

1895

REPORTS

OF A

SPECIAL COMMITTEE OF THE SENATE

OF THE

UNIVERSITY OF TORONTO

ON CLAIMS RESPECTING THE

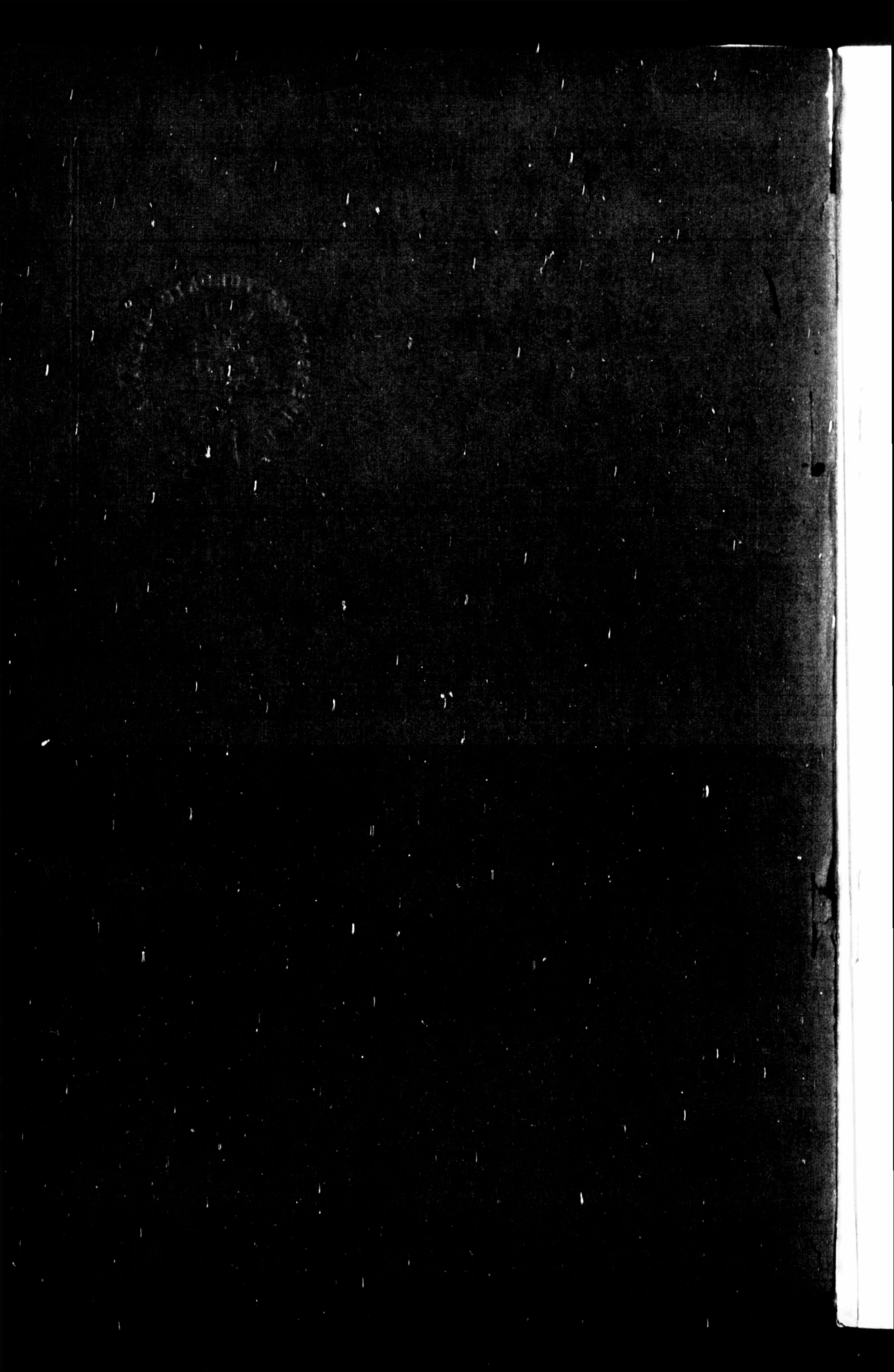
ASSETS AND ENDOWMENTS OF THE UNIVERSITY.

PRINTED BY ORDER OF THE LEGISLATIVE ASSEMBLY.

3091



TORONTO:  
WARWICK BROS. & BUTTER, PRINTERS, 50, 52 AND 70 FRONT STREET WEST.  
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## FIRST REPORT :

### ON THE CLAIMS RESPECTING THE LAND ENDOWMENT OF THE UNIVERSITY.

*To the Senate of the University of Toronto :*

The Special Committee of the Senate appointed to investigate the legal and equitable claims of the University in respect of its Endowment and Assets, as specified in the Resolution of the 11th January, 1895, present the following as a Separate Report upon the claims of the University respecting the original appropriation for its Land Endowment :

#### ENDOWMENT OF A UNIVERSITY RECOMMENDED IN 1796.

1. The first reference to an Endowment for a University in the Province of Upper Canada appeared in a Despatch from Lieutenant-Governor Simcoe to the Colonial Secretary, dated the 20th July, 1796, in which he states that "appropriations [of Crown Lands] may be made agreeable to the opinion of the Executive Council to be sold hereafter for public purposes—the first and chief of which I beg to offer with all respect must be the erection and endowment of a University, from which more than any other source, or circumstance whatever, an attachment to His Majesty, morality and religion will be fostered and take root throughout the whole Province."

#### LEGISLATIVE ADDRESS FOR A LAND ENDOWMENT, 1797.

2. During the session of the Legislature of Upper Canada held the following year (1797), a joint address from both Houses was presented to His Majesty praying that a certain portion of the waste lands of the Crown should be appropriated to form a fund "for the establishment of a respectable Grammar School in each District ; and also of a College or University where the youth of the country might be enabled to perfect themselves in the different branches of liberal knowledge."

#### IMPERIAL CROWN'S ASSENT TO SUCH AN ENDOWMENT.

3. In a Despatch dated the 4th November, 1797, the Colonial Secretary communicated to Mr. President Russell the Crown's compliance with the address of the Legislature, and directed him to consult the Executive Council, Judges and Law Officers, and to report in what manner, and to what extent, a portion of the Crown Lands might be appropriated for the establishment of Free Grammar Schools, and a University ; which Despatch was communicated to the Legislature on the 18th June, 1798.

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LOCAL GOVERNMENT RECOMMENDS A LIBERAL ENDOWMENT.

4. On the 1st December, 1798, the Executive Council reported their unanimous opinion that His Majesty's intention respecting free Grammar Schools and a University for Upper Canada, could only be effectuated by "a liberal provision for their establishment and maintenance." They therefore recommended "that an appropriation of 500,000 acres, or ten townships of the waste lands of the Crown, after deducting the Crown and Clergy sevenths, should be set apart to form a sufficient fund for the establishment and maintenance of four Grammar Schools, and a University in the Province of Upper Canada." And they further recommended that if the proposed appropriation should be found to be insufficient for the purposes indicated, "a similar selection should be made from the Crown Reserves." (*See Appendix to the Journal of House of Assembly, 1831, pp. 105-8.*)

CROWN'S APPROPRIATION OF 549,217 ACRES FOR HIGHER EDUCATION IN 1798.

5. From various Parliamentary and other records, your Committee find that in 1798, pursuant to the above Report, the Executive Government, on behalf of the Crown set apart twelve townships, then estimated to contain about 549,217 acres, for the Educational purposes above specified. Subsequent surveys showed that these townships contained only 467,675 acres; from which the surveyor's percentages, amounting to 19,982 acres, had to be deducted. It was also found that 170,719 acres had, apparently through inadvertence, been alienated by Crown grants to various individuals, leaving available, of the original reservation of 1798, only 277,674 acres. To make good these deficiencies, the Surveyor-General, on the 19th November, 1827, reported that certain lands in other townships could be made available for that purpose; and an Order in Council, dated 22nd November, 1827, was passed, adopting the recommendations of his report to the Crown Lands Department, and setting apart sufficient Crown Lands in other Townships, so as to bring up the Endowment for Higher education to the original reservation of 549,217 acres. The effect of this subsequent action of the Government was to make the reservation 550,274 acres, a small increase of 1,057 acres. (*See Appendix to the Journal, 1832-3, pp. 105-6, and Appendix No. 1 to this Report.*)

LEGISLATIVE DISAPPROVAL OF DEFICIENCIES IN THE ORIGINAL APPROPRIATION.

6. These deficiencies were unfavorably commented upon in the report of the Legislative Committee on Education in 1833, as follows: "It may be proper to state that your Committee do not recognize any deduction for deficiencies in the actual admeasurement of the Townships originally appropriated, or the alleged percentage for survey, or for the endowment of Upper Canada College, since they are persuaded that a respectful representation to His Majesty (if it cannot be at once done by the Provincial Government), will restore the grant to what was at first intended without any diminution whatever. In order to set the matter at rest, it is respectfully recommended that an humble address be presented to His Majesty, praying that he would be pleased to direct that the appropriation be made up to its original amount, with no other deduction than that for the



University; and that all bad lots be exchanged either for Crown Reserves, not already sold, or for such other Crown Lands as are good and available." (*See Appendix, 1832 3, p. 69.*)

GOVERNMENT POLICY SUBSEQUENT TO 1819 RESPECTING THE UNIVERSITY ENDOWMENT.

7. Your Committee find that from the year 1819 the Executive records furnish indications that it was occasionally the policy of the Imperial and Local Governments to consider the Land Reservation of 1798, as appropriated to the establishment and endowment of the University. During that year the Lieutenant Governor brought the matter before the Executive Council and requested them to consider "a plan for establishing an University in the Province." After a review of the proceedings previously taken under the Colonial Secretary's Despatch of the 4th November, 1797, and the recommendations made in the report of the Committee of Council, dated the 1st December, 1798, advising the reservation of 500,000 acres of the Crown Lands for Grammar Schools, and a University, the Executive Council, in a report dated the 7th January, 1819, recommended that the formal sanction of the Imperial Government should be obtained, authorizing the local Government to sell or lease "the said 500,000 acres of land for the purpose of establishing a University in this Province." And they further advised that provision for Grammar Schools was not then required out of the original Reservation, as sufficient provision for their establishment and maintenance had been made by the Legislature. (*See Appendix to the Journals, 1831, p. 109.*)

LEGISLATIVE PROVISION FOR GRAMMAR SCHOOLS, IN 1807.

The Legislative provision referred to was a grant of \$400 per annum, out of the Provincial Revenues, towards the payment of the salary of the Master of each Grammar School, made by the Act of 1807, 47 Geo. III, chapter 4, and Amending Acts.

FURTHER LAND ENDOWMENT FOR GRAMMAR SCHOOLS IN 1823.

8. Apparently in consequence of this advice nothing was done by the local Government to carry out so much of the original intention of the Crown, as related to the endowment of Grammar Schools out of the Land Reservation of 1798, until the Lieutenant Governor, in a Despatch to the Colonial Secretary, dated the 13th May, 1823, recommended that "much good might be effected by the organization of a general system of Education; an object to which might be applied the proceeds of the sale of some portions of the land set apart under the title of 'School Reserves'; still, however, reserving a certain portion for the future endowment of a University." (*Ibid., p. 108.*)

IMPERIAL APPROVAL OF SUCH ENDOWMENT.

This recommendation was approved by the Imperial Government in a Despatch from the Colonial Secretary to the Lieutenant Governor, dated the 12th October, 1823, in which he said: "I am happy to have it in my power to convey to you His Majesty's consent that you appropriate a portion of the Reserves, set apart for the establishment of a University, for the support of schools on the national plan of education." (*Ibid., p. 106.*)

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APPROPRIATION OF 190,573 ACRES FOR GRAMMAR SCHOOLS.

9. Thereupon the Executive Government, in 1823, selected and set apart 190,573 acres as an endowment for the establishment and maintenance of District Grammar Schools. The management and sale of these lands, and the distribution of the proceeds among the Grammar Schools, were given to a General or Provincial Board of Education, appointed by the Lieutenant-Governor.

UNCERTAIN POLICY OF THE LOCAL GOVERNMENT.

10. From some of the Parliamentary Records available to your Committee, it appears doubtful whether this appropriation of 190,573 acres was always considered by the Executive Government as part of the original Land Reservation of 549,217 acres, set apart in 1798, for "the establishment and maintenance of four Grammar Schools, and a University." There are other Documents which also make it doubtful whether the later appropriation of 63,996 acres (originally estimated as 66,000 acres) for the establishment and maintenance of Upper Canada College, were taken from the original Reservation of 1798.

BALANCE OF ORIGINAL LAND RESERVATION INTENDED FOR THE UNIVERSITY.

But all of them make it clear beyond question that the balance of the original Reservation was intended for the endowment of the University. A Government return presented to the House of Assembly in 1833, after the Grammar School appropriation of 1823, and the Upper Canada College Endowment of 1831-2, showing the appropriation of these lands, will be found in the Appendix to the Journals of 1832-3, page 72. Another and later Return will be found in the Appendix KK of 1841. An extract from the Return presented to the Parliament of Upper Canada in 1833 is appended to this Report as Appendix No. 1.

LAND RESERVATION OF 1798 SUPPLEMENTED.

This Return shows the later action of the Government in 1827 under the Royal Instructions of 1797, and is in accordance with the Legislative recommendation respecting deficiencies in the Land Reservation. It brought up the quantity of land set apart for the Educational purposes then indicated, to 550,274 acres instead of 549,217 acres, originally reserved.

REASONABLE PRESUMPTION RESPECTING THE GOVERNMENT POLICY.

Assuming, however, that the land endowments of the Grammar Schools (190,573 acres) and of Upper Canada College (63,966 acres) should be considered as properly appropriated out of the original, and supplemented, reservation of 550,274 acres, the quantity which then remained for the establishment and endowment of the University, and to which your Committee consider it then became justly entitled, pursuant to the action of the Crown in 1798, consisted of 295,735 acres.

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 OTHER LAND APPROPRIATIONS FOR EDUCATION.

11. Your Committee think it proper to refer here to other appropriations of the Crown Lands for the support of Education in this Province. By an Order in Council, dated Quebec, 25th August, 1789, 3,598 acres were set apart for schools; but they formed no part of the subsequent reservation of 1798. (*See Appendix, 1835, Vol. 2, No. 115.*) By the Act 2 Vic., c. 10 (1839), the Lieutenant-Governor in Council was authorized to set apart 250,000 acres for the support of Grammar Schools—thus making, with the former appropriation of 190,573 acres, their endowment 440,573 acres. And by the Act 12 Vic., c. 200 (1849) 1,000,000 acres were set apart so as to produce a capital fund which, when invested at 6 per cent., would yield an income of \$400,000 a year for the support of Public or Common Schools. But as these appropriations do not come within the scope of the present inquiry, your Committee only refer to them to show how the increased and urgent necessities of these schools have been recognized and provided for, with just liberality, while those of the University—equally urgent—have apparently been forgotten.

## ESTABLISHMENT OF THE UNIVERSITY RECOMMENDED IN 1825.

12. Your Committee now propose to deal with the history of the endowment when the establishment of the University appeared to be an assured reality, as well as an indispensable and crowning equipment of the Educational system of Upper Canada. In a Despatch to the Imperial Government, dated the 19th December, 1825, the Lieutenant-Governor reported that the state of education forcibly impressed him with "the incalculable importance of the immediate establishment of an University," and he stated that "about 450,000 acres had been set apart for that object." But as some portions of the lands were remote from settlements, and a considerable portion of them was not of the first quality, he recommended that "an equal quantity of the best of these lands should be exchanged for that portion of the 'Crown Reserves,' which remains to the Government, being under lease, as the latter could be almost immediately disposed of." And in a report on the establishment of the proposed University, made by the Rev. Dr. Strachan at the request of the Lieutenant-Governor, dated 10th March, 1826, it was stated: "In 1798 about 549,000 acres of land were appropriated for the purposes of Education and the endowment of Schools. Of this appropriation 190,573 acres have been assigned by His Majesty's Government to the General Board of Education, leaving for the endowment of a University, 358,427 acres." (*See Report of the University Commissioners, 1851, pp. 78-83, and Appendix EEE to the Journal of 1851.*)

## IMPERIAL AUTHORIZATION OF THE ESTABLISHMENT OF THE UNIVERSITY IN 1827.

13. These recommendations were approved of by the Imperial Government; and in a Despatch to the Lieutenant-Governor, dated the 31st March, 1827, the Colonial Secretary, informing him of the issue of Letters Patent under the Great Seal, constituting a University for Upper Canada, under the title of King's College, said: "I have to authorize you on the receipt of this Despatch, to exchange such Crown Reserves, as have not been made over to the Canada Company, for an equal portion of the lands set apart for the



purposes of Education and the foundation of a University, as suggested in your Despatch of the 19th December, 1825, and more fully detailed in Dr. Strachan's Report of the 10th March, 1826; and you will proceed to endow King's College with the said Crown Reserves with as little delay as possible."

#### AVAILABLE QUANTITY OF THE CROWN RESERVES FOR THE ENDOWMENT.

14. Your Committee notice that in the Lieutenant-Governor's Despatch above referred to it was stated that there were "about 200,000 acres of Crown Reserves;" and that, in Dr. Strachan's Report, it was stated that "the Crown Reserves prayed for in exchange yield about 229,000 acres." The Crown Lands Department, however, reported to the Executive Council that the actual quantity of Crown Reserves then available consisted of 225,944 acres, and which were specifically described in the Report of the Surveyor-General, dated the 19th November, 1827.

#### GRANT OF A PARTIAL ENDOWMENT TO THE UNIVERSITY IN 1828.

15. On the 3rd January, 1828, Letters Patent issued to the University, by which, after reciting that certain large tracts of lands had been set apart by the Crown in 1798, "for the purposes of promoting education, and for the foundation of a University," and further reciting that it was desirable to exchange Crown Reserves for "an equal portion" of such reserved lands, and declaring that in place of 225,944 acres, part of the original Reservation, "and which we have resumed to us, our heirs and successors, as no longer to be reserved or set apart for the purposes aforesaid," the Crown granted to the University the 225,944 acres of Crown Reserves described in the Patent. An extract from the Letters Patent is appended to this Report as Appendix No. 2.

#### PROOF OF THE UNIVERSITY'S CLAIM TO THE FULL LANDED APPROPRIATION.

16. The conclusions to which your Committee have arrived, after an exhaustive investigation of the Parliamentary and other Records bearing upon this claim, are confirmed by the opinions of the public authorities who have also investigated the history of this Endowment. The University Commissioners, in their Report, laid before Parliament in 1851, state: "The residue of the grant of 1798, amounting to 358,427 acres, appears to have been regarded by the framer of the Report above mentioned (Dr. Strachan), as well as by the Lieutenant-Governor, as properly constituting that portion of the Royal grant, which has been intended for the support of the contemplated University." And further on: "Of the lands constituting the difference between the 358,427 acres remaining of the grant of 1798, and the 225,944 acres conveyed from the Crown Reserves to the University in exchange for an equal quantity of the former . . . the difference amounts to 132,483 acres; and by reference to the report of the Rev. Dr. Strachan, before noted, the suggestions of which were approved by His Majesty, it is evident that the whole of the 358,427 acres were regarded as appertaining to the University." And the Commissioners commented on the inaction of the members of the Council in neglecting to press the claims of the University to the lands originally appropriated for its endowment "to their legitimate extent." (See Report pp. 16 and 17.)

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CONFIRMATORY OPINION OF THE LATE MINISTER OF EDUCATION IN 1881.

These conclusions are further confirmed by the investigations and opinions of one whose long and intimate connection with the University, and educational matters in this Province, enabled him to speak with authority on this matter. In an exhaustive Report to the Lieutenant-Governor of Ontario, dated the 31st January, 1881, the late Minister of Education, who had been for many years a member of the Senate, and Vice-Chancellor of the University, stated that "The residue of the grant [of 1798], being 358,427 acres, was regarded by the Provincial Government as applicable to the support of the then contemplated University; and an exchange was made by the Imperial Government of Crown Reserves of an equal quantity of land with the view of securing the immediate establishment of the University." And he added that from these lands 66,000 acres were set apart in 1831 for the support of Upper Canada College, but that the actual quantity was only 63,996 acres. (*See Ontario Sessional Paper to the Journal of 1881 No. 31, p. 2*)

UNIVERSITY STILL ENTITLED TO 69,791 ACRES OF THE LAND RESERVATION.

17. Your Committee, therefore, find that after deducting the appropriations for Grammar Schools, 190,573 acres, and for Upper Canada College, 63,996 acres, from the supplemental reservation of 550,274 acres, there remained as properly belonging to the University Endowment 295,735 acres, of which 225,944 acres were resumed by the Crown out of the original Reservation and restored to the Crown Domain, by the Letters Patent of the 3rd January, 1828; and, in lieu of the latter, an equal quantity of "Crown Reserves" was granted and made part of the University Endowment, leaving still due to that Endowment 69,791 acres of the supplemental Crown reservation of 1827, which at the average price at which the granted lands had been sold were to be of the estimated value of at least \$6.00 per acre. (*See Bursar's reply No. 3 in Appendix No. 11 of 1856*). And your Committee submit that the University is justly and equitably entitled to the value of these 69,791 acres out of the said Reservation; or if they have been alienated by the Crown, then out of other lands of the landed wealth of the Crown in Ontario, so as to make up the University Endowment to the quantity of land which, by the combined action of the Legislature and the Imperial and Local Governments, was originally reserved for it, and in respect of which the good faith and honor of the Crown have been so often acknowledged, and pledged, in the several Despatches and State Papers above referred to.

UNIVERSITY'S CLAIM ON THE ENDOWMENT OF UPPER CANADA COLLEGE.

18. Your Committee's Report on the loans to Upper Canada College, will show that the land endowment of that institution had been vested in the University by Letters Patent as security for the repayment of the moneys which had been loaned to Upper Canada College. These loans consisted of (1) direct advances by the University to Upper Canada College for the erection of its building and other purposes amounting to \$143,565.86; and (2) direct advances by the Crown to Upper Canada College for the same purposes, which the University, at the instance of the Government redeemed out of its trust moneys amounting to \$25,571.62, making in all without interest, the total amount of \$169,137.48 abstracted out of the University endowment. The capital of that land endowment has

lately been appropriated by statute to the purchase of a site and the erection and equipment of new buildings for Upper Canada College; and your Committee would submit with all confidence that as the trust moneys of the University endowment amounting, without interest, to \$169,137, were advanced to Upper Canada College at the instance, and with the express approval, of the Crown, the University, on behalf of the Higher Educational Interests of the Province, has an equitable claim upon the conscience and honor of the Crown, to be re-couped for these trust moneys by a grant of land equivalent in value to the amount so lost to the endowment; and also for the deficiency or shortage of 2,004 acres lost to the University by prior Crown grants or defective measurements. An extract from the Letters Patent setting forth the special trusts of the original grant of the endowment of Upper Canada College to the University is appended to this Report, as Appendix No. 3.

#### CLAIM FOR DEFICIENCIES IN THE UNIVERSITY LAND GRANTS.

19. Your Committee also find that of the "Crown Reserves" granted to the University in lieu of the 225,944 acres of University lands resumed by the Crown in 1828, the University did not obtain title to the actual quantity granted and described in the Letters Patent; and that, owing to prior grants made by the Crown to individuals, and for public purposes, and defective surveys, there was a deficiency or loss of about 3,676 acres, and a small over-plus in about three townships; and there was also a similar deficiency or loss, as previously indicated, of 2,004 acres in the lands granted to the University as security for its loans to Upper Canada College: in all 5,680 acres. By various statutes, since 1842, authority is given to the Commissioner of Crown Lands to order new grants equal to the loss so occasioned; and your Committee are of opinion that on a proper representation of these facts to the Commissioner of Crown Lands the above deficiencies would, in the public interest, be made good to the University. (See R. S. O. (1887) c. 24, ss. 26 and 27). A statement of these Deficiencies in the land grants is given in Appendix No. 4.

#### FURTHER CLAIM OF THE UNIVERSITY FOR MONEYS PAID FOR CROWN LANDS IN 1842.

20. Your Committee also report that in 1839, the Hon. Joseph Wells assigned to the University, as part security for certain shortages in his accounts as Bursar, (and in respect of which the University, after all proper credits, suffered an actual loss of about \$5,545), 1,265 acres of land in the Township of Brantford, for which the University had to pay the Crown Lands Department the sum of \$8,447.64 on the 11th February, 1842, in order to obtain the Patent, although at the time the University was entitled to the above claims in respect of both the balance of its endowment, and the deficiency in the quantity of land described in the Letters Patent of 1828. Your Committee recommend that this amount, or lands to the value of this amount, should be claimed, in adjusting the rights of the University respecting its Land Endowment.

#### DUTY OF THE SENATE AND GRADUATES RESPECTING THE UNIVERSITY'S CLAIM.

21. Your Committee, in conclusion, would earnestly impress upon every member of the Senate, and upon every graduate of the University, that they should agree to make it their steadfast policy, and their pledged duty, to obtain for our Provincial University not



only the balance of the Land Endowment to which it has long been equitably entitled, but a recognition of its right,—equally with the subordinate Educational Institutions of the Province,—to a proportionate share in the increased Land Grants which the marvellously rapid progress of the Physical and Social Sciences, and Mechanical Arts has made necessary; and which the enlightened policy of the Legislature and Government of the Province of Ontario has recognized as a national duty to Education. Only to its University, which has long felt the pressing necessity for better educational equipment to meet the scientific and intellectual demands made upon it, has the Province failed in the liberal policy which has made its Educational System famous among other enlightened communities. The result is that, from poverty of means, the available resources of the University are altogether inadequate to meet the modern Educational and Scientific demands of the age.

GREAT LANDED WEALTH OF ONTARIO, 126,000,000 ACRES.

22. The Province has partially drawn upon its great landed wealth—which is estimated to consist of over 126,000,000 acres,\*—for the support of its Schools; has given liberal Land Grants in aid of Railways; and can, out of the same landed wealth, readily do the same for the more efficient support and aid of its University. “And,” as affirmed in the Report of the Legislative Committee on Education in 1833, “how can the waste lands of the Crown be more usefully disposed of, than in promoting Public Instruction, and in establishing Beneficial Institutions.”

All which is respectfully submitted.

THOMAS HODGINS,

*Chairman.*

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\*“The immense heritage of the Province in its Crown Lands, is scarcely realized by the general public. If it is borne in mind that the total area of the Province is 126,000,000 acres, of which only 21,640,000 acres have been disposed of, leaving 104,360,000 acres still in the hands of the Crown, of which 87,609,000 acres are unsurveyed, some idea may be formed of the extent of the Crown domain still undisposed of. No doubt considerable areas are rough and of little agricultural value, but the percentage of absolutely worthless lands will be found to be very much less than is generally supposed.” (*Report of the Hon. Arthur S. Hardy, Q. C., M. P. P., Commissioner of Crown Lands for 1894, p. vi.*)

**Appendix No. 1.—Extract from the Surveyor-General's Report, presented to the Legislature of Upper Canada in 1833, showing the Original Reservation of Crown Lands for District Grammar Schools, and the University, made in 1798, and supplemented in 1827.**

The original School Townships of Alfred, Plantagenet, Bedford, Hinchinbrooke, Sheffield, Seymour, Blandford, Houghton, Middleton, Southwold, Westminster and Yarmouth, were computed at 549,217 acres, but actually contained .....	Acres.	467,675
Alienated from the above for surveyors' percentage .....	19,282	
Alienated by Grants to individuals .....	170,719	
The Townships of Java,* Luther, Sunnidale, Osprey, Merlin* and Proton, made School Townships in lieu of the above alienations, contain .....		272,000
Also reserved in the Township of Warwick .....		600
		<hr/>
		740,275
Re-invested in the Crown in lieu of lands granted to the University .....	225,944	
Re-invested in the Crown in lieu of lands granted to Upper Canada College.....	66,000	
		<hr/>
		481,945
		<hr/>
Lands still disposable .....		258,330

10th December, 1832.

(Signed) S. P. HURD,

*Surveyor General.*

NOTE.—From the above 258,330 acres may be deducted the 190,573 appropriated for District Grammar Schools in 1823. See paragraph 10, and the corrected statement in paragraph 17 of the foregoing Report.

**MEMORANDUM APPENDED TO THE ABOVE RETURN.**

	Acres.		Acres.
University.....	225,944	Original appropriation ..	549,217
Upper Canada College.....	66,000	Deduct .....	291,944
	<hr/>		<hr/>
	291,944	Amount due. ....	257,273

\*Now Nottawasaga.

**Appendix No. 2.—Extract from the Letters Patent dated the 3rd January, 1828, granting certain lands to the University Endowment.**

Whereas by our Letters Patent made under the Great Seal of Our United Kingdom of Great Britain and Ireland, and bearing date at Westminster the fifteenth day of March, one thousand eight hundred and twenty-seven, in the eighth year of our reign. We, of our special grace, certain knowledge and mere motion, did for Us, our Heirs and Successors, ordain and Grant, that there shall be established at or near our Town of York in our said Province of Upper Canada, from this time, one College, with the style and privileges of an University, as in said Letters Patent directed, for the education and instruction of youth and students in arts and faculties, to continue forever, to be called "King's College." \* \* \* And whereas, by order of His late Most Excellent Majesty, King George the Third, certain large tracts of land were reserved and set apart for the purpose of promoting Education and for the foundation of an University in our said Province, and it hath been represented to Us, that, by exchanging certain other tracts of land belonging to us in our said Province, called Crown Reserves, for an equal portion of the lands which have been so set apart for the purpose of promoting Education and the foundation of an University, as aforesaid, a Fund may the more easily and certainly be procured for the immediate establishment of the said University, to be called "King's College," conformable to the provisions contained in our said Letters Patent. Now therefore know ye that, in the place and stead of Two hundred and twenty five thousand nine hundred and forty-four acres, part of the tracts of land so reserved and set apart by His said late Majesty, as hath been hereinbefore mentioned, and which We have resumed to Us, Our Heirs and Successors, as no longer to be reserved or set apart for the purposes aforesaid ; We, of our special Grace, certain knowledge and mere motion, have given and granted, and by these presents do give and grant, unto the Chancellor, President and Scholars of King's College at York, in the Province of Upper Canada, and to their successors forever, all those several parcels or tracts of land situate in our said Province, (*describing them.*)

**Appendix No. 3.—Extracts from the Letters Patent granting the lands for the Endowment of Upper Canada College to the University in trust to secure the Loans made to the College.**

Whereas we have heretofore thought fit to direct that the lands and tenements hereinafter mentioned and described whereof We are seized in right of Our Royal Crown, should amongst other lands be set apart and appropriated for the support and endowment of Upper Canada College and Royal Grammar School. And whereas the Chancellor, President and Scholars of King's College at York in Our said Province of Upper Canada have from time to time, advanced divers large sums of money for the purposes of the said Upper Canada College and Royal Grammar School, which it was agreed should be charged and chargeable upon the lands which We have been pleased to appropriate for the support of the said College and School ; and We being willing to ratify and confirm the said agreement, and to secure the repayment of the said sums of money so advanced,



or which may be hereafter advanced, as aforesaid, have consented to Grant to the said Chancellor, President and Scholars of King's College the lands hereinafter described, upon the trusts hereinafter mentioned. Now know ye that We, of Our special grace certain knowledge and mere motion, have given and granted, and by these presents do give and grant, unto the Chancellor, President and Scholars of King's College at York, in the Province of Upper Canada, and to their successors forever, all those several parcels or tracts of land situate in our said Province, and containing by admeasurement (*describing the lots*). \* \* \* To have and to hold the said lands and premises unto the said Chancellor, President and Scholars of King's College at York in the Province of Upper Canada aforesaid, and to their successors forever, in trust to sell the same and apply the proceeds thereof towards the repayment of all sums which have been or may hereafter be advanced by the Corporation of King's College aforesaid, in aid of the said College of Upper Canada and Royal Grammar School.

**Appendix No. 4.—Statement showing the Deficiencies in the Lands granted to the University as part of its Endowment; and in the Lands granted to the University as security for its loans to Upper Canada College.**

County.	Township.	Deficiency Acres.	Total in County.
Carleton .....	Marlborough .....	30	30
Grenville .....	Oxford .....	47	
" .....	Walford .....	115	162
Leeds .....	Bastard .....	49	
" .....	Elmsley .....	93	142
Lanark .....	Montague .....	86	86
Hastings .....	Tyendinaga .....	200	200
Prince Edward .....	Marysburgh .....	99	
" .....	Sophiasburgh .....	166	265
Northumberland .....	Cramahe .....	20	
" .....	Haldimand .....	312½	
" .....	Hamilton .....	111	
" .....	Monaghan .....	2	
" .....	Murray .....	600	
" .....	Seymour .....	89	
			1,134½



<i>County.</i>	<i>Township.</i>	<i>Deficiency.</i> <i>Acres.</i>	<i>Total in</i> <i>County.</i>
Durham	Hope	40	
		—	40
Ontario	Pickering	21	
		—	21
York	Gwillimbury, North	288½	
"	Markham	12½	
"	Scarborough	105½	
		—	406½
Peel	Toronto	4	
		—	4
Halter	Trafalgar	25	
		—	25
Wentworth	Beverley	18	
"	Flamborough, East	35	
		—	53
Lincoln	Caistor	200	
		—	200
Haldimand	Walpole	33	
		—	33
Norfolk	Charlotteville	27	
"	Walsingham	298	
		—	325
Oxford	Blenheim	200	
"	Norwich	200	
		—	400
Elgin	Southwold	20	
"	Yarmouth	24	
		—	44
Waterloo	Wilmot	105	
		—	105
Total number of acres deficient in the University grant			3,676½
Deficiency in the grant to the University for its loans to Upper Canada College			2,004
Total acres due the University under the above grants			5,680½

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## SECOND REPORT :

ON THE CLAIM OF THE UNIVERSITY RESPECTING THE ANNUAL GRANT OF £1,000 STERLING PER YEAR FOR SIXTEEN YEARS, OUT OF MONEYS PAYABLE BY THE CANADA COMPANY, PURSUANT TO AN IMPERIAL TREASURY WARRANT OF 1827.

*To the Senate of the University of Toronto :*

The Special Committee of the Senate appointed to investigate and report upon the claims of the University with respect to its endowments and assets, as specified in a resolution of the Senate adopted on the 11th January, 1895, present the following as a Separate Report upon the claims of the University respecting certain arrearages of the yearly grant of £1,000 sterling made by the Imperial Government in 1827 to the University, out of the moneys payable by the Canada Company into the Casual and Territorial, or Hereditary, Revenues of the Crown in Upper Canada.

### AGREEMENT BETWEEN THE IMPERIAL AUTHORITIES AND THE CANADA COMPANY, 1826.

1. That by an agreement between the Imperial Government and the Canada Company, made on the 23rd May, 1826, by Earl Bathurst, Colonial Secretary, with the Directors of the Canada Company, the Company, under the authority given by the Imperial Act, 6 George IV. c. 75, purchased one million acres of land, for which they agreed to pay the Government by yearly instalments of from £15,000 to £20,000 sterling per annum, for a period of sixteen years, commencing 1st July, 1826, and ending 1st July, 1842. (*See Appendix K. to Journals, Upper Canada, 1826-7, and Appendix No. 39, p. 17, to Journals, 1835.*)

### ESTABLISHMENT OF THE UNIVERSITY IN 1827.

2. On the 31st March, 1827, Earl Bathurst, Colonial Secretary, sent the following Despatch to Sir Peregrine Maitland, Lieutenant-Governor of Upper Canada :—

“SIR,—I have the honour to inform you that His Majesty has been pleased to grant a Royal Charter, by Letters Patent under the Great Seal [dated 15th March, 1827], for establishing at or near the town of York, in the Province of Upper Canada, one College, with the style and privileges of a University, for the education and instruction of youth in Arts and Faculties, to continue forever, to be called King's College.

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ANNUAL GRANT OF £1,000 OUT OF THE CANADA COMPANY'S PAYMENTS.

"I am further to acquaint you that His Majesty has been pleased to grant £1,000 per annum as a fund for erecting the Buildings necessary for the College, to be paid out of the moneys furnished by the Canada Company, and to continue during the term of that agreement.

ENDOWMENT OUT OF CROWN RESERVES.

"I have to authorize you, on the receipt of this Despatch, to exchange such Crown Reserves as have not been made over to the Canada Company, for an equal portion of the lands set apart for the purposes of Education and foundation of a University, as suggested in your despatch of the 19th December, 1825, and more fully detailed in Dr. Strachan's Report of the 10th March, 1826; and you will proceed to endow King's College with the said Crown Reserves with as little delay as possible."

MESSAGE TO THE LEGISLATURE ON THE ESTABLISHMENT OF THE UNIVERSITY.

3. On the 29th February, 1828, the Lieutenant-Governor communicated the above action of the Imperial Government to the Legislature of Upper Canada by the following Message :--

"The Lieutenant-Governor transmits to the House of Assembly, in compliance with its address, a copy of the Royal Charter for erecting the University of King's College in this Province.

"The Lieutenant-Governor further informs the House that His Majesty has been pleased to grant, as endowment for the University, 225,944 acres of the Crown Lands, and to appropriate from the Revenues of the Crown the sum of £1,000 sterling [out of the moneys payable by the Canada Company] for sixteen years, for the erection of the buildings." (*See Journals, 1828, p. 78.*)

And on the 18th February, 1829, in answer to an Address for a statement of the funds which had been received and set apart for the University, the Lieutenant-Governor informed the House of Assembly that the funds consisted of: 1st. A grant from His Majesty towards erecting the building, of £1,000 sterling for sixteen years from the 1st January, 1828—of which one year had been received. 2nd. Revenues from a grant of Crown Reserves to the University, which could not then be accurately ascertained. (*See Journals of 1829, p. 37, and Appendix, p. 37.*)

CASUAL AND TERRITORIAL REVENUES SUBJECT TO THE CROWN'S PREROGATIVE.

4. At this time these Crown Revenues were not subject to Parliamentary control, as they formed part of the Casual and Territorial (commonly called "Hereditary") Revenues of the Crown, which the Crown claimed the disposal of by virtue of its Prerogative. In the Colonies these Revenues were then under the control of the Colonial Secretary and the Lords Commissioners of His Majesty's Treasury,—the latter having a superintendence over the finances of the dependencies of the Crown. (*See Todd's Parliamentary Government, v. 2, p. 441.* And this view was subsequently communicated to the House of Assembly by



the Lieutenant-Governor in 1834, in answer to an Address praying to be informed of the Revenues at the disposal of the Executive Government, as follows: "There are no Revenues under the control of the Executive Government of this Province. The only Revenues under the control of the Lords Commissioners of His Majesty's Treasury, since the relinquishment of the Revenues collected under the Imperial Act, 14 George III. c. 88, are the Casual and Territorial, including the instalments from the Canada Company. \* \* On these Revenues the Lieutenant-Governor is authorized to issue Warrants from time to time by special orders." (See *Journals 1833-4*, p. 139.)

TREASURY WARRANT GRANTING TO THE UNIVERSITY £1,000 A YEAR FOR SIXTEEN YEARS.

5. Your Committee find that on the 20th November, 1826, the Colonial Secretary recommended to the Lords Commissioners of His Majesty's Treasury, that out of the moneys payable to the Crown by the Canada Company during the term of its contract the sum of £1,000 sterling should be appropriated as "an annual grant towards the Building of a College for the Province of Upper Canada." This recommendation was concurred in and approved of by the Lords of the Treasury; and on the 24th July, 1827, they issued a Treasury Warrant authorizing the Lieutenant-Governor to issue his Warrants for, and directing the Receiver-General to pay, the said annual sum of £1,000 sterling to the University for the period and for the purpose above mentioned. Instructions to carry out the directions of this Treasury Warrant were afterwards communicated to the Lieutenant-Governor and Receiver-General. And pursuant thereto, the grant commonly known as "The Royal Grant," was paid over to the University by the Receiver-General of Upper Canada out of the moneys received by that officer from the Canada Company, and which were designated in the Public Accounts and Parliamentary Returns as *Fund D. Ca. Co.* (See *Appendix Nos. 4, 19 and 21 of 1836.*) And in a Despatch from the Colonial Secretary dated the 23rd May, 1831, this grant also appears in the schedule of appropriations for 1831, which the Lieutenant-Governor was authorized to pay, as "University, £1,000." (See *Appendix No. 122 of 1836*, p. 4.)

FIRST PAYMENT OF THE GRANT MADE IN 1828.

6. From these returns it appears that, although the Canada Company paid its first instalment about the 1st July, 1827, the first payment to the University was not made until January, 1828, the Treasury Warrant authorizing the grant, not having issued until the 24th July, 1827, and not having been received by the Receiver-General until near the end of that year.

PAYMENT OF THE GRANT CONTINUED FOR 4½ YEARS.

7. From several independent sources of information your Committee have ascertained that payments were made to the University for only four and one-half years, instead of sixteen years. In a Report of a Committee of the House of Assembly, printed in Appendix 19 to the Journals of 1835, it appears the £1,000 was paid during each of the years 1828, 1829, 1830 and 1831, and £500 sterling for six months of 1832. In a memoran-



dum enclosed by the Bursar to Mr. Secretary Harrison, dated 7th May, 1842, it is stated that "the grant was regularly paid from the 1st January, 1828, to the 1st day of June, 1832, being four and one-half years." (See University Commissioners' Report, 1851, p. 117.) And in a Report prepared by the Bursar on the 17th July, 1846, by direction of the University Council, he stated that "the donation was continued four and one-half years, till the 1st July, 1832." (*Ibid*, p. 243.) From the Financial Statements in the Bursar's Office, and from entries on pages 73 and 75 of the second volume of the Minutes of the University Council, and from a Return presented to the Legislature of Canada in 1843, it appears that the total amount received from the Receiver General by the University was £4,999 19s. 9d. currency, equal to £4,500 sterling; although it appears that the Canada Company duly paid to the Provinces of Upper Canada, and Canada, all the instalments (£295,000 sterling=\$1,335,666.66) payable under its agreement with the Colonial Secretary above referred to.

#### PUBLIC ACTION AGAINST THE DENOMINATIONAL CHARACTER OF THE UNIVERSITY CHARTER.

8. The Royal Charter of 1827, establishing the University of King's College, contained provisions which gave a distinctively denominational or sectarian character to the proposed Provincial University; and public action was taken by the House of Assembly and other public bodies in 1828 and 1831, by Addresses to the Imperial Government praying that the Charter might be cancelled, or that such modification might be made in its provisions as would entirely remove everything of a sectarian or exclusive character, so that the honors and privileges of the University could be enjoyed by all classes of the community, and by all denominations of Christians.

#### ASSENT OF THE IMPERIAL AUTHORITIES TO THE MODIFICATION OF THE CHARTER.

9. The policy advocated in these Addresses was assented to by the Imperial Government; and in a Despatch from the Colonial Secretary to the Lieutenant-Governor of Upper Canada, dated the 2nd November, 1831, the objections to the Charter were elaborately reviewed, and the following decision was directed to be communicated to the University authorities: "I am to convey through you to the members of the Corporation of King's College, at the earnest recommendation and advice of His Majesty's Government, that they do forthwith surrender to His Majesty the Charter of King's College, with any lands that may have been granted them." But to assure the Canadian people that it was not the intention of the Imperial Crown to revoke any grant of property, or in any way to affect or divert the trust endowment, he added: "It can scarcely be necessary to say that no part of the Endowment of the College would ever be diverted from the great object of the education of youth. It must ever be regarded as a fund sacredly and permanently appropriated to that object."

#### REFUSAL OF THE UNIVERSITY COUNCIL TO SURRENDER THE UNIVERSITY CHARTER.

10. This Despatch was communicated to the University Council in 1832, and was considered by them at several meetings; and on the 21st March, 1832, they appear to have adopted an elaborate Report setting forth their views, and declining to surrender the

Charter, or the Endowment. The Report will be found in Appendix DD to the Journals of 1846 ; and extracts from it appeared in the Address delivered by the Bishop of Toronto, as President of the University, on the occasion of the opening of the University on the 8th June, 1843, pp. 42-45.

#### SUSPENSION OF THE ANNUAL GRANT OF £1,000 STERLING.

11. Your Committee find that following the refusal of the University Council to comply with the request of the Imperial Government to surrender the Charter, the annual payment of the Royal Grant was suspended at the end of the following half year. The circumstances connected with such suspension were thus stated in a letter from the Bursar to the President of the University, dated the 19th March, 1838 : "The last half-yearly payment which I received from the Receiver-General was on the 1st July, 1832. Upon my applying at the end of the ensuing half year for the usual warrant, I was informed by the direction of the late Lieutenant-Governor, Sir John Colborne, that His Excellency had received a Despatch from the Home Government that this Royal boon was to be suspended until the Legislature should pass an Act for amending the original Charter of the University as should be approved of by the Sovereign." (*See University Commissioners' Report, 1851, p. 115.*) A similar statement appears in the Bursar's letter to Mr. Secretary Murdoch, dated the 4th February, 1840 ; and in a document enclosed by the Bursar to Mr. Secretary Harrison, dated 7th May, 1842, he states : "The grant was regularly paid from the 1st January, 1828, to the last day of June, 1832, being 4½ years. It was then suspended by a Despatch from the Home Government to Sir John Colborne, (a copy of this Despatch is not to be found in the office, the original it is presumed must be in the Government office), until the Legislature should pass such an Act for amending the original Charter of the University as should be approved of by the Sovereign." (*See Ibid, pp. 114-117.*)

#### INEFFECTUAL SEARCHES FOR THE ALLEGED DESPATCH SUSPENDING THE GRANT.

12. Your Committee have caused searches for the Despatch stated to have been the authority for the suspension of the Grant of £1,000 sterling, to be made in the archives of the Colonial Office and the Public Record Office, in London, England, and of the Offices of the Governor-General, Secretary of State, and Archivist in Ottawa ; but no such Despatch, confidential or official, is on file in any of the offices mentioned, nor has any trace of such a Despatch been discovered after most careful searches.\*

#### LEGISLATIVE PROCEEDINGS TO AMEND THE UNIVERSITY CHARTER, 1832-1837.

13. Apparently to remove the cause of the reported suspension of the Grant, and to amend the Charter so as to bring it into harmony with the policy indicated in the Legislative addresses to the Crown, amending Bills were introduced into the House of Assembly in

\*In a pamphlet published in 1844 on the "*Origin, History and Management of the University of King's College*," it was stated that the Grant was suspended by direction of Lord Goderich, Colonial Secretary, in a confidential Despatch, dated the 5th July, 1832. A copy of this confidential Despatch has been obtained from the Governor-General's Secretary, but it deals exclusively with the Address of the Legislature praying that the administration of the Grammar School moneys, theretofore under the control of the General Board of Education, be placed under the control of the House of Assembly. Neither the official nor confidential Despatches, of the date mentioned, make any reference whatever, either to the Grant of £1,000 sterling, or to King's College.

1832-3 and 1833-4, but were defeated in that House. In 1835 and 1836 similar Bills were introduced and carried in the Assembly, but were defeated in the Legislative Council. And it was not until the session of 1836-7 that a measure was carried in both Houses amending the Charter, and repealing the objectionable clauses; to which measure the Royal Assent was given on the 4th March, 1837. (7 William IV. c. 16.) In the speech pro-roguing the Legislature after assenting to the Act, the Lieutenant-Governor said: "Second only in importance \* \* \* are those amendments in the Charter of King's College, by which on very liberal principles you have established this Capital as the principal seat of learning in British North America. This long disputed subject being finally settled, the munificent endowment of our Sovereign, will, in addition to other important advantages, now provide a constant supply of teachers qualified to diffuse over the remote parts of the Province the inestimable blessings of education." (*See Journal for 1836-7, p. 643.*)

UNIVERSITY ACT OF 1837 REMOVED THE ALLEGED CAUSES FOR THE SUSPENSION OF THE GRANT.

14. This Act gave effect to the policy of the Imperial Government as indicated in the Despatches referred to, fulfilled the conditions imposed, and removed the causes which were alleged to have led to the temporary suspension of the yearly payment of this grant of £16,000 sterling. And whether the grant was suspended for the reasons stated, or otherwise, it was claimed that thereupon the University became entitled to the payment of the arrearages, and to receive the subsequent yearly payments authorized by the Despatch of the Colonial Secretary, and the Warrant of the Lords Commissioners of His Majesty's Treasury, above referred to.

APPLICATIONS TO GOVERNMENT FOR THE ARREARAGES AND PAYMENT, 1838-1846.

15. Applications for such arrearages and payments appear to have been made by the University to the Executive Government of Upper Canada in 1838, and in subsequent years up to 1846, but with no results. (*See Report of 1851, p. 115-117, and 242.*) The claim was formally brought before the Governor-General of Canada, the Right Hon. C. P. Thomson, (afterwards Lord Sydenham) at a meeting of the University Council held on the 29th of January, 1840, at which were present: His Excellency the Governor-General, as Chancellor of the University, the Bishop of Toronto, Mr. Justice Jones, Sir Allan N. McNab, Hon. C. A. Hagarman, Attorney-General, Hon. W. H. Draper, Solicitor-General, and the Rev. Dr. McCaul, when the following minute was adopted and subsequently approved by the Governor-General and Chancellor:

"The council took into consideration the state of the Royal Grant of £1,000 sterling per annum, when it was stated that an arrear of seven and a half years was due on this grant to the College, amounting, without interest, to £8,333 6s. 6d. currency. The Council deemed it expedient that an immediate application be made to His Excellency the Governor-General respecting these arrears, accompanied with a full statement of the circumstances under which they are claimed." *Univ. Min. Book v. 2, p. 148.*



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LORD SYDENHAM'S INTENTION RESPECTING THE ARREARAGES.

16. The minutes of this meeting and the Bursar's letter to the Chief Secretary of the Governor-General, dated the 4th February, 1840, claiming payment of the arrears then due, will be found in Appendix J. to the Journals of the Legislature of Canada, 1843, and in the Report of the University Commissioners (1851) p. 114 and 117. And in a subsequent report of the Bursar to the University Council, dated the 17th June, 1846, it is stated: "The records of this office will show that it was the intention of Lord Sydenham to have obtained the arrears for us, had not the more important events of his administration drawn his attention from the subject." (*Ibid.* p. 243.)

CONDITIONS UPON WHICH THE CROWN SURRENDERED THE REVENUES TO THE LEGISLATURE.

17. The Casual and Territorial Revenues of the Crown were surrendered by the Crown in 1841, by the Union Act, 3 and 4 Victoria, chapter 35 (Imp.) But the conditions under which the Crown surrendered them to the Legislature were stated in a Despatch from Lord Glenelg to the Lieutenant-Governor, dated 15th April, 1836, when in dealing with a claim then made, he said: "That amount [of the claim] must be placed on the Casual and Territorial Revenue of Upper Canada, as one of those charges to which the good faith of His Majesty is pledged, and subject to which alone His Majesty has consented to divest himself of his control over that Revenue. I need not here repeat the strong sense which His Majesty entertains of the obligation on him, while contemplating the surrender of the control over the Casual and Territorial Revenue, to maintain inviolate all those charges upon it to which his faith had become previously bounden." (*See Journals for 1836-7, p. 465.*)

SCANT INFORMATION OF THESE REVENUES IN THE PUBLIC ACCOUNTS.

18. The Public Accounts of Upper Canada furnish no information, and the Special Returns sent by the Government in reply to addresses of the Legislature, furnish very scant and unsatisfactory information respecting the "Casual and Territorial Revenues," of which these moneys from the Canada Company formed part. The appropriation of these Revenues was controlled by the Imperial Government, and the House of Assembly had no Parliamentary jurisdiction to vote or in any way control such appropriation or expenditure. Information respecting these special Crown Revenues appears to have been not easily obtainable by the House of Assembly from the local Government. The accounts of these Revenues, as they appear in some of the Returns to the House, were classed under the two special titles of "*D. Ca. Co.*" or Canada Company's Instalments, and "*K.*," or King's Rights. (*See Appendix Nos. 4 and 21, pp. 54-5, to the Journals, 1835.*) And in a letter from the Receiver-General to the Lieutenant-Governor's Secretary, dated 28th February, 1835, enclosing copies of such accounts for the years 1826 and 1832, it was stated that the original accounts for those years had been "forwarded to the Board of Audit in London for examination." (*See his letter in Appendix No. 121, 1835.*) The accounts



referred to in that letter do not appear to have been printed in the Parliamentary Records of Upper Canada; but there is a copy of certain accounts of Fund *D* in a Return for those years in Appendix No. 19, 1835.

WHERE PARTIAL STATEMENTS OF THESE REVENUES MAY BE FOUND.

19. From the Records so available to your Committee, partial statements of the receipts and payments on account of Fund *D. Ca. Co.*, and the other funds forming the Casual and Territorial Revenues of the Crown, which were laid before the Legislatures of Upper Canada and Canada, were printed in the Appendices to the Journals for the years hereinafter mentioned :

*Upper Canada*—1833-4, Appendix, p. 106; 1835, Appendix Nos. 4 and 19; 1836, Appendix Nos. 18, 99 and 102; 1837-8, Appendix, p. 136 and p. 390; 1839, Appendix, p. 588.

*Canada*—1841, Appendix B.; 1843, Appendices J. and S.

In these statements there appear to be large balances to the credit of the fund *D. Ca. Co.*, at the end of the accounts of each year; portions of which balances appear to have been applied to reduce overdrafts on fund *K.*, or to discharge certain liabilities of the local Government, leaving, however, more than sufficient of that fund in each year to discharge the liability of the Province of Upper Canada to the University endowment in respect of this grant of £1,000 sterling.

Appendix S. of 1843 contains a statement of the "Casual and Territorial Revenue" of Upper Canada from the 1st January, 1839, to the 9th February, 1841, *i. e.*, up to the day before the union of Upper and Lower Canada. It is not as satisfactory or as explanatory as some of the preceding statements. It shows large balances carried over from year to year; and it mixes charges on funds *D.* and *K.* together, a majority of which do not appear to be properly chargeable against fund *D.*, and it shows there were carried into the revenues and accounts of the Province of Canada at the Union, balances of the united funds *D.* and *K.*

In a statement appended by the Receiver-General to his accounts of these funds given in Appendix No. 19 of 1835, he says that many salaries and charges, although authorized by His Majesty's Government to be paid out of any funds under the control of His Majesty, had been charged against funds *K.* (King's Rights) and *D.* (Canada Company); and his accounts make this latter fund bear the heavy overdrafts properly chargeable against fund *K.*

THE GRANT TO THE UNIVERSITY APPROPRIATED BY THE PROVINCE TO LOCAL PURPOSES.

20. It is, however, clear that Upper Canada obtained the benefit of, and used for local and Provincial purposes, the University's share in the fund *D.* up to the Union of the Provinces of Upper and Lower Canada in 1841; and so likewise did the late Province of Canada from the date of that Union, 10th February, 1841, to the date of the receipt of the last instalment from the Canada Company.

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PRIORITY OF THE CHARGES ON THESE SPECIAL CROWN REVENUES.

21. From the available sources of information your Committee infer that these special Crown Revenues were applicable, *firstly*, to the special charges in favor of the institutions and individuals specified in the Orders or Warrants of the Lords Commissioners of His Majesty's Treasury, or the Despatches of the Colonial Secretary; and *secondly*, to the salaries, charges and expenditures of the local Government, only chargeable upon and payable out of any funds received by or placed under the control of that Government. The claim of the University may properly be classed among the first or special charges on the fund *D.* in priority to any general expenses of the Provincial Government.

RESUME OF THE LEGISLATION RESPECTING THE UNIVERSITY ENDOWMENT, 1837-1887.

22. Your Committee consider it important to give a short resumé of the Provincial Legislation respecting the property and assets of the University Endowment, as showing the controlling authority in which the management of the Endowment has been, from time to time, vested, since this claim matured.

(1) The University Charter Amendment Act of 1837, made the Lieutenant-Governor, the Speakers of the two Houses and the Law Officers of the Crown, together with the President and Professors appointed by the Crown, the University Council; and under the Charter that body had the management of the endowment.

(2) The University Act of 1849, 12 Victoria, chapter 82, changed the name of the University of King's College to that of the University of Toronto; and by section 32, vested all the property and effects of King's College in the University corporation created by the Act. By section 33 it was declared that all *debts* to the said University (of King's College) or to its University corporation, and all securities held by the same, should be available, stand, and continue of good purport and full force and strength, to the corporation of the University of Toronto, with power to sue for and recover the same. The management and superintendence over the affairs and business of the University endowment were given to a Senate appointed by the Crown. (See ss. 5 and 10.)

(3) The Act also constituted an Endowment Board of five members appointed by the Crown and the other authorities mentioned in the Act, whose duty it was to have the general charge, superintendence and management of the whole property and effects of the University under certain University statutes. (See ss. 21 and 22.) During a portion of the time this Board managed the property and assets of the University, the Hon. (afterwards Sir) Francis Hincks, then a member of the Provincial Government, was the Chairman of the Board.

(4) This Act was repealed by an Act introduced into the Legislative Assembly of Canada by Mr. Hincks in 1853, 16 Victoria, chapter 89. By that Act all the property and effects which had, by the Act of 1849, been vested in the Corporation of the University, were transferred to and vested in Her Majesty in trust for University purposes. And the Act also declared that every right, title, claim or demand of the said corporation to any real or personal property, *debt or sum of money*, should be vested in the Crown

(s. 46). And it further provided that the said property should be managed by a Bursar appointed by the Crown, and under such powers as should be assigned to him by the Governor in Council (s. 47).

(5) The Act also provided that the management and superintendence of the affairs and business of the University (subject to the provisions as to the property) should be in a Senate appointed by the Crown (ss. 4-10).

(6) These University Acts were consolidated in C. S. U. C., c. 62, but such consolidation was declared by chapter 1 of the statutes not to operate as new laws, but as declaratory of the law contained in the Acts consolidated.

(7) The subsequent legislation respecting the University makes no material change either in respect of the Crown's title or its management of the University Endowment. See R. S. O. (1887), c. 230, ss. 85 and 86; c. 231, ss. 1, 6 and 7.

(8) Thus since 1837 the Legislature has given to the Crown, or its appointees, the financial control over the trust property and effects constituting the University Endowment; and since 1853 has vested in the Crown the exclusive right to sue for and recover all debts, money and property belonging to that Endowment.

#### SUMMARY OF THE FACTS RESPECTING THIS CLAIM.

23. Your Committee submit the following for the consideration of the Senate as a fair summary of the facts respecting this claim, drawn from their investigation of the matters referred to them:—

(1) That the Imperial Government in 1827, by the Warrant of the Lords Commissioners of His Majesty's Treasury, and by the Despatches from the Colonial Secretary to the Lieutenant-Governor of Upper Canada, above referred to, charged the Casual and Territorial Revenues of the Crown in Upper Canada with a grant of £1,000 sterling per annum for sixteen years in favor of the University Endowment, such sum being specially charged upon the moneys payable by the Canada Company to the said Revenues, and known in the Public Accounts as Fund *D. Ca. Co.*

(2) That the Province of Upper Canada, up to 1841, and the Province of Canada, up to 1842, received the said moneys payable by the said Canada Company subject to the charge of £1,000 a year in favor of the University; and that each Province, during the period of such receipt, became liable, and as a trustee for the University, was bound to pay, pursuant to the Imperial orders aforesaid, the said grant of £1,000 sterling to the said University Endowment.

(3) That pursuant to the said Imperial orders the said Province of Upper Canada did pay over to the said University Endowment, the said grant of £1,000 sterling for a period of four and one-half years, amounting in all to £4,500.

(4) That in 1832 the yearly payment of the said grant was temporarily suspended by the assumed direction of the Colonial Secretary, until certain amendments should be made by the Legislature of Upper Canada to the Charter of the University; that in 1837



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such amendments were made, and it thereupon became the duty of the University to claim (as it did) that the right to receive payment of the arrearages, and of the subsequent yearly payments of the said grant revived.

(5) That neither the Province of Upper Canada, between 1832 and 1841, nor the Province of Canada since 1841, has paid over to the University Endowment any part of the said arrearages or yearly payments of the said grant of £1,000 sterling.

(6) That by the Union Act, 3 and 4 Victoria, chapter 35, the Casual and Territorial Revenues (out of which this grant was payable) were surrendered by the Crown to the Legislature of the Province of Canada; and the reasonable inference is that such surrender did not affect the special charges theretofore made by the Crown, as indicated in the Despatch proposing such surrender.

(7) That on the Union of Upper and Lower Canada, in 1841, the Province of Canada became entitled to all the assets of Upper Canada, and it is fair to assume that thereupon the debts and liabilities of Upper Canada became chargeable or claimable against the said Province of Canada. And by s. 111 of the B. N. A. Act, the Dominion of Canada is declared to be liable for the debts and liabilities of the former Province of Canada, existing at the Union of 1867.

(8) That it seems to your Committee to be the duty of the University to claim that the said sum of £11,500 sterling and interest thereon from the respective periods at which the same was payable, is a debt due to the University Endowment by the former Provinces of Upper Canada and Canada, and for which it is submitted that there are just and equitable, if not statutory, grounds, for contending that the Dominion should assume the liability, pursuant to the said B. N. A. Act.

All which is respectively submitted.

THOMAS HODGINS,  
*Chairman.*

## THIRD REPORT :

ON LOANS AMOUNTING TO \$169,137, MADE BY THE UNIVERSITY TO UPPER CANADA COLLEGE, AND RESPECTING CERTAIN OTHER PAYMENTS MADE TO UPPER CANADA COLLEGE.

*To the Senate of the University of Toronto :*

The Special Committee of the Senate appointed to investigate and report on the claims of the University in respect of its Endowments and Assets, as specified in the order of reference, dated the 11th January, 1895, present the following as a Separate Report upon the University's claims respecting certain loans made to Upper Canada College out of the trust moneys of the University Endowment.

### PURPOSE OF THE LOANS TO U. C. COLLEGE.

1. From various Parliamentary Returns, and the early records of the University, your Committee find that the University Council, prior to the opening of the University, advanced moneys by way of loans to Upper Canada College, between 1829 and 1843, to pay (1) the cost of erecting the College buildings and the residences for the Masters ; (2) the expenses of bringing out from England the Masters for the College ; and (3) the annual overdraft or deficiency in income, so as to make up sufficient to pay the salaries of the Masters and the other yearly expenses of the College.

### GOVERNMENT BOARD OF EDUCATION THE ORIGINAL CREDITOR OF U. C. COLLEGE.

2. There is nothing in the University records prior to June, 1831, authorizing these advances or loans to Upper Canada College. In response to an enquiry of the House of Assembly, in 1835, as to the authority under which the advances had been made, the then Bursar gave the following explanation : "The late General Board of Education was requested by the Lieutenant-Governor to undertake, with his express sanction, the entire management attending the erection of the buildings for Upper Canada College ; and the Treasurer of the College, [who was also Bursar of the University], was authorized by the Board to temporarily make use of the Board's funds in his hands, until those of King's College were enabled to repay the same, to which arrangement the University Council gave their assent." (*See Appendix to Journals, 1836, No. 64, p. 6.*)

### LAND ENDOWMENT OF U. C. COLLEGE.

3. In the Minutes of the University Council of 18th June, 1831, we find the first reference to the loans which had been previously made to Upper Canada College. At a meeting of the Council, held on that day, a communication from the Lieutenant-Gover-

nor's Secretary was read, enclosing a copy of a letter to the Commissioner of Crown Lands, informing him that 66,000 acres had been appropriated by the Crown under an Order in Council, as an endowment for Upper Canada College, and intimating that "as certain expenses incurred by the Trustees of Upper Canada College, had been defrayed from the funds of King's College," he was to pay the proceeds of the sales to the Bursar of the University. The University Council in reply requested that such portion of the 66,000 acres as would replace the advances made, and to be made, to Upper Canada College, should be conveyed to the University.

#### LIEUTENANT-GOVERNOR'S PROPOSAL TO THE UNIVERSITY.

At a subsequent meeting of the Council, held on the 28th July, 1831, a letter from the Lieutenant-Governor was read suggesting that the Council's proposition should be varied as follows: "That King's College should hold in trust 20,000 acres of the lots ordered by His Majesty's Government to be set apart for the support of Upper Canada College, until all sums advanced by King's College shall be repaid to that Corporation." The University Council consented to this variation, on the condition that 20,000 acres should then be granted by patent to the University, to hold upon the trusts mentioned in His Excellency's letter.

At the same meeting a further letter from the Lieutenant-Governor was read recommending that two members of the Council should be relieved from the personal responsibility they had incurred by borrowing, for the use of Upper Canada College, the sum for which the land set apart in York (Toronto) for the support of a Grammar School had been sold. The University Council assented to this, upon receiving a patent for the land so set apart.

The property referred to was known as part of block D. of the Grammar School reservation, which had been occupied by the College while the buildings on Russell Square were being erected. (*See Univ. Com'rs Report, 1851, p. 352, and Univ. Min. Book, vol. 2, p. 136.*) The letters and proceedings above referred to, are appended to this report as Appendix No. 1.

#### SECURITY FOR UNIVERSITY LOANS SANCTIONED BY ORDERS-IN-COUNCIL.

Your Committee find that the above agreement between the Lieutenant-Governor and the University Council, was given effect to by several Orders-in-Council dated in 1831 and 1832, and by various Patents vesting the whole land endowment of Upper Canada College in the University upon the special trusts set forth in an extract from the Letters Patent appended to this Report as Appendix No. 2.

#### \$169,137.48 TAKEN FROM THE UNIVERSITY ENDOWMENT AS LOANS.

4. These loans to Upper Canada College commenced in 1829 and went on increasing yearly up to 1843, when they amounted, without interest (including the Government's loan hereinafter mentioned), to £42,284 7s. 5d. currency, equal to \$169,137.48, and they represent so much capital abstracted from the University Endowment and advanced to



Upper Canada College, with the sanction of the Crown. The accounts presented to the Legislature show that the University Council occasionally had to resort to Bank discounts to provide for these loans to Upper Canada College. (*See Appendix Q Q. to the Journals, 1846.*)

COMMENTS BY THE UNIVERSITY COMMISSIONERS IN 1851.

In the general summary of "Expenses and Losses," given in the report of the University Commissioners, presented to Parliament in 1851, it is stated that these loans, with the accrued interest up to the end of 1849, amounted to £75,506 5s. 0d. currency, equal to \$302,025 (*See Report, pp. 53 and 348*). And in reporting on them the Commissioners express their "regret to find that an educational institution so amply endowed by the Legislature and the Crown, as they find Upper Canada College to have been, should have been permitted to trench so largely upon the resources of the University, to the interest and progress of which it was intended to be contributive." (*Ibid, p. 33, see also pp. 35 and 340*). And they also intimate that had the affairs of Upper Canada College been properly attended to, its net income might have sustained a charge for the interest on its debt to the University (*p. 343*).

PARLIAMENTARY COMMITTEE'S OBJECTIONS TO SUCH LOANS.

5. In a report of the Legislative Committee on Education, presented to the House of Assembly in 1833, the practice of making loans to Upper Canada College by the University Council had been similarly disapproved: "It appears from evidence and documents on the Journals of your Honorable House, that the Minor or Upper Canada College is greatly indebted to the University of King's College. This fact, obtruding itself on the notice of your Committee, they consider it their duty to bring it under the notice of your Honorable House. \* \* \* How far the University Council is legally authorized to expend their funds for any other purpose than that of promoting the object for which the Charter and Endowment were granted, your Committee presume not to determine; but with every respect for the members of that Council they feel no hesitation in expressing their decided disapprobation of such a proceeding. Nor do they believe it to be regular, or justified by precedent." And they add: "It is indeed stated in the Treasurer's evidence that such disbursements are secured on the endowment of Upper Canada College; but is such security sufficient? And can the money so invested be repaid the moment it is wanted? Repayment seems in truth hopeless." (*See Appendix, 1832-3, p. 69.*)

GOVERNMENT'S LOAN OF \$25,571.62 TO U. C. COLLEGE, THROUGH ITS BOARD OF EDUCATION.

6. With reference to the explanation given to the House by the Bursar in 1835, above referred to, your Committee find that the Parliamentary Returns show that the General or Provincial Board of Education, which from 1823 to 1832, had the superintendence of the Grammar and Common Schools (for the support of which 190,573 acres had been appropriated), and were also the Government Trustees of Upper Canada College, had advanced to Upper Canada College on behalf of the Provincial Government, \$25,571.62 out of Grammar School moneys, for the purposes mentioned above.

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GOVERNMENT'S LOAN REDEEMED OUT OF UNIVERSITY FUNDS.

In the Returns laid before the House in 1836 (Nos. 18 and 64) these advances or loans, appear in the Board's accounts as having been made "until the funds of the University of King's College are able to redeem them;" and in 1834-5 they appear to have been so redeemed by sundry payments of University moneys to the Receiver-General, but entered in the University accounts as paid "on account of School lands." And in a memorandum appended to the accounts he stated that, "The sums temporarily borrowed from the funds of the late General Board of Education have since been restored, and paid into the hands of the Receiver-General of the Province." In the accounts of 1835 the loans made by the University, and the Board, to Upper Canada College were united, and were carried forward as the "Upper Canada College debt due to the funds of King's College." It appears, therefore, beyond question, that the loans out of the Grammar School Funds were redeemed by the University Bursar, paying to the Government in 1834-5, the sum of \$25,571.62, out of the capital of the University Endowment.

U. C. COLLEGE DEBT OF \$302,025 TO THE UNIVERSITY CANCELLED IN 1849 WITHOUT CONSIDERATION.

7. By the University Act of 1849, 12 Vic. c. 82, s. 68, this large indebtedness of Upper Canada College to the University Endowment, which with interest then amounted to \$302,025, was declared to be "absolutely cancelled and discharged." No consideration was given to the University for this legislative receipt for the debt, nor was any compensation or other provision made, by the Legislature, or the Executive Government, to recoup the University this enormous loss of \$302,025 to its Endowment; which compensation the University was justly and equitably entitled to,—more especially because it had, on the faith of the Crown, advanced its trust moneys for the benefit of Upper Canada College, and had paid into the Public Treasury another portion of its trust moneys to redeem the loan of \$25,571.62 previously made by the Provincial Government to Upper Canada College, the security for the repayment of which, as well as its own loans, had been confirmed to the University by Orders-in-Council and Letters Patent.

UNIVERSITY'S CLAIM ON THE EQUITY OF THE CROWN.

8. Your Committee consider that notwithstanding this legislation of 1849, the University has an equitable claim on the good faith and honour of the Crown to recoup the University out of its ungranted Crown Lands for the loans so made on the faith of its Orders in Council and Letters Patent. (*See Univ. Com's Report 1851, p. 16, 17 and 18; Appendix to the Journals 1831, pp. 105-9; Sessional Papers, 1831, No. 31, p. 2.*)

UNIVERSITY'S DEALINGS WITH U. C. COLLEGE.

9. The facts stated in this Report will show how the University has dealt with Upper Canada College; and your Committee concur in the remarks of the late Minister of Education that "the record of the College has been one of much educational usefulness; and from the nature of its work, it has performed an important and beneficial part

in the higher education of the youth of this Province; and during its existence of half a century, it has had an important influence upon our national character." (*Sess. Paper No. 31 [1881], p. 2.*) But, while conceding this, your Committee submit that it was not just to the important claims of University education that a large portion of an endowment specially dedicated by the Crown, and charged with the trust and duty of providing for the higher branches of Literary and Scientific Education, should have been diverted to subordinate educational purposes. And it is submitted that if the endowment of Upper Canada College was insufficient for the educational work it was established to perform, its claims should have been recognized and dealt with by the Legislature and Government which were responsible for its establishment.

#### LEGISLATIVE OPINION ON LAND APPROPRIATIONS FOR EDUCATION.

And in support of this view the Report of the Legislative Committee on Education, previously referred to, may be cited:—"In regard to the support of Upper Canada College, your Committee entertain no doubt that on a respectful representation to His Majesty's Government, an endowment will be granted to that Seminary as a separate and Royal gift, exclusive of the school lands originally set apart for the University and District Grammar Schools. It is, indeed, manifest from the spirit of the letter of the Duke of Portland in 1797, that further grants would have been cheerfully made had they been requested and deemed necessary. And surely there is no reason to doubt but that His Majesty's present Government is as willing now, as it was then, to comply with the prayer of the Legislature for further appropriations for the education of our now great and increasing population. And how can the waste lands of the Crown be more usefully disposed of than in promoting public instruction and establishing beneficial institutions." (*Appendix, 1832-3, p. 59.*)

#### LAND ENDOWMENT OF U. C. COLLEGE.

Your Committee find that the land endowment of Upper Canada College consisted of 66,000 acres of land (or 63,966 acres owing to shortages), and some lots in Toronto, including the site of the College (formerly Russell Square) on King Street. And its income was supplemented by an annual grant of £1,000 sterling up to 1859. The capital of the endowment, exclusive of the Toronto properties, was estimated by the Bursar in 1856, at \$291,328: (*see Appendix, 1856, No. 11, item 3*); and by the Minister of Education in 1881, at \$236,658: (*See Sessional Papers, 1881, No. 31, p. 2.*)

#### IMPROPER ADVANCE OF UNIVERSITY FUNDS TO U. C. COLLEGE IN 1860.

10. Your Committee also find that notwithstanding the disapproval of the practice of making loans to Upper Canada College out of University funds, as expressed in the Reports of 1833 and 1851, above referred to, and which had resulted so disastrously to the University in 1849, the Government of the late Province of Canada by an Order-in-Council dated May, 1860, ordered payment of the sum of \$4,444.42 to Upper Canada College out of the University Surplus Income Fund. This sum appears to have been



paid by the then Bursar to Upper Canada College on the 13th June, 1860; and in intimating his obedience to the Order-in-Council, he added that as, by the Statute, the University Surplus Income Fund was at the disposal of Parliament, he presumed it was "the intention of the Government to introduce a law during next session to confirm the appropriation." No such law was ever passed, nor was the money thus taken from the University Endowment ever appropriated, or voted, by Parliament to Upper Canada College. The Order-in-Council is appended to this Report as Appendix No. 3.

#### STATUTORY PROVISIONS RESPECTING THE UNIVERSITY FUNDS.

The then University Act, C. S. U. C. c. 62, created a "General Income Fund," composed of the respective incomes of the University and Upper Canada College (s. 75). The income of the latter institution was defined to be that derived from the property of its Corporation, and was designated the "Special Income Fund" of Upper Canada College (s. 77). The remainder of the General Income Fund was designated the "University Income Fund," and the Governor-in-Council was authorized to appropriate out of it whatever sums should be required for the current expenses of the University and University College (s. 78). The Act then provided that "any surplus of the University Income Fund remaining at the end of any year, after defraying the expenses payable out of the same, shall constitute a fund to be from time to time appropriated by Parliament for Academical Education in Upper Canada" (s. 81). By the present University Property Act, R. S. O. c. 231, s. 22, this "Surplus Income Fund" is declared to be the permanent property of the University.

#### ADVANCE OF \$4,444.42 TO U. C. COLLEGE NOT WARRANTED BY STATUTE.

11. Your Committee, after much deliberation, submit that under the statutory provisions then governing the appropriation of this "Surplus Income Fund," it was not within the prerogative of the Governor-in-Council to authorize the Bursar to pay any moneys out of that fund to Upper Canada College, without the statutory appropriation of the Fund by Parliament for Academical Education; and that, as there was no such Parliamentary appropriation of this money, nor any Parliamentary authority for such payment, the University should claim that this sum of \$4,444.42, so improperly or improvidently taken out of the University moneys, is a debt or liability of the late Province of Canada; and that steps should be taken to have the same refunded to the University Endowment, with interest thereon from the 13th June, 1860.

#### IRREGULAR PAYMENT OF \$1,600 OUT OF UNIVERSITY FUNDS IN 1858.

12. Your Committee have further to report that on the 16th May, 1855, there was paid to the University Trusts Fund the sum of \$1,600 on behalf of an unnamed person who declared that he could not retain the money as "it did not belong to him but to the University." This sum (apparently "conscience money") thereupon vested in the Crown as part of the General Income Fund of the University pursuant to section 49 of the Act 16 Victoria, c. 89.

On the 19th June, 1858, the Senate directed the Bursar to appropriate the \$1,600 of the University funds to Upper Canada College. (*See Senate Minutes Book, v. 2, pp. 462, 464.*)

There being no Order in Council nor any direction from the Crown for such an appropriation of University funds, your Committee submit that the above appropriation was not warranted by the Statute.

#### FURTHER IRREGULAR LOANS TO U. C. COLLEGE, 1857-1859.

13. Your Committee also find that on the 12th November, 1857, a loan of \$4,000, and on the 31st December, 1857, a further loan of \$2,000, were made to Upper Canada College out of the University funds; that these loans (\$6,000) were repaid to the University on the 10th June, 1859, but without interest. Your Committee submit that the University was entitled to the interest on these loans for the period they were current.

#### PROVISIONS RESPECTING LATE ADVANCES TO U. C. COLLEGE.

14. Your Committee also report that by recent legislation, 55 Vic. c. 63, the former site of Upper Canada College, known as Russell Square, is vested in the Crown, and may be transferred to the University, subject to the following charges on the rents and profits, and the proceeds of all sales thereof, according to the following priorities:

(1) Expenses of management and administration, and any local improvement burdens payable by the University, with interest thereon at four and a-half per cent. per annum, with yearly rests, making overdue interest principal.

(2) Advances made out of University funds, amounting to \$56,053.15, to pay the balance due to Upper Canada College, in respect of the erection and equipment of the buildings for the College, with interest thereon from the 30th June, 1892, at four and a-half per cent. per annum with similar yearly rests.

(3) An endowment fund of \$100,000; for Upper Canada College, with interest thereon at four and a-half per cent. per annum, as specified in the Act.\*

All which is respectfully submitted.

THOMAS HODGINS,  
*Chairman.*

\*During the present session of the Legislature an Act was passed (58 Vict., c. 58) authorizing the University trustees to pay to Upper Canada College a sum of money equal to the present value of this charge of \$100,000, and to issue debentures chargeable upon the block of land above mentioned for whatever sum would be sufficient to extinguish and liquidate such charge. The present value of this charge to Upper Canada College under the provisions of this Act is estimated at \$73,234.

**APPENDIX No 1.—Proceedings of the University Council respecting the security for the loans to Upper Canada College.**

*Extract of the Minutes of a Meeting held on Saturday, 18th June, 1831.*

The following communication from His Excellency the Lieutenant-Governor was read :

“ GOVERNMENT HOUSE, 2nd June, 1831. .

“ SIR,—I am directed by the Lieutenant-Governor to transmit to you the annexed copy of a letter to the Commissioner of Crown Lands, from which the College Council will perceive that all sums accruing from the sales of lands set apart as an endowment for Upper Canada College and Royal Grammar School have been ordered by his Excellency to be paid into the hands of the Bursar of King's College till the revenue of Upper Canada College is sufficiently increased to bear the expenses of its present establishments.

“I have, etc.

(Signed) “ Z. MUDGE.”

(*Enclosure.*)

“ GOVERNMENT HOUSE, 2nd June, 1831.

“ SIR,—His Majesty's Secretary of State for the Colonies having in his Despatch authorized a township to be set apart as an endowment for Upper Canada College and Royal Grammar School, I am directed by the Lieutenant-Governor to acquaint you that His Excellency requests that you will take under your charge the blocks of land appropriated in conformity to the annexed copy of an Order in Council for this purpose, and that they may be sold for the benefit of the institution ; and as certain expenses, incurred by the Trustees of Upper Canada College, have been defrayed from the funds of King's College, and as advances from time to time will be sanctioned by the College Council till the revenue of Upper Canada College is sufficiently increased to bear the current expenses of the present establishment, I am also to desire that you will pay into the hands of the Bursar of King's College, the amount of the proceeds of the sales of land, effected on account of Upper Canada College.

“I have, etc.,

(Signed) “ Z. MUDGE.

“ The Hon. P. ROBINSON,

“ *Commissioner of Crown Lands.*”

The Council of King's College, having deliberated upon the above letters, were of opinion that the more convenient arrangement would be that the Government should transfer by Patent to the Corporation of King's College, such portion of the 66,000 acres which His Excellency has proposed to direct the Crown Lands Commissioner to dispose of for the purpose of replacing the advance which the corporation of King's College has made in aid of Upper Canada College, as may be estimated to be equal in value to the debt incurred. And that whatever advance may be necessary in future years, in aid of Upper Canada College, will be made by King's College, to be repaid in like manner by lands to be taken upon a valuation in each year, unless these payments can be otherwise secured.



In making this suggestion, however, the College Council think it proper to add that they have no objection to offer on the part of King's College to the arrangement first proposed by His Excellency, of conveying the endowment of Upper Canada College to the institution, the King being declared trustee by an instrument under the Great Seal, and empowering King's College Council to sell the land, until the endowment shall be sufficient to support the institution after paying the debt due to King's College. It is in reference only to the proposition last made by His Excellency the Lieutenant-Governor, that the College Council would urge the course they have now suggested, as more secure and satisfactory. (*University Minute Book, vol. 1, pp. 174-6.*)

*Extract of the Minutes of a Meeting held on Thursday, 28th July, 1831.*

The following communication from His Excellency the Lieutenant Governor, Sir John Colborne, was read:—

“The Lieutenant-Governor with reference to a former communication on the subject of the lands set apart for the Upper Canada College and Royal Grammar School, and to the measures proposed by the College Council in their minute of the 18th June, suggests the following arrangement should be adopted, viz.: That King's College, in the first instance, shall hold in trust 20,000 acres of the lots, ordered by His Majesty's Government, to be set apart for the support of Upper Canada College, till all sums advanced by King's College shall have been repaid to that Corporation. That King's College shall have full power to create a revenue for Upper Canada College till all sums advanced by King's College shall have been repaid to that Corporation. That King's College shall have power to create a revenue for Upper Canada College; to sell the lands set apart for the support of Upper Canada College; to defray from the proceeds of the sale of these lands the current expenses of Upper Canada College, and to replace such sums as have been advanced by King's College, or shall be advanced, on account of the buildings or expenses of Upper Canada College.

“By adopting this course, King's College Council will become gradually the Trustees of the endowment; and the wild land tax cannot be demanded for any part of the 66,000 acres.

(Signed) “J. C.

“GOVERNMENT HOUSE, 25th July, 1831.”

After deliberation, the Council adopted the following resolutions:

That the Council accedes to the arrangements suggested by His Excellency the Lieutenant-Governor, conceiving it to be the intention of His Excellency that the 20,000 acres spoken of are to be granted by patent to the Corporation of King's College, upon the trusts mentioned in his Excellency's letter; and that with respect to the residue of the 66,000 acres, the College Council shall assume the agency of disposing of it for the purposes stated by His Excellency, the title to the land remaining, as at present, vested in the Crown until patents, from time to time, shall issue to the Corporation for such tracts as will cover the contracts of sale which the College Council shall have entered into, through the Bursar, in order to enable them to make deeds to the respective purchasers.

The following communication was also read :

"The Lieutenant-Governor acquaints the College Council, that it appears desirable that the deeds of the land which was set apart in this town for the support of a Grammar School, should be placed in possession of the Council, and that the Archdeacon of York and Colonel Wells, should be relieved from the personal responsibility which they have incurred, by borrowing, for the use of Upper Canada College, the sum for which the land in question was sold."

"GOVERNMENT HOUSE, 27th July, 1831."

The Board having inquired of the Bursar relative to the sales of the school reservation alluded to, acceded to the proposition of His Excellency ; and upon receiving a patent for the land which was set apart in this town for the support of a Grammar School, will assume the responsibility now held by the Archdeacon of York and Lieut-Col. Wells, as suggested by His Excellency. (*Univ. Min. Book, vol. 1, pp. 177-180.*)

*Extract of the Minutes of a Meeting held on Saturday, 16th March, 1833.*

The following communication from His Excellency was read :—

"GOVERNMENT HOUSE, 9th March, 1833.

"SIR,—I am directed by the Lieutenant-Governor to state for the information of the Council of King's College, that a deed for 18,000 acres of land has been transmitted to the Secretary and Registrar of this Province, part of the endowment sanctioned by His Majesty's Government for the support of Upper Canada College. His Excellency considers that the interests of both institutions would be advanced by the remainder of the lands set apart for Upper Canada College being disposed of through the agency of King's College Council, and requests to know whether the Council will consent to authorize the lots to be sold by the Bursar for the benefit of Upper Canada College.

"I have, etc.,

(Signed) "WM. ROWAN."

It was resolved that His Excellency's recommendation, communicated in Lieutenant-Colonel Rowan's letter of the 9th instant, "that the remainder of the lands set apart for Upper Canada College be disposed of through the agency of King's College Council," be accepted and carried into effect ; and the Bursar is hereby authorized to sell the said lands for the benefit of Upper Canada College. (*Univ. Min. Book, vol. 1, p 192, 4*)

**APPENDIX No. 2.—Extracts from the Letters Patent granting the lands for the endowment of Upper Canada College to the University in trust to secure the loans made to the College.**

"WHEREAS We have heretofore thought fit to direct that the lands and tenements hereinafter mentioned and described whereof We are seized in right of Our Royal Crown, should amongst other lands be set apart and appropriated for the support and endowment of Upper Canada College and Royal Grammar School. AND WHEREAS the Chancellor, President, and Scholars of King's College at York, in Our said Province of Upper Canada, have, from time to time, advanced divers large sums of money for the purposes of the said

Upper Canada College and Royal Grammar School which it was agreed should be charged and chargeable upon the lands which We have been pleased to appropriate for the support of the said College and School, and We being willing to ratify and confirm the said agreement and to secure the repayment of the said sums of money so advanced, or which may be hereafter advanced as aforesaid, have consented to grant to the said Chancellor, President and Scholars of King's College the lands hereinafter described, upon the trusts hereinafter mentioned. Now, know ye, that We of Our special grace, certain knowledge, and mere motion, have given and granted, and by these presents do give and grant unto the Chancellor, President and Scholars of King's College at York, in the Province of Upper Canada, and to their successors forever, all those several parcels or tracts of land situate in our said Province, and containing by admeasurement (describing the lots) \* \* To have and to hold the said lands and premises unto the said Chancellor, President, and Scholars of King's College at York, in the Province of Upper Canada aforesaid, and to their successors forever, in trust to sell the same, and apply the proceeds thereof towards the repayment of all sums which have been, or may hereafter be, advanced by the Corporation of King's College aforesaid in aid of the said College of Upper Canada and Royal Grammar School."

**APPENDIX No. 3.—Order of the Governor-General in Council, No. 340, dated 22nd May, 1860, appropriating \$4,444.42 out of the University Surplus Income Fund to Upper Canada College.**

"The Committee have had before them a memorandum dated 18th May, 1860, from the Honourable the Solicitor General, Upper Canada, stating that the annual legislative grant to Upper Canada College of \$4,444.42, has, this session, been discontinued. . . That no provision has been made in view of so large a deduction from its income. That, consequently, the funds at the disposal of the Institution are not sufficient to meet the current expenses of the present year—expenses incurred upon the faith of receiving the usual annual appropriation, and unless relief is afforded great embarrassment will result.

"That a large amount is standing to the credit of the University Surplus Fund, which Fund, under the University Act, is applicable to Academical Education in Upper Canada.

"That he would therefore recommend that an amount equal to the former annual appropriation, viz : \$4,444.42 be granted from such Surplus Fund to Upper Canada College to enable it to meet the expenses of the current year. That he would also further suggest that, as the Income Fund of Upper Canada College will hereafter, in all probability, be insufficient to meet the annual expenditure under its present system and management; and as it is considered practicable to reduce the expenses of the Institution, without impairing its efficiency, the subject be brought under the notice of the Chancellor of the University, and it be intimated to him for the information of the Senate, that the Government cannot hold out any encouragement that any further appropriation will be made by Parliament in aid of Upper Canada College, and that the College, after this year, must depend upon its Endowment and tuition fees for support.

"The Committee advise that the above suggestions of the Solicitor-General be approved and acted on."



## FOURTH REPORT :

### ON THE CLAIMS OF THE UNIVERSITY FOR COMPENSATION FOR THE USE AND OCCUPATION OF THE FORMER UNIVERSITY BUILDING AND GROUNDS FROM 1853 TO 1869.

*To the Senate of the University of Toronto :*

The Special Committee of the Senate appointed to investigate and report upon the claims of the University with respect to its Endowment and Assets, as specified in the Resolution of the Senate adopted on the 11th January, 1895, present the following as a Separate Report upon the claim of the University for compensation for the use and occupation by the Executive Government of the late Province of Canada of the former University Buildings and grounds, taken possession of by that Government in 1853, and subsequently used as a Branch Lunatic Asylum from 1856 to 1869.

#### UNIVERSITY'S PURCHASE OF THE UNIVERSITY PARK IN 1828.

1. Your Committee find that the property comprising the original University Park consisted of the northern halves of park lots 11, 12 and 13, now in the City of Toronto, together with the Queen and Yonge Street Avenues, containing the number of acres hereinafter mentioned, and were purchased, in 1828, by the University from the under-mentioned parties :

Easterly portion, Park lot No. 11, north	52 $\frac{1}{2}$	acres.	.. Hon. John Elmsley.
Centre " " " 12, "	52 $\frac{1}{2}$	" "	.. Hon. Wm. D. Powell.
Westerly " " " 13, "	52	" "	.. Hon. D'Arcy Boulton.
Avenue to Queen Street	5 $\frac{1}{10}$	" "	.. Hon. John B. Robinson.
" " " "	5 $\frac{3}{10}$	" "	.. Hon. Wm. D. Powell.
" Yonge Street	4 $\frac{3}{10}$	" "	.. Hon. John Elmsley.

Containing in all ..... 171 $\frac{1}{10}$  acres.

#### A RELIABLE AND AVAILABLE ASSET OF THE UNIVERSITY.

2. The University Commissioners in their Report presented to Parliament in 1851, stated that this property had cost the University (exclusive of the University Building and Caretaker's cottages), up to the end of 1849 the sum of \$59,440, and that its then value was about \$224,000. They also state: "The first disbursement made by the Council for the benefit of the University foundation was the purchase of the King's College grounds in the vicinity of York now within the City of Toronto, containing over

150 acres. These grounds are perhaps at present the most beautiful public enclosure in British America. No investment ever made by the University authorities can be regarded as equal to this, either in present or prospective value. The property may be regarded as a reliable and available asset of the University, which would at any time produce three or four times the total cost. In the event of the reduced state of the general endowment, conjointly with the continuance of the present excess of expenditure over income, rendering necessary a further recourse to the fixed system of replenishing funds by fresh sales of marketable property, the College grounds will be found well suited to the wants of the University." (*See Report of the University Commissioners, 1851, pp. 33-34.*)

#### VALUATIONS OF THE UNIVERSITY PARK.

3. It may afford some assistance to the Senate in formulating the claim of the University for compensation for the property herein reported upon, to give some of the recent estimates of the cost and value of the Park property to the University Endowment, as an investment.

Your Committee find in the report of the Accountant of the Board of University Trustees dated the 22th October, 1892, that his estimate of the cost to the University of the 48 acres leased to the City of Toronto as "Queen's Park" was in 1892 \$582,768, equal to \$12,141 per acre. Applying this ratio to the whole of the University Park property it would make the estimated cost to the University of the 171<sup>1/2</sup> at the date above mentioned, amount to the sum of \$2,077,810. In 1894 we find that the Assessment Commissioner of the City of Toronto estimated the Park property at \$15,000 per acre. In view of these values, your Committee, before dealing with the particulars of the present claim, suggest to the Senate and members of the University to consider, in the light of certain dealings with this property, how far the opinion of the University Commissioners of 1851 that "this property may be regarded as a reliable and available asset of the University which would at any time produce three or four times its total cost," has been, or is likely to be, realized.

#### FORMER MISMANAGEMENT OF UNIVERSITY ENDOWMENT.

4. Before discussing the details of the claim respecting the University Park property, your Committee regret to report that the early history of the administration of the Endowment, as given in the Report of the University Commissioners of 1851, discloses several unfortunate and disastrous instances of mismanagement, negligence and actual breaches of trust, whereby on doubtful investments, in some cases made on estimates of prophetic values, or uncertain or expected advantages; and, in some cases, without such preliminaries, some of the moneys and properties of the University Endowment were improvidently invested or parted with; so that the depletion of the original endowment may unfortunately be now estimated at a large sum.

Your Committee regret to call attention to these historic and later instances of improvident management. It was perhaps unfortunate that there was no proper supervision over, nor any watchful or inquisitive beneficiary to criticise, except for purely political purposes, the early financial administration of the University Endowment.

The former trust authorities of the University were bound to have administered their great educational Endowment with a watchful care and conscientious desire to conserve it intact, and thereby extend the benefits and widen the influence of University Education in the Province; and in some instances it must be conceded that they did so. As was once observed by a former Governor-General in addressing a sister University in another Province: "The Endowment enjoyed by the University of Toronto is a most valuable element in the future progress of the country; and such an endowment once lost, or diverted to other purposes, is not easily recovered." (*See Appendix No. 11 of 1856.*)

#### LEGISLATION OF 1853 AFFECTING THE UNIVERSITY.

5. Your Committee find that during the Parliamentary session of 1853, two Acts were passed affecting the University, under which the Executive Government of the former Province of Canada obtained important controlling powers over the Endowment and property, as well as the general government, of the University. One of the Acts was the statute 16th Victoria, c. 89, passed on the 22nd April, 1853, whereby all the property of the University, and every right, title, claim or demand of the corporation of the University of Toronto, to any real or personal property, debts or sums of money, was vested in Her Majesty in trust for the University (s. 56). The other was the Act 16 Victoria c. 161, passed on the 14th of June, 1853, whereby the Crown acquired authority to expropriate that portion of the University Endowment lying at the head of the Queen Street Avenue "not required for Collegiate purposes," as the Governor-General in Council should deem requisite for the erection thereon of Parliamentary and other Public Buildings. And it further enacted that the ground set apart for the purposes aforesaid, should be vested in the Crown for the public uses of the Province.

#### CROWN'S AUTHORITY TO EXPROPRIATE THE UNIVERSITY PROPERTY-CONDITIONAL.

6. In granting this authority to expropriate the property just vested in the Crown in trust for the University, Parliament attached to its exercise the following conditions, which your Committee submit have never been repealed:

"The ground which shall be so set off and taken for the purposes aforesaid, shall be valued by competent persons to be appointed by the Governor; and the interest of the value thereof, so ascertained, at six per cent. per annum, shall be paid yearly out of the Consolidated Revenue Fund to the credit of the University Income Fund, and shall form part thereof."

#### CROWN TAKES POSSESSION OF THE UNIVERSITY PARK IN 1853.

Your Committee find that on the 6th August, 1853, the Government Architect, acting under the instructions of the Provincial Government, notified the President of University College, and the Bursar of the University, that the Government required possession of the University Building and so much of the park lands as were described in his letter of notification, for the purposes of a site for the proposed Parliamentary Buildings, under the Act, c. 161, of 1853, above referred to (*See Appendix No. 1 to this Report.*)



That on the 20th August, 1853, the Bursar notified the Government Architect as follows: "You will remember that according to the arrangement intimated by you this day terminates the occupation of the University grounds for University purposes."

Your Committee find that thereupon and on or about the 21st August, 1853, the Crown as represented by its officer above mentioned, took possession of the University Building in the Park, the cottages of the gate-keepers, together with that portion of the University Endowment, consisting of the Queen and Yonge Street Avenues, and the Park lands lying between the Observatory and Experimental Farm on the west, and the eastern boundary of the Park on the east, and between the Avenues on the south and Bloor Street on the north.

8. Your Committee have not obtained any estimate of the then value of the landed property of the University Endowment so taken possession of by the Provincial Government. But in answering a Return ordered by the Legislature in 1856, for a statement of the cost of the buildings and expense of fitting up the grounds "which formerly belonged to the University of Toronto," the Bursar reported that the total cost of the buildings and disbursements on account of the grounds (not including their original cost) "up to the date of their being taken possession of by the Government in 1853, was £29,785," equal to \$119,140. (*See Appendix No. 11 (Second) to Journals for 1856.*)

#### UNIVERSITY LOSES THE BUILDING ERECTED FOR COLLEGIATE PURPOSES.\*

The University building referred to had been erected by the University about ten years previously (1842-3) at an actual cost of \$67,623, and was the only building it was then possessed of containing lecture and class rooms suitable, all of which were then "required for Collegiate purposes,"—purposes which apparently excluded it from the expropriatory power given to the Crown by the Act 16 Victoria chapter 161.

9. Your Committee also find that in addition to the loss to the University by this action of the Provincial Government, the expense of the removal of the University to the Parliament Buildings, and of the repairs required to fit up the latter for Collegiate purposes, entailed a further financial loss upon the University of \$1,485.50, besides other expenditures,—no portion of which was ever recouped to the University by the Government.

#### PROTEST OF THE CHANCELLOR AND SENATE IN 1854.

10. This action of the Provincial Government in compelling the University to vacate the only building it possessed for University and Collegiate purposes, and which had been erected at the expense of the University trust funds,\* was earnestly protested against in the Annual Report of the Senate for 1854, which appears to have been written by the Hon. William Hume Blake, then Chancellor of the University. He says:

"The Senate do not presume to question the policy of the Statute, 16 Victoria chapter 161, by which the Executive Government is empowered to take possession of a valuable portion of the property of this Institution without its consent, with a view to the

\*In the Bursar's return of the cost of the University Building including repairs "up to the date of their being taken possession of by the Government in 1853" it was stated that the same amounted to \$78,412. (*See Appendix No. 11 of 1856.*)

erection thereon of the Houses of Parliament, and for other public purposes. But without impugning the policy of that Act, or questioning the principle on which it proceeds, the Senate humbly conceive that the Legislature did not intend to authorize the Executive Government to take possession of that portion of the property of the University which had been already appropriated to Collegiate purposes, and upon which the buildings of the University had been already erected at great expense. Apart from the general reasoning upon the subject, the Senate venture to assert, with considerable confidence, that the conclusion at which they have arrived, is clearly deducible, not only from the enactment of the language in question, which expressly confines the power of the Government to such portions of the property as are 'not required for Collegiate purposes,' but also from the 57th Section of the University Amendment Act, 16 Vic. c. 89, from which it is quite clear that the Legislature had no intention of depriving the University of the Buildings already erected by it for the educational purposes of the Institution." (*See Appendix M to the Journals, 1854-5*).

#### THEIR FURTHER PROTEST IN 1855.

11. This earnest protest of the Chancellor and Senate against the improvident and expropriatory action of the Provincial Government in depriving the University, under color of the Act of 1853, of the only building properly available for Collegiate purposes, appears to have been disregarded by the then Government. And in the Annual Report of the Senate for the following year, 1855, the learned Chancellor again presented the Senate's protest in the following language :

"The Statute, 16 Victoria chapter 161, empowers your Excellency in Council to appropriate such portion of the University property lying at the head of the College Avenue, as may not be required for Collegiate purposes, as the site of a Government House, a Parliament House and Buildings for the accommodation of the Public Departments. But in conferring this power for an important and Provincial object, the Legislature recognized very clearly the right of the Institution to retain such portion of its own property as might be necessary for Collegiate purposes ; and the Senate humbly insist that whatever portion may be necessary for those purposes of University Buildings of every sort, for a Botanic Garden, and for a Park, ought to be assigned to and placed under the control of the Senate, under the 56th Section of the University Act, previous to the application of any part of it to other purposes ; and that the power of appropriating it to other than University purposes, is limited to the objects specified in the Act.

"Hitherto the prior right of the University to such portions of the lands in question as may be necessary for Collegiate purposes has not been acknowledged ; on the contrary, possession of the entire property has been assumed by the Government, and the University has even been deprived of its Buildings, already erected at great expense, which have been allowed to fall into a state of entire dilapidation."

In the same Report the learned Chancellor earnestly protested against the action of the Government in converting another portion of the University Park into a public street, and added : "The Senate respectfully insist that such an appropriation by the Executive Government is neither authorized by the letter, nor in accordance with the spirit, of the Act of Parliament."

12. And in comparing the position of the University with that of other institutions he added: "It is a source of deep humiliation to the Senate to observe the condition of other Educational Institutions of a Collegiate or University character, each provided with all those accommodations of which the University of Toronto is so utterly destitute; and to remember that it is to individual exertion, and liberality, and not to a large public endowment that those Universities are indebted for the superior position in which they are placed. It is a mortifying contrast to observe that those self-governed Institutions are, in some cases, permanently, but in all suitably, located on their own property, while the University of Toronto, possessed of large estates, with its expenditure under the immediate sanction of the Executive Government, has, for its Educational requirements, but scanty and inconvenient accommodation. Conscious of the singleness of their motives, and confident of the correctness of their views, the Senate feel it necessary to disclaim any intention of giving offence by the strength of their language, or the undisguised freedom of their suggestions."

CHANCELLOR BLAKE ON THE CROWN'S ADMINISTRATION OF THE UNIVERSITY TRUST.

13. The Chancellor also commented upon the duty of the Crown as trustee in administering the endowment of the University under the provisions of the University Act of 1853, and observed: "The property of the University is certainly transferred to and vested in the Crown. But it is so transferred and vested for the purposes of the Act, and becomes in its nature a Trust Estate to be administered under the authority of the Crown, but for the benefit of the University; and necessarily therefore in accordance with the Statutes of the Senate, the body to which the legislative power has been entrusted."

14. These earnest and persistent protests and appeals to the Government at length produced some slight change of policy; and on the 21st February, 1856, an Order in Council was passed restoring a portion, about two-thirds, of the expropriated landed property (but not the Buildings) to the University. The Order in Council was passed under s. 56 of the University Act of 1853, and set apart for the use and more convenient accommodation and business of the University, that portion of the University Park lying west of the Queen street Avenue, said to contain about 103 or 104 acres, being the two Park lots Nos. 11 and 12, purchased by the University Council in 1828, from the Hon. W. D. Powell and the Hon. D'Arcy Boulton. (See Appendix No. 2 to this Report.)

UNIVERSITY BUILDING APPROPRIATED BY THE CROWN FOR A LUNATIC ASYLUM IN 1856.

15. The University Building was however still retained by the Government, although urgently needed by the University for Collegiate purposes, and thereby caused further expenditure of University funds in fitting up the old Medical Building so as to make it temporarily available for the purposes of the University. On the 23rd April, 1856, an Order in Council was passed reciting that the original University building was then in possession of the Department of Public Works, and directing that it should be appropriated for the purposes of a Branch Lunatic Asylum. A copy of the Report of the Attorney-General, and of the Order in Council, are appended to this Report as Appendix No. 3.



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LEASE TO TORONTO OF 49 ACRES FOR 999 YEARS.

16. In 1858 an Act was passed (22 Victoria, chapter 110), on the application of the then Senate of the University authorizing the Bursar to execute a lease to the City of Toronto of about 49 acres of the University Endowment, for a term of 999 years, at the nominal rental of one dollar per annum. It is not for your Committee now to criticise this action of the Senate's predecessors, further than to express regret that their action practically surrendered and appropriated the most valuable portion of the property purchased by the trust moneys of the University Endowment as a free recreation ground for the citizens of one municipality in the Province, which portion, as previously stated, has been estimated by the Accountant of the Board of Trustees to have cost the University—treating it as an ordinary investment of its trust moneys—over half a million of dollars.

RENTAL UNDER ACT OF 1889, \$6,000 A YEAR.

17. The original lease to the City of Toronto was dated the 1st January, 1859, and leased what is now known as the Queen's Park and the College Avenues, containing, as stated in the lease, about 49 acres, more or less, for the long term of 999 years, at a rental of one dollar per year. This nominal sum after a recent judgment of forfeiture, and under a Provincial Act of 1889 setting aside the forfeiture, has been raised to \$6,000 a year for the balance of the lease of 999 years, or about one per centum per annum on the present actual value of the property.\*

18. The City's lease reserved the stone building and the ground immediately around it, marked on the plan as "Reserved," but subject to the provisions of an Order in Council which reserved to the Government the right to use the same as a Branch Lunatic Asylum, for the temporary accommodation of Lunatics. The quantity of land so specially reserved by the lease was estimated at one acre and  $\frac{1}{100}$  of an acre.

GOVERNMENT OCCUPATION OF BUILDING LOTS.

19. From the correspondence and plans submitted, it appears that the Government then occupied and used for the purposes of the Branch Lunatic Asylum a much larger quantity of land, nearly all of which was outside the limits of the Queen's Park, as described in the lease, and included several lots which were authorized to be leased at a ground rent for the benefit of the University Income Fund. Your Committee have ascertained that the actual quantity so occupied and used by the Government for the purposes of the Asylum was about eleven acres.

LOSS OF RENTALS TO THE UNIVERSITY.

20. Your Committee find that owing to this occupation of the lots by the Government, the Bursar was prevented for several years from leasing the Building lots laid out on the easterly side of the Queen's Park; and also from enforcing several of the covenants of

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\*In 1875 the City agreed with the Senate to lease the northerly 35 acres of the University Park, at a rental of \$8,000 a year for 42 years renewable on a valuation, and to compensate two tenants on the property for their outlays and the surrenders of their leases. A By-law No. 671 was passed by the City Council to carry out this agreement; but on certain objections being made to it by the Senate, another, No. 674, was passed to remove the objectionable provisions. The lease, however, was never executed, and the property has never realized the agreed income for the University. (See *Senate Minute Book for 1875*, pp. 87 and 226).

the City corporation contained in the lease of the Park to the City. Your Committee would specially refer to the letters of the Bursar, dated the 7th June and 14th Dec., 1861, and to the reply of the Provincial Secretary, dated the 23rd September, 1861, in which the Government informed the Bursar that the extra ground so occupied by the Branch Lunatic Asylum could not be given up; and that the Government could not then authorize the laying out and leasing of the Building lots referred to in the correspondence.

OPINION OF THE UNIVERSITY COMMISSIONERS OF 1863.

21. Your Committee also report that this claim of the University for compensation is sustained by the University Commissioners in their Report laid before Parliament in 1863, as follows: "The Commissioners are under the necessity of calling special attention to the occupation by the Branch Lunatic Asylum of a large and valuable property belonging to the University. The building was erected out of the Endowment at a cost of about \$55,000,\* and was in use for University purposes until the year 1853, when it was taken possession of by the Government under the Act for the erection of Government Buildings in Toronto, and has been occupied by the Branch Asylum for eight years, without compensation or allowance of any kind to the Endowment Fund. In a letter to the Hon. Provincial Secretary dated 14th December, 1861, the Bursar showed how much injury to the University had resulted from this occupation. A much larger space than was originally intended has been taken possession of, and it is impossible to carry out the plan for leasing a portion of the Park laid out in lots for Building leases, so long as the University property is thus withheld from its legitimate use. If it is deemed necessary that the Building should be reserved for an Asylum, a fair compensation should be made to the University Endowment, and only so much land taken as may be found absolutely necessary. The Commissioners further consider that a fair claim exists for rent during the whole period of the occupation." (*See Sessional Paper, February Session, 1863, No. 19.*)

22. The Commissioners, without taking into account the provisions of the Act of 1853, allowing the University six per cent. on the value of the property taken, estimated that the allowance to be made to the University should be at the rate of five per cent. per annum on the original cost or value of the property occupied by the Government for the Branch Asylum from 1853 to 1862, which they computed up to the date of their Report would amount to \$27,500.

23. Your Committee also report that the Senate made several applications to the Government respecting their continued occupation of the University Building, and the non-payment of rent of the same, but without success.

UNIVERSITY ENTITLED TO COMPENSATION FROM THE CROWN.

24. Your Committee having thus brought out the prominent facts respecting this claim, submit that the Executive Government of the late Province of Canada, having exercised the powers given by the Act 16 Vic. c. 161, by taking possession of a portion of

\*The actual cost of the Building, excluding repairs, up to 1849, was \$67,628. See Report of the University Commissioners, 1851, p. 35.

the University Endowment, and having so taken and held possession of such Endowment, the University has a right to claim a reasonable compensation, either that provided for in the Act of 1853 up to the 1st January, 1859, when a portion of such Endowment was leased to the City of Toronto, or as may be otherwise ascertained. And having also from the dates above mentioned, retained possession of the Stone Building and adjacent property, and appropriated it to other purposes than those authorized by the Act, and under which such possession was obtained from the University, it is submitted that there are good grounds for claiming on behalf of the University, and against the Crown, compensation for the use and occupation of the Building and property used by the Government for the purposes above mentioned.

25. Your Committee therefore recommend that a proper representation be made to the Executive Government of Ontario, so that immediate steps may be taken to recover for the University Endowment a reasonable compensation for the use and occupation by the Crown of the Trust property mentioned in this Report.

26. The Correspondence and Orders in Council laid before your Committee relating to the matters here reported upon, are appended to this Report.

All which is respectfully submitted,

THOMAS HODGINS,  
*Chairman.*

**APPENDIX No. 1.—Correspondence Respecting the Crown's Taking Possession of the University Park and Buildings in 1853 and Other Matters.**

TORONTO, 6th August, 1853.

SIR,—Under instructions from the Government, I have notified the President of the University College of Toronto, that the Parliament Buildings will be vacated on the 15th instant, requesting him to avail himself of the same as soon thereafter as possible with a view to the transfer of the University Building to the Government on or before the 20th instant.

The West wing of the Parliament Buildings will be reserved for your Office and residence.

With reference to the lands of the University, namely the Avenues, and Park land lying between the Observatory and Experimental Farm to the West, and the Eastern Boundary; and between the East Avenue and the 1st Concession of York; I am to request that you will take the necessary steps for their transfer, with all Buildings and fences thereon, on the 20th instant; and I submit whether, in connection with said transfer, it be not advisable that a proper survey be made of the property, its boundaries established and defined, and the value of the Buildings ascertained, pursuant to the clauses of the Act passed for that purpose.\*

I have the honour to be, etc.,

(Signed) FRED. CUMBERLAND.

DAVID BUCHAN, Esq.,  
*Bursar, Toronto University.*

\*16th Victoria, chapter 161.



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UNIVERSITY AND COLLEGES, BURSAR'S OFFICE,  
TORONTO, 8th August, 1853.

SIR,—I have the honour to acknowledge receipt of your letter of 6th instant, and have to inform you in reply that I have given instructions to the Superintendent of grounds to be prepared to resign possession of that portion defined in your letter, by the 20th instart.

With reference to your suggestion about a survey of the grounds, and a valuation of the buildings, I am satisfied both are necessary. I understand that you have instructed a surveyor to measure and define the grounds, and I shall be happy at any time to furnish him with every information and assistance in my power. I have already suggested to Government through the Solicitor General (West) the necessity there exists for an immediate arrangement being made for the valuation both of the grounds and buildings which are about to be taken from the University; but, lest amidst the multiplicity of other matters requiring attention this may be overlooked, I will make a formal communication immediately, requesting either the direct action of Government, or instructions how I am to proceed.

I have given directions at the Medical Building for some one to be always in attendance in order that in case of your going up or sending any one else, there may be no disappointment.

I have the honour to be, etc.,

(Signed) DAVID BUCHAN,  
*Bursar.*

F. W. CUMBERLAND, Esq.,  
*Architect,*  
Toronto.

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UNIVERSITY AND COLLEGES, BURSAR'S OFFICE,  
TORONTO, 8th August, 1853.

SIR,—I received on Saturday from Mr. Cumberland a communication, of which I have the honor to enclose a copy in which he informs me of the arrangements which are in progress for the assumption by Government of the present University grounds and the Buildings thereon, and he suggests the propriety of getting a survey of the grounds, and a valuation of the buildings in order to the proper carrying out of the transfer.

I understand that he has already ordered a survey to be made, and in acknowledging receipt of his letter, I have stated my readiness to afford every information and assistance in my power.

With reference to the valuation, I presume it would be proper to have the value, not only of the Buildings but of the grounds themselves ascertained, as also the loose building material which is on the grounds, of which there is a large quantity, originally intended for King's College.

4 C.U.

I have not seen a copy of the Act authorising the erection of the Parliament Buildings, and the assumption of the University Park as a site for them and a Government House; but according to my recollection of the newspaper version of the Bill, the property was proposed to be valued by competent parties, and six per cent. interest paid on such valuation to the University Income Fund.

Might I presume to suggest that this valuation should be made as soon as possible; and that Government should either themselves name the valuers, or authorise Mr. Cumberland and myself, or any other more capable or appropriate party, to select competent persons to represent in such valuation the general public interest on the one hand, and the University interest on the other. At any rate, in whatever way the valuation is arrived at, it appears to me exceedingly desirable that it should be as nearly simultaneous with the transfer as possible.

I have the honour to be, etc.,

(Signed) DAVID BUCHAN,  
*Bursar.*

THE HON. A. N. MORIN,  
*Provincial Secretary,*  
Quebec.

SECRETARY'S OFFICE,  
QUEBEC, 13th August, 1853.

SIR,—I have the honor to acknowledge the receipt of your letter of the 8th instant, transmitting a copy of a letter from Mr. Cumberland on the subject of the assumption by the Government of the present University grounds and the buildings thereon; and to inform you that the subject will receive His Excellency's consideration.

I have the honor to be, etc.,

(Signed) A. N. MORIN,  
*Secretary.*

DAVID BUCHAN, ESQ.,  
*Bursar, University and Colleges,*  
Toronto.

BURSAR'S OFFICE,  
TORONTO, 20th August, 1853.

SIR,—You will remember that, according to the arrangement intimated by you, this day terminates the occupation of the University Grounds for University purposes. You are aware, I believe, that I have intimated to all the men under Mr. Buckland's charge that they must cease from to-day to look to the University for employment, and are

henceforth dependent on you. Mr. Buckland is now with me. He has charged the men to look after the grounds as usual to-morrow; but on and from Monday, it will be necessary that they have your instructions what they are to do.

Mr. Buckland desires me to say that he will be happy to render you any assistance in his power, until your Superintendent is ready to enter upon his duties, in case he may not yet be on hand.

I am, etc.,  
(Signed) DAVID BUCHAN,  
*Bursar.*

F. W. CUMBERLAND, Esq.,  
Toronto.

(*Extract.*)

TORONTO, 30th August, 1853.

SIR,—On the subject of the Public buildings, etc., I have to bring to your notice:

1. That the whole of the University property, avenues, park, buildings, etc., have been transferred by the authorities to me as agent of the Government in the matter.

That such transfer will involve an arbitration in accordance with the Act of last Session, and that said arbitration could be more conveniently made now than at any future period.

2. That in consequence of said transfer it has become necessary to retain three labourers and a foreman in charge and care of the grounds, whose wages become due weekly, for which as yet no provision has been made.

I request your authority and directions as to these and other incidental petty disbursements, observing that it would be a very convenient and satisfactory arrangement if some Government officer resident in this city should be appointed Paymaster of these accounts on my certificate.

Otherwise I am connected with payments in cash, which is not desirable or within the range of my duty. The Bursar of the University, a Government officer, already acquainted with these matters, would be willing to undertake the service.

I have the honor to be, etc.,

(Signed) FRED. CUMBERLAND.

T. A. BEGLEY, Esq.,  
*Public Works,*  
Quebec.

5th September, 1853.

SIR,—With reference to that portion of your letter of the 13th ultimo,\* respecting the transfer of the University property at Toronto, I am directed to request that you will transmit the document to this office, together with a plan of the whole property.

(Signed) T. A. BEGLEY,  
*Secretary.*

F. CUMBERLAND, Esq.,  
Toronto.

\*This letter of 13th Aug., 1853, cannot be found in the Department of Public Works.



TORONTO, 12th Sept., 1853.

SIR,—With reference to your letter of the 5th inst., directing me to transmit the document transferring the University property in this city to the Government, together with a plan of the whole property, I have to inform you that no such document has come to my hands, the Bursar of the University having communicated to the Honourable the Provincial Secretary upon the subject.

No accurate or authorized plan of the property being in existence I have caused the same to be surveyed and the plan is now in course of preparation, by a Deputy Provincial Surveyor, for registration, a copy of which I will transmit so soon as completed.

The property having been transferred, it became necessary to take steps for its care and management, especially with a view to its preparation for its contemplated purposes. I have accordingly placed it in charge of Mr. William Mundie whose plan for the Botanic Garden had already been approved, and who has so successfully laid out the grounds of the Provincial Normal School. The Grounds require thorough draining, planting, etc., and he is authorized to proceed with those works. No funds being yet officially at my disposal for these services, I have opened an account at the Bank of Upper Canada for the necessary payment of wages, the monthly returns of which will be regularly transmitted to you.

I have also let a contract for the fencing in of those parts of the Park including the sites of the Governor's House and the Parliament Buildings. This is necessary to prevent the Park and Grounds being injured by building operations.

These steps, as well as the transfer of the Parliament Buildings to the University authorities, have been taken on verbal instruction from Members of the Administration, here, as further delay awaiting the formal Order of Council would have resulted in the total loss of this season, and extreme embarrassment in regard to completion within the allotted period.

I have the honour to be, etc.,

(Signed) FRED. CUMBERLAND.

T. A. BEGLEY, Esq.,  
Secretary Public Works,  
Quebec.

TORONTO, 26th Feb'y, 1855.

SIR,—By your letter (No. 16776) of the 6th instant, we are directed to transmit "a full" Report on the state of the public Grounds and "the several Buildings connected with them, the Observatory, Medical Building, etc.," describing their present state, the expenditure "on each and how occupied, the nature of" the work remaining to be done to the "Observatory, if any, and the cost thereof."

We accordingly proceed to report

1st. As to the Grounds: On the 25th January we had the honor to report to you the intention and purposes resulting in the transfer of these grounds from the University to the Government by an Act of Parliament passed in that behalf. These Grounds

having been adopted by the then Government as the site for the proposed Parliament Buildings, they were transferred to our charge on the 20th August, 1853, and on the 30th August, 1853, I reported the same together with the propriety of establishing the terms of said transfer by Arbitration as directed by the Act of Parliament aforesaid. On the 12th September, 1853, we reported the necessity for procuring an accurate and authorized plan of the property for registration and such a plan has since been made and transmitted to you.

\* \* \* \* \*

(Signed) CUMBERLAND & STORM.

The Secretary, Public Works,  
Quebec.

BURSAR'S OFFICE OF THE UNIVERSITY OF TORONTO,  
7th June, 1860.

SIR,—In reply to the question put by you to me this morning, I have the honour to inform you that the portion of the University grounds in this city taken possession of by the Government of the day, under the Hincks' Act for the erection of Parliament and other public buildings in Toronto, consisted of the Avenues and the Easterly 100 acres of the 150 purchased by King's College.

When authority was given for the erection of the new University Buildings, Government released possession of all that portion of the 150 acres which lies to the westward of the line of the Queen Street Avenue.

Again, under the Act of Parliament, and subsequent Order-in-Council, (dated 15/18 December 1858) authorizing the lease to the City of a portion of the grounds for a public park, the avenues and a portion of the east 50 acres were surrendered subject to the right of Government "to use the building reserved for the temporary accommodation of Lunatics."

And now that the Government have authorized the disposal of a portion of the park in building lots, I conceive that there has been surrendered, that portion of the east 50 acres, which lies between the public park and the Yonge Street Avenue on the south, and the Elmsley property on the East, as far north as the park extends.

It seems to me, therefore, that what still remains to be surrendered is the piece of land east of the line of the Queen Street Avenue and north of the city park, for I take it for granted that, under the Order-in-Council quoted, the Lunatic Asylum portion will fall into the hands of the University whenever the Lunatics are removed, which we all hope will be soon.

I have the honour to be, etc.,

(Signed) DAVID BUCHAN,

*Bursar.*

The Hon. J. C. MORRISON,  
*Solicitor General,*  
Toronto.

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UNIVERSITY BURSAR'S OFFICE,  
TORONTO, 7th June, 1861.

SIR,—May I request the favor of your informing me when I may expect to be put in possession for the University of Toronto, of the building and grounds belonging to the University, at present occupied by the branch Lunatic Asylum? Or, if there is not immediate prospect of the building being vacated, whether I can get possession of the ground between the building and the eastern boundary of the park, extending northwards as far as used by the Asylum?

Having been authorized by the Government to lay out and lease building lots there, I am anxious to complete my arrangements.

I have the honor to be, etc.,

(Signed) DAVID BUCHAN,

*Bursar.*

E. A. MEREDITH, Esquire,  
*Secretary Board of Prison Inspectors,*  
Quebec.

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SECRETARY'S OFFICE,  
QUEBEC, 5th September, 1861.

SIR,—I am directed by His Excellency the Governor General, to acknowledge the receipt of your letter of the 7th June last, addressed to the Secretary of the Board of Inspectors of Asylums etc. requesting to be informed when you may expect to be put in possession for the University of Toronto, of the buildings and grounds belonging to the University, at present occupied as a branch Lunatic Asylum, or whether, in the event of that building not being immediately vacated, you can get possession of the ground between the building and the eastern boundary of the University park, extending northwards as far as used by the Asylum.

His Excellency directs me to inform you, that the temporary Lunatic Asylum in question cannot at present be given up to the University.

With regard to your application for a portion of the ground attached to the Asylum, I am to state that it will be necessary, previously to coming to a decision upon that application, to ascertain whether the retention of this piece of land, is essential to the well-being of the temporary Asylum.

I have the honour to be, etc.,

(Signed) E. A. MEREDITH,

*Assistant Secretary.*

D. BUCHAN, Esq.,  
*Bursar, University and Colleges,*  
Toronto.



SECRETARY'S OFFICE,

QUEBEC, 23rd Sept., 1861.

SIR,—Adverting to the letter to you from this Department of the 5th instant, I have the honour to inform you that the Medical Superintendent of the Provincial Lunatic Asylum was requested to report upon that portion of your letter of the 7th June last, in which you ask to be informed whether you can get possession of the ground between the branch Asylum in the University grounds and the eastern boundary of the park, extending northwards as far as used by the Asylum.

I have now to state that that officer reports that he considers the retention of the whole of the grounds, at present occupied by the temporary Asylum in question, essential to the well-being of the patients, and that he should consider any curtailment, but especially that mentioned in your letter, as rendering the building unfit for the purpose of a Branch Asylum.

His Excellency cannot therefore authorize at present the laying out and leasing as building lots of the grounds referred to.

I have the honour to be, etc.,

(Signed) C. ALLEYN,

*Secretary.*

DAVID BUCHAN, Esq.,  
*Bursar, University and Colleges,*  
Toronto.

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OFFICE OF THE BURSAR OF THE UNIVERSITY,

TORONTO, 14th December, 1861.

SIR,—I have the honour to request that you will lay before His Excellency the Governor General in Council the following statement of facts connected with the occupation of the old University Building and a considerable portion of the University Park, for the benefit of some of the Lunatics of the Province:

At the time the arrangements were in progress for leasing a part of the University Park to the City of Toronto, to be converted into a Public Park for the benefit of the Citizens, and when the question of the approval of the Statute of Senate in that behalf was before His Excellency in Council, the Honourable the Attorney General (U.C.) reported that the Statute should be approved "subject to the right of the Government to use the Building reserved for the temporary accommodation of lunatics, which may be provided for in the proposed lease," and the Order-in-Council was passed accordingly.

As the above mentioned condition, suggested by the Honourable the Attorney General, refers to a reservation provided for in the Statute, it will be proper to quote the words of the Statute on that subject. They are as follows: "There shall be reserved in and by the Lease thereof the Stone Building with the Ground immediately around it as laid down in the said plan and marked 'Reserved.'"

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That His Excellency may have a clear view of what this reserve is composed, and its relative position to the Park leased to the City, I enclose a tracing of the plan in so far as necessary.

In the end of 1858 the Lease was signed. It contains very strict covenants on the part of the City for the planting of the Park with ornamental trees, fencing and making roads, etc., but the authorities of the University cannot enforce these covenants, because the Medical Superintendent of the Lunatic Asylum holds in possession a much larger piece of ground than that which is reserved by the Lease and the Order-in-Council which authorized the lease. Part of the over-plus ground so held is within the limits of the City Park, and part is comprehended within the bounds of another piece of ground which has been put under my charge for the purpose of being leased as building Lots around the City Park, or Queen's Park as it is now called.

It will perhaps be remembered by some of the members of the Executive Council that the plan of this land appropriated for leasing purposes, the form of the lease, and elevation plans of the houses to be erected were submitted to and approved of by His Excellency Sir Edmund Head.

After a good deal of trouble and many goings to and fro, I have been able to get a contract of lease executed with a respectable party in the City for two of the lots; on which he is bound to erect a house, according to plan within two years from the date of the Lease. The plan of the ground laid out in lots has also put on record in the Register Office for the City.

I am therefore, so far in a position to bring the remainder of the lots into the market; but I hesitate to do so until the difficulty arising from the occupation of the over-plus ground by the Asylum authorities is removed; or, at least, until I know that it will be removed within a certain definite limited time.

I fear also that I may get into trouble with the party who has already obtained a lease, as he cannot get access to the front of his lot until the road there is made. I shall be very agreeably surprised if he pays his rent when it becomes due.

Such being the circumstances, I have to request, on behalf of the University, that the occupation for the benefit of the Lunatics of, at any rate, the ground not embraced in the said reservation may be put an end to. Also that even the building and ground comprehended in the reservation, may be given up; for it seems very hard that not only should the property of the University be appropriated without compensation, to a purpose quite foreign to its original destination, but that the occupation should be continued to the serious damage of the University's interests.

I have the honour to be, etc.,

(Signed) DAVID BUCHAN,

*Bursar.*

The Hon. THE PROVINCIAL SECRETARY.

## OFFICE OF THE INSPECTOR OF ASYLUMS AND PRISONS,

TORONTO, 3rd July, 1869.

SIR,—I have the honour to communicate for the information of the University authorities that it is the intention of the Government to transfer the patients at present confined in the University branch of the Provincial Asylum to the main building on or about the 1st September next, when possession of the building now used for asylum purposes will be given up.

I have the honour to be, etc.

(Signed) J. W. LANGMUIR,

*Inspector.*

DAVID BUCHAN, Esq.,  
Bursar, University College,

Toronto.

BURSAR'S OFFICE,

TORONTO, 21st Dec., 1869.

Received from the Honourable the Commissioner of Agriculture and Public Works the keys of the building situate in Queen's Park, Toronto, and recently known as the "University Branch Asylum," the same received without prejudice as to any future settlements or adjustments respecting said building or its contents.

(Signed) DAVID BUCHAN,

*Bursar.*

**APPENDIX No. 2.—Extract of a Report of a Committee of the Honorable the Executive Council, dated the 21st February, 1856, approved by His Excellency the Governor-General in Council on the same day.**

On a petition from the Chancellor, Vice-Chancellor and Senate of the University of Toronto, for the assignment of a certain portion of land as a site for the University Buildings, and for the early erection thereof.

The Honorable Attorney-General for Upper Canada recommends that the portion of the University Grounds lying west of the College Avenue, be set apart for University purposes, but the Senate be authorized to contract for the necessary University Buildings thereon.

The Committee humbly advise that the recommendation of the Honorable the Attorney-General be approved and carried out, it being assumed that the Senate will enter into no engagements beyond the limits of the resources of the University available for the above purposes.

Certified,

(Signed) W. H. LEE, C.E.C.

TO THE HONORABLE  
THE PROVINCIAL SECRETARY.



**APPENDIX No. 3.—Memorandum of the Attorney-General, and Order in Council appropriating the former University Building for a Branch Lunatic Asylum.**

*Copy of the Memorandum of the Attorney-General to the Executive Council, respecting the University Building.*

The undersigned has the honour to state for the information of Your Excellency that the building on the East side of the College Avenue in Toronto, formerly used by the University, is now unoccupied, and under the control of the Board of Works. It has been suggested that this building might at a comparatively small expense be fitted up for the reception of lunatics, until the erection of a permanent Asylum in Upper Canada.

The undersigned therefore respectfully recommends that the Commissioners of Public Works be instructed to communicate with Dr. Workman, the Medical Superintendent, and to report without delay on the extent of accommodation which this building will afford, and the sum required to fit it for such temporary occupation.

(Signed) JOHN A. MACDONALD.

TORONTO, April 23rd, 1856.

*Copy of a Report of a Committee of the Honourable the Executive Council, dated 23rd April, 1856, approved by His Excellency the Governor-General in Council on the same day.*

On a memorandum from the Hon. Attorney-General for Upper Canada, stating that the Building on the East Side of the College Avenue, in Toronto, formerly used by the University is now unoccupied, and under the control of the Department of Public Works ; that it has been suggested that this building might, at a comparatively small expense, be fitted up for the reception of Lunatics, until the erection of a permanent Asylum in Upper Canada.

He, therefore, suggests that the Commissioners of Public Works be instructed to communicate with Dr. Workman, the Medical Superintendent, and to report without delay on the extent of accommodation which this building will afford, and the sum required to fit it for such temporary occupation.

The Committee submit the above recommendation for Your Excellency's approval.

(Signed) WM. H. LEE, C.E.C.

TO THE HONOURABLE  
THE PROVINCIAL SECRETARY.

## FIFTH REPORT :

### ON THE CLAIM OF THE UNIVERSITY RESPECTING CERTAIN BONDS OR DEBENTURES OF THE TAY NAVIGATION COMPANY.

*To the Senate of the University of Toronto :*

The Special Committee of the Senate appointed to investigate certain claims of the University with respect to its Endowment and Assets, specified in the Resolution of the 11th January, 1895, present the following as a separate Report upon the claim of the University respecting the investment of \$2,000 of the capital of the Endowment, in two bonds or debentures of the Tay Navigation Company.

#### INVESTMENT OF \$2,000 IN TAY NAVIGATION BONDS IN 1841.

1. Your Committee find in the Minute Book of the University Council under date of the 2nd October, 1841, the following entry :

"The Bursar exhibited the receipts of the Cashier of the Bank of Upper Canada for the following Debentures purchased since the last meeting of Council and delivered over to the Bank for safe custody and management.

"No. 4 Tay Navigation Company for £250.

"No. 5 " " " " £250."

The Cash Book of the Bursar shows that these bonds were purchased, apparently from the Bank of Upper Canada, on the 18th May, 1841. A copy of one of these Bonds is appended to this report as Appendix No. 1.

#### THE TAY COMPANY INCORPORATED IN 1831.

2. The Tay Navigation Company was incorporated in 1831 by 1 William IV., c. 11., with a capital of \$16,000, for the purpose of improving the navigation of the River Tay, or building a canal between Perth and the Rideau Lake and Canal ; and the persons so incorporated were Henry Graham, Hon. Alexander Fraser, Hon. Roderick Matheson, John McKay, George Hume Read, Jonas Taylor and Henry Glass. The Hon. William Morris afterwards became the President of the Company. The Act also specially repealed so much of the Rideau Canal Act of 1827, (8th George IV., c. 1), as authorized the Crown to improve the navigation of the said River Tay, as part of the Rideau Canal.

#### GRANT OF PERTH TOWN LOTS TO THE COMPANY IN 1833.

3. During the construction of the Canal the Company obtained from the Executive Government of Upper Canada by Letters Patent, dated the 31st January, 1833, a free grant of certain town lots, containing five and one-half acres of land on Cockburn Island, in about the centre of the Town of Perth, and then used as a Market Place ; but your Committee have not investigated whether the title to those town lots still remains in the Company.

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 GOVERNMENT LOANS OF \$7,000 TO THE COMPANY.

4. In 1834 the Company also obtained a loan from the same Government of \$4,000, payable in ten years, with interest thereon at six per cent. per annum, under the provisions of 4 William IV., c. 42; and in 1837 a further loan of \$3,000, payable in twenty years, with interest thereon at six per cent. per annum, under 7 William IV., c. 75. The loans were to be secured by a Bond and a mortgage on the property of the Company, and the tolls to be collected from the navigation, and such other real and personal security as the Lieutenant-Governor should deem sufficient.

5. These loans amounting to \$7,000, have never been re-paid; and in the Public Accounts of the Province of Canada for 1865, they are entered under the title of "Loans to Incorporated Companies; Tay Navigation Company, \$7,764.05." (*See Canada Sessional Paper, 1865, 2nd session, No. 38, p. 3*).

## PARLIAMENTARY PROCEEDINGS RESPECTING LOAN IN 1866.

6. During the Parliamentary session of 1866, the Committee on Public Accounts reported that the loan had long been treated as a nominal asset, and recommended that it should be cancelled, provided that persons interested in the trade of the Rideau Canal should restore the navigation. Their report was concurred in by the House, but was never acted upon by the Crown, in which the debt was vested. And it has not been made to appear to your Committee that any "persons interested in the trade of the Rideau Canal," sought to avail themselves of the privilege of cancellation mentioned in the Report. (*See Journals 1866, p. 348*).

## COMPANY'S DEBT TO THE CROWN CARRIED FORWARD AS AN ASSET UP TO 1882

7. The debt due by the Company was therefore carried forward into the Accounts of the Dominion of Canada, and was considered as an asset of the former Province of Canada up to the year 1882, when on the revision of the Balance Sheet of the Dominion by a sub-committee of the Committee on Public Accounts it was ordered to be eliminated as worthless or irrecoverable. (*See Appendix No. 1, to the Journal of 1882*.) This action of the Committee on Public Accounts was taken during the year in which the Department of Railways and Canals assumed and took possession of the property and works of the Company for the purposes of constructing the Tay Canal, as hereinafter mentioned. During the same year a vote of \$50,000 was taken for the construction of new works on the River Tay Canal. (*See 45 Vic., c. 2, page 22, Dom.*)

## STATUTORY CONDITIONS UPON WHICH THE CROWN MIGHT ASSUME THE COMPANY'S WORKS.

8. The special Act incorporating the Company provided that the Crown might, "at any time after 50 years after the making and completing of the said navigation," or canal, assume the possession and property of the same, and of all works and dependencies belonging thereto, upon certain statutory conditions as to payment to the said Company, for the use of the stockholders thereof "the sums furnished or advanced by each subscriber



towards the making and completing the said Navigation," together with a percentage specified in the Act. (*See William IV., c. 11., ss. 40-42*). The Act further provided that the said navigation should "from the time of such assumption, in manner aforesaid, appertain and belong to His Majesty, His Heirs and Successors." This provision was specially added to the Act of Incorporation during its passage through the Legislature. (*See Journal of 1831, pp. 63, 64*).

COMPANY COMPLETED THEIR CANAL IN 1834.

9. Your Committee find that the Company completed their works in 1834, on which were said to have expended from \$17,000 to \$28,000; and that they operated the same as a Canal for some years up to about 1849 or later. The entries in the University Cash Book show that the Company paid to the University the interest on these bonds up to the 30th June, 1843. By the University Act, 16 Vic. c. 89, the title to these bonds, and the right to recover on them, became vested in the Crown on the 22nd April, 1853, as trustee for the University.

CROWN TOOK POSSESSION OF THE COMPANY'S WORKS BEFORE THE EXPIRATION OF THE STATUTORY LIMIT OF FIFTY YEARS.

10. From an examination of the Parliamentary Reports, your Committee have ascertained that instructions were given by the Department of Railways and Canals to the Government Engineer in 1881, to make a survey of the old Company's Tay Canal with a view to the construction over it of a branch canal from the Town of Perth to the Rideau Canal; and that the Engineer's report on such survey giving a statement and estimate of the proposed works, was made on the 10th November, 1882; (*See Canada Sessional Papers, No. 8, of 1882, p. xxxv, and No. 8 of 1883, p. 119.*) From these it would seem that the Dominion Government, on behalf of the Crown, in 1882, and before the expiration of the 50 years mentioned in the Company's Special Act of incorporation, entered upon and took possession of the property and works of the Company, and constructed on the same, or part of the same, what is known as the "River Tay Canal," which by Order in Council, passed in 1890, was declared to be part of the Rideau Canal and to be known as the "Tay Branch." Extracts from the Reports of the Minister of Public Works for 1867, and for 1882, relating to the River Tay Navigation and Canal, are appended hereto as Appendix Nos. 2 and 3, and from the Report of the Minister of Railways and Canals for 1882, as Appendix No. 4.

CLAIM SHOULD BE FURTHER INVESTIGATED.

11. Your Committee recommend that the claim of the University respecting this asset of the Endowment should be further investigated, so as to ascertain whether the claim can be enforced against the Dominion Government. And also whether such taking of possession subjected the Crown to the statutory provisions as to payment prescribed by the Act of 1831, and, if so, to the debt due by the company on the Bonds or Debentures held by the University; also, whether the Province, on behalf of the Crown, as trustee for the University, was, since 1853, entitled to a lien for the amount of these

Bonds and interest on whatever property and works of the Tay Navigation Company have lately been taken possession of, or expropriated by, the Dominion Government, for the purposes of the Tay Canal, or on any moneys payable to the Company as specified in the Act of 1831.

All which is respectfully submitted.

THOMAS HODGINS,  
*Chairman.*

**APPENDIX No. 1.—Copy of one of the Bonds or Debentures of Tay Navigation Company held by the University.**

Know all men by these presents that the President and Directors of the Tay Navigation Company, and their successors in office, are hereby held and firmly bound to the President and Directors of the Bank of Upper Canada in the penal sum of Five Hundred Pounds of lawful money of this Province conditional as follows :

The condition of the above obligation is such that the above bound Tay Navigation Company shall pay to the President and Directors of the Bank of Upper Canada aforesaid or to their assigns on the first day of July one thousand eight hundred and thirty-seven the sum of Two Hundred and Fifty pounds of lawful money, and shall in the meantime at the expiration of every six months from the date hereof, pay to the said Bank or their assigns, the lawful interest accruing on the said sum of Two Hundred and Fifty Pounds, then this obligation to be void or else to remain in full force and virtue.

Given under my hand and seal at Perth in the said Province this third day of October in the year one thousand eight hundred and thirty-three.

(Signed) WILLIAM MORRIS, [L.S.]  
*President, Tay Navigation Company.*

Witness :

(Signed) JAMES WILSON.

(Signed) WM. KIRKPATRICK.

**APPENDIX No. 2.—Extract of the Report of the Minister of Public Works for 1867, on the River Tay Canal.**

"The River Tay, which may be considered a branch of the Rideau Navigation falls into the Rideau, at the foot of Lower Rideau Lake.

"The town of Perth is situated on the River, about 8 miles above its mouth.

"In 1831 a Company was incorporated with a capital of \$16,000, for the improvement of the navigation of this river. The works were immediately commenced, and in 1834, were opened for navigation.

"They consist of five locks, with dams and slides for passing timber ; four of the locks are of stone, the remaining one with the other works is of wood. The Company never declared any dividend ; and the works are in a dilapidated state.

"The locks are about 101 by 20 feet, with four feet of water.

"The Government of Upper Canada, during the session of 1833-4, loaned the Company \$4,000 ; and in 1836-7, \$3,000.

"The total cost of the works, so far as can be ascertained, up to 30th June, 1867, amounted to \$17,764.05." (See Sessional Papers 1867-8, No. 8, p. 61.)

**APPENDIX No. 3.—Extract of the General Report of the Minister of Public Works, 1867-1882, on the River Tay Canal.**

"The town of Perth, in 1834, was connected with the Rideau Lake by a canal constructed on the line of the River Tay, which flows from Perth and empties into the east end of the Rideau Lake, a distance of about 10 miles.

"This canal was built by the 'Tay Navigation Company,' which was incorporated by the Legislature of Upper Canada in 1831, by 1 William IV., c. 11; Local and Private Acts of Upper Canada.

"The works consisted of five separate Locks, lifting in all 28 feet; the levels of the different reaches being maintained on the same principle as on the Rideau Canal, by flat dams built across the river at different points, causing the flooding of a considerable amount of low lands.

"The total length of the Canal proper from Perth to Port Elmsley, where the level of the Rideau Lake is reached, being eight and a half miles.

"The locks were constructed of rubble masonry, faced with stone, 100 feet between quoins, and 20 feet in width, with four feet water on the sills.

"The Canal has long since been abandoned for any boat traffic, and hardly a vestige of the locks remains. The dams, however, with the exception of one, are still serving the purpose of keeping up sufficient water to run logs down. (See Sessional Papers, 1883, No. 10A, p. 837.)

**APPENDIX No. 4.—Extract of the Report of the Minister for Railways and Canals for 1882, respecting the re-construction of the River Tay Canal.**

"TAY CANAL. A survey has been carried out having in view the construction of a short Branch Canal to connect the Town of Perth and the extensive mineral interests now being developed, of which it is the centre, with the Rideau Canal; such connection formerly existed by means of a channel maintained by dams and locks, which have long fallen into disuse and decay, along the line of the River Tay, ending at Port Elmsley on Lake Rideau, a distance of about 10 miles. It has been decided to adopt a line of communication, starting from Beveredge's Bay on Lake Rideau, at which point a short cut in which two locks, the only ones to be constructed, will be built, giving access from the Lake to the River.

"At the point of junction with the River a dam will be formed, raising the River waters sufficiently to give with the deepening of the channel in certain places, a navigable depth up to Perth. Some of the more abrupt bends of the river will also be cut through, making the distance to be traversed about six miles." (Sessional Paper No. 8, of 1883, p. xxxiv.)

The Report of the Government Engineer in charge of the reconstruction of the River Tay Canal, is appended to the Report of the Department of Railways and Canals for 1882, as Appendix No. 6, p. 119. (See Sessional Papers, 1883, No. 8.)