonia, a recently discovered mineral Spring, now much esteemed, in the District of Ottawa. See Appendix.

32. The immense multitude of Islands dispersed in the St. Lawrence, have been ascertained to be not less than one thousand. Those most worthy of note from their magnitude are *Cornwall*, and *Shiek's Island*, the *Nut Islands*, *Cusson*, *Duck*, *Drummond* and *Sheep Islands*, *Rowe's Grenadier*, and *Hickory Islands*, and *Grand* or *Long Island*.—*Bouchette*, p. 16.

33. The engaged a v of Canada, American p establishing In 1791, (s Provinces o extent, is e Canada cor superficies, lakes, rivers, St. Lawrence nearly 52,5 258,363 sq (see 3rd and the Province same is disti

For the su the name of tion of publ Sessions are see the same The most inland towns exclusive of ways. This length, by te or such othe rectangular to ranges of lot twenty-eight twenty-eight lots of two l lots, two hun eighty-eight



Arrangements new their Worships make  
 In DISTRICTS such as Viceroy<sup>s</sup> take :  
 Boundless the land with such excisions,  
 Yesterday four, were the divisions ;  
 But these again as times explore,  
 Double, and treble, aye, and more :  
 Bewildered we lose all sensation,  
 Before we reach our destination.

33. The divisions of Canada for political, judicial, and civil purposes, have engaged a very considerable portion of legislation. The first grand division of Canada, as distinguished from the other portions of the British North American possessions, was by the Quebec Act, 14th Geo. III., c. 83, establishing the Province of Quebec, comprising Lower and Upper Canada. In 1791, (see 31st Geo. III., c. 31), this Province was divided into the two Provinces of Lower and Upper Canada. Upper Canada, in its superficial extent, is estimated in round numbers at 141,000 square miles; Lower Canada contains upwards of 205,863 square statute miles, of which superficies, about 3,200 miles may be said to be covered by the numerous lakes, rivers, and streams of the Province, exclusive of the surface of the St. Lawrence and part of the Gulf, which, together, occupy an area of nearly 52,500 miles, making the total extent of this Province equal to 258,363 square miles.—*Bouchette*, p. 182. These Provinces, in 1840, (see 3rd and 4th Vic., c. 35), were reunited into one Province, now called the Province of Canada, although, for purposes of the public business, the same is distinguished as "CANADA EAST," and "CANADA WEST."

For the subdivisions of Upper Canada, or Canada West, the population, the name of the townships, the capital or principal town for the transaction of public business, and the days on which the Courts of Quarter Sessions are held, see Appendix III. For divisions of Lower Canada, see the same Appendix.

The most exact content of ten miles square, the usual dimensions of an inland township, as prescribed by the Warrants of Survey, is 61,000 acres, exclusive of the usual allowance of five acres on every hundred for highways. This quantity is contained in a tract of ten miles and five chains in length, by ten miles three chains and fifty links in perpendicular breadth, or such other length and breadth as may be equivalent thereto. A rectangular township of this admeasurement contains eleven concessions or ranges of lots, each lot being seventy-three chains and five links long, and twenty-eight chains seventy-five links broad. Each range is divided into twenty-eight lots, so that each township contains three hundred and eighty lots of two hundred acres with the allowance for highways. Of these lots, two hundred and twenty are granted to settlers, and the remaining eighty-eight reserved for the Crown and Protestant Clergy.—*Bouchette*.



New Governors hew out Districts *Twenty*<sup>34</sup>  
 With patronage to office, plenty.  
 This goodly number, well to know  
 For Sheriffs, or their Bums to go  
 When *Capias*, or *fi fa's* been sent;—  
 No Writ to have, "*non est invent*,"—

34. Upper Canada, as stated, was formed originally into the four divisions of Lunenburg, Mecklenburgh, Nassau, and Hesse. In 1792, these changed their names into Eastern, Midland, Home, and Western.

The MIDLAND, under 38th Geo. III., c. 5, comprised the Counties of Frontenac, Lenox and Addington, Hastings, and Prince Edward, and certain Islands in the Ontario. Hastings was formed into a separate District by 7th Wm. IV., c. 5., and Prince Edward by 1st Wm. IV., c. 7.

LONDON.—This town is beautifully situated on the northern bank of the Thames, and is the capital of the District. Governor Simcoe predicted, as far back as 1793, that it would become some day a place of great magnitude.

The HOME DISTRICT is the largest and most important in the Province, containing originally, under 38th Geo. III., c. 5, the County of York divided into four Ridings, and the Counties of Northumberland, Durham, and Simcoe. By 42nd Geo. III., c. 2, Newcastle District has been formed, by taking the Counties of Northumberland and Durham. The District of Gore, by 56th Geo. III., c. 2, also took some portions of this District, and Simcoe has recently been proclaimed a separate District.

The EASTERN DISTRICT, by 38th Geo. III., c. 5, comprised originally the Counties of Dundas, Glengarry, Stormont, Prescott, and Russell. By 56th Geo. III., c. 2, Prescott and Russell were erected into the District of Ottawa.

The OTTAWA DISTRICT is in the rear of the Eastern, having its north front on the River Ottawa, whence it derives its name.

The District of JOHNSTOWN comprises the Counties of Grenville and Leeds.

The BATHURST DISTRICT was formed out of the County of Carleton, under 2nd Geo. IV., c. 3, and 4th Geo. IV., c. 1.

DALHOUSIE was formed of Townships, parts of Bathurst, Johnstown, and the Ottawa Districts, in 1838 under 1st Vic., c. 25. It derived its name from Earl Dalhousie, Governor General in 1820.

PRINCE EDWARD, formerly a County of the Midland District, was erected into a separate District, under this name, by 1st Wm. IV., c. 7.—On the 25th July, 1836, the schooner *Prince Edward*, Captain Young, discharged a cargo of salt at the pier then erecting at Wellington, and was the first vessel enabled to unload at the pier.

VICTORIA  
 NIAGARA  
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 Lincoln and  
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 Bouchette, 131

SIMCOE.—T  
 III. J. Grave

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 formerly part o

Read on, and you shall understand  
 These new Divisions of the Land:  
 The MIDLAND District first claims pity,  
 There lies the Governor's proud city,  
 But whether for short time or long  
 Puzzles conjecture, right or wrong.

VICTORIA, formed of the County of Hastings by 7th Wm. IV., c. 5.

NIAGARA DISTRICT, the oldest in the Province, is situated between the two lakes, Erie and Ontario, bounded by the Niagara River, by which it is separated from the United States. It formerly comprised the County of Lincoln and its four Ridings, and the County of Haldimand. The District of Gore has been partly formed from this.

NEWCASTLE DISTRICT, formed of the Counties of Northumberland and Durham, taken from the Home. This District, it is said, has a greater chain of lakes and water communication than any other portion of Upper Canada.

COLBORNE, erected into a District by 7th Wm. IV., c. 115, out of certain townships and territory of the Newcastle District. It takes its name from Sir John Colborne, now Lord Seaton, formerly Lieutenant Governor of Upper Canada.

WELLINGTON, erected into a District by 7th Wm. IV., c. 116, from the Counties of Halton and Simcoe.

BROCK, erected into a District by 7th Wm. IV., c. 30, from the County of Oxford, formerly part of the London District. Sir Isaac Brock was President of Upper Canada in 1811. See further Appendix

HURON, formed into a separate District by 1st Vic., c. 25, from the Counties of Huron and adjacent territories. It is in this District the possessions of the *Canada Company* are principally to be found. This Company was incorporated by Royal Charter under the provisions 6th Geo. IV., c. 75.

The Huron Tract, granted to the Canada Company, was one million of acres.

Lake Huron, which gives the name to this District, presents from its western side a series of extensive islands, called Manitoulin. One of these is upwards of seventy-five miles long. A superstitious veneration is attached to these islands by the Indians, who believe them to be consecrated by the presence of the Great Spirit, or, in their own language, the "Great Manitou," and hence has originated the appellation they still bear.—*Bouchette*, 131.

SIMCOE.—This District has recently been proclaimed.—See Appendix III. J. Graves Simcoe, Esq., was Lieutenant Governor in 1792.

TALBOT was erected into a District from the County of Norfolk, formerly part of the London District, under 7th Wm. IV., c. 33.

LONDON, they say, sometimes HOCHLAGA,<sup>35</sup>  
 (Alpha's not nearer to Omega,)  
 Have the best claim to be the seat  
 Where Courts and Palaces should meet.  
 But all agree, the young, and old,  
 The rich, the poor, the warm, the cold,  
 The meek-eyed maid, the matron bold,  
 The wisest, the like truth unfold,  
 Far distant lands, yea all! not some,  
 Admit the truth, there's none like HOME.  
 Nor is there earthly situation  
 So perfect fitted for the station  
 Of making Canada a people,  
 As where you spy St. James's steeple.  
 By slightest knowledge 'twill be seen,  
 That brave TORONTO's<sup>36</sup> always been

WESTERN contains the two Counties of Kent and Essex, and was formed under 38th Geo. III., c. 5.

GORE was formed from the Districts Home, and Niagara, under 56th Geo. III., c. 2. F. Gore, Esq., was Lieutenant Governor in 1806.

LONDON originally comprised the Counties Norfolk, Oxford, and Middlesex. By 7th Geo. IV., c. 13, the Townships of Walpole and Rainham, in the District of Niagara, were added to this District. By 5th Wm. IV., c. 45, certain Townships in this District were formed into a County, and certain Townships attached to the Counties of Middlesex and Kent. The 3rd Vic., c. 1, defined the limits of the Township of London.

35. *Hochlaga*, the Indian Village formerly occupying the spot on which the city of Montreal now stands.

36. Toronto signifies, in Indian language, a Place of Meeting. And it is not improbable that the spot once called Little York, now the City of Toronto, was a chosen spot for the Courts and Councils, or rather the Council Fires, of the Aborigines. The city was formerly called Little York, in contradistinction to New York, or Great York.

When Bouchette, the Surveyor General, under the orders of Governor Simcoe, then residing at Niagara, surveyed, in 1793, York Harbour, the scite of Toronto was a covey for wild fowl. Two Mississauga families were the only inhabitants; and when the Governor paid a visit in the following summer, to determine on the future capital of Upper Canada, his residence was a canvas-covered dwelling. Now, in 1843, the population is estimated at 17,000, the census of 1841 was 14,249. You here behold a governor's

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37. Canada  
 between three  
 or Five Nation  
 banks of the S

A place of note, and high renown,  
 Tho' late attach'd to British Crown :  
 If its antiquity be doubted,  
 Indian<sup>37</sup> Records you 've never routed ;  
 For if you had, you there would learn,  
 In Adam's days, the fires did burn,  
 Round which the Indian tribes would meet  
 Their laws to make, and men to eat.

palace, supreme and other law courts, public offices, a college and university, banking and other companies, handsome streets lighted with gas, wharves, and a capacious harbour.

The following brief sketch of the proceedings observed at the ceremony of laying the foundation-stone of the University of King's College, will convey to the reader a far more exact notion of the magnitude and magnificence of the City of Toronto, in 1842:—

The vast procession opened its ranks, and his Excellency, the Chancellor, with the President, the Lord Bishop of Toronto, on his right, and the Senior Visitor, the Chief Justice, on his left, proceeded on foot through the College Avenue to the University grounds. The countless array moved forward to the sound of military music. The sun shone out with cloudless meridian splendour, one blaze of banners flashed upon the admiring eye.—The Governor's rich Lord Lieutenant's dress, the Bishop's Sacerdotal Robes, the Judicial Ermine of the Chief Justice, the splendid Convocation Robes of Dr. McCaul, the gorgeous uniforms of the Suite, the accoutrements of the numerous Firemen, the national badges worn by the Office Bearers of the different Societies, and what on such a day (St. George's) must not be omitted, the Red Crosses on the breasts of England's congregated sons, the grave habiliments of the Clergy and the Lawyers, and the glancing lances and waving plumes of the First Incorporated Dragoons, all formed one moving picture of civic pomp, one glorious spectacle which can never be remembered but with satisfaction by those who had the good fortune to witness it. The following stanza from a Latin Ode, recited by Master Draper, son of the late Attorney General, after the ceremony, expresses in beautifully classical language the proud occasion of all this joy and splendid pageantry :

Io! triumphe! flos Canadensium!  
 Est alma nobis mater; æmula  
 Britannæ hæc sit nostra terra,—  
 Terra diu domibus negata!

37. Canada, on its first settlement by Europeans, was chiefly divided between three great nations, the *Algonquins*, the *Hurons*, and the *Iroquois*, or Five Nations. The first held an extensive domain along the northern banks of the St. Lawrence, about an hundred leagues above Trois Rivières.

Then view again the country back,  
 Its Port, and Harbour, and the Lac,  
 Its Public Halls, for Law, and Learning,  
 The thousand hearths with fires all burning,  
 And hosts of men the money turning :  
 Bold is the man, of great defiance,  
 With brains to lead in close alliance,  
 Who by the word, or in the letter,  
 Can say Toronto has its better.

Between St. Lawrence, and River Grande,  
 EASTERN, OTTAWA, JOHNSTOWN stand ;  
 And BATHURST, and DALHOUSIE too,  
 As District Judges well do know.

The Huron territory reached from the Algonquin frontier to the borders of the *Great Lake*, bearing their name. The Iroquois occupied a long range of territory on the southern border of the St. Lawrence, from Lake Champlain to the western extremity of Lake Ontario. This people was divided into five cantons, viz., the *Mohawks*, *Oneidas*, *Onondagas*, *Cayugas*, *Senecas*. The Indians, under British protection, are now dispersed in small villages and settlements in different parts of the Province. In consideration of their services, and in compensation for the encroachments made on their domain, each Indian, on repairing to a fixed station, receives a certain amount of goods as an annual present. In 1828, the numbers in Lower Canada amounted to 2,912; Upper Canada, 12,919. The banks of the Grand River, which falls into Lake Erie to the extent of six miles on each side, was set apart by General Haldimand for the Mohawks and Six Nations. Some part of this land has been sold, but they still retain 260,000 acres of an excellent soil on the north-western shore of the Lake Simcoe; and on the road to Lake Huron, other extensive tracts of land are reserved for the Indian tribes.—Murray's History of British America, v. 1, c. 5.

Mr. Buckingham, in his notice of the *Tuscarora* Indians, observes :—  
 "The Nation, for so *all* the Indian tribes call themselves, has a sort of aristocratic rather than republican government. This aristocracy consists of what are called Sachems, Chiefs, Warriors, and head men of the tribe. These, at least, are the nominal ranks of the leaders; and in the larger tribes of the West, who retain all their original manners, these ranks really exist; but among the *Tuscaroras*, and other tribes settled in the State of New York, there are no warriors, and chiefs are the only

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Near to the Bay of Quinté's found,  
 What now you call "PRINCE EDWARD" ground:  
 And brave and gallant Picton's fame,  
 Gives to its Capital, his name.  
 VICTORIA next, we can't conceal,  
 Its Court's found sitting at Belleville:  
 NIAGARA too, though not the Falls,  
 Six times a year a *Prefect*, calls:  
 NEWCASTLE, COLBORNE, WELLINGTON, BROCK,  
 Illustrious names, of noble Stock:  
 HURON distinguished by its Lake,  
 Where Manatoulin spirits wake:  
 SIMCOE, and TALBOT, WESTERN, GORE;  
 And last comes LONDON, and no more.  
 Judges<sup>38</sup> arise in all we're told  
 To *Forty Pounds*, they're now so bold

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"persons usually spoken of. These are neither hereditary nor elected by the people, but a standing body, in which the vacancies that occur by death are filled up by the decision of the remaining members of the class. In general, a certain age, and the possession of some qualities to recommend the individual, are demanded, but not always. The appointment, when made, is for life, and against the decision of the Council of Chiefs there is no appeal."—Buckingham, v. 2, p. 152.

The whole Indian population, by a late return from the Office of Indian Affairs, New York, is stated as follows:—

Indians emigrated east of the Mississippi.....	49,365
Do do. west side.....	51,327
Indigenous.....	231,806
	322,498

Assuming every fifth to be a warrior, there would be 66,499 warriors.—Return from War Office of Indian Affairs, U. S., Nov. 22, 1837.

38. The earliest Act establishing DISTRICT COURTS in the Upper Province, was the 34th Geo. III. ch. 3.: this, with the 37th Geo. III. c. 6., 38th Geo. III. c. 3., 57th Geo. III. c. 6., were repealed by the 2nd Geo. IV, c. 2., which consolidated the Laws establishing District Courts, and regulated the Practice.

This Act erected in each District a Court of Record, under the name "DISTRICT COURT," to be holden by one or more Judges, appointed under the Great Seal of the Province, with power to hold Plea, on all

Judgment to give, at certain meetings  
 Held close upon the Sessions greetings :  
 At one, and all, Courts also sit,  
 The *Ten Pound* causes to befit  
 Every two months; no longer bide  
 These Jurists, ere they do decide.  
 To keep good order, peace uphold,  
 To license Inns, and cure the scold,

matters of contract from Forty Shillings to £15, and when the amount is liquidated, or ascertained, either by the act of the parties, or the nature of the transaction, to £40, and also on all matters of tort respecting personal chattels, when the damages to be recovered should not exceed £15, and the Title to the Lands should not thereby be brought into question.

The Practice in this Court is partly pointed out by this Act :

By 4th and 5th Vic. c. 8.—The Judge of any District Court must be a Barrister of the Province, and resident in the District of which he is Judge. The Judge is to receive a stated Salary, not more than £500, nor less than £150, instead of being paid by Fees.

The Clerk's Salary is not to exceed £250, nor be less than £70, but he is entitled to a Fee for every search among the Records; and the table of all Fees is directed to be hung up in some conspicuous place in the office of the District Clerks.

In 1792, under 32 Geo. III. c. 6., COURTS OF REQUESTS were held before two or more Justices of the Peace, the 1st and 3rd Saturday of every month, within their respective Divisions, for small debts not exceeding 40s., extended by 56th Geo. III. c. 5. to £5. These Acts, and the subsequent Acts regulating these Courts, were all repealed by the 4th and 5th Vic. c. 3., by which the Quarter Sessions are empowered to divide Canada West into Divisions, to erect a Court, appoint a District Judge to preside, and to hear and determine in a summary way all causes not exceeding £10. The Practice of this Court, the powers and duties of the Judges and officers, the costs and fees, are by this Act minutely defined.

The District Courts in Upper Canada are held on the Monday of the week next but one preceding the Quarter Sessions week, and terminate on the following Saturday.

The Division Courts are held once in two months, at such times and places, within the Six Divisions of each District, as are appointed by the Magistrates, and approved by the Judges.

For the legal business in each District there is a Sheriff, a Clerk of the Peace, a District Clerk, and an Inspector of Licenses, and since the incorporation of the Districts, a Warden.

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Benches of Justices appear  
*In Petit*, or *Four times*<sup>39</sup> a year:  
 While thousand Squires<sup>40</sup> send forth their thunders,  
 Clerks taking care, they make no blunders.—  
 In Gothic Hall, no Summons horn  
 Assembles to the *Sheriff's Tourn*<sup>41</sup>  
 The County Suitor, who complains  
 Of wrongs the *Vicinage* sustains:

39. The times and places of holding the Quarter Sessions are mentioned in the Appendix III.

40. In the Lower Province the qualification of Justices of the Peace was regulated by the Statutes of Lower Canada, 10th and 11th Geo. IV., c. 2, and 6th Wm. IV., c. 16. This qualification was real estate, *en fief*, *en roture*, in free and common soccage, in absolute property, or by *emphytéose*, or lease for one or more lives, or originally created for a term not less than twenty-one years, or by usufruit for his life in lands, tenements, or other immoveable property above the value of *three hundred pounds* currency. In Upper Canada, there appears to have been no qualification till the last Session (1842) passed an Act, 6th Vic. c. 3. The amount of the qualification is now the same as in the Lower Province.

The Magistrates to the year 1838 recorded for the Upper Province are as follow:—

District.	Year.	
Eastern.....	1838	52
Ottawa.....	1836	29
Bathurst.....	1833	61
Johnstown.....	1833	79
Midland.....	1836	93
Prince Edward.....	1834	42
Newcastle.....	1837	107
Home.....	1837	164
Gore.....	1838	114
Talbot.....	1838	36
London.....	1836	123
Western.....	1837	63
Niagara.....	1833	85

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41. The Sheriff's Tourn, in England, is a Court held by the Sheriff in different parts of his county, to investigate and chastise divers minute offences against the public good, and possesses the same kind of jurisdiction as the Court Leet of Lords of Manors, only more extended. The County Court there is a Court incident to the jurisdiction of the Sheriff,



No *County Court*, the Shillings Forty  
 Awards to the successful Party;  
 Nor obstinate defendants' names  
 In open Hall "outlawed" proclaims.—  
 No Baron here, of ancient blood  
 Tracing its fountain to the flood;  
 For, vain of such to seek the trace  
 Where modern Courts now hold their place;  
 Nor *wampum belt*,<sup>42</sup> nor wigwam Hall,  
 Nor armed Knight, nor Seneschal;  
 But Sessions bench, with solemn sounds  
 The outlaws destiny resounds.

TORONTO<sup>43</sup> has a Court, tis said,  
 SHERWOOD,<sup>44</sup> the Mayor, is now the head,

for holding pleas of debt or damages under the value of forty shillings.—It is held monthly. It is at this Court that the Sheriff, when unable to find a defendant, and upon the return to the writ of *capias, alias and pluries non est inventus*, that the writ of *exigent* was sued out, requiring the Sheriff to cause the defendant to be proclaimed or exacted in *five County Courts* successively, to render himself; and if he did not then appear, and was returned *quinto exactus*, he was then to be outlawed.

By 55th Geo. III., c. 2, of Upper Canada, there being no County Court in this Province, the Court of General Quarter Sessions is substituted for proclaiming outlaws. This Act has been continued. In Upper Canada the proclamation of the writ of *exigent* is only at *three Courts*.

42. The Wampum Belt is a girdle variously decorated, and on which it is supposed the most important transactions of the Indians are recorded in their own way. Some of these Wampum Belts are said to be of great value. The author saw some offered for sale by the Tuscaroras at the Niagara Falls.

43. TORONTO was incorporated by 4th Wm. IV., c. 23, and a Mayor, Aldermen and Common Councilmen were created. A COURT OF RECORD was established, with power to the Mayor and Aldermen to hold Quarter Sessions for the trial of offenders.

The other Municipal Corporations are—

The city of Kingston, incorporated by 1st Vic., c. 27.

The city and town of Quebec, incorporated by 4th Vic., c. 45.

The city and town of Montreal, incorporated by 4th Vic. c. 48.

44. The Hon. Henry Sherwood is the present Mayor of Toronto.

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With COURT OF ALDERMEN, to judge  
 All wicked cheats, prevent all fudge;  
 Four times a-year, to punish sinners,  
 Justice to grant, and eat good dinners.

The next of kin<sup>45</sup> are not forgot,  
 When mortals by the common lot  
 From all this world's good things are taken,  
 And friends and relations are forsaken;  
 The PROBATE COURT, anon dispenses  
 Deceased's goods and consequences:  
 And if on Probate you can't wait,  
 There lies the DISTRICT SURROGATE.<sup>46</sup>

A BOUNDARY COURT,<sup>47</sup> comes now to aid,  
 So soon as the *Commission*'s prayed,—

45. PROBATE AND SURROGATE COURTS were established by the 33rd Geo. III., c. 8, with power to issue process and hold cognizance of all matters relative to the granting of probates and committing letters of administration of the goods of persons dying intestate, having personal estate *within* the Province. The Governor, or his assessor, is the Judge of this Court, and empowered to decree and pronounce judgment in all questions, causes, or suits that may be brought before him, and to appoint an Official Principal, Registrar, and other officers.

This Court is held four times in the year in Toronto, namely, the first Monday in January and June; last Monday in March and September.

46. A SURROGATE JUDGE is appointed in each District.

Where a party dies, leaving goods of the value of five pounds in more than one District, the Will must be proved, or Letters of Administration obtained at the Probate Court.

The Surrogate Court is held before the Surrogate—

First.....From the 2nd to 7th January.  
 Second .....From 27th March to 1st April.  
 Third .....From 5th to 10th June.  
 Fourth .....From 25th to 30th September.

Wills can be proved, and letters of administration taken out, at either the Probate or Surrogate Court any day, at the respective offices.

47. In a country divided and subdivided, as is the Province of Canada, into districts, counties, divisions, parishes, seignories, concessions, and lots, lines of division must frequently create causes of dispute. In the Upper

Land-marks to give, on lots, concessions,  
And Lines to keep, clear of suppressions.

And, for all HEIRS and DEVISEES<sup>48</sup>  
Of *Royal Bounty* made *Grantees*,—  
Their claims or Titles, if neglected,  
Must quick at KINGSTON be inspected.

Now CHANCERY<sup>49</sup> last, not least, appear  
Thy Justice pure as chrystal clear:  
Here, all confiding owners may  
Compel the TRUSTEE to repay

Province a COURT OF BOUNDARY COMMISSIONERS was to decide upon such questions; but by 1st Vic., c. 19, the Governor is empowered to appoint three fit persons, in each District, to hold a Court to hear and determine all matters of dispute, touching any lines of boundary, of townships, concessions, or lots; and to ascertain, fix, and determine such lines. The Court sits at no certain time, but, in case of district bounds being disputed, the Commissioners for each District concerned, are to meet on notice, and the majority decides. In case of township or concession, or owner of private lots, parties requiring the decisions of this Court are to give ten days' notice to the Commissioners of the District; who are to issue a summons to the parties to attend them, not exceeding twenty-one days from the notice, and the sittings are to be held as convenient as may be to the disputed boundary, not exceeding ten miles. This Act has expired. There was no such Court in the Lower Province.

48. THE HEIRS AND DEVISEES' COURT is constituted under the powers of the 45th Geo. III., c. 2, by commission from the Governor to a certain number of the Executive Council, the Chief Justice of the Province, and the Justices of the Court of King's Bench; any three of whom, the Chief, or one of the Justices to be one, have power to ascertain, determine, and declare who is, or are heirs or devisees of the nominees of Crown Lands, in cases where no *patent* hath issued.

This Court is held at the Seat of Government, on the 1st of July, and sits for two weeks.

49. THE COURT OF CHANCERY was established by the 7th Wm. IV., c. 2, the Governor being the Chancellor, with a Vice Chancellor. The jurisdiction of this Court is similar to that in England, with the exception of bankruptcy practice. In this Province the bankruptcy laws do not at

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50. Orator is  
proceedings.

Monies mispropriate; lands restore,  
 Though sliely held by *Fraud* before ;  
 And else, what e'er *deceit* has taken,  
 And the just use thereof forsaken.  
 No damages will now suffice,  
 The thing *itself* must be the prize  
 Quickly to ORATOR<sup>50</sup> restored,  
 If just the case he has implored.  
 Here, too, the tie of loving Friend,  
 Bound to a *Partner*, has an end ;  
 Tho' close the bond, their Gordian Knot  
*Decretal Order* will uncut;  
 Set all at liberty, make free  
 As air, or the Mississippi.  
 No lengthen'd Bill, complex accounts,  
 Tho' lost in number or amounts,

present exist. In the Lower Province they have been recently introduced by a law of the Provincial Parliament. The Vice Chancellor has the power to settle forms of process, to define the practice, to regulate officers and fees, and to make general rules. The funds of suitors are invested, under the Vice Chancellor's order, in the funds of the Province. The Registrar, Masters, Accountant, and Sergeant-at-arms are appointed by the Governor; the Master's Extra, and Examiners by the Vice Chancellor. Barristers and Attornies of the Courts of Common Law practice in this Court. An appeal lies to the Governor in Council, and from the Governor in Council to the Queen in Council. The principal business of this Court may be ranged under six heads:—1. *Accident and Mistake*; 2. *Account*; 3. *Fraud*; 4. *Infants*; 5. *Specific Performance of Agreements*; 6. *Trusts*. The rules governing the practice of this Court, established by the Honorable Robert Sympson Jameson, the first and present Vice Chancellor, are contained, in the Orders of the 1st June, 1836, and 1st July, 1837, for regulating the practice in the conduct of a cause to the hearing,—the Orders, see Appendix, applicable to subsequent proceedings,—and the Orders of the 1st January, 1842, "for the further facilitating the administration of justice in the Court of Chancery, and "the reduction of expense and delay in suits and proceedings therein."

50. Orator is the technical description of the plaintiff in Chancery proceedings.

Can 'scape the rigid MASTER's eye<sup>51</sup>  
When once the ORDER 's given to pry.

If ACCIDENT or mistake arise,  
None dares the Chancellor's act despise ;  
All blunders prompt his Honour sees,  
And rectifies quickly by DECREES.  
Poor helpless babes, infants in teens,  
'Gainst wrongs their weakness can't defend,  
Have now impenetrable screens,  
By gift of *Guardians*, or of Friend.  
And IDIOTS' melancholy fate,  
Nor less the LUNATIC's sad state,  
(The precious gift of reason gone,  
And left to stand, or fall alone),  
Here find relief, support, redress,  
This Court, *such* specially doth bless.

Favour'd TORONTO,<sup>52</sup> thine the pride,  
That JUDGES o'er thy Courts preside,  
Endow'd with wisdom, skill, and worth,  
To spread stern Justice o'er the earth.  
May such long flourish, 'till to men  
ASTREA comes from Heaven again.

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51. It is the practice of this Court to refer disputed accounts to the Master, with directions to report the result of his investigations to the Court.

The protection of the interests of infants, idiots, and lunatics, is a very special branch of the Chancery jurisdiction, together with the appointment of guardians.

52. The present Judges of the Superior Courts of Upper Canada are,  
The Honorable John B. Robinson, Chief Justice.  
The Honorable J. B. Macaulay,  
The Honorable Jonas Jones, } Justices.  
The Honorable Archibald McLean,  
The Honorable C. A. Hagerman,  
The Honorable Robert Sympson Jameson, Vice Chancellor.

53. See App

Anon MACKENZIE'S<sup>53</sup> maddening zeal,  
 With fires such as false patriots feel,  
 Unsheathes the steel, and gives the word  
 To raise the fratricidal sword.  
 Colleagu'd with him, stern PAPINEAU  
 Contrives the simultaneous blow ;  
 They shrink not, till with flame unblest,  
 Fiercely blaze out, both East and West :  
 And fiery musquets' deafening roars,  
 Are heard throughout our hapless shores.

But soon the din of war is past,  
 Tranquillity returns at last ;  
 Yet not till WINDMILL-POINT attests  
 The hate of our unbidden guests.  
 There dauntless once, the undying dead,  
 Have sternly won their gory bed ;  
 And countless tearful eyes deplore  
 The unflinching hearts those heroes bore ;  
 For their's the unrelenting strife  
 That neither spared, nor spake for, life.

Now Peace restored, and Discord o'er,  
 The volleying thunders cease to roar :  
 And Canada the near and far  
 Emerges from the din of war.  
 The Provinces erewhile divided,  
 In Legislative Hall united,  
 Like bride and bridegroom, meet to kiss  
 At KINGSTON the metropolis.  
 From fair TORONTO'S spire-clad plain,  
 The Court Vice-regal, and its train

53. See Appendix.

Of Lawyers, Benchers, Pleaders, all  
 To Kingston drag their Judgment Hall.  
 Yet here, the Law perplexed, distrest,  
 And wandering Justice knew no rest:  
 Her Practice cramped, and out of place,  
 Poor CHANCERY felt but ill at ease:  
 Backward again the vagrant strays,  
 The stony roads and wooden ways  
 Of old TORONTO to regain,—  
 Ne'er may she quit that soil again.

Dreary and sad was Frontenac<sup>54</sup>  
 Thy Duke ne'er made a clearer sack,  
 Than when the Edict to be gone,<sup>55</sup>  
 Issued from the Vice-regal Throne.

54. The City of Kingston, formerly Cataracuy, afterwards Fort Frontenac.

55. The Duke de Frontenac succeeded M. Courcelles as Governor of Canada in 1672. He erected a famous fort near Kingston, and was a very successful General in driving out the Iroquois, then infesting that part of the Province.

In 1693, Count Frontenac invaded the country of the *Mohawks* from Canada, but his army, after encountering the greatest hardships, and losing eighty men killed and thirty wounded, found it necessary to return without accomplishing any thing material. A great quantity of fur had been accumulated by the French at Michilimackinac, but the Five Nations had so effectually blocked up the passage between that place and Canada, that they had remained useless for several years. At length, however, a fleet of two hundred canoes, laden with furs, arrived at Montreal.—*Decanesora*, who had for many years the greatest reputation among the Five Nations as a speaker, arrived in Canada with many other deputies to hold a treaty with the French. "This *Decanesora* was grown old," says Colden, "when I saw and heard him speak. He had great fluency and a graceful elocution, that would have pleased in any part of the world. His person was tall and well made; and his features, to my thinking, resembled much the *dustos* of *CICERO*." It is not clear how this treaty terminated, nor whether there was any made; for we find this same *DECANESORA*, very soon afterwards, assuring an English conference, at Albany, of a fact that could not be very satisfactory, to the French.—Addressing Governor Fletcher, of New York, the orator gave the following passage, as part of his speech, to the Governor of Canada:—" *Onnuntio*,  
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*Excunt omnes, helter skelter*  
 To LITTLE YORK again for shelter:  
 Little no longer, YORK the NEW  
 Of imports such, can boast but few;  
 A goodly freight, without all brag,  
 When comes, 'mongst others, MASTER Spragge,<sup>56</sup>  
 And skilful TURNER,<sup>57</sup> versed in pleading,  
 The Kingston exiles gently leading.

"we will not permit any settlement at Cataracuay; you have had your fire there thrice extinguished. We will not consent to your rebuilding that fort, but the passage through the river shall be free and clear. We make the sun clear, and drive away all clouds and darkness, that we may see the light without interruption." The Five Nations having now positively refused to accede to the terms proposed by the French, Count Frontenac determined to compel them to submission. Having previously sent out three hundred men, in the hope of surprising them on their hunting ground, between Lake Erie and Cataracuay Lake, (now Lake Ontario), and at the same time to view the old French fort there. He, in the summer of 1695, sent out a considerable body of French and Indians to repair the fortifications of Cataracuay, in which work they were completely successful, and restored its former name, Fort Frontenac.—The Count, having secured his fort at Cataracuay, resolved to make the Five Nations feel his resentment. Having assembled all the regular troops and the militia of Canada at Montreal, together with the *Owenagungas*, the *Quatoghies* of Lorette, the *Adironducks*, *Sokohies*, *Nepicisiuiens*, the *Praying Indians* of the Five Nations, and a few of the *Uttawawas*, he marched with this formidable army from that Island on the 4th of July. After twelve days march, the French army arrived at Cataracuay. On approaching Onondaga, the Indians hearing of the formidable power of the French, by a Seneca deserter, thought it prudent to retire, after setting fire to their poor fort and bark cottages. All the French did here was to destroy a very extensive field of corn. The Chevalier de Vaudreuil was dispatched with six or seven hundred men to destroy another field of corn, belonging to the Oneidas, at no great distance, which was accomplished; and these feats, with the capture of thirty-five Oneidas, who staid to welcome the French in one of their little forts, were all the achievements of this grand enterprise.—*Brief Annals of Public Events, from the Discovery of America to the Division of the Province of Quebec, 1839.*

56. J. G. Spragge, Esq., the present very highly esteemed and respected Master of the Court of Chancery.

57. R. J. Turner, Esq., a skilful Equity Draftsman and Solicitor in Chancery. See Journals of House of Assembly, 1841.



Farewell TORONTO! of great glory,  
 Of valour too, in modern story;  
 Farewell to Courts, to Lawyer's Hall,  
 To Justice seats, both great and small;  
 Farewell ATTORNIES,<sup>58</sup> SPECIAL PLEADERS,  
 EQUITY DRAFTSMEN,<sup>59</sup> and their Readers.  
 Canadian Laws, and Suits, to song  
 Of future Bard, henceforth belong.

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We seek not for this humble strain  
 The Poet's meed of praise to gain;  
 Yet tell, Oh! tell me, who may be,  
 'This Poet, Lord of minstrelsy?  
 'Tis he with soul divinely fired!  
 'Tis he with holiest zeal inspired!  
 'Tis he who wins a deathless fame!—  
 Give him 'he glory of the name.

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58. See Appendix.

59. As a Court of Equity insists upon having the whole of the most complicated transactions, be they of never so different parties, and spread over never so great a space of time, thoroughly ransacked, "in order to raise from them ingredients of Equity," and will follow fraud through all its tortuosities, and error through all its mazes of confusion and obscurity,—it may be easily conceived that the business of the Equity Draftsman, whose duty it is to inform the conscience of the Court fully on all these subjects, cannot be otherwise than very arduous and responsible. To state and arrange all these facts, in such a clear and perspicuous manner as to convince the judgment of their truth, agreement, and consistency with each other, which is the great characteristic of a complete Draftsman, is a work worthy the attention of the ablest men. A patient, perspicacious, discriminating intellect, will here find full play for its well-trained energies, and will not fly with terror from the formidable phalanx of bills, cross-bills, supplemental bills, bills of revivor, interpleader, answers, exceptions, pleas, demurrers, interrogatories, reports, depositions, each of which,

"Like a wounded snake, drags its slow length along"

the Equity Draftsman's Chambers.—Warren's Law Stud., 206.

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## APPENDIX.

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## APPENDIX.

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### I.

Let us suppose that a Landlord and his Tenant have got to high words about some broken windows. They cannot settle their dispute together, and therefore apply to the Law to settle it for them. Let us but imagine each of them to be blessed with the rare faculty of *coming to the point*,—of stating his case in a plain straightforward way,—and it is the easiest and pleasantest thing possible. Come forward then, Landlord and Tenant, and tell us all that is in your hearts!

*Landlord.*—I let that man a house for seven years, and he agreed to leave it in good repair, when the time was up. He has left the premises, however, with twelve broken windows, for which I demand £3.

*Tenant.*—I own I left the windows broken, but my Landlord *forgave* me, by this deed here, (of release).

*Landlord.*—That deed is mere waste paper; being obtained from me by duress, [i. e. illegal constraint].

*Tenant.*—It was given voluntarily; and I will go before a Jury upon it.

*Landlord.*—So will I.

Therefore let a Jury come, says the Court, to try this matter between the parties.

Here is a round unvarnished tale! Here is short work for the Jury!—Are not these two most exemplary disputants? Here is no intermixture of law with fact, no irrelevant matter, no prevarication, no concealment, or exaggeration. Let us now, however, put the matter into the hands of the law.

### *The Declaration, or the Landlord's Original Complaint.*

In the Common Pleas.

On the 1st day of January, 1835, Middlesex to wit, A. B., by E. F., his Attorney, complains of C. D., who has been summoned to answer the said Plaintiff, in an action of Covenant. For, that whereas heretofore, to wit, on the 10th day of March in the year of our Lord 1826, by a certain Indenture then made between the said Plaintiff, of the one part,

and the said Defendant of the other part, (one part of which said Indenture, sealed with the Seal of the said Defendant, the said Plaintiff now brings here into Court, the date whereof, is the day and year aforesaid,) the said Plaintiff, for the consideration therein mentioned, did demise, lease, set, and to farm let, unto the said Defendant a certain Messuage or Tenement and other Premises, in the said Indenture particularly specified, to hold the same, with the appurtenances to the said Defendant, his Executors, Administrators, and Assigns, from the 25th day of March, then next ensuing the date of the said Indenture, for and during and unto the full end and term of seven years, from thence next ensuing, and fully to be complete and ended; at a certain rent payable by the said Defendant, to the said Plaintiff, as in the said Indenture is mentioned. And the said Defendant, for himself, his Executors, Administrators, and Assigns, did thereby covenant, promise, and agree, to and with the said Plaintiff, his Heirs and Assigns, (amongst other things,) that he the said Defendant, his Executors, Administrators, and Assigns, should and would at all times during the continuance of the said Demise, at his and their own costs and charges, support, uphold, maintain, and keep the said Messuage or Tenement and Premises, in good and tenantable repair, order, and condition; and the same Messuage or Tenement and Premises, and every part thereof, should and would have in such good repair, order, and condition, at the end, or other sooner determination of the said Term, as by the said Indenture, reference being thereunto had, will among other things, fully appear. By virtue of which said Indenture, the said Defendant, afterwards, to wit, on the 25th day of March, in the year aforesaid, entered into the said Premises, with the appurtenances, and became and was possessed thereof, and so continued, until the end of the said term. And although the said Plaintiff hath always, from the time of the making of the said Indenture, hitherto done, performed, and fulfilled all things, in the said Indenture contained, on his part to be performed and fulfilled, yet the Plaintiff saith, that the said Defendant did not, during the continuance of the said Demise, support, uphold, maintain and keep, the said Messuage or Tenement, and Premises, in good and tenantable repair, order, and condition, and leave the same in such repair, order, and condition, at the end of the said term: but for a long time, to wit, for the last three years of the said term, did permit all the windows of the said Messuage or Tenement to be, and the same during all that time were, in every part thereof, ruinous, in decay, and out of repair, for want of necessary reparation and amendment, and the said Defendant left the same, being so ruinous, in decay, and out of repair, as aforesaid, at the end of the said term, contrary to the form and effect of the said Covenant so made as aforesaid. And so the said Plaintiff saith, that the said Defendant (although often requested), hath not kept the said Covenant so made by him as aforesaid, but hath broken the same; and to keep the same, with the said Plaintiff, hath hitherto wholly refused, and still refuses, to the damage of the said Plaintiff of £50, and therefore he brings his suit, &c.

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*PLEA, by way of Confession and Avoidance, or the Tenant's Defence.*  
In the King's Bench.

On the 8th day of January, 1835.

C. D. } And the said defendant, by G. H., his attorney, says, that after  
ats. } the said breach of covenant, and before the commencement of this  
A. B. } suit, to wit, on the 3rd day of June, in the year of our Lord 1834,  
the said plaintiff, by his certain deed of release, sealed with his  
seal, and now shown to the court here, (the date whereof is the day and  
year last aforesaid), did remise, release, and for ever quit claim to the said  
defendant, his heirs, executors, and administrators, all damages, cause and  
causes of action, breaches of covenant, debts and demands whatsoever,  
which had then accrued to the said plaintiff, or which the said plaintiff then  
had against the defendant, as by the said deed of release, reference being  
thereto had, will fully appear. And this the said defendant is ready to verify.

*REPLICATION, by way of Confession and Avoidance, or the Landlord's  
Reply to the Tenant's Defence.*

In the King's Bench.

On the 12th day of January, 1835.

A. B. } And the said plaintiff says, that the said plaintiff, at the time of  
agst. } the making of the said supposed deed of release, was unlawfully  
C. D. } imprisoned, and detained in prison by the said defendant, until, by  
force and duress of that imprisonment, the said plaintiff made the  
said supposed deed of release, as in the said plea mentioned. And this the  
said plaintiff is ready to verify.

*REJOINDER, by way of Traverse, or the Tenant's Answer to the Defendant's  
Reply.*

In the King's Bench.

On the 15th day of January, 1835.

C. D. } And the said defendant says, that the said plaintiff freely and  
ats. } voluntarily made the said deed of release, and not by force and  
A. B. } duress of imprisonment, in manner and form as by the said Repli-  
cation alleged. And of this the said defendant puts himself upon  
the country. And the said plaintiff does the like.\* Therefore the Sheriff  
is commanded, that he cause to come† here, on the first day of February,  
in the year of our Lord 1835, twelve good and lawful men of the body of  
his county, qualified according to law, by whom the truth of the matter  
may be better known, and who are in no wise of kin, either to A. B., the  
plaintiff, or to C. D., the defendant, to make a certain jury of the county  
between the parties aforesaid, in an action of covenant, because, as well the  
said C. D. as the said A. B., between whom the matter in variance is, have  
put themselves upon that jury, and have there the names of the jurors and  
this writ.—Witness, Sir Thomas Denman, &c.

\* This is called the "*Similiter*."

† The "*Venire Facias*."

Now if, as Mr. Warren so facetiously states, men could be brought to keep to the point, it might be of great benefit for the suitor to adopt the simple narratory style; but as experience proves this can never long be observed, the system of leaving the formal complaint and defence to the Professional Adviser, the Pleader, or Solicitor, must be considered a manifest improvement. The narratory system would involve the personal attendance in Court of the plaintiff and defendant's witnesses, and generally of themselves, however distant the Court from their residences. The pleadings are now carried on in writing, the Attorneys of the parties delivering to each other, on behalf of their respective clients, a formal statement of the complaint and defence, in the several stages of the suit, the declaration, plea, replication, rejoinder, &c. All this goes on while the litigating parties are snugly by their fire-side, not a whit discomposed, unless by the occasional, but ubiquitous phantom, the "Bill of Costs." So soon as this written complaisance is over, and the tale told on both sides, the Public Officer of the Court, in which these papers are left, hands them over to the parties, in the shape of a Record, for the Judge to refer to, when, in Court, he attends to try the cause.

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## II.

### STYLE OF AN ANCIENT ENGLISH REPORT.

The English Reports are extant, in a regular series, from the reign of King Edward the Second, Anno 1307, inclusive; and from his time to that of Henry the Eighth, were taken by the Prothonotaries, or Chief Scribes of the Court, at the expence of the Crown, and published *annually*, whence they are known under the denomination of the *Year Books*. King James the First, at the instance of Lord Bacon, (Pat. 15, Jac. 1, p. 18. 17 Rym. 26), appointed two Reporters, with a handsome stipend for this purpose. Yet that wise institution was soon neglected, and from the reign of Henry the Eighth to the present time, this task has been executed by many private and contemporary hands. Blac. Com. v. 1, p. 72.

By 3rd Vic., c. 2, Provincial Parliament; the Law Society of Upper Canada appoint to the office of Reporter of Queen's Bench, Upper Canada, with a salary of £150.

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## DR. ARBUTHNOT'S CELEBRATED BURLESQUE OF AN OLD REPORT.

STRADLING *versus* STILES.

Le report del case argue en le commen banke devant tous les justices de le mesme banke, en le quart An. du raygne de roy *Jacques*, entre *Matthew Stradling*, plant. & *Peter Stiles*, def. en un action propter certos equos coloratos, *Anglicè*, pyed horses, post per le dit *Matthew* vers le dit *Peter*.

Le recitel Sir John Swale, of Swale-Hall, in Swale-Dale, fast by the del Case. River Swale, Kt., made his last Will and Testament: in which, among other Bequests was this, viz. Out of the kind love and respect that I bear unto my much honoured and good friend Mr. *Matthew Stradling*, gent. I do bequeath unto the said *Matthew Stradling*, all my *black and white horses*. The Testator had six black horses, six white horses, and six pyed horses.

The Debate therefore was, Whether or no the said *Matthew* Le point. *Stradling* should have the said pyed horses by virtue of the said Bequest.

Pour le pl. *Atkins* apprentice pour le pl. moy semble que le pl. recovers.

And first of all it seemeth expedient to consider what is the *nature of horses*, and also what is the *nature of colours*; and so the argument will consequently divide itself into a twofold way, that is to say, the *formal part*, and *substantial part*. *Horses* are the *substantial part*, or thing bequeathed: *black and white* the *formal* or descriptive part.

*Horse*, in a physical sense, doth import a *certain quadrupede*, or *four-footed animal*, which, by the apt and regular disposition of certain proper and convenient parts, is adapted, fitted and constituted for the use and need of man. Yea so necessary and conducive was this animal conceived to be to the commonweal, that sundry and divers acts of parliament have from time to time been made *in favour of horses*.

1st Edw. VI. Makes the transporting of *horses* out of the kingdom no less a penalty than the forfeiture of £40.

2nd and 3rd Edward VI. Takes from *horse-stealers* the benefit of their clergy.

And the Statutes of the 27th and 32nd of *Henry VIII.* condescend so far as to take care of their very *breed*: These our wise ancestors prudently foreseeing, that they could not better take care of their own posterity, than by also taking care of that of their *horses*.

And of so great esteem are *horses* in the eye of the common law, that when a *Knight of the Bath* committeth any great or enormous crime, his punishment is, to have his *spurs chopt off with a cleaver*, being, as master *Bracton* well observeth, *unworthy to ride on a horse*.

*Littleton*, Sect. 315, saith, If tenants in common make a lease reserving for rent a *horse*, they shall have but one assize, because, saith the book, the



law will not suffer a horse to be severed. Another argument of what high estimation the law maketh of an horse.

But as the great difference seemeth not to be so much touching the substantial part, *horses*, let us proceed to the formal or descriptive part, *viz.* what horses they are that come within this Bequest.

Colours are commonly of various kinds and different sorts; of which *white* and *black* are the two extremes, and consequently comprehend within them all other colours whatsoever.

By a bequest therefore of *black and white horses, grey or pyed horses may well pass*; for when two extremes, or remotest ends of any thing are devised, the law, by common intendment, will intend whatsoever is contained between them to be devised too.

But the present case is still stronger, coming not only within the intendment, but also the very letter of the words.

By the word *black*, all the horses that are *black are devised*: by the word *white* are devised those that are *white*; and by the same word, with the conjunction copulative, *and*, between them, *the horses that are black and white*, that is to say, *pyed, are devised also*.

Whatever is *black and white* is *pyed*, and whatever is *pyed* is *black and white*; ergo, *black and white* is *pyed*, and vice versa, *pyed* is *black and white*.

If therefore black and white horses are devised, pyed horses shall pass by such devise; but black and white horses are devised; ergo, the pl. shall have the pyed horses.

Pour le Catlyne Serjeant: moy semble al' contrary, the plaintiff shall Defend. not have the pyed horses by intendment; for if by the devise of *black and white horses*, not only black and white horses, but horses of any colour between these two extremes may pass, then not only *pyed and grey horses, but also red and bay horses would pass likewise, which would be absurd and against reason*. And this is another strong argument in law, Nihil, quod est contra rationem est licitum; for *reason is the life of the law*, nay the common law is nothing but reason; which is to be understood of *artificial perfection and reason*, gotten by long study, and not of *man's natural reason*, for nemo nascitur artifex, and legal reason est summa ratio; and therefore if all the reason that is dispersed into so many different heads, were united into one, he could not make such a law as the law of England; because by many successions of ages it has been fixed and refixed by grave and learned men; so that the old rule may be verified in it, Neminem oportet esse legibus sapienterem.

As therefore *pyed horses* do not come within the intendment of the bequest, so neither do they within the letter of the words.

A *pyed horse* is not a white horse; neither is a pyed a *black horse*; how then can *pyed horses* come under the words of black and white horses?

Besides, where custom hath adapted a certain determinate name to any one thing, in all devises, feofinents and grants, *that certain name shall be made use of, and no uncertain circumlocutory descriptions shall be allowed*; for certainty is the father of right, and the mother of justice.

Le reste de place.

Le court deliberation Judgment Motion in thereupon an Et sur ceo

From Report Bench, i

An inquisition in favour of the Geo. III., for their estates in been permitted Epaphrus Lord stated, that it ship of Grims in the fifty-eight Commissioner Nelles and other sion named, or sion specified, and also on the seized of certain lease for 999 and of other described), be the premises a taken and cau &c. That on of the Province year, &c., enti

\* Where an Statute 54th Ge lands vested in t to the defendant woman) and thr

Le reste del argument jeo ne pouvois oyer, car jeo fui disturb en mon place.

Le court fuit longement en doubt' de c'est matter; et apres grand deliberation eu,

Judgment fuit donne pour le pl. nisi causa.

Motion in arrest of judgment, that the *pyed horses were mares*; and thereupon an *inspection was prayed*.

Et sur ceo le court advisare vult.

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From Reports of Cases argued and determined in the Court of King's Bench, in York, Upper Canada. By T. Taylor, Esq., Barrister.

THE KING *against* PHELPS.\*

November 12, 1823.

An inquisition in this case had been found against Epaphrus L. Phelps, in favour of the Crown, under the provisions of the Provincial Statute, 54th Geo. III., for declaring certain persons therein described aliens, and vesting their estates in his Majesty. By a subsequent Statute, Esther Phelps had been permitted to traverse the inquisition found against her husband, Epaphrus Lord Phelps. The record, which was of Trinity Term, 1821, stated, that it had been found by an inquisition indented, &c. at the Township of Grimsby, in the District of Niagara, on the 28th day of January, in the fifty-eighth year, &c., before Abraham Nelles, Esquire, one of the Commissioners of the late King, &c., to enquire, &c., by the oath of William Nelles and others, (the Jury), that Epaphrus Lord Phelps, in the commission named, on the day of committing the high treason in the said commission specified, to wit, on the first day of June, in the fifty-third year, &c., and also on the day of the outlawry of the said Epaphrus L. Phelps, was seized of certain parcels or tracts of land, to wit, the unexpired term of a lease for 999 years, made to him by Captain Brant, of 1000 acres of land, and of other land on the Grand River, (in the record and inquisition described), being part of the Indian lands, &c., and that the Commissioners, the premises aforesaid, into the hands of the said late Lord the King, had taken and caused to be seized, &c., as by the commission was commanded, &c. That on Saturday, the last day of Trinity Term, by force of an Act of the Provincial Parliament of this Province, made and passed in the second year, &c., entitled, an Act to afford relief to one Samuel Hull and the said

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\* Where an inquisition had been found against the defendant, under the Provincial Statute 54th Geo. III., the Court refused to set the same aside, on the ground that the lands vested in the Crown by that inquisition had been granted by the Mohawk Indians to the defendant for a term of 999 years, in trust for the support of his wife (a Mohawk woman) and three children.

Esther Phelps, comes the said Esther Phelps, in said Act named, wife of the said Epaphrus L. Phelps, in said commission named, by her Attorney, and prays Oyer, &c., which being read, &c., she complains that she, by colour of the premises, is grievously vexed and disquieted, and protesting that the commission and inquisition are not sufficient in law, and to which she has no necessity nor is bound by the law of the land to answer, for plea saith, that on the 25th day of October, in the year 1724, the Grand River, in the said District of Gore, in the said Province of Upper Canada, constituted and formed part of the Province of Quebec, that the Mohawk Indians, and others of the Six Nations of North American Indians, being on the same day, &c., and long before, the faithful and attached allies of his late Gracious Majesty king George the Third, and especially in the war then lately before that time carried on between his said late Majesty and the United States of America, by the event and pressure of which war the said Indians were obliged to withdraw from their settlements and possessions within the said States, and his said late Gracious Majesty, in consideration of that fidelity and attachment so early manifested to his interest, by the said Mohawk Indians, and of the loss of their settlements and possessions which they thereby sustained, was pleased to direct that a convenient tract of land, under his protection, should be chosen as a safe and comfortable retreat for them, the said Mohawks, &c., who had either lost their settlements within the territory of the said American States, or who wished to retire from those States to the British; and Sir Frederick Haldimand, the said late Majesty's Captain General and Governor in Chief of the Province of Quebec and the territories depending thereon, &c., having, in obedience to such his late Majesty's directions, and at the desire of many of the said Indians, &c., purchased a tract of land from the Indians, that is to say, the aboriginal Indians, occupying the same, situate between the Lakes Ontario, Erie and Huron, did afterwards, to wit, on the same day, &c., and while the said Province of Upper Canada formed part of the Province of Quebec, at the Castle of St. Louis, at Quebec, &c., by instrument under his hand and seal at arms, as Captain General, &c., and in his said late Majesty's name, authorize and permit the said Mohawk nation, &c., to take possession of and settle upon the banks of the river commonly called the Ouse, or Grand River, running into Lake Erie, that is to say, the said Grand River, &c., allotting to them, for that purpose, six miles deep from each of the said rivers, beginning at Lake Erie and extending in that proportion to the head of the said river, *To them* and their posterity for ever; by which said authority, permission and allotment, the said Mohawk nation, &c., afterwards, on the same day, &c., did enter upon and take possession of the aforesaid allotment; and being so possessed, &c., they, the said Six Nation Indians, afterwards, to wit, on the first day of May, in the year 1804, at Grand River, &c., by indenture bearing date the same day and year, &c., and made between them, the said Six Nation Indians, residing, &c., by Captain Joseph Brant, principal Chief and Agent for them, the said Six Nation Indians, duly authorized, *Did*, in consideration of the rents,

covenants and demise, lease heirs, execute (land mention 999 years, *for and three child* is to say, in true woman and the Six Nations. the indenture the woman me the indenture traverser, on t the day of the time of taking indenture, poss land in said in things, &c. T hands of our sa to her possessio time perceived, Crown, demur to amove the h tenements afore in the hands an

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covenants and agreements in the said indenture mentioned, &c., grant, demise, lease, and to farm let unto the said Epaphrus Lord Phelps, his heirs, executors, administrators and assigns, All that certain tract, &c., (land mentioned in the inquisition). *To hold* the same for the term of 999 years, *for providing for one of the women of the said Mohawk nation, and three children, born of her the said woman*, by the said Epaphrus, that is to say, in trust, for the purpose of providing for and maintaining the said woman and the said three children, according to the custom of the said Six Nations. Averments, that the lease mentioned in the inquisition and the indenture last set forth are one and the same; and that traverser is the woman mentioned in the indenture, and that the land mentioned in the indenture is the same with that mentioned in the inquisition; that the traverser, on the first day of June, in the fifty-third year, &c., and also, on the day of the outlawry of the said Epaphrus Lord Phelps, and also at the time of taking the said inquisition, was and still is, by virtue of said indenture, possessed of the issues and profits of the parcels and tracts of land in said inquisition mentioned, to wit, &c., and all and singular which things, &c. The traverse concludes with a prayer for judgment, that the hands of our said Lord the King be thence amoved, and that the traverser to her possession, together with the issues and profits therein in the mean time perceived, be restored. The Solicitor General, on the part of the Crown, demurred to the traverse generally, as not being sufficient in law to amove the hands of the said Lord the King from the possession of the tenements aforesaid, and prayed judgment, and that the tenements, &c., in the hands and possession of the said Lord the King may remain, &c.

Boulton, Solicitor General, in support of the demurrer.—The traverse in this case is insufficient. It sets out that the traverser is an Indian woman, and that there is a custom among the Indians to bestow lands in the manner stated, and that Brant made such a conveyance for her benefit, but it shews no good title in him or the Indians to do so. By the traverser's own shewing, she is a foreigner, and consequently no more entitled to hold lands than a Frenchman, or any other foreigner; for the Indians are bound by the Common Law.

Even if the title were good, it only conveyed a chattel interest, which a man cannot hold in trust for his wife.

Should the inquisition have been ill found, yet the lands being once vested by the finding in the Crown, they cannot afterwards be divested, without the traverser shews a better title, as appears in Dyer.

Baldwin, contra.—Where both parties claim under the same deed, neither can impugn it for defects, and therefore defects in titles, under those deeds, (if such there be), cannot be set up by the Crown.

The foundation of the title from General Haldimand is evidently a treaty, and as such must be recognized by the Court, for all Courts of Justice will recognize treaties, as is constantly seen in cases of seizure, &c.

The Indians must be considered as a distinct, though feudatory people; they were transported here by compact; they are not subject to mere

positive laws, to statute labour, or militia duty, though perhaps to punishment for crimes against the natural law, or law of nations.

It may be considered as a ridiculous anomaly, but it appears from Vattel that these sort of societies, resident within and circumscribed by another territory, though in some measure independent of it, frequently exist, and that the degree of independence may be infinitely varied; and however barbarous these Indians may be considered, the treaty under which they migrated to and reside in this country, is binding.

Phelps had not such an estate as he could forfeit; it is a trust limited to him for providing for the traverser, Esther Phelps and her children, plainly expressed in the words of the deed, and as laid down in Shepherd's Touchstone, not forfeitable for his treason, though it perhaps might be, by that of the cestui que trust. Should the Court consider this instrument as a trust deed, founded upon sufficient consideration, namely, that expressed in it, of supporting Mrs. Phelps, then they will decide in favour of the traverser; and, on the other hand, if insufficient, the inquisition will be quashed as nugatory, Phelps having nothing to forfeit, as the trust resulted for the benefit of the grantors.

Boulton, Solicitor General, contra.—If the title placed in the Crown by this inquisition is at all consistent, it cannot be disturbed, though special circumstances might induce the Crown to regrant the land. The supposition that the Indians are not subject to the laws of the country, is absurd; they are as much so as the French Loyalists who settled here after the French Revolution, who came to this Province from a country perfectly independent, and of which the independence was never doubted; and supposing them not to be so, confesses the grant from General Haldimand to be (as it was in fact) not warranted by law. As to the pretended consideration of the deed, it is perfectly nugatory; it purports to be made for the support of Phelps's wife and children, whom he was bound to support himself, nor could an husband be a trustee of a chattel interest to the use of his wife; and even supposing her to be a bona fide cestui que use, she could not dispute the legal estate of the Crown once vested.

Per curiam. (Absente Powell, Chief Justice).

Judgment in favour of the Crown.—Taylor's Reports, 15.

Romney, Bos  
Moore, Zone, D  
Dover, Howard,  
Rochester, Mai  
Malden.

Population, 9  
Sessions, Januar

Colborne, M  
Hibbert, Goder  
Williams, Blanc

Capital, Gor  
April 4, July 4,

Adelaide, Lob  
ter, Dorchester,  
Dunwich.

Population, (3  
holding Quarter

Woodhouse, W  
ham, Townsend.

Population, 9,6  
January 10, Apri

Nissouri, Oxf  
Norwich, Oaklan

Population, 15  
Sessions, January

## III.

## UPPER CANADA.

## WESTERN DISTRICT.

Romney, Bosanquet, Warwick, Plympton, Sarnia, Brooke, Enniskillen, Moore, Zone, Dawn, Sombra, Orford, Camder, Chatham, East and West Dover, Howard, Harwich, Raleigh, Tilbury East, Tilbury West, Anderdon, Rochester, Maidstone, Sandwich, Mersea, Gosfield, Colchester, Huron, Malden.

Population, 23,026; Capital, SANDWICH place of holding Quarter Sessions, January 10, April 11, July 11, October 10.

## HURON DISTRICT.

Colborne, McKillop, Logan, Ellice, East Thorpe, Downie, Fullarton, Hibbert, Goderich, Hay, Osborne, Biddulph, Stephen, McGillivray, Williams, Blanchard, Hullett, Stanley, Tuckersmith.

Capital, GODERICH place of holding Quarter Sessions, January 3, April 4, July 4, October 3.

## LONDON DISTRICT.

Adelaide, Lobo, London, Mosa, Ekfrid, Caradoc, Delaware, Westminster, Dorchester, Aldborough, Yarmouth, Malahide, Bayham, Southwold, Dunwich.

Population, (including Huron), 32,257; Capital LONDON place of holding Quarter Sessions, January 10, April 11, July 11, October 10.

## TALBOT DISTRICT.

Woodhouse, Windham, Middleton, Charlotteville, Houghton, Walsingham, Townsend.

Population, 9,637; Capital, SIMCOE place of holding Quarter Sessions, January 10, April 11, July 11, October 10.

## BEOCK DISTRICT.

Nissouri, Oxford, Burford, Blandford, Blenheim, Dercham, Zorra, Norwich, Oakland.

Population, 15,621; Capital, WOODSTOCK place of holding Quarter Sessions, January 24, April 25, July 11, October 10.



## WELLINGTON DISTRICT.

Waterloo, Wilnot, Guelph, Erramosa, Erin, Garrafraxa, Nichol, Woolwich, Proton, Melancthon, Luther, Anaranth.

Population, 13,851; Capital, GUELPH, place of holding Quarter Sessions.

## GORE DISTRICT.

Brantford, Binbrook, Barton, Saltfleet, Ancaster, Glanford, Dumfries, Beverly, Trafalgar, Esquesing, Nelson, Nassagaweya, Puslinch, Flamborough East and West.

Population, 42,577; Capital, HAMILTON place of holding Quarter Sessions, January 10, April 11, July 11, October 11.

## NIAGARA DISTRICT.

Canborough, Sherbrooke, Cayuga, Moulton, Dunn, Haldimand, Rainham, Walpole, Caistor, Gainsborough, Wainfleet, Humberstone, Bertie, Willoughby, Crowland, Stamford, Niagara, Thorold, Grantham, Louth, Pelham, Clinton, Grinsby.

Population, 34,577; Capital, NIAGARA place of holding Quarter Sessions, January 10, April 11, July 11, October 10.

## HOME DISTRICT.

St. Vincent, *Tay*, *Mulmur*, *Uphrasia*, *Medonte*, *Mono*, *Artemisia*, *Oro*, *Sumidale*, *Collingwood*, *North and South Orillia*, *Tosorontio*, *Osprey*, *Adjala*, *Matchedash*, *Nottawasaga*, *Tecumseh*, *Gwillimbury West*, *Flos*, *Essa*, *Innisfil*, *Vespra*, *Tivy*, *Zero*, *Whitchurch*, *Brock*, *Gwillimbury North*, *Gwillimbury East*, *King*, *Albion*, *Brock*, *Reach*, *Toronto Gore*, *Whitby*, *Pickering*, *Markham*, *Toronto*, *Uxbridge*, *Scarborough*, *Chingvaceousy*, *Scott*, *York*, *Etobicoke*, *Caledon*, *Georgina*, *Vaughan*, *Rama*, *Mara*, *Thora*.

NOTE.—The Townships in italics have by Proclamation, 11th January, 1843, been declared to form the District of Simcoe.—See post.

Population, 64,401; Capital, TORONTO place of holding Quarter Sessions, January 3, April 4, July 4, October 3.

## DALHOUSIE DISTRICT.

Nepean, Goulburn, March, Torbolton, Fitzroy, Gloucester, Marlborough, North Gower, Osgoode, Huntley.

Population, (including Bathurst), 27,635; Capital, BROWN place of holding Quarter Sessions, January 10, April 11, July 18, October 17.

Cumberland,  
Longueuil, Se

Population,  
Sessions, Janu

Crosby No  
Yonge, Leede  
South, Wolfor

Population,  
Sessions, Febr

Finch, Loch  
Onabruck, Ro

Population,  
Sessions, Janua

Richmond, A  
Fredericksburg  
Hinchinbrooke,  
Osa, Pittsburgl

Population,  
Sessions, Janua

Pembroke, I  
housie, Sherbr  
Beckwith, Pake

Population in  
Quarter Sessio

Belmont, Ma  
Harvey, Bexley  
of Monaghan, A

## OTTAWA DISTRICT.

Cumberland, Russell, Cambridge, Clarence, Plantagenet, Caledonia, Longueuil, Seignior of, Hawkesbury, Alfred.

Population, 9,324; Capital, L'ORIGINAL place of holding Quarter Sessions, January 17, April 18, July 20, September 19.

## JOHNSTOWN DISTRICT.

Crosby North, Bastard, Lansdowne, Burgess, Kitley, Crosby South, Yonge, Leeds, Oxford, Elizabeth Town, Montague, Augusta, Gower South, Wolford, Edwardsburgh.

Population, 35,952; Capital, BROCKVILLE place of holding Quarter Sessions, February 21, May 10, August 8, November 14.

## EASTERN DISTRICT.

Finch, Lochiel, Mountain, Winchester, Williamsburgh, Lancaster, Osnabruck, Roxborough, Cornwall, Matilda, Kenyon, Charlottenburgh.

Population, 30,279; Capital, CORNWALL place of holding Quarter Sessions, January 24, April 25, July 11, October 10.

## MIDLAND DISTRICT.

Richmond, Adolphustown, Ernesttown, Anglesea, Camden East, Barric, Fredericksburgh, Sheffield, Kennebec, Kaladar, Portland, Clarendon, Hinchinbrooke, Loughborough, Olden, Bedford, Kingston, Palmerston, Osa, Pittsburgh.

Population, 32,208; Capital, KINGSTON place of holding Quarter Sessions, January 24, April 25, July 11, October 10.

## BATHURST DISTRICT.

Pembroke, Levant, McNab, Darling, Lanark, Ramsay, Horton, Dalhousie, Sherbrooke South, Sherbrooke North, Bathurst, Drummond, Beckwith, Pakenham, Kenmore, Ross, Westmeath.

Population included with Dalhousie; Capital, PENTH place of holding Quarter Sessions, March 21, June 13, September 19, December 19.

## COLBORNE DISTRICT.

Belmont, Mariposa, Methuen, Ennismore, Smith, Eldon, Ops, Burleigh, Harvey, Bexley, Dunmer, Verulam, Somerville, Seven Rear Concessions of Monaghan, Asphodel, Emily, Fenelon, Douro, Otonabee.



## NEWCASTLE DISTRICT.

Cartwright, Darlington, Clark, Manvers, Cavan, Hope, Hamilton, Cramahe, Seymour, Monaghan, Haldimand, Percy, Murray.

Population, (including Colborne), 38,596; Capital, AMHERST place of holding Quarter Sessions, January 10, April 11, July 11, October 10.

## PRINCE EDWARD DISTRICT.

Ameliasburgh, Sophiasburgh, Marysburgh, Hillier, Hallowell, Athol.

Population, 14,661; Capital, PICTON place of holding Quarter Sessions, January 3, April 4, July 4, October 3.

## VICTORIA DISTRICT.

Lake, Thurlow, Madoc, Grimsthorpe, Marmora, Huntingdon, Elzevir, Rawdon, Hungerford, Sidney, Tudor, Tyendinaga.

Population, 13,111; Capital, BELLEVILLE place of holding Quarter Sessions, January 10, April 11, July 11, October 10.

## SIMCOE DISTRICT.

West Gwillimbury, Tecumseh, Adjala, Mono, Mulmur, Tosorontio, Essa, Innisfil, Nottawasaga, Sunnidale, Vespra, Oro, Orillia, (North and South Division), Medonte, Flos, Tiny, Tay, and Matchedash, together with the Islands in Lakes Huron and Simcoe, lying wholly or in greater part opposite thereto.

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 LOWER CANADA.

Under the Act of the British Parliament, 31st Geo. III., c. 1, Sir A. Clarke, the Lieutenant Governor, by Proclamation, dated 7th May, 1792, divided the Provinces into Counties, Cities and Towns. By 34th Geo. III., c. 6, for amending the judicature, the Province is divided into the three Districts of QUEBEC, MONTREAL, and THREE RIVERS. In 1827, the extension of the old settlements, and the formation of new ones in remote parts of the Province, rendered a new subdivision of the Province necessary. This was effected by the 9th Geo. IV., c. 73.

The follo  
Province of  
Townships,

N.B.—The

CONTAINS I

COUNTIES,

Acadie .....

Beauharnois

Berthier.....

Chambly ..

Lachenaye..

La Prairie ..

L'Assomptic

Missisqui ..

Montreal ..

Ottawa .....

S

ACA

Seigni

De Lery

La Colle

Town

Sherrington

Isl

Aux Noix

Aux Teté

BEAUHA

Seigni

Beauharnois

The following, at this time, were the Divisions and Subdivisions of the Province of Lower Canada into Districts, Counties, Seignories, Fiefs, Townships, &c. :—

N.B.—The Townships marked with an asterisk are included in and compose the Inferior District of St. Francis.

MONTREAL DISTRICT

CONTAINS 19 COUNTIES, 70 SEIGNORIES, 6 FIEFS, AND 59 TOWNSHIPS.

COUNTIES, 19.	In each County.			COUNTIES.	In each County.		
	Seignories.	Fiefs.	Townships.		Seignories.	Fiefs.	Townships.
Acadie .....	2	...	1	Richelieu .....	8	...	...
Beauharnois ...	1	...	3	Rouville .....	7	...	...
Berthier.....	8	3	2	St. Hyacinthe .....	3	...	...
Chambly .....	5	1	...	Shefford .....	...	...	8
Lachenaye.....	2	...	2	Stanstead .....	...	...	6
La Prairie .....	4	...	...	Terrebonne .....	4	...	3
L'Assomption	1	...	2	Two Mountains.....	3	...	6
Missisqui .....	1	...	3	Vaudreuil.....	4	...	1
Montreal .....	1	...	...	Vercheres.....	8	2	...
Ottawa .....	1	...	8	Projected Townships	...	...	14

*Seignories, Fiefs, Townships, &c. in each County.*

<p><b>ACADIE.</b> <i>Seignories.</i> De Lery La Colle</p> <p><i>Townships.</i> Sherrington</p> <p><i>Isles.</i> Aux Noix Aux Teté</p> <p><b>BEAUHARNOIS.</b> <i>Seignories.</i> Beauharnois</p>	<p><i>Townships.</i> Godmanchester Hemmingford Hinchinbrooke</p> <p><i>Indian lands.</i> .</p> <p><i>Islands.</i> Grande Isle Isles de la Paix, part of</p> <p><b>BERTHIER.</b> <i>Seignories.</i> Berthier and Augmentation</p>	<p>D'Aillebout D'Autraye and Augmentation De Ramzay Isle Dupas Lanaudière, part of Lanauraie and Augmentation Lavaltrie</p> <p><i>Fiefs.</i> Antaya Chicot Du Sablé, or York</p>
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Petit Bruno  
Randin

*Townships.*

Brandon  
Kildare

*Isles.*

Randin  
St. Ignace

**CHAMBLY.**

*Seigniories.*

Boucherville  
Chambly, West  
Longueuil, Barony  
Montarville

*Fiefs.*

Tremblay

*Isles.*

Isles Communes  
Percées

**LACHENAYE.**

*Seigniories.*

Lachenaye  
L'Assomption

*Townships.*

Kilkenny  
Wexford

*Isles.*

Bouïrdor

**LA PRAIRIE.**

*Seigniories.*

Chateauguay  
La Prairie  
La S<sup>te</sup>le  
Sault St. Louis

*Isles.*

A la Paix, part of  
Aux Hurons  
St. Bernard

**L'ASSOMPTION.**

*Seigniories.*

St. Sulpice

*Townships.*

Chertsey  
Rawdon

*Isles.*

Boucharde, Lower Isle

**MISSISQUI.**

*Seigniories.*

St. Armand

*Townships.*

Durham  
Stanbridge  
Sutton

**MONTREAL.**

*County, Island, and*

*Seignior.*

Nun's Island  
St. Helen  
St. Thérèse

**OTTAWA.**

*Seigniories.*

La Petite Nation

*Townships.*

Bristol  
Buckingham  
Clarendon  
Derry  
Eardley  
Hull  
Lichfield  
Lochaber and Augmen-  
tation  
Onslow  
Portland  
Templeton  
Wakefield

**RICHELIEU.**

*Seigniories.*

Bonsecours  
Bourchemin  
Bourgmarie  
St. Charles  
St. Denis  
St. Ours and Augmen-  
tation  
Sorel

*Isles.*

De Grace  
St. Ignace  
Ronde

**ROUVILLE**

*Seigniories.*

Bleury  
Chambly, East  
Foucault  
Monnoir and Augmen-  
tation  
Noyan  
Rouville  
Sabrevois

**ST. HYACINTHE.**

*Seigniories.*

Bourchemin  
De Ramzay  
St. Hyacinthe

**SHEFFORD.**

*Townships.*

Brome  
Ely  
Farnham and Augmen-  
tation  
Granby  
Milton  
Roxton  
Shefford  
Stukely

**STANST**

*Townsh*

\*Barford  
\*Barnston  
\*Bolton, part of  
\*Hatley  
Potton  
\*Stanstead

**TERREBO**

*Seignior*

Blainville and  
tation to R  
Chêne, S.  
Desplaines and  
mentation  
Isle Jesus  
Terrebonne and  
mentation

*Township*

Abercromby  
Chatham Gore  
Howard

CONTAINS 13

**COUNTIES.**

Beauce .....  
Bellechasse ..  
Dorchester ..  
Kamouraska ..  
L'Islet .....  
Lotbinière.....  
Megantic .....

**RICHELIEU.**  
*Seigniories.*  
Ascours  
Archemin  
Argmarie  
Charles  
Denis  
Ours and Augmen-  
tation  
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*Isles.*  
Grace  
Ignace  
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**ROUVILLE**  
*Seigniories.*  
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**STANSTEAD.**  
*Townships.*

\*Barford  
\*Barnston  
\*Bolton, part of  
\*Hatley  
Potton  
\*Stanstead

**TERREBONNE.**  
*Seigniories.*

Blainville and Augmen-  
tation to Rivière du  
Chêne, S.  
Desplaines and Aug-  
mentation  
Isle Jesus  
Terrebonne and Aug-  
mentation

*Townships.*

Abereromby  
Chatham Gore  
Howard

**TWO MOUNTAINS.**  
*Seigniories.*

Argenteuil  
Lac des deux Montagnes  
Rivière du Chêne

*Townships.*

Arundel  
Chatham  
Grenville  
Harrington  
Howard  
Wentworth

*Isles.*

Isle Bizard

**VAUDREUIL.**

*Seigniories.*

Nouvelle Longueuil  
Rigaud  
Soulange  
Vaudreuil

*Townships.*

Newton

*Isles.*

Aux Pins  
Aux Tourtes  
Perrot Isle  
St. Généviève Isle  
St. Giles

**VERCHERES.**

*Seigniories.*

Bellevue  
Belœil and Augmen-  
tation  
Cap St. Michel  
Contrecoeur  
Cournoyer  
St. Blain  
Varennes  
Vercheres

*Fiefs.*

Guillaudière  
La Trinité

*Isles.*

Beargard  
Bouchard, Upper Isle

**T. HYACINTHE.**  
*Seigniories.*  
Archemin  
Ramzay  
Hyacinthe

**SHEFFORD.**  
*Townships.*  
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ham and Augmen-  
tation  
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**DISTRICT OF QUEBEC**

CONTAINS 13 COUNTIES, 79 SEIGNIORIES, 12 FIEFS, AND 38 TOWNSHIPS.

COUNTIES.	In each County.			COUNTIES.	In each County.		
	Seigniories.	Fiefs.	Townships.		Seigniories.	Fiefs.	Townships.
Beauce .....	7	...	9	Montmorenci .....	1	...	...
Bellechasse ...	7	2	4	Orleans .....	1	..	...
Dorches'er ...	1	...	...	Portneuf .....	13	3	...
Kamouraska ...	7	1	3	Quebec .....	4	2	2
L'Islet .....	9	3	1	Rimouski.....	15	1	2
Lotbinière.....	8	...	...	Saguenay.....	6	...	1
Megantic .....	...	...	16				

**BEAUCE.**  
*Seigniories.*  
Aubert de l'Isle  
Aubert Gallion  
Jolliet  
St. Etienne  
St. Joseph  
St. Marie Nouvelle  
Beauce  
Vaudreuil

*Townships.*  
Cranbourne  
Ditchfield  
Frampton  
Jersey  
Marlow  
Risborough  
Spalding  
Watford  
Woburn

**BELLECHASSE.**  
*Seigniories.*  
Beaumont and Augmentation  
Livaudière  
St. Jervais  
St. Michel  
St. Valier and Augmentation  
Vincennes

*Fiefs.*  
La Martinière  
Montapeine

*Townships.*  
Armagh  
Buckland  
Standon  
Ware

**DORCHESTER.**  
*Seigniories.*  
Lauzon

**ISLET.**  
*Seigniories.*  
Bonsecours  
Cap St. Ignace  
Isle Verte  
Lepinay  
Lessard  
L'Islet  
St. Claire  
St. Jean Port Joli  
St. Roch des Annais  
Vincelot and Augmentation

*Fiefs.*  
Fournier  
Gagné  
Reaume

*Townships.*  
Ashford and Augmentation

*Islands.*  
Isles aux Grues et Oies

**KAMOURASKA.**  
*Seigniories.*  
Granville  
Granville and Lachenaye  
Islet du Portage  
Kamouraska  
River Ouelle and Augmentation  
St. Anne de la Pocadicrie  
Terrebois

*Fiefs.*  
St. Denis

*Townships.*  
Bungay  
Ixworth  
Woodbridge

*Isles.*  
Harc Island, part of  
Isle Verte  
Kamouraska Islands

**LOTBINIERE.**  
*Seigniories.*  
Bonsecours  
Deschailions, or Riv. du Chêne and Augmentation  
Desplains  
Gaspé  
Lotbinière and Augmentation  
St. Croix  
St. Giles  
Tilly, or St. Antoine.

**MEGANTIC.**  
*Townships.*  
Adstock  
Broughton  
Colraine  
Dorset  
Gayhurst  
Halifax  
Inverness  
Ireland  
Leeds  
Nelson  
Oulney  
Shenley  
Somerset  
Thetford  
Tring  
Winslow

**MONTMORENCI.**  
*Seigniories.*  
Côte de Beaupré

**ORLEANS COUNTY.**  
Island and Seignioriy.

**PORTNEUF.**  
*Seigniories.*  
Bélair and Augmentation  
Bourglouis  
Cap Santé  
D'Auteuil  
Deschambault

Desmure, or gustin?  
Faussembault  
Grondines  
Guillaume Bon  
Jacques Cartier  
Neuville, or P  
Trembles  
Perthuis  
Portneuf

*Fiefs.*  
Gaudarville  
La Chevrotière  
La Tesserie

**QUEBEC**  
*Seigniorie*  
Beaumont  
Notre Dame des  
St. Gabriel  
Sillery

*Fiefs.*  
Hubert  
St. Ignace

**TH**

CONTAINS 6 CO

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COUNTIES.

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Champlain.....  
Drummond ...  
Nicolet .....

<p>Desmure, or St. Augustine Faussembault Grondines Guillaume Bonhomme Jacques Cartier Neuville, or Pointe aux Trembles Perthuis Portneuf</p> <p style="text-align: center;"><i>Fiefs.</i></p> <p>Gaudarville La Chevrotière La Tesserie</p> <p style="text-align: center;"><b>QUEBEC.</b></p> <p style="text-align: center;"><i>Seigniories.</i></p> <p>Beauport Notre Dame des Anges St. Gabriel Sillery</p> <p style="text-align: center;"><i>Fiefs.</i></p> <p>Hubert St. Ignace</p>	<p><i>Townships.</i></p> <p>Stoneham Tewkesbury</p> <p style="text-align: center;"><b>RIMOUSKI.</b></p> <p style="text-align: center;"><i>Seigniories.</i></p> <p>Bic Dartigny De Peiras, or Mitis Isle Verte Lac Matapediach Lac Mitis Le Page and Tivierge Lessard Madawaska and Temiscouata Matane Richard Rioux Rimouski River du Loup St. Barnabé Trois Pistoles</p> <p style="text-align: center;"><i>Fiefs.</i></p> <p>Pachot</p>	<p style="text-align: center;"><i>Townships.</i></p> <p>Matane St. Denis</p> <p style="text-align: center;"><i>Islands.</i></p> <p>Bic Biquette Green Island St. Barnabé</p> <p style="text-align: center;"><b>SAGUENAY.</b></p> <p style="text-align: center;"><i>Seigniories.</i></p> <p>Eboulemens Isle aux Coudres Mille Vaches Mount Murray Murray Bay Terra Firma de Mingan</p> <p style="text-align: center;"><i>Townships.</i></p> <p>Settrington</p> <p style="text-align: center;"><i>Isles.</i></p> <p>Isles et Islets de Mingan Isle of Anticosti</p>
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**THREE RIVERS DISTRICT**

CONTAINS 6 COUNTIES, 35 SEIGNIORIES, 9 FIEFS, AND 53 TOWNSHIPS.

COUNTIES.	In each County.			COUNTIES.	In each County.		
	Seigniories.	Fiefs.	Townships.		Seigniories.	Fiefs.	Townships.
Champlain.....	5	...	1	St. Maurice.....	8	5	3
Drummond ...	...	...	19	Sherbrooke .....	...	...	28
Nicolet .....	4	4	2	Yamaska .....	8	...	...

*Seigniories, Fiefs, Townships, &c. in each County.*

CHAMPLAIN.	Livrad or St. Pierre les Becquets	SHERBROOKE.	CONTAINS
<i>Seigniories.</i>	Nicolet and Augmentation	<i>Townships.</i>	Counties
Batiscan		*Ascot	Bonaville
Cap de la Magdeleine		*Auckland	Gaspé
Champlain and Augmentation	<i>Fiefs.</i>	*Brompton	
Ste. Anne and Augmentation	Bélaire	*Bury	
Ste. Marie	Cournoyer	*Chesham	BONAVALLE
	Godefroi	*Clifton	<i>Seigniories.</i>
	Roquetaillade	*Clinton	Shoolbred
<i>Townships.</i>		*Compton	
Radnor	<i>Townships.</i>	Croydon	<i>Townships.</i>
	Blandford	*Dittan	Carleton
<i>Isles.</i>	Maddington	*Drayton	Cox
Du Large		*Dudswell	Hamilton
St. Marguerite	<i>Isles.</i>	*Eaton	Hope
St. Ignace	Moran	*Emberton	
		*Garthby	
DRUMMOND.	ST. MAURICE.	*Hampden	By the 3rd
<i>Townships.</i>	<i>Seigniories.</i>	*Hereford	Barnston, Ban
Acton	Grandpré	*Lingwick	the 17th, 18th
Arthabaska	Grosbois or Machiche	*Marston	within the limits
Aston and Augmentation	Lanaudière, part of	*Melbourne	parts of the Town
Bulstrode	Maskinongé	*Newport	Brompton in the
*Chester	Pointe du Lac	*Orford	ford, Drayton
*Durham	Rivière du Loup	*Shipton	Chesham, Clif
*Ham	Ste. Marguerite	*Stoke	well, Westbur
Horton	St. Maurice	*Stratford	Watton, Wee
Grantham		*Weedon	formed into t
*Kingsey		*Westbury	Vic. c. 35. of
Simpson	<i>Fiefs.</i>	Whitton	Orleans were
Stanfold	Carufel	*Windsor	County of Mo
*Tingwick	Dumontier		naye to form
Upton	Gatineau and Augmentation	YAMASKA.	La Prairie to
Warwick	St. Etienne and Lands	<i>Seigniories.</i>	chester and E
Wendover	of the Forges	Baie St. Antoine or du	c. 43, being a
Wickham	St. Jean and Augmentation	Febvre	nistration of
*Wolfstown		Bourgmarie East	it is directed,
*Wotton	<i>Townships.</i>	Courval	Districts, as
	Caxton	Deguir	should deem
NICOLET.	Hunterstown	Lussaudière	is authorized
<i>Seigniories.</i>	New Glasgow	Pierreville	inferior Distr
Becancour		St. Francois.	By the 6th
Gentilly		Yamaska	"of the Gov
			"Canada rela

**GASPE' DISTRICT.**

CONTAINS 2 COUNTIES, 1 SEIGNIORY, 6 FIEFS, AND 10 TOWNSHIPS.

Counties.	In each County.		
	Seigniories.	Fiefs.	Townships.
Bonaventure.....	1	...	7
Gaspé .....	...	6	3

BONAVENTURE.	GASPE'.	Grande Vallée des Monts
<i>Seigniories</i>		Magdeleine
Shoolbred	Richmond	Ste. Anne
<i>Townships.</i>	<i>Fiefs.</i>	<i>Townships.</i>
Carleton	Ance à Beaufls	Magdalen Isles
Cox	Ance de l'Etang	Number 8
Hamilton	Bonaventure Isle	Number 9
Hope		

By the 3rd Geo. IV. c. 17. so much of the Townships of Stanstead, Barnston, Barford, Hatley, Compton, Oxford, Ascot, Brompton, and of the 17th, 18th, 19th, 20th, and 21st Ranges of Bolton as are comprised within the limits of the District of Montreal, together with the remaining parts of the Townships of Barnston, Hatley, Compton, Orford, Ascot and Brompton in the District of Three Rivers; and the Townships of Hulford, Drayton, Emberton, Auckland, Clifton, Eaton, Newport, Dittan, Chesham, Clinton, Marston, Hampden, Stratford, Longwick, Bury, Duds- well, Westbury, Stoke, Melbourne, Durham, Kingsey, Shipton, Windsor, Watton, Weedon, Garth, Wolfstown, Tingwick, Chester, and Ham were formed into the Inferior District of St. FRANCIS. By the 3rd and 4th Vic. c. 35. of the Imperial Parliament, the Counties of Montmorency and Orleans were to be united into and form one County, to be called the County of Montmorency, and the Counties of L'Assomption and La Ches- naye to form the County of Leinster, and the Counties of L'Acadie and La Prairie to form the County of Huntingdon, and the Counties of Dor- chester and Beauce, to form the County of Dorchester. By the 4th Vic. c. 43, being an ordinance to provide for the easy and expeditious admi- nistration of Justice in Civil causes and matters of small pecuniary value, it is directed, that the Province should be divided into such a number of Districts, as the Governor, with the advice of the Executive Council, should deem expedient. And by 4th and 5th Vic. c. 20. the Governor is authorized to divide Lower Canada, except the Province of Gaspé, into inferior Districts, and the limits of the same to be fixed by Proclamation.

By the 6th Vic. c. 13. intituled "An Act to repeal certain ordinances "of the Governor and Special Council of the late Province of Lower "Canada relative to the administration of Justice," the 3rd and 4th Vic.

County.  
HERBROOKE.

Townships.

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dswell  
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berton  
rthby  
mpden  
ereford  
ngwick  
arston  
elbourne  
ewport  
ford  
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oke  
ratford  
eedon  
estbury  
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YAMASKA.

*Seigniories.*

St. Antoine or du  
ebvre  
rgmarie East  
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saudière  
reville  
Francois.  
naska



c. 45. 4th Vic. c. 19. 4th Vic. c. 15. and 4th "and 5th" Vic. c. 20. "or of any other Act, Ordinance or Law, as authorizes the Governor of this Province by Proclamation to fix the time from or after which the said Ordinances (Acts) or either of them, shall have force and effect, or as vests any power in any Court or Officer to be constituted or appointed under either of the said ordinances, or directs that any proceeding be had, in consequence of the coming into force of the said Ordinances or either of them, shall be repealed, and the said Ordinances and all such Provisions of Law as aforesaid, are hereby repealed accordingly."

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## DISTRICT COURT, QUEBEC.

1ST MARCH, 1842.

*Action for £17 11s. 2d. Currency, balance due on an obligation for land sold.*

JACQUES BEZEAU, PLAINTIFF,

vs.

FRANÇOIS BONNALI, DEFENDANT.

No. 18.

Plea—*Exception Declinatoire* on two grounds—1st. That until the Governor of this Province, by his Proclamation issued by and with the advice of the Executive Council for this Province, shall, for the purposes of Judicature have divided the portion of this Province, called Lower Canada, into such number of Inferior Districts, as by the said Governor, by and with the advice of the Executive Council aforesaid, shall be deemed fit and expedient, and shall have fixed and appointed the limits of each such Inferior District, and the place at which the District and Division Courts shall be therein held, *which Proclamation the said François Bonnali alleges hath not yet been issued*, the Court now here by Law cannot proceed nor compel the said François Bonnali to answer in any manner unto the demand of the said Jacques Bezeau, in this cause filed contained, nor in any way to take cognizance of the action of the said Jacques Bezeau in this behalf, &c.

Wherefore the defendant prays Judgment, whether the Court, now here, can or will take further cognizance of the action, and that the writ and process in this cause issued be declared null and of no effect. 2nd. That W. Power, Esq., in whose name, as District Judge of the Inferior District of Quebec, the writ issued in this Court, at the instance of the said Jacques Bezeau, is attested, did, at the time of his nomination and appointment to be District Judge of the Inferior District of Quebec, accept and now holds the office of District Judge of the Inferior District of Saguenay, and did,

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at the same time, accept and now holds the office of District Judge for the Inferior District of Portneuf, and that the said offices, from the nature and extent of the different duties attached to them, are incompatible, and cannot be holden together, and that the appointment of one and the same person for the discharge of all and every the judicial functions attached to the offices of District Judge of the said several Inferior Districts, and to each of them, is illegal and contrary to the intent and meaning, and in violation of the Provincial Statute in this behalf made and provided, and that by the acceptance of the said offices of District Judge of each of the Inferior Districts of Saguenay and Portneuf, the said Wm. Power, Esq., is incapacitated from holding the office of District Judge of the Inferior District of Quebec, and executing the duties thereof.

Wherefore the defendant prays judgment, whether the Court, now here, can or will take further cognizance of the action, and that the process issued in this cause be declared null and of no effect.

Issue having been joined on this Plea—the Attorneys of the parties filed the following admission of facts:—

"The plaintiff hereby admits, that W. Power, Esq., now exercising the functions of District Judge of the Inferior District of Quebec, has been appointed to, and has accepted the respective offices of District Judge of the Inferior District of Quebec, of District Judge of the Inferior District of Saguenay, and District Judge of the Inferior District of Portneuf, at one and the same time, and that the said W. Power, Esq., has taken the necessary oaths to qualify him for the discharge of the duties of the two last mentioned offices in the manner by law required.

"It is further admitted that the said W. Power, Esq., hath directed the Clerks appointed for the two last mentioned Inferior Districts to enregister the Commissions appointing him to the said last mentioned offices respectively, together with the said oaths of office, and hath also authorised and directed the issuing of Writs of Summons, tested in his name, in the Inferior Districts of Portneuf and Saguenay, but he hath not performed any other act, either judicial or ministerial, in his capacity of District Judge of the said last mentioned Inferior Districts respectively."

(Signed)

DUNBAR ROSS,

"

T. C. AYLWIN,

For Defendant,

#### JUDGMENT OF MR. POWER, THE DISTRICT JUDGE.

The objections to be decided upon in this cause are admitted to be of great importance, inasmuch as they are said to involve the legal existance not only of this Court, but of every other District Court in Lower Canada. I have devoted the best consideration which my humble abilities could afford, to the eloquent and ingenious arguments of the learned Counsel on both sides, and have distinctly and steadily directed my attention to the

numerous cases cited as authority, and endeavoured to contemplate them in their true relations, and to assign to each the degree of importance of which I conceive it to be worthy.

With respect to the first objection, it was said, on the part of the defendant, that the Proclamation issued on the 1st December, by his Excellency Sir Richard D. Jackson, for dividing Lower Canada into new Districts, for judicial purposes, is a nullity, because no power was given to his Excellency by the Statute to issue that Proclamation; and therefore no Proclamation has issued. That the Crown may be represented and the Government of the Province carried on by either of three distinct persons, the Governor, Lieutenant Governor, or Administrator of the Government, but that when the Provincial Parliament has given a power to only one of them, that one alone can exercise the power.

That Statutes conferring power must be construed strictly, and Espinasse on Statutes, p. 13, is quoted, which says: "With respect to the *designatio personæ*, or description of persons who are to do or perform any particular act, the express designation of one person for that purpose, is the express exclusion of all others." Page 11, of the same work, is also cited on the same point, and also Dwarris, on Stat. p. 767, which says: "Where an Act of Parliament gives authority to 'one' person expressly, all others are excluded; a special power is sure to be strictly 'pursued';" and a *dictum* of Mr. Justice Buller, reported in the case of Jones vs. Smart, 1st vol. Term Reports, p. 51, was particularly relied upon, where that Judge said, in delivering his judgment, that an *omissus casus*, or omission on the part of the Legislature, cannot be supplied by a Court of Law, for that would be, not to administer the law, but to make laws. The 6th vol. of Toullier, p. 343, No. 390, was also cited in support of that principle, *Expressio unius est exclusio alterius*. The 90th clause of the Provincial Statute, i. e. the interpretation clause, was cited, to show that there it was not mentioned, that the words Governor of the Province should mean Administrator of the Government, and reference was had to the 93rd Section, to show that for a certain purpose, mentioned in that Section, the administrator of the Government was named, inferring therefrom that it was not the intention of the Legislature to grant the power of issuing the Proclamation to any other person than the Governor of the Province, as in the clause relating to the issuing of that Proclamation, no other person was named.

On the other side, it was argued that the pretended principle "*expressio unius est exclusio alterius*," is a sophistry, that is, stated so to be by Mr. Toullier, in his 10th vol., p. 448, and cannot be supported by logical reasoning. That the powers confided to the Administrator of the Government result from the same source as those confided to the Governor.— That they are the same powers, and are derived from one and the same commission. That the Acts of the Legislature, in order to ascertain its intention, are to be construed as the will of a testator, and a Statute made for the public convenience must always have a liberal interpretation, so as

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\* Dwarris, p. 721

† Espinasse p. 3  
18 Plowd 366. 10

to give it effect; and Dwarris, on Statutes pages 665, 690, 712, 713, 720 and 722, are cited. That the insertion, in Acts of the Provincial Legislature, of the words Governor, Lieutenant Governor, or person administering the Government, was unnecessary, the word Governor would have comprised the whole, the other words were mere surplusage.—*Expressio eorum quæ tacite insunt nihil operatur*," Dwarriſ, 665. That to suppose the Legislature intended to make any distinction between them would be to pervert reason and drown knowledge in words.

Amidst the apparently conflicting precedents cited, there is one point which obtains universal consent, and that is, that the intention of the Legislature in passing a Statute, is always to be sought for as the fixed rule of construction, and the difficulties which exist, are as to the mode of interpreting that intention.

Some of the English Judges have deemed it the safer mode to adhere literally or to the plain words of an Act, as the surest guide for what the Legislature did say,\* than by an extended interpretation to suppose what they meant to say; whilst others of them, and by far the greater number, lay it down as a rule, that the intention of the Legislature can never be controlled by the letter or wording of the statute; but the wording may, by the obvious intention, for a thing may be within the letter of a Statute, yet shall not be taken as within it, unless it be within the intention of the maker of it.†

With respect to ascertaining the "intention," when it is attempted for our guidance to deduce a general principle, such as that "*Expressio unius est exclusio alterius*," from a limited number of decisions, on particular grounds, and make that principle applicable to every other case, this is what is called hasty generalizing, which, if trusted, will lead us into error; and, from the number of contrary decisions to be found in the books, we are warranted in rejecting that pretended principle altogether, as applicable to the present cause.

Before I proceed further, it may not be improper to inquire, What are the powers and attributes of an Administrator of the Government of the Province.

I have taken an extract from the Commission of an early Governor of Canada, remaining in the Provincial Secretary's Office at Quebec, and perceive, by the Proclamation of his Excellency Sir Richard Downes Jackson, dated at Kingston, the 24th September last, announcing that the Government of Canada had devolved upon his Excellency, that the expressions in that Proclamation, taken from the Commission of the late lamented Lord Sydenham, are the identical expressions contained in this extract, whereby, I presume, that the same words have been inserted into the Commission of every Governor, they are as follows:—"And if, upon your death, "resignation, or absence out of our said Provinces, there be no person upon

\* Dwarriſ, p. 721, 6 B. and C. 475.

† Espinasſe p. 34 2 Roll: 318. 11 mod. 161 Litt. Rep. 212—3 Co: 59 Plowd: 18 Plowd 366. 10 Co. 57. 4 T. Rep. 2.

" the place commissioned or appointed by us to be our Lieutenant Governor, or appointed by us to administer our Government within our said Provinces, our will and pleasure is, that the senior officer, for the time being commanding our forces in Canada, shall take upon him the Administration of the Government, and execute our commission and instructions, and the several powers and authorities therein contained, to all intents and purposes, as other our Governors, Lieutenant Governors, or persons Administering our Government, until our future pleasure be known."

It will be perceived by this that the power and authorities of the Governor and Administrator are identically the same, and that *quoad* the administration of the Government they differ in nothing but in name.

The question to be decided is this:—The Provincial Parliament pass an Act for the public advantage purporting to be for the more easy and expeditious administration of Justice in Civil causes, and the Governor of the Province is directed to issue his Proclamation, with the consent of the Executive Council, on or before the 1st December, for the purpose of putting the Act into force. The Governor dies in the interim, and the administrator of the Government, with the advice of the Executive Council, issues the Proclamation and puts the law in force. Shall we ascribe to the Legislature the "intention" of having such a narrow construction put upon the words "Governor of the Province" as will render nugatory the whole Act?—and it must be remembered that after the 1st day of December, that Act could not be put into force, for when a Statute imposes a term and prescribes a thing to be done within a certain time, even the lapse of a day is fatal, it cannot be done afterwards.\*

I cannot shut my eyes to ninety-four clauses of the Act, for the purpose of construing one other clause in a manner to annihilate the whole—because "the most natural and genuine way of construing a Statute is to construe one part by another part of the same Statute, for this best expresseth the meaning of the makers thereof, such construction is moreover *ex viceribus actus*,"† and because—"The words of a Statute ought to be so construed as to give effect to the Statute *Verba ita sunt intelligenda ut re magis valeat quam pereat*,"‡ and because—"such construction ought to be put upon a Statute as may best answer the intention the makers of it had in view, *for qui heret in litera heret in cortice*,"§ and—"a Statute which concerns the public good ought to be construed liberally,"|| also—"such construction ought to be put upon a Statute as does not suffer it to be eluded."¶

To shew that the express designation of one person for a particular purpose is not the express exclusion of all others for the same purpose,

\* Dwaris & 5 Bro: P. C. 448.

† Bacon's abridg. P. 645-1st Inst.

‡ 2d vol: Dwaris, p. 689.

§ Bacon's abridg. Verbo Statute p. 647. 2d Dwaris, 690. 2. rep. 73.

|| Dwaris, 650.

¶ Ib. 652.

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\* Espinasse p. 1

† 2d Dwaris, p

‡ 2d Dwaris, p

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we find that "when a Statute makes a new Law and appoints certain  
 " Justices to execute it, although the Justices of the K. B. are not by ex-  
 " press words authorized to execute it, yet they may execute it,\* and" if  
 an Act speaks of the King generally and indefinitely it extends to a Queen,  
 if the Crown descend to a female.†

The remedy given by the 9th Ed. III. c. 3. against executors, has been  
 always extended by an equitable construction to administrators, and the  
 ground is plain that it reaches to all others in a like degree.‡

Il existe (says Mr. Toullier §) peu de raisonnement plus vicieux que  
 l'argument trivial, *qui dicit de uno negat de altero*. Even in penal statutes  
 which are interpreted the most strictly, the mention of one name may be  
 considered as comprehending another, as in the Soldier's case reported in  
 Croke Car. page 71. This case was propounded by his Majesty to all  
 the Judges, to be by them resolved:—

Whereas a man had received press-money, to serve the king in his wars,  
 was enrolled, had taken pay, and was delivered, amongst other soldiers, to  
 a conductor, to be brought to the sea side, did, afterwards, withdraw him-  
 self and run away without licence,—whether this departure be felony,  
 within the meaning of the Statutes (7th II. VII., c. 1, and 3rd II. VIII.,  
 c. 1). Three of the Judges conceived that it was not felony, because the  
 Statutes mention only the departure of soldiers from their Captain, who is  
 a special named person, and of special note and place, and the soldier who  
 departs ought to be delivered unto him as his Captain, and he ought to be  
 a Captain in the wars; and a conductor is such a person only who is hired  
 to guide soldiers in the way or part of the way to their Captain, and such  
 conductors are new officers, &c. But it was resolved by nine Judges  
 against three, that a conductor is a Captain within the meaning of the  
 Statutes.

This is an old authority, and the defendant's counsel would make a  
 distinction between old and new divisions: I should do so also, were it not  
 that the laws of reason and good sense are immutable and common to every  
 age.

It must be observed that it was to the office of Governor, and not to the  
 exalted personage who filled it, that the power was intended to be given.  
 It was the officer, and not any particular man, who was directed to put the  
 law into force. To say that the Provincial Legislature intended otherwise,  
 would be a presumption that they meant a thing beyond their control, for  
 the terms "Governor of the Province" are general terms,|| and comprehend  
 any person whom her Majesty may be pleased to appoint to that high office,  
 and as it has already been shewn that her Majesty has granted the same

\* Espinasse p. 12, 11 Co: 64. b.

† 2d Dwarris, p. 669, 12 Rep: 110.

‡ 2d Dwarris, p. 722.

§ 10 vol. p. 443.

|| "Verba generalia restringuntur ad habilitatem personæ vel ad aptitudinem rei."—  
 Dwarris, 689.



identical powers, and by the same commission, to the Administrator of the Government, the terms Governor of the Province and Administrator of the Government, ought to be considered in law, as they are in fact, synonymous.

Entertaining, as I do, this view of the subject, I shall now proceed to examine whether there is any thing contained in the authorities cited by the defendant's counsel, that can militate against it. And first, as to the authority from Espinasse, p. 13, with respect to the "designatio personæ," I find these words in the paragraph which follows that authority:—"But this rule must be taken to apply generally only, where the Statute gives "or creates a new right, to or for any person, which right was not in use, "or in the enjoyment of any other person before; for if any person before "was authorized to do the same act, by reason of any antecedent right or "statute, he is not thereby excluded, but they shall have concurrent jurisdiction or right." Now the words, "to the same act," must mean any similar act, and as the act required to be done by the Governor of the Province was an act similar to what the Administrator of the Government, in the absence of the Governor, was always authorised to do, namely, the issuing of a proclamation to put the law into force, the Administrator, according to this authority, is not excluded by the Statute from issuing the proclamation, more particularly as the Statute contains no negative words to exclude him; and in page 11, of Espinasse, from whence the other authority is quoted, I find these words, "To the rule laid down there is "this exception, that in cases of *public concern*, and where there are no "negative words in the Statute, the Court will allow *ex necessitate*, a latitude "of construction."

The case of Jones vs. Smart, in 1st vol. T. Rep., to which so much importance was given in the argument, was whether a diploma, conferring the degree of Doctor of Physic, granted by either of the Universities in Scotland, gave a qualification to kill game under the 22nd and 23rd Car. 2, cap. 25, and it was there decided that it did not; and that, according to the words of the Act, "*an Esquire, or other person of higher degree, as such, is not qualified under that Act, though the son of an Esquire, or the son of another person of higher degree is qualified.*" Lord Mansfield, C. J., and the three Puisne Judges, who heard the cause, admitted that absurd consequences would follow from giving a privilege to the son which the father had not,—that it was not the intention of the law-maker, purposely to exclude the father,—that the blunder was committed without meaning it: and three of the Judges decided that they were bound to take the Act of Parliament according to the meaning of the words, and that an *omissus casus* cannot be supplied by a Court of Law, for that would be to make laws; but Mr. Willes, the senior Puisne Judge, "a very great common lawyer," (according to Lord Eldon),\* and who was afterwards Chief Justice, expressed his dissent to that judgment in the strongest terms, and pronounced the construction put by his brother Judges upon the Statute to be unnatural and unreasonable.

\* 7. Price, 509.

If, however, the Court, and is only to the present case did what was intended by the Act, which was

One of the leading principles of the law is that this was the intention of the Statute the Chief Justice, and he also

I shall put this question to the Court:—Did the Governor authorise the raising of a militia at Quebec, and did he do so on a certain day, issued a proclamation to take up a position, or was absent before the General, or next day, or could; because the Statute mentioned in the case is "Licutenant General, and the time being, any other person who could frustrate the object of the Statute."

There is another objection, namely, the possibility of being decided in favour of the Statute used in both Statutes, and the intention of the sense in which the Statute is to be construed.

By the Imperial Statute, "and Lower Canada, and the authorities expressed in the Statute to be exercised by the Governor of her Majesty's order in Council for the Province," are found in the Statute made in the intention of the Province of Canada, and the Governor, Licutenant General, and the functions of the Provincial Statute, and the Executive Government, and both Statutes mentioned in the Statute of one of these Statutes.

\* Dwarris, 701. 4



If, however, that decision, which had not the sanction of an unanimous Court, and is only a decision upon the Game Laws, could at all be applied to the present case, it would go to prove that the Provincial Legislature did what was unreasonable and absurd, or that there is a *casus omissus* in the Act, which we cannot presume from what has been already stated.

One of the learned counsel has put a case hypothetically, and it seemed that this was the strongest portion of the argument, namely, whether, if by a Statute the Chief Justice were empowered to perform some new judicial duty, any of the Puisne Judges could, in his absence, perform the same duty? The answer would be that they could not; but then this supposed case is one not of legitimate hypothesis, as applicable to the present, because there is no antecedent circumstance from which you can interpret that the intention of the law was to give the power to any other than the Chief Justice, and he alone being mentioned, the others are excluded.

I shall put this case,—suppose that an Act of the Provincial Parliament authorised the raising, within a limited time, of an army, to be quartered at Quebec, and directed that the Lieutenant General should, on or before a certain day, issue an order for marching off the army from Quebec, to take up a position elsewhere, and that the Lieutenant General either died or was absent before the day mentioned had arrived—could the Major General, or next senior officer, legally issue the order? Most certainly he could; because the private name of the Lieutenant General not being mentioned in the Act, the Legislature must have intended by the words “Lieutenant General,” any person having command of the army for the time being, any other interpretation would swerve from their intention and frustrate the object they had in view in raising the army.

There is another point of view in which this question is perhaps susceptible of being decided.

It is a rule that where Acts are *pari materia*, if the same word be used in both Statutes, a distinction made in the one is a legislative exposition of the sense in which it is to be understood in the other.\*

By the Imperial Statute, the “Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada,” all the powers and authorities expressed in that Act, in relation to the Government, are to be exercised by “the Governor of the Province of Canada,” subject to her Majesty’s orders and instructions. These words, “Governor of the Province,” are found in many clauses of that Act, and then a distinction is made in the interpretation clause; that the words “Governor of the Province of Canada,” are to be understood as comprehending the “Governor, Lieutenant Governor, or person authorised to execute the office or the functions of Governor of the said Province.” The clause of the Provincial Statute is in *pari materia*, because it directs an Act of the Executive Government to be performed, the issuing of a proclamation; both Statutes mention the same words, “Governor of the Province,” and one of these Statutes explains to us what these words shall comprehend.

\* Dwarria, 701. 4 T. R., 419. King, G. T. Smith.

In proceeding to deliver the opinion of the Court upon the second ground of objection, I shall not stop to enquire how far the proof adduced in support of it is regular, or whether any consent or admission of facts given by suitors here could have the effect upon an appeal to another tribunal, to justify such tribunal in deciding whether this Court has or has not jurisdiction. This may be a question elsewhere, but knowing personally that the admission of facts filed contains the truth, I am desirous, so as not to evade the question, to waive the irregularity and decide the objection upon its merits.

It was contended, for the defendant, that the Crown has exceeded its power by appointing one person to the office of Judge of three separate Districts, that the three offices are incompatible in law, and cannot be held by one and the same person.

That the Judge of each of these Districts should reside during the whole year within the limits of the District, which is described in the Statute to be a local limited jurisdiction, and that the appointment of one Judge to these three offices is a complete denegation of justice to the poor.—That the object of the Statute, which purports to be for the more easy and expeditious administration of justice, is frustrated, and the old cry, that justice ought to be brought to every man's door, is yet unavailing.—That the words of the Statute, which authorise the Governor to "appoint a District Judge " for each and every of the said Inferior Districts, in which a Court shall " be established," could never be so construed as to give the power to appoint one person as Judge of three Districts.—That it is a principle of law, where offices are incompatible, the acceptance of a second office vacates the former.—That although each of the commissions is in itself legal, yet, by the acceptance of the three, they are become forfeited.—That as the Crown could not have issued the three commissions, the one after the other, for in that case the one would vacate the other, it can have no power to issue the three, at one and the same time.—That it was the duty of the Judge not to have accepted of more than one commission, and to give for reason to the Government that, if he accepted the three, he would render himself subject to a criminal prosecution.—That as the Judge must be occasionally absent from each of these Districts, no writs of *saisie gagerie*, *saisie arrêt*, or *saisie revendication*, can issue in his absence, and these are all writs which can admit of no delay; likewise, that no appeal can be obtained in the absence of the Judge, who is bound to certify the record.—That the presence of the Judge in one District would not justify his absence from the other, because such absence would be a voluntary and a criminal absence, and could not be given as an excuse against an action of damages, which any party aggrieved might bring against him.—That if the proclamation had not made so many Districts, the mischief would have been avoided, but that as it is, there has been no compliance with the letter or the spirit of the Statute.

The incompatibility and inconvenience alluded to, occupied a wide range of argument, in support of which the following authorities were cited for the defendant:—

Chitty on P  
Letter B, p. 1  
Reports, p. 81  
29. Comyn's  
vol. T. Rep. 8  
on Lit. p. 238  
142, 501. J

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Chitty on Prerog., page 76, 83, 84, 87. Comyn's Digest, vo. Office Letter B., p. 136. Petersdorf Office, p. 5, and the note. 2nd vol. Term Reports, p. 81. Douglas, 398, note 2. Comyn's vo. Prerog, p. 61, D. 29. Comyn's v. Office, 190, B. 6, 191. Croke Car. 127, 128. 2nd vol. T. Rep. 87. Comyn's vo. franchise, Letter F. 24, p. 363. 1st Coke on Lit. p. 238. 1st vol. Hawkins, p. 412. 1st Russel on Crimes, p. 141, 142, 501. Jarvis, p. 68. 3rd vol. Atkins's Reports, p. 184.

It was said, in answer, that the three offices were not in law incompatible, but that even if they were, the three commissions would not be annulled, one of them would still be good.—That if the Courts were to be held on the same day, which is not the case, there would be incompatibility.—That the commissions do not require actual residence, and that if incompatibility should arise it must appear and be proved.—That the greatest inconvenience may arise, but it is a matter of fact, of which the Court here cannot take notice.

That the defendant's counsel admit that each commission was originally a nullity, and they invoke forfeiture; but forfeiture is the consequence of absence or neglect, and must first appear and be proved, and for this purpose a scire facias is the proper remedy.—That it was said the chamber business could not be conducted in the absence of the Judge, but the 23rd section of the Act authorises the Governor, in case of the sickness or absence of the Judge, to appoint a deputy in his place, and there is no proof that a deputy has not been appointed.—That the question of incompatibility is defective, 1st. Because it cannot be admitted that the acceptance of three commissions at one and the same time annuls and vitiates the whole three.—2nd. That supposing it works a forfeiture, it is not alleged in the exception.—3rd. Supposing the forfeiture to exist, and that there were an allegation of it, the Judge sitting here cannot be held to declare the forfeiture, because it is his own cause, and next, because it can only be proved by matter of record.—That the plea requires the Court to declare that it is no Court, and the Judge cannot declare that he has no jurisdiction.—That this plea is not known either by the French Law or the English Law, for the object of it is to try whether the patent given is a legal patent or not.

Authorities cited on the part of the plaintiff:—4 Burrow, 2005. Chitty on Prerog., p. 87. Croke Car. 491, 203, 128, 600. Bacon's Abridgt. Verbo Office, 208. Croke Eliz., 534. 2nd Term Rep., p. 87.—5th Term Rep., 466, repertoire de Jurisp. verbo incompetence, verbo declinatoire.

From a careful investigation of all the precedents cited on this second ground of objection to the jurisdiction, I find that they are referable to three heads or classes of cases.

The 1st.—Incompatibility of offices, i. e., where a person cannot hold at the same time two offices, one of which is subordinate to and under the control of the other, for in such case the office which the person first held is impliedly surrendered or vacated by the acceptance of the new situation.



county, may be removed for non residence in the county. The case in *Jarvis*, p. 68, goes further and shews that if a coroner dwell in the extreme part of the county, so that he cannot conveniently exercise the duties of his office, he may be removed by a writ *conrotore exonerando*; but all the authorities agree that if an officer, who holds his office by patent, commit an act incurring forfeiture, he cannot be turned out without a *scire facias*, for his right appearing of record, the same must be defeated by matter of as high a nature.

The District Judge of the Inferior District of Quebec is required to hold a sitting of the Court at Quebec in every month of the year, and to hold two sittings in each of six months—in all, eighteen terms at Quebec yearly. He will be absent from this District three and a half months in the year, and at no one period longer than eighteen days, and it remains to be seen whether this absence will hereafter create a forfeiture of the offices, or whether it can be considered as a criminal absence.

There is no man, whose understanding is trained to the investigation of truth, who will not distinguish between an absence on the public service and a wilful and criminal absence, nor will he easily presume that the chief magistrate of the country, from whom the three commissions are derived, and whose province it is to promote virtue and discountenance vice, will hold out to any one an encouragement to commit crime.

The Crown is the fountain of all power and authority, and has the nomination to all offices originally.\* It has an interest in its subject, and a right to his service;† and instances are not wanting in this country to shew that Judges have been called away from their Bench to give their services in another department—one Puisne Judge from Montreal sits at Quebec in the Court of Appeals. The Provincial Judge at Three Rivers absents himself from this District, also to sit at Quebec in appeal. If this absence be contrary to the principles of law, no custom can sanctify it; but I presume it to be a legitimate absence at the call of the Sovereign, and therefore that *that* which those high legal functionaries have not deemed improper, will not, on the part of the more humble District Judge, be considered as a crime.

With respect to the cases cited, which I have placed in the 3rd class, it is not necessary for me to notice them, as they have no relation to the plea filed, nor was any application made of them in the argument.

The Proclamation, it is said, made too many Districts, as it became requisite that a Judge should reside in each, and that there has been no compliance with the letter or the spirit of the Statute.

In the making of this statement, important and essential considerations have been left out of view, and a place and an importance given to those which are incidental and trivial; for instance, it was lost sight of, that the Statute gave to the Executive Government the full and absolute power of making the Districts large or small, and of carrying out the system in such manner as it should see best fitting for the public advantage.

\* Black's Com., B. 1, Ch. 7—Comyn's Vo. Office.

† 1 Salk, 169. 4 Mod., 273.

There was no way in which that could be done without some accompanying inconvenience, and the mode which offered the greater public advantage and lesser inconvenience, was that which seems to me to have been adopted.

If the Districts were made large, so as to give sufficient occupation to a Judge, many of the inhabitants would have to travel 90 miles to the District Court, which would not be in that case a Court according to the words of the Statute, "To which easy access may be afforded to Her Majesty's subjects for the attainment of justice," but it would verify what was said in the argument, of justice not being brought to the poor man's door. On the other hand, where the Districts are small you have three District Courts, instead of one, and these at convenient distances to suit the wants of the people,—again,—there are twenty-two Districts, and it never could be the intention of the Legislature to have twenty-two District Judges in Lower Canada, for in such case each District Judge, (those of Montreal and Quebec excepted,) would have very little to do, and his office would be almost a *sinecure*.

To make the Districts therefore sufficiently large so as to give occupation to a Judge, would not supply the public exigency as required by the law, but would frustrate the object of the Statute.

To appoint a District Judge for one small rural District only, would be unreasonable, and could not be the intention of the law maker.

By a Legislative Ordinance passed by the late Special Council for the establishment of District Courts in Lower Canada, similar to those established by the present Statute, the Lower Province was to have been divided, by the Governor's Proclamation, into Districts, each to be under the jurisdiction of a Sheriff, and by an amendment afterwards made by the Council to that ordinance, the Governor was empowered to appoint one Sheriff to two or more of these Districts.

The Proclamation not having issued, the ordinance was not carried into effect, and although it was not, it nevertheless proves in what manner that Legislative body considered the subject as most conducive to the public good. And as there are no words in the present Statute to direct that the Judge shall reside within the Inferior District, or to prohibit His Excellency from appointing one person to be the Judge of three, the ordinance in question may be considered as a legislative interpretation of what was right to be done by the government in this respect.

The words of the Statute relied upon in favour of the Defendant's pretension are these: "It shall be lawful for the Governor of the Province for the time being to appoint a District Judge for each and every of the said Inferior Districts in which a Court shall be established." These words may be considered ambiguous, but they mean nothing to prevent one person under three separate commissions from being "a District Judge for each and every of the said (three) Inferior Districts." If we look to the 8th clause of the Act we find these words: "And be it enacted, that the *District Judge of the Inferior Districts*, respectively, shall from

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"time to time appoint a sufficient number of fit and proper persons to act as Bailiffs for the service and execution of the process of the said District Courts respectively."—And again in the 16th clause, "And be it enacted, that it shall be lawful for the *District Judge of the several Districts*, in which a District Court is established as aforesaid in civil causes and matters legally cognizable in such District Court, to issue writs of attachment returnable in the said District Courts respectively." In the foregoing expressions, according to the grammatical construction of words in a sentence, it would appear that one Judge is to act for several Districts, but I attach no other importance to what may be considered inaccuracies of expression than to shew, in connexion with the considerations already mentioned, that it is a misapplication of the reasoning powers to argue that the appointment of one Judge to three Districts is either against the letter or the spirit of the Statute.

It is very true that suitors may suffer inconvenience and loss by the absence of the Judge from the District, when his *fiat* may be required for writs of attachment, which admit of no delay, but it is premature to say that the proper authority will not soon remove this inconvenience either by the appointment of a *deputy* under the 23rd clause of the Act, or by the Legislature giving a power to the Clerks of the District Courts to receive the necessary oaths and issue writs of attachment, and also to certify records of appeal without the *fiat* or signature of the Judge. A similar power was given by the 9th Chap. IV. cap. 4, to the Prothonotaries at Quebec, and was afterwards extended to the Clerk or Prothonotary of the Court at Sherbrooke.

Having noticed that which may become really a serious public inconvenience unless speedily remedied, I shall now remark upon two other alleged inconveniences which are purely imaginary, and which have been set forth in a published report, of the argument of the learned counsel for the defendant, though not mentioned in Court, but which I will presume were intended to be mentioned. 1st. Where a Judge from relationship or interest is incompetent to try a cause, the hardship of a suitor upon proceeding to another District and then again to another, and finding the same person to be the Judge in each. 2nd. The inconvenience, ridicule and absurdity of the District Judge of Quebec, addressing to himself a commission rogatoire as District Judge at Saguenay.

I shall use no epithet to characterize this mode of reasoning, but simply state, that if the three Districts had been only one District, as was contended they ought to be, under the jurisdiction of one Judge, the suitor when the Judge was interested, would have to apply to the Judge of the next large District, and such application would not render his journey shorter, nor his situation better, than it is now. And when the Judge would be required to address a Com. Rog. he would address a commission in the nature of a Commission Rogatoire to Commissioners, whom he would name and who would make to him their return, and there is nothing at present to prevent him from doing the same thing.



I make a distinction between inconvenience and incompatibility,—the inconvenience may be removed in the manner I have already shewn, but the incompatibility cannot, except by the removal of the officer from the office. I shall suppose that a District Judge was appointed to, and constantly resident in, one District, wherein the business was so great that no one man could possibly transact it; this would be a public inconvenience for which the proper authority would have to apply a remedy, but it would not be said that what the Judge did would be illegal, or that he had no jurisdiction, or could not hold his office, because of his inability to perform the whole business of the District.

Perfection in any system is not to be obtained suddenly, it is the work of time, and there is no Judicature Act amongst our Provincial Statutes which has not after experience been altered or amended, or in which some defect may not be pointed out.

It is whilst the District Courts are being organized throughout, that the plea in the present case has been got up, requiring, in anticipation of a future inconvenience, to have what has already been done by the Government, set aside. It is a case *sui generis*, and bears no resemblance to any other, nor can a vestige of analogy be traced between it and those cited. If, by the way of curiosity, we look back to the Roman Law, we find that an individual who would put in a plea like the present would render himself obnoxious to criminal punishment, for it was considered as a crime, even to question the right of the Sovereign to appoint whom he should think fit, to office;\* it is permitted to do so, however, under the genuine freedom which the Laws and Constitution of England afford, when done with decency and respect, as in the present case.

If we examine the French Law, which is nearly similar to the English in cases of incompatibility of offices, we see that the Courts of Justice cannot interfere with the Royal Prerogative, for the King, by his *Lettres de Compatibilité*, may render any office compatible, which would be otherwise by law incompatible,—“*Quoique des charges soient incompatible, on peut détruire cet obstacle en obtenant du Roi des Lettres de compatibilité.*”† Le Roy says Bourjon‡ est la source unique de la puissance publique; origine qu'il ne faut jamais prendre de vue en matière d'office.

Offices in France are compatible when their duties may be reconciled, and when the one is not below the dignity of the other,§ and with respect to the jurisdictions of the *juges des seigneurs*, which are limited local jurisdictions, not dis-similar to those of the District Courts, the Judges are in several instances exempted from residing within the limits of those jurisdictions.||

\* C. 9. 29—3.—Disputare de principali iudicio, non oportet; sacratissimi enim instar est, dubitare an is dignus sit, quem elegerit imperator.

† Rep. de Jurisp. vo. Incompatibilité.

‡ Vol. 1, p. 396.

§ Rep. de Jurisp. vo. Compatibilité, p. 266.

|| Il. vo. Juges des Seigneurs, pp. 602, 603.

The reason why Courts of law upon the incompatibility of the Prerogative, is that it is not compatible with one person, and that the Court do no more than what the King of England grants to one person, which is *de Compatibilité*, a delicate one, he has no law to the contrary in this case.

From the merits alone, the learned Court is decisive.

Upon the merits of the Government was legally and the appointment of the Court is legally.

The plea of the defendant and the defendant.

For the Plaintiff.

For the Defendant.

A similar judgment.

The Report of the Queen's Bench.

A wide field of case, and a multiplication, as well of which have been which the Court.

The Statute of the Province shall be the Court shall be the fourth section of the aforesaid, shall be mentioned, cognized after the passage of power, jurisdiction.

The reason as it seems to me, (and I advance it with much diffidence,) why Courts of Justice in England and France are empowered to decide upon the incompatibility of offices, and without interfering with the Royal Prerogative, is that when the Sovereign grants an office to a person, incompatible with one already held by such person, there is an implied agreement that the office first held shall be given up, and the Courts of Justice do no more than carry that agreement into effect, but should the Crown of England grant two or three incompatible offices at the same time, to one person, which grant may be considered as equivalent to the *Lettres de Compatibilité* of the King of France, the question would become a delicate one, how far a Court of Justice, in the absence of any statute law to the contrary, might interfere. The inquiry, however, is unnecessary in this cause.

From the desire which I have had to examine the present case upon its merits alone, I have not alluded to the close and apposite argument of the learned counsel for the plaintiff, which seemed to me to be technically decisive.

Upon the whole, I am of opinion that His Excellency the Administrator of the Government, had the power to issue the Proclamation, which power was legally and duly exercised.—That there is no incompatibility in the appointment of one person to be Judge of three Districts, and that this Court is legally constituted, and has jurisdiction.

The plea of declinatory exception is therefore dismissed with costs, and the defendant ordered to plead to the merits of the action.

For the Plaintiff, Mr. Aylwin.

For the Defendant, Messrs. Duval and Ross.

A similar judgment was rendered in the case of *Dalc vs. Fitzgerald*.

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BONNALI, PLTF. v. BEZEAU, DEFT.

The Report of the Judgment of the Chief Justice of the Court of Queen's Bench, Quebec, in this case, was as follows:—

A wide field of argument has been gone into, in the discussion of this case, and a multitude of authorities have been cited; but the consideration, as well of the arguments which have been used, as of the authorities which have been cited, is rendered altogether unnecessary, by the view which the Court takes of this subject.

The Statute referred to in the pleading, after enacting that the Province shall be divided into Inferior Districts, and that the District Court shall be held at a place to be appointed in each, then proceeds, in the fourth section, to enact, "that the said District Courts, to be held as "aforesaid, shall severally have, except in the cases therein after mentioned, cognizance of, and *from and after the first day of January next*, "after the passing of this Act, shall have *exclusive* cognizance of, and full "power, jurisdiction, and authority, to hear, try, and determine in a

" summary manner, all suits or actions (those purely of Admiralty jurisdiction excepted) wherein the sum of money, or the value of the thing demanded, shall exceed six pounds five shillings, currency, and shall not exceed twenty pounds, sterling."

This clause imports a repeal of the jurisdiction of this Court, in respect of the suits therein mentioned, from and after the first January last, the words "*exclusive cognizance*," as they are found in this clause, having the same effect as if, in express and formal terms, it had been declared that, from and after that day, this Court should cease to have jurisdiction over such suits. The case has been argued, as if the power of this Court was to cease, not on a certain day, but on the establishment of District Courts, and if such had been the language of the Legislature, the validity of the establishment of those Courts, involving that of the Proclamation referred to, would have come in question, under this declinatory exception. But the Legislature has not thus expressed itself. On the contrary, by the clause above recited, the Legislature fixed prospectively a future day, on which the jurisdiction of the Courts of King's Bench, throughout Lower Canada, was to cease,—the moment that day was past, the jurisdiction of this Court became extinguished, without reference to the legality or illegality of the establishment of the District Courts. The only question, then, before us, being whether this Court has or has not jurisdiction, and our jurisdiction having been clearly taken away, we are not called upon, and it would be foreign to our duty, to inquire, whether the newly established Courts, to which it was the intention of the Legislature to transfer the jurisdiction of the Courts of King's Bench, have been legally constituted or not; it is sufficient, for the determination of the question raised on this issue, that this Court has, by the enactment of the Legislature, been deprived of its jurisdiction, over the subject matter of this suit. The Court being of this opinion, the judgment is, that the declinatory exception be maintained, and that this action be dismissed with costs.

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#### IV.

The following brief account of the transactions which occurred during the late rebellion in Upper Canada, has been compiled from authentic documents. Its correctness may generally be relied on. We seek to give umbrage to no one; but have every where endeavoured to observe that strict impartiality which is indispensable to true history: and shall be glad to retract any misstatements we may happen to have admitted, undesignedly, on being convinced of our error:—

The rebellion which broke out in Upper Canada, in December, 1837, is stated in the *Foem* to have been a simultaneous movement on the part

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of the Upper Canada insurgents, in concert with the outbreak in the Lower Province. This fact is attested by the declaration of Mackenzie himself, in an account of that rebellion which he dated from Navy Island. In this document he informs us, that he and his colleagues "kept up a good understanding with the reformers of Lower Canada; and concluding that "arbitrary imprisonments and a declaration of military execution would "follow the anticipated movement at Montreal, we resolved to second the "Lower Canada movements by others equally prompt and decisive."

To effect this object, it was agreed on, by twelve leading reformers of the Home District, during the month of November, 1837, that on Thursday, the 7th of December ensuing, between the hours of six and ten in the evening, the "Friends of Freedom" in the several Townships, led by their respective Captains, should meet at Montgomery's Tavern, on Yonge Street, a few miles in the rear of Toronto, march to the city, seize four thousand stand of arms which were deposited in the City Hall in the keeping of the Mayor and Constables, dismiss Sir Francis Bond Head, and proclaim a republic.

By some misunderstanding, originating from a verbal order which superseded the sealed commands of Mackenzie, the rising of the insurgents took place on the Monday preceding the day of appointment; and accordingly, on the evening of Monday, 4th December, a considerable number of men, armed with rifles and pikes, had assembled at Montgomery's Tavern. As the object of their rendezvous could be no secret, Colonel Moodie, a gallant but imprudent officer, who lived some distance beyond the tavern, attempted to make his way through the ranks of the insurgents into town, in order to apprise the government of their danger. He was stopped by a guard of the rebel band, stationed for such objects at a barrier they had placed across the road: as he insisted on being allowed to pass, and was refused permission, he fired his pistol at the guard, but without injury; instantly four rifles were levelled at his breast, he fell to the ground mortally wounded, and died in about two hours.

Thus the first blood was shed; but it remained not long unexpiated.— During the enactment of this tragedy, Mackenzie, who appears to have now quailed at the magnitude of an enterprise for which he seems to have possessed no single qualification, instead of advancing directly upon the city, to surprise it with his band of patriots, rode down in company with four others for the purpose of reconnoitering. Here he met John Powell, Esq., since Mayor of Toronto, and A. McDonnell, Esq., who had ridden out from the city for the very same object from the opposite party.— Powell, who had nothing for his defence but a small pair of pocket pistols, on being made prisoner by Mackenzie, and ordered to give up his arms, denied having any. He and McDonnell were then given in charge to two of Mackenzie's followers, to be brought back to their guard-house. On their way thither, Powell, having heard that Colonel Moodie had been shot, was resolved to effect, if possible, his escape at all hazards, and to apprise the government of their impending danger. Accordingly he endeavoured

to drop behind, although threatened by Anderson, the second in command of the insurgents, in whose custody he was, with instant death if he attempted to make his escape. Finding, however, all other methods fruitless, he watched his opportunity, shot Anderson dead on the spot, and fled, accompanied by McDonnell, towards the city, followed by the pistol ball of Anderson's companion. On their way thither they again encountered Mackenzie, who fired his pistol at Powell, but without effect. Powell contrived to make his way to the city, down the College Avenue, and apprized Sir Francis Bond Head of the approach of the rebels. McDonnell was recaptured, and brought back prisoner to the rebel guard-house.

Sir Francis Bond Head immediately repaired to the City Hall, at the Market Square, where four thousand stand of arms and accoutrements were deposited. One of the first persons he met with here was the Chief Justice Robinson, with a musket on his shoulder. He immediately ordered the arms to be unpacked, and the alarm bell rung: speedily he was joined by a whole host of gallant fellows, who were soon armed and provided with ammunition. They manned the windows of the City Hall and those of the houses opposite; then the Lieutenant Governor, having stationed one of his Aides-de-Camps, the Hon. Mr. Justice Jones, with a piquet of thirty men near the rebel post on Yonge Street, tranquilly waited for the morning.

On the next day, Tuesday, the rebel numbers, according to Mackenzie's account, amounted to eight hundred; but ill equipped however with arms and ammunition.\* About noon they received intelligence that the force in the city amounted only to one hundred and fifty, including the pupils of the College, who, although but beardless school-boys, would in all probability have displayed more *pluck* than was exhibited soon afterwards by Mackenzie's Sons of Freedom. They knew that your bullet, so it be well directed, never stays to inquire whether it was a man, a woman, or a boy, who pulled the trigger. At one o'clock, a flag of truce arrived from Sir Francis Bond Head, (after Colonel Moodie had been detained and murdered on the King's high-way!) borne by Dr. Rolph and Mr. Baldwin, to inquire what terms would satisfy the malcontents. They answered, with a firmness that was worthy of a better cause, "INDEPENDENCE."† Immediately after the dismissal of these messengers, Mackenzie gave orders for an advance on the city, directing Colonel Lount to occupy a post near the Lawyer's Hall. When he had proceeded down Yonge Street, as far as the College Avenue, he was met by another *polite* message from Sir Francis, who also answered in one word, "NEVER!" He still continued to approach, when, being within musket shot, he either quailed at the coming peril, or, according to his own assertion, received a message from the

\* Sir Francis Bond Head estimates them at between four hundred and five hundred.

† Doctor Rolph, who was to have been the first GOVERNOR of the new republic, in the event of the insurgents' success, drew Mackenzie aside, after delivering his message, and advised him to attack Toronto instantly. This person had offered his services to the government, to be the bearer of the flag of truce, in order, as he represented, to prevent the effusion of blood.

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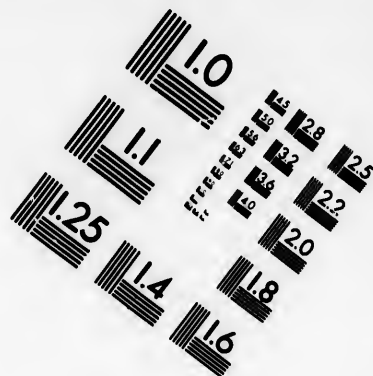
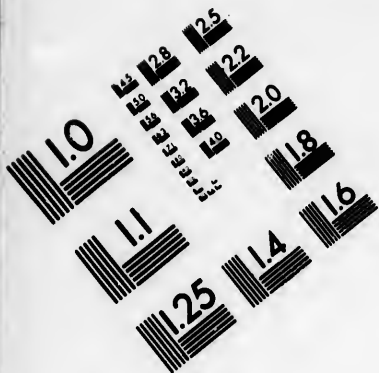
EXECUTIVE of the rebels, to defer his attempt till evening. This indecision and delay transfused his own timidity into his adherents, and proved the utter ruin of all his idle, wicked and malicious hopes.

In the mean time the little band of citizens, who adhered to the government, although unaided by a single military man, and narrowly watched in every movement by the residents who were in Mackenzie's interest; although unapprized of the extent of their danger from without, and naturally disposed to magnify it by reason of the uncertainty of intelligence; expecting also an attack at every instant, were resolved to die *game*, and to omit no precaution which would enable them to retrieve, in the event of being compelled to abandon the city to the enemy. Accordingly, the specie was taken from the coffers of the banks, and placed on board a steamboat in the bay, whither Sir Francis also bestowed the more precious freight of his lady and family; the Upper Canada Bank was converted into a little fortress, all the lower sashes of the upper windows being removed and replaced by wood work rendered bullet-proof, and loopholed for musketry; a barrier was placed at the north-eastern angle of the Market Square, in which the much-sought arms were deposited; and cannon were stationed, in order to sweep the streets, as soon as the enemy might make their appearance; a considerable number of active young men were sworn as special constables by the magistrates, to prevent disorders in the city; the city militia was raised and armed, and had their orders whither to repair in the event of an attack. Sir Francis Bond Head garrisoned the Government House with fifty stout fellows, who were always at their post; and the residences of private individuals were prepared against assault, or for the annoyance of the enemy, according to the means and probable exposure of the occupant. The following anecdote, which may be relied on as authentic, will serve to shew both the alarm which prevailed within the city, and the decision and determination of the little band who felt themselves charged with its defence.

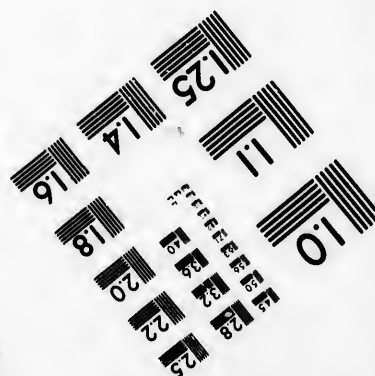
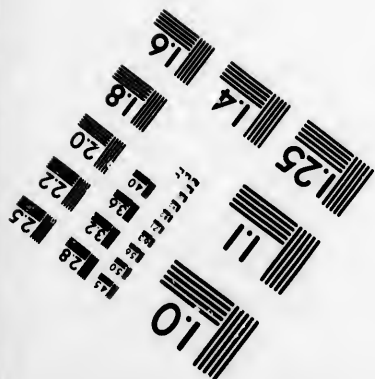
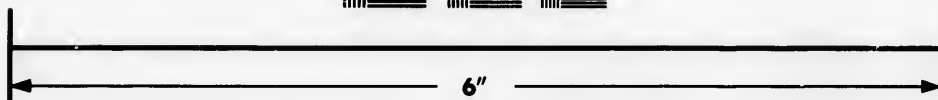
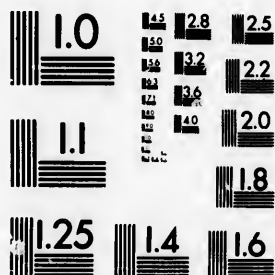
On Wednesday, Dr. Morrison was arrested on a charge of being implicated in the conspiracy, and was conveyed to the old Gaol, now the Lunatic Asylum. At the time of which we write, the Wellington Buildings were not in existence, and there lay an open area in front of the Gaol and the Court House, on which area that block of buildings at present stands. As the Doctor was being accompanied to prison by the officer who arrested him, a vast concourse of the citizens, apprehensive of no danger, ran in a crowd to witness the *fun*. Happily a farmer, who was well acquainted with the city, and who had been detained in town by the impromptu of his waggon and horses for the uses of the government, had left the crowd considerably sooner than the rest, and having business beyond the market place, had proceeded near the large gate at the northern entrance to the market, when he perceived that the gunner, who stood at a cannon pointed at the returning crowd and loaded with grape, held a portfire lighted in his hand, and was just about to apply it to the piece, in order to discharge it on the multitude, supposing them to be a large body of Mackenzie's people,







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advancing to seize the arms in the market place. Knowing the truth, with great presence of mind the farmer cried out to the gunner to stay his hand, for they were his friends. But for this timely interference, more lives would perhaps have been sacrificed on this occasion, than were lost during all this winter besides. A cannon, once fired in Edinburgh into a crowd, during a time of civil commotion, is reported, by Hume the historian, to have destroyed a hundred persons.

During the night of Tuesday, Mackenzie represents himself as having moved upon Toronto, and states that his attempt was rendered abortive by an unaccountable panic which seized his gallant myrmidons.\* Indeed, if one might be allowed to form a judgment from the conduct of Sir Francis Bond Head throughout, it would seem more likely that his object was to draw Mackenzie into Toronto, by inspiring him with the vain confidence likely to be produced by his seeming to sue for terms from a rebel band, after the murder of Colonel Moodie. Had he succeeded in enticing Mackenzie in, there is little doubt that the traitor would have had such terms in fire and steel, as would have made him for ever forget his demands of independence. Yet, to a gallant band, under a spirited leader, the city must have fallen an easy prey. But the Lieutenant Governor was too acute an observer of human nature not to know with whom he had to do, and accordingly he openly avowed, in a despatch to Lord Glenelg, that he thought "the more he encouraged them to consider him defenceless the "better."

Sir Francis, who had ordered strong reinforcements of volunteers from Cobourg, Hamilton, Niagara, and other places, to repair promptly to Toronto, as the city was threatened with an hourly attack by a body of insurgents stationed on Yonge Street, within about three miles of the city,—resolved on adopting a different course from that which he had pursued hitherto, of standing on the defensive. Had the ancient legend of the sowing of the dragon's teeth been realised, and men sprung in vigor of manhood from the bowels of the ground, the city of Toronto could not have been better garrisoned than on Wednesday, which was consumed by the rebel chief in heartless robberies of the helpless, and in carrying away the mail, stage, horses, and all, from Dundas Street, with wise precaution for futurity. Mean time, there were not arms sufficient for those who sought them in the city, and the welkin resounded with perpetual discharges from the newly distributed guns, which not even the orders of Sir Francis Bond Head could repress, as each militiaman tried his musket, knowing that on the very next day he was to prove its goodness in open field with the enemy.

Thursday came, and the arrangements for the attack on the rebels were ably made by Colonel Fitzgibbon, who was entrusted with that onerous duty. Sir Francis Bond Head has been reprehended for having superseded Fitzgibbon in the command, just as the arrangements were completed, and

\* In fact, his host had encountered an advance piquet, under the command of Mr. Sheriff Jarvis, who drove them back with the loss of one killed and several wounded,

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the gallant militia were in movement to the attack. This charge however is not true, Sir Francis appearing on the field only in his capacity of civil governor. Fitzgibbon therefore justly bears the credit of the arrangements, and has since been rewarded for his services to the government, on this and other occasions, by a grant of five thousand acres of wild land. Simultaneously with the movement of the volunteers from the city,—who just knew enough of military matters to be aware which end of the gun they were to point towards the enemy,—was a detachment dispatched by Mackenzie, which, by a circuitous route, was to proceed and fire the Don Bridge. This detachment, consisting, according to Mackenzie's account, of forty riflemen and twenty others, arrived at their destination after the loyalists had quitted the city, (which, however, was not left defenceless), and proceeded immediately to set fire to the bridge and the house adjoining. A cry of fire was instantly raised by some persons who observed not its cause, and the firemen, being exempted by Statute from military duty, speedily repaired to the spot. The rattling of their engines induced Mackenzie's GALLANT SONS OF LIBERTY to fancy they heard the wheels of the artillery. Without waiting to see the danger, they courageously took to their heels, and scampered off.—Mean time, the militiamen from the city advanced steadily up Yonge Street to the sound of martial music, disdaining to take the Sons of Freedom by surprise. The morning had been wasted by the rebels in fruitless consultation, which was still unfinished when word came that the loyalists were advancing upon them with music and artillery. Speedily the roar of cannon followed the announcement; this was soon succeeded by musketry. Mackenzie's corps fired a volley, by which three men were wounded, one in the head, one in the hand, and one in the foot. Although he reports that several volleys were fired by the rebels, and that several of the enemy were killed. Soon, however, considering flight the best part of valour, they fled, leaving behind them seven of their party dead. A considerable number of prisoners was taken, all of whom Sir Francis Bond Head, (after giving them a severe lecture on the wickedness and insanity of their conduct), whether despising their pusillanimity, or actuated by motives of clemency, but most probably for both reasons, forgave on the spot, and ordered to be set at liberty. This was a magnanimous set-off for the mild and honorable treatment which Mackenzie had extended to several respectable persons who had accidentally fallen into his hands, and were detained by him during his stay on Yonge Street.

After the discomfiture and dispersion of the rebel host, Mackenzie fled to the United States, with a reward of £1000 set upon his head by the Canadian government. Previous to this, and immediately after returning from his traitorous message to Mackenzie, took place the disappearance of Dr. Rolph from the city of Toronto; for whose apprehension £500 were offered, as soon as his treachery was detected. Several other of the rebel chiefs were also gazetted about this time, with large rewards for their apprehension. And, after a little time, Colonel Lount and Captain

Mathews were taken by the loyalists. They underwent a trial before the Chief Justice Robinson, were found guilty of high treason, and hanged at Toronto during the administration of Sir George Arthur; Sir Francis Bond Head having been recalled, soon after the occurrences we are here relating.

During the early part of the week which was spent on Yonge Street, Mackenzie had caused a large impression of the Colonial Advocate, a newspaper of which he was the editor, to be struck off and transmitted to the west, wherein the Sons of Freedom were informed, that their brethren were in arms at Toronto; that Sir Francis Bond Head was closely blockaded in the market place, and had been compelled to sue for terms from the insurgents. All this, which lied like truth, was propagated industriously in the west, and loyalty had begun for a few days to look extremely *blue*. During this interval, a large body of about three hundred rebels had arisen in the London District, and placed themselves under the command of Duncombe, Alway, and other rebel chiefs. Speedily, however, the appalling news of the disaster of Mackenzie succeeded to this lying gasconade; and Duncombe, hearing that Colonel, since Sir Allan McNab, (who had raised a vast body of volunteers in a few days, by Sir Francis Bond Head's directions), was proceeding by hasty strides to overwhelm him, mounted his horse, and abandoned to their fate the misguided creatures who had hazarded their all to follow his ill-fated standard. He took refuge in the United States, and thus escaped at once the double vengeance of the government against which he had revolted, and of the victims of his treachery. Large numbers of these surrendered to Sir Allan McNab, who treated them with much compassion and humanity: and this gallant Colonel marched in triumph through the west, without striking a single blow.

During the progress of McNab through the western counties, several little acts of petty aggression were practised by individuals of the victorious army, and sometimes, perhaps, even with the connivance of their officers, upon the property of persons who were known to be disaffected to the government. Indeed, it was not to have been expected, that a large body of young men, roused from their homes to bear the rigors of a Canadian winter, and to face a rebel foe, who were denied the little kindness of a draught of cold water, or the use of a vessel to draw it, when thirsty on their march, would not feel a just indignation at a churlishness on the part of fellow-subjects, which would not be practised by a generous enemy, and which was so openly at variance with the proverbial hospitality of the Canadian farmer. Several little acts of aggression were accordingly practised, probably in retaliation for this ungenerous conduct, which served to augment the growl of discontent. Amongst other insults, the sign-posts of taverns kept by disaffected individuals were generally cut down, and other little acts of a similar kind, although it is to be hoped not much more heinous, were committed. Yet so highly were these indignities resented, that numbers of the disaffected sacrificed their properties for a mere trifle,

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and fled to Detroit, or other places on the Michigan frontier. Scarcely a day passed which did not bring fugitives into that State, who represented the condition of the Canadians, under the aggressions of the government and its adherents, as utterly insupportable. As all who came told the same story, and supported their representations by narratives of incidents, related with all the aggravations of hatred, they easily wrought upon the simplicity and credulity of an unsuspecting people like the Americans, who had, in many instances, been from infancy taught to associate the British name with injustice and oppression, and who, of course, were utterly ignorant of Canadian affairs, but from the report of those who were blinded by resentment and enraged by defeat. A similar course was practised, with similar effects, by Mackenzie and the other refugees who had fled across the Niagara frontier, and taken shelter in the State of New York. These represented the Canadians as engaged in a glorious struggle for independence, which was only defeated by a casual mistake in the time appointed for the rising; exaggerated beyond all bounds the number and influence of their adherents; and aggravated the exclusion, the injustice, and alleged imbecility of the Canadian government. Brother Jonathan easily lent his ear to the tale, and the more so, perhaps, because it promised to the speculations of individual selfishness a rich reward: he flattered himself into belief that the British Lion had fallen fast asleep upon his post, and could easily be stolen upon, and knocked in the head. But the monstrous brute was never more wide awake; he but lay motionless on the ground, with his eyes glancing around in every direction, marking strictly what passed on all sides within his view, and ready to make his spring at a moment's warning.

The representations of Mackenzie and his colleagues, who claimed for their ill-timed and worse-conducted revolt, a kindred object with that of the Revolution of the United States, being infused into ears unfriendly to the British, begat for them speedily a substantial sympathy all along the line of the Niagara frontier. Agents were despatched to a distance, and Committees were formed at various places, to collect subscriptions, and to raise recruits to aid the cause of the suffering Canadian Patriots. At Rochester, Buffalo, and other places in the State of New York, bodies of men were raised, and forwarded to Fort Schlosser, on the Niagara River. At Cleveland, Cincinnati, and several other towns in Ohio, like subsidies of men and money were procured; and all along the frontier of Michigan, similar preparations were simultaneously in progress. The public arsenals of the United States were robbed of their musquets, their cannon, and their ammunition. And report was rife that all this was not done without the connivance of the United States authorities. The arms of the Brady Guards in Detroit, which were carelessly piled, as was the custom, in the corners of the lobbies of an open building, occupied by lawyers for their offices, and dentists for their chambers of practice, were also seized. And the whole Canadian frontier exhibited one busy scene of bustle and activity, for the invasion of Upper Canada, by an army of self-

styled Patriots, who were said to be in reality, with a few exceptions, the citizens of the neighbouring republic.

It is certain that many of the wiser and more respectable of the inhabitants of Buffalo were in possession of the truth as to Mackenzie's insane attempt on Toronto: but it was not to such persons as either would, or could possess accurate information, or weigh consequences, that this arch-rebel would apply himself for assistance. Accordingly on the 13th of December 1837, some hundreds of the citizens of the State of New York, as an armed body, under the command of a Mr. Van Rensselaer, an American citizen from Albany, openly invaded, and took possession of Navy Island, a part of Upper Canada situate in the Niagara river. Here they commenced to entrench themselves, and threatened speedily to make a landing on the Canadian side of the river. To keep them in check, a body of Militia was hastily collected, and stationed on the frontier, under the command of Colonel Cameron, who was soon succeeded by Colonel McNab, on his return from the suppression of the rebellion in the London District. His instructions were, to act on the defensive only, and carefully to avoid any course of conduct, which the United States Government might interpret into a breach of neutrality.

The piratical force which had occupied the Island, immediately commenced to open upon the Canadian shore a cannonade, which they continued for several days, without intermission; taking care during all this time to fortify their position. On the 28th of December, Colonel McNab received information that a small steamboat of about 50 tons burden, called the *Caroline*, had been hired by the Patriots, and was to be employed in carrying down cannon, men, and stores, between Fort Schlosser on the American shore, and Navy Island. She was accordingly observed to transport a piece of artillery, and other stores, and made repeated passages during the day, between the Island and the American shore. In the night, a party of Militia was sent in boats, with orders to take or destroy her. They found her moored to the wharf opposite to the inn, which was the head-quarters of the Pirate band at Fort Schlosser. On the deck was an armed party, and a sentinel who demanded the countersign. After a resistance, in which some desperate wounds were inflicted on the assailants, she was carried. But a man was killed belonging to the other party; and the alleged murder of this man, whose name was Durfee, gave rise subsequently to the famous trial of Alexander McLeod Esq., a British subject, at the city of Utica.

Previously to the taking of the *Caroline*, not a single gun had been fired by the force under the command of Colonel McNab. The party who seized the vessel, being armed with cutlasses only, loosed her from the wharf; and finding it impossible to tow her against the stream of the river, set her on fire, and let her drift down the current. The light of the burning schooner was seen as far off as the Township of Pickering, in the Home District, and suddenly disappeared, as she took her headlong leap down the fearful precipice of the stupendous cataract.

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The Patriots on the Island, and their enemies on the Canadian shore, continued to exchange salutes, with little or no execution on either side, until the 13th of January, 1838. As neither party seemed desirous of coming to any closer engagement, the Island was then evacuated, having been then occupied by a number of persons variously stated from 700 to 1200. Thus was broken up the first grand division of the Patriot army of Canada.

During the progress of these proceedings at Navy Island, the sympathies of the American people had been wrought upon in the manner above represented, all along the frontier bordering on the river Detroit. Emisseries were also sent, as we have stated, into Ohio, to create the necessary asperity of feeling; which was easily effected, and operated powerfully on a class of citizens already too susceptible of unkindly emotion towards the British, and their Government. Committees were every where appointed to collect subscriptions, and public benefits were given at the Detroit theatre, in aid of the suffering Canadian Patriots. The press teemed with the most exaggerated and exciting accounts: Volunteer Companies raised: the arms in the United States arsenals, and those of the Brady Guards in Detroit, as has been already observed, were seized and appropriated. The steamboat Erie brought up 70 or 80 volunteers from Cleveland: the Brady, a similar number from Monroe, with two pieces of artillery, and 400 stand of arms, that had been pillaged from the arsenal. Two large pieces of artillery were taken from Fort Gratiot; and 400 stand of arms from the public prison at Detroit. Armed Companies were to be seen on drill in the open day. A person named Sutherland, who had been editor of a paper, and who was said to have been convicted of a capital offence in the State of New York, was entrusted with the command, under the title of Brigadier-General of the Second Division of the Patriot army, although it contained only a few of the Canadian refugees, none of whom held any higher rank than that of Captain. And so forward were the preparations reported to be, that had not the early part of the winter proved unusually mild, and the invasion of Canada been in consequence deferred, with the daily expectation that the ice would form, and facilitate a march across it, there is little room to doubt, that an armed force would have planted its footsteps on the Canadian shore early in the month of January. To meet this hostile armament, there would only have been about 300 Volunteers, who had organised themselves at Windsor, Sandwich, and Amherstburgh. These poor fellows were almost worn out, being constantly on guard, and many not retiring to rest for ten or twelve days together.

The delay of the Patriots in making their irruption, was improved by the Loyalists on the opposite shore to the utmost advantage. All the powder which could be found was secured: lead was put in requisition, and cast into balls: cartouches were made. The blacks turned out to a man: the Militia from the lake shore came forward cheerily. But the gallantry of the Kent Volunteers was most conspicuous and enthusiastic,

These brave fellows in two days organised to the number of 120, under Captain Bell, and Lieutenants Baby and McCrae. By forced marches, part of the time up to the waist in water during a Canadian January, they reached Windsor in two days more. The St. Thomas Cavalry arrived in Amherstburg by the Talbot road about the same time. Simultaneous with the arrival of these reinforcements to the loyalists, was the seizure of the arms by the Patriots from the authorities in Detroit, and two steam-boats were cut out of the ice, for the use of the invading army.

On Monday, January 8, the piratical armament, consisting of the armed schooner Ann, a sloop or brig which acted as a trader, two large scows, and a number of boats, carrying about 700 men, and twelve hundred stand of arms, five pieces of artillery, and a vast quantity of ammunition, set sail from Sugar Island, belonging to the State of Michigan, which place they had for some time previous made their rendezvous. At first they appeared disposed to seize upon Bois Blanc, an island near to the former, and belonging to Canada: but this was quickly occupied by Colonel Prince, with about 300 Volunteers. They contented themselves therefore with firing two cannon from the schooner against this force; and shaped their course forthwith towards Amherstburg. On perceiving their intention, Colonel Prince evacuated the island, and advanced to the support of Amherstburg, which was defended by only about 400 Militia and Volunteers, imperfectly armed, with only three bayonets amongst them, and a few rounds of ammunition each. The town of Amherstburg was fired upon several times during that evening; and on the next day was cannonaded for two hours together, without any loss of life or personal injury sustained by its inhabitants. On that day also, General Sutherland gallantly carried Bois Blanc, there being no one to oppose him, and marched round the island in triumph with banners and music.

Soon after sunset, the schooner sailed down the river, cannonading Amherstburg as before, and with a similar result. The Volunteers followed her down, leaving 150 of their number to defend the town from an expected attack by the brig, scows, and boats. She had hitherto kept beyond the reach of rifles; but now on coming within reach, she was fired upon by the St. Thomas Cavalry. As she neared Elliott's point, a well directed fire of musquetry was poured into her, by the Kent and Windsor Volunteers, which disabled some of her sails; and either killed, or compelled the helmsman to abandon his post. The wind blowing fresh in shore, she drifted, and ran aground a little below the point. Several of the Essex Militia speedily arrived, together with a detachment of the blacks; and a galling fire was kept up upon the schooner, which was for some time returned with great spirit by those on board. At last, however, finding no intermission, they were obliged to cry for quarter, when the victors waded into the river, boarded the schooner, and made prisoners General Theller, Colonel Dodge, Captain Davis, and Colonel Brophy, with sixteen others of less note; together with one nine-pounder cannon, two six-pounders, 350 stand of arms, with bayonets &c. complete, a large

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quantity of ammunition, and 630 dollars in specie. And what was most remarkable of all, not a single man of the victors was even wounded.— One indeed did die, but a long time after, in consequence of a cold caught in wading the river, to capture the surrendered schooner.

Nothing daunted by the loss of their vessel together with its inmates, the Patriots, after taking breath to recover their courage, possessed themselves of Fighting Island, a long strip of land belonging to Canada, situate in the river Detroit, nearly midway between Sandwich and Amherstburg. This occupation of the island took place on the 24th of February, 1838. Meantime the Hon. Colonel Maitland had arrived at Amherstburg with a body of Regulars; and as soon as the rebels were known to have occupied the island, the Rev. Mr. Johnson, of Sandwich, (since dead,) took upon himself the charge of repairing to Amherstburg in person; and representing to Colonel Maitland the danger of suffering such a band of pirates, who were in daily expectation of supplies and strong reinforcements, to concentrate themselves on a point of the frontier, which afforded them opportunity of selecting their time and place for attack; and exposed several considerable frontier villages to the tender mercies of such a desperate band of rapacious invaders. In consequence of this representation, Colonel Maitland despatched Major Townsend to proceed at three o'clock next morning, with two Companies of the Regulars, one of the 32nd, and one of the 83rd Regiments, together with a detachment of the Royal Artillery, bringing with them a nine-pounder piece of Ordnance, under the command of Captain Glasgow. Speedily Colonels Elliot and Askin of the Militia joined this force, with a body of about 400 men. As soon as these troops had assembled at the village opposite to Fighting Island, a place was selected a little lower down, by which the Infantry proceeded to cross over in single files. At the same time a fire was opened on the Patriots from the cannon, and they fled after the second discharge, with the utmost precipitation, leaving behind them one small cannon which had been but once discharged; together with rifles, musquets, pistols, swords, powder, shot, and other munitions. Three were said to have been killed, and four wounded by the fire of the artillery: and as soon as the runaways had reached the American shore, they formed a line, and fired upon the British, but without injury. This little success had the effect of checking the presumption of the pirates, who before had threatened Amherstburg; so that the troops were kept in perpetual alarm, expecting hourly an attack by a body which fame rated so high as fifteen hundred or two thousand. The brigands had affected also to believe a calumnious report respecting the Provincial Militia, which they themselves had forged and propagated with the greatest industry; denying strenuously that that body of men would fight against the Patriots. The behaviour of the Militia at Fighting Island flung the foul falsehood in the teeth of those who had fabricated it; and evinced that on that occasion, as well as on every other where their prowess had been tried, they were resolved to make up by steady valour, and a determination to conquer or die, for whatever they were defective in point of military skill, or suitable equipment.

Still unconvinced by the preceding proofs of the insanity of *Patriotism*, the pirates possessed themselves of Point au Pelé Island, containing about 12,000 acres of excellent land, and occupied by several wealthy settlers. This island is situated in Lake Erie, distant about 18 or 20 miles from Amherstburg, and opposite to Sandusky. It belongs to Canada, and being utterly defenceless, its inhabitants were pillaged in the most merciless manner by the invading Patriot army. On receiving information of these facts, the Hon. Colonel Maitland proceeded by night over the ice, with two six-pounders, and a small body of Regulars and Militia, and arrived about daybreak at the Northern point of the island, which is said to be about nine miles long. Its piratical occupants fled on the approach of the evening towards the Southern extremity; where were posted about 80 of the 32nd Regiment, supported by about 25 of the Sandwich and St. Thomas Cavalry; which had been stationed there for the purpose of intercepting their retreat. The brigands drew up in line on perceiving the paucity of their foes, and opened a regular fire, being in number about 300, completely equipped, and taking the precaution to avail themselves of a quantity of broken ice, behind which they were to a certain degree protected, and which enabled them to take the deadlier aim. Captain Brown, who commanded the 32nd, seeing several of his men fall, with great presence of mind gave the order to charge. Soon as the pirates saw the cold steel coming, they took to their heels, but were compelled to leave behind them their commander, Colonel Bradley, Major Houdley, Captains Van Rensselaer and McKeon, and seven dead. Several were taken prisoners, some of whom were wounded severely. The fugitives were enabled to carry off about forty wounded, by means of sleighs, with which they were provided. They abandoned a tricolor flag, about forty stand of American arms, ammunition, swords. Three of the 32nd Regiment are said to have been killed, and about twenty-eight wounded. A Mr. Parish, a St. Thomas volunteer, also fell in this action. But a victory, achieved by such a handful of men over a force so vastly superior, ought to have convinced the most obstinate of the fruitlessness of protracting so unequal a contest. Yet, as we shall just now see, the truth was not permitted to transpire, so as to reach and influence those whom it most concerned.

The following was the account with which the American public was abused, relatively to the affair at Point au Pelé Island, in the Detroit Morning Post Extra, March 5, 1838:—

“The British attacked the Patriots at Point au Pelé Island on Saturday morning. There were 600 regulars and some 1000 of militia.—The latter were not called into action. The regulars were met upon the ice, between the island and the British shore. Three of the regulars were killed, and sixty wounded, of whom six died on Saturday night, and many more are supposed to be mortally wounded. The loss on the part of the patriots, known, is five—wounded not known—three prisoners to the enemy. The patriots retired in order to the island, and the

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The piratical career of General Sutherland, who figured so conspicuously in this border warfare, had now approached its conclusion. Colonel Prince and his friend, Major Lachlan, had both acted as volunteers at the Point au Pelé island. The former of these was returning in a sleigh along the ice of Lake Erie, accompanied by a friend named Haggerty, when, with eagle eye, he discovered another sleigh bearing Sutherland and his Aide. He immediately directed his horses so as to intersect the direction of his enemy, who forthwith commenced a flight; but was obliged to bring to, fearing the execution of the threat, that Mr. Prince's favorite deer-gui. would speedily enforce obedience. The General's sleigh was stopped; and that gallant chief, with his Aide, Captain Spencer, was made prisoner by Colonel Prince and his companion, and lodged in triumph in the garrison at Malden, whence they were forwarded the next day to Toronto. This capture was made on Sunday, March 4, 1838.

About the middle of this month, an event occurred which deserves to be recorded, as forming a striking counterpart to the alleged conduct of other American officers, entrusted by their own government with the charge of putting down the aggressions which were daily being committed by American citizens upon the British frontier. An American officer, Colonel Worth, had received information that many hundred men had left the vicinity of Buffalo, with the design to invade Canada, at or near to Point Abino, above Fort Erie, on the Niagara frontier: he accordingly followed, and found them established within the British lines, under a temporary shelter erected on the ice. He was proceeding to disperse them, when they asked him, how he dared to offer them violence in her Britannic Majesty's dominions? The Colonel, no way deterred by this subterfuge, demanded them to lay down their arms, and gallantly displayed his determination to enforce obedience. Our heroes, deterred by his resolute conduct, quickly dispersed and fled. Thus did the spirit of this gallant officer, by preventing in all probability much destruction of property and blood, confer an obligation on both governments, acting, as he did, under the unshaken conviction, that no captious exception would be taken to his conduct on the part of the British government. May the sons of Britain often find such invaders, in cases of aggression from a foreign foe.

About the 19th or 20th of June, a small party of eight of Major Magrath's Troop of Lancers, stationed at St. John's, about eight miles from the Niagara frontier, were unexpectedly attacked by a large body of pirates, and after a desperate defence, in which two of their number were wounded, one of whom died next day, they were made prisoners; not, however, until the house in which they were posted was set on fire over their heads. It is thought that in the conflict four of their assailants were either killed or desperately wounded. They were left at liberty, after having been plundered of their horses and arms. The banditti who committed this outrage, had been brought over from the United States in small



parties by the steamer Red Jacket, and landed on the Canada shore, a little distance above Chippawa. They were speedily pursued by a party of the Lancers, who captured nine of their number; their leader, by name Chandler, being shot by Lieutenant Heath, who lost his horse by pursuing the fugitives into a morass. On this man's person were found one thousand dollars and many papers. Speedily afterwards no less than twenty more of the pirates were taken, amongst whom was one Moreau, for whose apprehension £500 had been offered by Sir George Arthur. He was taken prisoner by a solitary Scotchman, who brought him bound in his waggon to the Pavilion, at the Niagara Falls, where he first discovered the large amount of the reward to which his good fortune entitled him. This affair was subsequently better known as the Short Hills' outrage.

After the proceedings which have been above detailed, the frontier war appears to have terminated for the season. It may naturally excite inquiry, why the season of inclemency should have been selected by the aggressors, for their inhuman purposes of invasion and rapine? During other times of year, employment of one description or another might be obtained by all; and therefore, many of those who, in winter, would be thrown out of work, would, on the return of the milder weather, be withdrawn from the more dangerous temptations which *Patriotism* held out to the more peaceable and honest pursuits of livelihood by industry. Add to this, that during the winter a military force could not be forwarded from Great Britain, unless at vast loss of time and expense; and therefore the invaders, or insurgents, would have unrestricted choice of what force they were to oppose all along the frontier, and on what point to make their attack.—Previously to the rebel outbreak at Toronto, there was not a single military man in the Upper Province. The small detachment of six or eight artillery men, whose chief duty it was to fire the garrison noon-gun, were indeed retained by Sir Francis Bond Head to take charge of the garrison, but their services were not employed at the battle of Gallow's Hill, on Yonge Street. So that with every advantage in their favor,—choice of time, and place, and mode of attack,—the revolutionists of Upper Canada were forced to shew their backs in disgrace at every encounter, although opposed only by their own fellow-citizens.

The summer returned, and, as it came, seemed to have brought back with it a temporary oblivion of the rage which had maddened men's minds during the preceding winter. Sometimes, indeed, the monotony of tranquillity would be interrupted by a cold-blooded murder, perpetrated under circumstances of aggravated atrocity, upon some solitary individual, who had awakened the blood-thirsty vengeance of malice; or by a deed of heart-chilling incendiarism, enacted during the unsuspecting stillness of midnight. Acts like these, although they indicated the demoniac mind, yet told less fearfully than the burning of a town and the massacre of its defenders. They showed that the spirit of mischief was abroad, and waited but an opportunity to display its energies in the commission of atrocity.—And as the autumn glided away, and the cold chill of winter returned once

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more to freeze any generous feeling which still might cling lingering to the inhuman breast, war again displayed its front, which was now to be distinguished by deeper marks of determined desperation.

On Sunday, the 11th of November, 1838, during the night, the "United States" steamer landed, on the Canada shore, between three hundred and four hundred well armed men, together with two pieces of artillery. Several of these had provided themselves with a newly-invented species of rifle, which admitted of firing six or seven shots successively, without the delay of loading for each; and the whole body took up a strong position, many of them being covered by a stone wall, about a mile and a half below Prescott, and having in their rear three or four stone houses, and a stone mill, whose walls were several feet in thickness. They were under the command of one Von Shultz, a Pole, a man of considerable military skill and great determination. Captain Sandom, of the Royal Navy, having had previous information of the movements of the brigands, landed at Prescott a detachment of about forty of the 83rd and a party of the Marines, who formed a junction with Colonel Plomer Young's force of Militia. These united troops, amounting to about two hundred men, formed two columns, and speedily compelled the patriot pirates partly to disperse, and partly to occupy the mill and houses, from the windows of which they kept up a galling fire, being themselves in security, as the Military were unaided by artillery.

The British force was then disposed by the commanding officer under shelter, in order to blockade the enemy until the arrival of ordnance from Kingston. During this attack, several boat loads of armed men attempted to cross over from the United States to raise the siege and liberate the pirates in the mill, but were compelled to put back by Captain Sandom, who had three armed steamers assisting. The "United States" steamer also, attempting to cross for the same object, was thrice driven back by the little steamer "Experiment." And several boat loads, loaded with the runaway brigands, attempting to go over from the Canada shore, were either captured or compelled to return. Meantime several bodies of the Provincial Militia arrived, who poured incessant volleys of musketry into the mill and houses; and on Wednesday, the Hon. Colonel Dundas appeared with a battering train from Kingston. The brigands, who had been for some time before compelled to fire stone from their cannon for want of balls, surrendered at discretion on Thursday, (after the destruction of the stone houses), by hoisting a white flag at the mill. This surrender is reported to have been made indispensable on their part, by the fact that their provisions being exhausted, they must soon have fallen victims to famine. It is remarkable, that although some companies of the 83rd accompanied the Hon. Colonel Dundas, yet the Militia, by particular desire, requested the reduction of the rebels to be left entirely to themselves and the Artillery, that they might have an opportunity of effacing, with the blood of their enemies, the foul stain which their slanderous tongues had



sought to affix to the reputation of the Provincial Militia. The following official document will put the results of this desperate and protracted conflict in the clearest light:—

*Toronto, November 19th, 1838.*

**AFTER DISTRICT GENERAL ORDER.**

His Excellency Major General Sir George Arthur feels the greatest gratification in announcing to the Queen's Regular Troops, and to Her Majesty's Militia of the Province, now so happily engaged hand in hand in the defence of their country, against internal disaffection, and against the most cruel and unjust aggression from abroad, that their united efforts have proved decidedly effectual in overcoming a gang of desperadoes, who lately had the temerity to make a descent, from the United States, on the Canadian Shore of the St. Lawrence, between Prescott and Johnstown.

The Pirates, on landing, took possession of some Stone Houses, and a Stone Mill, of extraordinary strength of masonry, about one and a half mile below the former place; of these they held possession for some time, closely blockaded by the loyal Militia, under Colonel Plomer Young, Particular Service, until reinforced by Colonel the Honourable Henry Dundas, with a Demi Field Battery of the Royal Artillery, and some Companies of the 83rd Regiment, from Kingston. Against such a force, when supplied with heavy Artillery, it was impossible for the enemy long to hold out; and after the Stone Houses had been destroyed, a white flag was hoisted at the Mill, and its occupiers were permitted to surrender at discretion.

The fruits of these gallant proceedings, consisted of about *one hundred and sixty-seven Prisoners*, exclusively of about *sixteen wounded*.

It is reported, that not less than fifty-six of the Enemy were killed during the operations.

Colonel the Honourable Henry Dundas, Colonel Plomer Young, and Captain Sandom, Royal Navy, Commanding the Naval Flotilla, speak in the very highest terms of the gallantry, good conduct, and extraordinary forbearance, of the whole of Seamen and Marines, the Regular Force, the Militia and the Volunteers, employed on the occasion.

The British loss consists of Lieutenant Johnson, 83rd Regiment; Lieutenant Dulmage, of the Grenville Militia, killed; and Lieutenant Parker, Royal Marines, and Lieutenant Parslow, of the Militia, wounded; with about forty-five Rank and File killed and wounded.

The loss of the Brigands was particularly severe in Officers, among whom were the self-styled Generals Brown, and Phillips.

His Excellency Major General Sir George Arthur cannot sufficiently applaud the alacrity and firmness with which Colonel Plomer Young, attacked the Brigands, with a very inferior force, on their first appearance on the Canada Shore; and the gallantry with which the Detachments of the 83rd Regiment, and Royal Marines, with the Militia under his com-

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mand, drove them to seek a temporary security in the Mill and Houses: in which, however, they found it totally impracticable long to maintain themselves against British valour and persevering intrepidity.

The Major General also offers his warmest thanks to Colonel Dundas, for the able disposition of his Force, and his indefatigable exertions; to Colonel McBean, R.A.; to Colonel R. Duncan Fraser; to Lieutenant Colonel Gowan; and Captain George Macdonald; and to all the Officers of the Militia and Volunteers, whose names he is alone prevented from particularising, by the casual absence of the Despatch from Colonel Young, which enumerated them; and His Excellency is confident that the gallant example now shewn, will be followed with equal loyalty and spirit, by all the Militia of the Province, should their services be called for.

To Captain Sandom, Commanding the Royal Navy, likewise are His Excellency's thanks most fully due, for his vigilance and able co-operation; and to Lieutenant Fowell, Royal Navy, who so gallantly commanded Her Majesty's Steamer "EXPERIMENT," which although so inferior in point of size and power, obliged the enemy's Steamer "UNITED STATES," to seek refuge in an American Port.

His Excellency the Lieutenant Governor, likewise, has much pleasure in congratulating Colonel Carmichael, Particular Service, and the loyal and gallant Glengarry Militia Regiments, under Colonels McDonell, Fraser, Chisholm, and McDonell, whose ready aid in moving into the Lower Province, mainly contributed to the re-capture of the "*Henry Brougham*," and has earned for them the high approbation of His Excellency the Commander of the Forces.

*By Command.*

C. FOSTER, COLONEL,

*Assist. Adj't. Gen'l.*

On the fourth of December 1839, the anniversary of Mackenzie's appearance on Yonge Street, a body of about 450 Brigands, at two o'clock in the morning, stole the steamer Champlain, (belonging to a merchant in Detroit named Julius Eldred,) with which they effected a landing on the Canada shore, at the two windmills, a little below the foot of Hog Island in the river Detroit. Here they remained until about five o'clock, after which they moved towards Windsor, setting fire in their route to the British steamboat Thames, belonging to Duncan McGregor Esq., of Chatham. They were then challenged by a sentinel of Captain Lewis's Company, whom they shot dead on the spot. Twenty men who were stationed in the guard-house returned their fire, and killed a *brigand Captain Lewis*. The guard-house was immediately set on fire, and was burned to the ground, together with two other houses: in the former two brave fellows were burned to death. Their gallant comrades were all captured,

but eventually succeeded in escaping. The brigands then proceeded to murder in cold blood a Mr. Hume, Assistant Staff Surgeon, stationed at Sandwich, who had mistaken them for a body of Volunteers, and walked up to Windsor to assist professionally. Not content with firing several balls through his body, they stabbed him with bowie knives, and mangled him with an axe. They also assassinated a black man who had refused to join them: and during these inhuman proceedings the air was rent with cheers issuing from persons on the Detroit shore of the river, that city being directly opposite to the village of Windsor in Canada.

These chilling atrocities speedily brought on their own punishment, which was severe and signal. At six o'clock in the morning, Colonel Prince, at Sandwich, received news that Windsor, two miles above, was in possession of Brigands and Pirates from Michigan, which tidings were instantly confirmed by the appearance of a fire in the direction of Windsor. He immediately despatched a guest of his to Malden, for a reinforcement with a field piece, from Colonel Airey. Meantime, with a force of about 130 men, commanded by Captains Sparke, Fox, Thebo, and Elliott, together with several gentlemen volunteers from Sandwich, he marched directly for Windsor. About the entrance to Sandwich village they were joined by Captain Bell, of the Provincial Volunteers. As they advanced towards Windsor they were informed, that the village was occupied by a large body of brigands, and that another considerable force had left Windsor and was marching on Sandwich.

Speedily a body of about 150 were discovered in an orchard in the rear of Windsor, at a distance of nearly 250 yards. Captain Sparke's Company which led, immediately wheeled up, and opened a well-directed fire: and the Militia and Volunteers at the same instant moved rapidly up on the enemy's left flank, and poured in their fire also. On receiving these two fires, they fled to the woods most precipitately. As the force under Colonel Prince approached the woods, he ordered them to halt; and fearing that Sandwich might be captured in his absence, that place having been left defenceless, he returned thither speedily in double quick time. On his return he found that they had not attempted an attack on the village, but had been seen in the groves in its rear in large numbers. He then received information that upwards of 300 brigands were still in Windsor—that they continued to receive reinforcements from Detroit,—but that they abstained from further outrage. Being unwilling to divide his little force, he resolved to remain at Sandwich, where in about an hour's time he was reinforced by Captain Broderick, with a body of Regulars and a field-piece.

Of the brigands, 21 were killed, and four prisoners were brought in wounded immediately after the battle, all of whom Colonel Prince ordered to be shot upon the spot. Subsequently 26 other prisoners were taken: and in this list of killed and wounded were several notorious offenders, who had long been a terror to the frontier. The British lost one man of Captain Elliott's Company killed, with two men slightly wounded. The

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standard-bearer of the brigands was shot dead by an Ensign in Captain Thebo's Company, and the standard itself captured by Lieutenant Rodkin, of Captain Sparke's Company. It was a tri-colour, with a crescent and two stars, in the lower corner, near the staff.

After being reinforced by Captain Broderick, the whole force returned to Windsor, but found that the brave heroes who had come over to give LIBERTY TO CANADA had utterly disappeared.

After the affair of Windsor, placards were posted in Detroit, offering a reward of 800 dollars for the capture of Colonel Prince, alive or dead. It was also reported subsequently that that gentleman, dreading assassination in his own house, was compelled to set man-traps and spring-guns in the grounds around his dwelling; having previously given his friends notice by posted handbills not to approach his premises before a certain hour in the morning, nor after a certain hour in the evening.

The account of "the battle of Sandwich," published by the *Buffalonian* newspaper, is said to have represented the British as having lost 40 to 50 killed, whilst the patriots had only three killed and three wounded.

Long after these events, and in the subsequent summer or autumn, eight human skeletons or bodies in a very advanced state of decomposition, were said to have been found in the woods, in the neighbourhood of Sandwich and Windsor. They were supposed to have been the remains of so many of these brigands, who were in all probability frozen to death at the foot of a large tree, where they had been found; this being the only manner in which such an extraordinary discovery could, with any appearance of likelihood, be accounted for.

\* *Thibau.*

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## V.

### COURT OF CHANCERY.

By 3rd and 4th Vic., c. 1, the Governor is authorized to issue a Commission, directed to the Vice Chancellor and any two or more Judges, authorizing them to make Rules for the Practice of this Court.

In addition to the Orders for regulating the Practice of this Court, mentioned in the note page 39, there are additional Rules and Orders, passed since: the last were those made 3rd March, 1843, for regulating the making and taking Office Copies. The substance of which are as follows:—

All Copies of Proceedings and Pleadings (save and except copies of minutes, decrees, orders, and depositions) to be made and delivered by the Solicitor or Agent, with whom the draft shall originate, that such copies, before being delivered, shall be examined and certified by the Registrar.

No answer shall be considered as filed until a copy thereof, authenticated as in the preceding order, shall have been served on the Solicitor or Agent of the plaintiff.

The originals of any affidavit, in support of, or in opposition to any application, by motion, petition, or otherwise, may be read at the hearing, instead of Office Copies, as heretofore, and that any party requiring a copy of any such affidavit, shall be entitled to demand and receive the same, authenticated by the Registrar, in manner before mentioned, from the party filing such affidavit, who shall be obliged to furnish the same within such time, as by the present practice, the same may be obtained from the Registrar.

It shall not be necessary to file any affidavit of the service of a notice of motion, or any affidavit which proves the mere service of a paper, and to take an office copy thereof for use, but the original affidavit may be read, in the same manner as the office copy.

That the Solicitor or Agent, of whom any Office Copy may be spoken, shall have the same ready for delivery within forty-eight hours thereafter, copied in clear and legible characters.

That where a bill is amended and a re-engrossment thereof filed, and a copy served on the opposite party, it shall not be necessary to pay to the opposite party, the usual sum of 20s.

In the case of *Aked vs. Aked*, recently (January 31, 1843), determined before the Vice Chancellor of England, it has been decided, that notwithstanding the recent abolition of the office in England of the Six Clerks, Sworn Clerks, and Waiting Clerks, under the Act of the 4th and 5th Vic., c. 103, it had not abolished the business transacted by means of it, and that the Fees for an Office Copy of the Bill, before allowing the defendant to file his answer, were yet compulsory, and might be received by the Clerk of the Records and Writs.

The Fees in England for Office Copies of Documents left for Exhibits, are, per folio..... 4d.

For all other Office Copies.....10

DEBATE ON THE CHANCERY BILL.

*House of Assembly, February 2, 1837.*

A great part of this day was occupied in discussing the Chancery Bill, in Committee of the whole House; and a good deal of warm debate took place, principally between the Solicitor General and Mr. Prince, in an amendment moved by the latter gentleman, to allow Barristers and Solicitors of three years standing in the Court of Chancery in England and Ireland, who produced proper certificates, &c., to practice in the Court of Chancery in this Province. The amendment was adopted, and the bill ordered for a third reading to-morrow.

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February 3.

Pursuant to the order of the day, the Chancery Bill was read the third time, and on the question for passing the same, the Solicitor General, seconded by Dr. Rolph, moved, to expunge the clause introduced by Mr. Prince yesterday. This motion brought on a long debate. Messrs. Solicitor General, Robinson, Jarvis, Murney, Sherwood, McKay, Aikman, and Rolph, spoke in favour of the motion for expunging; and Messrs. Prince, Thorburn, Gowan, MacNab, Gibson, Norton, Boulton, Parke, McDonell of Glengarry, and Dunlop, spoke against it. The motion was carried, 24 to 22, and the clause was expunged.

Mr. Gowan, seconded by Captain Dunlop, then moved the same clause, leaving out the word Barristers, which was carried by a majority of 8, and the bill was amended accordingly.

Mr. Gibson, seconded by Mr. McIntosh, moved, that the Solicitors and Counsel in any cause, in the said Court, *shall not be allowed more than one-half of the amount of the property in dispute* for the costs incurred by the plaintiff and defendant. Lost, yeas 11, nays 31.

Mr. Prince, seconded by Mr. Gowan, moved a Schedule of Fees, to be paid by the suitors in a suit, instituted for the specific performance of any contract or agreement, and that the same should serve as a precedent, to guide the Master in taxing costs in other suits. Total amount—Thirteen Pounds Seventeen Shillings and Six Pence! Which was carried, yeas 27, nays 27.

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## PRACTICE OF THE COURTS AT WESTMINSTER, IN CANADA.

### IN THE CASE OF DOE DEMISE OF GRIFFIN *vs.* ROE.

The Court (K. B. Upper Canada) were of opinion, that as *Tidd's Practice*, was that to which the Practitioners usually referred, for authority in this country, and as the English Rule, Easter Term, 2 Geo. IV. had not, as appeared, been published in that Work, it would be unreasonable that Suitors or Practitioners should be surprised by its production, and directed that the edition of 1817, should be considered as that which regulated the Practice of this Court.—Taylor's Report, 269. Hil. Term, 1825.

In *Mead vs. Bacon*, Michs. Term, 1824.—Rolph in shewing cause against a Rule for setting aside an Interlocutory judgment for want of a Plea, stated, that in this point of practice, we must be governed by that of the KING'S BENCH IN ENGLAND, it being a case not provided for by our own Statute, the regulations for which, respecting the times for pleading, are expressly confined to actions not bailable. *That in all cases not provided for by our own Statute, we are referred to the ENGLISH PRACTICE, by the Rule of this Court.*



## CHRONOLOGICAL INDEX

To the several Statutes and Ordinances of Lower and Upper Canada, and Canada, relating to the Judicial Institutions of the Province, the Practice, and Proceedings therewith connected:—

## LOWER CANADA.

## RELATING TO SUPERIOR COURTS OF CIVIL JURISDICTION.

1793. 34th Geo. III, c. 6.—For the Division of the Province, and for amending the Judicature.
1795. 35th Geo. III, c. 1.—To explain and amend the last Act.
1807. 47th Geo. III, c. 6.—To amend the 34th Geo. III, c. 6, as to the Superior Terms in Three Rivers.
1818. 58th Geo. III, c. 13.—To extend the 34th Geo. III, c. 6.
1823. 3rd Geo. IV, c. 9.—To amend the 34th Geo. III, c. 6.  
3rd Geo. IV, c. 17.—For establishing Courts of Judicature in the District of St. Francis.
1824. 4th Geo. IV, c. 18.—For directing Circuit Courts to be held in the School Houses (*temporary*).
1825. 5th Geo. IV, c. 2.—To alter the 25th Geo. III, c. 2, to regulate proceedings of Civil Judicature.  
5th Geo. IV, c. 23.—To continue the 3rd Geo. IV, c. 9.
1826. 6th Geo. IV, c. 26.—To continue the 3rd Geo. IV, c. 17.
1829. 9th Geo. IV, c. 49.—*Ib.*
1830. 10th and 11th Geo. IV, c. 7.—*Ib.*  
10th and 11th Geo. IV, c. 17.—To repeal in part the 34th Geo. III, c. 6.  
10th and 11th Geo. IV, c. 22.—To amend the same as to Three Rivers.
1832. 2nd Wm. IV, c. 8.—For regulating appeal from the Provincial Court of the District of St. Francis, and to establish Circuits.
1833. 3rd Wm. IV, c. 18.—To continue the Act as to the Inferior District of St. Francis.
1838. 2nd Vic., c. 13.—For one or more Assistant Judges, for K. B. for the District of Quebec, Montreal, and Three Rivers, in case of sickness.  
2nd Vic., c. 2.—For an Assistant Judge of Three Rivers, to sit in K. B., St. Francis.
1839. 3rd Vic., c. 3.—To render permanent certain Acts relative to the District of St. Francis.
1840. 3rd Vic., c. 24.—To amend 2nd Vic., c. 13.  
4th Vic., c. 26.—To facilitate the dispatch of business now before K. B., Montreal.  
4th Vic., c. 45.—To establish new Territorial Divisions, and to alter and amend the Judicature.

## RELATING

1832. 2nd W  
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1792. 32nd G  
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1819. 59th G
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1822. 2nd G  
1832. 2nd W
1797. 37th G  
1823. 4th G



## UPPER CANADA.

## RELATING TO SUPERIOR COURTS OF CIVIL JURISDICTION.

1832. 2nd Wm. IV, c. 8.—For regulating the sittings of K. B.  
 1834. 4th Wm. IV, c. 8.—To repeal the 2nd Wm. IV, c. 8.  
 1837. 7th Wm. IV, c. 1.—To increase the number of Judges and alter the Terms.  
 1838. 1st Vic., c. 15.—To amend the 7th Wm. IV, c. 1, as to Hilary Term.

## REPORTER.

1823. 4th Geo. IV, c. 3.—For providing a Reporter for the K. B.  
 1840. 3rd Vic., c. 2.—For better regulating the Office of Reporter.

## COURT OF CHANCERY.

1837. 7th Wm. IV, c. 2.—To establish this Court.  
 1838. 1st Vic., c. 14.—To amend the last Act.

## COURTS FOR THE RECOVERY OF SMALL DEBTS.

1792. 32nd Geo. III, c. 6.—For the easy recovery of Small Debts.  
 1794. 34th Geo. III, c. 3.—To establish Courts for the cognizance of Small Causes in each District.  
 1797. 37th Geo. III, c. 6.—To extend the Jurisdiction and regulate the Proceedings of the District Court, and Court of Requests.  
 1816. 56th Geo. III, c. 5.—To extend the Jurisdiction of the Court of Requests.  
 1819. 59th Geo. III, c. 9.—To repeal and amend the 34th Geo. III, and 37th Geo. III, c. 6.  
 1833. 3rd Wm. IV, c. 1.—To repeal, amend and reduce the several Laws for the recovery of Small Debts.  
 1837. 7th Wm. IV, c. 12.—To amend the Laws.

## DISTRICT COURTS.

1822. 2nd Geo. IV, c. 2.—To reduce into one Act the Laws establishing District Courts.  
 1832. 2nd Wm. IV, c. 9.—To make valid certain proceedings in the Home District Court.

## PARTICULAR DISTRICT COURTS.

1797. 37th Geo. III, c. 9.—To enlarge the time for holding the Assizes for the Home District, and for altering the time of holding the Sittings.  
 1823. 4th Geo. IV, c. 2.—To provide for the establishment of Courts in the District of Bathurst.

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Geo. III, c. 2, to regu-  
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Geo. IV, c. 9.

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## LOWER CANADA.

## COURTS FOR SMALL DEBTS.

1808. 48th Geo. III, c. 15.—Expired.  
 1817. 57th Geo. III, c. 14.—For administration of Justice in Small Causes in Country Parishes.  
 1819. 59th Geo. III, c. 10.—To facilitate the recovery of Small Debts.  
 59th Geo. III, c. 13.—To continue the 58th Geo. III, c. 12.  
 59th Geo. III, c. 20.—To continue the 57th Geo. III, c. 14.  
 1821. 1st Geo. IV, c. 2.—For the Summary Trial of Small Causes.  
 1st Geo. IV, c. 3.—To continue the 57th Geo. III, c. 14.  
 1823. 3rd Geo. IV, c. 1.—To continue the 1st Geo. IV, c. 2.  
 3rd Geo. IV, c. 2.—To continue the 57th Geo. III, c. 14.  
 3rd Geo. IV, c. 22.—To extend the Acts to Magdalen Islands.  
 1824. 4th Geo. IV, c. 24.—To extend the Trial of Small Causes to St. Francis.  
 1825. 5th Geo. IV, c. 24.—To continue the 57th Geo. III, c. 14.  
 1826. 6th Geo. IV, c. 2.—To provide for the Summary Trial of Small Causes.  
 1827. 7th Geo. IV, c. 9.—To amend the last Act.  
 1829. 9th Geo. IV, c. 22.—To continue the 6th Geo. IV, c. 2, and 7th Geo. IV, c. 9.  
 1833. 3rd Wm. IV, c. 34.—For the Summary Trial of Small Causes.  
 1834. 4th Wm. IV, c. 2.—*Ib.*  
 1836. 6th Wm. IV, c. 17.—*Ib.*  
 1840. 4th Vic., c. 43.—For the easy and expeditious administration of Justice in Civil Causes of small value.

## COURTS OF REQUEST.

1839. 2nd Vic., c. 58.—To establish Circuit Courts of Request in Quebec, Montreal, and Three Rivers.

## COMMISSIONERS ENQUETEURS.

1829. 9th Geo. IV, c. 5.—To provide Commissioners to take evidence in the District of Montreal.  
 1831. 1st Wm. IV, c. 2.—To facilitate the Administration of Justice respecting Enquetes.  
 1832. 2nd Wm. IV, c. 6.—To extend the last Act.

## BANKRUPTCY COMMISSIONERS.

1839. 2nd Vic., c. 36.—For establishing Bankruptcy Law.

## REGULATING PRACTICE IN CIVIL COURTS.

1795. 35th Geo. III, c. 10.—For regulating the Proceedings in Superior Terms K. B., Montreal.  
 1801. 41st Geo. III, c. 7.—For regulating the Forms of Proceeding, and to facilitate Administration of Justice.

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1814. 54t

1815. 55t

1818. 58t

1821. 2n

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1792. 32n

1797. 37t

1800. 40t

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1818. 58t

1819. 59t

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1822. 2n

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1824. 4

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## UPPER CANADA.

## PROBATE AND SURROGATE COURTS.

1793. 33rd Geo. III, c. 8.—To establish these Courts.

## COUNTY COURTS.

1814. 54th Geo. III, c. 13.—To supply the want of County Courts.  
 1815. 55th Geo. III, c. 2.—To repeal 54th Geo. III, c. 13, and to make further provision in Outlawry.  
 1818. 58th Geo. III, c. 11.—To continue 55th Geo. III, c. 2.  
 1821. 2nd Geo. IV, c. 9.—*Ib.*  
 1839. 2nd Vic., c. 7.—*Ib.*

## BOUNDARY COMMISSIONERS' COURT.

- 1st Vic., c. 19.—To establish a Court of Boundary Commissioners.

## REGULATING PRACTICE.

1792. 32nd Geo. III, c. 4.—To abolish summary proceedings in Common Pleas Actions under £10.  
 1797. 37th Geo. III, c. 13.—For better regulating the Practice of the Law.  
 1800. 40th Geo. III, c. 7.—To regulate proceedings in case of Criminal Conversation.  
 1808. 48th Geo. III, c. 4.—For preventing vexatious Suits, and to authorize levying Poundage in certain cases, and to regulate Sales by Sheriffs.  
 1811. 51st Geo. III, c. 3.—To extend Personal Arrest to the sum of 40s., and to regulate Practice in case of Personal Arrest.  
 1812. 52nd Geo. III, c. 7.—To regulate time of Penal Actions.  
 1818. 58th Geo. III, c. 4.—To regulate Costs in certain cases, K. B.  
 1819. 59th Geo. III, c. 25.—To prevent the abatement of any action against a Joint Obligor, Contractor, or Partner, on account of the other Joint Parties not being defendants.  
 1821. 2nd Geo. IV, c. 7.—To regulate the service of Process out of K. B. and the District Court.  
 1822. 2nd Geo. IV, c. 1.—To repeal part and amend the Laws respecting the Practice of K. B.  
 2nd Geo. IV, c. 5.—To repeal part and amend 37th Geo. III, c. 13.  
 1824. 4th Geo. IV, c. 20.—To alter the times of holding the Terms of Hilary and Michaelmas.  
 1825. 6th Geo. IV, c. 1.—To remove doubts as to commencement of Michaelmas in the last, and Hilary Term in the present, and to appoint the period of holding the several Law Terms.

## LOWER CANADA.

1812. 52nd Geo. III, c. 8.—For regulating Habeas Corpus proceedings.  
 1817. 57th Geo. III, c. 18.—For amending 34th Geo. III, c. 6, giving an additional Superior Term.  
 57th Geo. III, c. 30.—For repealing the 29th Geo. III, regulating the Practice and providing for dispensation of Justice.  
 1821. 1st Geo. IV, c. 8.—For regulating further proceedings under Habeas Corpus.  
 1824. 4th Geo. IV, c. 17.—For regulating appearance of defendants residing in different Districts.  
 1827. 7th Geo. IV, c. 8.—For facilitating proceedings relating to Habeas Corpus, and Attachment.  
 1830. 10th and 11th Geo. IV, c. 26.—To repeal the 27th Geo. III, c. 4, requiring Writs of Attachment to be endorsed.  
 1833. 3rd Wm. IV, c. 5.—To facilitate proceedings in Actions in District of Three Rivers.  
 1834. 4th Wm. IV, c. 4.—To amend 4th Geo. IV, c. 17.  
 1839. 2nd Vic., c. 49.—For regulating the Practice.  
 1840. 3rd Vic., c. 9.—To facilitate Administration of Justice in Civil Matters.

## RELATING TO EVIDENCE IN CIVIL SUITS.

1801. 41st Geo. III, c. 8.—For determining the Relationship of Witnesses.  
 41st Geo. III, c. 15.—Relating to the Decisory Oath.  
 1808. 48th Geo. III, c. 22.—Relating to the Judges' powers to delegate Administration of Oaths.  
 1812. 52nd Geo. III, c. 11.—To continue and make perpetual last Act.

## RELATING TO EXECUTIONS.

1823. 3rd Geo. IV, c. 11.—To make Sheriffs' Sales less expensive.  
 1824. 4th Geo. IV, c. 12.—To explain and amend last Act.  
 4th Geo. IV, c. 13.—For regulating Proceedings affecting Debtors' effects.  
 1829. 9th Geo. IV, c. 3.—To exempt Debtors' Bedding and Wearing Apparel from seizure.  
 9th Geo. IV, c. 26.—To prevent Fraudulent Seizure of Lands.  
 1836. 6th Wm. IV, c. 26.—*Ib.*  
 1839. 2nd Vic., c. 48.—*Ib.*  
 1831. 1st Wm. IV, c. 4.—For exempting certain Articles from Execution.  
 1833. 3rd Wm. IV, c. 11.—To continue 9th Geo. IV, c. 3, and 1st Wm. IV, c. 4.  
 1839. 2nd Vic., c. 28.—*Ib.*

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## UPPER CANADA.

1827. 7th Geo. IV, c. 6.—For preventing frivolous Suits.
1830. 11th Geo. IV, c. 4.—To extend the provisions of the Laws of set off, and to prevent vexatious Suits.
1831. 1st Wm. IV, c. 2.—To prevent a failure of Justice by immaterial variances in certain Law Proceedings, and to require all Courts to take Judicial notice of Private Acts.
1833. 3rd Wm. IV, c. 6.—To revive 55th Geo. III, c. 2, and to make further provision for proceeding to Outlawry.
- 3rd Wm. IV, c. 8.—To facilitate proceedings against Corporations.
1834. 4th Wm. IV, c. 5.—To grant relief to Bail, and to regulate putting in, and perfecting Bail in vacation.
- 4th Wm. IV, c. 7.—To facilitate remedy in Replevin.
- 4th Wm. IV, c. 9.—To amend 2nd Geo. IV, c. 1, regulating the Practice of the Law.
1835. 5th Wm. IV, c. 1.—To prevent multiplication of Suits on Bills of Exchange.
- 5th Wm. IV, c. 2.—To allow Writs of Error from K. B.
1837. 7th Wm. IV, c. 3.—For the further amendment of the Law, and for the better advancement of Justice.
- 7th Wm. IV, c. 5.—To amend the Law respecting proceedings on Bills of Exchange.
- 7th Wm. IV, c. 9.—To revive and continue 3rd Wm. IV, c. 8.
1838. 1st Vic., c. 16.—To regulate the Costs of levying Distresses for small Rents and Penalties.
1840. 3rd Vic., c. 8.—To make perpetual 5th Wm. IV, c. 1.

## PRACTICE OF COURT OF CHANCERY.

1840. 3rd Vic., c. 1.—To authorize the appointment of Commissioners to regulate the Practice of this Court.

## PRACTICE OF DISTRICT COURTS.

1811. 51st Geo. III, c. 6.—To amend Process of District Courts, and also further to regulate the proceedings of Sheriffs in the Sale of Goods taken in Execution.
1835. 5th Wm. IV, c. 14.—To enable Suitors in District Courts, to procure attendance of Witnesses and to make Affidavits.
1840. 3rd Vic., c. 5.—To provide for the continuance of Suits in cases of formation of New Districts.

## LOWER CANADA.

## INSOLVENT DEBTORS.

1827. 7th Geo. IV, c. 7.—For their relief.  
 1832. 2nd Wm. IV, c. 1.—*Ib.*  
 1836. 6th Wm. IV, c. 3.—*Ib.*  
 6th Wm. IV, c. 4.—*Ib.*

## DEBTORS—FRAUDULENT.

1829. 9th Geo. IV, c. 27.—To prevent Fraudulent Debtors evading Creditors.  
 9th Geo. IV, c. 26.—To prevent Fraudulent Seizure of Lands.  
 1833. 3rd Wm. IV, c. 27.—To revive 9th Geo. IV, c. 27.  
 1836. 6th Wm. IV, c. 26.—*Ib.*  
 1839. 2nd Vic., c. 48.—*Ib.*  
 1836. 6th Wm. IV, c. 9.—To prevent Debtors wasting property under Seizure.

## COURTS OF CRIMINAL JURISDICTION.

1821. 1st Geo. IV, c. 15.—To extend to Three Rivers the 27th Geo. III, c. 6, for establishing Courts of Criminal Jurisdiction.  
 1830. 10th and 11th Geo. IV, c. 16.—To amend the 34th Geo. III, c. 6, as far as relates to Criminal Jurisdiction.  
 1833. 3rd Wm. IV, c. 3.—To continue 9th Geo. IV, c. 28, and 10th and 11th Geo. IV, c. 16.

## EVIDENCE IN CRIMINAL CASES.

1804. 44th Geo. III, c. 7.—Regulating the administration of Oaths to the Grand Jury.

## PRACTICE.

1826. 6th Geo. IV, c. 5.—To delay sentence of death in certain cases.  
 1839. 2nd Vic., c. 23.—For abolishing the Traverse of Indictments for misdemeanors before Court of Oyer and Terminer.

## JUSTICES OF THE PEACE.

1802. 42nd Geo. III, c. 11.—Giving power to regulate Apprentices.  
 1803. 43rd Geo. III, c. 4.—To embrace the last Act.  
 1807. 47th Geo. III, c. 4.—To continue 42nd Geo. III, c. 11.  
 1811. 51st Geo. III, c. 13.—To continue the Acts expired.  
 1823. 3rd Geo. IV, c. 12.—To extend the Powers of Justices of the Peace.

1803. 43rd G

1837. 7th W

1838. 1st V

1832. 2nd W

1835. 5th W

1839. 2nd Vi

1840. 3rd Vi

1805. 45th G

1822. 2nd G

1827. 8th G

1830. 11th G

1829. 10th Ge

1833. 4th W

1835. 6th W

1833. 4th W

1832. 2nd W

1838. 1st Vi

1834. 4th W

1794. 34th Ge

1795. 35th Ge

1804. 44th Ge

1810. 50th Ge

## UPPER CANADA.

## EXECUTIONS.

1803. 43rd Geo. III, c. 1.—To allow time for the Sale of Lands and Tenements by the Sheriff.  
 1837. 7th Wm. IV, c. 19.—To amend the Laws for the Sale of Lands for Taxes.  
 1838. 1st Vic. c. 20.—To postpone Sale of Lands for arrears of Taxes.

## ABSCONDING DEBTORS.

1832. 2nd Wm. IV, c. 5.—To afford means for Attaching their property.  
 1835. 5th Wm. IV, c. 5.—To amend last Act.  
 1839. 2nd Vic., c. 5.—To continue 5th Wm. IV, c. 5.  
 1840. 3rd Vic. c. 7.—*Id.*

## INSOLVENT DEBTORS.

1805. 45th Geo. III, c. 7.—For the relief of.  
 1822. 2nd Geo. IV, c. 8.—To regulate weekly maintenance  
 1827. 8th Geo. IV, c. 8.—For the relief of.  
 1830. 11th Geo. IV, c. 4.—*Id.*

## IMPRISONMENT OF DEBTORS.

1829. 10th Geo. IV, c. 2.—To authorize the detention of Debtors in certain cases.  
 1833. 4th Wm. IV, c. 6.—To extend last Act.  
 1835. 6th Wm. IV, c. 3.—To mitigate imprisonment.

## DEBTORS ON MESNE PROCESS.

1833. 4th Wm. IV, c. 3.—To relieve persons confined.

## PROPERTY LIABLE FOR DEBTORS.

1832. 2nd Wm. IV, c. 6.—To make the Stock of Companies liable.  
 1838. 1st Vic., c. 7.—To amend the Law, with respect to the liability of the legal Representatives of Joint Contractors and of Defendants, on Joint Judgments.  
 1834. 4th Wm. IV, c. 10.—To extend the Limits of Gaols, and to facilitate payment of Debts from Defendants in execution.

## SUPERIOR COURTS OF CRIMINAL JURISDICTION.

1794. 34th Geo. III, c. 2.—To establish a Court, and regulate Court of Appeal.  
 1795. 35th Geo. III, c. 4.—To explain and amend 34th Geo. III, c. 2.  
 1804. 44th Geo. III, c. 3.—To repeal part 34th Geo. III, c. 2.  
 1810. 50th Geo. III, c. 9.—To repeal 44th Geo. III, c. 3.



## LOWER CANADA.

1824. 4th Geo. IV, c. 19.—For Justices to account for Fines and Penalties.  
 1833. 3rd Wm. IV, c. 10.—To regulate the Fees of persons employed by Justices of the Peace in country parishes.  
 1830. 10th and 11th Geo. IV, c. 2.—Fixing qualification of Justices.  
 1836. 6th Wm. IV, c. 16.—Fixing further qualification of Justices.  
 1839. 2nd Vic., c. 20.—For information of the Governor and public, of prosecutions before Justices of the Peace.

## JURIES.

1829. 9th Geo. IV, c. 10.—For extending Jury Trials.  
 1832. 2nd Wm. IV, c. 22.—Regulating qualification and summons of Juries.

## SHERIFFS.

1829. 9th Geo. IV, c. 6.—Regulating office of Sheriff.

## JUDGES.

1811. 51st Geo. III, c. 4.—To prevent Judges sitting in the House of Assembly.

## BARRISTERS AND ATTORNEYS.

1815. 55th Geo. III, c. 13.—For Relief to Students, who have served in the Militia.  
 1826. 6th Geo. IV, c. 6.—For amending 25th Geo., as to admission.  
 1836. 6th Wm. IV, c. 10.—To repeal certain Acts concerning persons admitted to practice.

1837. 7th

1793. 33rd

1796. 36th

1801. 41st

1807. 47th

1815. 55th

55th

1835. 5th

1816. 56th

1818. 58th

1821. 2nd

1823. 4th

1829. 10th

1830. 11th

1840. 3rd

1797. 37th

1800. 40th

1819. 59th

1833. 3rd

1839. 2nd

1826. 7th

## UPPER CANADA.

## OYER AND TERMINER.

1837. 7th Wm. IV, c. 38.—To authorize Justices of the Peace to hold Courts of Oyer and Terminer, and Assize in Ottawa District.

## QUARTER SESSIONS—GENERAL ACTS.

1793. 33rd Geo. III, c. 6.—To fix time and place of holding Courts.  
 1796. 36th Geo. III, c. 4.—To amend 33rd Geo. III, c. 6.  
 1801. 41st Geo. III, c. 6.—To remove doubts respecting the authority, under which the Courts have been erected and holden, and other matters relating to the Administration of Justice, and to fix time for holding the Courts.  
 1807. 47th Geo. III, c. 11.—To fix the Fees of the Clerks of the Peace, and to regulate the Fees in the several Courts.  
 1815. 55th Geo. III, c. 9.—To amend 41st Geo. III, c. 6.  
 55th Geo. III, c. 16.—To repeal 41st Geo. III, c. 6.

## QUARTER SESSIONS OF PARTICULAR DISTRICTS.

1835. 5th Wm. IV, c. 2.—To alter the time of the Quarter Sessions for the Niagara District.  
 1816. 56th Geo. III, c. 1.—To alter the time, as to the London and Johnstown Districts.  
 1818. 58th Geo. III, c. 2.—To repeal 56th Geo. III, c. 1.  
 1821. 2nd Geo. IV, c. 16.—To regulate Home District.  
 1823. 4th Geo. IV, c. 30.—To repeal 2nd Geo. IV, c. 16.  
 1829. 10th Geo. IV, c. 6.—To regulate Ottawa District.  
 1830. 11th Geo. IV, c. 8.—To regulate Niagara District.  
 1840. 3rd Vic., c. 26.—To fix time for the Home District Court.

## PRACTICE—CRIMINAL CASES.

1797. 37th Geo. III, c. 15.—Authorizing the apprehension of Felons.  
 1800. 40th Geo. III, c. 1.—For the further introduction of the Criminal Law.  
 1819. 59th Geo. III, c. 10.—Authorizing Trial of Crimes within the limits of any described Township.  
 1833. 3rd Wm. IV, c. 3.—Regulating Bail in certain cases.  
 1839. 2nd Vic., c. 3.—To provide for the payment of costs in certain cases of information at the suit of the Crown.  
 1826. 7th Geo. IV, c. 3.—To dispense with the necessity of pronouncing sentence of death in certain cases.

## UPPER CANADA.

1839. 1st and 2nd Vic., c. 2.—To remove doubts as to jurisdiction over offences upon the Lake.
1833. 3rd Wm. IV, c. 4.—To reduce the number of cases in which capital punishment may be inflicted, to provide other punishment for offences, to abolish the benefit of Clergy, and to make alteration in certain criminal proceedings before and after conviction.
- 3rd Wm. IV, c. 5.—To take away corruption of blood in certain cases.
1837. 7th Wm. IV, c. 6.—To provide for the punishment of certain offences, and to enable the Governor to commute sentence of death.
- 7th Wm. IV, c. 7.—Regulating transportation of convicts.

## JURIES.

1794. 34th Geo. III, c. 1.—For the regulation of Juries.
1796. 36th Geo. III, c. 2.—To amend 34th Geo. III, c. 1.
1808. 48th Geo. III, c. 13.—For the better regulation of Juries.

## SHERIFFS.

1806. 46th Geo. III, c. 1.—To make provision for certain Sheriffs.
1814. 54th Geo. III, c. 19.—To continue 46th Geo. III, c. 1.
1817. 57th Geo. III, c. 8.—To continue 46th Geo. III, c. 8
1822. 2nd Geo. IV, c. 8.—*Ib.*
1827. 8th Geo. IV, c. 10.—*Ib.*

## BARRISTERS AND ATTORNEYS.

1794. 34th Geo. III, c. 14.—To authorize the Governor to license Practitioners.
1798. 38th Geo. III, c. 2.—To repeal 25th Geo. III, c. 2, concerning Advocates, Attornies, and Notaries.
1803. 43rd Geo. III, c. 2.—To authorize the Governor to license Practitioners.
1803. 43rd Geo. III, c. 8.—To authorize Attornies now practising, or hereafter to be admitted, to take a certain number of Clerks.
1807. 47th Geo. III, c. 1.—For the relief of Clerks to Attornies who may have served their clerkship without being bound by contract in writing.
- 47th Geo. III, c. 8.—To authorize Practitioners to take such a number of Clerks as therein mentioned.
- 4th Wm. IV, c. 9.—To qualify 2nd Geo. IV, as to the Attorney and Solicitor Generals.

1815. 55th C

1837. 7th V

1800. 40th C

1802. 42nd C

1805. 45th C

1832. 2nd V

1839. 2nd V

1842. 6th V

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## UPPER CANADA.

1815. 55th Geo. III, c. 3.—To afford relief to Barristers and Attorneys, and to provide for the admission of Law Students.
1837. 7th Wm. IV, c. 15.—To amend the Law for the admission of Barristers and Attorneys.
- JUSTICES OF THE PEACE.
1800. 40th Geo. III, c. 4.—Summary powers in sale of spirits.
1802. 42nd Geo. III, c. 2.—To provide for Administration of Justice in District of Newcastle.
1805. 45th Geo. III, c. 5.—To alter part of 42nd Geo. III, c. 2.
1832. 2nd Wm. IV, c. 4.—To facilitate summary proceedings before Justices of the Peace, and to afford them protection.
1839. 2nd Vic., c. 4.—To provide for the summary punishment of petty trespasses and offences.
1842. 6th Vic., c. 3.—Fixing the qualification of Justices of the Peace.

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 JUDICIAL STATUTES PASSED BY THE PARLIAMENT OF CANADA.

1841. 4th and 5th Vic., c. 3.—To repeal the Law for the recovery of Small Debts in Upper Canada, and to make other provision.
- 4th and 5th Vic., c. 5.—To facilitate the dispatch of business K. B.
- 4th and 5th Vic., c. 8.—To alter the Law regulating District Courts in Upper Canada.
- 4th and 5th Vic., c. 12.—For Justices making returns of convictions.
- 4th and 5th Vic., c. 20.—For the more easy and expeditious Administration of Justice in Civil Causes, and matters involving small pecuniary value in Lower Canada.
- 4th and 5th Vic., c. 22.—To provide for Administration of Justice in Magdalen Islands.
- 4th and 5th Vic., c. 24.—For improving the Administration of Criminal Justice.
- 4th and 5th Vic., c. 25.—For consolidating and amending the the Laws in this Province, relative to Larceny and other offences.
- 4th and 5th Vic., c. 26.—Regulating proceedings in cases of malicious injuries of property.

4th and 5th Vic., c. 27.—Regulating proceedings on offences against the person.

6th Vic., c. 3.—Fixing the qualification of Justices of the Peace.

6th Vic., c. 10.—To continue 4th Vic., c. 26.

6th Vic., c. 11.—To continue 2nd Vic., c. 49, and 4th and 5th Vic., c. 1.

6th Vic., c. 18.—To repeal 3rd and 4th Vic., c. 45, 4th Vic., c. 19, 4th Vic., c. 15, and 4th and 5th Vic., c. 20.

*House of Peers*

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*Common Pleas.*

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*Bail Court.*

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*Rolls Court.*

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## LAW AND EQUITY COURTS IN ENGLAND.

*House of Peers.**Exchequer Chamber.**Queen's Bench.**Common Pleas.**Exchequer.**Bail Court.**High Court of Chancery.**Rolls Court.**Vice Chancellor's Courts.**Court of Commissioners of Bankrupts.**Court of Pie Poudre.**Court Baron.**County Court.**Court of Admiralty.**Archdeacons'**Consistory**Of Arches**Of Peculiars**Prerogative Court**Delegates**Commission of Review*

} ECCLESIASTICAL COURTS.

## COURTS OF SPECIAL JURISDICTION.

*The Forest Courts.**Commissioners of Sewers.**Marshalsea and Pulace Court.**Court of the Duchy of Lancaster, Counties Palatine of Chester,  
Lancaster, Durham, and the Royal Franchise of Ely.*

## STANNARY COURTS.

*Of Devonshire and Cornwall.*

## ENGLISH COURTS.

The several Courts within the City of London, and other Cities, Boroughs, and Corporations, throughout the kingdom, held by Prescription, Charter, or Act of Parliament: these are for local objects, Civil and Criminal; the Civil corresponding in some degree to the District Courts and Courts of Request:

*The Chancellors' Courts in the Universities.*

*The High Court of Parliament.*

*Lord High Steward.*

*King's Bench.*

*Chivalry.*

*Admiralty.*

*Courts of Oyer and Terminer and Gaol Delivery.*

*Quarter Sessions.*

*Sheriffs' Tourn.*

*Court Lect.*

*Clerk of the Market.*

*Coroners.*

There are a few other Criminal Courts of greater dignity than many of these last, but of a more confined and partial jurisdiction, extending only to some particular places.

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## LAW COURTS IN AMERICA.

The Courts of the United States are, the SUPREME, the CIRCUIT, and the DISTRICT COURTS: their jurisdiction is limited by the Constitution, Art. 3, Sec. 22.

By the Law of 1789, c. 20, (1 Story's Laws, U. S., 58, f. 13), the SUPREME COURT has exclusive jurisdiction of all controversies of a civil nature, where a State is a party, except between a State and its citizens, and except also between a State and citizens of other States or aliens; in which latter case it has original, but not exclusive, jurisdiction. It has also exclusive jurisdiction of all suits against ambassadors, or other public ministers, and their domestics; and original, but not exclusive, jurisdiction of suits by ambassadors, or other public ministers, or in which a consul or a vice-consul is a party. It has also appellate jurisdiction from the Circuit Courts in civil actions.

The CIRCUIT COURT is next in rank. It has original jurisdiction, concurrently with the State Courts, of all civil suits, where the matter in dispute exceeds five hundred dollars, and the United States are plaintiffs, or an alien is a party, or the suit is between a citizen of the State, where the suit is brought, and a citizen of another State. It has exclusive jurisdiction of all crimes and offences cognizable under the authority of the United States, except when specially otherwise provided; and concurrent jurisdiction with the District Courts of the crimes and offences cognizable therein. It has also appellate jurisdiction from the District Court.

The DISTRICT COURT has jurisdiction, exclusive of the State Courts, of all crimes and offences, cognizable under the authority of the United States, committed within its district or upon the high seas, where no other punishment than whipping, not exceeding thirty stripes, a fine not exceeding one hundred dollars, or a term of imprisonment not exceeding six months, is to be inflicted; and also has exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under the Laws of Import, Navigation, or Trade of the United States, where the seizures are made on waters navigable from the sea, by vessels of ten or more tons burthen, within its district, as also upon the high seas; saving to the suitors, in all cases, the Common Law remedy, where it is competent. It has also original jurisdiction of all seizures on land, or other waters than those above mentioned, made under the Laws of the United States, and of all suits for penalties and forfeitures incurred under those laws. It has also cognizance concurrently with the State Courts and the Circuit Courts, of all cases, where an alien sues for a tort only, in violation of the Law of Nations, or a treaty of the United States, also of all suits at Common Law, where the United States sue, and the matter in dispute amounts to one hundred dollars. It also has jurisdiction, exclusive of the State Courts, of all suits against consuls or vice-consuls, except for offences above the

## AMERICAN COURTS.

description above mentioned. It also has a concurrent jurisdiction in suits of Common Law, where the United States, or any officer thereof, under any Act of Congress, sue, although the amount is under one hundred dollars.

In addition to these, there are also COURTS MARTIAL, and NAVAL COURTS, for the Army and Navy.

In the State of New York, the highest Court is the COURT OF ERRORS, consisting of the Senate, the Chancellor, and the Judges of the Supreme Court: it is also the Court for the trial of Impeachments.

A Writ of Error, from the decisions of the Supreme Courts, lies to this Court, and then the Justices of that Court merely assign the reasons of their decision without voting. An Appeal lies to it from the decision of the Chancellor.

The Chancellor has the same equity powers as the Chancellor of England; Appeals also lie to him, from the decisions of the Vice Chancellor, and in some cases from the decisions of Surrogates.

The SUPREME COURT has jurisdiction in all Common Law cases. It is aided in practice, almost entirely relieved, from the *trial* of causes, as the Circuit Judges try issues of fact, in all civil Common Law causes; and with two of the Judges of the County Courts, are the Judges of the Court of Oyer and Terminer. The Circuit Judges are also the Vice Chancellors of their own Circuit, and Appeals lie to them, in some cases, from the Surrogates of their counties.

In the first Circuit, including the city of New York, the offices of Vice Chancellor and Circuit Judge are distinct.

Courts of COMMON PLEAS are appointed for each county, and have cognizance of all *local* actions, within their county: and of all transitory actions, and of appeals from the Justices' Courts, except in the city of New York, where the decisions of the Justices' Courts are reviewed by the Superior Court for the city on a certiorari.

In each town there are Justices' Courts, having jurisdiction, generally of personal actions, when the amount in controversy does not exceed fifty dollars, and the title to lands does not come in question. There is also in the city of New York, the Superior Court, having the same powers generally as the Common Pleas Courts, with this addition, that however large the amount in controversy may be, causes cannot be removed from it, to the Supreme Court, before judgment.

In the city of New York is also the MARINE COURT, having the same jurisdiction as the Justices' Courts; also jurisdiction, in such cases, to the amount of one hundred dollars, and in all controversies between sailors and the masters of ships.

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## AMERICAN COURTS.

In addition to these Courts, are the **GENERAL AND SPECIAL SESSIONS**, in each county, for the trial of crimes.

The **SURROGATE** of each county is also constituted a Court, and has cognizance of all matters concerning the estates of deceased persons.

**COURTS MARTIAL** are also appointed annually, in the manner directed by Law for the Militia of the State.

There is no Ecclesiastical Court in the State; the powers of such Courts, so far as they relate to the estates of deceased persons, are executed by the Surrogate; so far as they concern divorces, are executed by the Court of Chancery.—(See the Revised Statutes of New York.)

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 BARRISTERS AND ATTORNIES.—CANADA.

So intimately connected with Courts are its Officers, that the Laws affecting Barristers and Attornies claim some notice. The Act of the 25th Geo. III, c. 4, provided that no person should practice as a Barrister, Advocate, Solicitor, Attorney, or Proctor, who should not have been articulated in writing to some Advocate or Attorney, admitted and practising in the *Province, or in some other part of his Majesty's dominions*, for six years, unless such person should have been called to the Bar; and until he shall have been examined by some of the first and most able Barristers, Advocates, and Attornies, in the Courts of judicature in the Province, in the presence of the Chief Justice, or two or more Judges of some of his Majesty's Courts of Common Pleas.

Notwithstanding this provision, Upper Canada enjoyed an inadequate supply of lawyers; the above Act, therefore, as regarded this part of the Province, was suspended by 34th Geo. III, c. 4, to enable the Governor to admit, not exceeding sixteen licentiates, to act as Attornies and Advocates. Although, in 1797, the Law Society was established in the Upper Province, so great, six years afterwards, was the inconvenience "in several parts of this Province, from a want of a sufficient number of persons duly authorized to practice the profession of the Law," that the Governor was again empowered to admit six additional practitioners, having the Certificate of the Chief Justice, or the senior Puisne Judge, as to their ability. By the 2nd Geo. IV, c. 5, the 25th Geo. III, c. 4, is repealed, so far as relates to the Province of Upper Canada, and practitioners at the bar must be admitted into the Law Society, and continue students five years, with an exception in favour of English, Scotch, or Irish Barristers, on their becoming members of the Society. On the establishment of the Court of Chancery, in 1837, the Vice Chancellor has

the power of admitting six persons, qualified to practice in that Court, in addition to those who were qualified by a provincial education. Barristers and Attorneys of the Common Law Courts have power to practice in this Court. See 7th Wm. IV, c. 2.

By 4th Geo. IV, c. 3, and 3rd Vic., c. 2, the Attornies of the Upper Province are required to take out Annual Certificates, and this, by the latter Act, must be before or during Michaelmas Term; such Certificate to be given by the Clerk of the Crown and Pleas, upon the production of a receipt from the Treasurer of the Law Society, for such sum as the Benchers shall determine.

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#### THE LAW SOCIETY.

This Society was established in the Upper Province, in 1797, under the 37th Geo. III, c. 13, and was constituted of the persons then practicing at the Bar, under the inspection of the Judges as Visitors; the six senior members, or more, with the Attorney and Solicitor General, were to form a quorum, and to act as Governors, or Benchers. In Michaelmas Term, 40th Geo. III, the then Attorney and Solicitor General, and thirteen members, were chosen Benchers, and in Trinity Term, 59th Geo. III, the Treasurer was directed to be chosen annually. The proceedings of the Benchers, in Convocation, by rule, Trinity Term, 1st and 2nd Wm. IV, c. 4, to be in conformity to the ordinary parliamentary mode, and their election, by the majority of the votes of Benchers in Convocation. In January, 1800, the Benchers were declared Governors of the Society, with full power to make such rules and regulations as should be necessary, subject to the inspection of the Judges; and by 2nd Geo. IV, c. 5, the Society was incorporated.

There is also another Society, or Class, formed from the members of the Law Society, who have not taken any degree, and which is under the superintendance of the other members of the Society. This Society, or Class, is called the "Trinity Class," and is organized and regulated by the Benchers in Convocation. The Terms of the Society are the same with those of the Court of King's Bench. The Standing Convocation days in each Term, are:

The first Monday..... First Examination day.  
 The first Saturday ..... Second Examination day.  
 The second Tuesday..... Admission day.

The Annual Examination of the Trinity Class, takes place on the first Thursday after the Michaelmas Session of the Class.

By the latest existing regulations, candidates for admission to the Law Society, are subjected, if they are designed for the Optime Class, to be examined in the Hecuba of Euripides, the first twelve books of Homer's

Iliad, Sallust, Euclid, Trigonometry, H Philosophy, Me Language.

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Iliad, Sallust, Euclid, (1st, 2nd, 3rd, 4th, 6th and 11th books), Algebra, Trigonometry, Bridge's Mechanics, Astronomy, Geography, and in Moral Philosophy, Metaphysics, Rhetoric, the Belles Lettres, and the English Language.

The Senior Class, in the *Analecta Græca Minora*, or, instead of this, if he prefers it, in Moral Philosophy, the Odes of Horace, Euclid, (1st, 2nd, 3rd, 4th and 6th books), Bridge's Algebra, to the end of *Quadratio* Equations, Astronomy, English, Roman, and German History, Geography, and the English Language.

The Junior Class, in the first two books of Virgil's *Æneid*, the first book of Euclid, English History or Geography, and the English Language.

One of the Standing Orders of the Convocation, Michaelmas Term, 3rd Wm. IV, directed for purposes of examination, a division of Classes, denominated, the Junior, Senior, and Optimes.



The number of Barristers in Upper Canada, admitted since	
Trinity Term, 1797, is.....	291
The number of Attornies.....	333
	624

A great number of these Attornies, are Barristers also.

The number of gentlemen belonging to the English Bar, or, who are qualified to practice in the Courts of Westminster, is nearly six thousand. Some of them derive from their profession incomes as high as £5,000, £6,000, £8,000, and even £12,000. The retaining fees given to distinguished Counsel, in important cases, are often very large. One thousand guineas has on many occasions been given; two and three hundred are of frequent occurrence. In the case of Small and Attwood, Mr. Sergeant Wilde's retainer was eight thousand guineas.\*—The Bench and the Bar, p. 36.

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\* In this celebrated case, Mr. Sergeant Wilde received five thousand guineas with his brief, and got fifty guineas every day he appeared in the case, which was nearly forty days altogether. He got, in addition, twenty guineas a-day, in the shape of consultation fees. The case not being concluded the first session, it was brought before the House of Lords, and was re-argued, when the learned Sergeant got an additional five thousand guineas, with the before mentioned fifty guineas every day he appeared, and the twenty guineas per day for consultation fees.

The number of persons belonging to the Legal Profession, in New York alone, exceeds seven hundred, of whom about fifty only are Judges in all the Courts together. The remainder are Barristers and Attorneys, which are here not separate professions as in England, but united in the same individual.

The younger members, who have any practice at all, as Attorneys, readily make an income of 3,000 dollars, or from £600 to £700 a-year, rising from this minimum to as much as 10,000 dollars, or about £2,000 sterling a-year. The smallest fee of a Barrister of any standing, and in almost any cause, is one hundred dollars, or about twenty pounds. The greatest fee to the most distinguished Barrister, in any regular cause tried in the City Courts, is five thousand dollars, or about one thousand pounds.

—Buckingham's America, v. 1, p. 130.

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### ERRATA.

- Page 9.—For *detereur* ..... read ..... *det. ac. dr.*  
           “ *cenntts* ..... “ ..... *cents.*  
 “ 10.— “ *Quatuor Mara...* “ ..... *Quatuor Maria.*  
 “ 30.— “ *56th Gco. III, c. 2* “ ..... *56th Geo. III, c. 19.*

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