

GT. BRIT. PARLIAMENT. 385  
HOUSE OF COMMONS.  
SELECT COMMITTEE...

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REPORT

1890

OF THE

1890

CIVIL SERVICE COMMISSION

CANADA

1890

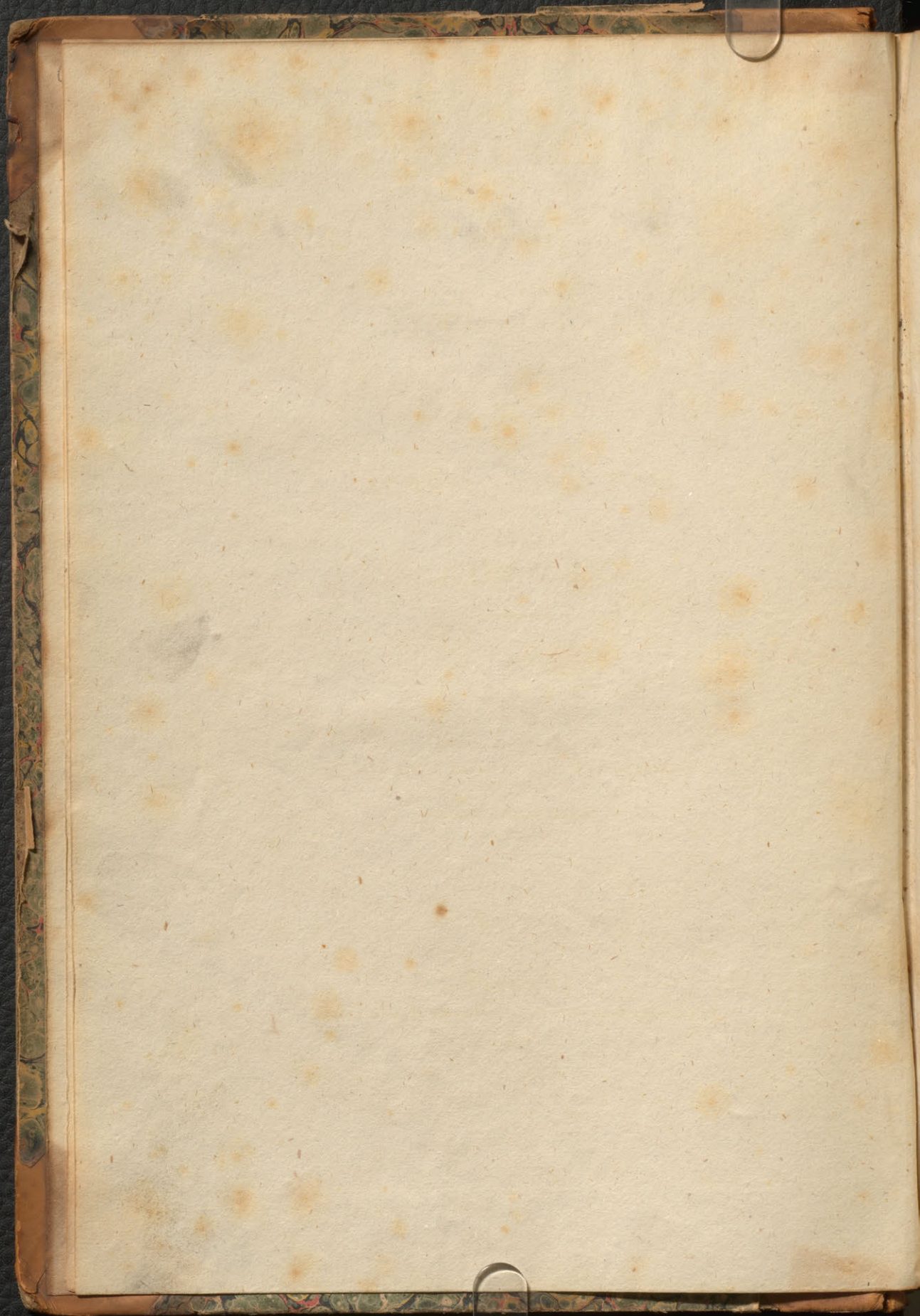
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REPORT  
FROM THE  
SELECT COMMITTEE  
ON THE  
CIVIL GOVERNMENT OF  
CANADA.

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*Ordered, by the House of Commons, to be Printed  
22 July 1827.*

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QUEBEC:  
Re-Printed by Order of the House of Assembly of Lower Canada,  
1829.

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## REPORT.

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THE SELECT COMMITTEE appointed to inquire into the state of the Civil Government of *Canada*, as established by the Act 31 Geo. III. and to report their Observations thereupon to The House; and to whom several PETITIONS for an alteration in the present Government were referred;—HAVE examined the Matters to them referred, and agreed to the following REPORT:

YOUR Committee began their investigation into the State of the Civil Government of *Canada*, by examining the several Petitions from the Inhabitants of the two Provinces, which had been referred to them by the House. The Petitions from the Townships of the Lower Province, signed by above 10,000 persons, complain of the want of Courts within their own limits, and of the administration of French Law in the French Language; that they are without Representation in the House of Assembly in Lower-Canada, and that Emigrants of British origin have been deterred from settling in the Province; and, finally, they pray that a Legislative Union may take place between Upper and Lower-Canada.

Your Committee then proceeded to examine the Petition signed by about 87,000 Inhabitants of Lower-Canada, resident within the Seigneuries, who complain of arbitrary conduct on the part of the Governor of the Province; of his having applied public money without legal appropriation; of violent prorogations and dissolutions of the Provincial Parliament; and of his having prevented the passing of many useful Acts, which they enumerate. They complain also, that a Receiver-General had been maintained in the exercise of his functions for some years after his insolvency was known to the Government; that similar abuses had prevailed with respect to the office of Sheriff. And it is further stated, that the rights of the Petitioners had been injured by Acts of the Imperial Parliament, particularly by the Canada Trade Act, and the Act passed in the sixth year of His Majesty's Reign, c. 59, affecting the Tenures of Land.

For a further knowledge of the grievances complained of, your Committee beg leave to refer to the Petitions which will be found in the Appendix.

Before your Committee proceed to explain or to discuss these important subjects, they think it their duty to state, that Petitions from the Province of Upper-Canada were also referred to their consideration; the prayer of which Petitions is, that the proceeds arising from the sale of certain Lands, set apart for a Protestant Clergy, may not be applied solely to the use of the Clergy of the Church of England, (the adherents to which throughout the Province they state, in contradiction to the representations of Archdeacon Strachan, to be comparatively few in number), but that they may be applied to the maintenance of Protestant Clergymen of other denominations, and to the purposes of general education.

## REPORT FROM THE SELECT COMMITTEE

As these Petitions appear to comprehend the most material subjects that have of late agitated the Provinces of Upper and Lower-Canada, your Committee thought the best course they could pursue was to examine witnesses as to each Petition in succession; and in communicating to the House the information they have received, and the opinions they have been induced to form as to the Civil Government of Canada, they will treat of the different subjects, as much as possible, in the order in which they were investigated.

Your Committee proceeded to examine into the system of Law established in Lower-Canada, to which their attention was particularly drawn by the Petition from the Townships. Your Committee have examined evidence in great detail on this subject; from which they collect, that uncertainty has long existed on points of law relating to the Tenure of Real Property in that portion of the Province. It appears that shortly after the Cession of the Province, the King of England, in a Proclamation dated the 7th of October 1763, (which will be found in the Appendix), declared, amongst other things, that "all the Inhabitants of the Province, and all others resorting to it, might confide in His Royal protection for enjoying the benefit of the Laws of England;" and he announced that he had "given commands for the erection of Courts of Judicature, with an appeal to His Majesty in Council."

In the year 1774, the first Act of Parliament was passed, making provision for the better government of this part of the British dominions. By this Act the English Criminal Law was preserved. But it was enacted "that in all matters of controversy relating to property and civil rights, resort should be had to the Laws of Canada as the rule and decision of the same; and all causes that should thereafter be established in every Court of Justice, to be appointed within the Province, should, with respect to such property and rights, be determined agreeably to the said Laws and Customs of Canada." There is, however, one marked exception to this concession of the French Law, namely, "that it should not apply to Lands which had been or should be granted in Free and Common Socage."

After an interval of seventeen years, this Act was followed by the Constitutional Act of 1791. The provisions of this important Act have no bearing upon the subject under our consideration, excepting that it provides, with respect to Lower-Canada, that Lands shall be granted in Free and Common Socage, if so desired: and further, that such Grants shall be subject to such alteration as to the nature and consequences of Socage Tenure as may be made by the Provincial Legislature, and with His Majesty's approbation and assent; but no such alteration has been made.

On examining into the application of those provisions in the Province, it appears not only that doubts have existed as to the true interpretation of them, but that the general practice of the Colony has been to convey real property within the Townships according to the Canadian forms, and that it has descended and been subject to the incidents of that Law. In the year 1826 the British Parliament passed an Act, which put its own interpretation of these Statutes beyond the reach of further dispute. This Act, commonly called the Canada Tenure Act, declared that the Law of England was the rule by which real property within the Townships was to be hereafter regulated and administered. In offering any recommendations on points of so much difficulty and importance, Your Committee are fully aware of the disadvantages under which they labour, and of their inability, from their want of sufficient technical and local information, to enter for any useful purpose into minute and intricate details. They do not however decline to offer as their opinion, that it would be advantageous that the declaratory enactment in the Tenure Act, respecting Lands held in Free and Common Socage, should be retained; that mortgages should be special, and that in proceedings for the conveyance of Land, the simplest and least expensive forms of conveyance should be adopted, upon the principles of the Law of England, that form which prevails in Upper-Canada, being probably, under all circumstances, the best which could be selected; that a registration of deeds relating to Socage Lands should be established as in Upper-Canada.

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Your Committee are further of opinion, that means should be found of bringing into effective operation the Clause in the Tenures Act which provides for the mutation of tenure, and they entertain no doubt of the inexpediency of retaining the seigneurial rights of the Crown, in the hope of deriving a profit from them. The sacrifice on the part of the Crown would be trifling, and would bear no proportion to the benefit that would result to the Colony from such a concession.

In addition to these recommendations, it appears to be desirable that some competent jurisdiction should be established to try and decide causes arising out of this description of property, and that Circuit Courts should be instituted within the Townships for the same purpose.

The Committee cannot too strongly express their opinion, that the Canadians of French extraction should in no degree be disturbed in the peaceful enjoyment of their religion, laws and privileges, as secured to them by the British Acts of Parliament; and so far from requiring them to hold lands on the British Tenure, they think that when the lands in the Seigneuries are fully occupied, if the descendants of the original settlers shall still retain their preference to the tenure of *Fief et Seigneurie*, they see no objection to other portions of unoccupied lands in that Province being granted to them on that tenure, provided that such lands are apart from, and not intermixed with, the Townships.

Your Committee are now desirous of adverting to the Representative System of Lower Canada, with respect to which all parties seem to agree that some change should take place; to this branch of their enquiry they are desirous of recalling to the recollection of the House, that under the provisions of the Act of 1791, the division of the Province for the purpose of exercising the elective franchise, was entrusted to the Governor; and it appears that Sir Alured Clarke took the numerical amount of the population, as the sole basis on which his calculations were formed, and divided into counties as much land as was found to contain a given number of inhabitants; on the thickly-peopled banks of the Saint Lawrence a small district was found to suffice, while in the more distant parts vast territories were comprehended in one county, in order to obtain the required amount of population; thus it happens that the Counties of Kent, Surrey, Montreal, Leinster and Warwick, do not, altogether, equal in extent the single County of Buckinghamshire; the small Counties, too, are composed wholly of lands holden as Seigneuries. A Bill actually passed the Assembly, the object of which was to increase the number of the Representative Assembly. This Bill did not become a law; and it appears to have been founded upon the same principle, and to have involved the same error as the original arrangement by Sir Alured Clarke. It has been stated by one of the witnesses, that under the proposed division, a disproportionate increase would have been given to the Representatives from the Seigneuries.

In providing a representative system for the inhabitants of a country which is gradually comprehending within its limits newly peopled and extensive districts, great imperfections must necessarily arise from proceeding, in the first instance, on the basis of population only. In Upper Canada, a representative system has been founded on the compound basis of Territory and Population. This principle we think might be advantageously adopted in Lower Canada.

One of the obstacles which is said greatly to impede the improvement of the Country, is the practice of making grants of land in large masses to individuals who had held official situations in the colony, and who have evaded the conditions in the grant by which they were bound to provide for its cultivation, and now wholly neglect it. Although powers have been lately acquired by the Government to estreat these lands, and although we think that under certain modifications this power may be advantageously used, we are nevertheless of opinion that a system should be adopted similar to that in Upper Canada, by the levy of a small annual duty on lands remaining unimproved and unoccupied contrary to the conditions of the grant.

It now becomes the duty of Your Committee to advert to the Petitions signed by the Inhabitants of the Seigneuries. On the important subjects contained in them, they thought it right to call for explanation from Mr. Neilson, Mr. Viger and Mr. Cuvillier, Members of the Assembly of Lower Canada, who had been deputed to this country for the purpose of seeking redress for the injuries complained of by the Petitioners.

From the testimony of these gentlemen they have learned, with the deepest regret, that the disputes which have arisen between the Government and the House of Assembly, originating (as they appear to have done) in doubts as to the right of appropriating and accounting for a considerable portion of the public revenues, have led to a state of confusion and difficulty in the administration of public affairs in that Colony, which calls for an early and decisive remedy.

With a view to understand accurately the grounds of this dispute, the Committee have carefully examined into the different sources of revenue arising in Lower Canada, and they have examined also the public documents which have enabled them to trace the successive steps which have been taken by the contending parties in these disputes. Your Committee beg leave to refer to the evidence of Mr. Neilson, and of Mr. Wilmot Horton, for a detailed account of the origin and progress of these differences.

Upon this important subject your Committee have felt that they should not do wisely in confining their views to a critical examination of the precise meaning of the words of the different Statutes. They look rather to the circumstances of Lower Canada, to the spirit of its Constitution, to the position and character of the local Government, and the powers, privileges and duties of the two branches of the Legislature. Although from the opinion given by the law Officers of the Crown, your Committee must conclude that the legal right of appropriating the revenues arising from the Act of 1774 is vested in the Crown, they are prepared to say that the real interests of the Provinces would be best promoted by placing the receipt and expenditure of the whole public revenue under the superintendance and control of the House of Assembly.

On the other hand your Committee, while recommending such a concession on the part of the Crown, are strongly impressed with the advantage of rendering the Governor, the Members of the Executive Council, and the Judges, independent of the annual votes of the House of Assembly for their respective salaries.

Your Committee are fully aware of the objections in principle which may be fairly raised against the practice of voting permanent salaries to Judges, who are removable at the pleasure of the Crown; but being convinced that it would be inexpedient that the Crown should be deprived of that power of removal, and having well considered the public inconvenience which might result from their being left in dependence upon an annual vote of the Assembly, they have decided to make the recommendation, in their instance, of a permanent vote of salary.

Although your Committee are aware that the grant of permanent salaries has been recommended to a much greater number of persons connected with the Executive Government than they have included in their recommendation, they have no hesitation in expressing their opinion that it is unnecessary to include so large a number; and if the officers above enumerated are placed on the footing recommended, they are of opinion that all the revenues of the Province (except the territorial and hereditary revenues) should be placed under the control and direction of the Legislative Assembly.

Your Committee cannot close their observations on this branch of their inquiry without calling the attention of the House to the important circumstance, that in the progress of these disputes the local Government has thought it necessary through a long series of years, to have recourse to a measure, (which nothing but the most extreme necessity could justify) of annually appropriating, by its own authority, large sums of the money of the Province,

Province, amounting to no less a sum than £140,000 without the consent of the Representatives of the People, under whose control the appropriation of these sums is placed by the Constitution.

Your Committee cannot but express their deep regret that such a state of things should have been allowed to exist for so many years in a British Colony, without any communication or reference having been made to Parliament on the subject.

Upon the several points referred to your Committee, connected with the Office of Receiver General, of the Sheriffs, and of the Jesuits' Estate, your Committee proceeded to examine evidence upon each. The facts of the cases as regards the Receiver General, Mr. Caldwell, are detailed in Mr. Neilson's evidence. Mr. Caldwell was a defaulter in 1823 for £96,000 of the public money of the Province. Upon an examination of his accounts by the House of Assembly, no acquittal could be traced from the Treasury of a later date than 1814, though some balances were stated up to 1819; and it appeared by documents then produced, that the fact of his deficiency was known for a considerable time before he was suspended.

Your Committee recommend for the future, that steps should be taken, by efficient securities and by a regular audit of the accounts, to prevent the recurrence of similar losses and inconveniences to the Province.

As connected with this branch of the inquiry, your Committee recommend, that precautions of the same nature should be adopted with regard to the Sheriffs; as it appears that within a few years two instances of the insolvency of these officers have occurred while possessed, in virtue of their office, of large sums of money deposited in their hands.

With respect to the Estates which formerly belonged to the Jesuits, your Committee lament that they have not more full information; but it appears to them to be desirable that the proceeds should be applied to the purposes of general education.

One of the most important subjects to which their inquiries have been directed; has been the state of the Legislative Councils in both the Canadas, and the manner in which these Assemblies have answered the purposes for which they were instituted. Your Committee strongly recommend, that a more independent character should be given to these bodies; that the majority of their Members should not consist of persons holding offices at the pleasure of the Crown; and that any other measures that may tend to connect more intimately this branch of the Constitution with the interest of the Colonies, would be attended with the greatest advantage. With respect to the Judges, with the exception only of the Chief Justice, whose presence, on particular occasions, might be necessary, your Committee entertain no doubt that they had better not be involved in the political business of the House. Upon similar grounds it appears to your Committee, that it is not desirable that Judges should hold seats in the Executive Council.

Your Committee are desirous of recording the principle which, in their judgment, should be applied to any alterations in the Constitution of the Canadas, which were imparted to them under the formal Act of the British Legislature of 1791. That principle is to limit the alterations which it may be desirable to make by any future British Act, as far as possible, to such points as, from the relation between the Mother Country and the Canadas, can only be disposed of by the paramount authority of the British Legislature; and they are of opinion that all other changes should, if possible, be carried into effect by the local Legislatures themselves, in amicable communication with the local Government.

Upon the great question of the Union of the two Canadas, your Committee have received much evidence, to which they desire to call the attention of the House. With reference to the state of public feeling that appears to prevail in these Colonies on this momentous subject, your Committee are not prepared, under present circumstances, to recommend that measure.

Your

## REPORT FROM THE SELECT COMMITTEE

Your Committee nevertheless think it highly desirable that some satisfactory arrangement, (and if possible one of a permanent nature,) should be effected between the two Canadas with regard to the imposition and distribution of the Customs collected in the St. Lawrence. They trust, however, when the heats which so unfortunately exist, shall have subsided, that such an arrangement may be amicably effected.

It now remains for us to lay before the House the result of our inquiries into the Clergy Reserves, which appear, by the statements of the Petitioners from Upper-Canada, to be the cause of much anxiety and dissatisfaction in that Province. By the Act of 1791 the Governor is directed to make, from and out of the Lands of the Crown within such Provinces, such allotment and appropriation of Lands for the support and maintenance of a Protestant Clergy within the same, as may bear a due proportion to the amount of such Lands within the same, as have at any time been granted by or under any authority of His Majesty. And it is further provided, that such Lands so allotted and appropriated shall be, as nearly as the circumstances and the nature of the case will admit, of the like quality as the Lands in respect of which the same are so allotted and appropriated; and shall be, as nearly as the same may be estimated at the time of making such grant, equal in value to the seventh part of the lands so granted.

The directions thus given have been strictly carried into effect, and the result is, that the separate portions of Land which have been thus reserved are scattered over the whole of the Districts already granted.

It was no doubt expected by the framers of this Act that, as the other six parts of the Land granted were improved and cultivated, the reserved part would produce a rent, and that out of the profits thus realized, an ample fund might be established for the maintenance of a Protestant Clergy. These anticipations, however, have not as yet been, and do not appear likely to be soon realized. Judging indeed, by all the information the Committee could obtain on this subject, they entertain no doubt that these reserved Lands, as they are at present distributed over the country, retard more than any other circumstance the improvement of the Colony, lying as they do in detached portions in each Township, and intervening between the occupations of actual settlers, who have no means of cutting roads through the woods and morasses which thus separate them from their neighbours. The allotment of those portions of reserved wilderness has, in fact, done much more to diminish the value of the six parts granted to these settlers, than the improvement of their allotments has done to increase the value of the reserve. This we think must be apparent from the results of the attempts which have been made to dispose of these Lands. A corporation has been formed within the Province, consisting of the Clergy of the Church of England, who have been empowered to grant leases of those Lands for a term not exceeding 21 years. It appears that in the lower Province alone the total quantity of Clergy Reserves is 488,594 acres, of which 75,639 acres are granted on leases, the terms of which are, that for every lot of 200 acres, 8 bushels of wheat or 25s. per annum, shall be paid for the first 7 years; 16 bushels, or 50s. per annum, shall be paid for the next 7 years, and 24 bushels, or 75s. per annum, for the last 7 years. Under these circumstances, the nominal rent of the Clergy Reserves is £930 per annum. The actual receipt for the average of the last three years has been only £50 per annum. The great difference between the nominal and the net receipt is to be accounted for by the great difficulty of collecting rents, and by tenants absconding. We are informed also, that the resident Clergy act as local Agents in collecting the rents, that a sum of £175 had been deducted for the expenses of management, and that at the date of the last communication on this subject, £250 remained in the hands of the Receiver-General, being the gross produce of the whole revenue of an estate of 954,488 acres.

An attempt has been made to dispose of this estate by sale. The Canada Company, established by the Act 6th Geo. IV. cap. 75, agreed to purchase a large portion of these reserves at a price to be fixed by Commissioners; 3s. 6d. per acre was the price estimated, and at this sum an unwillingness was expressed on the part of the Church to dispose of the Lands.



The Government therefore have made arrangements with the Company, and an Act has since been passed authorizing the sale of these Lands to any person desiring to purchase them, provided the quantity sold does not exceed 100,000 acres each year.

As your Committee entertain no doubt that the reservation of these Lands in Mortmain is a serious obstacle to the improvement of the Colony, they think every proper exertion should be made to place them in the hands of persons who will perform upon them the duties of settlement, and bring them gradually into cultivation.

That their value, whatever it may be, must be applied to the maintenance of a Protestant Clergy, there can be no doubt. And your Committee regret that there is no prospect, as far as a present and a succeeding generation is concerned, of their produce being sufficient for that object, in a country where wholly unimproved land is granted in fee for almost nothing to persons willing to settle on it. It is hardly to be expected that with the exception of some favoured allotments, responsible tenants will be found who will hold on lease, or that purchasers of such Land will be found at more than a nominal price.

Your Committee, however, are happy to find that the principle of the progressive sale of these lands has already been sanctioned by an Act of the British Parliament. They cannot avoid recommending in the strongest manner the propriety of securing for the future any provision which may be deemed necessary for the religious wants of the community in those Provinces, by other means than by a reservation of one-seventh of the land, according to the enactment of the Act of 1791. They would also observe that equal objections exist to the reservation of that seventh, which in practice appears to be reserved for the benefit of the Crown; and doubtless the time must arrive when these reserved Lands will have acquired a considerable value from the circumstance of their being surrounded by settled districts, but that value will have been acquired at the expense of the real interest of this Province, and will operate to retard that course of general improvement, which is the true source of national wealth. Your Committee are of opinion therefore, that it may be well for the Government to consider whether these Lands cannot be permanently alienated, subject to some fixed moderate reserved payment, (either in money or in grain, as may be demanded,) to arise after the first 10 or 15 years of occupation. They are not prepared to do more than offer this suggestion, which appears to them to be worthy of more careful investigation than it is in their power to give to it; but in this, or in some such mode, they are fully persuaded the Lands thus reserved ought without delay to be permanently disposed of.

To a property at once so large and so unproductive, it appears that there are numerous claimants.

The Act of 1791 directs that the profits arising from this source shall be applied to a Protestant Clergy; doubts have arisen whether the Act requires the Government to confine them to the use of the Church of England only, or to allow the Church of Scotland to participate in them. The Law Officers of the Crown have given an opinion in favour of the Rights of the Church of Scotland to such participation, in which your Committee entirely concur; but the question has also been raised, whether the Clergy of every denomination of Christians, except Roman Catholics, may not be included; it is not for your Committee to express an opinion on the accuracy which the words of the Act legally convey. They entertain no doubt, however, that the intention of those persons who brought forward the measure in Parliament was to endow with Parsonage Houses and Glebe Lands, the Clergy of the Church of England, at the discretion of the local Government; but with respect to the distribution of the proceeds of the reserved Lands generally, they are of opinion that they sought to reserve to the Government the right to apply the money, if they so thought fit, to any Protestant Clergy.

The Committee see little reason to hope that the annual income to be derived from this source is likely, within any time to which they can look forward, to amount to a sufficient sum to provide for the Protestant Clergy of these Provinces; but they ven-  
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ture to press the early consideration of this subject on His Majesty's Government, with a view to an adjustment that they may be satisfactory to the Province; of the principle on which the proceeds from these Lands are hereafter to be applied, and in deciding on the just and prudent application of these funds, the Government will necessarily be influenced by the state of the population, as to religious opinions, at the period when the decision is to be taken. At present it is certain that the adherents of the Church of England constitute but a small minority in the Province of Upper-Canada.— On the part of the Scotch Church, claims have been strongly urged on account of its establishment in the Empire, and from the numbers of its adherents in the Province. With regard to the other religious sects, the Committee have found much difficulty in ascertaining the exact numerical proportions which they bear one to the other; but the evidence has led them to believe, that neither the adherents of the Church of England nor those of the Church of Scotland form the most numerous religious body within the Province of Upper-Canada.

The attention of the Committee having been drawn to the establishment of the University of King's College, at York, in Upper-Canada, they thought it their duty to examine the Charter granted to that College; that Charter was granted under the Great Seal, and it is to be observed, that it does not impose on the Students an obligation to subscribe to the thirty nine Articles, which was done in the case of the other North American Colleges. Your Committee find it provided, amongst other arrangements for the conduct and government of this Institution, that the Archdeacon of York for the time being, shall, by virtue of his Office, at all times be President of the said College.

It is further ordained, that there shall be within the said College or Corporation, a Council, to be called and known by the name of the College Council, which shall consist of the Chancellor, the President, and of seven Professors in Arts and Faculties of the said College; and that such said Professors shall be members of the Established Church of England and Ireland, and shall, previously to their admission, sign and subscribe the thirty nine Articles of Religion. To this Council the whole government of the College is confided. Of the great advantage which the establishment of a College for the purposes of general education in Upper-Canada is likely to confer upon the Province, your Committee entertain the strongest conviction; they lament only that the Institution should be so constituted as materially to diminish the extent to which it might be useful.

It cannot, they think, be doubted, as the guidance and government of the College is to be vested in the hands of the members of the Church of England, that in the election of Professors, a preference would inevitably be shown to persons of that persuasion; and in a country where only a small proportion of the inhabitants adhere to that Church, a suspicion and jealousy of religious interference would necessarily be created.

For these and other reasons, the Committee are desirous of stating their opinion, that great benefit would accrue to the Province by changing the constitution of this body. They think that two Theological Professors should be established, one of the Church of England and another of the Church of Scotland, (whose lectures the respective candidates for holy orders should be required to attend) but that with respect to the President, Professors, and all others connected with the College, no religious test whatever should be required.

That in the selection of Professors no rule should be followed, and no other object sought than the nomination of the most learned and discreet persons, and that (with exception of the Theological Professors) they should be required to sign a declaration, that, as far as it was necessary for them to advert in their lectures to religious subjects, they would distinctly recognise the truth of the Christian Revelation, but would abstain altogether from inculcating particular doctrines.

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Though your Committee have now disposed of the most important subjects of their enquiry, they are aware that on an examination of the petitions, and of the evidence, many other matters will appear entitled to consideration.

The Committee think it necessary also to observe, that the evidence from Upper-Canada has not been equally ample and satisfactory with that which they have had the advantage of receiving from the Lower Provinces. Your Committee, however, are desirous of directing the attention of Government to the Sedition Act, (should it not be found to have expired,) the repeal of which appears to have been long the object of the efforts of the House of Assembly of Upper-Canada.

Your Committee also beg leave to call the particular attention of the Government to the mode in which Juries are composed in the Canadas, with a view to remedy any defects that may be found to exist in the present system.

Your Committee lament that the late period of the Session in which they were appointed has rendered a minute investigation into all parts of the subject submitted to their inquiry impossible. They believe too, that if the Legislative Assemblies, and the Executive Government of Canada, can be put on a right footing, that means will be found within the Province of remedying all minor grievances. They are disposed nevertheless to recommend that the prayer of the Lower Canadians for permission to appoint an agent in the same manner as agents are appointed by other colonies which possess local legislatures, should be granted, and that a similar privilege should be extended to Upper-Canada, if that Colony should desire it.

At an early period of their investigation, Your Committee perceived that their attention must be directed to two distinct branches of inquiry:—1st. To what degree the embarrassments and discontents which have long prevailed in the Canadas, had arisen from defects in the system of laws and the constitutions established in these Colonies.—2nd. How far those evils were to be attributed to the manner in which the existing system has been administered.

Your Committee have clearly expressed their opinion that serious defects were to be found in that system, and have ventured to suggest several alterations that have appeared to them to be necessary or convenient. They also fully admit that from these, as well as from other circumstances, the task of Government in these Colonies, (and especially in the Lower Province,) has not been an easy one; but they feel it their duty to express their opinion that it is to the second of the causes alluded to that these embarrassments and discontents are in a great measure to be traced. They are most anxious to record their complete conviction that neither the suggestions they have presumed to make, nor any other improvements in the laws and constitutions of the Canadas, will be attended with the desired effect, unless an impartial, conciliatory and constitutional system of Government be observed in these loyal and important Colonies.

Your Committee had closed their Inquiry, and were proceeded to consider their Report, when it became their duty to enter into further evidence upon a Petition referred to them by the House, and signed by the Agents who had brought to this country the Petition of 87,000 Inhabitants of Lower-Canada, of which mention has been made in a former part of their Report.

This Petition, and the evidence by which it is supported, contain the most grave allegations against the administration of Lord Dalhousie since the period at which those Gentlemen left the Colony.

Those complaints consist chiefly of the dismissal of many officers of the militia for the constitutional exercise of their civil rights; of the sudden and extensive remodelling

## REPORT FROM THE SELECT COMMITTEE

of the commission of the peace, to serve (as it is alleged) political purposes; of a vexatious system of prosecutions for libel at the instance of the Attorney-General, and of the harsh and unconstitutional spirit in which these prosecutions have been conducted.

Your Committee have hitherto felt that they should best and most usefully discharge their duty by studiously abstaining from commenting upon the official conduct of individuals; but it is impossible for them not to call the serious and immediate attention of His Majesty's Government to these allegations.

Your Committee also feel bound to urge upon His Majesty's Government, in the most especial manner, their opinion, that it is necessary that a strict and instant inquiry should take place into all the circumstances attending these prosecutions, with a view to giving such instructions upon them as shall be consistent with justice and policy.

Your Committee learn, with the greatest concern, that disputes have lately arisen in Upper-Canada between the local Government and the House of Assembly, which have led to the abrupt termination of the Session of the Legislature of that Colony.

22d July 1828.

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## MINUTES OF EVIDENCE.

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*Jovis, 8<sup>o</sup> die Maij. 1828.*

The Right Honourable  
**THOMAS FRANKLAND LEWIS,**

IN THE CHAIR.

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*Samuel Gale, Esq. called in, and examined.*

*Samuel Gale,  
 Esquire.*

What acquaintance have you with Canada?—I have resided there almost from infancy.

Are you a native of England?—I am not; I am a native of St. Augustine in East Florida.

Have you held any public situations in Canada?—I have.

Be so good as to state what they are?—Chairman of the Quarter Sessions for the city and district of Montreal.

Describe the nature of that situation; by whom were you appointed?—The Governor-in-chief.

Is any salary annexed to it?—There is.

Have you ever held any other public situation in that country?—I think not. I was once indeed, by some communications not under seal, requested to act as a Commissioner relating to the boundary lines between Upper and Lower Canada; there had been some difference with respect to these boundary lines, and I was written to act as Commissioner.

Are you a proprietor in Canada?—I am; I have lands both in the seigneuries and in the townships.

Then you are acquainted with the division of Canada, with a view to the representation in the Lower House of Assembly?—I am.

Can you state what is the proportion of persons having a right to vote residing in the seigneuries, as compared with those who reside in the townships?—It would be impossible for me to answer that question. I can only state, that the condition which entitles persons to vote by the statute is being possessed, for their own use and benefit, of a dwelling-house and lot of ground in the town or township, of the yearly value of £5 sterling; or of being possessed of lands in freehold, or in fief, or in roture, of the yearly value of 40s. sterling, or upwards. How many individuals there may be of that description in the Province I can hardly take upon me to say.

What is the greatest number you have ever known polled at any election that has come under your observation?—That again is a matter to which I have very little attended, and could scarcely take upon me to answer; I believe there is a great difference in the number of electors in different places; in some places more than 3000 votes have been given; in other places, such as Sorel and Three-Rivers, only a few hundreds.

Is not the town at which the election is held in the counties generally within the seigneuries?—I do not know any instance where it is not in the seigneuries.

And near of course to the River St. Lawrence?—Generally near the River St. Lawrence; there are some of the places in the seigneuries that are more or less distant from the St. Lawrence.

Do the voters residing in the townships generally attend the elections?—They do not generally attend at the elections.

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What prevents their attendance?—The distance at which they are from the places of election; the difficulty of communication from the bad state of the roads, which would require most of the inhabitants of the townships voting at the elections to take a journey of three days, going and returning; and very few indeed would feel inclined to take such a journey, when they would of course find such numbers of other voters present as would render whatever vote they might have to give perfectly unavailing.

What other voters?—Voters in the seigneuries; there are a variety of reasons why they would not travel from their residences in the townships to the places of election; the expense is a very obvious one, the difficulty of communication is another, and the inutility of the vote when given would be a third reason.

You have stated as one reason the bad state of the roads; is there any particular reason why roads are not made from the townships in the seigneuries to the towns where the elections are held?—The only cause why the roads are not better is, I believe, the inadequacy of the laws regarding communications; the laws were made so as to adapt themselves, I believe, to the making of roads in the seigneuries, where the lands are conceded in a particular mode; those laws, although they might perhaps answer with respect to the seigneuries (that is, answer better at any rate than they would with regard to the townships,) are quite insufficient with respect to the townships; they oblige every individual in the seigneuries to make a road along the front of his land. The land is generally divided into lots of three acres in front; the original object was, that each individual proprietor might have a front upon the river. The lots run back generally to the distance of about 30 acres or a mile, so that each individual proprietor of a lot in the seigneuries may have his road to make along a front of three acres; but in the townships the lots are laid out very differently, and there are reserves between the different lots; so that it must be perfectly evident, that laws obliging a person to make roads upon the front of their lands, could never answer to establish communications between one part of the country and another in the townships.

Have any attempts been made by the Legislature to improve the system of making roads in the townships?—There were nearly, I believe, 25 years passed without more than perhaps £1000 being given towards making roads; from the first period when the Constitution was established in 1791 to 1815, I believe that there was not more than £1000 laid out upon roads generally to make communications. In 1815 and in 1817, I believe, considerable sums of money were voted for the improvement of internal communications; since that period, for the last ten years, I think, there have not been more than about £3000 devoted to that purpose, or authorized to be so employed.

You say that the laws might do pretty well for the seigneuries; are good roads made under those laws in the seigneuries?—An Englishman certainly would consider them very bad.

Are they practicable roads?—They are practicable roads?

Is not there a system of road-making in the seigneuries, conducted under the system of law that prevails there by an officer appointed, called the grand voyer for the administration of the roads in the seigneuries?—The person who lays out the roads is the grand voyer; there is a grand voyer in each district.

Can any road be made without his authority?—Not legally established in the country.

Does his authority extend to the Townships?—It does.

How is he appointed?—Those officers are appointed by the Governor.

Has he the power of preserving the road when it is made?—There are persons, sous-voyers and others, appointed to superintend; the grand-voyer makes his proces verbal to establish the roads; this proces verbal is laid before the court of quarter sessions, and there it is either confirmed or rejected. However, it is generally confirmed, inasmuch as the court considers itself only entitled to reject when the forms of the law are not complied with; they consider that the grand-voyer is almost exclusively vested with the right of determining as to the expediency or in expediency of the road.

When he has determined upon the expediency of forming a new road, in what manner are the funds obtained, first in the seigneuries, and secondly out of the seigneuries, in the townships?—The grand-voyer orders each individual proprietor to contribute so many days work, or such a proportion of labour; (or to make bridges, when it shall be required to make bridges.) The individuals are pointed out in the proces verbal who are to be held liable to make and keep in repair the roads and bridges.

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Are any funds assigned for the purpose?—No funds are assigned; it is done by the proprietors, who work in the proportions that he orders.

Both in the seigneuries and in the townships?—Both in the seigneuries and in the townships the work is done in the proportions ordered by the grand voyer.

Is that proportion according to the extent of the individual property through which the road is to go?—The grand voyer, doubtless, in the performance of his duty, endeavours to make each contribute to the road in proportion as he shall benefit from it.

Do you mean to say that the authority of the grand voyer is absolute over the proportion that each person is to contribute to the expense of the road?—It may be considered that much is left to his discretion.

Does he act under any law?—He acts under a law, but the law does not always point out what labour he shall oblige each individual to perform, further than that it shall be done as equitably as possible, in reference to the degree of benefit that the person shall receive from the road and his extent of ground.

Does this system of the grand voyers give satisfaction in the Province?—I believe that the system is satisfactory enough in the seigneuries, but it is not satisfactory, if I may judge from what I have heard, through the townships.

You say considerable sums of money were voted in 1816 and 1817; do you know the amount of those sums?—I believe, by reference to a paper, I shall be able to state that. It was between £8,000 and £9,000 in 1815 and about £55,000 in 1817.

Is it a system that occasions complaints on the part of the townships?—It does, undoubtedly.

To what purposes were the sums that were voted in certain years appropriated, and what rendered them necessary, inasmuch as it appears that the people themselves have to make the roads?—Their labour in various parts of the country would not have been sufficient, owing to the distance of the settlements, the length of the roads, and other causes. The assistance that the Legislature gave might, in a trifling degree, be intended to supply that deficiency. But the money I believe was chiefly expended upon roads in the seigneuries. It was injudiciously appropriated for local, rather than for general purposes, for towns and old settled places rather than for new settlements.

Why is this system satisfactory in the seigneuries, and not in the townships?—The power of the grand voyer, and the mode of obliging the proprietors to labour, was one that was better adapted to the seigneuries, owing to the mode of conceding the lands in the seigneuries, than it was in the townships, owing to the manner in which the township lands were laid out.

You mean that the proportion of labour pressed more heavily upon the townships, from their being of greater extent and width?—The proportion of labour undoubtedly did press heavier in that way, but it pressed heavier for other reasons; the roads, instead of going along the line of ranges in the townships were obliged to traverse the lots very frequently diagonally. There is this that may be said, however, the seigneuries are more commonly level; the roads therefore may be made in a given direction with more facility; and they follow the concession lines, which are straight lines generally, without much inconvenience. The face of the country in the townships is quite different; there it is diversified by lakes and mountains and falls, and it is not possible for a road to be made along the line of ranges. As far as my observation has extended, I do not know any township in which it would be practicable; therefore that system which would answer in a level country, where a road may be made without deviation, will not answer in a country which does not admit of roads being so made, and where the roads are to traverse either lengthways or diagonally the lots.

In point of fact, is the want of roads in the townships, and the wish to obtain a different mode of laying out roads and forming other communications, one of the grievances of the townships which have been brought before the Legislature, and not attended to?—I believe that it is one of those grievances. I have not attended the Assembly myself, and can therefore only speak from information; but I understand it to be the case.

Have petitions ever been forwarded to Parliament upon the subject?—I believe so; I have been so informed.

By your answers it would seem that the roads in general run parallel with the river; is that so?—The roads along the river generally follow the course of the river, and the roads along the subsequent concessions generally run in a straight line.

In a line at right angles with the river?—Not at right angles with the river always.

Do you recollect any instance of an appeal from the decision of a grand voyer; how does

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he proceed?—As I said before, the grand voyer makes his order with respect to every new road; this order which is called a proces verbal, is presented to the court of Quarter Sessions confirmed, it is very often opposed in the court of Quarter Sessions, but it is almost universally confirmed there, notwithstanding any opposition made to it, unless there has been some defect of form. The law requires certain formalities to be observed, such as that upon a petition presented to him the grand voyer shall cause a notice to be given at the church door, after divine service, that he will come to the place, and requiring all persons interested in the road to give him their advice or opinion with respect to the making the road; if there should be any want of attention to these formalities, and some others required by law, then the court would reject the proces verbal, which would oblige the grand voyer to do it over again with those formalities; but if the objection raised by the party opposing should be as to the expediency and justice of the roads, and the apportionment, the court would rarely venture to dismiss on those accounts, because the grand voyer is considered the judge of those matters. Appeals have sometimes been made from the court of Quarter Sessions to the court of King's Bench, and the court of King's Bench have held the same doctrines as to the authority vested in the grand voyer.

Then the inhabitants of the townships consider themselves in no other way aggrieved by the present state of the law, with regard to roads in Lower Canada, than what necessarily arises from the inconvenient manner in which the English townships are laid out?—I cannot say that those are the only complaints I have heard.

In what manner do the inhabitants of the English townships consider that they have been unfairly used by the Legislature with regard to the roads in Lower Canada?—They consider that the Legislature ought to have made provisions better adapted to the situation of the townships than the law which already exists. They also consider that it would have been perfectly fair for the Legislature to have caused money to be laid out in making those communications, and after they were made, in causing, while it should be necessary, some outlay to keep them out, till the inhabitants were enabled to do it.

Are the Committee to understand from what you have stated that it is more difficult to keep up good roads and good communications in the way in which the townships are laid out, than it is in the way in which the seigneuries are laid out?—It is far more difficult to get the roads originally made, as well as to keep them up.

You said that the Legislature, till 1817, had liberally provided for the roads of the province, and that since that time they have been inadequately provided for?—What I said was, that there had been no provision that I recollected, except about 1000*l.* during the space of 25 years, from 1791 to 1815; then in 1815 and 1817 there were considerable sums, by an act of the Legislature, ordered to be employed in the improvement of internal communications; and since that period, I believe, there have been only about 3000*l.* devoted to that purpose.

To what do you attribute the Legislature giving less since 1817 than it did before?—I do not recollect the causes that I have heard assigned for it at present.

Since the year 1817, have any Appropriation bills for roads been passed by either branch of the Legislature, which have not received the sanction of the other?—I cannot state whether there was or was not.

Did you consider the want of communication in the townships as one of the grievances you were to represent.—I did, certainly.

To what did you attribute that want of communication, and what were the suggestions you had to offer for the remedy of it?—Undoubtedly, one of the reasons to which the difficulties of communication, as well as many other difficulties under which the townships labour, I have generally heard ascribed to an indisposition on the part of the Provincial House of Assembly, to give encouragement to such settlements: that I have very often heard assigned as one of the reasons; it is by many believed to be a reason.

Have there been any proposals made in the Legislature to appropriate funds for the improvement of the internal communication in the townships since the year 1817?—There have; and I think that there may have been sums to the amount of about £3000 appropriated for roads, of which a part was directed to be employed in the townships.

Has the Governor, since the year 1817, ever called the attention of the Legislature to the necessity of improving the internal communications?—Yes, in his speeches or messages, I believe, frequently.

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What notice has been taken of that recommendation?—As I said before, not being a member of the Legislature, I cannot take upon me to state; it is considered that the proceedings that ought to have been adopted in those particulars were neglected.

Will you state what proceedings you think ought to have been adopted?—I consider that the law ought to have been altered, so as to adapt it to the situation of the townships.

What law?—The law that now exists in the province regarding roads, namely, the Act of the 36th of Geo. the 3d.

Is that impression in the townships general among the English settlers, that if some principal lines of communication were made there would be great increased facility to the formation of settlements in those townships?—There cannot be any doubt of it.

Is it the impression that it is in order to prevent such settlements that difficulties are thrown in the way of forming such roads?—It is believed so by a great many.

You have stated other grievances which you were desirous to represent, bearing hard upon the British settlers in the townships; what are those grievances?—I might perhaps offer, as a more succinct mode of pointing them out, a petition that was drawn up and signed by upwards of 10,000 persons at the time that they prayed, in order to obtain relief from these difficulties, for the union. The petition that was drawn up by them contained what were considered generally amongst them as their grievances; it would be shorter, therefore, to read them from this petition than to state them in any other manner.

What is the date of that petition?—It was transmitted from the townships in 1823.

Do you conceive that that is a fair statement of what is generally complained of?—I do believe it to be a fair statement; it is entitled the petition from the inhabitants of British birth and descent in Durham, Stanbridge, and so on, enumerating a great number of them in Lower Canada.

*[The witness delivered in a copy of the petition, which was read.]*

With respect to what is there mentioned, I have only to state that I do not know any alteration in the condition of the townships, except only that there has been for a certain portion of their number a court established, which decides causes of a very limited amount; that however affects only a portion of the townships comprised in what is called the inferior district of St. Francis.

By whom has that court been established?—It was established by the Legislature. I believe that His Excellency recommended the establishment of a court there, and the Legislature established it; it is under a temporary act, however, which expires next year.

Under the Act of 1791, permission was given to any person who desired it, to have his property granted to him in free and common soccage out of the seigneuries?—Yes.

Is it under that Act that the townships have arisen?—I consider that without that Act it would have been equally competent to the Government to have established the townships.

Is not all the land in the townships held in free and common soccage?—It is; but I conceive that that was a tenure that was established from the very commencement of Canada becoming an English colony. In the year 1763, His Majesty's proclamation promised to all his subjects, both in England and in the Colonies, the benefit of the laws of England, if they would go to Canada.

At what time was land first granted in free and common soccage in Canada?—I believe it was so granted in few years after the conquest.

Is all the land in the townships held in free and common soccage?—All.

Will you describe the position of the land?—The seigneuries constitute a narrow tract of land on both sides of the river St. Lawrence, of varying breadth from ten to forty miles. In the rear of those seigneuries, in the province of Lower Canada, the townships have been granted since 1791.

Have the goodness to state, supposing the course of the river to be east and west, how far to the eastward or towards the mouth of the river the seigneuries extend?—They extend in a connected line to the Mal Bay River on the north side, and to De Peiras or Metis on the other side of the river. There are some detached seigneuries even beyond these on each side of the river.

And westward they extend to Upper Canada?—They do.

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Are they continuous along the whole of that line?—They are continued from Metis on the one side, and from Mal Bay on the other side of the river St. Lawrence up a little above Montreal.

Without any interval?—Without any interval along the banks of the river.

To the west of Quebec, and in depth from the river to the American frontier, do the seigneuries extend the whole distance?—They do not.

Is the land immediately upon the American frontier in seigneurie or in township?—Generally in township, not universally.

Is there a line of seigneuries extending along the bank of the river Richelieu?—Yes.

Does that extend along the river Richelieu to the American frontier?—It does.

Does that cut off and separate the townships at the back of the seigneuries in the Lower Province from the Upper Province?—Those seigneuries do intervene between the townships and the Upper Province.

And they form a continued line up to the American frontier?—They do on the river Richelieu.

Will you direct your attention to that portion of territory which is on the west of the river Richelieu, and between the St. Lawrence and Upper Canada. Are there any townships in that district, or is it all occupied by seigneuries?—There are some townships.

Can you state at all what the breadth of the tract of seigneurie is on both sides of the river Richelieu, near the boundary of the province that divides the great tract of townships, on the south of the St. Lawrence and east of the Richelieu, from the townships south of the St. Lawrence and west of the Richelieu?—The breadth on both sides may be about six leagues.

The portion of land that is west immediately of the river Richelieu is called the county of Huntingdon, is it not?—There are three counties between the Richelieu and the St. Lawrence, Huntingdon, Kent and Surrey.

Do the townships in the county of Huntingdon join immediately upon the townships in Upper Canada, or do the seigneuries intervene there?—They would join immediately, but that the river St. Lawrence separates them.

But there is no seigneurie between?—None.

Is the whole southern bank of the river St. Lawrence, between the mouth of the river Richelieu and the point where Lower Canada meets the United States, in seigneuries?—It is not, the whole of it; there is the exception of the township of Godmanchester, on the Lake St. Francis.

The seigneuries then reach to the township of Godmanchester?—They do.

Can you state the probable number of inhabitants that at present occupy that district of township which is situated to the east of the river Richelieu? They estimate themselves at 40,000.

Is the district of country that is occupied by townships all allotted, or is there any part of it still in the hands of Government?—I believe there are ungranted lands on that side of considerable extent.

Does the space of the townships greatly exceed the space of ground occupied as seigneuries?—Yes.

Is the soil of the townships very inferior in quality to that of the seigneuries?—I have seen many parts of it in which it was as good as any soil could possibly be. In general the face of the country is much more diversified: the seigneuries generally are a flat country; the townships have hills and lakes much more frequently than the seigneuries.

Is there any thing like a capital town in this district of townships?—There is not.

Is there any considerable village in it?—There are several villages; I do not know that any of them would deserve the name of considerable; there is one however that is, I believe, as large as other villages in Canada; that is Stanstead.

Is there any considerable market town?—No.

Are there any seigneuries lying detached among the townships?—None.

Will you describe the state of the eastern boundary of the townships; how far do they extend to the east with reference to the River St. John?—They extend to the State of Maine; and where that commences is a controverted point.

What is the district of Gaspé, is that in township or seigneurie?—There are several townships, and some seigneuries there

When the Lower Province was divided into counties, upon what principle was the division made?—It is natural to suppose that the division was made with a view to the then population.

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Esquire.*

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Is the result of that division, that some of the counties consisting exclusively of seigneuries, are of very small dimensions, and that other counties consisting principally of townships are of very great extent?—Yes.

Name some of the counties of small extent consisting of seigneuries?—There are the county of Surrey and the county of Kent; the county of Buckingham, I suppose, is equal in extent to a dozen of both those counties.

Does the county of Buckingham return two members?—It returns only two members. There are some seigneuries in the county of Buckingham, but its principal extent consists of township lands. There is the county of Northumberland, which extends from the St. Lawrence to the Hudson's Bay territories, and is equal in extent to a kingdom.

Is not that an extent of wilderness?—It is at present chiefly so.

Not laid out in townships?—No.

Does the county of Kent, or the county of Surrey, though small in point of extent, possess a larger population at this moment than the county of Buckingham?—I take it that the county of Buckingham possesses a far larger population than either of those.

There was a census of the population taken in 1825. In what manner was it taken; in counties or districts?—It was the population of the counties, I believe.

Have you that document by you?—I have not.

Have you it in England?—I think I can get it.

If in the townships any individual has a suit at law, or any business at the county town, what facility has he of communicating it: are there direct roads to the county town?—We have no county courts there; the courts are all district courts.

Where are the district courts held?—At Montreal and Three Rivers, and Quebec.

Is there no court at all held in the counties?—We have no courts held in the counties; we had the country divided into counties for the purpose of sending representatives; it is the old division that was made in 1791.

Where is the place of election in each county?—It is a place appointed by the Legislature; I do not recollect the names of each.

Each county has a place of election within itself?—It has a place or places.

And they are all within the seigneuries?—They are, except perhaps at Gaspé.

Have any petitions been presented from the inhabitants of the townships to the Legislature to introduce in the townships British courts and British jurisdiction?—I believe there have many for the establishment of courts.

What reception have they met with?—I understand that they have been treated with neglect; that they have never been attended to at all except as to the temporary act for St. Francis.

Does it consist with your knowledge that applications have been made for the registration of freeholders and deeds?—Residing always at Montreal, and the Legislature being held at Quebec, it is difficult to say that it consists with my personal knowledge; but I understand and believe that that is the case, that applications have been made repeatedly to the Colonial Legislature for register offices.

Is there much inconvenience experienced from the want of registers in the townships? Very great indeed; it is considered as essential to the security of property, where a long chain of titles cannot be given (as is the case in a new country), that a person shall be able to ascertain whether he who was formerly proprietor of the land has disposed of it anteriorly or not, and whether he can give a good title.

Are there any civil courts in the townships other than those which are in the seigneuries formed under the French system?—None, except in the inferior district of St. Francis, which is a district comprising a certain number of townships, and established recently, since the signing of the petition that I produced.

Supposing an inhabitant of a township to sue another inhabitant upon a question of civil property, must he bring his action in the French courts?—He must bring his action in the French courts of law.

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And sue and be sued in the French language?—The English language is generally made use of by the advocates or lawyers who are English; there is no law to prevent their setting forth their claim in English, and that I consider the legal language of the writs; but the law that is to determine the claim is French, generally speaking.

How does the French law apply to the land held in free and common soccage?—At present it does not apply to the land held in free and common soccage at all, that land is exempt from the operation of the French law.

Then by what law is it administered?—It could only be administered in conformity to the Imperial statutes under the English law.

By what courts?—It must be administered by the courts that now exist, or not be administered at all; it must be administered by the courts of Montreal, Quebec, and Three Rivers.

Are not the judges mostly English?—They are; there are however three Canadian judges.

Are the chief justices both or either of them Englishmen?—I believe that the chief justices of the province is from Massachussets, and I believe the chief justice of Montreal is a Scotchman.

What law does he administer?—French, when that law has not been altered by British or Provincial enactment.

What is the law that applies to dower, to wills, and to all the transactions and relations that grow out of the transfer of property and its descent?—The French law exists in Lower Canada, except where the English law has been introduced in its stead; the English criminal law exists in Lower Canada and the French civil law; there have been some modifications of the French civil law under provincial statutes and ordinances.

In all questions relating to land held in free and common soccage, must not those questions be decided in the English courts where the English law is administered?—We have none as contradistinguished from the courts where the the French law is administered.

According to the nature of the suit is not the decision given according either to the French or to the English law?—Precisely; they are the same courts of King's Bench and the same judges. In the criminal courts the decision is given according to the English law; in the civil courts it is given according to the French law, except in so far as particular statutes have introduced the English law or altered the French law.

Are they the same individual judges that administer the French law with respect to those lands held according to the custom of Paris, and those lands held in free and common soccage?—Precisely the same.

Are those gentlemen all English lawyers?—No.

Are they French lawyers?—Those judges are French lawyers. There are some French Canadians, but the majority of them are Englishmen; the law they chiefly administer, however, is the French law, that being the law of the country.

Is not the French law, the law of the country, applicable to all the lands and to all the occupiers of those lands in the English townships, although the system of seigneuries does not prevail as to the tenure of the lands; and what are marriage rights?—The British statute, called the Tenures Act, must have put that question at rest; and it is expressly declared in that statute, that the French law cannot apply to lands granted in free and common soccage. Marriage establishes, unless there be some stipulation to the contrary by previous marriage contract, two rights, amongst others, one of which is called dower, and the other communauté. The dower differs in some measure from the English law of dower, as well as far as regards the quantum of land, as also as far as regards the further disposition of the property; it consists of half the real property belonging to the husband, either of his own acquisition or otherwise, at the time he married, and also of half the real property that may come to him by inheritance during the time of the marriage. The dower belongs malienably to the children of the marriage; the widow is only entitled to the fruits and the revenues of it during her life; and if there be no marriage contracts all property is subject either to dower or communauté.

Do you mean all property, both of Canadians and of settlers, in the townships?—No, I do not mean that all the settlers in the townships are liable to both those rights; but a portion

portion of their property is liable to one of those rights, the right of communauté ; at least it is so held by some ; and these are points which it would be very desirable to have settled.

Does your observation extend to both real and personal property ?—A dower is of real property only ; a communauté consists of personal as well as real property.

Does it apply equally, as the case may be, under the like circumstances, to the English settler in the township, as it does to the Canadian in the seigneurie ?—I think that the Canada Tenure Act has confirmed the exclusion of the French dower from the townships, inasmuch as the dower consists of real property ; but with regard to the communauté, it is held by some that that exists in the townships, except where real property is concerned. The communauté is composed partly of personal and partly of real property ; it is composed of all the personal property and the real property that is not liable to dower. The wife is entitled to one half the communauté, that is, one half of the entire personal property of the husband, and one half of the real property which he has acquired during his marriage.

Does this go to the heirs of the wife ?—If the wife dies before the husband, the children I will be entitled to her share of the communauté ; that is, to one half of it instantly upon her death, even although the husband acquired the whole of this communauté ; and the consequence is, very frequently, lawsuits between parents and children ; I have known very often children bringing suits against their parents.

Suppose the children die before the wife, upon the death of the wife does the property go to the heirs of the children or of the wife ?—If there were grand-children living it would go to them ; but supposing the wife to die without having had children, it would go to her heirs, although they were strangers to the husband ; so that, supposing the wife dies, if there has been no previous marriage contract, her relations can claim from the husband one half of the fruits of his labour, although the wife might never have brought him any thing.

Would a previous marriage contract pleaded in the French courts bar the right of communauté ?—Undoubtedly the right of communauté would be destroyed if there were a previous marriage contract setting it aside ; but in order to make a previous marriage contract, it is necessary to have some idea of the law, and most Englishmen who come to that country know very little about that.

Even in the case where a marriage contract did not subsist, could the husband have power to alter that disposition by will, or does the power only apply to cases where the party has died intestate, and there has been no marriage contract ?—I do not conceive that the husband would have a right to dispose of the communauté by will ; he can spend it, or he can dispose of it while he lives, but not by will, as I conceive.

You have stated that it is undecided in the country whether this communauté does apply always to English settlers in the Townships ; has the question ever been brought before the courts ?—I have no knowledge myself of its having been brought forward contradictorily. I do not know that any instance exists of its having been decided where the opposition was made upon the ground that the law did not apply. The courts, of course, if the objection be not taken, would make it apply ; but I do not know that it has been objected to, and decided formally upon objection.

What is the appeal from the courts of Canada upon the French law ?—The appeal is first to the Court of Appeals at Quebec, and next to the King in Council here.

Have there been appeals to the King in Council upon the construction of the French law in the seigneuries ?—In some cases.

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Samuel Gale, Esq. again called in; and Examined.

WHEN you were last before the Committee you placed before them a Petition, numerously signed by the Inhabitants of the townships in Lower Canada; it is stated in that petition, that "the townships are peopled by persons who inhabit lands granted under the British tenure of free and common soccage, who have a Protestant Clergy, for whose maintenance a portion of those lands are set apart, and who, notwithstanding, are subject to French laws, of which they know nothing." According to the statute law which is in force in Canada, are not the persons who live in the townships subject to the English civil law, as well as the English criminal law?—I have heard some legal characters state that they consider the townships entitled to the English civil law *in toto*; I have heard others deny the position. The following are some of the alterations of the law in the colony; in the first instance, by His Majesty's proclamation, in the year 1763, it was declared that *all* his subjects resorting to Canada should be entitled to the benefit of the laws of his Realm of England; the statute of 1774 bestowed the French laws upon the seigneuries, but excepted from the operation of those laws the rest of the province granted or to be granted in soccage, the tenure of the townships. The English laws were acted upon, as it has been stated, from 1763 to 1774; those who maintain that the English laws are now fully in force in the townships, found themselves upon the proclamation, the practice for eleven years after, and the exception in the statute of 1774.

What does the statute of 1774 provide in that respect?—After having introduced into the seigneuries the body of French law, which was assumed by the statute to be the establishment of a law not then existing in Canada, it declares that nothing in that Act shall extend or be construed to extend to lands granted or to be granted under the English tenure, that is, in free and common soccage.

Is not that held distinctly to limit the operation of the French law to the seigneuries and the inhabitants thereof?—It is, by some legal characters.

Upon what grounds is it held by other persons that the French law has any effect upon the townships?—There are some who deny that the English laws, except the criminal, were ever legally introduced into Lower Canada, either antecedently to the statute of 1774, or by the provisions of that statute.

Do they deny that the statute of 1774, has any effect or power within the Canadas?—Their conclusion amounts to that, as far as regards the exceptions of that statute respecting the English civil law for the townships. They deny that the English laws in civil matters, as before mentioned, were legally introduced into Canada, and therefore they hold that the Act of 1774, in so far as it purports to introduce the French laws into the seigneuries, was a mere work of supererogation, since legally, according to them, the French laws were in force in the seigneuries before and until the Act of 1774; and as a consequence, they maintain that the exception in that Act, declaring that nothing contained therein shall extend or be construed to extend to lands in free and common soccage can produce no effect, inasmuch as the French laws were then in force, instead of owing their existence to that Act. Had the Act established the English laws by words of positive enactment, instead of endeavouring to do so by words of exception, they admit that the English laws would be in force in the townships. It was from such legal subtleties that the townships were in danger of being deprived of the advantage of laws which the Act intended to give them.

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Is this denial a mere matter of common conversation, or do the Chambers, or the Legislative Assembly, go so far as to recognise this denial in their practice?—In some of the Acts passed in the Assembly, they appear to consider the French laws to be in force in the townships. 15 May, 1828,

Do you mean Acts or Bills?—I mean Acts. There was an Act in 1823, which established a court with a small jurisdiction in a certain part of the townships, a jurisdiction to the amount of 20*l.*, and in that Act there are expressions used whereby it would be concluded that the French laws were assumed to operate in the townships.

Where is that court held?—That court, I believe, is held in Sherbrooke.

Can you state any other Act from which it may be inferred that it is held by the members of the Assembly that the French law is in force in the townships, notwithstanding the Act of 1774?—I do not recollect at this moment any Act that has been passed, but I think there may be, and I believe that various bills which have passed the Assembly would show that such was their interpretation.

Can you refer to any thing else besides those Acts, from which it may be inferred that it is the opinion of the leading persons amongst the Canadians, that the provisions of the Act of 1774 are not of authority, and ought not to prevail in Lower Canada?—I do not at the moment recollect any thing further than the mere general opinions expressed in conversation by those gentlemen; they would hardly find fault with the provisions of that Act, where they confirmed or re-established French institutions; it is only where exceptions are made in favour of English civil institutions that the effect of the Act would be denied.

Can you mention any Act of this nature, and leading to this inference, which has been passed in Canada since the passing of the Tenures Act?—No, I do not recollect any passed since.

By the passing of the Tenures Act then, that question, so far as the Legislature of Canada is concerned, appears to have been set at rest?—No, that question has been set at rest only as far as regards *real* property by the Tenures Act.

In what year was the Tenures Act?—1826.

Are you aware whether there has been any decision in courts of justice upon the point whether the English law does or does not prevail in the townships?—I do not know that that point has been made a subject of litigious controversy; there may have been suits determined upon that principle; but if the question was not raised, no conclusion as to the settlement of the principle could be drawn from such determinations.

You are a lawyer?—I am.

In the interval between the Proclamation and the Act of 1774, was not Mr. Hay chief justice of the Province of Quebec?—I believe he was.

Can you state what the form of his commission was, with regard to administering the law according to the practice of the courts of England?—I do not recollect what his commission was, but I take for granted that it must have been in conformity to the proclamation, in which case it must have been to administer the laws as nearly as might be agreeable to the laws of England.

Can you state whether any cases with regard to property of any kind were so decided, either in the seigneuries or in the townships, under that proclamation? I have not seen any of the decisions of Mr. Hay which I at present recollect; reports were not published in Canada.

What do you know of any petitions which have been presented to the Assembly, praying that British courts of justice and British laws might be introduced into the townships? There have been several petitions presented; some sent to England, praying for English courts and English laws; and others to the Assembly, praying for courts, register offices, and for a representation.

Has any thing been done in consequence of those petitions praying for courts?—I do not know any thing further than that at a very recent period, in 1823, a court was established, with a small jurisdiction of 20*l.* in personal cases, over a small portion of the townships.

What portion of the townships have access to this court?—I believe it is chiefly that portion of the townships situate within that part of the county of Buckingham which is in the district of the Three-Rivers.

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Is that court distinctly limited to that district?—It is; and the jurisdiction does not extend beyond 20 *l.*, nor beyond 10 *l.* without appeal; so that it is a trifling jurisdiction.

Who is appointed judge of it?—Mr. Fletcher.

Is he an English lawyer?—He is.

A native of Britain?—A native of Britain, as I understand; and I believe he was a practitioner at the bar in London.

Are the English laws administered in that court?—I have not been there, and as there are no reports of adjudged cases, I do not know; but I presume that his decisions in those personal cases are all under the French law, excepting in so far as it may have been modified by provincial statutes.

Did not the House of Assembly pass a bill, introducing the trial by jury in civil cases?—After several judicature bills had been previously passed by the Legislative Council, the Assembly passed a judicature bill, wherein trials by jury, of a new description, were indeed introduced, but wherein also trials by jury of a previous description were abolished;—a bill which, in my opinion, when I formerly looked into its enactments, might have been rightly considered as one that it would be impossible to sanction and proceed upon without injury to the country.

What was the nature of the injury apprehended?—It was not considered to be fit for the state of the province.

Do you know on what particular grounds that opinion was entertained?—I do not recollect exactly now; it is long since I have looked at it. The bill appeared to provide a cumbrous and difficult system. In some civil cases it established juries, indeed, whose members might be less qualified for their office, but in whom unanimity was required, instead of juries as now established, who might be better qualified, and of whom nine might return a verdict. Its operation would have excluded divers townships whose inhabitants belonged to the jurisdiction, and might have been parties to the suit, from furnishing jurors. It left untouched the main evil of the present system, in not forming a sufficient tribunal to give certainty and uniformity to the jurisprudence of the country, which, as it has not, as to French laws, the perpetual corrective of a body of living expounders in the parent state, must require more especially an able and permanent appellate tribunal in the country.

Have you the bill?—The bill is in my possession.

Then that was an approximation to the English law which passed in the House of Assembly, and was rejected by the Governor and the Legislative Council?—I do not know whether it ever went before the Governor; but I believe it was not rejected upon the ground of its approximation to the English law.

Did the Legislative Council ever introduce or originate a bill purporting to be an amendment of this bill?—They passed, during several sessions, a bill for the establishment of a different judicature, since it is admitted, on all hands, that the judicature at present existing in Lower-Canada is in a very defective state. The first bills that were passed for the amendment of the judicature were passed during several successive years in the Legislative Council, as I understand.

Had that judicature bill brought in in the Assembly reference to the whole province, with one uniform operation, or had it reference to a distinct operation in the townships?—It had, I believe, reference to one uniform operation in the townships and in the seigneuries.

Can you furnish the Committee with copies of the bills to which you have alluded?—I will produce copies of some of them.

Are the contracts and legal instruments which are executed by the inhabitants of the townships, although living under the English law, and holding land in free and common soccage, in English forms or in French forms?—I do not reside there, and I cannot state the practice there now.

What is the mode of conveyance?—The mode of conveyance I know frequently has been according to the French form. But I always considered that illegal, even before the Canada Tenure Act was passed in England, and therefore whenever I had any thing to do with conveyances I always used to have them executed in the English form.

What form?—Generally lease and release.

How could they apply the Canadian form of conveyance to the tenure in free and common



mon soccage?—They used to go to a notary just as they would do with respect to lands in the seigneuries, and get the notary to pass what is called an Act, and the notary would thereafter have to make a copy under his signature, which, if it had concerned lands in the seigneuries, would have been a sufficient deed, but I do not consider that it would have been a sufficient deed under the English laws.

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Is there not one of the forms of tenure under the French laws, which is almost the same thing as free and common soccage in effect?—I conceive not; there is one that is called *franc aleu*, but that is of two kinds; *franc aleu noble* and *franc aleu roturier*; the *franc aleu noble* is a kind of seignury, with many conditions and rights generally attached to seigneuries, and at the same time it would be, as well as the *franc aleu roturier*, under all the liabilities to the French law in other particulars, such as dower and *communauté*, and notarial mortgages, which the lands in the seigneuries are subject to.

Do you consider that they do not resemble free and common soccage?—No; they are subject to a variety of liabilities, being French tenures, to which such English tenure is not subject.

If an Englishman die in Quebec intestate, possessed only of personal property, according to what law would that property be distributed?—Of course, according to the French law, as to all Englishmen domiciled in the seigneuries; and if it were in the townships, it is maintained by a part of the inhabitants of Lower-Canada that there too it would be distributed under the French law; but it is held by another part of the subjects in Canada, that is the English, that it ought to be distributed according to the English laws.

Has not there been any decision of a court as to that question?—I do not know whether the particular question has been litigiously contested; there may have been decisions with respect to personal property in the townships, which decisions may have been rendered according to the French laws, but these were perhaps not decisions rendered when that particular question and that particular objection were raised before the court, so that these decisions would determine nothing.

In the case of an Englishman dying in Quebec possessed of personal property, would he have the power of disposing of it by will?—If he were not married, unquestionably.

Supposing he were married previously to coming to Quebec?—I should conceive that if a marriage took place out of Canada, all the liabilities consequent upon the marriage would be in conformity to the law of the place where the marriage was contracted; unless where the husband was previously established in Canada, and went to another country in order to get married, and returned to resume his residence in Canada; in that case I should suppose that the liabilities consequent upon the marriage would follow the laws of Canada.

Supposing that an individual emigrating from England to Quebec marries, when there, a lady who has also emigrated from England to Quebec, and both of them are possessed of personal property, according to the law in force there, would the husband, in the case of his death and no settlement being made, have the power of disposing of the property by will?—I believe there may be a difference of opinion upon that point; for my own part I should conceive, as the law now stands, that the husband in such case would not have a right to dispose of all his personal property; that he could not dispose of that part which belong to his wife, who is entitled to the *communauté*.

Will you state your reasons for that opinion?—During his life the husband can sell and dispose of the property constituting the *communauté*, but at his death the wife becomes invested with the exercise of her pre-existing right to one half of it; and although the law authorizes the husband, as master of the *communauté*, *inter vivos*, and using his wife's rights as well as his own, to dispose of all the property that belongs to the *communauté*, one would hardly construe that that authority would extend to the testamentary bequest of property that is considered to belong to another, and whose right of gestion over it commences the moment he dies. His will comes into operation only at his death; but upon the contingency which brings his will into operation, his wife would seem entitled to the exercise of her pre-existing right over half the *communauté*. It is, among others, for this reason, that the right of the wife being pre-existent, although

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although called into exercise only at the same moment that the will of the husband comes into force, I conceive the husband has no right to deprive her by will of her half of the *communauté*.

Is this distribution founded upon any part of the custom of Paris?—Upon the custom of Paris, that establishes the *communauté*. Where a wife died without making a will and without children, one half of the husband's property, amounting to several thousand pounds, was claimed by the wife's relations from the husband, although the wife had brought him no money whatever.

Would the same results follow in the case of a person dying at any place within the townships, Quebec being within the seigneuries?—That would depend wholly upon the question whether the English or the French law is to be considered to exist in the townships with regard to personal property.

How is the fact?—I have already stated that the fact is by some considered doubtful. If the French law exists in the townships, there is no doubt that all that right of *communauté* and all its consequences would exist there. If the English laws be introduced *in toto* in the townships, instead of being confined simply to the lands, then this right of *communauté* does not exist there.

In the course of years has no person died intestate in the townships, so as to bring this question before the court for decision?—I dare say persons have often died intestate. I have stated, in answer to a previous question, that I do not know any case in which the precise exception has yet been urged in a court of justice.

Then, in point of fact, the French law has been allowed to take its course?—It has been often allowed to take its course; but I know many cases in which the parties have made an arrangement by agreement as to personal property.

Supposing a person possessed of real property within the seigneuries was to die intestate, what would happen then?—His real property would, if it was ignoble property, be equally divided among his children; if it were noble, that is, if it were a fief or seignury, it would not be divided quite equally, but the eldest son would have an extra portion; that is, he would have two thirds if there were only one child besides himself, and he would have one half if there were several children.

What power has a person over his real property to settle by will in both these cases?—It would depend in a good measure upon the precaution he had taken before he married.

Supposing he dies without being married?—If he dies without being married he may do as he likes with all his property, he may bequeath it all; but if he dies, being married, the right he has over his property depends upon his having taken the precaution previous to his marriage to establish his right by contract or not. If under the contract he has reserved to himself a perfect and entire control and disposal over all his property, in that case he has a right to bequeath it all by will. If he has not taken this step, either from want of prudence or from ignorance of the liabilities that his property would be under from not making the contract, then he cannot dispose of a very considerable portion of his property.

What proportion?—He could not dispose of that which would be liable to the dower, which would be one half of all the lands that he possessed at the time of his marriage, or that he might have succeeded to by inheritance, as well as some others.

What happens to the dower upon the death of the widow?—The dower then belongs to the children.

Supposing there are none?—Then, upon the death of the wife, it would go back again to the husband's relations.

Supposing a person to have complete control over his real property, what is the mode of conveyance in order to transfer it to another when it is sold?—The common practice is, to have an act of sale drawn by a notary, somewhat similar to our deeds-poll, stating the transaction and the consideration, this is signed by the parties, and remains for ever with the notary. There is no original deed, commonly given out to the parties when notarial instruments are passed, and the notary gives certified copies; these certified copies amount to proof in a court of justice; they are considered authentic instruments, which prove themselves, somewhat as the record of one of the courts of England would be deemed authentic in another of the courts of England.

Is that registered in any public office whatever to which persons can subsequently have access?—No; registers have been very much desired, because without them there is no possibility of knowing whether a man has not transferred his property a dozen times or a hundred times before.

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Must all subsequent transactions with regard to the transfer of real property be carried on in the house of the same notary with whom the original transaction took place?—No, there are 250 notaries, or about that number, in the province of Lower-Canada, and a person may go to any one of those that he pleases, and each is bound to keep secret the transactions that pass before him.

How do you know the former state of the title of any property which you may wish to purchase?—There is no possibility of knowing it.

Do you borrow money upon mortgage?—There is a great deal of difficulty in doing so, seeing that persons can obtain no certainty that they have a secure lien upon the property. A man may go before a notary and mortgage his property; this mortgage may be a mere declaration before a notary, that a certain sum is due by the mortgagor to the mortgagee, and the same individual may go before each of the other 250 notaries in Lower-Canada, and mortgage his property in the same manner, and there is no possibility of knowing whether he has or has not given other mortgages previously.

Do your observations apply to land in the seigneuries only, or to land held in the townships also?—To land in the seigneuries now, because the Canada Tenure Act has exonerated the land in the townships from the operation of the French laws relating to mortgage.

Is there any specific process necessary in mortgaging?—It is simply necessary that the mortgagor should declare that he owes a specific sum, and mortgages his property, which will import all the property that he then has, or for ever after may acquire; the law attaches it to all the property, upon an Act containing that simple declaration, and signed by the parties before a notary.

Is it not the fact, that an individual may go to a notary and perfect a mortgage, and that the next day he may sell his property without the possibility of the mortgagee's attaining any knowledge of that fact?—Yes, but then I apprehend that the purchaser would suffer and not the mortgagee, because whoever is first in date is prior in right.

Must not that lead to a great many law suits?—An immense number of lawsuits and frauds. I have seen widows and orphans, whose money had been lent upon mortgage, deprived of their all. There is scarcely a term in any of the courts that passes without numbers of those frauds being brought to light.

Do you understand that this system with regard to mortgages is one that necessarily springs out of the establishment of the French law; do you understand that it prevails so in France, or does it depend upon local statutes?—All those laws under which the notarial mortgages are effected are derived from the custom of Paris, or through French institutions. In France, however, frauds of this description might not have been so frequently practised, because there was a criminal law that subjected those who thus imposed upon others to punishment. This criminal law has not existed in Lower-Canada since the acquisition of the country by the English, because the English criminal law was substituted in lieu of the French. But that provision of the French law was by no means adequate to prevent frauds; it might indeed after the commission of such offences punish the individuals who might be guilty of them, but the object that is particularly desirable is to prevent them altogether, which might be done by having registers.

Does the mode of conveyance you have mentioned apply to noble holdings?—To all lands in seigniorial Canada.

In the House of Assembly has any member ever introduced a bill for the purpose of amending this state of the law within your knowledge?—Yes, a bill was introduced into the House of Assembly for the establishment of register offices. A bill was also introduced, and actually passed, in the Legislative Council for that purpose for the townships; but the bill that was introduced into the Assembly was, I believe, a general bill for the establishment of register offices, and this bill fell through in the Assembly.

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Was it lost by a large majority?—I do not recollect by what majority; but I know that some of the reasons assigned for rejecting the bill, published in a speech as pronounced before the Assembly, were, that “the religious principles and the habits of the people were adverse to the practice of lending money upon interest;” and “that it would enable the few that had money to do injury to the many that were needy.” And it was asked “whether it would not be better for the *riche avide* to lose a portion of his superfluity if he lent his money, than that the poor man should be expropriated.” Those were some of the reasons that were published as assigned by a lawyer in the House of Assembly. I have the publication here.

Was it upon the failure of this bill in the House of Assembly that a bill for the same purpose, but confining its objects to the townships, was introduced into the Legislative Council?—No, I think that bill was introduced into the Legislative Council first, but am not certain.

Was that rejected by the House of Assembly?—They made no proceedings upon it at all, as I have understood.

Was it in consequence of the sudden dissolution of the Parliament, or from their coming to any matter that rendered it impossible to go on with the public business?—I do not know whether it was in consequence of the sudden prorogation of Parliament; but I believe there have been subsequent sessions in which the matter might have been taken up had it been thought fit. It was about a year ago that the Assembly rejected their own registry bill.

In what year was it that those bills passed the Legislative Council?—I think that the register bill was passed in the Legislative Council in 1826, but I am not quite certain whether it was in 1825 or 1826. It had been petitioned for, however, a number of times during several years.

Was it subsequently to the time when Sir Francis Burton was provisionally administering the Government?—I cannot recollect whether it was in that year or after.

Is it your opinion that the civil law of Lower Canada could be materially altered without extensively affecting existing interests in that Province?—I should conceive that the civil law might be altered without extensively affecting existing interests; the rights of those that possess them now might be by a clause in any Act preserved.

Does that mode of conveyance which you have described as existing in the seigneuries interfere at all with the transmission of real property?—It renders it always very uncertain and very insecure. And I have known a number of persons that have come from England to settle in Canada, who had brought money to purchase property, quit Lower Canada in consequence. I have known some with £1000, and others with more. It drives people out of the country: they cannot think of settling and laying out money in the purchase of land, where, after having possessed the land for a number of years, they may find an individual with a mortgage upon it, which divests them of their right.

What effect has it upon the interest of money lent upon mortgage?—It has this effect, that it is generally very difficult, and that there is often no such thing as getting it upon mortgage; and that keeps back the improvement of the country; because if money cannot be borrowed upon the credit of land, there must be a great deficiency of requisite capital to be employed in its improvement.

Are you aware of the existence of any estates which include lands in the seigneuries and also in the townships, belonging to the same individual, bordering upon each other?—There are several individuals who possess property both in the seigneuries and in the townships bordering upon each other.

According to what form does land pass from one person to another in the townships?—At present I believe none would transfer except under English forms. Heretofore, too, most prudent persons used to transfer under English forms, but it was customary among a good many to transfer under the French forms.

Is that practice pretty well established at present within the townships?—Not having been there lately, I cannot say from personal observation, but I have no doubt of it. It must be so, I think, inasmuch as no other transfer at present could be legal.

Does the practice of borrowing money upon mortgage prevail in the townships?—Doubtless a good many would be desirous to borrow money upon mortgage if they could obtain

obtain it; but as there are no register offices there, the inhabitants, even in the townships, although not subject to all the difficulties that seigniorial mortgages would occasion, must find it extremely difficult to borrow money upon mortgage.

If an individual purchases an estate within the townships, does the title that is made out for him show or profess to show the previous transfers that have taken place of that property, or does it show the original title of the property?—There are not the means of giving a long chain of titles to lands in the townships, such as would secure the purchaser in his property, or enable him to know that he was secure. In England a long chain of titles may be given, but in a country settled only yesterday, in which an individual may have received a grant of some thousand acres, of which he would transfer perhaps two hundred, or other small portion at a time, it is impossible that the old titles can go with the new; it is impossible that, unless there are register offices, it should be known that he has not previously transferred the same land to somebody else; and, for these and other reasons, they desire register offices in the townships, upon principles resembling those upon which they are generally established over the rest of America.

According to what forms is property distributed by will?—A will may be made now, and before the Canada Tenures Act it might have been made according to the French or according to the English forms.

Which practice prevails?—I believe it is the general practice to make their wills according to the English form among the English inhabitants.

In the case of intestacy, is property in the townships distributed according to the English law; does the right of primogeniture prevail?—I conceive that it does, in landed property.

Does the right of dower prevail in the same form and to the same extent as in England? Happily that right is now precisely the same in the townships as it is in England.

The Committee perceive in the petition that reference is made to a bill which the Legislative Council passed in the session of 1825, for the purpose of introducing into the townships the English law of dower and conveyance, and making incumbrances special, and establishing public offices for the registration of all mutations of real property, and of all mortgages on the same. Was that bill thrown out by the Assembly?—It was not passed.

How far has the Canada Tenures Act passed by the Imperial Parliament supplied the provisions of that bill?—It has established all with the exception of the register.

With respect to the mode of borrowing money in the townships, do you deliver up the old titles when the conveyance is by lease and release, as is done in this country?—The titles are all new there. The titles sometimes include a vast deal more than the vendor parts with, and of course therefore he must keep his own titles to himself, he cannot part with them to one to whom he sells only one-tenth part of what he has.

Does not he covenant to produce the title-deeds?—He would have little objection to enter into a covenant of that kind, but that covenant amounts to no more than a warranty. It gives no security to the purchaser, provided the vendor has made a previous sale of it.

Are you not aware that the practice is in England every day, when large estates are sold, to enter into covenants for the production of the title-deeds, and that is no objection to any title in this country?—You have one security in this country that unfortunately could not be expected to exist in a new country, you have the character of the individuals possessed of large property, you have their great wealth as a security. There the sellers of land are often those that perhaps sell their all when they sell a small tract; at any rate there is a universal opinion which is acted upon, (and practice has proved it to be just), that without registration it is impossible to ascertain whether the title to land be good or not, or whether the incumbrances upon land are secure or not.

Since the passing of the Canada Tenures Act, has the question of the establishment of registration offices been again mooted in either house?—I believe it is since that period that it has been rejected in the Assembly.

Have the English population in Lower Canada any desire to disturb the routine of law, or to have the customs of the French Canadians in the seigneuries changed?—No. If the French Canadians be desirous to maintain the yoke of their ancient laws in the seigneuries

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seigneuries, the English, I believe, would seek no alterations there, unless what might be necessary for the security of property, or consistent with the inclinations of the French Canadians. But it is hard to impose those French laws upon the remaining portion of the Province, when it is disagreeable, and must be disadvantageous to commerce, to improvement, and to the mass of the inhabitants of that portion; and would be a further violation of the pledges for the establishment of English laws solemnly given by the British Government to all its English subjects, in addition to the violation of these pledges which has already taken place by the Act of 1774, establishing French laws in the seigneuries.

Do you imagine that the feeling for the alteration of the law is universal on the part of the population in the English townships?—I do; there are some few deviations from the law and practice existing in this country, that of course they would be glad of; but those are modifications that could be made in Canada afterwards. But they would like to have the same foundation of law in the townships that they have throughout all the rest of America, except Lower Canada.

Would they rather borrow from the amended law of the United States than from the law of England?—They would rather borrow from the amended law of the United States, or rather from the amended law of the English provinces than from the law of England, because of course the amended law is merely an adaptation of the foundation of English law to the state of things existing in America.

Did not a bill to allow prisoners the benefit of counsel pass the House of Assembly, and was rejected by the Legislative Council?—I have heard of a bill of that description; but I did not pay much attention to it, and I can hardly say whether it passed in the Assembly, or whether it passed in the Legislative Council. I at this moment merely recollect having heard some observations concerning such a bill, and should think it consistent with justice.

Amongst the persons who emigrate to the British Provinces in North America, is there not a decided preference shown to settling in Upper Canada rather than Lower Canada?—I believe that it may be said that a decided preference is shown by the majority of Englishmen and Scotchmen to settling every where rather than in Lower Canada; not only the British Provinces, but also the United States seem to be preferred to Lower Canada, in its present state.

Is not there a disposition manifested on the part of many persons, who are natives of the United States, to settle in Upper Canada?—I believe a good many people have gone from the United States to Upper Canada.

Has it happened that many persons who have come to Lower Canada, with the intention of settling in that Province, on their becoming acquainted with the state of things you describe, have given up that intention, and have crossed the border, and settled in the United States?—Great numbers. Upon the Journals of the House of Assembly will be found the following observation of the Land Committee:—"From May 1817 to the end of the year 1820, there arrived at the Port of Quebec 39,163 settlers; the great majority of them, "intimidated by the length and rigour of the winter of this country, and unacquainted with the laws and language thereof, have ascended the St. Lawrence, and are now dispersed over the lands of Upper Canada and the United States, where they have found a more genial climate, their own language and institutions analogous to those to which they have been accustomed." That is an extract from a report of a Committee of the House of Assembly in Lower Canada. The winter, in many parts of Lower Canada, is not such as to deter settlers from establishing themselves there, as may be seen in other reports of the Assembly.

What object do you conceive the Committee had in making that report?—I would submit that the report should explain itself. I conceive it is pretty evident that the naked fact is given in such a way as to show no intention of taking any steps in the Legislative Assembly to lessen such of the inconveniences alluded to as it might be in their power to remedy, nor to encourage emigrants; and a want of encouragement in any other part of America would be considered disgraceful. That it appeared right to them to adhere to every thing that prevented emigrants from Britain, or from other parts of the British dominions, coming into the unsettled country.

Do you think that 100,000 persons is too great a calculation to make of the emigrants that probably would have settled in Lower Canada, if the laws had been other than they are?

are?—I do not think it too great a calculation, since a great many more than that number have come out to Lower Canada.

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From what nation were those emigrants?—From England, Scotland and Ireland.

Were any of them citizens of the United States?—Of those that are here spoken of, none. 13 May, 1823.

In point of fact, have not many of the citizens of the United States passed their own boundary, and established themselves in the province of Lower Canada?—Numbers of them have.

Are not many of the lands to the south of the St. Lawrence settled by citizens of the United States?—A great many. Upon the Act of 1791 being passed, proclamations were issued in Lower Canada, in conformity to instructions received from the Government here, inviting the American loyalists to come and settle in the townships of Lower Canada, promising them grants of lands, and giving them encouragement to settle there; and in consequence of this, numbers of old loyalists did come forward and make application for grants of land, and lands were granted to them; and those who now inhabit those lands are either those loyalists themselves, or their descendants, or the persons to whom they have sold them.

Do you mean to say that, after the separation of the two Provinces of Upper and Lower Canada in 1791, the object of which separation was to give the exclusive possession of the Lower Province to the French Canadians, and of the Upper Province to the English settlers, proposals were made to encourage the settling of Americans in Lower Canada?—I mean that those proclamations were made after the division of the Provinces of Upper and Lower Canada; and I mean to state, that it was not and could not be the object of the statute of 1791 to reserve the Province of Lower Canada to the French Canadians, inasmuch as that would have been doing for a French Colony more than Britain ever did for an English colony, and inasmuch as express provisions were made of reserves for the Protestant clergy, and other matters inconsistent with such an object; and as also it was expressly declared by Mr. Pitt to be "his intention to assimilate the Canadians to the language, the manners, the habits, and above all, to the laws and constitution of Great Britain." He stated this expressly in Parliament at the time that the bill of 1791 was under discussion in this country; and I am convinced that whatever nation, be it France or be it England, shall endeavour to establish or rear up a French nation in North America, will ultimately incur the lasting enmity, not only of that branch of the great English national family which now exists independently in North America, but also of our own colonies; since the latter would be ultimately exposed to as much injury from the existence of a French nation in North America as the United States would be.

What is the present practice, are the citizens of the United States in the habit of settling in the Province of Lower Canada?—They occasionally come in and make purchases of lands, but not in the same manner as it was anticipated at the time those proclamations were issued that they would have done.

Those proclamations offered them a specific encouragement, and now they would come in merely as purchasers or settlers upon the same terms as other people?—Yes.

In point of fact, do they now come in in considerable numbers?—I have not been resident in the townships for a considerable length of time, and I cannot say in what numbers they come, but many of them must be desirable settlers for a new country.

Are not the best settled townships those which run along the American border?—The most populous of the townships are those.

Do not they sell their produce, and get manufactures from the American side?—They do very frequently, and in fact they could not do otherwise unless they were to dispense with manufactures altogether; because there are scarcely any roads whereby they can communicate with the markets in Canada during the summer; and there are roads whereby they can communicate with the markets elsewhere, so that necessarily they are often obliged to get their supplies from America.

Is not the consequence of that, that they are supplied with American manufactures, or with English manufactures, which have paid duty to the American Government?—I dare say that that is the case frequently.

Are they not divided from the seigneuries by large tracts of uninhabited country.—The townships nearest the seigneuries are the least inhabited. I cannot say that the townships are divided from the seigneuries, because they extend to them; but that part of them that

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is near the seigneuries is generally uninhabited, and those at a distance are best inhabited.

Is not that the great difficulty that English settlers meet with, that the Government does not make roads across the unsettled districts?—That is one of the difficulties certainly.

In what manner do they wish the funds to be raised to make these roads?—There are various modes in which, I dare say, they would be satisfied that a fund should be raised. If there was a small tax imposed upon all lands that have been granted, whether now in the hands of absentees or others, (which I believe is the case in Upper Canada,) to be laid out in improving the roads, I believe it would be satisfactory.

Has that ever been proposed in the House of Assembly?—I believe not; I do not know however.

Do you think there is any party that would object to that?—I dare say there is.

Would not those persons be the principal opponents who hold those tracts of country which are not at present settled?—Some of them might very probably be amongst the number of the opponents, I cannot say that all would. Speaking for myself, who am an absentee and have lands there, I certainly should rejoice that a tax were imposed upon all the lands that I have towards roads, provided only a similar tax were imposed upon all other lands.

Would not such a measure operate better than the law of escheat which was passed in the Imperial Parliament?—I do not see that one of those laws ought to prevent the operation of the other; I think that both might exist with advantage at the same time, if upon proper and efficient principles.

Would not such a law be more efficacious towards the improvement of the country?—I think it would be more efficacious towards the improvement of the country, if universally and impartially carried into effect, and as one absentee holding lands I should rejoice at any such tax for that purpose.

You have stated that it would be very desirable to levy a tax upon land generally for the purpose of making roads of communication; do you not consider that it would be highly desirable that the lands reserved to the Crown, and the reserves belonging to the Clergy, should be subject to the same necessity of contribution towards the roads in their immediate neighbourhood?—All that would be highly advantageous to the community, no doubt, whether it would be fair to the Crown is another matter.

Has not a small land-tax been imposed in the Upper Province upon lands and property of individuals left waste?—I believe there has.

Can you state what have been the results of that tax?—I cannot; I believe it has not been long in operation; but I have no doubt that if it had been imposed upon proper principles, so as to be fully and fairly executed, the result must have been highly advantageous, because it has been proved to be so throughout the rest of the continent of North America.

As far as you know, with respect to Upper Canada, have the Clergy and Crown reserves materially impeded the formations of great lines of communication?—I believe that those reserves have very much impeded the lines of communication, and it is inevitable.

The petitioners apply that courts of jurisdiction should be established in the townships for the administration of justice, in conformity to the laws of England; does not that involve the establishment of judges, and the whole system of English judicature?—I should suppose that to be their meaning.

In the case of any war breaking out between the United States and Great Britain, and an attack being made on Canada, is it not generally understood that the line of the Richelieu is the one by which Canada is most accessible, and that which it is most desirable to strengthen and secure?—I believe it has always been considered so; fortifications have been always made there. During the time of the French, the fortifications were made there, and they have continued to be made on that river ever since the acquisition of Canada by the English.

Is it not desirable, with the view to the defence of Canada, that the townships should be peopled and strengthened as much as possible?—I consider that the security of any country depends upon the arms and hearts of its inhabitants; and I conceive that the filling of a country with a loyal population is an infinitely better means of defence than all the money that could be expended upon fortifications in it.

Is not the line of the River Richelieu chiefly occupied by the seigneuries at present?—It is. Does not the district of the townships in Lower Canada lie between the American frontier and the line of the seigneuries on the St. Lawrence?—It does, on the south side of the river.

Although



Although the immediate line of the River Richelieu is now occupied with seigneuries, in the case of any attack being made along that valley, would not Canada be rendered infinitely more secure, if the country at the back of the seigneuries, now held in townships, were filled with a powerful and active population?—I can only say, as I said before, that the arms and the hearts of a loyal people are the best defence of a country, and the greater their numbers the better.

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Are you not of opinion, that an improvement of the law would lead to the colonization of that part of the country which, for the grounds stated, you consider desirable?—There is no question about it, it would be peopled with fourfold rapidity if that were done.

Are you acquainted with the district of country most contiguous to the United States? Yes, I am.

Are not considerable numbers of the United States people, of the lower class, making encroachments on that district?—That part of the country now alluded to seems a part of the country in the district of Quebec, which I am not acquainted with.

The question alludes to the district of Montreal?—There is no dispute about boundary there.

Are not a pauper population from the United States making encroachments as squatters, on that district?—With respect to a pauper population, that can hardly be found in America; but there is a certain population that are called squatters, who are the pioneers of all improvement almost every where throughout America; some of those undoubtedly occasionally get into Lower Canada, but not to any extent; but it will be universally the case, that where lands are not taken and improved by those that have good titles to them, they will be taken up by squatters that have not good titles.

Is not therefore a desirable object to people those frontier tracts with acknowledged citizens of their own Province?—Undoubtedly, with persons acknowledged character or property or industry; it is certainly most desirable to people them.

Is not that system of intrusion by squatters constantly progressive?—I do not know that there are a greater number of squatters now in Canada than there were 10 years ago.

Do not they advance?—They generally precede the advancement of settlements; those squatters belong to the first class of pioneers, that are the first settlers in every new district.

Under the Act of 1791 was not the number of members in the House of Assembly fixed at 50, and in the Legislative Council at 15?—The House of Assembly is to be not less than 50, and the Legislative Council not less than 15.

Of what number does the Legislative Council now consist?—Of about 28.

Of what number does the Assembly now consist?—Fifty.

Has it remained at 50 since the proclamation of Sir Alured Clarke?—It has.

What number are there of country members, and what number represent cities and towns?—There are 39 Members from the 21 Counties; there are 11 Members from cities and towns; Montreal sends four, Quebec four, Three Rivers two, Sorel one.

Was there any provision made for the gradual alteration or increase of the number of members in the House of Assembly at the time the Act of 1791 was carried into effect?—No, there was nothing of that kind, nothing that fixed a progressive increase of the Legislature; if it be desired, I can state how that progressive increase would take place on the other side in the vicinity of Canada.

What provision has been made in Upper Canada for adapting gradually the numbers of representatives to the increase of extent, and the increase of inhabitants in the townships as they become gradually settled?—I have been told there are certain territorial divisions, some of pretty nearly similar extent, which when they attain a certain degree of population are entitled to send one member, and when they have a greater degree of population, they may send two, and not increase after that unless subdivided.

In what way has that been provided for, is it by an Act of the British Parliament?—By Act of the Provincial Parliament, as I understand.

Will you state as far as you can what provision is made in the United States for providing representatives for such barren countries as they become gradually inhabited?—In the state of Vermont, which adjoins Lower Canada, and by which Lower Canada is chiefly bounded on the south, the country is divided into sections of equal extent, which I believe they call towns or townships; each one of those sections sends a representative, although the population of some may be ten times the number of that of others, and the object

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object is (and it is well adapted for a new country) to allow those sections of country for which less has been previously done, and of which less has been previously ascertained, the means of sooner making their wants known in the Legislature, and sooner attaining equal ultimate improvement.

Is not the state of Vermont already very thickly settled in almost all parts of it?—No, it is not very thickly settled in almost all parts of it. There are some townships in which the settlers are not at all numerous; there are some, as I understand, which were inhabited chiefly by Scotchmen, who, when they settled in those townships, after they had remained there a twelvemonth were entitled to send representatives to the Assembly of the State; and were entitled, at the end of two years, to be representatives themselves. Such was the encouragement given to immigration there.

Generally speaking, would you call Vermont one of the parts of the Union the oldest settled?—It was not one of the thirteen States as they are called; it is one of the newer States.

Have the Assembly at any time shown a disposition or expressed a wish to make any change in the state of the representation of Lower Canada, or to increase their numbers? They have; they have shown a disposition to alter the system of representation, as they said partly with a view to give a representation to the townships. The Assembly introduced a bill which the inhabitants of that country have since declared to be, as to them, a delusion and a mockery; although at first, when only generally informed that its object was to give them representatives, they had expressed their satisfaction.

What was it that the bill proposed?—It was a bill whereby the whole number of representatives was proposed to be increased, I cannot say exactly to what number, as I have not the bill by me, but I believe to about twenty or upwards. The whole of the members now are returned from the seigneuries, and of that additional number three fourths or four fifths were by this bill to be added to the members from the seigneuries.

Do you mean practically to the seigneuries, or that they were to be added to the counties that already return through the influence of the inhabitants of the seigneuries?—Practically, the great increase would have been returned by or through the influence of the seigneuries. There was a new division of the counties, the names of the former counties were altered in this bill, and French names substituted in lieu of the English ones that they now bear; under this division, perhaps, nearly 20 new members would have been added to the members from the seigneuries, which now send all to the House of Assembly, while only four or five would have been given in toto to the townships which now send none to the Assembly; those who send all would hardly seem to require an increase; and the consequence of such a division would, from what I have last stated, show that an Englishman or a Scotchman settling in a new township, in the State of Vermont, would have an infinitely greater proportionate right in the representation of that State after one year's residence, than an Englishman or a Scotchman settling in the new townships in Canada would have in the representation of that British Province if he were to remain there all his life.

Has not the House of Assembly twice passed bills to extend the representation on the principle of making population the standard whereby to regulate that extension?—That I believe was the original foundation, and I believe that there have been bills introduced upon that principle. When such bills are introduced in the United States, even upon the democratic principle of universal suffrage, which could not be justifiable in Canada, they always provide a corrective for any alteration that may take place in the population. They do not make the laws which give a representation proportionate to the population, rest permanently on the population at the time the Acts are passed, but they provide at the same time a census that shall be taken every three or four years, according to which the representation is to adapt itself, so that if there be any difference in the population of the respective districts within three or four years, there is a self corrective applied to the representation. That was not the case in this bill in Lower Canada, it was a bill nearly founded upon the state of the population in the present day, which might alter in a new country so as to be totally different in the space of four or five years, and no provision was made for any such alteration. Besides, even in several of the United States, the principle of universal suffrage is conceived to be rather too democratic in that democratic country, as appears from what I have stated to be the case in Vermont, where the representation is territorial or compounded of the territory and the population.

Have

Have not what is called the French party in the House of Assembly declared their willingness to give up any advantage they may possess from the property being chiefly in their hands, and to proceed upon the principle of taking population as the basis of representation in that country?—With regard to property, I do not know nor believe that a larger or even so large a proportionate share of the landed property is in their hands; and I believe that the English only desire a territorial representation, that is, that certain extents of country should be laid out as counties, which is a practice sometimes followed even in the United States; that the counties should be as nearly equal as may be, and that when the counties have a certain proportion of population they should then send members, but not until they have a certain proportion of population.

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Would not that have the effect of giving undue weight in the House of Assembly to newly peopled counties?—Not by any means an undue weight. It is considered right, as I have already stated, that those counties, of which previously less has been ascertained, and for which previously less has been done, should be enabled to make their wants known and attended to, and the circumstances that have occurred in Lower Canada show the necessity of it, because for a long series of years the inhabitants of the townships have been unavailingly endeavouring to procure redress of grievances from the House of Assembly; they employed some years ago an agent at Quebec for that purpose, as people might employ an agent to make representations to a distant country, but he could only solicit, without having an opportunity of bringing any thing forward in the Legislature.

Do you conceive then that the inhabitants of the English townships ought to have a number of members in the House of Assembly, beyond the proportion that their population bears to the population in the French part of the country?—I do not think in a new country that to regulate the representation by the population is a mode that will most tend to advance it; the most beneficial mode, as it appears to me, must be one in which representatives may be brought as early as propriety will permit from new settlements, which stand more in need of legislation and help than the old.

Then you think a representation compounded of population and territory is the representation most suited to the wants of a new country?—I think it is the only representation suited to the wants of a new country.

With regard to what you have stated with respect to Vermont, are you aware how things stand in that respect in the other states of North America?—I am not aware how it is in general. I passed through Vermont in coming to this country, and in passing through I naturally inquired into the state of their representation, and I found it to be as I have mentioned. In Vermont they have as much reason to be jealous of allowing foreigners, who come into that country and reside only a couple of years, this territorial right in the representation, as any English colony could have any title to be jealous of allowing a representation to native British subjects.

Do you conceive that in any other State in the Union the newly and thinly settled parts of the State have given to them a larger share in the representation, in proportion to their population, than the older settled parts of that State?—I believe that is the case.

Can you mention any other instance of it?—I cannot state any instance positively. I have understood this to be the case, that in some of the States the counties are all laid out of equal extent, even before they all are inhabited, and that the law establishes, that as soon as a county shall contain a certain number of inhabitants it shall be entitled to have a representative. If they, who allow in many of their States foreigners to become naturalized in one, two or three years, do not object to this mode of sending representatives, in an English colony it could hardly seem justly exceptionable, when the settlers in whose favour it is desired are either Englishmen or Scotchmen.

Is not that at present the law in Upper-Canada?—I dare say it is somewhat similar to that. In Upper-Canada they would probably have no strong objection to the division I am speaking of; and there could be little objection to it in Lower-Canada, except that which would arise from a wish to exclude English representatives. There may be these considerations to influence them in those countries where the sections that send representatives are laid out of a certain extent throughout; they consider that although at first the representation may be unequal in proportion to numbers, yet that this is a defect which every year is diminishing, and which is in some measure compensated by equality of territory,

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territory, and that it is the mode that is best adapted to the progress of new settlements.

What is the size of the county of Orleans?—I believe it is not equal to a single township of 10 miles square in extent; it sends one representative.

What is the size of the county of Buckingham?—It contains a number of seigneuries, and I believe about 70 townships in addition to the seigneuries.

What number of members does that send to parliament?—It sends two.

What is the size of each of the townships?—I believe the general rule is 10 miles square.

Can you furnish the Committee with a copy of the census of the population to which reference was made in your former evidence?—I will deliver in a copy of it (*the witness delivered in the same*). I believe, as far as the townships are concerned, there is inaccuracy in that census; there could not have been the same facility in ascertaining the numbers of those that were dispersed over an immense extent of country, as there would be in ascertaining the numbers of those who live along the banks of the river, where it must be comparatively easy to make the enumeration.

If a system was applied to Lower-Canada similar to that which you describe to exist in Upper-Canada, and in the State of Vermont, namely, that of giving the power to send representatives from any townships that might hereafter be settled and inhabited, according to a compound scale of territory and population, is it likely that in that immense tract of country that lies to the north of the St. Lawrence, such a number of townships would hereafter be settled as to create an Assembly far too numerous?—I should not conceive that the Assembly would be more numerous in that way, (each county comprising several townships, and entitled to representation only when possessed of a certain population,) than when a certain measure was spoken of in the Parliament in this country some years ago, it was presumed that it would be: besides, if the present counties were to be diminished in extent, it could not be wrong to diminish the number of their members, which would allow some to be given to new counties, without, *pro tanto*, increasing the total number of representatives.

Do you refer to the Union?—Yes. There was, I believe, a recommendation to the Committee of the House of Assembly to take into consideration the propriety of authorizing the Governor to divide the townships into counties, giving six townships as a county, and of authorizing him to issue writs for the election of members.

When was that project submitted to the consideration of the Government?—It was in the year 1823, that instructions were given to a Committee of the House of Assembly to inquire whether it would not be expedient to empower the Governor from time to time to form new counties in the townships, each county to consist of six townships, I believe that those instructions were given to the Committee of the House, in consequence of a message from the Governor, as there had been a great variety of complaints from the townships that they were not represented.

Do you know whether the inhabitants of the townships exercise the elective franchise?—In general they certainly do not, because their distance is so great from the place of election; and besides, if they were to exercise the elective franchise with regard to one or two members only, it would be perfectly useless.

Do you conceive that that evil, of the distance which prevents their going up to vote, might be remedied under another system?—If that evil alone were remedied, it would not be worth the trouble of remedying it under the present system.

Is any portion of that district that is called Northumberland likely to be settled at an early period?—I have heard that there are several millions of acres of land that may be very fit for cultivation, and that flourishing and extensive settlements may be made there.

Can you speak of the district that lies between the river Saguenay and the Ottawa?—I cannot from personal knowledge. I have not travelled over that part of the country myself. I have understood that it is probable that the country may be settled and improved.

You were understood to state, that you had reason to suppose that the return of the English population in the townships is less than it should really be; have not you also reason to suppose that the Canadians were very shy of returning their numbers, for fear

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the Government were about to impose a poll-tax?—I never heard any thing of that kind that I recollect. Samuel Gale,  
Esquire.

How are the English inhabitants distributed, are they distributed in such a way as in any one county to form a majority?—I believe that is not the case any where, unless in Gaspé. 13 May, 1828.

You have stated that you are chairman of the quarter sessions?—I am, for the district of Montreal

Was it by Lord Dalhousie that you were appointed?—It was.

What is the tenure of that situation?—I believe that all situations in Canada are held during pleasure. Since I am asked respecting the appointment, I may be allowed to state that I did not solicit the appointment; it was offered to me; when offered I declined it, but accepted it after the offer was renewed with urgency.

Is your salary paid out of the 14th of George 3, or out of the money appropriated by the Legislature?—I of course take it that this forms a part of the expense of the maintenance of the civil government, and the administration of justice. I take for granted that it is considered payable out of the permanently appropriated funds.

Are you at all acquainted with the establishments in Lower-Canada for education?—I believe there are four Romish Colleges or seminaries for the education of youth. There are also a number of corporations in each parish; by an Act of the Legislature in 1824, the fabrique, as it is called, of the parish forms a corporation entitled to receive donations and bequests, and acquire property in mortmain to a limited extent, for the advancement of education. Those are the Roman Catholic parishes; the funds so received are to be at the disposal of the fabrique for the purposes of education.

Have any steps been yet taken in the application of those funds?—I do not know whether much funds have been realized as yet. There are no English colleges in Lower Canada, but there has been an Act passed for the advancement of learning so long ago as 1801, under which a number of common schoolmasters are appointed.

Do you mean English schoolmasters?—I believe generally English. It is a language highly necessary to be taught in seignorial Canada.

Who appoints them?—I believe the Governor appoints those schoolmasters.

What establishments are there for the education of the lower orders in the French part of Lower-Canada?—All those seminaries and colleges that I have been speaking of, besides numbers of the schools under the Act of 1801, and the schools that may be established under the Act with respect to the fabriques, making them corporations entitled to receive in mortmain.

Is there not a considerable property in Lower-Canada that, before the expulsion of the Jesuits in Lower-Canada, was possessed by them?—Yes.

When the Jesuits were expelled, did that property pass into the hands of the Government?—A decree of the Pope's annihilated the order. But I believe that the English Government always allowed the Jesuit missionaries to remain in possession until the death of the last of them; upon the death of the last of the order the Government of course took possession of the estates.

How has that property been applied since it was in possession of the Government?—The greater part of the net revenue arising from those estates has been employed, as I have understood, in the advancement of education.

*Edward Ellice,*  
Esquire.

15 May, 1828.

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*Edward Ellice, Esq. called in ; and Examined.*

THE Committee understand you are a proprietor of land in Lower Canada?—I am a proprietor of land in both Upper and Lower Canada.

Do you hold land in the seigneuries of Lower Canada as well as in the townships?—In both.

In what part of Lower Canada is it situated?—I hold the last seignury bordering upon Upper Canada, called Beauharnois ; it lies about 18 miles above Montreal, on the southern bank of the River St. Lawrence.

Did you acquire it by purchase?—No, I inherited it.

Have you frequently been in the Province of Lower Canada?—I have been there twice.

For any considerable time?—I was in Canada and the adjoining state of New York about a year each time.

Have you paid much attention to the administration of property and the state of the law there?—A good deal, being very much interested in it.

You are aware that by an Act that was called "The Canada Tenures Act" powers were given to transfer land held under the title of "Seignury" to that of free and common socage?—A clause was passed to that effects at my suggestion in the Canada Trade Act in 1822, and subsequently the Canada Tenures Act was passed in 1825.

Have you acted upon that?—I have endeavoured to act upon both, but the difficulties in the way of taking advantage of the provisions of either Act have been so great, that in utter despair of being able to obtain a mutation of tenure, I have, within the last year, directed the settlements to proceed upon the old system, although I conceive it was greatly to the disadvantage of the country and of the property itself.

Will you be so good as to describe what you mean by the word settlements?—Farms let to tenants of land not before occupied or brought into a state of cultivation. From my father's death, in 1804, till 1826, a period of 22 years, I gave directions to grant no new leases, expecting that at some future period the tenures would be changed ; and, acting upon that principle, I have made a great sacrifice of income during that period. In the year 1826, after fruitless effort to obtain a change in the tenure, in the first place under the Act of 1822, and then under the Act of 1825, I directed my agents to proceed in conceding the lands upon the old tenure ; and by a return I have of the concessions made in 1827, I find 228 new farms have been conceded to an equal number of tenants, containing a superficial quantity of nearly 20,000 acres of land, and for which I obtain a perpetual rent of about 500*l.* a year.

Will you be so good as to describe the character of the obstructions which have prevented the provisions of the Act, called "The Canada Tenures Act," from being carried into effect? Instructions were sent, as I understand, to the local government to carry into effect the provisions of the Act of 1822. The governor submitted those instructions to his executive council, who advised that a fine of one fifth of the value of the property for which a change of tenure was desired should be required as the condition of the cession of the rights of the Crown in such cases. Considering that to be more than five or six times the value of the exchange, I declined it. I then made an application to the Colonial Department, stating the little probability of any changes of tenure taking place while such terms were required, and that I did not know a single person in Lower Canada, except myself, at that time disposed to accept a change for nothing. In consequence of my representations, other instructions were sent, desiring the Government to offer a mutation at the lower fine of five per cent upon the value, and I might have been disposed, for the sake of showing an example to the country, to accept the change upon those terms, but my agent found so many other

other difficulties interposed by the local authorities, that all further attempts appeared hopeless; and he represented to me the little chance there was of any ultimate arrangement on the subject repaying the great sacrifices of rent I was making in the mean time, by deferring the settlement of the land.

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Are you not aware of an Act which passed in the British Parliament in the year 1825 for the express object of facilitating a mutation of tenures?—I have already stated I was aware of it, and in consequence of that Act I desired my agent to renew the attempt, giving him instructions at the same time to proceed with settlements under the old tenure, if his endeavours were still fruitless, in consequence of which the new settlements in 1827 was made.

Can you state what reasons were given explaining the impossibility of carrying the Act into execution?—Without referring to the particular letters, I cannot say, but the impression upon my mind is, that my agent being very anxious to comply with my wishes of obtaining a change of tenure, wrote to me generally that it was utterly hopeless.

Do you conceive that the difficulty of changing the tenure since the passing of the Act of 1826 arose from any defect in the Act?—The difficulty of changing the tenure arose, in my opinion, from no defect either in the Act of 1822 or of 1825, it arose probably from a very general cause of difficulty in that country; a dread on the part of the local authorities to act upon their own responsibility, complaining of defective instructions from home; and this aggravated by perpetual reference backwards and forwards from the Government to the Colonial Secretary, in the hope that they might at last agree upon the means of executing the provisions of the law.

Are the Committee to understand that the powers of that Act of Parliament are not sufficiently clear to enable the governor to carry them into effect without any doubt as to authority from this side of the water?—In my apprehension, the provision in the Act of 1822 was sufficiently clear for a government that would have acted with any promptitude and energy, and would have felt interest in the object in view.

You have said that your application was referred to the consideration of the executive council; of whom does the executive council consist?—I have only said, I understood it was so referred. The council consist of the chief justice and other persons, whose duty it is, to advise the governor with respect to the administration of the country.

Are the executive council persons holding salaries as such?—I rather think they are but I am not certain.

Do you happen to know whether any attempt to change the tenure of land under that Act has been successful, although your own attempt has failed?—I am sure no other attempt has been made. In suggesting the provision for the voluntary exchange of tenures in 1822, I intended to show an example to the country, as largely interested in landed property, and I did not expect that at first, or until they were convinced of the advantages of a mutation of tenure, any great number of proprietors in Canada would follow my example.

In your view, would it be an advantageous proceeding to change the tenure of land held in the seigneuries which has been in a state of cultivation, as well as of land which has not?—Looking to the state of property and the improvement of the country from a change of tenure, my views at the time were principally directed to the two great cities of Montreal and Quebec, and to the property in the island of Montreal. The Crown or the Church, but now, I believe, the Crown solely has the right of seigneurage over those two seigneuries, and of course has the power of conceding its rights upon any terms that might be supposed beneficial to the country. The chief obstacle to the improvement of Lower Canada arises from the objections of British-born subjects to the investment of the large profits that have resulted to them from the trade of the country in real property, and the impediments to the circulation of capital so invested, by the provisions of the feudal tenures, and the heavy fines on every alienation. No house can be sold in Montreal or Quebec, or no farm in the island of Montreal, without paying a heavy fine; and to make the case worse, a doubt has hitherto existed as to the right of the seminary who held the seignory of Montreal to exact these fines; but no purchaser would accept a title unless the fine due by the previous purchaser had been voluntarily paid. The fine is 12½ per cent, but frequently modified by compromise. As the population of the island of Montreal consists of about 50,000 persons, and of Quebec of about 25,000, a large proportion of the whole population of Lower Canada, and as there is a greater mass of capital in these two cities than in all the rest of Canada, it appeared

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peared to me a great object to endeavour to release the property from the shackles of the old tenures, so that capital might be invested in it, and be employed in its improvement, instead of being sent out of the country, as it invariably is now, for investment in England. I hoped that the Crown, having the power, would have consulted the obvious interest of the country by encouraging mutations of tenure on easy terms, and by degrees proprietors in other districts would have been convinced, by the increasing prosperity and improvement of the towns and the adjacent lands, of the advantages of a better system, and have been induced to promote a general change. I may add, that the depreciation of property in the towns has been frightful of late years, and I can see nothing in the present state of Canada likely to produce a different state of things, except by the removal of the existing impediments to the application of capital to the improvement of the country. I conceive that if the tenures upon the island of Montreal were converted into free and common soccage, and a registry was provided for the registration of titles and mortgages, that the improvement of that part of Canada, and its advance in wealth and population, would be as rapid as that which has taken place in any other part of America.

Was there any doubt that the Crown had the power to grant those mutations?—There was never any doubt that the Crown might have made an equitable arrangement with the seminary, to have given the Government power to act as they pleased with respect to the property in the seignury of Montreal.

Has any adjustment of this point taken place?—I understand that one has lately taken place.

Can you describe the nature of the claim of the Jesuits?—I understand the seignury of the island of Montreal was first granted to the seminary at Montreal for purposes connected with the Roman Catholic church, and education under its direction. Doubts subsequently arose, during the French Revolution, as to the rights of persons claiming to be successors to the original grantees; and of course if these rights were extinguished, the property would have reverted to the Crown.

When you alluded to a claim on the part of the clergy, did you allude to the Roman Catholic clergy or the Protestant?—The Roman Catholic; and I think it necessary to state, that when I talk of the claims of the Roman Catholic clergy in Canada, I do not believe a more liberal, benevolent, or charitable body of Christian ministers exist in any country, or one whose conduct and habits are more exemplary or praiseworthy; and I am persuaded they will be found at all times disposed to lend themselves, consistently with the interest of their religion and church, to every measure for the improvement and advantage of their country.

Is there any reason to suppose that it is a fear of the loss which the public property might suffer which induces the Government to hesitate in making those mutations?—It cannot be so. As the best answer to that question, however, I would recommend the Committee to desire a return of the revenue which the Crown has derived from all its property in Canada within the last 30 years.

Do you know, as matter of fact, whether any disputes have arisen with respect to titles to property in the island of Montreal, as between the Crown or the clergy, and individuals holding such property?—A few years ago, I think four or five, a person built a mill in the island of Montreal; and as the Committee are aware, among other rights of seigneurage, the *droit de mouture* is conspicuous. The seminary conceiving the erection of such a mill encroached upon their privileges, brought an action against the party building it, either for damages or to procure the removal of the mill. The proprietor defended the suit, and judgment was given against him by the Court of Montreal, before whom the case was tried. The proprietor appealed to the Court of Appeal at Quebec. On hearing the appeal, the French judges present all sustained the judgment of the court below; the English judges objected to it. No decision has yet been had, and the matter is still in abeyance, the proprietor remaining in possession of his mill.

Does the same sort of uncertainty prevail generally with respect to the tenure of property in the seigneuries, or is that only a particular and isolated case?—I should say that the particular point on which this action turned was, whether the church could sue as a corporation. This, of course, would only affect property similarly situated.

Therefore, in cases in which an individual could sue, such uncertainty would not exist? I hold, that as seigneur myself, I could prevent not only any person building a mill, but any



any tenant taking his corn to be ground at any other than the seigneurial mill. A principal part of the seigneur's revenue is derived from the *droit de moulture*.

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Can you state the proportion of real property in the great towns of Quebec and Montreal which is held by British persons, or by the Crown, as seigneur?—Either the Crown, or the Crown and the Church, hold the whole of Montreal and Quebec as seigneurs; no person has any superior right, except the Crown, in those towns.

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Can you state what proportion is held by persons of British birth or origin, as contradistinguished from the French Canadians, as the immediate tenants of the Crown?—I cannot even guess; but I should rather be inclined to think that much the greatest quantity of real property was held by the French Canadians, the English inhabitants having objections to invest their property on such titles.

Can you point out any means by which the difficulties that now impede this change of tenure can be removed?—I was always of opinion that a detailed instruction transmitting the Act of 1822 to the Government of Canada, such instruction being founded upon the legal information of the chief law officers of the Crown in Canada, who were then accidentally in England, directing the Government forthwith to carry the provisions of that Act into execution, would have been sufficient; and I advised at the time of the framing a proclamation in this country to be transmitted to Canada, and there issued for that purpose.

You used the expression "detailed instruction," can you point out what provisions those details should contain?—Such provisions as the competent legal authorities who were then upon the spot might have advised to be sufficient to carry into effect the provisions of an Act which they themselves had framed.

Do you think it would be desirable that the Crown should make the mutations without taking any fine whatever?—On general principles, I think the Crown should make the mutation on such conditions as were most likely to be acceptable to the mass of persons holding property under the old tenure, and likely to encourage them in accepting the mutation.

Although you do not know, in point of fact, any other exact impediment which stands in the way of those mutations, can you, from your knowledge of the subject, imagine any which you think probably have impeded it?—I can conceive no others than I have stated.

What do you suppose to be the value of the Crown's interest in the property so proposed to be changed?—The Crown is entitled to one fifth of the value of all seigneuries disposed of by sale; but the magnitude of the fine is in itself a bar to frequent transfers of property. Upon the seignery which I have in Canada, one fine of about 900*l.* has been paid within the last forty years. There are also means of evading the fine, and the amount is in fact more nominal than real, as a compromise generally takes place before a sale. The seigneur can concede his property, reserving the smallest possible nominal rent, so that the Crown's fine upon any disposal of that small reserved rent would be very trifling; but some general estimate of the whole value of those fines to the Crown in Canada, can be obtained by a return of their amount since the country has been in our possession. The right of the seigneur to a fine of one twelfth on every mutation is much more valuable, because the tenant has no power in any way to evade it. Mutations naturally take place of small tenements either by forced sale for division among families. The seigneur's fine also always increases with the increasing value of the improvements upon the property, so that in point of direct interest the title under which the seigneur holds his lands by the French law is more advantageous than it would be under the change of tenure. The land is let at a perpetual reserved rent, with other rights, such as the *droits de moulture, de retraite*, and fines on mutation, and which, taken together, return him a greater portion of his revenue than the rent; whereas, if he disposed of his land in free and common soccage in a new country, he probably would not get much more than the rent he now receives, without the other sources of revenue.

Notwithstanding the value of those advantages, would you as seigneur have been willing to have suffered the mutation of land to have been made on your own property, and to have suffered persons to hold under you in free and common soccage, although thereby you would have resigned your right?—Most undoubtedly I would, because it would have led to the introduction of greater capital, and to the improvement of the part of the property, which would have given me great advantages in the disposal of the remainder

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Can you give the Committee any idea of what that land which you have described as having let for 8*d.* an acre would have sold for in free and common soccage?—I should suppose it would have sold from 1*s.* to a guinea an acre; I have, as I have described to the Committee, a great mass of land held in free and common soccage immediately adjoining my seignery. Some difficulties had occurred with respect to the title of this property, which prevented me for many years attempting to settle it. Those difficulties I think, after 20 years application, have been removed by the Government of Quebec, and I am now endeavouring to settle this land upon the terms on which I proposed to settle the seignery if I had succeeded in obtaining a mutation of tenure; but what will still more strongly exemplify the advantages that would result to the country from a change of system, and more liberal institutions, is the fact that there is no difficulty in making sales of land, inferior in quality, and much worse situated with respect to means of communication and markets, in the adjoining part of the State of New-York, at at least double the price to that which can be procured in its immediate vicinity in Canada. I have with me a return of the sales of 10,000, part of between 40,000 and 50,000 acres, adjoining those lands in Canada, but fortunately on the other side of the line, averaging 30*s.* per acre, and the agent advises me this may be the average value of the whole of the remainder.

Was not the original right of the Crown as seigneur to one fifth.—It was.

You are understood to state, that when the Crown proposed to concede its rights as seigneur, it proposed to take five per cent?—It did by the last instruction.

The object being to induce the seigneur to release, on his part, the land from those circumstances of seigneurial tenure, are you of opinion that it would be right for the Crown to grant the seigneur a release at a less rate than five per cent?—I cannot exactly answer that question, further than by the illustration of my own case, that I was willing to pay five per cent; but I doubt very much whether I was not the only seigneur in Canada who would have accepted a mutation on such terms. The regulations, with respect to terms, I believe, were suggested by myself, and I only wished them, as I wish still, that they had formed part of the Act of Parliament, and not been left to the Government at home or in Canada, with whom the instructions have hitherto remained a dead letter.

Are you of opinion that if the Crown were disposed to make easier terms with the intermediate tenant, the tenant would be disposed to make easier terms with his sub-tenants?—I do not think it would make the least difference. The right of the seigneur, as I have already explained to the Committee, is of great value to him, and the value of right of the Crown is, practically speaking, nearly nominal; and if great encouragement is not given by the Crown, except in the cities of Montreal and Quebec, where persons may be desirous to invest capital for profitable employment, very few mutations would take place.

Are not the persons who hold under a seigneur entitled, by the 6th Geo. 4, to compel the seigneur to a mutation of title?—When I first suggested this alteration, it was with a view to the general improvement of the country; and the release of the rights of the Crown to the seigneur would conduce comparatively little to this end, unless the tenant had some power of emancipating himself from the shackles of his tenure. Much greater advantage would result from the general surrender of their feudal rights by the seigneur, than from any emancipation of particular seigneurs by the Crown.

Do you conceive that the great mass of the vassals in the seigneuries are desirous of any change in this respect, or not?—I conceive that a very small portion of the country population, for many years, would take advantage of the change, until they were convinced of the benefit their neighbours derived from being subject to no fines on mutations; and by their own experience of paying repeated fines, from which adjoining property was exempt.

Is not that principle of the French *Coutume de Paris* to discourage mutations in property as much as possible, the very principle that attaches the French population to the present state of law in that country?—That principle, so contrary to all the principles upon which the British Government have proceeded in the government of their other Colonies, has tended to retard the improvement of Lower Canada, while the improvement of other parts of America has been advancing with rapid strides; and although I should be as adverse as any one to deal forcibly with the prejudices and feelings of the Canadians, who certainly are attached to, and imagine themselves interested in, the preservation of their present system, still, as a matter of necessity, time will so deal with them, unless they can accommodate themselves to a gradual amelioration either under our Government or under some other.

Is there any thing in this Act that would do more than make it optional; would not the Canadians, if they like this tenure, be fully at liberty to continue under it?—I have already stated, that in suggesting this alteration originally, I was no party to any thing that could by any possibility be supposed compulsory; and that I should only propose now to deal with the Canadians by showing them the advantages to be derived under a better system, which prevailed among their neighbours.

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Can you state whether the tenure upon which land is now held in the townships is liable to any objection?—There have been great doubts with respect to the titles to property held under British grants in Lower Canada, and with respect to the laws affecting them. Until the Canada Tenures Act of 1825, I do not believe any person holding real property in free and common soccage in Canada knew very well by what law his property was regulated. Nor could I tell whether the property I held in free and common soccage would have descended or been governed by the French civil law, or the law of England. All transactions relating to such property, with very few exceptions, have been conducted upon the principle of their having been governed by English law; but no decisions to my knowledge had taken place in any Court in Canada until the bill of 1825 set this question at rest. Doubts have also been expressed as to the rights and powers of the seigneurs, in leasing and disposing of their property under the French law, which are frequently made the subject of public discussion in times of excitement, but which have never been brought to any judicial decision. Some of the French lawyers state their doubts whether seigneurs who have been in possession ever since the English occupation of Canada, and who have varied and increased their rents according to the circumstances of the times, had any right to do so. They alledge this property is held solely in trust for the settlement of it by the poorer class of people, and that an *Ordonnance du Roi*, published above a century ago, but which has never been acted upon in Canada, should now regulate all transactions between the seigneur and his tenant, and that the seigneur has no right to require or receive a higher rent than was then customary. The practice of the country has been entirely at variance with that rule; but in the later disputes that have occurred in Canada, some of my tenants were advised to resist the payment of this rent upon this ground: they did so resist, and my agent was obliged to proceed by law to compel the payment of the rent; but the proceedings were stopped in their progress by the submission of the tenants.

Did the declaratory clause in the Canada Tenures Act affect the rights of any considerable number of Canadians?—I do not see how it could affect their rights, as it never had been ascertained that lands in free and common soccage were liable to the provisions of the French civil law; but certainly if they had been so liable, the younger branches of a family, or the mortgagee of a younger son's proportion in his father's property, would have been left by the provisions of that Act without any protection for his rights.

Were there many French Canadians, who by holding lands in the townships, were affected by that declaratory clause?—I should think very few; and I should have no objection, for a very small sum of money, to undertake myself to indemnify all persons who could have any complaint under this clause.

Are the Committee to understand that as the law now stands, lands in the townships could be conveyed fairly and securely according to the English forms of conveyance?—As I understand by the provisions of the Act, landed property in free and common soccage would be regulated by the English laws affecting real property, with the exception of a very necessary alteration, that the land would be subject to simple contract debts; and further, that any land, the title of which might be changed from the feudal tenure to the free and common soccage, would be governed in like manner; and that would have been a great temptation to me, and would be to all others, to obtain a mutation of tenure.

Under those circumstances could a person borrow money on mortgage on property in the townships?—I should think it would be exceedingly difficult to borrow money on property in the townships, until a court for the registration of titles is established, by which incumbrances upon real property could be ascertained. By the provisions of the French Civil Law every Act passed before a notary (and there are very few Acts relating to money arrangements in Canada that are not passed before a notary) are held

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to be hypothecary claims affecting the real estate of the parties, and it is impossible at present to guard against the risks resulting from the circumstance.

If a law were passed to enforce the registry of all transfers of property in Canada, ought it in your opinion to be confined to the townships, or to such lands as were held in free and common soccage, or should it extend to the seigneuries?—There can be no doubt that for the security of the trading part of the community, and to induce capitalists to invest and advance their money on lands, it ought to extend generally to all property; and more particularly as it is impossible to conceive any injury that could result to the owners of property under the feudal tenure by having a record of the sales and the burthens affecting it. I would add, that in the state of New-York there are courts of record in every county, and that having had myself much experience and some trouble in tracing the titles to property in various quarters of that State, I have met with the greatest facilities by having recourse to the registers where the record of every mutation of a property is to be found.

You state that of late years a great depreciation of property has taken place in the towns of Quebec and Montreal?—There has.

What has been the cause of that depreciation?—I think, amongst others causes, the withdrawal of capital from the country, for investment in England, and some feeling of insecurity arising from the existing dissensions in the government, in addition to the obstacles I have already stated to investments in real property.

Do you attribute that to the disputes that have taken place in the country?—Certainly I attribute some part of it to those disputes.

Has not a great loss been sustained by the merchants that continue to reside in Canada?—Of course, great loss has been sustained by all holders of real property in the depreciation of that property; I am not aware of any other loss except the losses that have affected all His Majesty's subjects that have been trading within the last ten years.

Are you acquainted with the conditions on which the Government grants lands in the townships of Lower-Canada?—I am acquainted with the subject, as almost the greatest practical grievance of which the industrious population of Canada have to complain. These grants have been most inconsiderately and wantonly made in large masses to people connected with Government, without imposing upon them, or at least enforcing after they were imposed, adequate conditions for the settlement and cultivation of the lands; or without taxing them for the vast property of which they have got possession, and which lie idle and unimproved, to the great detriment of the country, and to the great nuisance of the inhabitants around.

To what extent has this taken place?—I am afraid in Upper and Lower-Canada it has taken place to so frightful an extent that the possession of a great part of the valuable and improvable land is in the hands of absentees, which might be otherwise now occupied by industrious and active settlers.

Has the land been granted in large masses?—In great masses. I think it would be very right for the Committee to require a return of all the grants that have taken place since General Prescott's time, at least since it has been the fashion for almost every counsellor or officer connected with the Government to get a grant of from 5,000 to 20,000 acres.

Is not the condition of escheating to the Crown all lands not improved, in a constant progress of operation?—I think it is the worst possible process as a remedy for the evil of these large grants; a much more simple remedy would be to follow the example of the State of New-York, in taxing uncultivated lands.

By whom were those grants made?—By the Government there, or by instructions from home.

Has that practice existed for a considerable length of time?—It has existed since land was supposed to be of any value in Canada. It was an easy mode, either of rewarding services, or satisfying jobbers.

Are you not aware that there were terms of settlement imposed in all those grants?—I am quite aware that in some cases, not in all, terms of settlement were imposed; but by some strange accident it happens that they never have been enforced, and the greatest portion of these lands is now in a state of wilderness, the proprietors in few instances

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instances applying capital to the improvement of them. Within the last two or three years the attention of the Public and the Government having been called to these abuses, a system of estreats has been resorted to, and it is understood that directions have been sent out to proceed to the forfeiture of all lands on which the duties of settlement have not been performed. The objection to this mode of proceeding is, that the conditions upon which the grants were originally made having been allowed to remain so long in abeyance, they have almost been forgotten by the proprietors; and if a rigorous system of Crown process is to be assisted upon, it will almost be productive of as great and serious a grievance in the country, as the neglect of the provisions for the improvement of the lands has hitherto been.

In what respect would it act as a grievance in the country?—Persons having influence either in the country or at home, (and there are many such who are grantees of this property,) would remonstrate against those proceedings, and according to the prevailing practice in such cases, relief would be given in some instances and none in others, and complaints would necessarily arise, from any apparent partiality, which might even be justified in particular cases. It would be impossible to confide the execution of so wide a discretion, with any hope of its being satisfactorily exercised by the local authorities.

Are many of those grantees who have so neglected to perform the conditions under which they have received the grants of land resident in Canada, or are they principally absentees?—I should think principally absentees; some Governors of the Colony; and many grants have been made as a remuneration for public services by the Government.

Are not those tracts of land, in many instances, in the best situations in the whole Colony?—They consist principally of the nearest lands to the seigneuries which had not been granted under the feudal tenure, and, of course, are in a situation to which access is more easy than to the more remote lands that have been granted to the actual settlers.

Have those grantees neglected the duties of settlement as well as those of cultivation, in making roads through their grants?—The greatest evil of all is that arising from the neglect of making roads. The still greater grievance of grants to the church, where no person is bound to make duties of settlement, remains to be stated; and the country remains impervious and impassable in consequence of the neglect of this very necessary improvement by all parties.

To what extent have any of those grants been made; what mass of land has been granted to any individual?—I should think in some cases to the extent of 20,000 or 30,000 acres.

Does great inconvenience result from the size alone of those grants?—Of course, the inconvenience is greater in proportion to the size.

Has a great number of such grants as those taken place within the last few years?—No; they granted so much of the valuable part of the country that the grants at distant places became of less value, and were less sought after; and I believe the eyes of Government were soon afterwards turned to the evil.

Are you aware whether the clause in the 6th Geo. 4, empowering the Government to escheat, has been put in operation?—I know, as a matter of fact, that I have been threatened with it, on some lands which my father bought, as adjoining his seignury, from soldiers, serjeants, and subaltern officers, to whom it was granted in small lots, in remuneration for their services, when they were disbanded at the close of the American war. Some objection was taken to the title of these people, which was removed after an incessant suit at Quebec for 14 or 15 years; and the moment I got a title that could enable me to settle the land, I was threatened with an escheat, which however I have prevented by doing that which I am quite disposed to do, providing for the settlement of the country.

Do you know whether escheats of land have taken place under that Act?—None, that I am aware of.

Can you suggest any mode by which this great evil might be remedied?—The only efficient remedy is by imposing a tax upon unoccupied lands, and by the Crown proceeding, upon the non-payment of the tax, to bring the lands to sale in execution for the taxes.

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Is that the practice in the United-States?—Yes, constantly.

Does any power of imposing such a tax exist except in the Local Assembly of the province?—None, except we should be obliged to follow the precedent which we unfortunately have been driven to, of legislating in this country upon all occasions for the internal government of the Canadas.

Do you see any objection to the power of estreat, provided that notice is given to the parties that the law upon that subject is intended to be enforced?—The objections are innumerable; first, by unsettling titles; then, the difficulty of defining boundaries, and obtaining proof on which to ground your proceedings; and lastly, the expense, and probably vexatious execution of the law.

Do you see any objection to a principle being put into operation which shall make escheat contingent upon the continuation of the property in a state of non-settlement?—I am against placing in the hands of the law officers of the Crown in those colonies the means of legal vexation to any parties, where it can be avoided; and I think it can be avoided by a much more efficient remedy for this evil, which I have suggested.

Has any such remedy been suggested, either in the Council or in the Assembly?—I should think, not in the Council, inasmuch as the Council generally are proprietors of lands; and I do not know that it has in the Assembly.

Is not your own proposition much the same thing; is not it, in fact, an escheat under distress for non-payment of the tax?—I should say, there is this very obvious difference, that the seizure of property could only then take place on the failure of a condition, which is matter of actual fact within the cognizance of the parties; and the public proceeding by estreat can only take place upon the proof that the conditions of settlement have not been attended to, and parties may differ and will differ as to the intent and meaning of the obligation of settlement imposed upon them.

Are you not aware that the Crown has now the power to impose some conditions of settlement, inasmuch as the original conditions not having been satisfied, those lands are actually escheated?—I am not aware of any power that the Crown has of imposing new terms till they have actually estreated the lands, and brought them to sale under execution.

Would not a question of fact arise before you could impose the tax upon the uncultivated lands?—That would depend on the regulations of the law, but proprietors should be obliged to carry in certificates of the actual occupation of the lands into the County Tax Office, to exempt them from taxation.

Are you aware how that machinery works in the United-States?—Without the least difficulty.

Does it often happen that distress is levied upon those lands in the State of New-York, in order to enforce the payment of the tax?—It has happened to myself, that by the neglect of my agent the receiver of the county has actually taken possession of my land, and I know of no difficulty that ever has occurred in the State of New-York with respect either to the levying of the tax, or proceeding to the sale of land upon which the tax has not been paid.

Under what regulations is the tax imposed?—The tax is imposed upon all wild and unsettled lands by an Act of Legislature of the State of New-York; I am not in possession of the detailed regulations under which the tax is levied and collected, but I will endeavour to procure them for the Committee.

Supposing the case of a district of uncultivated land being granted to any individual, is there any time allowed to him for bringing his land into cultivation; does the tax take place forthwith, or is he entitled to hold it any certain number of years before he becomes liable to it?—If such period ever was granted, it has long since elapsed in the State of New-York, where they attend to the internal administration of their affairs with the greatest precision and regularity.

Do you purchase the land subject to the condition of the payment of such a tax?—By a reference to the register of every county you can always find out whether the tax has been paid, or to what period it is in arrear.

As you have stated, that in your opinion a tax upon uncultivated land is a much more efficient mode of bringing unsettled land into cultivation than any other process, what

is your opinion of the probable fate of a bill that might be introduced into the Legislature of Lower-Canada for the express purpose of assimilating the law in that province to that of New-York?—After the experience of some years last past I should doubt the fate of any bill introduced by the Government into the Assembly of Lower-Canada, as at present constituted, for any purpose.

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Why?—In consequence of the eternal squabbles between the Assembly and the executive power, and their jealousy and distrust of each other.

Independently of those squabbles, have you any reason to think that a bill brought in to effect this object would be liable to objection by individuals who compose the Assembly?—That depends very much upon the individual interest of the members, and whether they are considerable landowners; and with respect to the Legislative Council, the same difficulty might occur.

What would be the individual interests of an inhabitant possessing property in the seigneuries?—It depends upon the extent of unconceded property he possesses.

Is there such a mass of unconceded property in the seigneuries as to be likely to create an interest among the seigneurs, or persons holding land in them, to object to such a tax?—How far it would create such an interest I know not, but there is a great mass of unconceded land in the seigneuries; the seigneuries going in many instances six or eight leagues back from the river, and in very few instances being settled for more than one or two.

If this law of escheat was to be acted on to any extent, would it not make the future titles of land extremely doubtful and difficult, as to knowing where the law of escheat did arise, and where it did not arise?—In my opinion it would involve the whole country, and all the tenures of free and common soccage land in endless confusion.

If a tax were to be adopted in the manner you describe in place of the law of escheat, would the same difficulties arise as to future titles?—Certainly not.

With regard to the difficulty which you conceive does not occur under the system of a tax upon wild lands, namely, the doubt whether the settlement duties have been performed, why is that more likely to arise under the system of escheats than under the other system?—It is much more likely. In the first place it is the interest of the crown lawyers in that province to make as much business as they can for themselves, and prosecutions of this description are not always under the control of other authorities.

Is not the point of what is to be considered a sufficient degree of cultivation, to excuse from such a tax as you propose, as difficult to prove as the fulfilment of the conditions of settlement?—Certainly not, at least there never has been any difficulty in the State of New-York, where it has been in practice ever since the independence of the country.

Are not the conditions of settlement very difficult; making a road of a certain width in front, and other conditions?—One person says, I have made a road and it is not kept up, it is grown over again. Another, I have settled such a man upon so many acres of land, who may have sold to another not yet established. Then how are you to prove that he has never been there? And then consider the distance of the townships from Quebec, and the difficulty of communication. The burthen and expense of proof is with the prosecution. How will you deal with the settler upon lands subject to escheat, who has purchased his lot? Is every part, or what part of the original grant subject to your process? And then the specific performance of your conditions might admit of different interpretations.

Would not the conditions in such a case be very various and very difficult to prove?—They would.

Would it not affect the land partially; would it not affect portions that remained uncultivated, leaving what was settled in the hands of the owner?—I think there is no end of the difficulty of the case.

Although there may be great difficulty with reference to proving the fact of past settlements, do you mean to state to the Committee, as your opinion, that it is difficult now with respect to new grants for the Government to impose such conditions as will do away with all obscurity as to the fact whether the lands are forfeited or not for non-completion of the condition of settlement?—The question has reference to new land, and not to any land that has been before granted, and I have stated no objection that I am aware of to new grants of land to actual settlers upon them.

Supposing

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Supposing the Crown, to-morrow, to grant 10,000 acres to any individual, are you not of opinion that it would be extremely easy to frame such conditions as would involve no obscurity when the question came to be considered whether he had fulfilled them or not?—

The best condition is to grant to no individual 10,000 acres of land; but I do not see how by possibility you can impose such conditions, or that any person would be willing to accept them, inasmuch as if the proprietor of such land, under such a title, wanted to sell a portion of his estate, the purchaser would require to know whether he had performed the condition with respect to the rest of it.

Are you aware that this is the principle upon which certain conditions are imposed with respect to every grant that is now made by the Crown, in order to prevent a recurrence of the mischief complained of?—No grants, to my knowledge, to the extent stated in the previous question have been recently made, or no grants except to persons *bonâ fide* intending to settle upon them.

Do you consider that there is any objection in principle to the Crown making a grant of 10,000 acres to any individual who will apply sufficient capital to bring it into a state of cultivation?—Certainly not.

Is it likely that any individual would be able to apply a sufficient capital to bring 10,000 acres into cultivation?—I should be very sorry to do it.

If this measure of taxing unoccupied lands is most advantageous for the general settlement of the country, have you any doubt that such an Act would be adopted and passed by the Legislature of Canada?—Such an Act, to a certain extent, has been passed by the Legislature of Upper Canada, and I should conceive that if some conciliatory adjustment of the existing difficulties could take place, there would be little doubt that the Legislature of Canada generally would pass Acts which were obviously for the interest of the country.

Is there any difficulty which would prevent individuals who held those large masses of land from putting them up to sale in portions, and is there any difficulty in making a title, arising from the state of the country?—There is no difficulty in making a title from a clear grant from the Crown, if this new doctrine of estreat does not interfere with it; but so long as the Crown has not proceeded to estreat, I take it for granted any body would take a title subject to the conditions in the original grant. There is the other difficulty to all titles in Canada, the want of a registry, and the danger that the property may be affected, even without the knowledge of the seller, by some Act passed before a notary, to which he may have been a party.

Would it not be one of the best modes of remedying this evil to facilitate sales?—Sales of land in Lower Canada for money are very difficult. Another objection occurs to me to any immediate process of estreat, which is, that until the passing of the Act of 1825 the title to lands previously granted, and the question whether they were effected by the English or the French civil law, had not been settled; so that it was uncertain whether the children of an original grantee took in common, or whether the land fell to the eldest son as heir-at-law.

In point of fact, would you recommend, as the easiest mode of settling those difficulties with regard to the grants of land, that the Legislature of Canada should be induced to adopt some such provision as that which prevails in the United States?—Most assuredly; it would be not only the simplest but the most expedient and beneficial course.

Are you aware of any other course that could be adopted that would have a tendency to subdivide those grants, and to enable the present proprietors to transfer them into others hands upon any tenure, either of lease or freehold, to convey them to persons that would be likely to improve and cultivate them?—I take it that they cannot by law transfer upon any other tenure than an English tenure.

Could any means be adopted that would facilitate the transfer?—I know no difficulty that occurs now to the transfer except any difficulty that may be interposed from the causes I have stated.

Would not persons as willingly take grants of lands from individuals who had received large grants from the Government, as from the Government itself?—Undoubtedly they would, if satisfied with the title.

Are not the Government in the habit of daily granting portions of land to individuals in the unsettled parts of the country?—They are, certainly, in Upper Canada, and, I believe, in Lower Canada.



Do you not consider that the present state of the law in Lower Canada does practically obstruct the settlement of the country?—There can be no doubt that among other bars to the improvement of the country the present state of the law, as affecting landed property, operates to a considerable extent, as I have already stated; but I should say, beyond that, a feeling of restlessness, uncertainty, and insecurity, arising from the evident consequences of a system of mal-administration of the Government for the last 20 years; the disputes that have prevailed, and must continue and increase between the two provinces in their divided state, with respect to the power of regulating the trade, and levying duties on the St. Lawrence, and to the division of revenue; and the perpetual state of excitement and irritation in which the public mind is kept, have lately tended materially to check confidence and enterprise, and the application of capital to the improvement of property.

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Do you consider that the executive Government are responsible in any degree for the difficulties that arise as to the division of the Custom duties between the two countries?—Certainly not. The unfortunate division of the provinces, the conflicting claims of their separate legislations, and the questions before referred to respecting their rights of taxation, and regulating the revenue on the St. Lawrence, are not imputable to Government.

Are you of opinion that the French Canadians feel that according to their view of the interests of the province, the facilitating settlement would so far benefit the province as to make it probable that they would consent to any bill which would have for its natural effect the progressive settlement and improvement of the province by English settlers?—The great object of the French population and legislature is obviously to retain their separate institutions, their laws, their church, and their distinct condition from the people of America; but of course although much may be secured to them by mutual concession, all their objects can only be effected at the expense of the interest of the English population, and by the retardment of all improvement in the country. So far from blaming them for entertaining that separate view, probably if I was similarly situated I might feel disposed to cling to the same hope as long as there was any reasonable probability of being able to maintain it; but feeling that sooner or later they must form part of the great American and English family, any attempt to sacrifice the paramount interests of improvement and civilization of the country to their habits or prejudices, would not only be injurious to the rest of Canada, but hopeless as to its result.

Do you conceive that independently of any acrimonious feeling existing between the House of Assembly in Lower Canada, a great majority of which are French Canadians, and the executive government, they would be disposed to resist the introduction of a Bill for the purpose of taxing waste lands, inasmuch as the result of such a measure could only be to increase the English population of the country?—I am afraid they might be actuated by any motive which in their opinion could retard the settlement of the country by a new population.

Are you of opinion that that feeling has arisen from the manner in which they have been governed?—I am of opinion that it arises in some respect from that, but more from the reason I have stated before, that they wish to maintain their separate caste as long as they may be able.

Can you specify any particular bills that they have passed, or that they have refused to pass, from which you would infer that disposition on the part of the House of Assembly, or is it merely your general impression?—I understood they had refused to pass a bill for the voluntary mutation of tenures, and another for establishing registers; these are the only two that occur to me at present, but I am certain there are many others; such bills were sent down by the Legislative Council to them, and they refused to pass them.

Was not their indisposition to pass those bills, in a great measure, founded upon their conceiving that the Government of England had interfered with a subject which more properly belonged to themselves and to the local Government of Canada?—The Government in England only interfered after they had refused to pass those bills.

Will you state to the Committee what other causes have, in your opinion, produced the present difficulties in Canada, and obstructed the settlement and general improvement of the province?—I conceive the great cause, as I have already stated, has been a long course of mismanagement, and a constant attempt to reconcile contradictory principles in the administration of affairs in that country. The unfortunate division of the province

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provinces was followed by the establishment of an independent Legislature, placed in the hands of one class of subjects, without providing for any participation in their rights, by the English population, as they increased in numbers and importance. To this Legislature, right or wrong, you gave the most extensive powers and privileges, which have been apparently found in practice so inconvenient, that they have been invaded or resisted as often as any emergency or necessity required it. The rights of the Crown have been fastidiously insisted upon on one side, and inadmissible claims of power and privilege set up on the other. This has been going on nearly since the time of General Prescott's administration, and mutual jealousies and quarrels have increased, with some short intermissions, till the evil has grown to its present formidable size. I think the fair inference must be, that much has taken place to be regretted on both sides. Certainly the Canadians complain, with apparent reason, of some part of the conduct of Government; an English receiver is appointed, insufficient securities being taken in England; the Assembly suggest the regulation of his office, and subsequently, I understand, bills were sent up in the terms of a bill passed in other Colonies for this purpose; they are told this is an encroachment on the prerogative of the Crown, and their bills are rejected. The receiver had previously failed in debt to the Public about 100,000*l.*; and when they say, "as you made the appointment yourselves, took your securities in England, and rejected our advice, it is fair you should pay the defalcation, Government insist upon their laying fresh taxes on their constituents for it. In the same manner they allege they have sent up bills for the regulation of the office of sheriff, that these also were rejected, and two following sheriffs have failed; the one a defaulter of suitors money to the extent of 27,000*l.*; and another for a less amount. These are not theoretical, they are practical evils, and form just ground of complaint. In the midst of such disputes, differences between the provinces arose as to the division of revenue raised at Quebec. Attempts are made to settle them by arbitration. The Assembly at Quebec set up the most inadmissible pretensions, and the matter was referred for decision to this country. I must offer my testimony as to the unwillingness of Government in this instance to resort to Parliamentary interference if it could have been avoided; but when the only alternative left was the payment of the whole civil list of Upper Canada out of the English Exchequer, it became indispensable. The question then ensued what was the best course to pursue to prevent an eternal reference to the House of Commons on the subject of Canadian disputes? A legislative union was suggested, and Government was induced, by the promise of support in different quarters, to adopt that suggestion. It is unnecessary to enter into the history of its failure. It was, and is still, in my opinion, much to be lamented. When the Union Bill was withdrawn, another measure of a much more objectionable nature, the Canada Trade Bill, was introduced and passed in 1822. By this bill all taxes previously existing were enforced for five years, or, I believe, till the repeal of the Act; a tolerably strong measure, and which could not be very agreeable to the feelings of persons having such high notions of their rights as had been displayed by the Assembly at Quebec. As Government had determined on so large an exercise of the authority of Parliament, it is to be regretted their foresight did not carry them one step further, and that they did not take power in the bill to apply the taxes on the payment of the civil lists of the two provinces. The Assembly were then called together, in no good humour, to vote the application of taxes levied not only without their consent, but for purposes at direct variance with their declared votes and opinions. This did not tend to allay former differences; and from that time, (with one exception during the administration of Sir F. Burton, who prevailed upon them to vote the supplies for one year, by the concession of a principle for which they had been long contending, that they should vote annually the salaries of the judges and other civil officers, making them thus dependent on their power) the Assembly has only met to be prorogued or dissolved, with the expressed animadversion of the Governor on their proceedings, and without making any provision for the public service. The Governor was instructed to supply the want of an appropriation bill by his own warrants on the receivers, to whom the taxes are paid under the provisions of the Canada Trade Act, but it would be difficult to find out by what law such instructions are sanctioned. This has been the course of proceeding from 1822 to 1828, and it is much to be deplored Government should have persevered so long in measures which, however much they may plead the excuse of pressing emergency in the first instance,

instance, were illegal, and offensive to the rights and feelings of the people. If no remedy was obtainable in Canada, an appeal should have been sooner made to Parliament, and the sore should not have been allowed to fester till the English and the French population have been almost brought into collision, and a wider separation between them in opinion on all matters of internal government and legislation been rather encouraged than checked. Assembly after Assembly have been called together, in which the local authorities have wisely persevered in attempts to carry their measures by a minority at no time exceeding 10, and seldom half that number, in a body of 50 representatives. And the Committee must always recollect the continuance of these dissensions has inflamed trivial differences on immaterial points at first, into serious additional causes of difference and misunderstanding, which it is not easy now to foresee the means of allaying or removing. The increasing English population in Upper Canada have been of course attentive observers of what has been passing below. They have got into communion with the English people in Lower Canada on their claims and complaints, and the whole now act as one body, determined to look after their fair rights and just pretensions to share in the power of regulating the commerce of the St. Lawrence and in the taxation of the country. The Upper Legislature will never be contented while this power is exclusively exercised by the Lower, and this difficulty is only now beginning. They have been on better terms with their executive Government, but the Committee should also be informed of any points of difference that have arisen in the Upper Province. A foolish dispute was persevered in for four or five years about an Alien Bill. It was discovered by decisions in England, that many people who had exercised rights as British subjects in some instances for 30 years, and some of whom had actually sat in the House of Assembly, might be legally deemed aliens. A Bill was brought in to relieve them from disabilities or penalties, and to make adequate and expedient regulations for the future, adapted to the circumstances of a new country. A quarrel took place on the most trivial grounds, I believe about one expression in the reciting part of the Bill, and in this the Government persevered against almost the unanimous feeling of the Assembly for one or two sessions, till at last Lord Goderich wisely put an end to it by sending out an instruction conceding any thing that was desired, in the most conciliating terms, and which it is impossible to conceive why any government should have delayed for one hour. There is another grievance I understand still existing, an Act of old standing, enabling the administration to send out of the country all persons against whom common information may be lodged of their being disaffected to the Government. The Assembly have naturally passed bills to repeal such an Act, possibly expedient under other circumstances; and the attorney-general has been directed to vote in a minority of one or two, I believe, in fact singly, on more occasions than one, against the sense of the Assembly, and the bills have been constantly rejected in [the Council. There is no allegation that the Act has been carried into vexatious execution, or at all, except in one case, that of Mr. Gourlay; but the people say it is an imputation on their loyalty, and it is clearly liable to all the other objections they urge against it. I am afraid you must expect jealousy and opposition in the Assembly while you are so careful to keep up those feelings by insisting on such points. But the great source source of difficulty in the Upper Province, and the foundation of interminable dispute and serious difference, is the state of the church lands, and the idle pretensions of the leading ministers of the established church, and the exclusive claims of that church. As small a proportion of the people of Upper Canada are members of the church of England, as of the population of Ireland. The mischief of providing by enormous grants or reserves of land for the maintenance of an exclusive establishment is beginning to be felt in every direction, and unless they are arrested with a strong hand, and put down by some arrangement conciliatory to the wishes and feelings of the people, there can be no hope of peace or quiet. I should add, the same objections press to the clergy reserves, as they are called in Lower Canada, and the whole subject, as respects both provinces, cannot too soon or too decidedly be dealt with by Parliament. There is another subject that requires the anxious attention of the Committee, the present composition and the constitution of the Legislative Councils in both provinces; and on this head I may observe, it is much more easy to find objections than to provide remedies. The Council of Lower Canada, as at present constituted, contains a large proportion, of the superior French proprietors. An objection has been taken to the judges being members, and on general principles that objection is well founded; salaried officers of the Government have been

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also objected to, as dependant on the executive authority; but then the question is, where are you to find in the present circumstances of the country councillors not liable to some such objections?—I do not believe many additions could be made from the French proprietors qualified by sufficient attainments and independence, and the trading part of the community are prevented, by the causes I have stated, from becoming permanently interested in real property. Otherwise the most intelligent and efficient members might be found among the merchants, and it is a curious and rather instructing fact, as connected with this case, that the French population have never had much share in the trade of the country.

Are there no resident English proprietors?—No English capitalist is induced to vest his property permanently in Lower Canada, although nearly the whole trade, and all the capital employed in it, and profits derived from it, are in the hands of the English inhabitants; and I should say, since the American revolution, there is scarcely an instance of any French Canadian occupying any considerable or permanent station in the commerce of the country. It would be therefore extremely difficult at present to remedy the defects, admitting them to be such, in the constitution and composition of the Councils. That it would be most desirable, if practicable, no person will doubt, who observes how little independence this body has at any time shown of the executive authorities.

Are the majority of them in office?—I think they are.

*Sabbati, 17<sup>o</sup>. die Maij. 1828.*

*Edward Ellice, Esquire, again called in; and examined.*

Are you at all acquainted with the Courts in which justice is administered in Lower Canada?—I am acquainted a little with them, but it is a long time since I have been in the country.

Are they so arranged as that, in your opinion, the British law can be effectively administered in them; or are they principally adapted to the administration of the French law?—I should think that depends very much upon the qualifications of the judges. I have never heard of any complaint on this subject; and I know some of the judges, now on the bench in Canada, who are respectable and able men, and perfectly qualified in public opinion for the office they fill.

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Do you mean qualified to administer the English law as well as the French?—It would be very difficult to say who are entirely qualified to administer the French law. If persons who have been educated, and have practised at the bar in Lower Canada, are not qualified to administer that law, I know not where they are to be found; the principles and practice in France having been essentially altered since the Revolution. The English judges are, I have said, qualified to administer the English law.

Do the judges principally consist of persons who have practised at the bar in Lower Canada?—I believe so, generally, in Lower Canada.

Are there frequent appeals to this country from the decisions in Lower Canada?—There are frequent appeals; and they are encouraged by the uncertainty which prevails with respect to decisions under the French law; there being no settled practice to refer to in Europe on the subject.

Do the inhabitants of the townships complain that the courts are so constituted that the English law, under which the inhabitants of the townships live, is not easily and effectively administered?—I am not aware of the particular complaints of those persons, but I can easily conceive, from the distance and difficulty of communication, great obstacles exist to the administration of the law in the townships.

Is it within your knowledge that a court with very limited jurisdiction has lately been established within the townships, held at the town of Sherbrooke, in which the English law alone is administered?—I have understood so.

Have you any reason to think that an enlargement of the powers of that court, or of any other court within the townships for the administration of English law, would be an improvement?—I am quite satisfied that nothing would tend so much to the settlement and civilization of the country, as the adoption of a simple, cheap and efficient system for the administration of justice.

Do you consider that the establishment of a registry of the titles of estates would be a very great improvement in Lower Canada?—I stated in my former examination that the want of such a registry was one of the main impediments to the improvement of Lower Canada, and I cannot too strongly impress upon the Committee the difficulties now caused in titles of all descriptions by the want of such registry. I believe no person would be advised to make any considerable purchase in Lower Canada, without taking the security of a sheriff's sale, which removes all incumbrances. It is impossible to ascertain what acts may have passed affecting it in various notaries offices; and a sale by the sheriff is a proceeding involving sometimes an expense equal to a large proportion of the estate.

Would it be possible, if a register-office were established, that all the different transactions relating to estates, which have heretofore taken place before notaries, could now become matters of record?—It would be very difficult, unless parties desirous to establish a clear title to their property would take pains for that purpose; and the interest of the notaries, a very influential class among the French Canadians, is opposed to any reform of this description.

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Would that opposition probably be greater to a retrospective enactment than it would be even to a prospective one?—I do not conceive that. The notary would only be interested by the reform interfering with new business, or acts passed before him.

Supposing a registration were enacted by law, might it not be possible to operate retrospectively upon property affected by notarial acts, by imposing penal consequences upon any party who effected a mortgage with registration, in a case where prior liens created by themselves, or existing to their knowledge, existed upon that property?—I should think it would be much more easy to provide some regulations, in a bill establishing courts of record, for calling in existing incumbrances. If the party recording a title or a mortgage of property not previously registered, was obliged to give public notice several times in the gazettes, as is done in cases of administration in Chancery, and to affix notices in courts of justice, there could be little hardship in excluding claims after a certain period, and passing the record in favour of the applicant. There could be less difficulty about free and common soccage titles on lands, of which a mutation of tenure had taken place, as there the possessor of the property would have in the first instance to establish his title.

Is it consistent with your own knowledge, that many persons who come out with the intent to settle in Lower Canada, have been induced from the difficulties that obstructed them to pass over the boundary and settle in the United States?—There can be no doubt of it. I have had, in particular instances, two or three successions of British and American tenants upon the same land, who, after experience of the French tenure and restrictions have abandoned their improvements, which my agents have re-entered into possession of, and sold to a considerable profit.

Under what circumstances is a forced sale by the sheriff effected?—Judgment under a decree of the courts.

Is it used as a mode of conveyance?—I cannot state that of my own knowledge; but if I intended, under present circumstances, to purchase property in Canada, I should be very desirous it should pass through the sheriff's hands to ensure a title.

Are not the papers full of notices of such sales for that purpose?—As I have said before, I cannot say of my own knowledge that they are for that purpose, but there is a general indisposition to accept of titles which have not undergone the ordeal of legal process.

Would not the easiest way to establish a register be to pass an Act requiring that within a certain period all mortgages now existing should be registered, in default of which they should become null and void?—That was the purport of an answer I have already given; but I should add, the Canada Tenures Act of 1825, deciding the question as to the law affecting free and common soccage lands, will give considerable facility to such a measure.

Do you suppose that in the desire which the inhabitants of the townships feel to have the laws of England introduced into Canada, they wish for the English law of primogeniture, and for the English forms of conveyancing, or for the laws of England, as they exist in the United States?—As a matter of opinion I should have no doubt the laws of England, as administered in the United States, were much better adapted to the circumstances of Canada, but I am not aware that any opinion upon that subject has been expressed in the country.

Are not the forms of conveyancing infinitely cheaper and simpler in the State of New York for instance, than they are according to the English system? I think the substitution of the English form of conveyancing would much aggravate the present evil, and it would be difficult to say whether the continuance of the present state of things, or such a remedy, would be the greater infliction. Nothing can be more simple or secure than the system of conveyancing in the State of New York, where the deed is generally written on half a sheet of foolscap paper, and when recorded, with the fiat of the judge or master in chancery, it is immaterial what becomes of the original deed itself. I can furnish to the Committee several conveyances of this description for large tracts of land, and very valuable considerations, that they may judge of the advantages of the American system.

You are aware that in the petition to the House of Commons from the townships, they pray for separate courts for the purpose of administering English law in the townships; is it your opinion that the existing courts might be so modified as to make those separate courts unnecessary?—I believe the present judges have full employment without being sent upon circuits into the townships. Their number must therefore either be increased,

or

or resident judges appointed; and I think the former the more expedient measure. It is not necessary, with an appeal to the superior courts, that these judges should be persons of very superior attainments. They will not, in the present state of the population and property of the country, be called upon to decide cases of difficulty or importance; and a material object in establishing courts of this description is to see that the machinery is as simple as possible, and the process easy, cheap and expeditious, and not clogged with restrictions of any description.

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If any change is to be made in the mode of conveyancing in Canada, would it be better to adopt the English mode as practised in this country, or the American mode?—I should say in addition to my former answer, that in all cases where you can assimilate the practice of the law in Canada to that of the State of New York, both with respect to process and property, it would be wise and expedient to do so.

Are you acquainted with the establishments for public Education in Canada?—I am not particularly acquainted with the establishments for education.

Either for the education of the higher orders or the lower?—The only institution I am much acquainted with is the seminary of Montreal, which I have always understood is conducted in a manner highly creditable to the gentlemen who superintend it, and much to the satisfaction of the Canadian community.

Do you know any thing at all of the schools established for the education of the lower orders in the townships?—I know very little upon the subject, except that if one can judge from the result, the American and English population in the townships, with less means and fewer resources, must have better or at least more efficient institutions for this object, seeing they are an exception to the rule which unhappily prevails in other parts of the Lower Province. They are the better educated part of the population.

The Committee have been informed that great inconvenience is felt in the townships from the very imperfect manner in which the Roads are laid out, and the extremely imperfect communications they have with the River Saint Lawrence; can you suggest any mode by which what system can be improved?—The greatest inconvenience felt by settlers in a new country is the want of roads and good communications. I should say, the first measure to be taken for the benefit of the settlers in the townships, is to provide effectually for this object. In the State of New York they have recently levied a heavy additional tax on the owners of uncultivated lands, to be applied by the public authorities in making and maintaining roads through them. This example might be advantageously followed; but the means should be applied in the first instance, and the sources from which they are to be repaid to the revenue looked to afterwards. The settlers have a just claim at all events on the public for good roads through the Crown and clergy reserves, and indeed through other lands granted in large masses, where Government have taken no sufficient means to ensure the performance of road duties.

Can you state what mode would be resorted to which could remove the inconvenience experienced in the townships, from the existence of the Crown and Clergy Reserves, as far as roads are concerned?—I should recommend the instant and immediate disposal of all such lands, both of the Crown and the clergy reserves; if they could not be sold, I would give them to settlers who would occupy them, and make the roads.

Would that answer apply to both Upper and Lower Canada?—Yes.

Are you aware that an Act of Parliament passed the House of Commons last year for the purpose of selling those reserves at the rate of 100,000 acres per annum?—If such bill has been passed, it will be found utterly impossible to carry this provision into effect.

Will you explain why you stated in your preceding answer, that you think it desirable to dispose of the whole of them immediately, although you say that the sale of 100,000 acres per annum is not practicable?—One half the clergy reserves in Upper Canada were sold to the Canada Company at a price greatly exceeding, if not nearly double, their value in money; and still the church, dissatisfied with the sale, prevailed upon the Colonial Department to put a stop to the arrangement. I am certain it is in vain to expect another such opportunity of disposing of them, or at least the mass of them, on terms satisfactory to the clergy, while land is granted almost for nothing to actual settlers in the country. In my former answer, I said I would give away the lands if I could not sell them.

Upon what grounds do you consider that the clergy in the Canadas will never consent to

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to a sale of those reserves, as you are probably aware that it has been communicated to them that all assistance from this country will cease? It was full time such communication should be made to them. I strongly recommended it on their first objection to the award of the commissioners, and then predicted an early repentance on their part of the course they had taken. There is no hope of their effecting a sale of 100,000 acres annually, or a quarter of the quantity; and I should much doubt their finding settlers for that quantity if they gave away the land. They do nothing to encourage settlers. They neither make roads, build mills, or lay out one shilling of capital. They desire to reap without sowing.

If then 100,000 acres cannot be sold in a year, in what manner do you recommend that all the reserves should be disposed of immediately?—I think it would be evidently better that some reasonable composition should be made with the church, and that the whole grant of land now in a state of mortmain should be resumed.

Where is the distinction between a composition made with the church, and a sale at the price at which the lands will fetch?—The composition should be very moderate; and the country might not be indisposed to undertake a small general tax to get quit of the nuisance. The free grant of the land to industrious settlers would be a great encouragement. I have understood also, in the late bill, provision has been made for the investment of the money arising from the sale of the church lands in the English funds, for the benefit and security of the clergy. Surely the framers of that Act must have overlooked the additional objection of draining from the small capital of the country any part of it for this invidious purpose.

In the present state of things, with those clergy reserves now all marked out, how would you recommend that the most advantageous disposal of them should be made?—I have already said, that I think the most advantageous disposal of them, if sales were impracticable to the extent stated, would be by granting them gratuitously to industrious persons, who might be inclined to settle, and undertake the road duties upon them.

You have said that a composition should be entered into with the clergy, how could that composition be effected, except by a direct expense from this country?—Beyond the means I have suggested, some might be raised from particular parts of the clergy reserves in the immediate vicinity of old cultivated lands, but they are to small extent. The great masses of clergy reserves are either interspersed with the new settlements, to the great annoyance and injury of the settlers, or in parts of the country where there is no chance of purchasers offering for them, at any price, for the next ten or twenty years.

Are you aware with regard to that sale of 100,000 acres per annum, which was considered as great a sale as could be calculated upon from year to year, that part of the arrangement is that the proceeds of it should be applied to opening roads?—In the first place, I deny the possibility of selling 100,000 acres a year to settlers; but this should not detract from the liberality and good intention of the church in devoting their property to so praiseworthy and charitable a purpose. It would certainly be a more beneficial employment of the money for the country, than sending it home for investment in the funds.

Are you aware that the Act of 1791 appropriated one seventh part of the land of those provinces to the maintenance of a Protestant clergy?—I am.

And you are aware that at present it has been a disputed point whether under the term "Protestant clergy," it applies exclusively to the clergy of the Church of England, or also to the clergy of the Church of Scotland?—I am quite aware of the feeling that exists in the country upon that subject, and of the claims of the different sects of Protestant Christians to participate in this fund; but hitherto the Church of England and the Colonial Office have agreed in their construction of the Act for the exclusive benefit of the ministers of that church, and there is a general impression in the minds of the people of the determination to establish the English church as the predominant and exclusively endowed church in that country, to which you can never expect their willing assent.

On what account?—Because the majority of the population are not members of the Established Church, far the greatest proportion being dissenters; and you may run the risk of increasing the evil by any attempt to make a separate and distinct provision for the Church of Scotland, if you do not at the same time provide for the claims of other descriptions of Protestants conceive themselves entitled to, under the Act of 1791.

In what way are the ministers of the Scottish church now supported in Canada?—I believe



believe some small allowances are made by Government, but that no part of such allowances are now derived from the reserved lands for the Protestant church in Canada.

Are you aware what is the amount in money of the whole proceeds that annually arise from the reserves in Canada, as applicable to the English clergy?—I suppose they must be trifling, but they would have been very considerable if the transaction that I have alluded to between the Canada Company and the Crown for the sale of the Reserves, had been carried into effect. I understand part of the allowances made to the Scotch clergy have been paid for out of other Government lands sold to the Canada Company by the Crown, which is not unlikely to excite additional jealousy on the part of other Protestant congregations, as a further application of the public money exclusively to the benefit of the Church of Scotland.

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In what way have the ministers of dissenting congregations, other than the Church of Scotland, been provided for in Canada?—I believe by the voluntary support of their communicants.

Are you aware of cases in which there has been a provision made for the Church of England where there has been a predominance of other persuasions?—I have stated it to be so made in Upper Canada, where there is a predominance of other persuasions. My opinion of the predominance of other persuasions is founded upon a resolution of the Assembly, declaring that the established religion of the Church of England was not the religion of the majority of the inhabitants. Upon a division in the Assembly on this resolution, I understand the majority was about 38 to 4 or 5, in favour of it.

Is Upper Canada generally divided into parishes?—I should think not yet, it is scarcely divided into counties.

In what way are the Clergy of the Church of England apportioned to any particular district or any particular portion of the inhabitants?—I do not know how they are apportioned, but the clergy of the Church of England have other advantages. They receive considerable allowances from the Society for the Propagation of the Gospel, the greater portion of whose funds arise from an annual grant of the British Parliament.

Do you know, in point of fact, how the clergy of the Church of England are paid?—The payments they now receive must be either from Government, or from such portions of the insignificant fund hitherto derived from the sale or rent of the clergy reserves, or from allowances from the Society for the Propagation of the Gospel; for I am afraid they would have little chance of provision, in the present state of feeling, from any voluntary payment on the part of the inhabitants.

Are the lands which you describe as clergy reserves held by the clergy in the same way as the church property here is held, or as glebe lands are held; or are they held by the Government, and the proceeds of them applied to the payment of the clergy?—I believe they are held by the Church as a corporation, and that no division or apportionment has as yet taken place. This corporation at present act under the control of the late regulations, and I have heard they rely mainly on the support of the English bishops to protect their exclusive claims against any attempt on the part of Government to alter the nature of the property, or to provide for the claim of other sects to participate in it.

Looking at the provisions of 1791, with respect to the clergy and to the manner in which those lands have been set apart, and to the difficulties which surround the subject, what is in your opinion the best course to be taken?—I think it of very little importance under what title, or by the provisions of what Act of Parliament, these lands have been set apart for the maintenance of an exclusive church in Canada. I am satisfied that all legislation with respect to a conciliatory adjustment of the difficulties existing in that country will be in vain, unless some mode is devised of putting an end to the title of the Church in these lands, and substituting some other provision for them.

Is not a large portion of the land that is held as clergy reserves granted out in small portions over the surface of the country, and would it not be more convenient that those small portions should be exchanged for some large mass elsewhere?—Nothing can be more inconvenient or more injurious to the industrious population than the mode in which these reserves have been laid out. Detached portions of each township intervening between the occupations of actual settlers, who have no means of cutting woods through roads and moras-

*Edward Ellice*, Esquire. 17 May, 1829. ses separating them from their neighbours. They retard more than any other circumstance the cultivation and improvement of the country. I do not think, however, in the present state of feeling in Upper Canada, it would be very expedient to attempt to remedy this defect by setting apart other lands in larger grants as a provision for the clergy.

You have alluded to a contract that was entered into by the Canada Company with Government for the purchase of those lands, and also for portions of the Crown reserves, will you be so good as to describe what the nature of that contract was?—In my opinion it was the most inconvenient contract that could have been made for the parties on both sides. The object of the Colonial Office was to obtain a considerable sum of money from the sale of land, and by the establishment of the company to encourage the transmission of capital for the improvement of Upper Canada. I am afraid, unless great caution is observed in the appropriation of the fund to be so received, it will become another source of grievance and complaint, and I do not think that objection likely to be diminished by the grant of any part of it as a provision for the ministers of any particular denomination, or for the foundation or endowment of schools or colleges on exclusive principles. The better policy would have been to grant to the company a more moderate quantity of land for a small price or for nothing, on condition of their expending double its assumed value in settling and improving it. By this means one point of contention might have been avoided, and the Government would have had at its free disposal four-fifths of the reserves to grant and settle by other methods, while I am satisfied the Canada Company would have done better by confining its first undertaking within its probable means of management; as it is, I fear great part of the funds hitherto received have been expended in unnecessary expenses attending the execution of the contract.

Can you state what quantity of land was conveyed to the Canada Company?—In the first instance, half the Clergy and all the Crown reserves in the townships which had been laid out and admeasured in Upper Canada, to be paid for or taken up in a series of years.

What number of years was allowed?—Fifteen years.

Is it likely that they would be able to take up the quantity of land they contracted for in that space of time?—In consequence of an alteration in the contract, rendered necessary by the objection of the clergy to the award of the commissioners appointed to value their lands, great difficulties have been experienced by the company in completing their arrangements, and a new negotiation was resorted to, to remove those difficulties.

Do you know what value the commissioners put upon the land?—I think the price awarded by the commissioners, for between 2,000,000 or 3,000,000 of acres under the original contract, belonging to the Crown and the Church, was 3s. 3d. currency an acre, the currency being ten per cent less than sterling, and the Company gave that price for the Crown reserves.

Did any contract take place under that valuation for the church reserves?—The Church, as I have stated before, refused to abide by the valuation after it had been awarded by the commissioners, and their refusal, as I have also stated, led to the greatest difficulty on the part of the company, a difficulty which, with respect to the completion of their contract, they may yet have great trouble in conquering. Government acquiesced in the refusal however, and after much discussion, and a submission to counsel on some technical point, urged by the Church in support of their objection, the directors agreed to release the Government from that part of the contract, and a new grant of a block of land, to the extent of 1,000,000 of acres on the borders of Lake Huron, was substituted for the clergy reserves; Government agreeing that a large proportion of the price to be paid for the new grant should be laid out in making roads, and in other improvements upon the property.

Is any sum of money annually paid by the company to the Crown?—I think two years payment, to the extent of nearly £40,000 has been either paid or directed to be paid by the company on account of this purchase, and the other payments will go on, according to the present agreement, at the rate of from £15,000 to £20,000 a year, until the whole of the purchase, exceeding £350,000 is paid, or such part of it as I have before adverted to, laid out in the improvement of the new grant.

Have the company power to alienate land in fee?—Certainly, they have; but questions are now depending between the Government and the Company, and altogether it is not a very clear case, in my opinion, that the obstacle interposed by the refusal of the clergy

to concur in the award of the commissioners may not lead to further and graver difficulties.

Is there any fixed annual payment to be made by the Canada Company?—They must take up land to the extent of £15,000 annually.

Are they bound to continue the payment after they have taken up all the land?—No, when they have paid for it, they have a free title to it.

You are aware that instructions were issued to the commissioners that valued this land, which instructions were approved of both by the Canada Company and the Government?—I am quite aware that instructions of that description were sent, and more unwise instructions, although they were agreed upon by the Company and the Crown, never were issued to any set of commissioners.

Are you aware that a question arose whether the Commissioners had executed those instructions, and that a reference was made to a professional gentleman upon the subject?—As there could be no ascertained principle upon which the Commissioners could execute their instructions, their award was of course open to every kind of objection which either party chose to take to it; but I do not think the particular objection taken by the Crown or the Clergy could have been maintained on reference to any two men in Great Britain, of competent knowledge or habits of business in such transactions.

Was not such a case as that, in which from the circumstances no absolutely defined principle could be established, precisely a case in which arbitration might be resorted to, as to the fact whether the fair principle of the instructions issued to the Commissioners had been satisfied?—As I never could understand the principles laid down in the instructions, which directed the Commissioners to value between two and three millions of acres of wild land in a country where in fact it could have no real value for money, no sale of any quantity of land amounting even to 10,000 acres, having, in my recollection, ever previously taken place, I cannot see what limit could have been imposed to the discretion of the Commissioners, or what other rule than the most visionary speculation could have guided their award. Certain I am, they did more than ample justice to both Country and Church.

Although you may be of opinion that nothing could be more absurd than those instructions, were they not approved by the majority of those interested in the formation of the Canada Company?—The commission itself, and the instructions, were both approved of by the majority of the Directors of the Canada Company. It was projected in the first instance by most respectable persons, but who knew as much of Canada as they did of Japan.

You are understood to have stated to the Committee, as your opinion, that this sale of land to the Canada Company, for which ultimately the sum of £350,000 is to be received, had better have been given as a donation to the Company, subject to imposing settlement duties for the general improvement of the Province; are you not aware that one of the avowed objects of that sale was, to relieve the British Parliament from the necessity of voting an annual estimate for the Civil Government of Upper-Canada?—I have not stated that between two and three millions of acres of land had better be given to any company or any body in Upper-Canada; but I stated at the time, and pressed my opinion on both parties, that if half a million of acres had been so given, or sold at a moderate price, without all the expensive and unsatisfactory process of an attempt to value that which in fact was otherwise unsaleable, and the company had been bound to lay out a portion of their capital in the improvement of that half million of acres, the arrangement would have been a very beneficial one for the country. I do not see the necessity which was imposed upon the Government of disposing of this land for the payment of the Civil List of Upper-Canada, nor am I aware that the money has been hitherto so applied; but there could be no occasion to resort to such a source of revenue, supposing it to have been disadvantageous in other respects, inasmuch as the ordinary revenue received on the trade of Canada has been always perfectly adequate, or might have been made perfectly adequate to the discharge of the Civil Lists of both Provinces.

You are understood to state, that by proper management the revenue of Upper-Canada

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Canada would have been sufficient for the maintenance of her Civil List; will you be good enough to detail in what manner that could be effected?—It could have been effected either by increasing the duties upon importation at Quebec, upon articles consumed in Upper-Canada, or by giving her a fair portion of the revenue generally collected at Quebec.

Are you not aware that the British Government could not, for the mere and avowed purposes of revenue, have imposed custom duties in Lower-Canada for the sake of increasing the revenue of Upper-Canada, and enabling her to discharge her civil list?—I am aware that the greatest possible objections exist in principle to their doing so; but I am also aware that in point of fact they have got over those objections, and, by the Canada Trade Act, have imposed duties to an extent quite equal to the expense of the Civil Government of both Provinces, without consulting either of the Provincial Legislatures. The Canada Trade Act, for this purpose, had been passed three years before the arrangement with the Canada Company.

Are you not aware that this country has no power to regulate the distribution of revenue between Upper and Lower-Canada, except upon the principle of arbitration between the two provinces, and that the result of that arbitration has been to give Upper Canada a proportion of revenue not adequate for the maintenance of that establishment?—After all, the question resolves itself into what is the fit amount of the expenditure of the Civil Government, and what deficiency it was necessary and advisable to supply, and whether that deficiency has been supplied from this fund; and I should be able to give an opinion upon that subject when I saw the application of the monies hitherto received from the Canada Company. I think, for the satisfaction of the Committee, they had better obtain a return of the amount of money received from the Company, and of the application of it, up to this time.

Can you inform the Committee whether, in the settlements of the townships, the persons belonging to the different denominations of religion have collected in different districts, or are they generally intermingled?—They are scattered all over the country.

Were not the boundaries of Upper and Lower-Canada settled in consequence of the provisions of the Act of 1791?—They were.

In your opinion, has the boundary line between the two provinces been drawn conveniently for the two provinces; or is the division so arranged as to give rise to very conflicting interests and separate feelings between them?—The division altogether was most unfortunate, and has completely verified the predictions of its consequences, made at the time by the agent of Canada, and by all the witnesses examined at the bar of the House. The result, so far, of maintaining distinctions between two classes of subjects, has produced no proof of its policy. As to the particular boundary or division of territory, that is very immaterial, and I do not believe you could satisfy either party in the general questions now under discussion by any alteration in that respect.

In point of fact, has not a very strong collision of feeling, and a sense of difference of interest arisen between the inhabitants of the two provinces?—The greatest possible collision of interest has arisen on the subject of the revenue; and unfortunately there is every reason to apprehend it is only now at its beginning.

Will you be so good as to state the principal grounds of difference that exist between the two provinces?—The principal ground is, the pretension set up by the French Legislature at Quebec to regulate the trade of the St. Lawrence, and to levy all duties upon the exportation or importation of commodities either going from or to every part of Canada, without consulting the Upper-Province on this point of deep and vital importance to its inhabitants. This grievance will of course be more deeply felt as the hitherto rapid settlement of Upper-Canada, encouraged by more liberal institutions, and a better state of law, progressively advances. The French population of the Lower Province have not increased or improved their condition in any respect in proportion to that of the English population either in Upper or in Lower-Canada, nor is there any reason to believe that their numbers or their interest in the country will in future increase in proportion to the increase that must take place in both colonies in British inhabitants and British capital. As the British interest increases in either province, a community of feeling will necessarily lead to their closer connection together; and I am afraid,

afraid, if even it was the determination of Parliament to maintain the ascendancy of one class of the population of Lower-Canada, and their exclusive powers over the taxation and commerce of the country, the British inhabitants of both Provinces would, at no distant time, look to some other means of relieving themselves from so intolerable a grievance.

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Are you sufficiently acquainted with the course of trade upon the St. Lawrence, to know whether, in point of fact, any obstruction exist in the export of the produce which the inhabitants of Upper-Canada have to dispose of, or whether the inhabitants of Upper-Canada can export their produce as freely as those in the Lower Province?—At present there is no obstruction. Formerly some regulations were attempted to ascertain the extent of goods transmitted to Upper-Canada, I believe, with a view to arriving at data to assist the commissioners in apportioning the revenue. Some complaint, I have also understood, was made of a tax levied by the Assembly at Quebec, on rafts of timber coming down the Rapids from Upper-Canada, for the purpose of improving the navigation, and that the money so levied was never expended on that object; otherwise the inhabitants have free ingress and egress for all their commodities, subject of course to such regulations and duties as the Lower Legislature think fit in their discretion to impose upon them.

Are any duties imposed upon any description of commodities on being exported from Canada?—Very trifling, if any.

Are the duties which are collected upon goods imported into Quebec or Montreal, and which are imposed and regulated by the Assembly of Lower-Canada, influenced in a certain degree by such Acts as have passed in this country for the purposes of regulating the trade?—I have stated, in a previous part of my examination, that the disputes between the provinces on matters connected with their joint revenue, led to the Canada Trade Act of 1822; and by the provisions of that Act the most valuable part of the constitutional functions of both the Colonial Legislatures are in effect abrogated. That Act passed almost unanimously in Parliament, and received the especial support of those who opposed the union bill.

Considering the respective habits and manners of the inhabitants of Lower and of Upper-Canada, would not any system of import duties be likely to affect the two classes very differently, as to the hurt that they would produce upon each?—I should think not; and I am quite sure if the case was otherwise, the better policy would be to avoid all distinctions.

Do you think that it would be best to enact such a system of custom duties as would, with reference to the articles upon which they were imposed, have an equal bearing upon the population of the two provinces?—From the nature of the country it would be impossible to do otherwise, even if it were advisable.

Is their consumption similar, from their habits and wants?—I should think, in some respects, dissimilar. The two great articles upon which the revenue is now raised, are rum and tea. The French Canadians are probably the greater consumers of rum, and the English population, following the habit of their own country, and of their neighbours in America, the greater consumers of tea; but there is a considerable consumption of these commodities by both parties.

Is it not probable that if a large duty were imposed on the tea imported into Upper Canada, where the English population chiefly reside, it would press much more heavily upon them than upon the Canadians?—A heavy tax upon tea would be both objectionable to the people, and impolitic; but the particular grievance with the people of the Upper Province would be, that the Assembly at Quebec should tax their tea without their consent, and I suppose it is not intended to adopt a permanent system of taxation by Parliament.

Is it not absolutely necessary that that same rate of duty should be collected upon goods imported into the St. Lawrence, whether for the consumption of the Upper or of the Lower Province; and if different rates of duty were to be levied in the two provinces, would it not inevitably lead to an intolerable extent of smuggling between the two provinces?—The inevitable result of any attempt to levy different rates of duties at different ports in the St. Lawrence above Quebec, would be smuggling to an extent quite destructive of the revenue, beyond other obvious objections to which such a system must be liable. Of course it is necessary certain rates of duties should be collected on

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the whole trade, unless Parliament was disposed most unnecessarily to pay the expenses of the civil government out of the revenue of Great Britain.

Would it be possible to fix upon some spot which should be made a legal landing place for all goods to be transferred to Upper-Canada, and to make any arrangement that should insure the transport of those goods into Upper-Canada, without any portion of them being transferred for consumption into the province of Lower-Canada?—It would be quite impossible, and if the case was otherwise, the restrictions and regulations on the trade of Upper-Canada would be an intolerable nuisance. At present the merchants and storekeepers in the Upper Province purchase their annual assortments of supplies for their customers in the towns and villages at Montreal. Very few goods are exported from this country direct for Upper-Canada. Montreal is the great mart through which far the larger proportion of the whole trade is and must continue to be conducted.

If those circumstances make it necessary that the same rate of duty should be collected on all goods passing up the St. Lawrence, whether for the Upper Province or for the Lower, is it possible to devise any system of division and appropriation of the produce of the custom duties collected in the St. Lawrence, between the two provinces, which must not necessarily be fluctuating and imperfect; supposing a perfect proportion were arranged this year between the Upper and Lower Province, according to the respective consumption of the two provinces, must not that proportion necessarily become imperfect in subsequent years, from the variation that would take place in the population and wealth of the two provinces?—I am of opinion any such system is impracticable, and would only lead to renewed complaints and disputes. We have already some proof of this in the difficulties that have hitherto attended the attempts to devise a satisfactory mode of reference between the two provinces.

Have the goodness to describe those difficulties?—Referees were appointed by the two Governments previously to the Act of 1822, to decide upon the proportion to which Upper-Canada was entitled of the total revenue raised at Quebec. Upon some difference or obstacle arising to an adjustment, the Legislature of Lower-Canada refused to grant the necessary powers to enable the Government to proceed in the arrangement, and the Upper Province was thrown upon this country for the means of paying her civil list.

If the parties were ever so well inclined to agree to a proportionate division, would not such division in itself necessarily be imperfect?—Certainly it would; and without meaning to state any opinion myself on the point, the fact should not be withheld from the Committee, that a general impression prevails among the English inhabitants engaged in the trade of both provinces, that the representatives returned to the House of Assembly by the mass of uneducated Canadians, are not exactly the persons best qualified to decide on questions connected with the trade, or revenue affecting it; and this impression does not tend to diminish the objections to their exclusive power of legislation on this subject.

If you were called upon to divide the customs duties collected between two provinces, upon what principle would you form such a division?—It is impossible to divine a principle upon which one could make a satisfactory division. If you were able even to arrive at some tolerable estimate of the consumption of particular commodities in the two provinces, that would be no great assistance. There are other consumers, and to a considerable extent, of commodities on which duties are levied at Quebec, and the Lower Province have no greater claim than the Upper to any addition to the revenue from the general trade of the St. Lawrence. The duties levied on the trade between the colonies and their neighbours form part of the mass.

Whatever proportion is fixed, must it not necessarily vary from time to time?—It must vary with the annual increase of the population, which, under present circumstances, will go on in a much more rapid progress in the Upper Province.

If one rate of customs duties must be collected in the revenue, and one mass of revenue is collected, and no fair or equitable division is made between the two provinces, does it not necessarily follow that there must be one expenditure?—That I take to be one of the most difficult points of this case. Supposing any idea to be entertained of re-uniting those provinces, I have always thought the more prudent course to adopt, and one which the paramount object of preventing at first any collision in the united Legislature on the here-

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tofore separate interests of the parties would justify, would be to fix the present revenue, and apply such part of it, for a certain number of years, as would be necessary to defray the charges of the existing civil lists in both provinces.

How could that object be effected?—By adequate provisions in a bill for uniting the Legislatures, specifying in the schedule to the bill, in minute detail, the different charges to be defrayed, in such manner so that there should be no ground for suspicion that it was intended either to increase the charge or to give the executive authority any discretion in the payments. I think this arrangement might not be objected to, on the ground I have stated, for a limited period of from five to fifteen years. Any surplus of revenue, or monies raised for the improvement of the country, or for the increase of the establishments in proportion to the gradual increase of the population and the wants of the administration, would be still under the control of the Legislature, and at the termination of the limited period the full power of regulating the taxation and expenditure would revert to them. Before that time, it is to be hoped, all separate habits and interests might be nearly lost sight of, and the present collision of feelings and prejudices give way to a general desire to consult only the common good and the prosperity of the country in the united Legislature.

Has the House of Assembly of Upper Canada ever expressed any wish for a union of the improvinces?—I have not heard so, nor do I conceive the fact either way to be of much importance. The people and the Legislature are only desirous to participate in the exercise of the undoubted right of the whole people to raise the revenue and regulate the commerce of the country.

In what way, in the case of the union, would you provide for the more general services, and the rest of the revenue remaining after the disposal of the civil list?—I would leave it at the free disposal of the united Legislature. I am perfectly satisfied, a governor of conciliatory disposition, popular character and good sound sense, acting upon instructions from this country, founded on liberal principles, would have no difficulty in balancing and conciliating the different parties in the Legislature, and procuring from them ample means of improving the institutions, and promoting the general interests of both provinces.

When the union of the two provinces was proposed in Parliament, did not a feeling arise in Lower Canada extremely hostile to that measure?—An adverse feeling certainly was expressed by the French population in Lower Canada, but not to a greater degree than was anticipated.

Was not one of the grounds upon which that feeling was founded an apprehension that under the circumstances of the union the provision for the maintenance of the Roman Catholic clergy might be endangered?—There were several ill advised clauses in the bill. It was suggested by the original proposers of the measure that some clause should be inserted protecting the Catholic church and the rights of the clergy from all encroachment by any act of the new Legislature. This intention was not accomplished by the clause in the Act, which was construed by the clergy as directed hostilely against their establishment. Nothing could have been so contrary to the feeling with which any mention of the church was suggested, and it would be consistent equally with justice and policy to provide distinctly in any measure for uniting the colonies, against all dangers the clergy may apprehend in this respect.

Each of those provinces having now a representative assembly, would it in your opinion be possible or desirable to leave to those assemblies the regulation of such matters connected with each province as might be considered as local and particular, and to assemble a Congress, consisting of certain members of both bodies, to which might be given the charge of such concerns as should be general to the two provinces; among which may be enumerated the collection of the revenue, great institutions for the purpose of defence, and the general application of the revenue, appointing to each of them a fixed civil list?—If it were possible to satisfy the parties by any arrangement more than by the whole measure of a union, I should be inclined to sacrifice a great deal for that object. But a Congress would in fact be only a union with more complex machinery; and I doubt whether the objection of one individual in Lower Canada to any measure of this description would be removed by it. The same difficulty would occur in apportioning the influence of the two parties in the Congress, as in a Legislature common to both, and you must make some alteration in the

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the constitution of the Assembly of the Lower Province, by the admission of representatives from the townships. The great desideratum is to infuse into the legislative body, under whatever regulations it may be placed, persons of liberal education, who may be able to counteract the influence of narrow habits and old prejudices in retarding the prosperity of the country.

Would not the same objection exist if a legislative union took place; would not the effect necessarily be, upon similar principles, to extend the influence of the French Canadians to Upper Canada?—Certainly not, if you were to unite the two Legislatures, adding to them a fair proportion of representatives from the unrepresented townships in Lower Canada.

Have the Legislatures of the two provinces ever come into collision on any other points except those connected with trade?—They could not come into collision upon other points, but this is one of paramount and vital importance.

Have not there been many Acts passed by the Legislature of Upper Canada to which there have been no similar Acts passed in Lower Canada?—Of course there have been; the state of society is different.

Is the population of the great towns of Montreal and Quebec principally French or English?—Principally French in numbers. But this would alter rapidly, and a great amalgamation of the present distinct classes, and a still greater alteration in property take place, if the tenures were changed; and the Crown has now the uncontrolled power of effecting this object in both towns.

Does the French population also possess the major part of the wealth and respectability in those towns?—Certainly not. The whole trade, and all the capital employed in it, or at least in the branches of trade, is in the hands of the English.

Could any possible change of boundaries between Upper and Lower Canada remove the difficulties at present existing?—I can conceive none.

What would be the effect of including the Island of Montreal in Upper Canada?—I do not think that any new division of the boundaries would improve the condition of Upper Canada, and the separation of Montreal from the Lower Province would produce more dissatisfaction than a more efficient measure.

Would not annexing Montreal to Upper Canada transfer a very large mass of the French population into that province, in which no French interest exists at present?—Certainly; but the character of the population in this most important town will progressively change.

What provision of the Legislature of either province has been made in pursuance of the provisions of the Act of 1791, for the extension of the right of representation and suffrage to the new settlers in either province?—In Upper Canada I think the original number of the Assembly was 16; in Lower Canada, 50. The Assembly of Upper Canada have taken advantage of the power given them by the Act of 1791, to extend the representation in proportion to the new settlements and increase of the inhabitants of that province, and the original number of 16 has been gradually increased to the present number of 43 or 45. The country is divided into counties, and I believe each county is entitled to send a representative when there are 2,000 inhabitants, and a second when the number increases to 4,000, when the representation of the county is complete. This law is still in operation, and of course the number of members of the Upper Assembly will progressively increase with the population. The Assembly of Lower Canada having no disposition to admit representatives from the English townships, have never added one to their number, nor have they acted like the Upper Assembly on the powers in the bill of 1791. The consequence is, the new settlements remain unrepresented, and the whole powers of legislation affecting the mode of revenue of both provinces, and all other interests of the Lower, are confined to the original 50 members returned almost exclusively by the French population. It might be advisable, in considering the means of redressing the complaints of the English population on this head, to refer to the institution of the neighbouring State of Vermont. There, it is considered so essential to provide for the greater wants of new settlers, that a right of representation is given to a much smaller number than by the regulation in force in Upper Canada. Two members, I understand, are given to each new township when 80 taxable inhabitants are resident in it, when the representation of such township is complete, and cannot be increased, notwithstanding any addition to the population.



lation. The town of Burlington, I understand, was represented when it only contained eight or nine *taxable* families. The population has since increased to 5,000, but their share in the representation remains the same as in the first instance, while other representatives are constantly added to the Legislature from new settlements. The situation and condition of these settlements is very analogous to those in the townships of Lower Canada.

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Have not the House of Assembly of Lower Canada twice passed a bill to extend the representation precisely on the principles of the State of Vermont?—That may have been, and I believe was the case, but no such law was passed.

Does not the principle on which the State of Vermont gives an advantage to a newly settled country, consist merely in giving the advantage of what is called the fraction to a newly settled country, that is to say, that there must be a certain number of inhabitants in a township before it can have one member; and when that is passed, before they get to the number that entitles them to two members, they give them what is called the fraction?—That rule, I understand, only applies until the number of taxable inhabitants arrives at 80, when the representation of the township is complete. The great advantage the new settler has in this principle of representation is, that the first 80 inhabitants have by their two members as much influence in the Assembly as a population of fifty times the amount in the old settled townships; and this advantage has been given to extend and encourage the cultivation of the country.

Did not the bill brought in by the House of Assembly in Lower Canada, at the same time that it provided for the increase of representation in the townships, founded upon the increase of population, extend that same principle of increase to the seigneuries which are now already represented, whereas in the State of Vermont no increase of the representation took place in the already represented districts when new districts came into the representation?—Upon recollection, I think, the first was so. The bill sent up by the Assembly for the increase of their numbers would have admitted four or five members from the townships, and added about 20 from the seigneuries; in short, only aggravating the evil, under pretence of liberality to the townships.

Can you state any other grounds of objection which have been urged to the union of the two provinces besides those which you have alluded to?—I have heard of no other grounds; but it is quite impossible there should not be a great difference of opinion on a subject affecting in so many ways the particular interests, both of individuals and parties. For instance, persons residing at Quebec, and at York in Upper Canada, may neither approve of the removal of the Legislature to Montreal, supposing that to be the proper place, if a union should be decided upon.

Are you aware what increase of population has taken place among the French Canadians since the year 1791?—A very considerable increase has taken place, but not in proportion to the increase in the English population in both countries.

Are the elections at Montreal and Quebec in the French or English interest?—Every election depends on the French interest; and I doubt very much whether there would be a single English representative returned if there were a new election to-morrow.

Even in the commercial towns?—Even in the commercial towns. The elections also depend in a great measure on the influence of the clergy.

Is the right of suffrage universal in those towns?—I forget what the right of suffrage is. I proposed in the Union Bill that the right of suffrage in counties should be 5l. a year, and the right in the towns 10l. a year.

Do the Protestants in the seigneuries pay tithes to the Catholic clergy?—They pay no tithes, they contribute in no way to the support of any minister except voluntarily.

Do not the Catholics pay tithes to their pastors?—Catholics are compelled by law to pay tithes. Protestants are exempt from all claims of this description.

Do you conceive it would be possible and desirable to erect either of the great towns into a free port, and the duties should be levied upon the issue of goods from such free port, in proportion as they went out to one province or the other, or would that give a facility to smuggling?—The restriction would be very unfair to other districts of the country, and prejudicial to the general trade, and it would be impossible to prevent smuggling on so great an extent of navigation.

Cannot vessels sailing up the river land at any point?—Certainly. At present all ves-

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*Edward Ellice*, Esquire, sels enter at Quebec; but if bound to Montreal, the consignee only gives bond at Quebec, and pays the duty afterwards on discharging at Montreal.

17 May, 1828, Do you conceive it would be possible to form a representation upon the principle of admitting some of the great towns as independent bodies into a confederation, such as exists in the north of Germany?—I am afraid it is too late to attempt the introduction of new principles of that kind in America. You must either improve the system that exists on the model of our institutions at home, or copy from the simpler forms in practice in the United States. No other method will be congenial to the habits of the English or American inhabitants of Canada.

Would it be easy to circumscribe such a district as should embrace little more than the French population, if you wished to throw them into a separate province, forming a part of a confederation?—I do not see much difficulty in forming a separate establishment for the French, if you deprive them of their exclusive control over the legislation affecting the trade and revenue, and introduce satisfactory reforms to the English inhabitants in the tenures of property and the laws; but all these alterations would produce equal dissatisfaction with any more general arrangement, and do what you will to maintain the present distinctions, the progress of civilization, the increase in power of the inhabitants of the countries watered by the St. Lawrence, and the probable march of events in America, will be eternally counteracting your views, and in the end lead to the necessity of more decided measures. I wish to add, that in any thing that may have fallen from me in the course of these examinations, I have not had the least intention of imputing blame to any persons connected with the executive Government in either province. I believe they have acted under instructions from this country, and that the difficulties they have had to contend with, and the discussions in which they have been involved with the Colonial Legislatures, were the inevitable consequences of a determination to persevere in the system of government I have described to the Committee, and which could scarcely have been avoided while that system remained unreformed and unimproved.

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*John Neilson, Esq. called in; and examined.*

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Where do you usually reside?—My usual residence has been at Quebec; I have resided for the last five or six years six miles from Quebec.

Are you a native of Quebec?—No, I am a native of Scotland.

How many years have you resided in Lower Canada?—Thirty seven years.

Have you ever been, or are you at this time a member of the House of Assembly in Lower Canada?—I have been a member of the House of Assembly of Lower Canada for the county of Quebec for ten years.

Are you now deputed by any portion of the inhabitants of Lower Canada to make any representations to His Majesty's Government in this country?—I am deputed with Mr. Viger and Mr. Cuvillier, of Montreal, on the part of the petitioners who subscribed the petition presented to the House of Commons lately.

Will you state what the grievances are of which the inhabitants of Lower Canada complain, and what it is they seek a remedy for from the Government of this country and from Parliament?—I shall take the liberty of stating the grievances as they are stated by the petitioners themselves: they complain, in the first instance, that the state of the province has been growing worse for several years past in respect to trade and the value of landed property, and the profits of industry. They complain that the expenses of Government are high. They complain that there has been a waste of the public revenue and resources; that the public monies advanced or paid for public purposes are not sufficiently accounted for; that large losses have consequently accrued; that the laws that are conceived by the people to be necessary for the common welfare are rejected by one of the branches of the Legislature, that branch being principally composed of persons who are dependent upon the Executive Government of the province. The laws, of the rejection of which they complain, are mentioned in the petition; they are various annual bills, granting the supplies for the support of the Provincial Government; for affording legal recourse to the subject having claims against the Provincial Government; for regulating certain fees and offices; for enabling the inhabitants of the towns of Quebec and Montreal to manage their local concerns; for extending the facility of proceeding in courts of justice more generally throughout the province than at present; for providing a new gaol for the city of Montreal; for qualifying justices of the peace; for continuing the militia laws; for increasing the representation in the House of Assembly; for the security of the public monies in the hands of the receiver-general of the province; for the independence of the judges; for appointing an agent to reside in England to attend to the affairs of the province: these are all bills that have passed the House of Assembly, most of them several times, I believe all several times, and have been rejected in the Legislative Council.

Have they all been rejected by the Legislative Council, or have they been disallowed by the King?—They have failed in the Legislative Council; there are none that I have mentioned that have been refused by the King.

Are there any of those which have been amended by the Legislative Council?—Yes, there are.

Can you particularize which those are?—A supply bill has been sent down amended; the bill for regulating certain fees and offices, I believe, was amended once; the bills for facilitating the administration of justice have been amended; the bill for continuing the Acts regulating the militia of the province was sent down amended. I am ready to give in, if the Committee wish for it, copies of those bills as latterly sent up to the Council.

*[The witness is requested to furnish the Committee with copies of the same.]*

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Are there no road bills or education bills that have been sent up by the Assembly?—Yes, there are; but they are not mentioned in the petition. They complain that the bills mentioned in the petition, and others, were rejected by the Legislative Council, and they ascribe that rejection to the Executive Government of the province.

Were they rejected with or without discussion?—Many of them were rejected without discussion; many of them were not proceeded upon on account of a rule that the Council imposed upon themselves in 1821 or 1822, not to proceed upon bills of a certain description: for instance, not to proceed upon appropriation bills of a certain description.

Where does that rule appear?—It appears upon the rules of the Legislative Council.

Can you furnish the Committee with a copy of the Standing Orders of the House of Assembly?—I think I can.

The next grievances that the petitioners complain of are the applications of money levied in the province, without appropriations by the Legislature thereof; the next is advances of money to persons who have not sufficiently accounted for the same, dissipation of public money, appointment of persons to be intrusted with public monies without full security given; the diversion of the revenues of the estates of the late Order of Jesuits from the purposes of education of the youth of the province; the non-execution of the conditions of the grants of the waste lands of the Crown; and the last is attempts made in England to obtain changes of the established constitution in the province by the officers of Government, during the existence of all these abuses. Hitherto I have confined myself to the complaints in the Quebec petition, and the county of Warwick petition; but there are complaints against the Governor-in-Chief in the Montreal petition which are not in the Quebec petition; the Montreal petition was adopted subsequently, and it was not approved of in the county of Warwick and some other parts. In addition to the complaints of the Quebec petition, the Montreal petition adds some which are directed against the Governor; first, with withholding of despatches that ought to have been laid before the Legislature; the dismissal of Messrs. M'Cord and Mondelét, the stipendiary chairman of the quarter sessions for the district of Montreal; the retaining of Mr. Caldwell as receiver-general after his default was known by the Governor, and continuing Mr. Perceval as collector of the customs after he had taken illegal fees; appointing Mr. Hale as receiver-general without security, and Mr. Young as sheriff without sufficient security, although both their predecessors had been defaulters to a large amount; continued abuse of the representation of the country in the newspapers established by his Excellency; threats of dismissals contained in those papers, dismissals of militia officers, and interference with the elective franchise, and with members of Assembly for the exercise of their freedom of voting in the House; answers to addresses, in which the Assembly is very harshly spoken of; misrepresentations of the Assembly in a speech delivered in 1827. These are all in the Montreal and Three Rivers petition, and are omitted in the Quebec and Warwick petition. I am ready to enter into explanation of any one of those charges, and I am ready to produce proof by public documents of the whole of them, particularly of those in the Quebec and Warwick petition.

There are two or three of those complaints in the Montreal petition, which are public complaints; why are they omitted in the Quebec petition?—The Quebec resolutions and the Montreal resolutions were adopted almost simultaneously; there was no concert between the two places. Each one of course mentioned those articles that they conceived bore the hardest upon them. In Montreal they felt those articles as bearing hard upon them, and in Quebec they did not say a word about them.

Seeing that so many bills have passed the House of Assembly which have been rejected by the Legislative Council, will you state to what circumstances you believe that to be owing?—The petitions ascribe the rejection of those bills more to the composition of the Legislative Council, the dependent situation in which the members are placed relatively to the Governor, than to any thing else.

Will you describe the constitution of the Legislative Council?—When I left the province there were resident in it 27 legislative counsellors; Jonathan Sewell, Speaker, 900*l.* a year; President of the Executive Council and Court of Appeals, 100*l.*; Chief Justice of the province and the district of Quebec, salary 1,500*l.* besides about 150*l.* for circuits, making altogether 2,650*l.* sterling. The Rev. C. J. Stewart, Lord Bishop of Quebec, salary

salary and allowances as bishop paid by Great Britain, about 3000*l.*; Sir John Johnson, Indian Department, paid by Great Britain, it is merely supposed 1000*l.* a year; I cannot say whether it is correct or not.

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What is the Indian Department?—There is a department in Canada called the Indian Department; it is a department that was established during the American war to have the direction of Indian affairs. John Richardson, an executive counsellor, 100*l.* a year; Charles St. Ours, half-pay as captain, paid by Great Britain; John Hale, appointed by Lord Dalhousie to act as receiver general, 900*l.* a year; as executive counsellor, 100*l.* making together 1,000*l.* a year.

Have all the executive counsellors 100*l.* a year in that capacity?—They have. John Caldwell, the late receiver general, is now paying by agreement for holding his estates, 2,000*l.* per annum, which are supposed to be worth much more. That is the only thing that places him in dependence upon the governor. H. W. Ryland, clerk of the Executive Council, salary and allowances, 650*l.*; pension, 300*l.*; Clerk of the Crown in Chancery, no salary is mentioned; fees of office unknown; total known, 950*l.* James Cathbert is said to be a half-pay captain on the establishment, but I do not know whether he is or not. Charles William Grant, seigneur proprietor, and late of Isle St. Helen, which he has exchanged with the Government. P. D. Debartzch, a landed proprietor, supposed to be worth at present 1,500*l.* per annum. James Irvine, late executive counsellor, merchant. M. H. Perceval, collector of the customs and executive counsellor, in the receipt for the last ten years, supposed, upwards of 3000*l.* per annum; as executive counsellor, 100*l.* L. De Salaberry, captain, half-pay; and in Indian Department a provincial pension of 200*l.*

Is that for life or during pleasure?—The pension has been stated to be instead of an office by the Legislature, and I should suppose he holds it independently of any one; but I have heard that he is dead since I left the province.

Are the pensions you mentioned before granted by the Executive Government?—The pension to Mr. Ryland was granted by the executive, but that has been voted several times by the Assembly. Mr. De Salaberry is stated to have been replaced by Mr. Taschereau, a judge in the King's Bench at Quebec. William Burns, late the King's auctioneer, a wealthy retired merchant; Thomas Coffin, chairman of the quarter sessions for Three Rivers, 250*l.*; Roderick McKenzie, a retired merchant; L. P. C. Delery, grand voyer of the district of Montreal, salary 150*l.* and fees unknown; Louis Gagy, late sheriff of Three Rivers, promoted to Montreal; office supposed worth per annum 1,800*l.*; Charles De Salaberry, seigneur; James Kerr, judge, King's Bench, Quebec, 900*l.*; Executive Counsellor, 100*l.*; Judge Vice Admiralty, 200*l.* besides fees; circuits 150*l.*; making together 1,350*l.* Edward Bowen, judge, King's Bench, Quebec, 950*l.*, and circuits 150*l.*, making 1,050*l.*; Matthew Bell, merchant, lessee of the King's forges; William B. Felton, agent for Crown lands, supposed 500*l.*; Toussaint Pothier, seigneur; John Stewart, late merchant and sole commissioner of the Jesuits estates, and executive counsellor, supposed 600*l.*; John Forsyth, merchant. The total amount of the sums received by different members of the Legislative Council from the public is 17,700*l.*

How much of the 17,700*l.* is paid by the province?—I suppose about 5,000*l.* or 6,000*l.* of the 17,000*l.* are paid by Great Britain. Of the 27 members of the Legislative Council, there are 14 who receive payment out of provincial funds, 4 out of British funds, and 9 receiving no pay; 9 of them are natives of Lower Canada; and of the 18 above mentioned who receive pay from the public, 7 are also Executive Counsellors.

Are not all the commissions in the colonies during pleasure?—All commissions are during pleasure; all may be suspended by the Governor.

Independently of any motive that you imagine those individuals may have from the salaries they receive, are there not strong grounds of political difference of opinion with respect to those measures existing in the province?—Certainly the people of the province wish for the bills, and the Government does not wish for them.

Is the difference of opinion confined to the Legislative Assembly and the Government, or is there any other portion of the population that differ in opinion as to the wisdom of those measures?—There may be a very small portion.

What portion is it that differs as to the propriety of those measures?—Principally those that are dependent upon the Executive Government.

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Have you any thing to add with respect to the constitution of the Legislative Council?—I have some facts to state; I wish to state that the Lord Bishop has been but lately appointed, of course he cannot have been an active member; that seven of the members, of which I have given a list, do not attend at all, or very seldom; Sir John Johnson, Mr. De St. Ours, Mr. Louis De Salaberry and Mr. Burns, on account of ill health or being superannuated; Mr. Cuthbert, Mr. Debartzch and Mr. De Salaberry, have discontinued their attendance.

Why have they discontinued?—I cannot tell; they did not attend at the last session; one of them I believe attended two or three sessions ago; I heard Mr. Debartzch say that it injured him; leaving 20 of those who are the most dependent, by their public situation, to transact the business of the Council. These facts I give as the grounds upon which the people of the country generally, and I myself, believe that those gentlemen are influenced, independently of their consideration of what is fitting or unfitting. In the year 1825 there was a supply bill passed by the Assembly, which passed the Council, only two dissentients. In the next year a bill, exactly similar, was rejected unanimously by those that were present. In the first instance the Governor approved of the bill, in the second the Governor disapproved of the bill.

Was he a different Governor?—He was. Under these circumstances the people of the country have got an opinion that the gentlemen who usually attend there are influenced by the will of the Governor, and it is my opinion.

Is it not considered by the Assembly, that the Assembly has the right to appropriate the revenue raised under the British Act which is known by the name of the 14th of the late King?—The Assembly has frequently declared upon its journals that it understood that it had the right to appropriate all the monies that were levied within the province.

Are you not aware that the 18th of Geo. 3, which is known by the name of the Declaratory Act, and which Act had reference to such duties as were to be subsequently imposed by the mother country for the regulation of trade, enacted that those duties, though imposed by the mother country, should be appropriated by the local Legislature?—I conceive that in 1778 the mother country declared that monies levied by the Parliament of Great Britain in the colonies, should be appropriated by the legislatures of the colonies; it declared that as a principle for the future government of those colonies.

Are you not aware that there was a distinct reservation in the statute of such monies as were levied by British Acts prior to the 18th?—I am not aware that there was such a distinct reservation; I know that it has been interpreted as being such; but the general understanding has been this, that the legislatures of the colonies have a right to appropriate all monies levied by the Imperial Legislature; and that they consider the only safeguard they have against taxation by the legislature of this country, in which they are not represented.

Are you not aware that in the Act of 31 Geo. 3, commonly called the Quebec Act, there is a distinct reservation of the duties levied prior to the 18th of the late King?—Not according to our understanding of it, and my own understanding of it.

Is it not the fact that the point which has always been contended by the English Government is simply this, that all duties levied since the 18th of Geo. 3, are to be appropriated in whatever manner the legislature of the colonies think proper, but that all duties that were levied under the British Acts prior to the 18th of Geo. 3, were to be appropriated as before by the authority of the Crown?—I believe there was a despatch of Lord Bathurst's which mentioned something of the kind, referring to an opinion of the Attorney and Solicitor General. I never saw the opinion, but I recollect seeing a despatch which stated something as being the opinion of the Attorney and Solicitor General to that effect.

It is not the fact that all the bills sent up by the House of Assembly to the Legislative Council were framed upon the assumption by the Assembly, that all duties imposed by the British Acts prior to the 18th of Geo. 3, were legally under the control of the local Legislature, and not under the control of the British Government?—Previous to the year 1822 there was never a question upon those Acts; it was always understood, both by the Executive Government and by the Assembly, that the whole of the monies were to be appropriated by the Provincial Assembly. In 1822 the distinction began, and since that there has been a quarrel about it; the Executive Government say, that they are not to apply the money

to any other purposes excepting the expenses of civil government; but the Assembly say, that it is not to be applied by the Executive in such a way that they are to have no check over it.

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Are you not aware that whenever there was no difference of opinion as to the appropriation, in point of fact, the right of the British Crown was not brought into question, and that under those circumstances the appropriation took place generally; but although it did take place, the rights of the Crown were not waived by such circumstance?—The difference of opinion was first as to the annual appropriations. Will the Committee allow me, in answer to this question, to state my view of the differences between the Government and the Assembly, referring to the different bills. My opinion upon the subject is this, that the money arising from the 14th of the King was to be applied exclusively to the support of the Civil Government; but that sum being insufficient for the support of the Civil Government, and the Executive Government coming to the Legislature for an addition, then the Assembly had the right of control over all the expenditure, to see that every item of that expenditure was such as would authorize it to make additions to it.

Then as long as the proceeds of the 14th of the King were sufficient for the maintenance of the Civil Government, you admit that the right was in the Crown, and that the appropriation would legally proceed from the Crown; but when those proceeds are not sufficient, you think that the right of the Crown lapses, and that the Assembly, in consequence of adding to that sum, becomes possessed of a control over the whole revenue?—So far; but that is not the true state of the case. I understand, as an individual, that the Assembly of the province has a right to appropriate and control the whole of the money that is levied in the province.

Notwithstanding the provision of the Act of 1778?—I understand that the Act of 1778 established this principle, that in the colonies whenever taxation was resorted to by the Parliament of the mother country, then the Legislature of the colonies had a right to apply the proceeds for the uses of the province.

What view do you entertain of the powers of the Act of 1774, as affecting the revenue of Lower Canada?—I will state my view of the matter; I differ in some respects from the members of the House generally; but we all agree in this, that we ought to have a control over the expenditure, although we differ as to the grounds upon which we ought to have that control. The Revenue Act of 1774, was passed by the Legislature of this country, at a time when there was no representation of Lower Canada; a representation had been promised them, but circumstances did not permit, in the opinion of the Government of this country, that it should be established then; and as a means of drawing something from the country for the support of its government, it passed the Act of 1774. It is very true that there were duties under the French Government, but those duties, I believe, by the judgment of a British court of justice, have been held to be illegal, and could not be recovered in the colonies. I believe, in the case of Antigua, there was a decision that all the French duties existing in the colonies were illegal from the moment the King's proclamation issued, recognising the people as British subjects and giving them the rights and laws of Englishmen. Of course in Canada nothing was said on the subject, the people of Canada have always been the humblest and the mildest people you have; it was accompanied by an Act giving them their laws and other advantages. The matter however of taxation generally at that time by the mother country was much discussed, and then came this Act of 1778.

Are the Committee to infer from your answer, that the duties being illegal for which those were commuted, although they were enacted in that Act of 1774, they were illegally enacted on that account?—No, certainly not; the Legislature of Great Britain had the power of making laws for the colonies in which there was no Legislature, and I conceive they had even the right of taxing them, although it is going further for the colonies than you will go for yourselves, for you will not allow that people ought to be taxed here without representation; but I admit that where there is no representation, there should be some supreme legislative power.

Do you entertain any doubt that the duties were legally imposed by the Act of 1774, and also legally appropriated?—I believe that the Legislature had a right to make the law, and that they had a right to make the appropriation.

Have you any doubt that that law is at this moment binding in Canada?—Yes, I have strong doubts.

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What do those doubts arise from?—They arise from the circumstances I was going to detail. While there was no legislative body in the colony, it was a power which seems to me to belong to that of the empire, of regulating the whole affairs of all the dependencies of the empire; but the moment there was constituted a representative body, then that body naturally took the whole control of the revenue of the country; and this declaratory Act of 1778 supported it in that, because it is said that all the duties that were to be levied thereafter by Great Britain were to be appropriated in the Colonial Legislature; in fact, we have held that the appropriation was altered by the Act of 1778 and the Act of 1791, and that the appropriation fell of course then to the Assembly, as the natural body that ought to have the control over the expenditure of money raised on its constituents. We have not contended that the Legislature had not the power of passing the Act at that time; but we say that the general principle is this, that all the taxes levied by the Legislature shall be applied by the Legislature of the colonies; and with respect to the Act of 1774, we say that there may be doubts upon the subject, for when the Act of 1791 was passed, it was the general opinion that it repealed the Act of 1774, so far as the appropriations were concerned. In consequence of that, the British Government sent a message through the Governor to the Legislature in 1794, saying that as there were difficulties on the subject, the moment duties were raised similar to those provided by that Act they would apply to Parliament for the repeal of that Act. The consequence was, that in the Colonial Legislature they did grant duties in lieu of the duties under that Act, and a bill was sent home to Government here, which was approved of by the King in Council, enacting those duties. The Act came out, approved by the King in Council, and ought to have been in force; however, it arrived too late. The Governor recommended it afterwards to the Legislature, and they passed it; so that in 1799 it was finally passed, and approved of by the Governor, conformably to the approbation that had already been made by the King in Council. It however happened that there was never any recommendation by the British Government to repeal the Act of 1774, and there it has remained, and we are the unfortunate victims of the quarrel that has ensued in consequence of that.

Are you aware that there is no instance of a Colonial Act repealing a British Act?—We do not pretend any such thing.

The Act of the 31st of the late King contains the following Preamble: "Whereas an Act was passed in the 14th year of the reign of his present Majesty, intituled, 'An Act for making more effectual provision for the Government of the Province of Quebec in North America.' And whereas the said Act is in many respects inapplicable to the present condition and circumstances of the said province: And whereas it is expedient and necessary that further provision should now be made for the good government and prosperity thereof; may it therefore please your most excellent Majesty, that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that so much of the said Act as in any manner relates to the appointment of a Council for the affairs of the said province of Quebec, or to the power given by the said Act to the said Council, or to the major part of them, to make ordinances for the peace, welfare, and good government of the said province, with the consent of His Majesty's Governor, Lieutenant-Governor, or Commander-in-Chief for the time being, shall be and the same is hereby repealed." Do you not therefore admit that in the Quebec Act of 31 Geo. 3, part of the Act of the 14 Geo. 3, was distinctly repealed, and the remainder of it distinctly confirmed?—That is not the Act referred to; chapter 88 is the Revenue Act, but the Revenue Act was not mentioned in the Act of 1791. There was a new constitution given to the country, and not a word said about the Act of 1774, and it raised a dispute so early as 1794; and upon that dispute the Government at home, by means of their Governor, told the Legislature that they would repeal the Act if they would grant similar duties to the same amount; they did so, but the Government never recommended to Parliament to repeal the Act; in fact, somebody or other in the colony advised against it at that time.

Does not the repeal of a portion of the Act of 17 Geo. 3, c. 83, without the repeal of any part of the 14 Geo. 3, c. 88, a contemporaneous Act which imposed duties, show that the British House of Commons in 1791, when the Quebec Act was passed, did not intend

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concede to the Legislature of Lower Canada a control over the revenue levied by the Act of 14 Geo. 3, c. 88, but on the contrary intended to preserve as law and unrepealed part of the 14 Geo. 3, c. 83, and the whole of the 14 Geo. 3, c. 88?—I am no lawyer; it seems to me that that is a question for a lawyer. As a very humble constitutional lawyer, I should say, that in giving a new constitution to the country it would be necessary to say what is repealed and what is not repealed; the Act of 1774, c. 88, is not mentioned at all in that Act of 1791, and it is probably its omission that gave rise to this early difference of opinion in 1794.

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Are the Committee to understand that the duties which were originally levied under the Act of the 14th of the late King, have been since levied by the Colonial Act of the year 1799?—That Act is not in force, because it could not be enforced till His Majesty's ministers recommended to Parliament to repeal the Act of 1774.

But it actually passed the two Houses?—It did, and received the Royal assent; it stands in our statute book as a law, waiting the performance of the condition by the British Government for it to come into force.

That condition being the repeal of the Act of 1774?—Yes.

What was it that prevented the Act recommended in the year 1794 from being passed till the year 1799?—It passed the Assembly in 1795 or 6, and was sent home to be approved of; it was approved of by the King in Council, but it came out too late to be enforced; it came out after the two years had expired. In a subsequent session, the Governor recommended the Act to be renewed. It was renewed and passed, and stands a law in our statute book; but its being enforced depends upon the execution of the engagement on the part of the ministers to repeal the Act of 1774.

Then, at this moment, would the repeal by the British Parliament of the Act of 1774, *ipso facto*, call into operation that Act of the colonial Legislature of the year 1799?—Yes; and it would give the Government the full appropriation of 11,000*l.* a year, without limit by the Legislature of the colony. The contest is now whether there be appropriations which never have obtained the consent of the Legislature of the colony: when once the appropriation has obtained the consent of the Legislature of the colony we have tied up our own hands; but when it has not obtained the consent of the Legislature of the colony we stand upon the broad principle that the people of the colony have a right to make an appropriation of the monies that they pay.

Do you mean to state, therefore, that by the repeal of the Act of 1774, the Crown would have for its own appropriation, unrestricted by the Assembly, the sum of 11,000*l.* a year?—Yes.

Does the House of Assembly also lay claim to the amount of 5,000*l.* a year in lieu of the territorial revenue of the Crown?—The House of Assembly has laid claim to the territorial revenue of the Crown, because it gave 5,000*l.* a year in the year 1794 or 5, after the Governor had told the Legislature that the Crown gave up its territorial revenue to the province.

Does the House of Assembly contend that 5,000*l.* a year is to be appropriated by the House of Assembly?—They would say that if the Crown were not to come forward and ask for more money, it is gone; but if the Government comes forward and asks for more money, they may say that money is misapplied, and it ought to be applied in such a way.

Will you state the progress of the disputes when those principles came practically into effect upon Sir John Sherbrooke, in 1818, calling upon the Legislature to provide for the civil establishment?—I have got already to the year 1799, when this bill was passed, giving a sum in lieu of the Act of 1774. Things went on tolerably well till the year 1809, the expenses were increasing very much, and the Assembly got alarmed, and they had a quarrel with the Governor. It was then said that Great Britain had been paying a great part of the money during all this time: whenever they applied to control the expenditure, they were told Great Britain pays this, what business have you to interfere? they said, well then we would rather take the whole of the expenses upon ourselves, so as to control the whole, for by-and-by it will be saddled upon us. Then they made the famous offer to pay the civil list, and they heard no more about it. The war began in 1812, and they gave all that they had, and more than they had, for the war; they authorized the issuing of paper money in the country, and there was no quarrel about the civil list, or any thing else; but after the war, Sir

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John Sherbrooke came out ; he found every thing in such a state of disorder that he represented it at home, and the Government here told him to get the accounts settled every year in the House of Assembly. Then came the acceptance of the offer of 1810 to pay all the expenses of the Government ; they said, we will take all the expenses from you ; the expenses in the mean time had augmented from about 40,000*l.* to about 60,000*l.* The Assembly then said, we will pay the whole of the expenses ; they then agreed to give the sum the Governor asked, which was in addition to the revenue that he assumed to be appropriated, and they reserved to themselves the right of examining into all the expenditure the next year.

Was there any bill passed that year, or was a resolution passed by the House of Assembly promising to indemnify the Governor ?—Precisely so, an address for money. The next year the Duke of Richmond asked for an addition of 16,000*l.* ; that alarmed the Assembly ; they had already accepted of an addition of one half from the time they offered to take up the expenses ; but when the Duke of Richmond came and asked for 16,000*l.* more ; they began to get alarmed ; they appointed committees to examine into the expenditure, and to check it, and they did examine and check every item of it, and they began to vote it by items, and they left out all the increased expenses, but offered to pay the expenses as they stood in 1817, and passed a bill and sent it up to the Legislative Council, allowing all those expenses. The Legislative Council threw out that bill, upon the ground that it was not safe to take an annual bill.

Did not the Legislative Council also object on the ground of the vote being made by items ?—No ; because it was an annual bill. At the same time the Assembly made good its vote of the preceding year, because they conceived themselves bound in honour not to have any quarrel about what had been advanced upon their address, although there were some items of expenditure that they objected to, and the bill passed. Then the Duke of Richmond unfortunately died, and in 1820 there was an irregularity in the Assembly, and there was no estimate, and no vote laid before the Assembly. Sir Peregrine Maitland convened the Assembly before the returns were all made, and the Assembly objected that the Governor ought not to convene the Assembly till the House was complete ; because they said, if he might convene it before the time fixed for the returns, he might convene it before half of them were returned. Things remained in that state till news came of the death of the King, and then there was a dissolution. At the close of 1820, Lord Dalhousie came ; and he asked, that whatever they had to give should be given permanently : they told him at once that they would not give any thing in addition to what they had already given permanently. Of course, nothing was done ; they passed however a bill in some shape or other, which it was said would be less objectionable ; it went up to the Legislative Council, and it was refused. It was refused by the Legislative Council upon its being detailed, and not being for the life of the King. The next year Lord Dalhousie asked for a bill for the life of the King ; the Assembly sent home a very long address to this country, as reasons for not complying, and the Legislature finally broke up without any bill being passed. Lord Dalhousie asked for a sum of money, which they said they could not grant till they had an answer from this country to their representation. The session finished without any bill being passed, and then came the famous Union project. In the subsequent year there was a bill for a part of the money passed, in 1823. In 1824 the receiver-general failed, and the appropriations already made by the Legislature were not paid, the members got alarmed, and some of them, against which I protested, voted a reduction of one-fourth of the expenditure to meet the empty state of the chest ; that of course was not accepted, it was rejected in the Legislative Council. In 1824 Lord Dalhousie came home, and Sir Francis Burton took the Government. In 1825, a Bill was agreed to by all parties, to add an indefinite sum to the indefinite amount of the appropriations already made, to make up the total amount of the whole expenditure ; for the Assembly had forgotten the alarm in 1824 about the empty chest, and they were willing to continue the expenses at the same rate. That was accepted by the Legislative Council, with two dissentients, and it was accepted by the Lieutenant-Governor, and the whole country was in a state of joy at the end of our difficulties.

Had not the Assembly reduced the estimate ?—The Assembly has still persisted in refusing to recognize some new offices, absentees, and sinecures that were objected to in 1819 ; it objected to them, and it had finally decided that it would not pay them in

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1819; it still refused to recognize them, and one or two were removed, or at least they agreed to give pensions in their stead, but they still voted a sum less than was asked by the Lieutenant-Governor, by about £3,000. At that time the whole country was at peace, there were not two parties existing in the country; unfortunately that bill was misunderstood in this country, at least it was not approved of in this country; it was sanctioned by the King, and it was the law of the land, but, I believe, it was not approved by the gentleman then at the head of the Colonial Department. Then in 1826 the Assembly offered the same bill as Sir Francis Burton and the Council had accepted in 1825; and in 1827 it offered to pass the same bill again. The bill of 1826 is the only one which came back amended. Before that the Council had declared that they would not proceed upon any such bills, but this time they did proceed so far as to send it back amended. Such is the whole history of the dispute about the appropriations bills, and the Act of 1774, so far as I am acquainted with them; and the conclusion of the whole is, that there was no house at all this last year.

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You have stated that the bill of 1825 which was accepted by the Legislative Council produced universal satisfaction in Canada?—It did.

In point of fact, was not the effect of that bill in 1825 to do away altogether with charges to the amount of £3,000 per annum, which the Crown, by virtue of the Act 14th Geo. 3, applied to certain purposes of civil government in the Canadas?—I do not know how far it was doing away with them, but certainly the Assembly refused to pay those items.

Then in point of fact, the Assembly by refusing to pay those items did interfere with the power of the Crown in charging the revenue raised under the British Act with those items?—I should conceive that the Assembly did interfere with the power of the Crown in charging it upon the revenues that had been considered as the public revenues of the province, but it did not prevent the Crown from charging them upon other revenues that it derived from the province; it did not prevent the Crown from paying those salaries out of the revenues derived from some Acts of Charles the First or Charles the Second, and other Acts, of the proceeds of which we had never heard a word of. Upper Canada has claimed them, but we never have claimed them. It did not prevent the Crown from paying them out of the revenues of the Jesuits estates, if those revenues belonged to it; it did not prevent the Crown from paying them out of the revenues of the Crown Lands, for the Crown is the greatest proprietor of reserved lands in the province; it did not prevent the Crown from paying them out of any source that is not part of the public revenue of the province.

Although the Crown might have paid those items amounting to £3,000 out of some other revenue, did it not effectually prevent the Crown from paying them out of that revenue out of which they had hitherto been paid, namely, the revenue derived from the Act of 14th Geo. 3?—I believe it is impossible to tell from what revenue they had hitherto been paid, for all the revenues of the Crown were put into the hands of the receiver general, and they were very much mixed up; I believe the military chest paid some of the expenses, there was a constant intercourse between the civil chest and the military chest, sometimes they were emptied into one another, and sometimes the chest became empty altogether. With respect to the £3,000 the quarrel about that is of a very trifling nature; it amounted merely to this, that the Assembly said they would not vote it, if those very objectionable items were continued as sinecures, but whenever the Government applied to the Legislature to pay them as pensions during the life of the holder they have paid them. In point of fact some of those which they had objected to when they were recommended to be paid as salaries, &c. they paid as pensions during the life of the persons holding them; their objection was this: if we allow these sums to these sinecurists and absentees, they will be saddled upon us for ever; the moment that one dies off, it will be given to somebody else.

When the same bill which was sent up in 1825 was rejected in 1826 and in 1827, were there any reasons assigned for that rejection?—Yes.

What were they?—There were dispatches laid by the Governor before the Legislature after the House of Assembly had voted the money.

Was the only reason assigned for the rejection of that bill, that those £3,000 were not included in the vote?—No; the dispatches however will speak for themselves, as they were laid before the Legislature.

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Under the state of obstruction you have described in the appropriation of the revenues of the colony having been voted by Parliament, in what way have the revenues of the colony practically been applied?—The petitioners state that the money has been applied by the authority of the Governor and the Council alone, without any act of the Legislature. The revenue naturally divides itself into two parts; that which we consider to be already appropriated by legislative enactments for the support of the Civil Government, and that which is not so appropriated: we say that nothing is appropriated but what has been appropriated by the Legislature of the colony; the Governor says, and others say, that the revenue of the Act of 1774 of the King is appropriated; the whole of the money has been mixed up together in the hands of the receiver-general, that which is appropriated and that which is not appropriated. There is part of it avowed by both parties not to be appropriated, and the expenses of the Government have been paid by the Governor himself, with the consent of the Executive Council, out of the chest as it stands, without any appropriation; so that now of the money that the Governor has applied there is about £140,000 that is paid without any appropriation at all even alleged by the Governor. It is justified on the part of the Colonial Government as a case of necessity, but necessity will always furnish a law and pretence for every thing.

Do things remain in that state now?—They are worse now, the Legislature is suspended; the Act of 1791 is suspended in the Colony; that Act requires that the Legislature should assemble once in 12 months to look to the affairs of the province, but there is no Legislature assembled, nor likely to be any till after the month of May. A number of the temporary Acts expire on the 1st of May.

Are those Acts under which duties are collected?—No; if they had been, it would have been a different story; but they are Acts of public utility; Acts regulating the inspection of asses and beef, or some things of that kind. Unless it is pretended that the mere meeting of the Legislature is a calling together of the Legislature for the despatch of business, and that you may get the Legislature to meet and not suffer it to proceed to business for 20 years to come; the Act of Parliament is actually suspended at the present moment, and the money is applied as the Governor and Council please.

Since there has been no vote of the Legislature for the payment of the expenses, from what resources have the Government drawn for their expenses?—From the receiver-general's chest; the whole of the money raised by the Acts of this Legislature and of the Colonial Legislature have been deposited in the hands of a receiver-general named by this country. Many of those Acts are permanent Acts, for the Legislature of Lower-Canada had not the precaution to make the revenue Acts annual as well as the appropriation bills. In other colonies they have made it a rule to make the revenue Acts annual, but we were foolish enough to make the revenue Acts permanent; so that the revenue comes into the chest, although it is not appropriated, and the Executive takes it out of the chest without appropriation.

Would not an action lie against the receiver-general for issuing money without its being properly appropriated?—The receiver-general is an officer of the treasury.

Are all the revenue Acts permanent?—I believe that every revenue Act is permanent.

Has there ever been any proposition in the Assembly to pass an indemnity Act?—Yes, they passed an indemnity, in 1823 for the whole of the expenses that had been voted by the Assembly, they passed an Act of indemnity, clearing Sir John Sherbrooke's administration for the excess that he paid beyond the amount of the Act of Appropriation, an excess of six or seven thousand pounds. They passed an Act, clearing the subsequent administrations, and even for the year 1820, when there was no estimate laid before the House; they passed an Act clearing the whole up to 1823.

Was the reason of the Legislative Council not passing those bills, that they professed to indemnify the Government for what the Government did not consider any indemnity to be required?—No; I believe the reason was that the Act was informally expressed; it was an indemnity to His Majesty; it ought to have been an indemnity to those who advised His Majesty to take the money.

Were those bills lost in the Council?—They were all except the bill indemnifying Sir John Sherbrooke.

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Did the bill, indemnifying His Majesty, actually pass the House of Assembly?—Yes, *John Neilson, Esquire.* for all that they had voted; they never indemnified for what they had not voted.

Do those permanent revenue Acts raise sufficient for the maintenance of the Civil Government?—Yes, more than sufficient; but the expenses of the Civil Government <sup>20</sup> May, 1823. have always grown with the amount of the revenue, because they have never been controlled by the representatives of the people in the colonies.

Are there many sinecures in Lower-Canada?—No; I believe that seven or eight, that were objected to from the commencement, are the whole; there were several others, but they were changed into pensions, but it was insisted that those should be maintained as officers; now the officers are not resident in the colonies, and have no duties attached to their offices.

You stated that the Assembly objected to the items included in the £3,000 because they were afraid they should perpetuate them after the death of the parties holding them; are the Committee to understand, that, as far as your opinion goes, you see no objection to pay those items, provided it was understood that they were to be discontinued after the death of the parties?—As a member of the Legislature, I cannot say what I would do; as a private individual, I would have no objection to allow those people that have, through our negligence, got allowances made to them, to have them continued to them during their life.

Has not the Assembly of Lower-Canada invariably objected to superannuations of all sorts?—Since they claimed a control over the expenditure; but they have never exercised any control over the expenditure, it has been resisted.

What proportion of the general expenditure of Lower-Canada did the Crown revenue bear to that which was raised by local Acts in the province?—There is a great deal of confusion with respect to the words "Crown revenue;" what is commonly called Crown revenue consists of those Acts anterior to 1774, Charles the 2d, and George the 1st, and so on; we have not regular accounts of their proceeds; the other Crown revenue is the 14th of the King, which is called the Crown revenue and the territorial revenue; all those revenues together might amount to between £30,000 and £40,000.

Supposing them to amount to that sum; what is the average amount of the revenue raised by local statutes for the purposes of the Government?—The total net revenue of Lower-Canada latterly has been about £90,000; it has amounted in gross to about £150,000 a year, a large proportion of which goes to the expenses of collection, 12 or 15 per cent perhaps, which we consider is enormous; then one fourth of the net revenue goes to Upper-Canada, exclusive of the territorial; then the rest remains the net revenue for Lower-Canada, of £90,000; of this, I believe, the executive Government claims to appropriate between £30,000 and £40,000, so that there would remain about £50,000 to be appropriated by the Legislature according to the pretensions of the executive Government of the province; that is to cover the whole of the expenses for local improvements, and the annual charitable appropriations, which last amount to about £15,000.

You stated that the Legislature of Lower-Canada having no control over the salaries of the officers of the civil government, their salaries were excessive; will you point out what salaries of officers appointed by the Crown you consider as excessive?—I consider a great many of them as excessive; I should say for instance, that all salaries which are accumulated, five or six upon one person are excessive; with respect to the petitioners I would say, that the general feeling of the country is, that the salaries are too high, relatively to the means of living in the country.

Are the petitions for which you are an agent here, signed exclusively by the French population of Lower-Canada?—No, they are signed generally by the population of Lower Canada, excepting in the townships, the district of St. Francis, and in the district of Gaspé, for which no petitions were sent.

Have you any idea of the number of English signatures upon these petitions?—Yes, in consequence of some things that had been said, we took the trouble to count; the whole number as stated to me by the secretary of the Montreal committee, is above 87,000, and two gentlemen who live in Montreal counted the Montreal petition, at least that part of the petition that contains 40,000 signatures, and they found that there were 2,676 English names in the 40,000, about one sixteenth of the whole.

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Are those chiefly Catholics?—They are both Catholics and Protestants. I do not know the proportion of them; I counted the Quebec petition just in the manner in which it unrolls, 1,171 names. In that petition they took care to state those that were proprietors, and those that were not proprietors; they generally are stated to be proprietors; and the fact of the petition being known and approved of by the parties, is certified by two witnesses who were present at the time, because many of them unfortunately cannot write their names. Of the 1,171 names that I counted, I began first with 200 in the town of Quebec and the adjacent country, there were of those actual signatures 48, the total of English names 19 out of the 200; of the English names with crosses there were four: 64 of St. Nicholas on the south shore, five signatures; no English names at all. 200 of St. Henry below Quebec, 16 signatures; no English names. 200 of ditto, 13 signatures; five English names, four crosses. 187 of Cape Saint Ignace, 45 miles below Quebec, 10 signatures; no English names. 200 of Rivière Ouelle, 60 miles below Quebec, 35 signatures; three English names. 120 at Quebec, 81 signatures; 34 English names, and six with crosses. So that that makes of the 1,171, 200 signatures, 61 of them English names, and 14 English names with crosses, which makes one-fifth of the whole actual signatures, one-nineteenth of the whole English names.

Was the petition sent at all into the townships?—Not at all; because there was not sufficient time; there was no idea of sending any person to England till after the prorogation of the House, and it was desired that somebody should come home before the meeting of Parliament.

Do you believe that those petitions would have obtained many signatures in the townships if they had been sent there?—I should conceive that they would obtain signatures in the townships.

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John Neilson, Esquire, again called in; and examined.

Have you brought with you any of the papers referred to in your former evidence?—I have brought copies of the bills that were referred to.—[*The witness delivered in the same.*]

Generally, are those bills which passed the House of Assembly, and were rejected in the Legislative Council?—They are. I stated that some of the bills had been sent back, which was not perfectly correct. I consulted the journals of the Legislative Council, and from those journals I took a memorandum of the fate of the different bills, which I have here.—[*The witness delivered in the same.*]

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You stated in your former examination that the two legislative bodies had each of them enacted certain standing orders, by which it was determined that they should not pass certain bills that came from the one body to the other; have you got those standing orders?—I have.—[*The witness delivered in the same.*]

Have the Assembly hitherto rejected every proposal which has been made for the purpose of arranging a civil list, or a settled system of payment for any number of officers connected with the Government, and the executive?—There never has been any such proposal made for any certain number of officers belonging to the executive.

What proposals have been made?—The first proposal was, that all money that the Assembly should vote should be voted permanently for the support of the Government. The next was, that it should be during the life of the King; and latterly it has been pretended, on the part of the executive, that certain officers of the Civil government were provided for already out of the monies that are appropriated generally for the support of the Civil Government, and the administration of justice; so that there has been no direct proposal to the Assembly to provide for such and such officers, but this general proposition, to give whatever they meant to give permanently.

Has there been any proposal that a certain sum of money should be given out, of which certain specified officers should be provided for?—No; there has been a proposal that certain officers, being already provided for, the Assembly should provide for the remainder; that has been the nature of the proposal that has been latterly before the Assembly.

When you say that certain officers are already provided for, have the goodness to state what officers were included in that, and out of what fund they were stated to be provided for?—There has been some variation in the lists laid before the House, of the officers alleged to be provided for out of the monies of the 14th of the late King, and the appropriation of the 35th of the late King by the Provincial Legislature; however, they will be found by reference to the lists laid before the Assembly, and in their journals.

Can you enumerate them?—I cannot certainly, but I can give a general idea of them.

Can you state the annual amount of the revenues arising under what you call the Act of 1774, which were commuted for the original monies due to the French Crown; does it exceed 5,000*l.* a year?—The annual monies under the 14th of the late King have varied very much, from 3,000*l.* to 20,000*l.*; they were about 10,000*l.* when a late Act of Parliament was passed, which repealed the Act allowing certain drawbacks upon exportations from Canada to the West Indies; since that time the proceeds from the 14th of the late King have nearly doubled; they have amounted to 19,000*l.* or 20,000*l.*; I mention the gross, without deducting the expenses of collection.

Will you describe what the other portion of appropriated revenue is, to which you have alluded, arising under the 35th of the late King?—5,000*l.* voted by the Legislature as an aid for the support of the Civil Government and the administration of justice.

Is that voted permanently?—It is.

In what way is that appropriated in detail?—There is no detail of it in the Act; it is a general appropriation in aid for the support of the Civil Government and the administration of justice.

Have

## MINUTES OF EVIDENCE BEFORE SELECT COMMITTEE

the Government proposed to make any fixed particular appropriation of that?—claim has been, that they could dispose of it as they thought proper.

24 May, 1828. the Legislative Assembly deny that claim?—They deny that claim, in so far as Government asks for other monies from the Assembly, they say then we must take care that the whole is properly applied, because you may turn this to any use that you think proper, that is not even for the support of the Civil Government and the administration of justice, and still come upon us for the remainder.

Has it ever occurred to your own mind that the mode could be chalked out in which the money might be appropriated to the maintenance of the different officers connected with the Government, so as not to let them depend actually upon an annual vote, but to make some arrangement similar in principle to a civil list?—I am very willing to answer that, excepting of course that I cannot engage myself as a member of the Assembly; I will state what the Assembly has done, and you may judge from that what it would be willing to do. The Assembly has already granted a salary to the Lieutenant Governor during his residence. It has already offered by bill to provide for the judges during good behaviour. The great difficulty, as it seems to me, hitherto, in respect of an arrangement, has been that its rights, or at least what the Assembly conceive to be its rights, were denied. I do not think that the Assembly is so very difficult about coming to an arrangement, but it stands very strictly upon its rights to control the whole of the monies levied within the colony; if that were not denied, I should suppose it would not be a difficult matter to make an arrangement that would be satisfactory to all parties, but they conceive that the only check they have upon any thing that may be injurious to the interests of the colony is the control that they have over the monies levied within the colony; if you deny them that, you deny them all share or control in the government of the country.

You are understood to say they do not go so far as to hold that it is desirable to keep all persons connected with the executive department of the government dependent for their salaries upon an annual vote?—I cannot say as to that; there are some that do entertain that notion, and very naturally, because that has been the practice in other colonies. I believe that in Nova Scotia, where things go on very well, they have made all the revenue depend upon annual vote of the Legislature, so that not only the appropriation of the money, but the very collecting of the money is dependent upon an annual vote of the Legislature; there the Government and the Assembly go on very well in concert; in the old colonies they kept the whole of the revenues subject to their vote annually; it may appear extraordinary, but considering the circumstances of the colonies, it is not so very extraordinary. The governors sent out from this country are far away from home; they have great powers, much greater than the executive has here; they have the whole military power at their disposal; they have the nomination of every body, almost down to the parish officers, during pleasure; and if any thing is wrong, there is no remedy to be expected in the colony, except from the power of the Assembly having a check upon the Governor, or by coming to this country; now coming to this country is rather a difficult matter. When the Government has a veto upon any thing being contributed on the part of the Public to support the expenses of coming here to ask for justice, it must be done, as it has been done in this instance, by a kind of miserable subscription; therefore the Assemblies have been extremely jealous of the power over the monies levied within the colonies.

In your opinion, could any arrangement be made of the sort alluded to in the question?—I am confident, judging from what has been done, that some officers might be provided for; and I am confident that the administration of justice would be permanently provided for.

Is there much difference of opinion with regard to the amount of the salaries, as well as with regard to the offices to be provided for?—The salaries, in general, are considered as high; in fact, they are high; it is needless to conceal things, or to shut our eyes. People in those countries begin to look round them, and see what is going on in other parts of the world, and particularly in the adjoining country; they see that there governments are well administered, and cheaply administered; and naturally, as they pay for the administration of the government, they expect that it will be as well administered, and as cheaply administered, as in the adjoining countries. In the State of New York, for instance, they have three times our population, and four or five times our resources, and they pay not more than we do for the support of the Civil Government. In Lower Canada peo-



ple shut their eyes to all these things, but in Upper Canada they have their eyes wide open, and they will open their eyes in Lower Canada; so that, generally speaking, I should say it is extremely dangerous to increase the expenses of Civil Government in the North American colonies greatly beyond the expenses of Civil Government in the adjoining States.

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Is an objection entertained with regard to the amount of those salaries, not only from a comparison of what takes place in the United States, but with reference to the incomes generally enjoyed by persons living in the country?—Certainly it is; because the men holding salaries under the Civil Government are higher paid than the wealthiest proprietors of land, or the persons engaged in the best pursuits of industry; they are becoming, in fact, by that means the lords of the country. The men that have the greatest incomes will always be the lords of a country, and they have greater incomes than the people who have landed property, or who are following the most profitable branches of business.

What is the average income of the richest landed proprietors?—I should suppose the richest landed proprietor has not more than 1,500*l.* a year; and gentlemen at the head of their profession think they are gaining very handsomely if they can get 1,500*l.* a year, and that is a gain that will not last more perhaps than eight or ten years.

Has it been proposed to include in the list of those to be permanently provided for, any individuals to whom objection has been taken?—There are some new offices that have been constantly objected to by the House of Assembly; there is one for the audit of public accounts that has been objected to, because the government would not consent to any law for regulating that office. They wished the Assembly to give the expense of about 1,800*l.* a year for an office for auditing public accounts, when there was no law for regulating such an office; in fact, the audit of public accounts is no audit at all, it is only the audit of the persons that receive the money.

Can you mention any other office to which objection was taken?—Generally they have objected to all new offices created without their consent since 1819.

Have many offices been created since 1819?—There have been some that have had salaries added to them that had no salaries before.

Has the civil list increased in any great proportion since 1819?—No, it has been increased something; but it was proposed in 1819 to increase it at once 16,000*l.*, and it was that which occasioned the alarm among the members of the Assembly.

Upon what sum was that increase proposed?—It amounted to between 60,000*l.* and 70,000*l.* before.

Do you think it a desirable arrangement that the salaries of the judges should be voted to them at pleasure?—I do not think it is, they are voted annually in the United States; but I think it is unnecessary, because their constitution declares that their salaries shall neither be increased nor diminished during the time they hold their office. In the State of New York they vote them every year, and the constitution does not declare that they shall not be increased or diminished, for they actually have diminished them; but I think they should be independent both of the Crown and of the People.

Are the Committee to understand that you are of opinion that if the principle in dispute, with respect to the appropriation of those revenues, were satisfactorily arranged, the Assembly would be willing to vote the civil list upon the sort of terms you describe?—It is impossible for me to answer for the Assembly; I have been ten years in the House of Assembly; I have almost as frequently been in the minority as in the majority; but I should conceive that generally there would not be any very strong objection to something like an allowance during the Governor's residence for the salary of the Governor, and I am sure they would all agree in making the judges independent of the Crown and of the people.

Would they, in your opinion, be willing to make such an arrangement with regard to other officers besides the Governor and the judges?—I do not know what other officer might be proposed, I am sure it would give rise to a great deal of discussion.

Was there not a distinction taken between the different classes of officers in the province?—There was; it was this, that one class were local, and another belonged to the Imperial Government; it was a distinction to set the colony and the mother country at variance, and to set the officers that pretended to be connected with the mother country at variance with those connected with the colony.

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Was it a distinction attempted to be drawn by the Government between those that were considered to be more immediately connected with the Civil Government and the administration of justice, who were thereby provided for, and those who not being so provided for, remained to be provided for by the vote of the Assembly?—Yes, it was; but there was a distinction that selected all those that were said to be imperial or permanent from others that were said to be provincial.

Was not the origin of that distinction being drawn, the inadequacy of the funds to provide for the whole?—Of course; if they had had sufficient funds to meet the whole, I do not think they would have troubled us at all with that distinction.

Do not the inhabitants of Lower Canada, who are the descendants of the original settlers, very much prefer the tenure upon which the lands are held in the seigneuries, to that of free and common soccage?—There has been a great deal of talk on that subject; in truth they do not care much about the tenure, one way or the other; their great object is to get land cheap, and to get it easily, without much expense, and you will find that they will never be mistaken in that head; whatever is the cheapest and easiest will be that which they like the best.

Have they no choice between the two tenures?—I speak of the peasantry that settle upon the lands, and do the work and make the country valuable. A great noise about the tenures has arisen from an attempt to change the laws of the country, at the same time that there was an attempt to change the tenures. Now the laws which regulate a man's property, which regulates the inheritance of his children and all that, are always dear to every people; they must be very bad laws indeed if people do not get attached to those laws under which they have lived for a great length of time, and under which they have enjoyed the security of their property. The moment there was a talk about changing the laws, that moment there was an alarm excited throughout the country: it would be the same thing if you talked of changing the laws that regulate property in England or Scotland.

Do you allude to the Act called the Canada Tenures Act?—Yes.

Has that created any alarm?—It created alarm in so far as it was conceived to be the commencement of a system to change the laws that regulate property, and which have regulated property since the first establishment of the colony.

Was it not known that it was only an Act leaving it optional with persons either to take advantage of its power, or not, as they pleased?—Yes; but in the first place it subjected all the land in free and common soccage to the laws of England, which never had been considered to be the case, because the courts of justice had uniformly acted upon the principle that the laws of Canada extended throughout the whole surface of Canada, and that those lands were under the laws of Canada.

Did not the Act that restored the civil law of France limit it to the seigneuries, and expressly prevent its power from extending over lands granted in free and common soccage? There is a clause to that effect in the Act of 1774, but that clause seemed very much to want explanation. In point of fact, it was understood that the laws of Canada extended over the surface of Canada; and the courts acted upon that understanding.

What laws of Canada do you allude to?—The laws of Canada that were restored by the Act of 1774.

Did any opinion exist that the French civil was in operation in Canada during the years that elapsed between the Conquest and 1774?—I do not know. From the time of 1774 down to the passing of the Act called the Canada Tenures Act, in the sixth of the King, it was understood that the laws of Canada extended to the whole country, and the laws were executed upon that understanding, and the whole proceedings were had in the courts of justice; I cannot say positively, but other gentlemen will be able to say with greater certainty, if there were decisions to that effect in the courts of Canada.

Would not such a practice have been in defiance of, and wholly inconsistent with, the provisions of the Act of 1774?—I know there is a provision to that effect, but I cannot say that the courts of Canada were acting in defiance of the Act of Parliament.

Can you state, of your own knowledge, that there ever was a decision of the courts of Canada to that effect in a disputed case?—No, I cannot say that, not being a lawyer; I have only a general understanding of the thing as it exists in the country; and the general understanding was, that all those lands were regulated by the laws of Canada.

Does

Does that understanding prevail now?—There is no understanding at all now, for no one knows what law regulates them, no one understands the mode of conveyancing according to the law of England, except one or two; and when they, as hitherto, wish to pass a deed that they used to pay 7s. 6d. for, they are asked five guineas, and that may be more than the lot of land is worth.

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Does that apply to all the land that is held in free and common soccage?—Yes; it is declared that from the year 1774 down to the present time the laws of England regulate the whole property in those townships; now every man has divided that property according to the laws of Canada. I myself trusted persons upon the faith of their being possessors of land in that country under the laws of Canada; but it appears now, that according to the English law it was the eldest son that had it all, and they had nothing, being younger sons, and I have no security for my money.

Did you enter into that contract under the idea that the same laws that regulated the decisions with respect to land in the seigneuries, prevailed in the townships?—It was generally so understood; I had no doubt about it till lately.

When did the doubt first arise?—I have heard doubts expressed a great many years ago, but it was considered as a thing upon which there was no longer any doubt from the proceedings of the courts, and consequently people set it down as a matter no longer in contest.

Do you mean to say that in the courts to which you allude the decisions have always ruled till lately, that the law of Canada prevailed in the distribution of land within the townships?—I have not said that there was a decision in the case; but the general understanding amongst the people in Quebec, where I have resided for the last 37 years, was, that those lands were governed by the laws of Canada.

What is it that has occasioned any doubt as to the practice in that respect?—The passing of the Canada Tenures Act in this country, which declares that those lands have always been regulated by the laws of England, and in fact that has a retro-active effect from the very commencement; men that thought themselves the owners of land in that country are no longer the owners of it, and it would be difficult to tell who are the owners of it.

By declaring it to be the law, does it do more than repeat and re-enforce the provisions of the Act of 1774?—I understand that a declaratory law says what has been always the law, and certainly the clause in the Act of 1774 gives a colouring to this, being declared to be the law; but it is in opposition to what was generally understood.

Have you ever heard any other construction put upon the provision of that Act, than that the laws of England should be in force in lands granted in free and common soccage? Taken with the clause of the Constitutional Act, which speaks of the granting of land in Canada, (for it will be observed there were no grants of land in free and common soccage made in Canada, till after the passing of the Constitutional Act,) that clause seems to imply that the lands in Lower Canada are to be continued to be granted in seignery, and that the lands in Upper Canada are to be granted in free and common soccage. It however does say, that if any person requires it, land in Lower Canada may be granted in free and common soccage; but the Act of 1791 seems to understand that the seignerial tenure should prevail in Lower Canada, but that in Upper Canada it should be the free and common soccage tenure.

What was the practice between 1774 and 1791?—Between 1774 and 1791 there were seignerial grants; in fact it appeared at the time that it was the intention of the British Government to reserve, in some measure, Lower Canada, for the Canadians, and Upper Canada for the British settlers.

Will you read the clause in the Act of 1774?—"Provided always, That nothing in this Act contained shall extend or be construed to extend to any lands that have been granted by His Majesty, or shall hereafter be granted by His Majesty, his heirs and successors, to be holden in free and common soccage." The Committee will recollect that this Act met with extreme opposition in this country, and the outcry was, that they were establishing French laws; in fact this Act was made one of the articles of complaint in the declaration of independence in the United States of America. Those who were opposed to the Act at that time were very violent indeed, and probably they got that clause introduced, which restricted the operation of the Act to the old grants. It all depended, however, upon the act of the Government whether there should be any thing of this kind in Lower Canada;

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if the Government chose to grant land in that way, then this Act might apply, but if the Government did not choose to make such grants, it could not apply, because there were no lands granted in free and common soccage.

Has the King ever granted any land in seigneurie?—He has.

Upon that land is there any doubt that the French law prevails?—No doubt; there is Mount Murray Seigneurie, below Quebec, which has been granted by the King.

At what date was that granted?—I do not know whether it was subsequent to that Act, I believe that St. Armand was granted subsequent to this Act, but I know there were no grants in free and common soccage of waste lands till after the passing of this Act; this was in 1791, and the first grants were in 1796.

Will you read the clause in the Act of 1791?—This is the 43d clause of the Act;—"And be it further Enacted, by the authority aforesaid, That all lands which shall be hereafter granted within the said Province of Upper Canada shall be granted in free and common soccage in like manner as lands are now holden in free and common soccage in that part of Great Britain called England;" (here is a positive enactment, that all lands granted in that province shall be granted in free and common soccage,)—"and that in every case where lands shall be hereafter granted within the said Province of Lower Canada, and where the grantee thereof shall desire the same to be granted in free and common soccage, the same shall be so granted," (that is only where the persons desire it,) "but subject nevertheless to such alterations with respect to the nature and consequences of such tenure of free and common soccage as may be established by any law or laws which may be made by His Majesty, his heirs or successors, by and with the advice and consent of the Legislative Council and Assembly of the Province." It seems to me, that by that clause, and in fact by the declarations of ministers themselves, it was intended to reserve the lands in Lower Canada for the increase of the population of Lower Canada, while the Upper Province was destined for the loyalists from the United States and emigrants from this country.

Do you found that opinion upon the clause you have just read?—Yes.

Will you point out what part of that clause leads you to that conclusion?—Because it positively enjoins that all grants shall be in free and common soccage in Upper Canada, and it says that lands may be granted in free and common soccage in Lower Canada, if the parties ask for it; that is leaving it to be understood that the old tenure is to be continued in Lower Canada.

The question is not whether it was the intention of the Legislature to permit the granting of land in Lower Canada upon the tenure of seigneurie, but whether it was the intention of the Legislature that the French law should extend to the lands granted in free and common soccage. What is there in the clause of the Act 1791 that would lead you to construe the clause in the Act of 1774, otherwise than that the English law was to prevail in lands granted in free and common soccage?—It seems to me, that where lands were granted in free and common soccage, under the Act of 1774 the English laws were to extend to them; but it seems to me, by the Act of 1791, that the old tenure was to be preserved in Lower Canada. In fact it has been understood that the laws of Canada prevailed all over the surface of the country.

The Act of 1791 permits that land should be granted in the province of Lower Canada upon free and common soccage to those who desire that it should be so granted. What is there in that Act which would lead you to suppose that lands granted under that permission, in free and common soccage, are not subject to the operation of the Act of 1774?—It seems to me that they would come under the operation of the Act of 1774, but the difficulty seems to arise from no grants having been made till after the Act of 1791, which seemed to imply that the old tenure was to continue in Lower Canada.

Practically in the townships have persons inherited property according to the English law, or according to the French law?—They have inherited property, I suspect, according to the laws of the United States. There has been little law or government there. Those settlements were made less as part of Canada, than as part of the United States.

Do you mean to apply that to the township of Godmanchester?—Those grants were made since that time, but I speak of the great mass of the population of those countries which are near Lake Memphramagog.

Practically, in the townships near the St. Lawrence, have persons inherited according to the English law or according to the Canadian law?—I cannot say.

But

But in those parts which have been settled upon the American frontier, they have inherited according to the American law?—I suspect so, that is to say, they have divided amongst themselves, according to the American law. People in spite of all laws will follow their old customs and usages; it requires ages for people to alter their customs; those people coming in from the United States, will dispose of their property as they did in the United States: now the United States have done away with that part of the laws of England which gives the real property to the eldest son, and they make an equal division amongst the children.

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Is not an individual in the United States at liberty to leave his property by will to whom he pleases?—Yes, and so it is in Canada; and in making marriages we make such arrangements as we please; but if we make no arrangement or no will, then the law of the country prevails. In Upper Canada they have passed a bill to introduce a law there similar to what we have in Lower Canada.

Can land held in seignery be disposed of by will?—Certainly; there is an Act of the Legislature for that purpose.

What is the practice that prevails in the seigneries in that respect; do persons divide their lands generally by will?—It is generally done by a donation; the great body of the population in Lower Canada are agriculturists; the way that they manage it is this; they take one of the boys, mostly the youngest one, and he remains with the father, and does the work upon the land, while the others go out and take up new land; before he dies, he makes what they call a donation or gift of all his land to his son who lives with him, and does the work of the land when he is no longer able to do it himself; that one becomes the proprietor of the father's land, all the others have spread themselves and taken up new lands, and he gets that gift under an obligation to pay certain sums to his brothers and sisters; the brothers with that money improve their new lands; the sisters take husbands; in fact it is their marriage portion.

You have said that the English mode of conveyancing, which has been adopted in the townships, is very expensive; are you acquainted with the mode of conveying land which is resorted to in the United States?—I believe, both in the United States and in Canada it is done very cheaply.

[A Deed was shown to the Witness.]

Have you ever before seen a document similar to that which you hold in your hand?—Never; I never had any property, in that country.

Describe what it purports to be?—It is a grant of land by the State of New York to an individual. The grants by our Government to individuals are not much more complicated than this. This is very much like one of our grants, except that our law officers choose to put in a great many more words.

Have the goodness to look at that document (*another deed being shown to the witness*), what does that purport to be?—It appears to be a conveyance of land from one individual to another in the State of New York.

What do you believe the expense of such a conveyance would be?—I do not suppose the expense of this could be more than about four dollars.

Can you form any judgment what it would cost under the English form to make a conveyance for similar purposes?—I cannot speak to that, but I believe there are very few that are able to make out a good title in the English form in Canada; those that I have heard speak on the subject, have said that they could not get any done at less than five guineas; now I believe many would be very glad to get five guineas for certain lots of land.

In fact, is the conveyance of land in Canada a matter of great expense?—I could convey my estates in the seigneries for 7s. 6d.

Is there any difference between the expense of a grant of land in seignery and in free and common socage?—The titles of the seigneries in Lower Canada are not larger than a small scrap of paper.

How is it in the townships?—There is a long roll of parchment, but that is at the taste of the law officer more than any thing else.

Is it difficult to trace a title in the seigneries?—No, it is not difficult. The notary keeps

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keeps a minute, and when the notary dies, the minute is taken and deposited in the records of the King's Bench, where they are all put away in vaults, and there is a *repertoire* of the whole, so that you can by going there find out a deed made by any notary. The notary is obliged by law to keep all his minutes in a certain order, and when he dies, the King takes possession of the whole of his records, and they are deposited in the office of the protonotary of the King's Bench for the district in which the notary officiated.

Has it not been frequently proposed to establish an office for the registry of deeds?—There have been frequent proposals.

Have they been successful?—Not any of them.

Will you state what steps have been taken to carry them into effect; have bills to that effect been brought into the House of Assembly?—There has been only one bill brought into the House of Assembly, which was lost by a majority of four or five.

Will you state what are the grounds of objection to the establishment of a register?—There are a great many grounds of objection; different persons had different reasons for voting on the subject. I, in the first instance, voted in favour of the measure, and afterwards I voted against it; that is to say, I voted for the introduction of the measure, and when I came to examine into the details I found that the thing was not practicable. The only motive that I had was to prevent fraud, and I found that the bill as proposed would occasion more fraud than it would prevent, and therefore I thought it was better to remain as we were. The truth is, that almost every head of a family in that province is a proprietor of land, and they, unfortunately, are not educated, at least many of the proprietors of land have been deprived of the means of education; they cannot do their own business; they could not comply with the formalities required by the Register Act; they would be obliged to employ law agents and persons of that description, whom we find, by experience, are not always safe, particularly such as the great body of the people are obliged sometimes to employ; they are of an inferior description, and may trick them in all kinds of ways. Now, by that law there is not one man that would be obliged, at one time or other, to come into those register offices, and, in fact, to put himself into the hands of a law agent to do the business for him, and there is not one of them hardly that would be safe. Under those circumstances they would lose their privileges; wives would lose their privileges; children would lose their privileges; persons who have advanced money would lose their privileges; and there would be probably fraudulent entries made in the book of registers which gives the privilege; so that, in reality, a great many of the poor people would be deprived of their only means of support, which is the land upon which they work.

Would it not be possible, under the present state of things, for a person to borrow money and to go before a notary, giving what would be, to all appearance, a security on land for that money, and that, nevertheless, other conveyances might have been made of that land, or other money might have been borrowed upon it; so that, in point of fact, that which would be an apparent security would be no security?—No doubt.

Would not a registry prevent the possibility of that taking place?—It would have a tendency to prevent the possibility of that taking place.

Does the difficulty of establishing a registry arise from the nature of the tenures and the mode of distributing the land held in the seigneuries?—Not at all; it arises from the people not being able to read and write, and the dispersed state of the country.

Is it your opinion that if the people were better educated such a register would be beneficial?—There is no doubt that a register office might be established for Quebec and Montreal with a tolerable degree of safety, diminishing the risk of those frauds being committed that are committed now. I ought, however, to have stated, with respect to those frauds that are committed, that the reason why they are committed frequently is, that the law which punished for this kind of fraud has been suffered to become extinct. The French law was very severe against those persons who mortgaged property that was already mortgaged before without declaring it; it was considered as one of the penal laws; but in consequence of the introduction of the English criminal law there was no statute which sufficiently provided for that kind of crime. The crime was one peculiar to the French system of laws, and it was provided for by the French criminal code, but it was not sufficiently provided for in the English criminal code.

Has any remedy ever been proposed in the House of Assembly?—Yes, it has been proposed

posed in the House of Assembly to renew that punishment, so that the persons that committed that fraud might be subject to pillory and imprisonment in that country, as well as they were in France.

Is it difficult to borrow money in Canada in consequence of that mode of transmission of property?—No, but on that subject there are a great many errors; there has been a talk of much greater fraud than there really was; from a circumstance unavoidable in a new country, people have been supposed to be dishonest when they were no such thing. Thirteen years ago, land in Canada was worth double what it is to-day; at that time it was quite fair in a man who had land worth 2,000*l.* to take 2,000*l.* upon that land; but now, that land is diminished so as to be worth only 1,000*l.*, he has taken 1,000*l.* more than the land is worth, and he appears to have been committing a kind of fraud, but there was no fraud in reality; but the moment a man has lent money in that way and loses it, he finds it convenient to accuse the person of being guilty of fraud and deception when it is not the case; it is owing to the great variation in the value of landed property in that country. This Parliament may make the value of all lands in Canada increase or diminish by one half, by one single Act. If you, for instance, admit our corn at a certain duty in this country, it will immediately increase the value of land in Canada: if you reject it, it will diminish the value of land in Canada; and you may in fact, by one single clause in a Corn Bill, increase or diminish the value of land in Canada by probably one half; under these circumstances, it is not surprising that people should occasionally lose money that is lent upon landed property, and every man that loses money raises an outcry about it.

Is there any difficulty in borrowing money upon land in Canada?—There is, because there are few who have any money to lend.

Is it not the habit of persons who have accumulated fortunes in Canada to transmit them to England, rather than to lay them out in that country?—It is so; gentlemen who have gone to Canada, and have not married there when they have made money, naturally incline to come here and spend it amongst their old acquaintances and relations and friends; they have nobody to bind them to that country, here they come and bring their property; those of course, who, like myself, marry in that country, and get property there, remain, and keep their property in the country.

Do you think that there exists, on the part of persons of English origin who have made money in Canada, any dislike to the tenure of land there, or the state of property, and the laws respecting property there, which deters them from employing their capital in the improvement of that country?—It did not deter me; with respect to others a great deal depends upon prejudice, and a great deal upon ignorance. People, going out to Canada, frequently think they ought not to inquire into any thing, but that every thing ought to be just as they wish; that the laws of the country should be made exactly to suit them the moment they arrive there; and, because that is not the case, they are dissatisfied, and they go away.

Are persons who settle in the townships, holding land upon the English tenure of free and common soccage, exposed to any other difficulties than those which arise in the administration of the courts of law?—I do not think that those people complain of any thing, except that they are far out of the way; because, unfortunately, the grants were made to them in a remote part, in preference to the grants being made nearer the St. Lawrence. But their great object has been to obtain a representation in the Assembly of the Province; and they have met in their usual way on Stanstead Plain, and have declared that they were satisfied with the bill that was passed by the Assembly, and they have petitioned the Assembly and the Council to pass that bill; they say, that in the event of that bill passing, they think they can get a remedy for all their grievances; that the first thing they want is to get a representation in the Assembly of the Province; and the Assembly of the Province is willing to join them in redressing their grievances; but any person that by chance happens to have any connection with the townships, goes and speaks as if he was deputed by the townships. We have had twenty different stories told us in that way; but the moment they have representatives of their own to speak for them, every body will believe them, and there is no doubt they will get a remedy for every thing they complain of. There is one thing that it is desired to give them, which they have in the United States, and that is the power of regulating their own little local concerns, which, I conceive,

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conceive, contributes very much to the prosperity of the United States; every district of country regulates matters of common convenience, such as roads and bridges. What can be done by an individual is done, but what cannot be done by an individual is done by a common effort of the whole community, as determined by the majority; whereas in the townships they can get nothing done without delays and expenses.

Describe the difference between the state of things in that respect in Canada and in the United States?—In Canada we have been plagued with an old French system of government; that is to say a government in which the people have no concern whatsoever, every thing must proceed from the city of Quebec and the city of Montreal, and persons must come to the city of Quebec and the city of Montreal to do every thing, instead of being able to do for themselves in their own localities. In the United States they have the English system, by which every locality has certain powers of regulating its own concerns, by which means they regulate them cheaper and better; whereas with us a man must make a journey to Quebec, he must go to a great expense, he must bow to this man and bow to that man, and rap at this door and at that door, and spend days and weeks to effect a little improvement of a road, or something of that kind, of common convenience to a district, whereas all that is done in the United States without going out of his own small district.

Is the arrangement with respect to roads, by which the Committee understand that they are placed under the grand voyer, not popular with the inhabitants of the seigneuries?—The system is a very good one; but in respect to that office, as in respect to many others, they have burthened it with fees, which disgust the people. You cannot get the grand voyer to operate without paying heavy fees, which the person that asks for the alteration must pay in the first instance. Perhaps if it is right, after the thing being argued in a court of justice, he may be reimbursed by the others, but in the mean time he must pay those fees to the grand voyer; that prevents their commencing improvements in roads or any thing of that kind; but the system of every man being bound to do the work upon his own land, as it exists in that country, is a very good one.

Does it secure that the roads shall be laid out in a proper place?—The system is this: the grand voyer ought to assemble the inhabitants, and take their advice as to where the road is to be laid out; and he ought to be guided by their advice, unless there is something very unreasonable in it; but the grand voyers perhaps, like other men, occasionally proceed carelessly and irregularly, and there are some discontents upon that subject; perhaps it may be thought that a grand voyer favours this individual or that individual, but it is often thought so when it is not the case.

In what manner is the grand voyer paid?—He has a salary from Government, and he has got fees allowed him in some way or other.

How is he appointed?—He is appointed by the Governor.

Is he appointed permanently, and for what extent of district?—He is appointed during pleasure; there is one for the district of Quebec, one for the district of Three Rivers, and one for Montreal; and each of them may appoint deputies in different parts of the country, with the approbation of the Governor.

Is the grand voyer constantly resident within the district entrusted to him?—I believe so.

Upon any application made for a new road, is it necessary for him to transmit the application to the Government?—No, he acts upon his own discretion, subject to ratification in the quarter sessions of the district.

Supposing it was desirable to adopt a system with respect to roads in Lower Canada similar to that which you say works so well in the United States, in what way could it be carried into effect?—Of course by an Act of the local Legislature. The whole system, as I said before, is hitherto a French system of government; it leaves nothing to be done by the people. It would be necessary to organize the counties, and to give the proprietors certain powers of interference in their own affairs.

Are the counties sub-divided?—There has been no alteration in the division of counties since the year 1792.

What sub-division exists at present?—The old settled part of the country is divided into parishes, and the newer settled is divided into townships and counties; but the division has been made merely with a view to representation; there is no organization of counties



counties, there are no quarter sessions and no courts of justice; every body is obliged to come to Quebec, Montreal and Three Rivers.

Are there any magistrates appointed for the counties?—There are.

Would it be desirable, in your view, to establish quarter sessions?—Yes, provided magistrates are qualified; but they refuse to qualify magistrates. If they put in persons who have no property and weight in the country, it will only create confusion.

Who refuse to qualify magistrates?—The Legislative Council.

Has there been any attempt to establish a system of local organization?—There have been partial attempts in the Judicature Bill: they have sub-divided the country for the purposes of justice.

If any such attempts were made with a view to improving the country by making new roads, would they be resisted upon the part of the Assembly?—Certainly not. No change that will be for the general good of the people will be resisted by the Assembly, for the Assembly are the true representatives of the people; they must do what will be for the good of the people; if they do not, they had better go home and mind their own business.

Do you suppose that in case a system of local organization were established in the townships it would be likely to make its way, in the course of time, into the seigneuries, from a conviction of its advantages?—The people themselves in Lower Canada have been desirous of having a voice in the management of their local concerns.

Is it your belief, from your knowledge of the people of French extraction in Lower Canada, that from seeing such a system established in their immediate neighbourhood they would be likely, in course of time, to conform themselves to it, and to wish to adopt it?—Upon the whole many of us have been rather afraid than otherwise that they would conform too fast to what they saw in their immediate neighbourhood, but I conceive there might be a great many improvements introduced amongst them with their own consent, without making them exactly such as in their neighbourhood, for it is not altogether what we could wish.

What is the proportion as to numbers between the French and English members in the Legislative Assembly?—The proportion of what are called English has been diminishing within the last five or six years rather rapidly: there are only two natives of this country in the House of Assembly.

The question refers to the descendants of English parents, as distinguished from French Canadians?—There are many of good English names that cannot speak a word of English, and many of French names that cannot speak a word of French; in fact the language of the majority always carries it for a certain time, then it is acted upon by the language of the majority that may be farther off, but in the immediate vicinity it is always at first the language of the majority that carries it.

Is that language the French language?—That is the language of nine-tenths of the people.

What is the proportion of persons returned by constituents of English extraction?—It is impossible to tell that; for those of English extraction are mixed throughout with those of French extraction. It would be as difficult to tell in this country which are of Scotch extraction, or which are of Norman extraction; but when English people have settled in a district inhabited by French Canadians, of course they cannot return any, because they are the minority. It is always the majority that returns.

Are there not a certain number of the members of the House of Assembly you consider the representatives of the English settlers?—I consider that we have all the same interest in that country, but we do draw lines; sometimes it is said this man is a Scotchman, sometimes he is a Yankey, sometimes he is a Foreigner, sometimes he is a Protestant, and sometimes he is a Catholic, but these are all nonsensical lines which have no real existence; we have all the same rights and the same interests in that colony, although our prejudices are different sometimes.

Are the interests and feelings of the people that live in the townships equally regarded in the Assembly with the interests and feelings of those that live within the seigneuries?—I cannot say as to that, for we have not been able to judge of their interest and feelings, they having had no representative entirely of their own choice.

You are a member of the House of Assembly?—I am.

What place do you sit for?—For the county of Quebec.

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What are your constituents principally?—The majority of them are what they call of French extraction.

Have you sat for the county of Quebec ever since you have been in the Legislature?—I have.

What proportion do the Protestants bear to the Catholics in the Legislative Assembly?—The Catholics have about seven-eighths, but they have not quite so many members as their population might entitle them to.

Then in fact the inhabitants of the townships, if they had an object distinct and separate from the inhabitants of the seigneuries, have no means of making themselves heard, or at least have no means of prevailing in obtaining that object in the Assembly?—Not till they have representatives in the Assembly; I conceive they have no fair chance, because every body that is connected with the townships tells a different story on the subject, and they are very much suspected of having private views in the matter.

Has there been any attempt made in the Assembly to give them a representation?—We have passed a bill four or five times, but it was always rejected in the Council.

In what mode was it proposed to extend the representation in the Assembly by those bills?—The first attempt was made in the year 1823, when I was in this country; Mr. Davidson was then chairman of the Committee, and I have seen the report that he made on the subject; he consulted the surveyor-general for a statement of the population, because we had not been able to get a census; we had been endeavouring to get a census for four or five years, and the Legislative Council refused the bill; the surveyor-general, however, stated the population as nearly as he could, of the different divisions, and the representation was apportioned upon that statement throughout the whole province; the bill was brought in and sent up to the Council; they proceeded some length upon it, and made some amendments of it, but it never came back to the Assembly. The next year, in 1824, they passed a bill providing for a census of the population generally, and the Assembly sent upon another bill, which failed in the Council.

What number of members did they propose to add?—The bill of 1823 proposed to make the number 68; that is to say, to add 18; and I think the last bill that was sent up, which was in 1826, proposed about 80.

Was not the principle on which it was proposed to divide them, rested upon the number of the people, and the addition that had taken place in the proportion of English in the population since the first distribution in the year 1792?—The division was made upon the principle of giving to a certain number of qualified electors throughout the province a representative; I think that 7,000 and odd was to be the number that was to entitle to two representatives; but there is a long report on the subject in the journal of the House of Assembly; it was proportioned equally throughout the province, in the new settlements, in the seigneuries, and in the townships they were all treated alike; for 36 years ago the settlements were very little extended any where, since that time they have extended in all directions, both seigneurial settlements and township settlements.

What fresh sub-divisions were made of the people for the purpose of enabling them to exercise this new right of election?—I cannot say; there were a great many extensive counties divided into two. I succeeded Mr. Davidson as chairman of the committee that brought in the bill, and I recollect that I portioned off the whole of the townships separate from the seigneuries, so that there might be no interference in the election; that the representatives of the township should be independent of the people in the seigneuries, seeing that when they are brought into contact they may destroy the votes of each other in some respects; so that according to that bill the townships would have had about five representatives in the Assembly who would be entirely their own choice, which would be sufficient to have their interests well understood; for if the representative of a county says this is wanted for my county, every body gives credit to him.

Did the bill contain any such provisions as would adapt the representation to the population as it continued to increase, and to the surface of the country as it gradually became cultivated?—It was intended at that time to get a census bill every 10 years, and to apportion the representation upon the census; that is the constant practice now in the neighbouring countries; and I believe it is a very safe practice; it prevents every thing that is unfair.

What

What is the rule laid down in the United States of America, particularly in the district of Vermont, with respect to the increase of representatives who are to sit in the Assembly of the State?—The universal principle throughout the United States of America is, that representation and population should go hand in hand; that they should be proportioned to each other. In Vermont I have seen the constitution of 1793, which says that the representation shall be apportioned as equally as possible. There were very few settlers at that time, and I think that they allowed two representatives for a town, provided it contained 85 qualified electors; and if it had not 85 qualified electors, it was nevertheless to have one representative.

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What is the qualification of an elector?—In the first place being a militiaman, in the next place paying taxes to a certain amount; I believe in the State of New-York they have lately made an alteration: they made any contribution in the shape of direct taxes sufficient.

Is there not a combined principle in Vermont which has reference both to the extent of land and to the population?—Not to my knowledge; I never saw any thing later in Vermont than the constitution of 1793.

What provision is made in Upper-Canada for increasing the number of representatives in the Assembly?—In Upper-Canada I know that they have a provision made by the local Legislature for increasing the representation; but I cannot speak as to the details.

What in your opinion would be the objection to establishing a system in Lower-Canada similar to that which has been described, recognizing a combined principle, rather than one that is to be dependent upon population solely?—I think it would be very unsafe and very unsatisfactory to the people at large. I do not think that the township people, or any other portion of the people of Lower-Canada would like to see a departure from the general principle, that the number of representatives ought to be proportioned to the number of qualified electors.

On what ground would it be unsafe?—I think it is unsafe to deviate in a matter of that kind, so greatly from the privileges which the people enjoy in the adjoining states; the people in Canada think they are entitled to privileges nearly corresponding with those which exist on the other side of the line, and I do not think it safe for this Government to deviate too much with respect to popular privileges, from what exists in the United States of America.

If you were to be convinced that the practice which has been described exists in the neighbouring country, should you think that there is any ground of danger in adopting it in Lower-Canada?—It is not very likely that I should be convinced on that subject; there may be something that I am not aware of, but I am almost certain that there is nothing that authorizes a departure from the principle laid down in all the American constitutions I have seen; but even if it were so, I do not think it is fair; I think it is essential that justice should exist every where; I think it is the foundation of all Government and all security.

Do you then mean, that numbers should form the sole basis of legislation?—No; it should be the number of qualified electors.

What qualification would you propose?—The qualification is a qualification that has been established by Act of Parliament, it is territorial in the counties, and proprietors of houses in the towns, or paying a certain rent.

You say that in Vermont, when there are 85 qualified electors in a town, that town is entitled to have two representatives; but does the number of representatives increase afterwards in a rapid proportion, when the number of qualified electors increases?—I have seen nothing of the constitution of Vermont except the constitution of 1793, which says, that when there are 85 qualified electors in a town, that town may send two representatives, and that all towns that have not got that number, may send one; that is to say, any town that has inhabitants may send one, but towns that had a number exceeding 85 might send two; now a representation of that kind is a most monstrous representation, for I have seen a house of 600 or 700 members all sitting together, constantly doing business. Every parish, in fact, sends two representatives, and they do send in some instances, I believe, as many as they choose to pay.

Does the number of representatives increase in proportion to the number of qualified individuals?—No.

Then the number of electors is not in proportion to the population?—They make out censuses every ten years, and upon those censuses it is that they apportion the representatives, so that every place may be equally represented.

Then

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Then it appears that a town containing 500 or 5,000 qualified electors, has the same representation as a town containing 85 qualified electors?—That is the constitution of 1793; but the constitution of 1793 establishes this principle, that it shall be as equal as possible amongst the qualified electors, and they regulate it by special Acts from time to time.

You are not aware of any change having taken place since that time?—No.

Then according to the system of 1793, there is no proportion established between the number of electors and the number of elected?—Perhaps the best way will be to refer to the clause, and then every gentleman will be able to put the construction upon it that is most correct.

Are gentlemen resident in Canada found to be generally averse to be members of the Assembly, or is it an object of competition amongst them?—There was a great deal of competition at the last election.

Were there many contests?—Universally, almost.

Do you know the system of representation in Upper-Canada?—I know there has been an augmentation of the representation there.

The principle of the representation there is that every county now formed or organized, or which may hereafter be formed or organized, the population of which shall amount to 1,000 souls, shall be represented by one member, and that when it shall amount to 4,000 souls, it shall be represented by two members; and that every town in which quarter sessions shall be held, and in which there shall be 1,000 souls, shall be represented by one member; would you think that a fair system?—We do not claim so much as that; we would have thought that that would have given us too numerous a representation. Their representation is nearly double ours upon the present system.

Do you think that would be a fair basis of representation, not as to the numbers but as to the principle?—I do not see any thing very objectionable in that; but I will read an extract from the petition of the townships, by which they declare themselves satisfied with this bill; this petition was presented in 1825 to the Legislative Council and to the Assembly of Lower-Canada; they say, "That the petitioners learn with most heartfelt satisfaction that a bill was introduced into the House at their last session, and which passed the same, providing for dividing the province anew into counties, for the more equal representation of the same in the Provincial Parliament, and for other purposes, and that they deeply lament that the same did not pass and become a law; that is to measures of a similar nature, especially as it regards the eastern townships, that they look forward as the most effectual remedy for the many difficulties under which they have long laboured as a people, and of preventing in a good measure the evils which a continuance of the present state of things would threaten them with for the time to come." That is the most numerously signed petition that ever I saw come in from the townships; since that time the same bill has been sent up twice to the Legislative Council, and in that bill they struck out every thing that regards the augmentation of the representation.

Upon what grounds do you understand that it was rejected?—I understand that they think that the House of Assembly is sufficiently numerous, but it is impossible to tell; we were seven years without obtaining an Act authorizing a census.

Do you know whether there were divisions in the Legislative Council upon the amendments, or whether they passed unanimously?—I cannot say; but the journal of the Legislative Council of 1827 will shew the proceedings. The bill was sent up in 1824, in 1825, in 1826 and in 1827; there was an instruction in the year 1825 to leave out the clause relating to an augmentation of the representation; in 1826 there were no further proceedings on the subject; in 1827 this bill was introduced, and ordered to be printed.

Do you know what is the system which is pursued with regard to the qualification of members for Congress, as to apportioning the number of representatives which each State is to send?—Yes; the population is the principle upon which they go; it is to be settled every ten years upon a census.

Is it not wholly dependant on population, without any reference to the number to which the Congress may ultimately come?—I believe it is not at all settled to what number they may ultimately come; but they will of course confine it to a number that is fit for doing business.

Is it not the fact, that the number of representatives sent from a State to Congress increases according to the increase of the population?—The constitution of 1789 says, that the representation of the States shall be regulated according to their population, and I understand that it is fixed upon a census every ten years.

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Have not wishes been expressed on the part of the townships that roads should be made from the townships through the seigneuries down to the river, in order to give them access to that part of the province which is the most populous and the most wealthy, and to give them access also to the river for the purpose of taking their produce to market?—Yes.

What has taken place in consequence of those representations?—There have been large grants of money from time to time made for the purpose, which have been spent under the direction of the Executive Government, and concerning which the people of the townships almost universally say that no good has been done with it.

What sums of money have been granted, and when?—I do not know exactly, although the people of Lower-Canada do make roads upon their own land, and are bound by law to do so, I think there must have been spent since the last war nearly £100,000 for roads, of the provincial money.

In what way has that money been raised?—It has been taken out of the unappropriated monies at the disposal of the Legislature.

How has it been applied?—The Governor appoints Commissioners, and the Commissioners proceed to apply the money; the people complain very much on the subject throughout the country; they say that the Commissioners have endeavoured to make roads for their own advantage, and that they have made roads where they could be of no use, and that the consequence is, that the people derive no benefit from them.

What interest could the Commissioners have in the matter?—They have large tracts of land, and every one likes to have a road through his own land.

Who have been appointed Commissioners?—That will appear by the journals of the Assembly.

By whom are they appointed?—By the Governor.

Are they appointed permanently, or is a set of Commissioners appointed to carry a particular road into effect?—They are appointed for a particular county, or for a particular district; I think that Mr. Felton, M. Heriot and Mr. Badeaux are for the Three Rivers.

Will you describe any one road which has been made with the public money?—I cannot mention any one road, for the people all say that there is none existing, the money is spent, and the road has grown up; there was a road called Craig's Road, upon which a great deal of money was spent; there was a road called Labaye Road, upon which a great deal of money was spent; and there was a road from Sorel to the townships, upon which a great deal of money was spent.

Does the making a road in Canada mean more than cutting an open way through the wood, and removing the timber and obstructions?—Yes, it is necessary to do more than that; the first opening, however, is mere by that. The first is sufficient for a sledge to pass in winter; the next is sufficient for a horse to pass in summer; the next is sufficient for a cart to pass in summer; and the next is sufficient for the common conveyance to market of a market cart, and then they think they have got a great way in improving the roads.

To what circumstances do you attribute that the roads you describe as having been constructed grew up again?—The roads were made out of all reason; it was attempted to make roads through an immense wilderness, where there was nobody settled; through the crown and clergy reserves, where there was nobody to look after it. Attempting such a road as that was a waste of money. No road can be kept in repair unless there are inhabitants along the road, and there is travelling by the road.

Has not one of the great objects of the Government of the United States been to extend great lines of roads; and has not it been found that the extension of those lines of road uniformly brought population upon the line?—I cannot say as to that; they are doing a great deal as to roads in that country; they are making military roads,  
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and other roads; and I have no doubt that where good roads are made, it is easier to settle along those roads than when they are miserable roads, such as are made in Canada.

Roads having been made, such as you have described them, to what do you ascribe that they have not had the effect of producing settlements upon the line?—In the first place, you cannot find who are the proprietors of the land, for they have been granted 20 or 30 years ago to persons, some of whom are living in England, or in Scotland; and you cannot sit down alongside a crown reserve, or a clergy reserve, because you have nobody to assist you; the wild beasts will come in from the crown reserve, or the clergy reserve, and eat up all your crop. It is as much as a man can do in those countries, in the first, second and third year, to derive subsistence from his labour, without doing the labour of his next neighbours; and then it is to be considered that the march of population, as the Americans say, is to the west, where the climate is milder; Lower Canada is the hardest climate of all the North American provinces. The people like, if they can, to take advantage of a long river, like the River St. Lawrence, to go into a milder climate.

Has not the increase of population been very rapid in Lower Canada, in the townships along the American borders?—I think it was about 1798 that they began to settle; and I believe that now, in that quarter, there may be about 24,000 souls.

Of what origin?—They are people that come in from the United States, native Americans. The first grants were made in 1796; and the people principally came in from the United States in the beginning of 1798, and on till 1812, when the war began; and since the war, I believe, the settlements have been going on increasing.

What is the inducement to settle on the borders of the United States, in preference to settling on the part of the Canadas near the townships?—The object of the Americans was to get good land, and cheap; and the nearer their own country, the easier it was to get to those lands.

Did they get them cheaper in Canada than in the United States?—Of course they did.

To what do you attribute that?—I attribute it to a great many causes; one is, that the Americans are better managers than we are.

In what respect are they better managers?—They generally manage their concerns extremely well for their own profit and for their own advancement; they have excellent regulations amongst themselves for the common advantage in settling lands, and making them valuable when they are settled; we are not so well regulated in that respect.

Do you attribute it to a better system of government?—I think their system of local government is much better than ours. There is another circumstance; some of the people that come in from the United States to Canada are runaways, persons that have got into debt in the United States; they come into Canada, and settle in Canada, because they are out of the reach of their creditors; those are not the best people for advancing a settlement.

To what do you attribute the difference in the value of land between the United States and Canada?—I should say that their local affairs are better managed than ours. I know that in Derby, when I was there in 1811, the lands on the other side of the line were worth eight dollars an acre, and on our side they were not worth two.

Have the inhabitants of the townships ever petitioned the Legislative Assembly for any purposes?—Yes.

For what?—They have petitioned for register offices; they have petitioned for courts of justices; they have had a court of justice; they have been set off into a new district.

Was that as much as they petitioned for?—I do not know that it was; they probably wanted courts upon a more extensive plan. This is a limited jurisdiction; but the townships were set off by the Act of 1823 into a new district, and an English judge appointed for them alone, and a gaol built, and some things of that kind done; however, there has been a great deal of difficulty upon that subject. They had an Act for collecting small debts, and making justices of the peace courts, and things of that kind; but I rather suspect they would like to have courts upon a more extensive plan; they are dissatisfied with the courts that they have.

Have their petitions been generally attended to?—They have, but latterly I should say that the whole of the legislative business of Lower Canada has been very much neglected; the differences between the executive Government and the Assembly, and the objections

tions on the part of the Legislative Council to proceed upon bills sent up by the Assembly, have prevented the legislative business from going on with that activity with which it ought to go on.

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With respect to roads you mentioned that 100,000*l.* had been voted for making them in different parts of the country since the war; do you mean since 1815?—In 1815 they began to make appropriations; in 1815 there was a grant of 15,000*l.*, and there was another large grant of 55,000*l.* in 1817, and they have gone on gradually ever since.

Has any one good road been made with that money?—Very little, I believe.

Were those sums granted upon the application of the executive Government, or did they arise from a motion in the House?—Some of them were upon petitions, some, I believe, from motions in the House; but there has been no grant of public money made without an approbation on the part of the executive Government.

Were they appropriated to make particular roads?—They were appropriated to particular counties.

Has there been any report of the manner in which the money was expended?—There have been reports made, but there is at this moment great disorder in the whole concern; there is to the amount of 150,000*l.* of monies advanced that have not been settled.

Have the commissioners salaries?—No.

Are they gentlemen of the counties?—Some of them reside in the counties, some in the towns, some of them reside in Quebec, and some in Montreal; but the thing has been badly managed altogether, and there is no regularity.

Have not the House of Assembly sometimes refused to pass bills that have been sent to them?—I do not know any road bill that they have refused.

Do you not recollect instances of road bills that have been introduced into the House of Assembly which the House of Assembly have not passed?—Yes, I recollect one about the crown and clergy reserves.

Do you recollect why it was not passed?—I cannot say, it was referred to a committee, and there was a report upon it.

Do you think there exists in the House of Assembly any disposition to discourage settlements in the townships?—I do not believe it.

If it has been said that the House of Assembly refuses to pass road bills in order to discourage settlements in the townships, you do not believe that to be a correct representation?—I do not.

Do you think there exists on the part of the inhabitants of Lower Canada of French extraction, an indisposition to see the English settlers occupy land in the rear of the seigneuries, and cultivate it?—I do not think there is; it is very natural, however, that the farmers should wish to see lands at the back of them to settle their children upon, but I do not think there is any indisposition to the settlement of the country by the people of Europe; the general notion among the people is that America is large enough for every body.

Is there a strong idea in Lower Canada that Lower Canada was intended to be reserved by the Act of 1791 for the French Canadians?—I have heard that idea expressed.

Do you think it prevails generally?—I do not think it does generally; but I am convinced that many of the French Canadians think it hard that they should not get land with the same facility as other people.

What obstruction is put in the way to granting lands to the descendants of the French Canadians?—In the first place, they like to have every thing in the old way; they have applied for land *en fief*, and they have been refused.

Do they object to take land upon the tenure of free and common soccage?—They do not object to take lands upon the tenure of free and common soccage; but they cannot get them; the lands there are granted out to a great extent back, 20 or 30 or 40 miles, if they find out who is the owner of a piece of land near them, they apply to him directly, and he asks them an extravagant price for it, a price that they cannot pay.

To whom are those lands granted?—From the year 1796 down to a late period, there was a practice of granting an immense tract of land, called a township, to a leader, that leader gave a number of names which were put in the patent, and he managed beforehand to get deeds of conveyance from them, so that he became possessor of the whole;

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but in some instances those names became actually the patentees, they never thought of settling the land; he used to give them 5s. to get their names, and in many instances they stood as the proprietors. At the present day they are not to be found, or they are persons that have come to England or Scotland, and you cannot tell who is the proprietor of the land; but if you do find the proprietor of the land at the back of the seignuries, where the people want to settle, he asks an extravagant price for it.

Would you propose to interfere with the rights of those proprietors?—All those lands were granted by the King on condition that they should settle on them, they have not performed that condition. It was proposed in the House of Assembly to pass a bill that should authorize the King's Government to proceed to escheat such lands as might be in the immediate vicinity of actual settlements; but it fell through, and there was an Act passed here in the year 1825, which is of the same character, but it gives the Government the power to escheat all over the country, perhaps 100 miles from any settlement. Now it is a hard thing to talk of escheating a man's land when he is out of the reach of all settlement, after he has been put to the expenses of fees for the patent, and other expenses. Undoubtedly when the settlement comes alongside of him, it is proper that he should perform his duty of settlement, and if he did not, that he should be deprived of it; but it is thought that that power might be used to take away land from people on speculation, and that has excited alarm.

How would you propose to deal with those lands?—To pass an Act of the Legislature, that whenever there are settlements in a township, the settlers upon the adjoining lands should have the lands escheated, unless they performed the duties of settlement.

Then you would propose to enforce the Act of 1825?—Under that limitation, that it should not extend to any other lands but those within the limits of a settlement.

You said just now that the price asked for that land is exorbitant, and before that you said that lands were cheaper in Canada than in the United States?—So they are, much cheaper than in the United States; there has been so much land thrown in the market in Canada, that unless it is in the immediate vicinity of a settlement it will not sell for more than 3½, 7½d., 10d., 1s., and 1s., 3d. an acre; but sometimes in the vicinity of a settlement it will bring a higher price. The moment you go and settle alongside the land of one of those occupiers, you increase the value of his land, and from that moment if you purpose to buy his land he asks an exorbitant price for it; he will not settle it, because he finds that he can get a price for his land by the labour of others.

You have said that it was very much wished on the part of many persons in Lower Canada, that an agent should be appointed in this country, and that the power to appoint such an agent had been refused; for what purposes did you wish an agent to be appointed?—Generally to attend to the interests of the colony in this country, particularly in matters that are before Parliament. The Parliament has reserved to itself the right of regulating our trade, and in fact, it is the supreme Legislature of the Empire; and we have found by experience, that latterly it has occasionally made laws that affect us; now we think, that as we have no representation here, it would be conducive to the welfare of the colony, and probably to a better understanding of what is done here, if there were a person resident here that might attend to those matters. It may happen that there are abuses in the colony, concerning which it may be necessary to apprise the Government here; now if there are abuses it would be better that there should be some person authorized by the colony, and recognized by the Government, to make representations to the Government, so that the matter may be quietly examined into and adjusted, any abuses of Government there may be put an end to by instructions to governors. An agent would be able to make the colony understood to the Government of this country in some measure, and the Government of this country better understood to the colony, besides attending to the business before Parliament.

Do you know who appointed agents to the United States in this country while they were still dependent upon this country?—I believe the Legislature of the colony. I think that generally the colonies that had agents have had them appointed by an Act of the Legislature of the colony, and they have agreed amongst themselves as to the person that should be that agent. I believe that Nova Scotia has had agents, New Brunswick has an agent, Jamaica has an agent; we have applied since 1807 for an agent, and certainly in there had been an agent, it would have prevented a great deal of alarm and ill feeling in the country.

Has



Has Nova Scotia now an agent of that description?—I do not know that it has now; I know that New Brunswick has an agent now.

How do you propose that the agent should be appointed?—By an Act of the Legislature.

With the consent of the Governor?—No Act can pass without the consent of the Governor. The last time it was proposed to have a conference with the Legislative Council on the subject, but they maintained that there ought to be no agent, that the Governor is the agent for the province. That may be so, but it is very difficult in matters, particularly where there may be complaints against the Governor, that he should be the agent.

Who would instruct that agent if you had one?—The usual method has been that there should be a committee named by the Council, and one by the Assembly, and that they should send him instructions; or if they did not agree upon the person that shall be the agent, they name two. The only object is, that the branches of the Legislature of the colonies may be heard in this country. It may be irregular in some respects, but there has been a necessity found for something of that kind. I rather think that agents have done more good than harm upon the whole.

With regard to the Canada Tenures Act, which contains a power for changing the tenure of land at the option of the holder of the land in the seigneuries, is that objected to now in Lower Canada, and are the provisions of that Act matters of complaint?—It has had no execution; the people have viewed it with some degree of alarm, because they conceived it as the commencement of an attempt to destroy the laws of the country under which they hold their property, and particularly that part of it which declares that whenever a commutation is made the property shall be under the laws of England. Now that my property should be under the laws of Canada, and that my next door neighbour's property should be under the laws of England, seems to me to be impracticable. The people imagined that it was the commencement of a plan for destroying the laws to which they have been accustomed, and in consequence it excited some alarm, and the people were indisposed against it.

Do you know what has taken place at New Orleans since it was made a part of United States?—There can be no difficulty there, because the majority of the people appoint the Legislature and the Governor; the majority of the people make the laws, and they must always be satisfied, because whatever is done is done by consent of the people themselves.

Has not the French law been adopted there?—I believe they have adopted a code very much like the *Code Civile*; and if there were a code drawn up, there would be no objection to the laws in Lower Canada, for the objections arise more from ignorance than any thing else. People will not inform themselves of what the law is, and then they find that they have committed blunders through their ignorance of the law.

What are the peculiarities in the state of Lower Canada which have occasioned it to remain so much behind the rest of the Continent in point of information?—The country is very much extended, it is difficult for people to establish schools themselves; they had no authority till lately even to hold property for schools, and under difficulties of that kind it is natural to suppose that education would not spread so rapidly as in the United States, where from the commencement there has been a regular provision made for schools on pretty much the same plan as in Scotland. In Lower Canada we have had nothing in favour of schools except the Act of 1801, which has done more harm than good with respect to the general advancement of education, for it alarmed the people with regard to their religion. The schools were under the control of persons that they considered adverse to their religion, and it was thought that it was attempted to get the whole of the children to school in order to convert them, or pervert them, as they called it, and it excited a great deal of alarm.

I deliver in a copy of the Resolutions of the Legislative Council of the 6th of March 1821.

[The witness delivered in the same, which was read as follows:]

“Resolved, That it is the undoubted constitutional right of the Legislative Council to have a voice in all Bills of Aid or Supply, or Money, of any kind levied upon the People of this Province by the Legislature thereof; and in all Bills for Appropriation of the same, whatsoever the purpose may be:

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“Resolved, That the said right extends to the approval or rejection of all Bills of Aid or Supply, or Monies aforesaid, and of all Bills of Appropriation for the whole or any part of such Aid or Supply, or such Monies, and that no legal appropriation can be made without the concurrence of the three branches of the Legislature :

“Resolved, That the Legislative Council will not proceed upon any Bill of Aid or Supply which shall not within the knowledge of this House have applied for by the King's Representative in this Province :

“Resolved, That the Legislative Council will not proceed upon any Bill appropriating Public Money, that shall not within the knowledge of this House have been recommended by the King's Representative :

“Resolved, That the Legislative Council will not proceed upon any Bill of Appropriation for Money, issued in consequence of an Address of the Assembly to the King's Representative, (Addresses of the Assembly for the expenses of that House excepted (unless upon some extraordinary emergency unforeseen at the commencement of a Session, and which unforeseen emergency will not allow of time for passing a Bill of Appropriation for the same in the session when the Address shall have been voted :

“Resolved, That the Legislative Council will not proceed upon any appropriation of public Money for any Salary or Pension hereafter to be created, or any augmentation thereof, unless the quantum of such Salary, Pension, or Augmentation shall have been recommended by the King's Representative.

“Resolved, That the Legislative Council will not proceed upon any Bill of Appropriation for the Civil List, which shall contain specifications therein by chapters or items, nor unless the same shall be granted during the life of His Majesty the King :

“Resolved, That nothing contained in these Resolutions shall be construed to prevent or infringe upon freedom of debate and decision in this House upon the merits of any matter which shall be recommended by His Majesty's Representative, or upon any Bill relating to Public Money, upon which this House, according to the spirit of these Resolutions, can proceed.”

*Mr. Neilson.*—I also deliver in a copy of the Resolutions of the House of Assembly of the 15th March 1821, which were founded upon the Resolutions of the Council that have just been read.

[*The witness delivered in the same, which was read, as follows :*]

“Resolved, That this House has never done nor claimed any thing contrary to what is stated in the said Resolutions of the Honourable the Legislative Council :

“Resolved, That the Honourable the Legislative Council cannot constitutionally prescribe or dictate to this House the manner or form of proceeding on Bills of Aid or Supply, nor upon any matter or thing whatsoever, and that every attempt of the Legislative Council for that purpose is a breach of the rights and privileges of this House : That the right of originating Bills of Aid or Supply belongs solely and exclusively to this House : That the right of originating Bills of Appropriation of Public Money belongs solely and exclusively to this House : That this House are astonished that the Honourable the Legislative Council have passed Resolutions and adopted rules which affect the constitutional rights and privileges of this House, without having heard the reasons to the contrary which might have been given on the part of this House : That the said Resolutions have been adopted by the Honourable the Legislative Council without any difficulty or dispute having arisen between the said Legislative Council and this House respecting the matters therein set forth, and that the said Resolutions, adopted gratuitously and unnecessarily by the said Legislative Council, are of a nature to retard the re-establishment of that harmony and that good understanding between the two Houses which it is desirable should prevail for the good government, peace, and welfare of the people of this Province : That all Resolutions by which one branch of the Legislature lay down for themselves beforehand, and in a general manner, a rule not to proceed on Bills of a certain form or description, which may be offered to them by another branch, is contrary to parliamentary laws and usages, to the Constitutional Act, and to the liberties, rights and privileges of the other branches of the Legislature, and even of that branch which adopts such resolutions : That by constant parliamentary usage, recognized by several Acts of the Parliament of the United Kingdom and the  
Legislature

Legislature of this Province, the Commons of the United Kingdom and the Assembly of this Province have frequently voted by address advances of money, when the exigencies of of the state and country have rendered it necessary; and that this practice, far from being disadvantageous, has been of very great assistance to Government, as the converse would produce incalculable inconvenience and fatal consequences to His Majesty's Government : That it is the duty of this House towards His Majesty and his People of this Province to take into consideration all Salaries, Pensions and Augmentations thereof, and to provide for them with liberality and justice, although the quantum be not mentioned in the recommendation made to this House by the King's Representative: That the Honorable the Legislative Council cannot, directly or indirectly, abridge or prolong the time fixed by Bills of this House for the collection of any sum of Money, nor change the mode established by Bill of this House either for the collection or application of the public Money."

*John Neilson,*  
Esquire.

24 May, 1828.

Mr. S. McGillivray.

3 June 1828.

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Mr. Simon McGillivray, called in; and Examined.

ARE you acquainted with the British Provinces in North America?—I am, having frequently visited them.

In what capacity have you visited them?—As a merchant, and connected with the North West Company, whose trade extended very far into the interior, and the necessary attention to which, I had occasion to travel through a considerable part of the country repeatedly.

Is your acquaintance principally with Upper Canada, or with Lower Canada?—About equal in both; my connections are chiefly in Lower Canada; but I have travelled so frequently through Upper Canada, that my personal acquaintance is about equal in both.

For what length of time have you been acquainted with those provinces?—I have been acquainted with Lower Canada since 1802; with Upper Canada since the war; since 1815.

Are you a proprietor of lands in either province?—I am not, individually. I believe I may be proprietor of some wild land that I inherit from some relations there; but I never saw it.

Is there any thing in the state of the laws in Lower Canada which, in your opinion, discourages British subjects from becoming possessed of land in that province?—Undoubtedly there is much; the state of the tenures, the fines upon mutations of property, and the general dislike which I have found to prevail to living under the French institutions and laws.

Do you find that dislike confined to the English population, or is it common to the French?—Certainly not; the French are anxious to preserve their peculiar institutions with as little alteration as possible.

Is not the French population much more numerous than the English?—It is. The French and English population are very little mixed; and even where they reside together, as in towns, they do not associate, but form, as it were distinct castes. In the seigneurial part of Canada, along the banks of the St. Lawrence, the French population is pretty much unmixed. There is a mixture of English population in some of the towns; and in what are called the eastern townships, (a considerable extent of territory lying between the seigneuries and the boundaries of the province,) the population is partly of English and partly of American descent, but generally called English, as distinguished from French.

Is the objection to the state of the law confined to the inhabitants of the townships?—It is confined to the commercial population of the towns, and the English inhabitants of the townships.

You say that the fines upon the mutations of property are one of the reasons why English people are indisposed to possess it; can you state the amount of those fines?—The amount of the fines is, I believe, one twelfth upon each transfer; and its injurious effect upon property which is improved is manifest at once; because if a man purchases a piece of ground, a mere garden, for 200*l.* or 300*l.* and builds a house worth 10,000*l.* upon it, he pays the fine upon the additional value.

Does the one twelfth go to the seigneur?—It does.

Is it paid equally, whether the property is transferred upon the death of the possessor or transferred by sale?—It depends upon whom it is inherited by. If it is inherited by the children I believe it does not pay the fine of mutation; I believe it is only in case of sale that the full fine is charged.

Is the commerce of Canada carried on chiefly by English people?—By the people of English

English and Scotch, and what the Canadians consider *foreign*, descent, speaking of English as including all others who are not Canadians.

To what circumstance do you attribute the Canadians not engaging in commerce?—It can only be matter of opinion. There are some of them that are engaged in the inferior branches of commerce; they keep shops, and are engaged in small country half taverns half shops, but generally they are not a commercial people, and of those who have engaged in commerce few have ever obtained any distinction, or amassed much property by means thereof.

Did they not while the fur trade took the direction of the St. Lawrence, engage very actively in that branch?—As clerks, servants, and *voyageurs* or canoemen, they did; I can speak to that from my own knowledge. The fur trade to the northern country was, from the year 1784 or 1785 to the year 1821, carried on wholly by an association called the North West Company, and although the partners of that company were always chosen by a regular system of promotion of meritorious clerks, I believe only four Canadians ever came to be partners of the company, and one of them through a circumstance of family connection. I have no objection to state *the fact*, but it is not of any moment, and it might offend the party; but the inferior servants were almost wholly Canadians.

Do the persons whom you describe as engaged in commercial pursuits in Lower Canada invest their money in Lower Canada, or are they in the habit of remitting it home?—They are very much in the habit of remitting it home; and I am persuaded that that practice has tended to prevent the advancement of the colony and its improvement, in the same manner that the adjoining states are improved.

Are you sufficiently acquainted with Upper Canada to be able to say whether the same habit prevails there; that is to say, whether persons making money in commercial pursuits remit their money home or invest it there?—I know scarcely any instance of any persons having acquired money in the Upper Province having left it. They become generally large holders of land. There are several persons that I know now who have been long talking of leaving the province, but they still remain there.

You mean persons that are engaged in commercial pursuits?—They have been persons engaged in commercial pursuits, proprietors of mills, and dealers in produce generally; because the commerce of the country is limited to the produce of the land, and to importation of manufactures and colonial produce for consumption.

Are the Committee to infer from that, that the tenure of land, and the management of property in Upper Canada, is upon a footing more acceptable to persons of British origin than it is in Lower Canada?—Undoubtedly; and I may state further in favour of that opinion, that although at a greater distance from a market, and a much greater distance from a navigation, and under various disadvantageous circumstances, arising from its remoteness, land in Upper Canada, is of considerably more value than land of equal fertility in Lower Canada.

Does the superiority of the climate in Upper Canada tend materially to produce that additional value?—In part, certainly.

To what do you attribute the other part?—To the superior eligibility of land held under the institutions of Upper Canada over land under the institutions of Lower Canada; in corroboration of which I would add, that where there is not much difference of climate, where the land is merely divided by an imaginary line separating the province of Lower Canada from the States of New York and Vermont, the land in the townships on the Canadian side of the line is in many places scarcely saleable at 1s. an acre, and on the other side of the line it is sold at 10s. 12s. and 15s.

When you say that the inhabitants of the English townships, and the English inhabitants of the towns in Lower Canada, are desirous of English law in preference to the French law, do you mean that they wish for the English law of primogeniture, and the English forms of conveyancing, or that they wish for the English law as it is established in the United States?—I should think that those who are not lawyers do not exactly enter into the difficulties relating to the English form of conveyancing, and the other difficulties of the English law.

Are the Committee to understand that they wish for the English law as it is practised in the States of Vermont and New York?—Yes, it is only in that way that they have

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a knowledge of it. I should say, that in speaking of English law, they may be considered to mean, and merely to wish for an exemption from the disadvantages they feel under the French law.

Does the system of French law which prevails in Montreal and Quebec materially affect or impede the commercial pursuits in Lower Canada?—It creates very considerable difficulties in many respects. The want of a bankrupt law, and of any provision for arranging insolvent estates, causes considerable difficulty in recovering commercial debts; and the system whereby every contract entered into before a notary is held to be a real security upon the whole of a man's estate, makes it difficult to know when a debt is secured or not; because an instrument in the possession of an obscure notary, or among the papers of a deceased notary, may be produced, of any date, almost forgotten by the grantor of it, and unless formally cancelled, it amounts to a mortgage over the whole of his property.

Does that prevent the practice of lending money upon mortgage?—It does undoubtedly; because it is impossible to know when you can safely lend money; and it also throws so much doubt upon titles, that it has made the system almost universal there of transferring property under a sheriff's sale, which, after a certain time, sets aside all alleged hypothecary security; and, in fact, sheriff's sales are so general, that if you take up a Canada newspaper, particularly the Quebec Gazette, you generally see half of it occupied with sheriff's sales.

Are persons engaged in commerce in Lower Canada at all impeded in their commercial pursuits, by the laws which exist with-reference to personal property?—I am not aware that they are impeded in buying and selling; as to the disputes between merchants, the case certainly is attended with difficulty, because the establishment of a system of trial by jury would be preferred by Englishmen to the manner in which questions are decided there.

With reference to the laws themselves, is there any thing in them that is productive of inconvenience, or of which merchants have reason to complain?—I believe there are a number of regulations still enforced as part of the "*Coutume de Paris*," that are inapplicable to modern times, but I am unable to speak to them.

Are you acquainted with the district of Lower Canada known by the name of the Townships?—I have never been there; in fact they are inaccessible to travellers, and can only be visited in summer on foot or on horseback, and in the winter when the *snow roads* are good, there being no roads between them and the bank of the river.

Are you at all acquainted with the transport of goods between the Lower Province and the Upper?—Yes.

Are the merchants who import goods for Upper Canada exposed to any difficulty, or to any unfair taxation in the transport of goods through the Lower Province into the Upper?—I believe the merchants are not exposed to any difficulty, because where they have to pay a duty upon importation it signifies nothing to the payer *where* he pays it. The province of Upper Canada has complained of being deprived of a part of the duties, and disputes have arisen between the provinces as to the distribution of the duties so collected.

Where are the duties now taken?—At Quebec, I believe, entirely; I am not sure whether part of them are not now taken at Montreal; the old system was that they were taken wholly at Quebec, but that was complained of at Montreal.

Is the consumption of foreign goods by the two provinces similar, or does the difference of the origin and manners of the inhabitants create much difference in their consumption?—I should think that the articles that pay most duties are liquors, wine and spirits. I should think there is more wine consumed in Lower Canada than in Upper Canada; probably they distill grain and consume less of the imported spirits than the people who are nearer the market; such at least was the opinion of the commissioners who met to determine the distribution of the duties between the provinces.

Then in the arrangement of the duties, do the taxes bear rather more heavily upon the Lower Canadians than upon the Upper, according to the relative proportions of the population?—So far as liquors go, I should say so; in regard to other commodities, I should think that from the habits and the superior comforts of living of several of the people of Upper Canada, the reverse is the case; so that very probably the distribution of the commissioners was a fair one, when they took population as the criterion for the distribution of the duties on importation.

In the imposition of taxes, which is altogether in the hands of the Lower Canadians, is there any ground of suspicion that an unfair use has been made of their power in that respect; that they have imposed taxes which they thought were more likely to fall upon the Upper Canadians than upon themselves?—I am not aware that there is any such impression:—I have no such impression.

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Are there any taxes upon the transport of goods from the interior?—There are no duties of any importance; some goods are received from the United States, upon which there is a heavy duty charged.

Do you mean goods transported from the territories of the United States at the south of the province?—Yes, the duties appear to have been intended to act as a prohibition, and they have so far operated as to be a prohibition of export by that channel, which was one great cause of promoting the canal which has been constructed in the State of New York.

Do any of those export duties bear upon the produce of Upper Canada?—I am not aware that they do upon the produce of Upper Canada.

Are you at all acquainted with the mode in which lands are granted by the Government in Lower Canada?—The grants made since the conquest have been made in townships, laid out in a similar manner to what they are in Upper Canada; the townships are generally about 10 miles square, which are divided into lots of 200 acres, and a certain number of those lots reserved for the Crown and the clergy, generally one-seventh for the Crown and one-seventh for the clergy.

Do you know whether the size of the grants, or the mode in which they have been distributed, has had a tendency to retard their cultivation?—Undoubtedly; making large grants in the townships nearest to the seigneuries must have tended to prevent cultivation; but the seigneuries themselves are not yet entirely cultivated to the boundary of the townships; it is only the front piece of land immediately bordering upon the river; that is very thickly peopled, so thick, that from a distance the houses along the road look like a continued village; but if you go back three or four miles, the country is very partially cleared.

Then beyond that again, and towards the American boundary, is there not a district called the Townships?—Yes, the seigneuries extend, I believe, generally about 12 or 15 miles from the river side, and the whole country from thence to the boundary line of the province is laid out in townships, of which, I believe, surveys were made, and I know the provincial government is by no means satisfied of their accuracy.

Can you state generally any measures or any course that could be pursued by which it would be likely that the land you now describe as lying waste between the seigneuries and the American border could be brought into cultivation?—I know no plan that would be likely to be so effectual as that of taxing the land for the purpose of making roads, or to make roads, and to make the proprietor pay for them; and if absentees or others did not pay, to sell part of the land to pay the assessments.

What are the difficulties that now impede the making of roads?—The difficulty is the state of the property; in the first place, a great deal of property granted being held by absentees; then the crown and clergy reserves are an impediment to the making of roads, or any communication through the country; there are no means of defraying the expense. People whom I have seen from the townships complain much of the difficulty of getting roads made, because there is nobody that will co-operate with them in paying for opening roads through the adjoining lands which do not belong to them.

Are you at all acquainted with the system which is now pursued for laying out roads?—I believe the grand voyer's superintendence is chiefly confined to roads in the seigneuries.

Is the land that is set apart for the clergy reserves so located as to produce great inconvenience to the settlers?—It is, undoubtedly; because laying out every seventh lot for that purpose, and another seventh for crown reserves, and supposing the intermediate lots adjoining the river or the road to be occupied and partially cleared, yet the man that has to get to the lot beyond the reserves cannot reach his farm or carry his produce out of it without going to the expense of opening a road through the reserve, and that he cannot afford; so that the reserves generally are an impediment to settlement.

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Is that in-itself a sufficient reason to account for the land between the townships and the seigneuries remaining unsettled?—It is only one cause, and it contributes with other causes; because, whether the land be a clergy reserve or a crown reserve, or land granted to a non-resident proprietor, the effect is the same.

Do you think the absentees have been deterred from cultivating their land by the clergy and crown reserves?—It has increased their difficulty.

Are you acquainted with the measures that have been had recourse to in order to compel the absentees to fulfil the conditions of their grants by cultivating the land?—In Upper Canada I know that some legislative measures have been adopted for the purpose of making improvements, and of taxing the lands of absentees to contribute to those improvements.

Are not the clergy reserves claimed by different religious sects in that country?—I think that dispute has arisen in this way. About four years ago Government made a contract with an association of merchants, of which I was one, for disposing of a certain portion of the clergy reserves, and the whole of the crown reserves of Upper Canada to that company, for the purpose of sale and settlement, and it was after that negotiation had made some progress, that I heard, for the first time, of a corporation, called the Clergy Corporation, which had acquired a title to all those clergy reserves. That Clergy Corporation made strong remonstrances against the transaction which Government had entered into with the Canada Company, and represented the value of those clergy reserves to be considerably more than they were considered by other persons to be, and subsequently other denominations, the Presbyterians particularly, and various parties in the House of Assembly in Upper Canada, have claimed a share in the distribution of the produce of the clergy reserves. The established church claim the whole right as the Protestant Church, for whose support the reserves were originally designed. Others claim a participation in it, as being generally appropriated for the support of a Protestant Church, without any exclusive reference to the Church of England.

Are the Committee to understand that this state of things arising from those different claims having been so long made, and it being uncertain to whom those clergy reserves really belong, has produced a great deal of discord and irritation in the province?—I should say not a great deal; it has very recently produced some discussion and contention in the newspapers; but it is a question of very recent occurrence; it is a question that had scarcely begun to excite public irritation when I was last in the province, in 1825.

Are you not aware that the Legislature of Upper Canada has repeatedly come to votes upon that question?—Yes, recently they have.

Have you any general notion of the numbers of the different sects in the colony?—I have not, and in fact it is rather a difficult point to ascertain; I have endeavoured to collect some specific information, and I have not been able to do it.

Would you state generally that the Church of England were in a great minority or not, in the province of Upper Canada?—If numbered against all others, I should say decidedly they were.

Was there not a resolution to that effect passed in the House of Assembly, and carried by a majority of at least 24, the minority amounting to only three?—So I have understood.

You are a member of the Canada Company?—I am.

What was the nature of the contract made between the Government and the company with respect to the lands that that company was to hold?—The contract was made for the purpose of purchasing from the Crown the whole of the crown reserves which had not then been granted (they have since been found to amount to about 1,400,000 acres,) and one half of the clergy reserves which had not been granted or leased previously to the 1st of March 1824 they amounted to about 840,000 acres, therefore it was a purchase by the company from the Crown of about two and a quarter of millions of acres at such price as should be awarded by commissioners, and to be payable to Government in instalments in 15 years.

Were the commissioners to award the price equally for the crown reserves and for the clergy reserves?—They were to award generally the price between the Government and the purchasers of all the land.

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Has any price been fixed upon the crown reserves?—Yes; a price was fixed by the report of the commissioners on both the crown and clergy reserves, but the best evidence upon that subject would be the Report itself, which is in the Colonial Office.

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What payments have been made by the Canada Company to the Government?—I believe, including a payment which may be considered as made because it has been ordered to be made, and it will be made within the present month, the amount is 35,000*l.*

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Is there any part of it an annual rent or fine?—No; it is the price for the purchase of so much land paid in annual instalments; the sum paid consists of the two first years instalments.

Are the instalments fixed in annual payments of 15,000*l.*?—They are fixed at the annual instalment of 20,000*l.* the first year, and 15,000*l.* the next year, and going on so as to make up the whole sum in 16 years.

What is the obligation of the company as to taking up the lands?—They are under the obligation of taking up a certain portion of the land annually, or paying a fine to Government in lieu of settlement duties; they are compelled either to occupy a certain portion of the land every year, or to pay a penalty in case of failing to do so.

How many years have they existed?—They got the charter in September 1826; I should state upon that subject, that the proceedings of the Company have been very much delayed by the dispute which arose from the representations of the Clergy Corporation. A delay ensued in granting the charter and in enabling the company to proceed with their operations, and in the mean time what was called the commercial or financial panic arose in England, which depreciated the value of all speculations of this description, and has been particularly injurious to the interests of the stockholders of the Canada Company.

What portion of the land is the company actually in possession of?—We have only taken actual possession of that which we have placed occupants upon.

Upon what terms have you placed occupants upon it?—On the terms of sale to those persons. We have contracted with a man that he is to pay so much, and we put him into possession of the land, giving him a title after he has paid a certain proportion of the price agreed on.

Is the land all in one mass?—No; the crown reserves are in detached lots.

In the improvement and cultivation of the land which you have obtained from the Crown, are you much impeded by the circumstances and position of the remaining clergy reserves?—We have not been, and I should think that we are under present arrangements not likely to be, because I understand that under the authority of an Act passed two years ago, Government has appointed a gentleman to sell the clergy reserves; and if they are to be for sale in the market, they will be no impediment to the cultivation of the province. We have complained of the measure of selling and of giving away those lands in opposition to us, as sellers of those we have purchased, but that is a commercial matter, affecting the interests of us, the company; and as to the general interest of the province, I should suppose that the measure the Government has adopted of putting the clergy reserves up to sale, will prevent their being so much an impediment to cultivation as they have hitherto been. I should also state, that in many former instances when the clergy reserves have acquired sufficient value from the settlements in the neighbourhood to bear the payment of any rent, they have been leased, and have so ceased to be an impediment to improvement.

What is the Clergy Corporation?—It is a corporation that was framed in Canada, and confirmed by royal authority in England.

Of whom does it consist?—Of the Bishop of Quebec, and of certain persons named in Canada, chiefly, I believe, clergymen.

Is the administration of the clergy lands vested in this corporation?—I believe it is.

Is Upper Canada supplied with foreign produce through the United States, or from Lower Canada?—Chiefly from Lower Canada; until within a few years both Canadas were supplied with the produce of China and of India very much through the United States; but in consequence of a measure adopted by the East India Company, of sending teas direct to Quebec, which are not subject to the heavy English duties, I believe the balance of imports is rather the other way now, and that some find their way from Canada to the United States.

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Is there much smuggling from the United States into Upper Canada, or *vice versa*?—I should think not; the duties in Upper Canada are not sufficiently large to make smuggling an object of any importance; but there is a considerable war of custom-houses on both sides of the lake, chiefly arising from the restrictions imposed on American vessels in their own ports; if a vessel touches on the English side of the lake she is considered to have come from a foreign port, and is subject to a heavy tonnage duty.

Is much of the produce of Upper Canada transported through the American canals?—No.

How is it that it is an object to the inhabitants of the southern shore of the lakes, who are American citizens, to transport their produce through their canals, if it is not so to the inhabitants of Upper Canada?—Because their produce is subject to considerable duty on being sent through Lower Canada. If the navigation of the St. Lawrence had been thrown open for the produce of the south side of the lakes, I think that those canals never would have been constructed; and that it was to avoid our transit duties and import duties in Lower Canada that the people of New York were induced to attempt works of such magnitude and difficulty.

If those duties were taken off now would it restore the trade?—I should think not, because the canals are constructed, and the great advantage of the harbour of New York, the capital accumulated in that city, the enterprise of its merchants, the propinquity of its harbour to the West Indies, as well as its being open all the year round, whereas the St. Lawrence is closed half the year; I think these circumstances would counterbalance the advantages on the other side, yet still of bulky articles a considerable quantity would come to the St. Lawrence.

What is the object of the transit duties; were they imposed to prevent American commodities being brought to England or the British colonies?—I should think that was the object. The Canadians claimed particular advantages in exporting their produce to England and to our colonies, either free of duty or at a reduced rate of duties; and in order to prevent the American produce sharing in those advantages, those duties were levied, partly with a view to secure to the actual settlers of Canada the advantages given to them in the exportation of their produce to England and to our colonies.

Would not this system of transit duties entirely prevent the produce of the American states finding its way along the St. Lawrence when the Rideau Canal is constructed?—The Rideau Canal, I should think, will never bring down much produce; it is an important improvement in the country with a view to its military defence, but whilst the St. Lawrence is open, and whilst considerable craft can come down the St. Lawrence without impediment, I should think that many of them will never come down through the Rideau Canal. Boats may go up the Rideau Canal, but I should think the waters of the St. Lawrence will always be the channel in coming down.

Will much of the produce of the American territory on the south of Lake Erie pass through the Welland Canal?—I think a great deal will.

With a view to find an ultimate outlet by the American canals?—Either by the St. Lawrence or the American canals. According to a calculation I have seen, I believe it might be of advantage for the sloops and schooners which navigate Lake Erie to pass through the Welland Canal, if they are permitted to pass without any transit duty, to carry their cargoes either to the mouth of the Oswego River, or to go down the St. Lawrence to Prescott.

Will not the principle on which the transit duties are established apply at all to the Welland Canal?—I am not certain about that; I hope if they do apply that an alteration may be made.

Have those transit duties, on the whole, been injurious to the colony?—They were meant to be beneficial to the colony, by encouraging the increase of its cultivation, but I believe they have actually been injurious to it.

Then they have not had the effect of increasing the cultivation of the colony?—Whether they may have increased it in any material degree I do not now; I believe the injury has been greater than the benefit.

Would the union of the two provinces materially facilitate the commerce of either province?—Of Upper Canada it would.

In what way?—By giving them a control of the direct port of entry and communication

cation with the rest of the world, which at present they are obliged to have through the jurisdiction of Lower Canada.

Do the Lower Canadians exercise that jurisdiction in such a way as to impede the commerce of the Upper Canadians?—The power of the Legislature of Lower Canada has been exercised so as to be an impediment to commerce generally, particularly to that of Upper Canada, because it was that which was most exposed to it.

In what manner have they imposed that impediment?—I can speak of general results much more than of details, and I am not prepared to enter into explanations upon that subject.

What sort of goods have you been in the habit of importing into Upper Canada?—Into Upper Canada I never imported much; the goods I was chiefly in the habit of importing from England to Lower Canada were British manufactures of various kinds fit for the Indian trade. I never was engaged in any local trade in the colonies; I was engaged in the Indian and fur trade as a director of the North West Company. Our imports from England consisted of manufactures, arms, ammunition and clothing for the supply of the Indian trade, and we purchased in America provisions and tobacco and rum, and those articles were sent up through Upper Canada in their way to the Indian territories in the north west; that was the trade I was chiefly engaged in, and that trade having met with no impediment from any legislative restrictions, I am therefore the less prepared to answer the last question.

Did they pass from province to province duty free?—Yes; having paid the duties upon the importation into either province, they passed free to the other, and there was no drawback.

Do you know any instance in which different regulations of trade, affecting the same commodities, have prevailed within the two provinces at the same time?—I am not sufficiently aware of the details of the local trade to answer that question.

Are not the complaints of the Upper Canadians of this sort, that the duties levied in the Lower Province are applied to the local purposes of the Lower Province, and not applied to the purposes of the Upper Province?—As far as I understand it, that is the chief complaint; and it is more a complaint of the distribution of the duties than any inequality or unfairness in levying them.

Can you state generally what is the nature of the arrangement by which is determined the share of the duties to which Upper Canada is entitled?—I believe I can, because I had a good deal of conversation with a gentleman that was sent so decide the last arbitration. Mr. Chipman, of New Brunswick, showed me his papers. He had been sent to settle the difference of opinion between Mr. Richardson and Mr. Baby, the commissioners appointed for Lower and Upper Canada, who, differing in opinion, Mr. Chipman was appointed by Government to decide between them. I happened to be at Montreal at the time they met, and after the decision had been given, Mr. Chipman showed me his papers, and the principle upon which he decided was, that the population of the two provinces was the fair standard of distribution.

Do you believe that that principle has given satisfaction to the two provinces?—I believe they both complained of it; and yet I could not imagine a more equitable mode of deciding the question.

Does not Lower Canada consider that it leads to a serious diminution of her power?—Lower Canada claimed originally the whole of the duties, and considered the claim of Upper Canada to any participation whatever to be unjust.

Is the principle of the relative number of the population agreed upon now for ever, as that by which the distribution is to be regulated?—No; it was only given as an award in one instance; and I believe it is for four years.

Has there been any other adoption of that principle?—This is the latest instance of it.

Has it been pursued in any former award?—I do not know what the former principle was.

Is not the criterion which was adopted, the relative proportion of the population of the two provinces, objected to as improper, with reference to the consumption of dutiable articles in the two provinces?—It has been objected to upon that ground, as well as upon several others.

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Do you not believe, that even in that instance, the portion awarded to Upper Canada was objected to in Lower Canada, as being too great with reference to their consumption?—It was so objected to.

Do you think it probable that the two provinces will be content with this mode of adjusting their difficulties with respect to the duties, as a permanent arrangement?—I should think the province of Upper Canada will never be content without a port of entry for its foreign commerce.

At the same time you cannot suggest any mode in which the difficulties could be better adjusted?—As a principle of distribution of duties between two independent Legislatures, I cannot.

Do you not consider that all difficulties would disappear under a union of the colonies?—I do not know that; many difficulties would disappear, those with respect to the distribution of the duties would certainly disappear, but many difficulties would be created.

In what respects would it create difficulties?—Difficulties would be created by the temper it would excite in the French party, who would think it was intended to extinguish and destroy the peculiar line of separation which they wish to keep up between themselves and their fellow subjects of English descent, in their own or in the adjoining colony; and in case of a union, I would apprehend so much difficulty from this particular spirit of dissatisfaction, this turning of the two parties loose in the same Legislature to try which should get the upper hand, that I should think the union a dangerous measure, without some provision for a certain number of years to regulate both the revenue and the appropriation, which in Lower Canada have been the chief sources of discord; so as to allow the parties to mix a little together before they should come into direct collision on those points which have agitated them for some years past.

Would not a union excite the greatest alarm in the minds of the French population of Lower Canada?—Undoubtedly it would, a temporary alarm; I think it would be only temporary, and it is to give time for that alarm to subside, that I consider it ought to be accompanied with the other measure I have mentioned.

Do you mean any sort of guarantee for the maintenance of their laws and church, and institutions of different kinds?—For their property and their church I presume that no guarantee would be required, because there would be no change contemplated; but as to their laws, I should think that if their laws are held to be oppressive upon their fellow subjects, any guarantee for the continuance of those oppressive laws would not be expected; and what I mean, is a legislative enactment in England to regulate the amount and the appropriation of the import duties to be levied in Canada for at least 10 years; in which time such a change of men and of feelings would take place as probably to prevent any recurrence of the recent grounds of discussion, as well as to reconcile all parties to their situation under the provisions of the union.

Would the Upper Canadians object to admitting the influence of the Lower Canadians in their province, which would be a necessary consequence of the union?—With respect to any united feeling of the Upper Canadians upon the subject, I can scarcely speak to that; but there are many interests in Upper and in Lower Canada opposed to the union. In the first place proprietors of land and of houses in the two present seats of Government, whether it be at Quebec or at York in Upper Canada, would expect that ultimately some central situation would be selected as the place of meeting of the general Legislature; and those that hold property in the vicinity of places at present benefited by the assembling of the respective Legislatures would be opposed to a union as being injurious to their own interest; those also that have great influence in the local Governments, perhaps connections of the Council in either province, who could not follow the Government if removed from its present seat, would dislike the measure as interfering with a system which has been beneficial to themselves.

Speaking generally, are the Upper Canadians favourably disposed to the union of the two provinces?—They decidedly are, in general.

They do not apprehend any injurious influence by the united Legislature, with regard to their property and institutions?—They do not apprehend that any alteration could be made with regard to property; they would look rather to the spreading of their institutions in the sister province.

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Do you not consider that the two provinces have the same interest in many respects?— I should say in all respects except from the prejudice and ignorance of a portion of the population.

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Have they not the same interest, especially with regard to improvements in the navigation and means of land communication, and trade regulations in general, inasmuch as they produce similar commodities for exportation, and require similar supplies from without? I should think they are alike in all those respects.

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Do you know the distance from the extreme eastern point of the district of Gaspé to the upper end of Lake Erie?—It is, to the best of my knowledge, about 1,500 miles.

Would any inconvenience result from mere distance alone in conducting the affairs of an executive government in so large a district?—In America generally the rivers are the great roads of the country, and every thing centres so much from the river, that a distance of 200 or 300 miles along a river is of less importance than one-tenth of the distance inland from the river. The distance to Gaspé is greater than it is necessary to take into consideration, because there is scarcely any population, or any space for future population below Kamouraska, which is about 100 miles from Quebec, and to which the distance from the upper end of Lake Erie may be estimated about 1,000.

Supposing that as time advances the country becomes more fully peopled in the interior, would it be possible, in your opinion, to conduct the Government with a single Legislature and one executive department over so vast a space as would then be occupied?—Judging from the neighbouring states, I should see no difficulty in it.

Have not the neighbouring states subordinate legislatures?—They have, confined to local and municipal purposes.

Have you ever considered whether it would be possible to adopt any thing of the kind, with reference to the two provinces of Canada, leaving the local affairs to be regulated by the local Legislatures, and having something in the nature of a Congress?—There has been a suggestion of a general Congress of all the North American provinces, it would be attended with considerable difficulty.

Without applying the answer to the provinces of New Brunswick and Nova Scotia, can you say what would be its effect with reference to the provinces of Upper and Lower Canada?—I think it would be attended with all the difficulties of a legislative union, and would be unproductive of some its advantages.

Would it not enable the Lower Canadians to preserve those interests which they think in danger, in connection with their church and their French law, and might not the power of such united assembly be applied only to those matters which related to the two provinces in common, such as their mutual defence, and the taxation, and appropriation of the revenue for public and general objects?—It might certainly; it would be rather a cumbrous machinery, but it might be established.

Would that obviate any of the evils that are apprehended from the union?—To a certain extent it would; but then I do not know how far it would relieve the English population of Lower Canada from the prevalence of those French laws of which they complain.

Might not a system of representation be adopted with reference to the English population of Lower Canada, by which the Assembly of Lower Canada might be remodelled, so as to apply both to the townships and to the seigneuries, by changing the right of representation?—The right of representation might be altered by a different distribution of the territory as to counties, but so long as the French Legislature possessed the control of the navigation of the Saint Lawrence, which they still would, I think the difficulties would still remain.

The question supposed that all the regulation of that line of water communication which ought to be common to both provinces should be regulated only by the combined Assembly?—That might remove the difficulty as to the general regulations of commercial improvement.

Would it be possible to adopt a double system of duties on the Saint Lawrence, that is to say, one for the Lower Province and another for the Upper Province, without giving rise to smuggling?—I think it would give rise to difficulties of various descriptions; it would be very difficult to carry into effect; and if the duty was sufficient to make smuggling an object, it would be unlimited.

Supposing that the duties to be collected on the Saint Lawrence are to be uniform, and that

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that they are to be distributed according to some mode between the two provinces, would there not necessarily be an unfairness in the distribution?—There must be some supreme authority to regulate the distribution, and to judge what the general benefit would require to be most advantageously expended in one part and in another. A general representation of the people would probably be the best means of ascertaining that point.

Has the Legislative Assembly of Upper Canada been increased in number since the Act of 1791?—Yes, they have been increased about threefold.

Do you know according to what rule they have been increased?—I do not exactly, but I believe when a new county is laid out, as soon as it attains a certain population it is entitled to send one member, and when it gets so many more it is entitled to send two.

In your opinion, is the system of representation which is founded upon the joint principle of population and territory, better adapted to a state in the condition of the Canadas, than one which has reference to population only?—I should think, decidedly, the best principle is combining population and territory.

That is to say, to parcel out a certain portion of land, and when its inhabitants amount to such a number, to give it a representative, and not to increase its representatives as the population increases?—This country is comparatively in its infancy. Looking to what its population may be, I would say that a certain extent of territory, possessing a certain number of inhabitants, much less than its neighbouring territory of equal extent, should still have an equal weight in the representation.

Are there any complaints in Upper Canada upon the subject of the representation?—I believe not.

Are there any complaints in Upper Canada with respect to the constitution of the Legislative Council?—Those who are opposed to the measures of Government complain of the Legislative Council, who generally have sided with the Governor when there has been any question in difference between them, but I have not heard of any complaint of the composition of the council; where there are parties, however, there will always be complaints.

How is the Legislative Council composed?—Of persons recommended by the Governor, and appointed by the King's mandamus.

Are they appointed for life?—They are.

Are they most of them persons holding offices under the Government?—Many of them are.

Are not a great majority of the persons composing the Legislative Council persons holding offices during the pleasure of Government?—I do not know that the majority are, but I believe that many of them are.

Is there a very marked distinctness of feeling, and a consciousness of conflicting interests between the inhabitants of Upper and Lower Canada?—The general mass of inhabitants have not much communication with each other; I can only judge of their feelings by the opinions of their leading representatives in the House of Assembly. The people of Upper Canada are of a more active and migratory race, and they sometimes visit Lower Canada; but the Lower Canadians seldom leave their own country.

Is it not generally understood that jealousies and animosities have prevailed more between the two provinces?—They have prevailed more between the English and French population in Lower Canada than between the two provinces.

With regard to the distribution of the duties, have not jealousies prevailed between the Legislative Assemblies of the two provinces?—There have, certainly.

Do you know any instance in which important improvements, with respect to navigation and roads between the two provinces, have been neglected from the want of concurrence in the two Legislatures?—I do not know the particulars of the manner in which they have been neglected, but that they have been neglected is obvious to every man who travels through the country.

Do you not believe that neglect to have proceeded from the want of concurrence on the part of the colonial Legislatures?—I do.

Do you understand that the transit duties are now applied to wheat from the north-western States passing through Canada?—Yes, on wheat from the United States, if imported. Is not the importing merchant allowed to bond for export?—I am not aware that he is.

Has not a regulation been made to that effect within two years?—I believe that by that regulation

regulation certain ports in the colony are made free ports, and the system of bonding for exportation has been established, but that would not apply to the transit duties through Canada. If Canada was surrounded by the sea so that goods could be imported at the same port from which they might be exported, it would apply; but I am not aware that American produce could be received from Lake Ontario at Kingston, or Prescott, or Coteau du Lac, and be sent to the mouth of the St. Lawrence, and thence shipped.

Could not it be bonded at Montreal and Quebec?—How is it to get there? it could only get there by the route referred to in the last answer.

Do you not believe that the inhabitants of Upper Canada consider, that with regard to their commercial position they have an advantage over the inhabitants of the United States?—I believe the more intelligent among them would be inclined however to give up some of those restrictions upon commerce which have been imposed by the British Parliament.

The question refers to local position; do you not believe that under all the circumstances of the United States and of Canada, they consider that they are better situated for commerce than the inhabitants of the United States?—I should think not.

Do they not consider that the St. Lawrence is a better navigation for the purpose of intercourse with Europe than the Erie Canal affords?—For their own particular position it is the best access they have, and yet it happens that New-York is as good a market as any that is open to them. I am not aware that they think they have any particular advantages over the people in the neighbouring country, except that they pay less taxes; they pay no taxes in fact, unless for purposes of local improvement, and the duties on importation from the United Kingdom are very moderate, so that they have the advantage of having all articles of import, unless from the United States, at a small duty.

Do you not consider that the St. Lawrence is a better exit from the lakes to the sea than any that can be afforded through the medium of New York?—Most undoubtedly; but that has been subject to legislative restrictions which have partly destroyed its value.

Will not the facility afforded by the St. Lawrence be greatly increased by the application of steam?—It has been, and it will be still further.

Will not the canals that are now forming render it a much superior ship communication to any that can be afforded through the United States?—There is no ship communication by canals through the United States, and the *Welland Canal* is the only ship canal in Canada.

Are you not aware that in the Erie Canal of New York there is but four feet and a half of water?—I am.

Do you know the size of the shipping that will pass through the canals that are intended to connect the lakes in Canada?—On the Rideau Canal and the La Chine Canal I believe the dimensions of the locks are adapted for vessels drawing about five feet water, and I think 100 feet length, and 20 feet beam, and that the dimensions are similar in the Grenville Canal at the Rapids of the Ottawa.

Do not you know that there is an order to enlarge those locks?—I do not know that there is an order to enlarge them; and to enlarge those of the La Chine Canal, which are already built, would be to rebuild them.

Do not you consider that any communication by shipping will always have a great advantage over a communication by boats?—Undoubtedly.

Do not you consider that this will afford very increased advantages for the export of the produce of the borders of the lakes?—I think not, because I think the St. Lawrence will always preserve its advantage over the line of canal from Lake Ontario to the Ottawa. I think, for the purposes of export, the river will always be the channel of navigation.

Do not you consider that all those advantages furnish a motive to the inhabitants of the British colonies with reference to the question of fidelity and attachment to the English connection?—I have been accustomed to consider that the population of our colonies never entertained any question upon the subject; they were attached to their country and their property, and they never entertained a doubt of the comparative advantages which themselves or their neighbours might possess.

Do not you consider that the sources of dissatisfaction among the colonies generally arise from regulations with regard to commerce and communication, and that all the objections of that kind may be easily got over by Great Britain?—There have been many causes of objection

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objection which I think might have been got over by being better understood and more attended to than they have been; some slight causes of complaint have been allowed to aggravate the feelings of persons there, when perhaps a little timely attention might have removed them.

But you consider that for all important purposes the people of Upper Canada are firmly attached to the British connection?—I believe so; I believe they have very few tangible grievances to complain of. I have heard several causes of grievance; one cause is the clergy reserves. The clergy reserves take away no man's property, they form an impediment to improvement, but that will be removed by disposing of them. There are some measures that have been carried by Government which have excited dissatisfaction; one is the Act enabling two magistrates to send any person that they consider seditious out of the country. I believe the only individual that was ever sent out of the country was Mr. Robert Gourlay; this is rather a hypothetical grievance than a real one.

Although you consider it a hypothetical grievance that a man may be sent out of Upper Canada at the discretion of the Governor, do you conceive that the majority of the population of that province do consider that as a hypothetical grievance or as a real grievance? It has been the subject of great dissatisfaction in the province, and because it has been a subject of dissatisfaction I think it an impolitic thing to persist in preventing its abolition.

You say that the clergy reserves take away no man's property; do you think they do not diminish the value of property in that country?—They have diminished the value of property situated beyond them, but the difficulty will be removed by disposing of them.

Have they not produced a great deal of irritation in the province?—The distribution of them has produced irritation between the parties claiming a participation in their produce, and their existence in that state in which they have hitherto remained has prevented improvement; but I would distinguish this from actual personal grievance or oppression operating upon an individual.

Is the mode in which the construction of roads is provided for in Upper Canada liable to any objection?—I am not aware that it is; it is, to the best of my knowledge, by levying local rates upon the proprietors of land.

In what manner is the line of each road determined?—I do not exactly know; I believe it is by certain commissioners, appointed by Government. Some complaints I know have existed both in Lower and Upper Canada, from the circumstance of those persons who had the laying out of the lines of new road having expended most of the money upon parts of the road that tended to improve their own property.

Do you not consider upon that point, that great advantage would be derived from the employment of government engineers in laying out those main lines of communication with a view to the general benefit of the country?—Undoubtedly I do so consider.

Would it not be better to adopt the system of management pursued in the United States, and that each district should elect its own surveyors?—Yes, that might be a good plan in some respects, but there might be some districts in which particular parts of a road might be more expensive than others, and therefore perhaps, in that view, a general system might be beneficial for the whole country together.



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John Neilson, Esq. again called in; and examined.

HAVE you any explanations that you wish to offer with reference to any part of the evidence you have already given?—I wish to submit a statement of the composition of the Executive Council, which I consider as unavoidably connected with the composition of the Legislative Council. This is the list of the Executive Council for 1827: Jonathan Sewell, speaker of the Legislative Council, chief Justice of the province and of the district of Quebec, and president of the Court of Appeals; the Rev. C. J. Stewart, lord bishop of Quebec; John Richardson, merchant; James Kerr, judge, K. B. Quebec, and of the Court of Vice-Admiralty; M. H. Perceval, collector of the Customs; William Smith, clerk of the Legislative Council; John Hale, acting receiver-general; C. E. C. Delery, assistant clerk of the Legislative Council; John Stewart, sole commissioner of the Jesuits estates; A. W. Cochran, Governor's secretary, law clerk of the Legislative Council, clerk of the Prerogative Court, and auditor of Land Patents; James Stuart, attorney-general. Out of these seven of them are legislative counsellors. Three of them are clerks of the Legislative Council, and one is attorney general. Of the whole number there is one that is a native of Lower Canada.

What are the rest?—They are from different parts of the King's dominions; the greatest proportion of them are natives of other colonies, and of the late colonies. This is the sole body in the country which has any check over the expenditure. They are delegated by the Treasury to exercise the powers of the Treasury, and they report to the Treasury, and upon their reports the governors are finally discharged; they in fact audit the accounts.

Do you consider that to be a sufficient check?—No, it is no check at all.

What would you propose to substitute?—The matter ought to be regulated by a law. There have been bills introduced into the House of Assembly for the purpose of regulating that.

Are they dismissable at pleasure?—The whole of them are dismissable at pleasure.

Does the Executive Council exercise any responsible authority?—No, it has been held here that they are not responsible.

Have they, in fact, any authority recognized by the constitution?—No further than that there was an instruction from home which required all laws raising money in the colonies to contain a clause providing that the money should be accounted for to His Majesty through the Lords of the Treasury, they may be considered as acting for the Lords of the Treasury under those laws.

Are they, in point of fact, recognized in any other way than as a council, which the Governor may or may not consult, according to his pleasure?—They certainly are the only efficient executive body in the Government; I do not know in what way the Home Government recognizes them; I do not know that they are recognized by any law of the colony, further than as I have stated.

Is the Governor obliged to consult them, or to follow their advice when given?—I apprehend not.

When were they first appointed?—Immediately after the conquest of the colony; they are, in fact, a substitute for the King's Privy Council here.

Are their functions in any way defined?—Not by any law that I am aware of; of course they act under the King's instructions.

Have they salaries?—They have 100*l.* each, as executive counsellors; but they all hold other situations, as I have mentioned.

How does it appear that they act at all; are their names signed to any public documents?—All warrants for the payment of money are countersigned by their clerk.

Have any of them seats in the Assembly?—Not at present; there were some of them formerly that had; but now there are none.

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There is no law against it, is there?—No.

Have they offered themselves to the people for election?—I apprehend that latterly they would not have been received. Occasionally members of the House of Assembly have been made executive counsellors; but I recollect very few instances of executive counsellors having offered themselves at the elections; there instances, I believe; that of the late Mr. Young was one of them; and Mr. Richardson used to be elected formerly.

Is it an office, the appointment to which would vacate a seat in the House of Assembly? No. There has been an attempt to establish the same law as exists here in respect to vacating seats; but the bill has been refused by the Council, so that of course it would not vacate the seat, their being members of the Council.

Did that bill pass the House of Assembly?—It did.

Have you got a copy of that bill?—I will produce one to the Committee.

Is there any individual who holds a high executive office who has also a seat in the Assembly?—There have always been some executive officers in the House, that have been managing the business on the part of the Government.

Are there any now?—Yes, there is the auditor of public accounts, Mr. T. A. Young, the House is not in existence at present. The principal conductor on the part of Government last session was the deputy adjutant-general of Militia, Mr. Taschereau, Mr. Ogden the solicitor-general, and Mr. Christie, the chairman of the quarter sessions at Quebec.

Who is the person who is the principal manager of the finance of the country; is there any office that at all answers to the chancellor of the exchequer here?—No, it has generally been considered with us that there was one person that was leading for the Government in the House, and this leading man was the deputy adjutant-general of militia, and latterly, police magistrate, now a judge of the King's Bench for district of Quebec.

Has it been considered that it was objectionable that the officers belonging to the Government should initiate any measure in the House of Assembly?—Not at all; the fact is, that they have always initiated measures connected with the Government; but the members generally do not think themselves bound to take charge of the measures of the Government, unless those measures be agreeable to them.

There is no objection made to a member of the Government initiating a measure?—Surely not: it is managed by message with us, and the member that takes up the message is usually considered as the gentleman authorized on the part of the Government to conduct it through the House.

Have you any other explanation to make with regard to your former evidence?—On a former occasion, I stated that the objection to the Bill sent up in 1819 by the House of Assembly was, that it was annual; and on consulting the journals, I find that the objection was, that it was by items, and also that it was annual; I stated also, that the permanent revenue was sufficient for the expenses of the Government. By permanent revenue, I understand the whole of the revenue that is permanent, not that which is appropriated for our colonial expenses; but on consulting I find that it has been diminishing of late.

To what cause do you attribute that diminution?—The revenue principally depends on the consumption on the part of the inhabitants of goods imported, that consumption is diminishing in consequence of the diminution of the means of the country to purchase the goods.

Is there any diminution of the means of the country to purchase goods?—Very material.

To what do you attribute that?—I stated before, that there had been a general depression in the value of landed property throughout the country during the last 12 or 15 years; the value of landed property there depends entirely upon the price that can be obtained for the produce of that land; the price of all kinds of produce has materially diminished, and consequently the value of property has diminished, and the means of the people to purchase manufactured articles have diminished.

Has not the increase of the number of consumers been more than sufficient to counteract any decrease?—It has been so.

Is not the price of articles of raw produce higher generally in Canada than it is in the United States?—No, it has not been so latterly; previous to the war, and during the last war, it was considerably higher; but since 1817 there has been a decrease, and now I believe it is lower than it is in the United States. The price of wheat at Albany is about 5s. a bushel, and

we cannot get that price for it in Lower Canada. I wish to state, with respect to the bill to indemnify His Majesty, which I mentioned, it was a mere clerical error those words being used. I stated that only one registry bill had been brought into the House of Assembly, that might leave it to be understood that I did not think of the one that was introduced from the Council. There was only one brought in by the House of Assembly, but there was one sent down from the Council, which was referred to a committee; it was within a fortnight of the close of the session when it was brought down, and there was no report upon the subject. At the time of my former examination I did not recollect the fate of the road bill, which I stated was sent down from the Council. It was sent down near the close of the session. It was conducted by the gentlemen who usually conducted the government business in the House, and referred to a committee; and he actually made a report that it was too late for the then session.

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Is that the only road bill that was thrown out in the lower House?—That is the only road bill that I have any knowledge of, that has been said to have been thrown out; but it was not thrown out, it was too late in the session.

In what year was that?—I think it was in the year 1824. In speaking of the townships, and of the security that they would have under the representation bill that passed the Assembly, I ought to have stated one fact, which is material: that that or no other bill could give the townships a sufficient share in the representation, unless doubts similar to those which have been started in Upper Canada, in respect of the right of those people to vote, should be removed; and the removal of those doubts can only be effected by the Legislature of this country.

Do you allude to the Alien Bill?—Yes, there ought to be a bill passed in favour of those people similar to that which was passed for Upper Canada, otherwise they would not have a fair representation under any circumstances; the moment they came to vote their votes would be questioned, and they would be deprived of their right of voting; in fact they would not be represented. They have elected one member generally heretofore; the member for Bedford has been solely of their election, because they formed a majority of that county; but latterly they have elected a Canadian gentleman, Colonel de Rouville. In my former examination I was asked what was the number of English members now in the House; I could not state with any certainty without referring to a list. I have since referred to a list, and I find that those that are called English members in the House at present amount to eight; there were eleven in the preceding House, but three of them lost their elections; four out of the eight are natives of Lower Canada, two of Scotland, one of Upper Canada, and one of Nova Scotia; four of them are opposed to the Colonial Administration, and four of them are in its favour. With regard to the arrangement of the civil list, respecting which there was a question put to me, the statements I made on that subject of course can only be expected to be realized, provided the complaints which are brought forward on the part of the Assembly and the people were removed, or in a probable train of being removed; for one of the great objections is, that a permanent supply would only ensure permanent grievances; it would be necessary then that the grievances should be removed at the time that a permanent supply was granted.

In point of fact, since the year 1819, with the exception of the years 1823 and 1825, has not the Governor paid such deficiencies as he thought proper, out of monies which he acknowledged to be at the disposal of the Colonial Legislature?—Yes.

To what amount?—I cannot say the exact amount. I apprehend that one of the gentlemen that came with me will be more particular upon that subject, but I understand it to about 140,000*l*.

Has that left any thing considerable, or any thing at all, for local improvements, education, and the other wants of the country?—I think there would have been a surplus if the receiver-general's money had not been lost; since that time I apprehend that nearly the whole has been expended in one way or another. I know that 30,000*l*, which was authorized to be borrowed to complete the La Chine Canal, has not been repaid, and we have no correct statement of the chest. We never got the receiver-general's accounts till the time that he failed, and we cannot say what is the true state of the cash in the chest; besides there are payments out of the chest for purposes that we do not consider as connected with the province at all; for instance, clergy payments, the monies paid from the military chest into the civil chest. The money is paid out of the military chest into the civil chest, and then it is paid out of the civil chest to the clergy.

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When Mr. Caldwell's accounts were delivered in were they audited up to the last moment?—No, we could trace no acquittal from the Treasury subsequently to 1814; there had been some balances stated up to 1819, but no acquittal. He failed in 1823, and the accounts were before us in 1824. There was a message from the Governor on the subject, by which it appeared that there had been no regularity; the warrants had not even been regularly issued to authorize payments.

What sum of money had been advanced without legal warrants?—I do not know what may be considered as legal warrants; I conceive that, according to the 14th of the King, there ought to be warrants from the Treasury here. The other warrants considered to be legal, are warrants signed by the Governor, and countersigned by the clerk of the Council; but, independently of all those payments, there have been advances upon what are called letters of credit. At the time the receiver-general failed there was to the amount of 116,000*l.* of them; and since that time they have introduced a new mode, which we consider worse still than the former, that is what they call 'accountable warrants.' In truth, the receiver-general is discharged against the Treasury, and the receiver-general runs less risk than he did before; that is the result of it. But the money of the province goes out without any sufficient accountability, or without the expenses having been supported by vouchers, and undergoing even the examination of the Council.

Did not the House of Assembly, in the year 1825, pass a resolution, declaring Lord Dalhousie responsible for that money so raised?—They have passed a great many resolutions; I believe they never did declare Lord Dalhousie personally responsible, but they declared that they would hold responsible every person concerned in issuing the money of the province without the authority of law.

Did not they, at the same time, pass certain resolutions that Lord Dalhousie had so expended the money?—Yes, the resolutions which I gave in the other day, I believe, are to that effect; the resolutions in 1824.

On what authority is it stated, in the petition presented to the House of Commons, that Mr. Caldwell was maintained in the exercise of his functions, as receiver-general, long after his malversation was publicly known and acknowledged?—That is in the Montreal petition. The fact is, that he was so retained during some time.

How do you know the fact?—It is upon the journals of the Assembly; when the receiver-general failed, his accounts were laid before the House of Assembly, and there was a committee appointed, and an examination into the whole matter. There came out a number of documents, some of which established the fact that his deficiency was known for a considerable time before he was suspended; in truth I believe it did not extend to a greater time than was necessary to send a person to England, and come back again; there was a person deputed by Lord Dalhousie and the receiver-general, namely, the receiver-general's brother-in-law, Mr. Davidson.

Did the province sustain any additional loss by his continuing during that time?—It is probable there would be some loss, because there would be some revenue coming in, and it was a dangerous thing that the revenue should be coming into the hands of a person who must have been so hard pressed as Mr. Caldwell was at that time.

Was the office practically given into the charge of any other person?—Yes; it was, subsequently, in August; but the Journals of the House of Assembly of 1824 will show the whole of the facts.

What steps were taken to secure the public from additional loss as soon as the malversation and insolvency of Mr. Caldwell were known?—There were no steps that I know of that were taken; I happened to be in this country at that time, and I speak merely from the knowledge I have of the proceedings in 1824; I believe that shortly after the prorogation of the Legislature in 1823; it was found that there was not money in the chest to meet the appropriations of the Legislature, then there was a long correspondence between Mr. Caldwell and the Governor, and I believe then it was determined to send somebody home; this must have been in April, and I think that in the month of July or August following there were two persons appointed to manage the business *pro tempore*.

Are you not aware that Mr. Caldwell pleaded as in some degree a justification for that defalcation, that the Assembly refused him any salary, and that he was compelled therefore

therefore to make use of this money as a remuneration for his services?—No, I believe he did not complain in that way; but I know for certain that he applied in 1814 for an increased salary.

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Was that granted to him?—No.

Was it not understood that he was to make use of that money?—No, surely not; if it had been so understood the whole province would have been in an uproar, and I myself would never have applied to him for bills of exchange, for I would never have trusted him if I had known that he would use a sixpence of the public money without authority.

What was his salary?—His salary was fixed by the Government here at a yearly sum, I think, soon after the passing of the 14th of the King, 400*l.* and 100*l.* for a clerk; but there was a recommendation of Sir George Prevost to allow him a salary; they could not proceed at all without a recommendation from the Governor, and the moment they had that recommendation they intended that there should be something done to regulate the chest; the matter was not finished that session, and the next session there was no recommendation, and it never came before the Assembly again; there had been occasional rumours; there was a bill introduced in 1815, and probably those rumours were in some measure founded upon the circumstance of an application for an increased salary.

Does the receiver-general keep the money in his own hands, or does he deposit it in any bank?—The whole of the monies received for the King in Lower Canada, whether by British statutes or by provincial statutes, have been put into the hands of the receiver general, and he has kept them all in his own house; I speak now of Mr. Caldwell; since that time, I believe that Colonel Hale has got a vault made to keep the monies in.

Is the money absolutely and entirely in his custody?—It was, in the time of Colonel Caldwell.

Can you state what would be the largest amount that in the ordinary course of the finances of the country would be in his hands?—The revenue comes in very irregularly; it comes in in the May and October quarters I think; that part upon which some credit is allowed upon giving bond, is paid, a great part, in the May quarter, and the other part comes in principally in October. Now the warrants for payments used to be issued on the 1st of May and the 1st of November, so that it naturally would take the money out of the receiver's hands very rapidly when the funds are low. Since the failure of the receiver-general, I suppose there never could be a great sum in his hands, perhaps 20,000*l.* 30,000*l.* or 40,000*l.*

What was the actual loss incurred by the insolvency of Mr. Caldwell?—The actual deficiency of cash was 96,000*l.* sterling; but besides that, there was 116,000*l.* of money advanced upon letters of credit, for which Mr. Caldwell was not discharged. The receiver general was responsible for about 216,000*l.* till such time as he was discharged of that 116,000*l.* He is not discharged of that, I apprehend, even now, because the account of the advances are never settled, so that in reality there would stand 216,000*l.* against him at the Treasury, although the real deficit was only 96,000*l.*

When Mr. Hale was appointed his successor, were sufficient securities required from him?—None at all; the appointment was considered as temporary, I believe, but the matter of securities has been entirely neglected in Lower Canada.

Had any security been required of Mr. Caldwell?—Security had been given in this country; but it was provided that he should give security in the colony also, but that security was never taken.

Has the security in this country been obliged to pay any money?—I think not; I have heard that there were some arrangements made with the Colonial Government, by which he kept his estates, and allowed 2,000*l.* to the Government. There is still a litigation in the courts in Canada between the Crown and Mr. Caldwell.

Was it ever known who his sureties were in this country?—Yes, in the Journal of the House of Assembly their names are stated.

Have any proceedings been taken against those persons?—Not that I know of.

By whom are the accounts of the receiver-general audited?—In the first instance, by the executive council of the province, then they are given to the Governor, who transmits them to the Treasury; and we could trace no acquittal subsequent to 1814; so that in reality the Governor, the council of the province and the receiver-general had been managing the whole of the revenue of the province without any actual control.

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Are the accounts required to be audited periodically?—Yes, by the King's instructions to the Governor they ought to be audited in the colony every six months, and transmitted to the Treasury here.

Is the Governor to require the accounts to be audited once in six months?—Yes, the instructions have been very precise on the subject that the Governor should attend to the proper expenditure of the public monies and account, and the receiver-general by his commission is required to give in a statement.

By whom is the receiver-general appointed?—Appointed by the King, not as acting in the colony, but as acting here, by the Lords of the Treasury in fact.

In what way do you think that the office of treasurer would be rendered most secure and the duties of it best performed?—The office ought to be regulated by law, so that no disbursements ought to be made unless it be in a certain form, and regular accounts of the receipts and payments with the vouchers ought to be laid before the Legislature every year, so that the Legislature and the Public may see the true state of its affairs.

What measures have been adopted to prevent a recurrence of the inconvenience suffered by the Public in consequence of the insolvency of the receiver-general?—The Assembly passed a bill on the subject, which it sent to the Council, but the Council rejected the bill; nothing has ever been communicated to the Assembly since the failure of Mr. Caldwell, but I have understood, in private conversation, that instructions have come out providing a remedy. I never saw them, nor do I know the nature of them further than that there was some kind of precaution to be taken that the money could not go out in the same way as it had gone out in Mr. Caldwell's time; but so long as the colony, which furnishes the money, has no check, there will always be mischief; there might be a dozen keys and a dozen locks, and yet they might all agree; it is only those that pay the money that are an efficient check.

In what way do you think that that check ought to be exercised?—There ought to be a law regulating the receipts and disbursements of the receiver-general's office, and the account ought to be regularly laid before the Legislature every year, so that they may see the true state of the case. At present the accounts laid before the Legislature are made up from the receiver-general's statements; but they are not the receiver-general's statements. There are accounts framed in the Executive Council Office, which are laid before the Legislature; but they are not the real accounts of the chest; those are what we want to see.

How do they differ from the accounts of the chest?—We cannot tell, because we have no regular account of the chest; such an account as they please of the state of our affairs they send to us.

You have an account purporting to be a general account; but you cannot tell whether it is a true one?—We cannot tell whether it is a true one, because we do not see the account of the officer that makes the payments.

How do you propose to remedy that by law?—There was one law passed, which is similar to that of Jamaica.

Is not there an account given in, signed by some responsible officer?—It is signed by somebody; but there is no responsibility.

Who is it signed by?—It is signed sometimes by the inspector-general of accounts, and sometimes by the auditor-general of accounts; they are merely preparatory accounts to the Executive Council, and the Executive Council is not responsible.

Then you have their authority for saying that the account is correct?—We have their authority, certainly.

By whom is the account transmitted to the Assembly?—It is transmitted by a message from the Governor, saying that he lays that account before the Assembly.

Has not the colony to complain of the default of other receivers of public money besides the receiver-general?—The province has to complain, and does complain severely, on the subject. The sheriff of Quebec, appointed in 1817, failed about the same time that the receiver-general failed; and there was a deficiency of monies deposited in his hands by judgments of the courts of justice, to the amount of about 27,000*l*. That money was the money of poor people of every description, that had had the misfortune to go into the courts, widows and orphans; and they have still to look for a remedy. When I came

came away, the sheriff that had been named jointly with the person that succeeded Mr. de Gaspé had stopped payment likewise; but I am glad to find that there has been a decision in the court that the other sheriff is bound with him, so that the Public will not be so much losers as was expected. On the sheriff coming to England there was another appointed jointly with him during his absence, and the parties who have not got their money have sued the other sheriff, and it has been considered that they were liable jointly, and I believe there has been judgment to that effect; but then that will go into the Court of Appeals, probably the Executive Council; and there is another risk.

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How are the sheriffs appointed?—By the Governor.

Are they annual officers or permanent?—They are during pleasure.

Do they not complain that since the default of officers in that situation others have been appointed without requiring sufficient security?—They do; I know of no security that was required of Mr. Sewell, who is the present sheriff, nor do I know of any security that was required of the other; there has been a good deal of complaint on the subject.

What funds are those which are in the sheriffs hands?—People go into the courts of justice to recover money that is due to them, there is judgment given, the sheriff executes that judgment, levies the money, and the money remains in his hands till it can be distributed by judgment of the court, to each person what belongs to him. It of course remains in his hands till the final judgment and distribution, which is frequently delayed for a considerable time; and it is out of those monies that the defalcation took place.

Are sheriffs sales very common?—They have been very common.

What is the cause of their being so common?—They have become very common since the close of the last war, because the country became poor; real property particularly diminished in value; those that had claims upon it insisted upon payment, and sued, and then it was seized by the sheriff and sold.

Has that been resorted to as the surest mode of conveyance in consequence of the defect of the law?—It has in several instances; the Legislature passed a bill providing for voluntary sheriff's sales. That is a proceeding something like a *decrét* under the French law; the parties come into court and say that they wish to have the benefit of a *decrét*; under this proceeding there is public notice to all the world that such property is to be sold, so that every one may come forward and put in his claim; then the sale takes place, and the whole is under the inspection of the court to see that every one gets his due; then every one having got his due, the title to the property is more secure than it would otherwise be.

Then a large portion of public property has fallen under sheriffs sales on account of the defects of the law?—Not during the time of Mr. De Gaspé; the law did not exist then.

But the fact is, that for the purpose of getting a secure title you are obliged to have recourse to a sheriff's sale?—It has been done since the law, and I believe before that law it was done; people wished to have a sale in virtue of judgment, so that there might be no contest thereafter; but those sales do not bar certain claims, I have understood, now.

Do they bar a prior mortgage upon the estate?—Yes, all mortgages except rights of minors and persons absent; persons in fact that cannot come forward and answer for themselves.

Then it is not a secure title against them?—It is not a secure title against persons that have it not in their power to exercise their right of coming forward, they cannot be deprived, that is universally so understood.

You stated that the management of public monies for purposes of internal improvement was better in the United States than in Canada, can you mention any instances which authorize you in making that statement?—I conceive that the same amount of money goes further there than with us, and this I ascribe to better management and greater responsibility; I will state an instance: the La Chine canal cost about half a million of dollars; it was nine miles in extent. The New York canal cost about eight million of dollars, that is sixteen times as much, and it is 320 miles in extent, and upon the whole, was liable to as great expenses, if not greater, than the La Chine canal, on account of the number of locks, and the great elevation of the country to carry the canal over, so that there is a remarkable difference against us in the result of the expenditure.

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To what do you attribute that difference?—I attribute it to not sufficient accountability in our expenditure.

Was it a government work?—Yes, it is not well looked after; when any gentleman gets work done without looking after it, it will not be done half so well, nor nearly at so moderate a rate. Our canal gives hardly any revenue; their canal gives a very great revenue; there is another proof of the management: I should say, generally, they manage their affairs better than we do.

Is the La Chine canal not used?—It is used, but it gives very little revenue. I do not suppose that it gives more than between 2,000*l.* and 3,000*l.* a year.

It is stated in the petition that a great many militia officers have been dismissed without just cause?—There have been a great number of dismissals, and they allege that it has been without sufficient reason or just cause.

What in public opinion is believed to be the reason that those militia officers were dismissed?—The almost universal opinion latterly is, that it is owing to their taking a part in sending complaints to England.

What grounds are there for entertaining that opinion?—There is no doubt that several of them were present at the meetings at which the petitions were adopted, and I believe that several of them presided at those meetings.

Was any motive assigned for their dismissal by the Governor?—Yes, a very bad motive; having become active instruments of a party hostile to His Majesty's Government.

Were they dismissed by a general order?—They were dismissed by a general order; there had been about 200 dismissals within the last 18 months, either dismissals, or putting on the shelf in another way; there has been a general doing and undoing of the whole militia. The general order for the last dismissals is as follows:—it is dated, "Office of the Adjutant-General of Militia, Québec, February 21st, 1828. General Order of Militia. The Governor and Commander-in-Chief has seen with regret that several officers commanding battalions of militia, forgetting their duty to set an example of subordination and respect for authority to those placed under their command, have shown themselves the active agents of a party hostile to His Majesty's Government; such conduct tending to create discontent in the country, and to bring the executive Government into contempt among the people, cannot be permitted to pass without notice; his Excellency, therefore, in virtue of the power vested in him by His Majesty, signifies to the undermentioned officers that His Majesty has no further occasion for their services—3d battalion of Buckinghamshire, Lieut. Colonel François Legendre; 1st battalion of Bedford, R. Hertel de Rouville; 3d battalion of the county of St. Maurice, A. Poulin de Courval; 1st battalion of Kent, R. Boucher de Labriere; 2d battalion of Huntingdon, Major M. Raymond. The Governor-in-Chief thinks it not less his public duty than an act of justice to the loyal militia of the province, to put them on their guard against being misled by the arts and misrepresentations of ill-disposed persons, to entertain unfounded suspicions of the views and acts of Government, or to swerve from that respect for its authority, and that spirit of obedience for the laws which becomes dutiful and loyal subjects. By order of his Excellency the Governor-in-Chief.

(signed)

"F. Vassal de Monviel, Adj. Gen. M. F."

Were those officers embodied with their corps at that time; were they out on duty?—Every man in Canada from 18 to 60 years of age is a militia man, and no man is embodied unless he be drawn from the militia; they are all militia men and liable to militia duty, although they are living upon their own farms; but there is no embodied militia now.

Do they meet at all for training and exercise?—They meet to have the roll called, so as to keep them in existence; with this view, that when in virtue of a law it may be necessary to embody a portion of the militia, they may be ready.

Are they supplied with arms?—No, they have no arms.

Do they appear in uniform?—No.

Is this military power thus exercised over the militia, in point of fact, possessed by the Governor, in his military capacity, over every subject in Canada?—It would be so; but, in point of fact, the great body of the people of Canada consider that he has no warrant upon that subject, because they consider the law as in non-existence.

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What law?—The Governor and the Council suffered the Militia Laws to expire in 1827, and they revived then an old ordinance which was passed in 1788 or 1789, before the existence of the present constitution, and it is under that ordinance that all the noise has been made lately. The people are generally of opinion that the law is not in force; but in the first instance, with respect to the mere parading to call the names over, nobody objected to it; but when they came to exact more than was usual under the laws that had existed ever since the present constitution, the people began to clamour on the subject, and those clamours have led, in some measure, to the present difficulties. There are actually dismissed of the officers, by general orders, 63, and there are a great number that are put on the shelf.

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Are any portion of the militia called out during peace?—No; the system has been this: the whole population of Lower Canada have been declared to be liable to bear arms under certain circumstances, when there is a rebellion in the country, or when the country is invaded; for that purpose they are all enrolled; there is a roll made of the whole male population from 18 to 60 years of age, and there is a roll called every year to see that they are all in being, and there are provisions made that in time of war there should be a drafting of the militia to form the embodied militia. During the last war we had about 7,000 or 8,000 of those men on the frontiers; we used to draw every third unmarried citizen to send them to the frontiers.

Are commissions appointed?—The officers all hold commissions; there is a general organization of the whole male population of the country as a militia; that in time of peace is nothing, but in time of war every man is liable to march.

Do the officers receive any pay in time of peace?—Nothing, it is all a burthen; they lose their time, and they sometimes suffer a good deal of expense; they spend money in volunteer dressed companies.

About what is the whole number of the officers?—The whole militia of the province consists of 66 battalions and seven companies; the whole number of officers of the 66 battalions, including those that had the *retraites*, is 2,954.

Including non-commissioned officers?—No, commissioned officers only, including the rank of ensign and upwards.

Is not some claim made to property that formerly belonged to the Jesuits, and is it not urged on the part of the Assembly that the proceeds of it ought to be appropriated under their direction to the maintenance of public education?—There has been a claim urged against the Jesuits estates since the year 1793 by petition to the Legislature. The statement on the part of the people is, that the property belonging to the Jesuits was given to them for the purpose of the general education of the youth of the country, and that the Jesuits becoming extinct, the property ought to be applied for the purposes for which it was originally given; in fact, that the Jesuits under the vow of poverty could not hold property but for colleges; and the result of the dissolution of the order of Jesuits in France has been that the property has been applied to the purposes for which it was originally granted, but under some other authority.

Has the claim any other foundation than the general reasoning you have stated?—There are several reports upon the subject by the House of Assembly, and the Education Report of 1824, which is to be found in the journals.

What answer has the Government given to the claims that have been made by the Assembly upon the subject?—There has been no answer on the subject.

In what way have the proceeds of the Jesuits estates been disposed of?—We have no account of them.

Do you know by whom the income arising from those estates is received?—There was formerly a commission and a treasurer, and the treasurer received the money, and he paid it into the hands of the receiver-general; part of it, I understood, was lost with the receiver-general; since that time there has been a new commission issued, and a sole manager appointed. I do not know who receives the money at present.

Is there any other property in the province of Lower Canada which stands upon the same footing, and with respect to which similar claims are made to those which you have stated to exist as to the Jesuits estates?—No.

Is there any other property held by the Crown which formerly belonged to ecclesiastical bodies?—Not that I know of.

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What establishments are there for education in Lower Canada; have any been provided by public funds?—None, excepting that the Legislature has granted some annual sums for different school societies in Quebec and Montreal, during the last six or eight years, but there are none established by the public funds of the province, that is to say, subsequently to the conquest in 1760; prior to that time there were establishments made. There was the Seminary for Missions at Quebec, and the Seminary of the College of St. Sulpice, at Montreal; they preserved their property, and although they were originally erected for ecclesiastical education alone, they extended their system, and embraced general education. Now the seminary at Quebec, which was formerly erected for forming clergymen, embraces the whole range of the sciences, and so does the Montreal seminary.

Have any disputes arisen with respect to the character of the system of education to be established; is there any wish on the part of the Canadians that it should be entirely of a French and of a Catholic character; and do the English inhabitants wish that it should be of a more general character?—There has been a good deal of jealousy on the part of the Roman Catholics on the subject of education; that, I believe, was occasioned by instructions from this country subsequent to the conquest.

When were those instructions sent?—They must have been sent shortly after the conquest, but they have been renewed frequently since, and it seemed to the Roman Catholics to be a kind of a system of proselytism, which of course produced some degree of alarm. There was an Act passed in 1801 for the establishment of schools; they were to be endowed by the King as schools of royal foundation, and they were to be under the management of a corporation to be named by the Governor; that corporation was not named till 1817, and it happened to consist mostly of those of one religion alone; the bishop of the church of England and the clergy of the church of England were at the head of the corporation, and the majority of the members were of the church of England, and that tended to confirm the suspicions the people had entertained with respect to proselytism, and it was needless to think of getting them to go to the schools after that; for there has hardly been an instance of the conversion of a Roman Catholic since the conquest, and I believe very few on the other side; but still all parties seem to be perfectly attached to their own religion and are afraid of any thing like proselytism. In consequence of that, those schools have fallen through. No property has been given to them as was proposed by the Crown; they have had very few scholars; but they have applied about 30,000*l.* of the money of the province for their support. Notwithstanding I suppose, that altogether they have not educated 1,200 children a year since they were established.

What was that 30,000*l.* derived from?—From the provincial revenue.

Have any steps been taken for the establishment of schools in the townships?—Yes; but they will not have those schools in the townships; they will have no schools in the townships that may appear to be under the direction of one particular church.

In your own opinion, what would be the best system upon which schools for the instruction of the population generally could be established in the colony?—The system that was proposed by the House of Assembly by a bill in 1814, was similar to that of Scotland, and with some of the modes adopted in New England. It was to have schools in every parish; the parishioners to have the power of assessing themselves for the purpose of maintaining those schools, and to appoint persons, a kind of trustees, to have the management of the schools.

Could schools be established to which both Catholics and Protestants could have recourse in common?—The moment you distinguish between Protestant and Catholic, that moment you separate them from one another; you must not consider them as either Protestants or Catholics, or else there is a distinction between them immediately.

Is not the power of charitable contribution for the purposes of education limited by law in Canada?—It is. After a great many efforts to establish schools in Lower Canada, I think the bill was rejected five or six times, allowing a certain sum for every school that would be established, leaving the schools under the direction of the clergymen of the different denominations, each denomination to have the direction of the schools of its own sort, and allowing £200 for the purpose of erecting a school, and placing a schoolmaster in it, provided there were a certain number of scholars,—at last a bill was agreed to, allowing them to hold property to an amount not exceeding £75, I think, for the purpose of schools. Before that

that the people could not hold any property, even if it were a gift, for the purpose of schools, because the heirs of the person that had made the gift used to come in and take it away from them; the Statute of Mortmain prevented it; so that there are no schools for the education of the people except those that are established by charity. The people are, however, making great efforts in favour of schools; and whether they are assisted by law or not they will be educated.

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Were those bills rejected by the Legislative Council?—They were.

On what grounds?—I cannot say; the general expression among them was that they would have no other Act but the Act of 1801; and the Act of 1801 could not be executed from the fears with respect to religion.

Was there any disinclination expressed to the system of the people assessing themselves?—No; that bill, however, never got to the Legislative Council; it was introduced just at the close of the war, and the substitute for it was a gift to each parish, whether it was a parish of the Roman Catholic church, the church of England, or the church of Scotland, or of Dissenters, provided they established a school, and had a certain number of scholars in it, they were to have from the provincial fund £200, but that was objected to in the Legislative Council. Then seeing that had failed so often, permission, as I have mentioned, to each parish to hold property for schools was introduced, and it finally passed, allowing property to the amount of £75, a year to be held by those schools.

Do you understand that a great desire for instruction has displayed itself in the townships?—There is no doubt of it; there is no American that does not think the education of his children is an essential part of his duty.

What is there to prevent the people from assessing themselves voluntarily for the purpose?—They have no legal authority for it; if they had they would have done it long ago.

Has any attempt been made to introduce an Act giving that permission?—No, I believe not, at least I know of no attempt but the general bill of 1814.

Do you apprehend that any difficulty would be made by the Canadian party to any such enactment?—I can assure the Committee that the Canadian party will do every thing that is possible to promote education, no matter by what party; they are persuaded that the country cannot get on without a general education.

Was there ever a period when the measures of the Government were commonly supported by the majority of the Assembly?—Certainly; after the establishment of the constitution in 1792 till 1806 and 1807, the Government had a constant majority in the House, or at least Government generally succeeded in all its measures.

To what do you attribute the change that has taken place since that period?—The great cause of the change was the administration of Sir James Craig; he was very violent with the House of Assembly and the people generally; and he accused them of a great many things, and finally, on the eve of a general election he put three of the leading members of the Assembly into gaol under a charge of treasonable practices, and kept them there till some of them subscribed to any condition in order to get out, and others continued in till they opened the doors of the gaol and let them go out; the truth was that there was no notion of treason among the people.

Do you believe these proceedings to have had a permanent influence on the Assembly?—It was the end of all influence of the administration, because it involved not only the Governor, but all the persons that were in Government employ; they took an active part in it, and consequently lost their influence with the people.

Since that period has the Government had no majority in the Assembly?—It never could command a majority. During the whole administration of Sir George Prevost they were unanimous in supporting all his measures, because there was a question then of defending the country, and of doing what was necessary to be done to aid for that purpose, and they were nearly the sole supporters of the Government at that time. During Sir John Sherbrooke's administration, the people generally were on the side of the Government, and they had a majority for all their measures in the House of Assembly, but they have had no majority that they could command since the time of Sir James Craig.

The Committee have before them a letter addressed by Mr. Papineau and yourself to the Under Secretary of State upon the subject of the union, and in that letter you state that the inhabitants of the settlements, which you call a continuation of the American settlements in Lower Canada on the frontiers of the United States, have very little intercourse

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or community of interest with the body of His Majesty's subjects in Lower Canada?—They had at that time very little intercourse indeed; their intercourse was with the United States principally.

How did it arise, that being subjects of the same King, and living under the same Government, they could be held in your opinion to have little intercourse or community of interest with the rest of His Majesty's subjects?—They are living within about 100 miles of Portland, on the sea shore, in the United States; and they are, I suppose, 100 miles from the St. Lawrence; their intercourse has been principally with the country from which they came, their connections altogether are there, and the roads between those settlements upon the frontiers of the United States and the River St. Lawrence are through a forest. Persons in this country can have very little idea of a road through a forest in America; if a road were made as good as any Macadamized road here, it would not be safe to travel one week, for the first gust of wind that comes in the spring of the year, or the first thunder storm in summer, would throw trees down across it, and therefore it cannot be travelled unless you have people living there to clear the road; now the whole extent of that country is still a natural forest between those settlements and the old settlements on the River St. Lawrence; there have been roads made, but those roads, for want of settlers, get filled up, even though they are passable for carts; after the work is done they get filled up by the falling of trees, and there is nobody to look after the roads.

Are the Committee to understand that it would be impossible to maintain roads between the townships on the American borders and the seigneuries upon the St. Lawrence till the intermediate country is settled?—There is nothing to be done towards making practicable roads till you make settlements. If the crown and clergy reserves were done away with, and you were to grant lands to people on condition that they would settle on them, they would settle; but people do not like to go a great way into the woods, and to have those crown and clergy reserves to encounter; it is a dreadful thing under any circumstance to live perhaps 13 miles from a human being; it is impossible for a man to live if he has not got neighbours to help him; he cannot clear away a forest, he cannot prevent the rotten trees that are occasioned by the burning of the woods from falling down and killing his cattle, and ruining his fences; in fact it is impossible for a man to settle down in America and live on the land unless he has got neighbours around him.

You state in this letter that the laws which regulate property and civil rights, the customs, manners, religion and even prejudices prevailing in the two provinces are essentially different; and you also state that the inhabitants of Upper Canada, from their distance from the sea, and the want of an external market, have in a great measure ceased to be consumers of the description of goods upon which duties are raised in the port of Quebec; and you go on to show that their interests are so distinct, that there would be no mode of inducing them to co-operate in measures for the public welfare, or to entertain the same views of general policy: Is that still your opinion?—It is true that the laws, customs, manners and prejudices of the two countries are essentially different; it is true, likewise, that they are beginning to consume largely American manufactures in Upper Canada, particularly in the part of the country above Lake Ontario, which, I think, contains about half the population of the Province; and I believe there is a great line of distinction between the whole of the views and interests of the two provinces. I cannot say positively that they could never be brought to co-operate; I believe they have a very friendly disposition towards one another at present, and a friendly disposition will go a long way to produce co-operation under very difficult circumstances; but, generally speaking, it would be considered a very great hardship that the people of Upper Canada should be obliged to come to Lower Canada to make their local laws, or that the people of Lower Canada should be obliged to go up to Upper Canada to make their local laws. The United States along that frontier have the convenience of having five different local legislatures along that same line. There is nothing got by being a member of the Assembly of the Provinces; it is all labour, and no profit. In that case they must go 700 miles, through a very difficult country to travel, to attend to all their little affairs: it would render the situation almost unfit to be held by any body that had not a larger fortune than can be found in that country.

Must not all the commerce between the Upper Province and the mother country be carried on necessarily through the Saint Lawrence, and through Lower Canada?—Of course they cannot trade with the mother country through the United States.

Can that commerce be regulated with a due reference to the interest of the Upper Province, if the whole of the legislative control over it is in the hands of the Government of the Lower Province?—That is not the case now; there has been no such legislative control since the year 1822; there was the Canada Trade Act passed then, which took it out of the control of the Legislature of Lower Canada; and I believe that there have been no complaints upon the subject since that time.

Do not the inhabitants of Lower Canada complain that the provisions of the Canada Trade Act are a breach of the covenant entered into with them respecting duties, and that they deprive the Legislative Assembly of a part of the power inherent in itself of imposing duties in Lower Canada?—They did complain very loudly of the renewal of some temporary provincial Acts, levying duties by an Act of the Legislature of this country, they conceived that if it was not absolutely taxing the colony it came very close to it; but still there has been no formal remonstrance on the subject, because they were doubtful whether this country could not claim some power of the kind, from the circumstance of its being necessary to regulate a difference between the two provinces which they could not regulate themselves; that made them rather doubtful of the grounds of complaint, otherwise you would have heard complaints more than ever you have heard yet from Lower Canada.

Are the Committee to conclude from your statement that the commercial interests of Upper Canada require such a regulation of the duties in Lower Canada as amounts in reality to an invasion of the privileges which Lower Canada claims?—No, I think you have been very kind to us, you have divested us of a great deal of trouble, for we are not any longer to be considered as having the power of passing any regulations affecting trade, that is done by an Act here; there can be no quarrel then between Upper Canada and Lower Canada upon the subject of regulations of trade.

Do you consider all duties of customs as regulations of trade?—They all amount to that, and we have no duties of customs, except duties that are combined in some measure in the Act for regulating duties of Customs generally.

Setting aside any object as to the regulation of trade, do you suppose that the Parliament here could impose a duty of customs in Lower Canada, solely for the purpose of augmenting the revenue?—Certainly not; we hold this, that you are to impose no duties excepting for the regulation of trade, and it is not to be expected that any legislative body will use that power for any other purpose; we expect that they will be *bonâ fide* duties for the regulation of trade, and we understand that the proceeds of those duties, whatever they may be, are to be disposed of by the Provincial Legislature. With respect to levying duties on goods passing between Upper and Lower Canada, in point of fact, Upper Canada does at present raise duties upon importations from the United States, which is a frontier of 700 miles; if they were desirous of raising a duty upon importations into Upper Canada, and if it were not thought to interfere with the general power of this country in respect of regulating the trade, they could have no difficulty in levying duties on goods passing from Lower Canada to Upper Canada, since they do levy duties on goods passing from the United States into Upper Canada. The only means of access into Upper Canada from Lower Canada are the River St. Lawrence and the River Ottawa, they might very easily levy duties there, and I think that probably after the next election, the Legislature of Upper Canada will ask to collect its own duties.

In what way would it be possible for Upper Canada to collect its own duties?—It could collect duties much more easily upon the Lower Canada frontier than it collects duties upon the United States frontier; it would not be one twentieth part of the expense, for the whole extent of the frontier between Upper and Lower Canada, which is not a wilderness, through which no trade can pass, cannot exceed 30 or 40 miles.

Suppose the case of rum imported into Lower Canada, and that a merchant in Upper Canada wished to transport that rum into the Upper Province, under the arrangement you have suggested, namely, that Upper Canada should collect its own duties, would they not in that case be subject to a double duty; must there not, in the first instance, be a duty paid for Lower Canada, and afterwards another duty paid for the Upper Province?—No, there ought to be a drawback. In the Constitutional Act there is an express power in this country to regulate those drawbacks; they would be entitled to a drawback upon proof being given that the thing had been introduced into Upper Canada.

Do you think it possible that an arrangement of this nature could be made, that all du-

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ties must necessarily be paid at the port of entry, but that instead of Lower Canada giving a definite proportion of those duties to Upper Canada, Upper Canada should impose whatever duties she chooses upon her imports, receiving a drawback from the Lower Province of all duties that have been paid upon goods in their transport through the Lower Province? I have no doubt that such an arrangement could be made.

Do you think it possible to enforce custom-house regulations upon the frontier line?—If they are enforced upon a frontier of 600 or 700 miles, they may surely be enforced upon a frontier of 30 miles; there could be no difficulty in collecting duties upon the Upper Canada frontier upon all goods of which the package would not have been broken; I should conceive there would be a difficulty in collecting duties, or allowing a drawback upon any thing that had been broken. It would be easy to ascertain that the thing was in the state in which it had come into the custom-house in Quebec, in that case the drawback ought to be allowed the moment it was ascertained, but if that were not provided for, there would be a great deal of trick and roguery; for instance, a tun of rum would be opened, and it would be watered, and two tuns made of it, and then the drawback would be allowed upon two tuns. Therefore it would be necessary to have it managed so that it would be certain that the same description of goods that had passed in at Quebec went to Upper Canada.

As at this moment every tun of rum that arrives at the Upper Province must pass through the Lower Province, where is the security now?—There is a great deal of roguery now; but, in truth, the consumption of rum in Upper Canada has almost ceased; they consume whiskey of their own manufacture. I believe there is no complaint at all on the part of either Upper or Lower Canada; they submit to the regulations that have been made.

What, in your opinion, would be the best mode of regulating it?—Suppose that in Upper Canada a merchant were to order things from England, they ought either, upon some certificate of an entry at the custom-house at Quebec, to go free to Upper Canada, or else Upper Canada ought to be allowed a drawback upon every article that has paid duty in Lower Canada, provided it is ascertained at the custom house in Lower Canada that *bonâ fide* the same description of articles has gone to Upper Canada, and that there has been no roguery; but although there has been a great deal of talk, I believe the Legislative Assembly of Upper Canada do not make any complaint on the subject. They are now on the eve of a general election, and I dare say will attend to all those things, for they are well conversant with their interests, and attend to them pretty strictly; but it is a matter for the decision of the Government of this country whether duties shall be laid upon articles imported into the colonies. If the Colonial Legislatures were to exercise that power to a certain extent they might shut the British trade out altogether; and it would, in my opinion, be a very imprudent thing for the Legislature of Great Britain, which has the general superintendence of the whole empire, to allow parts of that empire to turn the current of its trade as they pleased.

Are the imports of the Upper Province partly for the supply of the Upper Province and partly for importation into the United States?—There is very little importation to the United States; the people of New-York, although they pay heavier duties, are supplying Upper Canada. I believe that the Americans enter into competition every where above Kingston. Formerly the English tea could not enter the St. Lawrence at all; before the late alteration the Americans sent their tea down to Quebec and Newfoundland.

In what way do you account for that?—There is greater capital in the United States, and where there is a large capital trade may be carried on at a smaller profit. Our merchants are not trading upon their own capital; they are really trading upon the capital of merchants in this country; it is, I conceive, not so well managed as the American trade.

By what criterion has the proportion of the duties that has been appropriated to the use of Upper Canada been determined?—It has been determined by arbitrators chosen by the Governor of Upper Canada and the Governor of Lower Canada, and in case of disagreement, the Government in this country has appointed a third; and the House of Assembly of Lower Canada considered that as equitable a mode as possible, for they in reality had been almost tricked into a quarrel with Upper Canada. They were very glad to get rid of any thing that might get them into a quarrel again. The usual law that authorized an agreement with Upper Canada was suffered to drop in the Legislative Council, and the agreement expired; that raised a quarrel between the people of the two provinces, which can hardly now be raised.

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Is not the portion awarded to Upper Canada objected to as too great with reference to her consumption?—I should conceive that it is greater than it ought to be, from the circumstance that there is a great proportion of articles introduced from the United States above Lake Ontario. Our duties lie upon a great variety of goods that cannot get beyond Lake Ontario, and of course the arbitrators having taken population as the basis, it is erroneous; it is of no use that there should be 200,000 souls in Upper Canada, if only 100,000 consume the dutiable articles.

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The basis of the adjudication is objected to?—The basis of the population certainly is erroneous, but Lower Canada did not object to the last adjustment, so far from it, they obtained in the House of Assembly a vote to pay the arbitrators.

Would there be any objection to a distribution by the Imperial Parliament of the whole revenue collected at the ports of the Lower Provinces, made in proportion to the respective population of the two provinces, taken at certain periodical intervals?—Yes, there would.

In your view, which mode do you think the best with reference to the interests of the two provinces, that which has been resorted to of dividing the population and the revenues collected in Lower Canada, and applying them to the purposes of Upper Canada, or that of establishing a system of separate custom-houses for Upper Canada, and establishing duties to be collected there, and to be drawn back from the receipts of Lower Canada?—I should think that, in as far as this country is concerned, the preferable mode would be, that of arbitration under the Canada Trade Act. I object to nothing in the Canada Trade Act except the revival of the duties. Upon the general principle, I should say, that the less this country has to do in legislative measures affecting the colonies, the better it is both for the colonies and this country. If it were to interfere frequently, it might be the occasion of misunderstanding, when no misunderstanding ought to exist.

Does not the arrangement at present existing impose a great difficulty in the way of any increase being made in the taxation of Canada, if that should be found necessary?—It does; and there has been a representation on the subject to the Government here, upon an application by Mr. Galt, agent for the Canada Company. There were certain resolutions passed in the House of Assembly, and this matter was mentioned in it. There was something submitted to Lord Goderich; they took him as the arbitrator.

Do you consider that the union of the two provinces would be a proper remedy for those difficulties?—It would not at all be consistent with the interests of the two provinces, nor would it satisfy either the one or the other.

From your knowledge of Lower Canada, what do you conceive would be the feeling of that province with reference to a union?—It is clearly averse to it; both provinces are decidedly averse to it.

What do you believe to be the feeling in Upper Canada with reference to the question? Upper Canada I believe to be clearly averse to it; they wish not to be troubled with us in the management of their internal affairs. The truth is, that every portion of the population in America desire as much as possible to have the management of their internal affairs confined within narrow limits. In the United States, wherever a State was extensive, they have divided it into several States for the convenience of local management. They cut off the state of Maine from Massachusetts; they cut out two or three States in Virginia and in Pennsylvania. The object of that country is rather to sub-divide States than to unite them.

What do you think of any scheme for adding Montreal and the country between Montreal and Upper Canada to the Upper Province?—I certainly should think that it would be very objectionable; in the first place, it would be throwing the whole property of 100,000 souls who hold property under one system of laws to be at once governed by another system of laws, which they understand nothing about, and concerning which they have extravagant notions; for I am confident that every system of law is good for a country when it has been long established.

Do you imagine that it would shock the feelings of the population of that part of the country very much?—Certainly it would, very much indeed.

Is it not rather an inference, from the answers you have given, that it would be desirable, if possible, that Lower Canada and Upper Canada should carry on their internal concerns

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cerns separately, but that there should be some principle of union between them upon such points, and such points only as are common to both; as, for example, the revenue necessary to be received at the ports within the Lower Province?—I conceive that the thing as it stands at present will work very well; those two provinces, and the other British provinces in America, ought to stand in the same relation to the Government of this country in which the different States of the American Union stand to the general American Government. The seat of the British Government is here, and the seat of the general Government of the United States is at Washington; the Provincial Legislatures may very well do all that is done by their State Governments, and the British Government may do all that is done by their Congress, and the whole thing may work together for their mutual benefit by union and good feeling.

Do you not think that the two colonies have the same interests in many respects, particularly with regard to improving the roads and water communications?—Yes, and on that point they will act together with the greatest cordiality. Both the provinces have an intimate interest in approving the water communication by the Saint Lawrence; because, what makes property valuable at Quebec, and the trade thrive there, except the trade up and down the river?—and what is more beneficial to Upper Canada than to get the articles which go to them up the river, cheap, or brought down to market at a moderate price? They have therefore both an interest in improving the internal communications. That operates so much with us, that although we did not know much about the Welland Canal, but merely saw that it would open a better intercourse to the Saint Lawrence for a great extent of country, that the House of Assembly, at that time consisting of eight out of ten of French Canadians, voted a sum of 25,000*l.* to take shares in that canal.

When you stated that you thought that the relationship between the colonies of North America and of this country was much the same with reference to points of general government, as that which exists between the different States of America and their centre of government, you must be aware that there are several material differences that must be taken into consideration; how would you propose to supply the want of representation in this country?—We never have complained on that head, nor can we think of having a representation here.

Would not you require that the colonies should have some representation in this country?—We have asked for an agent to represent the interests of the colony, particularly at times when there may be a difference of opinion between the executive and the representative branches; for we are not much afraid of any thing wrong going on here, if we can have an opportunity of being heard.

You think that an agent appointed by the Colonial Legislature would be a sufficient representation for the colonies in this country?—I think that there would be no danger of any mischief being done, if there was some person here so as to enable all parties to be heard; there is no opposition of interest between the colony and the mother country; it is an advantage to us to be connected with an old rich and powerful country, and it is an advantage to this country to have colonies that are subject to her regulations of trade, and where she can get things independently of other countries. The only thing that can ever place them at all in opposition, is the not being understood to one another, and particularly the touchiness of all colonies; they are like all children, more touchy than their fathers.

Then you think that the most desirable expedient to overcome the difficulties would be to have an agent resident in this country, on the part of each colony?—Yes; and I would think that all parties should have a fair chance of being heard here; that is to say, that the Legislative Council should either agree in appointing the same agent with the Assembly, or should have one of their own.

Would you not think it desirable, if possible, that the same agent should be appointed by the Legislative Council and the Assembly?—If they could agree upon the same agent.

Does not the absence of all power, on the part of the British Parliament, to levy taxes, except for the purpose of the regulation of trade, put the British Parliament entirely on a different footing, with regard to the colonies, from that on which the Congress stands with regard to the American States?—There is a material difference there.

Is not that difference so great as to involve the necessity either of changing the relation in which the Government stands in relation to the Canadas, or of making it impossible to carry the arrangement into effect which you have suggested?—I conceive that there is certainly



certainly a marked point of difference in the connection arising from the limitation which this Legislature has put upon itself, of not imposing taxes for the purpose of a revenue in the colonies. The Congress of the United States does impose taxes for the purpose of a revenue; and it may impose internal taxes even. Its power of taxation is general throughout the whole limits of the United States; in point of fact, however, it has gone no further in exercising it than the power of regulating trade, because nearly all its revenues are derived from duties on importations.

*John Neilson,*  
Esquire.

5 June 1823.

*John Neilson,*  
Esquire.

7 June 1828.

*Sabbati, 7<sup>o</sup>. Junii, 1828.*

*John Neilson, Esquire, again called in; and Examined.*

DID not the proposition of the Union, which was brought forward in the British Parliament in 1822, excite a very strong feeling among the Lower Canadians?—It did.

What was the impression in Lower Canada, as to the inducement that the Government were under to bring forward that question of the union, who were supposed to be the parties applying for it?—It was supposed to be the Provincial Government of Lower Canada, or rather the persons forming the Executive of Lower Canada.

Was it supposed that any persons in this country connected with what is called the English interest in Lower Canada, made an application of that sort?—It certainly was supposed that the whole thing was got up from Lower Canada, they could not suppose that the Parliament or the Government of this country would take up a matter of that kind without it had come, in the first instance, from the authorities of Lower Canada, or from some person in Lower Canada, in correspondence with the Government here; that was the universal impression.

If there had been more definite provisions in that Act of Union for the preservation of the French laws and institutions, do you think it would have been less unpopular?—The thing would have been unpopular at any rate; it was generally unpopular among the English part of Lower Canada; it was considered a very unfair thing by them; even those that were in favor of the union were against the bill.

How do you account for the expressions that were used in the next year, expressive of so much gratitude and satisfaction?—Those are expressions of form very frequently, but the petitioners in favour of it were not satisfied with the bill as it stood, there were several that wanted the union, but I never heard one profess himself altogether friendly to the bill.

If those parties who, in their petition, expressed so much gratitude, were against the details of the measure, to what particular part did they object?—I have heard it mentioned among some gentlemen that were friendly to the union of the provinces, that the share of the representation was unfair, that it encroached upon popular privileges in some instances, that it introduced extraordinary clauses with respect to placing executive officers in the representative assemblies without election by the people, and matters of that kind; in fact all the petitions from Upper Canada in favour of the union expressed themselves dissatisfied with those provisions; the petitioners in Lower Canada, generally, were unfavourable to some of the provisions, but many of them were friendly to a union, expecting that the British Parliament would bring in a bill that would be better suited to the purpose than the one that had come out to Canada; that was the feeling of those who petitioned in favour of it. The feeling of those that petitioned against it was very different, and I dare say the Committee are well aware of that.

Are the Committee to understand that, if the modifications suggested by the petitioners who were in favour of the union had been adopted, the bill would have been satisfactory? Certainly not to the great majority of the people in both provinces.

If the modifications to which you refer had been made, would it have been acceptable to the people in favour of the union?—I should suppose it would have been favourably received by them; but I dare say they would have been glad to see what the clauses would be in the first instance.

Are you not aware that strong representations were made from Upper Canada, as to the utter impossibility of forming a custom-house establishment at Montreal, which could enable them to levy duties within their own province upon goods coming in through Lower Canada?—I am perfectly aware that they made representations to that effect.

Have you any reason to believe that they have changed their opinion since that time upon that subject?—I cannot say; but I know that they have sent forward no complaint upon

upon the subject of the division of duties since that time ; as to the collection of the duties on the frontier, I have already had the honour to state that I could not say positively whether they would find it practicable ; but my opinion was that it was practicable to a certain extent ; that they have collected duties upon a frontier of 600 or 700 miles ; and I should suppose from that, that they could collect some duties upon a frontier of 30 miles ; that a new election was going on in Upper Canada in this year ; and that the people there would no doubt be able to say what they could do, or what they could not do.

*John Nelson,*  
Esquire.

7 June 1822.

Are not the Committee correct in understanding you to have stated to the Committee that no objection exists to the principle of arbitration, as regulating the proportion of the duties necessarily levied in Lower Canada, which ought to be applied for the civil government of the Upper Province ?—I have stated that, as far as my opinion went, I did not object to any part of the measures adopted in this country to terminate the differences between the two provinces, excepting that which went to renew the temporary provincial Acts levying duties, which I conceive to be very nearly approaching to taxation, and consequently rather infringing upon the declarations of this country.

You are aware that however anomalous the introduction of those clauses might have been into the bill of 1822, the object of their introduction was to prevent the Government of Upper Canada being deprived of the means of being carried on in consequence of the cessation of revenue in the Lower Province ?—We never had any doubt as to the intentions of the Government here, or of Parliament, with respect to that bill ; we have always conceived that it was intended to relieve Upper Canada from her dependence on Lower Canada ; but the bill was received with a great deal of dissatisfaction on account of one circumstance. We had no opportunity of having any person here to represent Lower Canada, though they had a person to represent Upper Canada ?

The question refers to the practical point of the necessity of continuing those duties ?—With respect to the continuing those duties, I state what I have stated elsewhere, that I conceive it to be very dangerous as a precedent, and rather infringing upon what I conceive to be the constitutional rights of the colonies ; but, in point of fact, we ourselves would have been obliged to continue those duties, had they not been continued here. Part of them were refused to be renewed in 1821 or 1822, because there was in fact no want of the money. The Government at that time used to tell us, "we do not want any money from you ; England will pay the Civil List itself if you do not pay it, as we require it." That was the language of the gentlemen acting in the House of Assembly on the part of the Government. When they proposed to continue the bill of 1821 or 1822, it was referred to a committee ; there was a report ; and finally the House refused to continue one of the temporary Acts : saying, "very well, if Great Britain is to pay the expenses, we do not want this money ; we will relieve the trade of it." That was the cause of suffering that duty to expire ; but the moment there was a question of providing for the expenses of the Government, it would have been necessary for us to revive or continue that bill ; we could not have paid the expenses of Government, even upon the scale we had agreed to, unless we provided a sufficient revenue for that purpose, and likewise for the other purposes that are indispensable ; such as, something like miscellaneous votes here, hospitals and education, and several annual appropriations that are usually made ; and besides that, the improvements of roads and the internal navigation. With all these things we had the Chambly Canal, and the La Chine Canal, to provide for ; we certainly would have continued those duties ourselves ; therefore, in point of fact, though the precedent was dangerous, you took nothing from us that we would not have given ourselves. The precedent may, however, cause a good deal of hesitation in consenting to new duties required for temporary purposes.

Do you admit then, that if the Assembly of Lower Canada, on account of any reasons, had not revived those temporary Acts, the effect would to that extent have been to have deprived Upper Canada of the means of carrying on her civil government ?—Certainly, Upper Canada would have been diminished in its means ; but Upper Canada would not have been injured by Lower Canada in that respect, because it was a temporary Act. When Upper Canada consented that Lower Canada should impose those duties of which they were to have a share, it consented to it in the manner in which the Acts were passed for a certain time, so that Upper Canada would have had no reason to complain : it is we that have had reason to complain, because those Acts have been continued beyond the time. No one

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ever intended to make those Acts permanent, and therefore Upper Canada could not be deceived in that respect.

These questions are not put to you with a view of establishing any ground of complaint of Upper Canada against Lower Canada, but merely to illicit the fact whether the conduct of Lower Canada with respect to this continuing the Act does not necessarily expose Upper Canada to a failure of revenue, which prejudices her means of carrying on her civil government?—It is obvious, that if there is a revenue of which Upper Canada gets a part, and that is discontinued, that Upper Canada is thereby deprived of so much revenue.

Are you not prepared to admit that Upper Canada has no means within herself of obviating the inconvenience of such a cessation of her revenue?—I cannot say so. I have said the contrary, that I conceive she may collect duties for herself.

But supposing that should not prove to be the fact, in that case do you not admit that she has no means of obviating the inconvenience?—If she has no other means, certainly.

Are you not aware that complaints have been made by Upper Canada, that she could not impose taxes upon commodities which would afford to her a more beneficial revenue than that revenue which she now receives under the operation of the separate and exclusive taxation of Lower Canada?—I know that she has complained that she could not collect a revenue sufficiently, unless it was at the Port of Quebec, and I know that it is upon that ground that complaints were sent home to this country, and Mr. Robinson was sent home to support those complaints, and if we had been heard at the same time we might have fallen upon some mode that would have satisfied all parties, but we were not heard.

As many years have elapsed since, and you have had time to consider the nature of those remedies, can you now point them out to the Committee?—Those remedies must depend upon the consent of two parties. I can say what I think might be feasible, but it must be conceived to be feasible by both parties, or it will amount to nothing.

State what in your view could be effected?—I have already stated that I thought that Upper Canada could collect a revenue upon the frontier towards Lower Canada. I have reflected upon the thing since, and I think it feasible; and if that were not feasible, it still would be feasible to make a warehouse at Quebec, where articles imported for Upper Canada would be received and delivered out, so as to secure their not being sold or distributed in Lower Canada; if the goods were put into the King's warehouse at Quebec, for instance, there is nothing in the world to prevent their being transmitted through Lower Canada free of all duty, upon certificate being had that they are entered in Upper Canada, and the duty paid or secured. That has been practised in other countries. The other mode that I suggested was, that they might be allowed drawbacks. I am confident that the two provinces could fall upon some mode by which they would mutually afford sufficient convenience for one another to levy the duties necessary for their own purposes, without interfering or quarrelling; but it would require that they should understand one another as to what would be agreeable to both parties.

Then you are of opinion that it is practicable to make an arrangement under which Upper Canada may tax herself?—Yes, and be satisfied; I have not the least doubt of it; it may be done either upon the frontiers, or at Montreal, or Quebec, and by allowing a drawback. If they purchase articles in entire pieces as imported, they may have a drawback upon proof of entry in Upper Canada, and having paid or secured the duty; or they may have a warehouse at Quebec, and have the goods deposited there and transmitted under a certificate of the custom-house at the port of entry to Upper Canada; it would entail a little more expense, but it would not be material; and I am confident it might all be done at less than the expense of collection at the Port of Quebec at present.

Under the view you take of this subject, are the Committee to understand that you propose that arbitration should regulate the proportion of those duties which are charged equally in the two provinces, but at the same time if Upper Canada thinks it necessary for her own purposes to increase the duty on any particular article, or to impose a duty upon an article which is not taxed in Lower Canada, it would be practicable to carry such intention into effect?—We have never objected to the system of arbitration as adopted in the Act here; we have consented to that arbitration, and I believe that it satisfies all parties for the present. If a mode could be adopted for each province to levy its own duties it would be better, because it would leave them to tax such articles as each liked; but in reality, I think the levying such duties upon trade by the Colonial Legislatures to any great extent may be liable to a great

great many difficulties, and very dangerous. This country must regulate the trade, and you must consider the situation in which those colonies are placed with regard to the United States of America; if you choose to let the colonies levy duties upon articles that they can get from this country, and not levy duties upon articles that they can get from the United States, your trade might be, perhaps, unintentionally turned out of that country.

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Did not the trade bills of 1822 and 1824 impose duties in their schedules upon articles imported from the United States?—I know there have been duties imposed by Lower Canada and by Upper Canada independently of the Acts of the British Parliament; those in Lower Canada have ceased; it was generally conceived that the thing was not at all consistent; the Government of the Empire have regulated the trade between the United States and Lower Canada; how could we alter those regulations by laying on duties? if we laid on duties we altered the regulations of trade. I do not know what the Government of this country intends to do, but the whole system of communication between the British provinces in North America and the United States is likely to overwhelm us all.

Whether the duties be imposed by British Acts of Parliament, or whether they be imposed by provincial Acts, do you consider that the nature of the frontier between the United States and the British North American provinces is such as to make it extremely difficult in practice to levy duties upon articles imported into those provinces from the United States?—I conceive it altogether impracticable for any beneficial purpose. There is an extent of settled frontier between the British provinces and the United States of America of upwards of 1,000 miles, and more than 500 of that is a mere water communication; a broad river and lakes; the settlements are thin along these, and the river may be passed in any direction by night or by day. Any thing that can give any profit by smuggling will come in; all the custom-house officers in the world could not prevent people, living as neighbours and friends, relations, brothers and sisters, people who visit one another almost every evening, from bringing in any thing that will enable them to make a profit, or exchanging articles for mutual convenience. Then there is another thing to be considered; all over the world the Revenue Laws have been unpopular; people have not considered offending against them in the light that it ought to be considered, as an immoral act, but they have voluntarily violated those laws, thinking that they did not commit a very immoral act; they join in countenancing the smugglers instead of preventing them; every one feels that he has got a kind of interest in getting a thing as cheap as possible, and he does not hesitate when he feels the workings of that interest to violate the law; therefore, you have the people on both sides interested in some measure in this system of smuggling and unrestricted intercourse; and when the body of the people on each side the frontier are interested in favour of it, how can you prevent it being done?—There is something so consonant with the character of the people of America in this kind of trading with one another, independently of all regulations, that during the last war our army was supplied through the American army with the greatest part of its provisions. Under these circumstances, I would submit whether it is practicable on such a frontier to prevent smuggling if there is any thing to be made by it, and if there is nothing to be made by it, what is the use of the laws and regulations? If a system of custom-houses were established along the frontiers, it would ultimately make the people on both frontiers hostile to the British Government, for the acts of the officers of the Government are too commonly ascribed to the Government, and particularly in America; if any thing is done it is in the name of the British Government, and if they quarrel with officers they are quarrelling in some measure with the Government, so that in reality this kind of nuisance that the people will suffer in consequence of all those custom-house officers collecting a revenue, which will be no revenue, upon the frontiers, will dissatisfy the people with the British Government, and consequently, being dissatisfied in that way, both the Americans on their side and our own people on ours, we will run the risk of being overwhelmed, as I said before.

How do the American States regulate the intercourse between Canada and their territory?—There is hardly any regulation or difficulty to the intercourse. I came through that way; I brought all that was necessary with me to this country, books and papers, and other things; when I came to the first custom-house, a gentleman came in to the inn where I stopped and told me that he was a custom-house officer, if I would be so good as to report what I had brought. I told him what I had brought, and he wished me

good

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good day and a pleasant journey: that was the whole ceremony; there was nothing to pay; but with us they make them pay for every little thing, permits, and so on.

Is there any transport of valuable goods of any kind from Canada to the United States?—There is a trade going on of some kind, but it does not appear much, by the custom-house reports, on either side.

If the United States of America are able to supply Canada with such manufactured articles as it requires, do you think that it will supersede the trade with Great Britain?—It would, no doubt; and it is for that reason that I think it is extremely dangerous for this country to allow too great a latitude to the Colonial Legislatures to lay duties upon articles to be imported by Québec, because that augments the price of those articles, and diminishes the inducement for their consumption. It is easy to collect duties at the port of Québec, but they cannot be collected with equal certainty along the frontiers; this has a tendency to make the Colonial Legislatures lay them on heavily at the port of Québec, and thereby shut out the British trade, which must come in at that port. The duties there give a bounty as it were upon a clandestine importation on the other side: now it is a matter of fact that the manufactures of the United States have been selling at Montreal; coarse cotton manufactures fit for the wear of labouring people. It is to be observed that the great mass of the people in these countries are labouring people. The wealthiest of them often wear the manufactures of their own family, made up in their own family.

Is it within your knowledge, to take one example, that previously to the opening of the tea trade direct with Québec, the price of tea was lower in the Upper Province than it was in the Lower?—Certainly it was.

Can that be attributed to any thing else than to the constant practice of smuggling from the United States?—The United States supplied all the parts below Québec with tea, and many other things of value. It is utterly impossible to prevent smuggling in America; the only way is not to give an inducement to it.

Can you state the proportion of tea which was brought in from the United States, and of that which was brought in at Québec?—We have no mode of judging of it except by the diminution in our importations. We found that the importation from England was diminishing every year, and some persons said that it was a cessation of the consumption of tea, which was a very unlikely thing; at last the truth came out that it was the tea from the United States that was coming into competition.

Are not the manufactured articles chiefly consumed in the Canadas generally of a coarse description, which do not so well bear the cost of transport?—Of course.

Do you conceive it probable that the United States must necessarily soon supply the great bulk of those articles?—The only preventive of that is getting into those countries articles of British manufacture as cheap as possible, and consequently keeping the duties and other expenses as low as possible upon the introduction of them.

What description of goods, besides the coarse cotton goods you describe, are smuggled into the Canadas from the United States?—Silks, and all East India goods; but Mr. Cuvillier, who is here, can give better information upon that, because he has been long engaged in trade, and I am not.

Under the statement you make, of the impossibility of preventing smuggling from the United States, is it not more convenient that the revenue that may be necessary for the purposes of Government in those provinces should be derived from internal taxation rather than from import duties?—You will have a very badly supplied Government if you depend upon internal taxation for it. I have stated that the present revenue is about equal to the expenses; I have no doubt that if necessity existed we would find the means of raising more money; we might raise money by licenses and things of that kind. If it were necessary there is no danger that they will find means of raising enough for the real wants of the country; but it would be desirable that the country should have the means, under proper accountability, of extending its improvements; it ought to run a race with the adjoining countries, or else it will not only be laughed at, but be ruined.

Do not you conceive that the same difficulties which you say would arise from any attempt to prevent smuggling between the United States and the Canadas, would in a great measure apply equally to any attempt to establish a separate scale of duties in the Upper and Lower Provinces?—There is no doubt that it would; but the line is not very extensive.

extensive, and goods could only enter by the Two Rivers; the safest place is no doubt the Port of Quebec.

Is there any qualification for members that sit in the Legislative Assembly?—No qualification.

Is there any qualification for members that sit in the Legislative Council?—No qualification.

In your opinion would it be desirable to introduce a qualification?—The inconveniences have arisen from the exercise of the prerogative with respect to the Legislative Council; the King by the Constitutional Act has the right of naming them.

What would be the effect of limiting the prerogative, by a regulation that no person should be nominated unless he was possessed of land to a certain extent?—If you could have an independent Legislative Council, you would have something like a British Constitution, and the affairs of the country would go on. In that case there would be a body that would have a weight in the opinion of the country when the Governor and the Assembly were at variance, and on which ever side they declared they would incline the balance; if they were independent men connected with the country, it would be impossible to resist the declaration of the Council, consisting of respectable and intelligent men, in any dispute between the Governor and the Assembly; but under present circumstances every one supposes that the Council decide always just as the Governor pleases, and they have no weight.

Have you ever turned in your mind any plan by which you conceive the Legislative Council might be better composed in Lower Canada?—I am willing to say what I would suggest, but it must be considered as entirely my own individual suggestion, and not the suggestion of the petitioners. There are two modes in which the composition of the Legislative Council might be bettered, the one which, I believe, the majority of the people in Lower Canada have in view, is by the exercise of the prerogative appointing men who are independent of the executive, and in fact who are able to live by their own means. That has appeared to us to be the most consistent with the constitution under which we live. If that were found to be impracticable, the other mode would be to make the Legislative Council elective, by electors of a higher qualification, and fixing a qualification in property for the persons that might sit in the Council. I should conceive that the latter mode would be safe enough for all parties; still it seems to be a deviation from the constitution under which we live.

You conceive, then, that the fault of the Legislative Council is not in the original constitution of the body, but in the manner in which the choice of counsellors has been exercised?—Certainly; that may, perhaps, be unavoidable; because it is impossible that the Government here should see in the colony, excepting by the means of the people that are in the colony, they must take the recommendations that are sent from the colony, and if they are men that are not independent, and not suited altogether to act an independent part in the Council, of course they must appoint them notwithstanding, for they do not know that it is otherwise.

When you say that those alterations would improve the constitution of the Legislative Council, do you use the word 'improve', in this sense, that they would constitute a body which would agree with the lower House in their views, instead of agreeing with the Governor, as it now does, in his views?—I should suppose that it would be compelled to agree with neither one nor the other. At present we suppose that it is absolutely compelled to agree with the Governor. Then it would be an independent body, that would keep the balance between the two, and give a certain stability to the existing laws and institutions.

Do you conceive that if there were some qualification required from the members of the Legislative Council, that the province would still feel satisfied to allow the nomination of the Legislative Council to remain with the Crown?—The general feeling of the people has not been in favour of alteration, but rather a feeling of satisfaction with the usual rights exercised by the Crown in those matters. It never was imagined, by us at least, that the Legislative Council was to be otherwise than a body originating in some measure from the Crown.

Are you of opinion that any class of executive officers should be excluded by law from being members of the Legislative Council?—Yes, certainly.

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Will you specify them?—I should say that in that country the judges ought to be excluded from the Legislative Council: for it unavoidably mixes them up with politics, and they become, instead of judges, in some measure, political partisans.

Do you think that should apply equally to the chief justice?—If the chief justice is to be every thing as he is at present, a member of the Legislative Council, chairman of the Executive Council, presiding in the Court of Appeals, and taking an active part in all the public business of the province, he must be almost incapable of avoiding, when he is upon the bench, feeling a certain bias: it is believed too that such a bias exists; for instance, when a prosecution is advised, it must be sanctioned in the council in order to allow the expenses, the Executive Council has of course advised the prosecution, and the chief justice is the judge to sit on the bench and try it, and he is in danger of being biassed. In truth, people do conceive that there is a bias at present in matters where the Crown is concerned.

If the chief justice did not belong to the Executive Council, do you think there would be any objection to his belonging to the Legislative Council?—If the chief justice or any judge, were not to be active politicians, there would be no harm in their being any where; but the society being small, they become active politicians.

Is not it by being Executive Councillors that they get mixed up with politics?—Yes, that is the great evil of their being Legislative Councillors, but in the Legislative Council, in the passing of bills, they take an active part; they are for or opposed to the bill, and it has been frequently found that they interpret in their courts according to the interpretation in the Council.

Is the chief justice *ex officio* chairman of the Executive Council?—No, the Constitutional Act says, that the governor shall appoint the chairman.

Is there any other class of executive officers that you would be desirous of excluding from the Legislative Council?—I do not see that there can be any objection that there should be executive officers in the Legislative Council, provided there is not a majority of them.

Then, in addition to the objections arising from the nature of the offices, you would put a limit upon the number?—That the King can do at all times.

Would you think it desirable that a provision of this sort should be made, that not above a certain proportion of the Legislative Council should consist of persons in the pay and employment of Government?—Certainly I should say so, that would be a proper rule for the Government to act upon.

Do you think it possible that, in a country circumstanced as Lower Canada is, the Legislative Council can really command the confidence and respect of the people, or go on in harmony with the House of Assembly, unless the principle of election is introduced into its composition in some manner or another?—All that depends in truth upon the instructions that may be sent from the Government of this country; if they are dependent upon the governor of course they move according to the instructions from this country, because the governor must move according to those instructions.

Do you think that the colony could have any security that the Legislative Council would be properly and independently composed, unless the principle of election was introduced into it in some manner or other?—Judging from past experience, I should say there could be no security, but I should conceive it is possible that the errors of the past may be remedied for the future; but as the thing has gone on, we cannot conclude that we would have any security.

Do you conceive that any regulations whatever, as long as the nomination to the Legislative Council remains with the Crown, would make it such as would command the confidence of the people?—I should hope so.

Supposing such regulations to take place with respect to the Legislative Council as those to which you have referred, supposing that there should not be in it a majority of persons holding any situation of emolument under the governor; have you any apprehensions in that case that the Legislative Council would be considered with jealousy by the inhabitants of Lower Canada?—I should conceive that it would acquire great weight, but at present there has been a great deal of difference, and a great deal of disagreeable circumstances that it is not necessary to repeat, and it is some time before confidence recovers after such disagreeable circumstances; but I have no doubt that if the most en-

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lightened and independent people in the country were placed in the Legislative Council, that it would acquire in public opinion a counterpoise to the House of Assembly, that is, if the House of Assembly are wrong; if they are right and the Council are wrong, I should suppose the Assembly would naturally carry it, but as things stand at present in popular opinion, there is no counterpoise to the House of Assembly.

If it be deemed expedient to introduce a qualification as ensuring the independence of the members of the Legislative Council, do you not think that in principle it would be desirable to introduce a qualification with respect to the members in the Lower House of Assembly?—At present I do not see any use that the qualification would be of, for they are all qualified beyond what is proposed, even in the Union Bill; I know only of one individual member that might be suggested not to be qualified fully according to that Act. Then, seeing that no abuse has occurred from the present system, it perhaps might be judged rather invidious to say that they shall be qualified, when they are at present fully qualified to the extent that is desired.

Are the properties of any individuals so great in Lower Canada that there exists an aristocracy out of which it would be possible for the Government to select a Legislative Council, which, from the circumstance of their rank and fortune, would carry the weight that should belong to such an assembly with the province?—In all those new countries property rises up and disappears rapidly, so that, in reality, property is not sufficiently permanent to say that it can be calculated upon as itself giving a superiority to particular individuals over the rest of men; but I should suppose that relatively there might be something like an aristocracy formed out of the population of Lower Canada uniting talent and property, still it is less secure than in this country, or in any old country, because property is more evanescent.

Is not the absence of that security of less consequence where the situation is only for life and not hereditary?—Yes; but if the appointment were for life, it would create great danger of the composition being bad. When they are hereditary there is no choice, they come of course independently of the will of any body, and of course they can act independently; but if they are put in by the will of some one, they will naturally be inclined to act according to the opinion of those that put them in.

Is it not the general impression in the colony, that the intention of the English Government in introducing the Canada Act of 1791, with regard to the Legislative Council, has never been fulfilled?—No, there has been hardly any thing but two branches of the government in the country, that is to say, a representative body, and an executive government; there has been such an intermixture of the legislative council, and the executive government, that they have been in reality nearly one and the same thing.

You have said that there might be a sufficient body, combining property and talent, from which you might take an aristocracy; but as you could not ensure talent by any legislation, is there any body whose property would place them in that situation in the colony, that they would be proper persons to be selected?—Yes, all those things are relative; in a poor country, a man who has what would be considered here a small income, yet stands in the same situation with respect to that country in which a rich man stands in this country.

Should you confine the qualification of the Legislative Council to the possessors of landed property?—Landed proprietors in all countries are the country, they are the owners of the soil of the country, and of course must always be a prominent party in the country; but I conceive that fairness would require that every class of the community should have a fair share of every public situation; landed proprietors would, no doubt, form the majority of such a body in fairness.

Is there not a growing inclination in the Canadas to see their institutions rendered more and more popular, and in that respect more and more resembling those of the United States?—The Canadas have made great progress towards an inclination to popular institutions, it is not their disposition, but they have been driven to it, they have been kept in a constant state of agitation, and they certainly are more in favour of a popular government than they were some years ago. Eighteen or nineteen years ago I have heard that the population of Lower Canada considered a popular kind of government a very troublesome one; and they even said that they had all the advantages that they had in the United States without the trouble; they were proud

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of it; but latterly the people have held very much to popular privileges, because they have been afraid of innovations in their institutions; and the disputes, dissolutions and agitations that have occurred have made them enter more into the prevailing notions of the present time of a representative government.

Since you have stated that this inclination towards popular privileges is upon the increase in the Canadas, do not you think that it would be wise, in any change that is made in the institutions of that province, to meet what will be more and more the wishes of the people, and make them extremely popular?—It is very good; but it is very dangerous to hurry people in that respect; I should conceive that they ought to have the appetite before you give them the food. I conceive that the people of Lower Canada are certainly making rapid strides in attachment to a representative government. Twenty years ago I could not have believed it myself; but still they are not naturally a democratical people, nor have they any strong desire for the United States.

Having stated that there might be objections to the Legislative Council being appointed for life, do you conceive that there are materials for forming an hereditary council?—The answer that I have already given relating to the evanescent state of property there will explain, in some measure, my opinion, that an hereditary Legislative Council would not do in Lower Canada; they might be hereditary beggars, and fall into contempt. America is a new country, where all must be actively industrious, or decline in means. You may form a tolerably correct idea of America by supposing a number of people hewing down a forest, changing it into fields, while others are doing such other parts of labour as are indispensable for furthering this immense work. Under all the circumstances, the respect that ought to be attached to an hereditary aristocracy, and which is necessary to give it a useful existence, would not be maintained in America.

You have said that with regard to the House of Assembly it would be a good thing to have some members of the Government introduced into it; is there any such a decided influence of Government over any particular parts as to give them a security for having a certain number of members?—The Government have put in some members, and they had at one time a majority of persons that were agreeable to them, but some how or other for a considerable time past, they have lost the confidence of the electors. At Gaspé they still have put in a member, and at Sorel and at Three Rivers, but they have had hard struggles for it; at Sorel they were turned out, and at Three Rivers they succeeded only in obtaining one of the members.

Under these circumstances, should you not think it a good thing that certain members of Government in active situations should have the right of attending and speaking in the House of Assembly wit out voting?—The thing would be very extraordinary, and the situation would be a most unpleasant one to the gentlemen that would attend there; they would not have the privileges of members, and they would be amongst people that would view them with a kind of jealousy and suspicion.

Are you aware that it is the case in the French Constitution, that the French ministers attend and speak, but do not vote?—No; we have rather looked to the British Constitution.

Have you any papers to deliver in to the Committee?—I will deliver in copies of several other bills that have been referred to in my evidence; one is a Bill for vacating the seats of Members of the Assembly in cases therein mentioned; another is a Bill to remedy the improvident Grants of the Waste Lands of the Crown, and the other is a Bill to provide for the Trial of Impeachments in this Province.

[The witness delivered in the same.]

*D. B. Viger,*  
Esquire.

*Denis Benjamin Viger, Esq.* called in; and Examined.

ARE you a native of Lower Canada?—I am.

Are you connected with the profession of the law?—I am an advocate.

In what court do you practise?—In Montreal. I practise occasionally in the Court of Appeals at Quebec, but my residence is in Montreal.

What number of public courts of justice are there in the province?—We have a Court of King

King's Bench in the district of Quebec, and a Court of King's Bench in the district of Montreal; then there are, besides, provincial courts in other districts: there is a provincial judge at Three Rivers, there is a provincial judge at Gaspé, and another, a late establishment, at St. Francis.

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Is St. Francis within the townships?—It is.

Is the same code of laws administered in all of those courts?—We always understood it so till the Act of the 6th George 4, which was a declaratory Act by the Parliament of England, deciding that the laws of England were the laws of the townships. I ought to add in answer to the former question, that in the district of Three Rivers two judges of the Court of King's Bench of Montreal, or of Quebec, go every term to Three Rivers to hold a Court of King's Bench, and then there are three judges there; two judges are a quorum; but in case there should be a difference of opinion, there are generally three, and those two judges with the provincial judge, exercise all the powers of the Court of King's Bench, as they are established by the Provincial Statute of 1793.

Does the enumeration which you have given of the Courts of Justice include all that exist wit<sup>h</sup> in the province?—Yes, excepting quarter sessions of the peace, which are held in every district.

Is the criminal law administered solely at the quarter sessions of the peace?—No; there are criminal terms of the Court of King's Bench twice a year in the district of Montreal, and in the district of Quebec, and there are two criminal terms at Three Rivers, held by the chief justice either of Montreal or of Quebec, with the provincial judge and those who come from Montreal or Quebec. If I had known that I should be examined upon this point, I would have brought the law which was passed in 1793, which would explain the thing at once.

Was that law a provincial law?—Yes. It was a law by which the Courts of King's Bench and the quarter sessions have been established in Lower Canada, or at least put on a better system.

Is there any institution similar to the circuits in England?—No. We have endeavoured to establish such a system in our country for these three years past. I framed a bill, it passed in our Lower House, but it was not passed by the Legislative Council. My great object was to endeavour, with reference to constitutional principles, to establish the Courts of King's Bench in Canada upon the same footing that they are in England, because I do not think that the administration of justice, particularly with regard to jury trials, can be administered well by any other system, though I do not think it would be for the advantage of our country to change the laws as they stand at present with respect to civil matters, yet as far as it is practicable I thought it advantageous to establish the courts nearly on the footing upon which they are in England, and to have circuits. After a good deal of division in the House of Assembly, it came to an almost unanimous vote in favour of the bill.

In what year was that?—Successively for the last three years, the bill was brought in in 1825, 1826 and 1827. I will deliver in a copy of the bill which passed the House of Assembly, which is intituled, "A Bill to facilitate the Administration of Justice throughout the Province."

[The witness delivered in the same.]

Do you know the grounds upon which the Legislative Council rejected it?—I was once in the Legislative Council when the bill was argued; to my great surprise the judges in the Legislative Council were those that opposed that part of it which related to juries. It would take a great deal of time to explain their reasons; they seemed to think that the people were not fond of those jury trials, and they conjectured so from the small number of trials by jury which came before them. I ought to mention that we have only two species of civil actions which are to be determined by the verdict of a jury; commercial cases, and personal wrongs, that is cases of personal injury, such as defamation or assault; but they perhaps were not aware that the system of juries, as it is established in civil matters in Canada, is the worst species of juries that can be imagined, for one plain reason. By the ordinance of 1785, it is established, that in civil cases in the districts of Montreal and Quebec, which contain about nine-tenths of the population of Lower

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Canada, the juries are to be taken from the city of Montreal for the district of Montreal, and from the city of Quebec for the district of Quebec, so that by that means you have only citizens of Montreal and Quebec to form juries for a population of about 450,000 souls, which is certainly not according to the constitutional principles of jury trials. They should be taken from the whole mass of the population, because there ought to be a common association of ideas between the parties and the juries. The reason why the people, generally speaking, are averse to have trials by jury is, first, that they are extremely expensive; and, in the second place, they can never depend upon having jurors who have a common association of ideas with the people whom they try. In general, the great advantage of trial by jury is, that they may form an opinion as to the criminality or innocence of the party, from the circumstances and from their knowledge of the rank of the parties, their character in society, and their usages, and this advantage is lost in Canada, because, though those juries may be very respectable and honest men, they do not understand sometimes even the language of the persons they are to try. I would say that there is not a jury trial in criminal matters in Canada, according to the laws of England, at least in Montreal, because I never saw any petit juries that were not taken from the city of Montreal. The citizens of Montreal, by that practice, exercise a kind of power of life and death over a population of about very near 300,000 souls. I do not know upon what that can be founded. I know that the law is against it; the precepts of the judges are to take the juries from the body of the district, from the jurisdiction of the sheriff, as it is in England; yet singular to tell, they have never been taken except from the city of Montreal, and though we have complained, and there were some resolutions passed in our Assembly upon the subject, this, which I consider a great abuse, is at this moment continually acted upon in our courts of justice. These circumstances may have given occasion to some prejudices against juries generally. In my practice my clients have frequently expressed a wish of having their causes tried by juries, provided they could be taken from the vicinage.

What other objections were stated by the Legislative Council to the measure you proposed?—I think they did not like the circuits.

Was it your wish to apply juries to civil cases?—I do not like sudden changes in any case. I did not wish at that moment to extend jury trials further than the law gives it present; but I would have thought it desirable in a little time to extend it to other cases, where mere matters of fact are to be decided; for example, where damages are to be given for a trespass, it seemed to me that those would be proper cases for a jury; I should not think it desirable to introduce juries in matters of mere property, of mere title, of mere conventions. When this bill passed in the House of Assembly I did not wish to derange the system too much; I only wanted to lay a foundation for the administration of justice, civil and criminal, upon the constitutional principles of England, particularly to have circuits, to have a judge that would not be connected with the parties, that would go to the spot, and would there receive the verdicts of the juries.

What number of judges are there in the existing courts?—There are four judges of the King's Bench at Quebec, and four judges at Montreal; one provincial judge at Three Rivers, one at Gaspé, and one at St. Francis.

Can you state what proportion of those judges are of French extraction, and what of English?—There is one at Quebec, one at Montreal, and the provincial judge of Three Rivers, who are of French extraction; all the others are Americans, Scotchmen, Irishmen, and of the neighbouring provinces.

What opportunity have the gentlemen of English extraction of becoming acquainted with the French law?—They generally study with a lawyer of the country. There is no college in Canada where the civil law is taught. I think it would be very desirable that we should have a professor of civil law; but we have had so many things to think of that we have not been able to establish it. When I speak of the civil law, it is to be observed that though we speak very much of the *Coutume de Paris*, and the ordinances of the King of France, it is but a small part of our law. The common law of Canada may be called the civil law, as it was interpreted, and as it was practised in the Parliament of Paris. Where the *Coutume de Paris*, or the ordinances of the kings, are silent, then we take the general principles of the civil law as the *raison écrite*; in this sense it may be looked upon as the common law of Canada.

You

You have stated that a part of the judges in the Court of King's Bench are in the habit of going, on certain occasions, to Three Rivers, to hold a court there; will you describe what the process is?—At Three Rivers the provincial judge decides alone in cases under 10*l.*; but in cases above 10*l.* sterling two judges must sit in the court to form a quorum; and for that reason, every term one of the judges of Quebec goes to Three Rivers, and one of the judges of Montreal goes there also.

Is that practice confined to Three Rivers; or does it extend to Gaspé and St. Francis?—It is confined to Three Rivers; at Gaspé and at St. Francis the jurisdiction is limited; at Gaspé, I think it is limited to 100*l.*; and it is limited to 20*l.* at St. Francis.

Would it, in your view, be desirable to extend the powers of the courts of Gaspé and St. Francis?—I cannot say so; I think it would be better to establish a system of circuits, at least for St. Francis.

Is there any description of causes tried in those provincial courts?—The court of King's Bench sits at Three Rivers for the whole district, including that of St. Francis, for all cases not within the jurisdiction of the judge at St. Francis; and the same thing occurs at Quebec for Gaspé.

The provincial judges alone have no criminal jurisdiction?—No.

When the court of King's Bench sits at Three Rivers, whence are the juries drawn?—I never was at Three Rivers at the sitting of the court; but I understand that they are perhaps drawn upon a better plan, not only from the city, but from the vicinity. That is not the case at Montreal and Quebec; I speak of petit juries; for some years grand juries have been partially taken from the body of the district.

Is there any criminal jurisdiction at Gaspé, or at St. Francis?—Except quarter sessions, none.

Do the judges ever decide inconsistently with one another, some of them according to the French law, and some of them according to the English law?—There have been sometimes mistakes committed by judges by borrowing too much from the English law; but generally speaking our judges are supposed to adhere to the principles of civil law as it exists in Canada.

In how many places are quarter sessions held?—In Montreal, Three Rivers, Quebec, St. Francis and Gaspé.

How many times in the year?—Four times in the year.

Has each court of quarter sessions a separate judge?—Those quarter sessions are held by the justices of the peace; but in Montreal, Quebec and Three Rivers, there are what are called chairmen of quarter sessions, who are paid; and a similar appointment has been made for Gaspé. The St. Francis judge presides at the quarter sessions there.

What is the nature of the jurisdiction of those quarter sessions; is it civil and criminal?—It is chiefly criminal; but it extends also to road matters and penal laws.

What description of persons are the justices of the peace?—If I were to speak according to the rules and laws of England, I should say that they should be taken from the class of proprietors; however that has not been acted upon. We have passed a bill once or twice in the Assembly to qualify them nearly as they are in England; this bill has not been assented to by the Legislative Council.

What is the class of persons from whom the justices of the peace have been generally appointed?—The greatest number are merchants or traders in the country, as well as in the cities.

In the townships from what class of persons are they appointed?—I am not acquainted well enough with the townships to state that. In the townships the greatest number of the people are farmers; and I know that a number of respectable farmers are admitted into the commission.

Have you not understood that there is a difficulty in finding individuals to fill the office of magistrate?—We have sometimes imagined that the choice was not always good, but the Governor exercised his prerogative; it is left by the law to his judgment, and we have not interfered.

Have the inhabitants in the townships any power of assessing themselves for the purpose of local improvements?—There is no law to that effect in Lower Canada; by the laws of Lower Canada every body is under the obligation of making his own road, and this is done generally by an order of the grand voyer, and then there is a distribution of

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the work, and payment of the money in the same way; and there is a kind of assessment with regard to churches, there must be some previous arrangement, application must be made to the Governor, and then there are commissioners appointed for the purpose; then there is a kind of assessment by the parish, but there is no regular power for parishes to assess themselves by the laws of Canada for any purpose, except in the way that I have just mentioned.

What proportion of the year do the Courts of King's Bench sit in Quebec and Montreal?—Four terms of twenty days each for civil causes, and two terms of ten days each for criminal jurisdiction, besides terms for civil jurisdiction under 10*l.* sterling.

In what way are the proceedings conducted; are there pleadings in writing?—Pleadings are in writing in the superior court, not in the inferior court; in the court under ten pounds there are no pleadings in writing, unless the judges order it in some intricate cases, but in all cases above ten pounds all the proceedings are generally in writing.

You mentioned that at Quebec and Montreal there was a Court of King's Bench, consisting of four judges each; is that subdivided into a superior and an inferior tribunal?—Yes, one judge decides in cases under 10*l.*, and in cases above 10*l.* there must be two judges. Generally four judges sit, but the quorum of the court is fixed at two in civil matters.

In cases under 10*l.* are there any written pleadings?—There are no written pleadings, except when the judge, thinking that it is an intricate case, orders pleadings to be in writing.

Are witnesses examined in court?—*Vivá voce* in cases under 10*l.*, and in cases above 10*l.* their testimony is generally written; however, sometimes they dispense with writing the testimony under 20*l.*, because there is no appeal from the Court of King's Bench in such cases.

When the Court of King's Bench dispenses with written pleadings in cases under 20*l.*, do they examine witnesses *vivá voce*?—Yes, they take a note of it as they do in England.

When they resort to written pleadings, before whom are the witnesses examined?—In the presence of two of the judges, and it is one of the evils which were intended to be remedied in this bill, by giving a power to the judges to appoint commissioners to take this evidence in the country because it is an enormous expense; sometimes witnesses come a distance of 90 miles, sometimes they are obliged to come several times, and it was intended to give power of appointing commissioners to examine them in the country.

Are the arguments of the counsel *vivá voce*?—They are.

Even in the superior court?—In both courts.

Are there many appeals from the superior court to the Court of Appeal?—I could not exactly tell the number, but I know there is a pretty large proportion.

How is the Court of Appeals constituted?—The Court of Appeals is neither more nor less than the Executive Council of the province; every member of the Executive Council is *ipso facto* a member of the Court of Appeals.

Is the expense of lawsuits considerable?—They are very expensive.

Have you ever turned your mind to consider any mode by which that expense might be lessened?—I have thought of it, but I saw that there was very little remedy, because our courts are vested with the power of making tariffs of fees by a law of 1801, and we supposed that it would not be a very easy matter to abridge that power.

Are the fees large?—We considered them large in our country, in proportion to the quantity of circulating medium, and in proportion to the price of every thing.

To whom do those fees go?—A part of the fees go to the clerks of the court, the lawyers, sheriffs and bailiffs.

Are they paid into a fund out of which the salaries of those persons are paid?—Not at all. The judges are paid out of the public funds of the province; there are no fees to judges in Canada, except in the Admiralty Court, which have been a great subject of complaint there.

Is there much distinction in the mode in which you bring an action, according to whether the subject of it relates to real property, or whether it relates to moveables?—By the laws of Canada every man that brings an action must explain the grounds upon which he claims either real property or goods, or a sum of money; he must make the person whom he prosecutes

secutes know the title upon which he claims, and draw precise conclusions as to the amount, and as to the nature of the things he claims, and if he fails in any way to ask what he wants to obtain, the judge by the laws of the country can never give him any more; and that this is the difference, perhaps, between the nature of the proceedings in Canada and this country. In England there are particular forms of action, and a general conclusion is taken; whereas the judge, being both judge and jury in Canada, can never give any thing but what is asked precisely by the plaintiff, and then the defendant must give in the grounds of his plea.

Is the plaintiff afterwards enabled to amend his declaration?—He must obtain a permission from the judge. In some cases, that is given if it is only an addendum to the action, but he cannot change the nature of his action.

But whether the action relates to real or to moveable property, the mode of bringing it is the same?—Yes, in England there are special forms of action, we are not restricted to a precise form of action; but with regard to real property, for example, there is a mode of action, which is established by usage and according to the principles of law, which is such that if you were not to take that form of action you could not succeed. It is necessary to establish a certain number of principles and facts, and then to draw the conclusion from those principles, and from that results the necessity of adhering to certain forms, though we are not nominally restricted to forms.

Does the King's Bench act both as a court of equity and as a court of law?—By the laws of Canada there are cases where they have no right at all to exercise any equitable jurisdiction; that is, so far as the law is written they must obey that law; but there are a great number of cases where the law itself gives them a certain equitable jurisdiction. Of course in those cases they exercise an equitable jurisdiction; and besides the civil law being, as I said, the written reason which guides the judges in all cases where there is not a precise enactment, they have, generally speaking, fixed rules of equity by which they can be guided very easily.

Does the court deliver its judgment *vivâ voce*?—Yes, and they generally assign their reasons *vivâ voce*; but they do not generally enter them in the written judgment upon the register. As they are the judges of both law and fact, I should think it would be very desirable if their reasons were stated in the written judgment.

Upon the whole, is there satisfaction or dissatisfaction in the minds of the persons subject to the administration of the law, with regard to the mode in which it is administered?—I could not say that there is a very great confidence in the administration of justice in Lower Canada; and it arises from a great many reasons.

Will you have the goodness to state some of those reasons?—In Quebec the judges are generally executive counsellors; they are at the same time legislative counsellors, and they are generally supposed to have too much influence in the affairs of the province, so that their decisions are not always supposed to be perfectly impartial; besides there is such a contradiction in the judge being in the morning at court, in the afternoon at the Executive Council, and on the same day at the Legislative Council, making the laws, ordering their execution, and then judging upon those very laws, that it is impossible, at least as we suppose, that those men can be exactly judges, and judges alone. Perhaps in a country like this the same inconvenience may not arise from the judges exercising those different capacities, because there is the check of public opinion, and the Houses of Parliament are composed of an immense number; but there the judges form a great proportion of the Executive Council and of the Legislative Council, and they are the persons of the greatest influence in them.

Are the qualifications of the judges such as, in the opinion of the people of the province, to make them to be looked up to as fit persons to administer the law?—I must state that there are judges now who are not considered as great juriconsults.

In amending the administration of the law in Canada, should you think it necessary that there should be some additional establishment in the nature of circuits?—I really think that it would be essential to introduce circuits, as far as it is practicable, upon the system on which they are established in England.

What are the circumstances which you found to be obstacles to the introduction of the system as it exists in England?—The only thing is, that the distribution of the courts could not be exactly as it is in England, by counties, on account of the distribution of the population, such as it exists in Canada.

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Could you explain generally the plan which you proposed to adopt for that purpose?—The object which the House of Assembly had in view was to subdivide the large districts into circles which would comprise a reasonable proportion of the population in each, so that the judges might exercise their jurisdiction in each of those subdivisions. Had the divisions any reference to the counties?—It was impossible; and the reason is, that the division of the counties are liable to continual changes in a country where the population augments with rapidity.

Upon what principle did you propose to divide the country anew for the purpose of circuits?—To make a subdivision according to the population; that is, to fix the seats of the jurisdiction in those places where there is a population to which it could be useful.

Was the arrangement proposed intended to be permanent?—Things of this kind cannot be made permanent in a country like ours, because probably there are some of those divisions which it would be necessary to subdivide again as the population increased.

Do you combine that with the other proposition you have mentioned, of examining witnesses in the country?—Exactly so; it was proposed to have the examination of witnesses taken in those very subdivisions by commissioners; and I must say, that in this instance, as in a great many others, I did not think I was making the best law possible; but my object was to make the best that we could under the circumstances.

What number of circuits should you think necessary?—The number is fixed in the bill: we thought that in the district of Quebec seven circles would have been sufficient besides Quebec, and in Montreal eight besides Montreal.

Do you understand that according to the Constitution of Canada the English civil law is to be administered with respect to property situate in the township, or with respect to all property held in free and common socage?—We always thought that the French law prevailed in Lower Canada till Parliament passed the Act of the sixth year of His Majesty, with reference to tenures in the townships: our judges have acted upon this system. Since that Act, I do not believe that there are means to bring actions according to the English law, with regard to real property in the townships.

Seeing that it is the intention of the Legislature that English law should be administered with respect to all property held in free and common socage; what, in your opinion, would be the best arrangement for giving effect to that system of law?—I think that it is a very difficult thing, not to say impossible, to make the two systems go together in the courts, such as they are established; and I do not see how it could operate in Lower Canada, it would establish such a contradictory system, that it would bring every thing into confusion.

Would not that confusion be very materially prevented, by the establishment of different courts, that is, by establishing a new set of courts in which the law might be administered with reference to property situated in the townships, and retaining the courts which exist at present, in which the French law is administered?—I could give no opinion upon a thing which is almost a mere theory; to speak of the effect of establishing a new system of law in a country where it has never been in practice, would be reasoning upon mere supposition, upon which I am unable to answer; I know that the difference of courts and the difference of jurisdictions, and the difference of laws, will necessarily produce confusion; when it is established we must take things as they are, but in a country where it is not established we cannot say how it would operate.

Seeing that it is the fixed purpose of the Legislature to carry into effect the establishment of English law with respect to the lands in the townships, do you think the attempt had better be made by administering it in the courts as they at present stand, or by any other mode?—I do not know how that could be arranged at present.

Can it be administered in the courts as they exist at present?—It would be very difficult; perhaps it would be proper to state, that the actions as they are brought according to the rules of civil law, are very simple, and that the object can be attained as fully and as easily as upon any other system. I cannot imagine how it would be possible to establish in Canada courts in which the judge would determine one day according to the laws of England, and another day according to the law of Canada, it would throw the practice of the court into the greatest confusion; we have already enough of confusion, which has been created by people sometimes endeavouring to take the rules of the law of England and to introduce them into our jurisprudence.

Has



Has the Canada Tenures Act been carried into operation at all in Canada?—I do not know what operation it can have at present; it has destroyed rights that have been in existence 30 or 40 years—minors rights, rights of women, sheriff's sales, *hypothèques* executed upon the lands; all these have been swept away by the Act of the 6th of the King.

Are the Committee to conclude from what you have said, that the Canada Tenures Act has excited great discontent, and has been considered an unfortunate measure in the colony?—It has, certainly, in Lower Canada created the greatest discontent, particularly in what we call the Canadian population, because it destroyed at once the system which we considered to extend to the whole province, which has been acted upon for 40 years, and ever since the conquest. People had acquired lands in that country by titles made according to the formalities of the French law, which are extremely simple, and operate very well without any difficulty, and against which there was never any complaint at all. Women had acquired rights of community, families had acquired rights according to the Canadian law of descent, creditors had lent money upon *hypothèques*, a species of mortgage we have in Canada, by which those lands were supposed to be affected; and sheriff's sales of those lands have taken place in great numbers. Now if the declaratory law, which has been passed by the Parliament, is to take effect, all those rights are gone and destroyed, and all the sales which have taken place for 30 or 40 years are null and void; and in the second place, it has created a great discontent among the Canadians, because they are acquainted with the Canadian laws of the transfer of property, which are extremely simple, and which are not expensive, and very easily to be acted upon by every body; but this Act of Parliament establishes a system of transfer of property, with which the inhabitants of Canada are perfectly unacquainted, and which has the disadvantage of being extremely costly. In Canada you can get an excellent title made, according to the Canadian law, for about from 5s. to 10s. and you are obliged to pay as many guineas according to the English law. I may state, in order to give an idea of the opinion of even an English lawyer upon our law of transfer of property, that I heard the late Chief Justice Monk, who was not very much prepossessed in favour of Canadian establishments, say on the Bench, that a common notary in Canada, after a couple of years practice, understood conveyancing better than the most able conveyancer in England. I could add many other reasons, but these are sufficient to give an idea of the sources of discontent with regard to this Act, and the more so, because by the Act of the 31st of George the 3d, our Constitutional Act, it was particularly enacted in the 43d section, that "Lands in Upper Canada were to be granted in free and common soccage (in like manner as in that part of Great Britain called England,) and when lands shall be hereafter granted within the said province of Lower Canada, and when the grantor thereof shall desire the same to be granted in free and common soccage, the same shall be so granted, but subject nevertheless to such alteration with respect to the nature and consequence of such tenure in free and common soccage as may be established by any law or laws which may be made by his Majesty, his heirs or successors, by and with the advice and consent of the Legislative Council and Assembly of the Province." Now from this we understood, of course, that if there was any alteration to be made it should be made by the Legislature of Lower Canada, who would work upon the system according to the interest of the country, and who would of course know the circumstances of the country better than those who are at a distance of 3,000 miles. I will show, in point of fact, how the thing has operated in Canada. After this Act had been passed in England, the very Legislative Council, which is composed of executive counsellors who have the greatest influence there, and placemen who were supposed to have desired that the laws of England should be introduced, were the first to send to the Lower House a bill to introduce again our forms with regard to the transfer of property in the townships, the law of *hypothèques*, and some other rules taken from our own civil law.

Do you hold that the law by which property held in free and common soccage should descend, supposing that the owner dies without a will, should be the law which prevails in the seigneuries, or the English law?—I am apt to think that it would be desirable that it should remain as it was before the declaratory Act passed, that is, that it should be divided equally, according to the laws of Canada.

When you say that discontent has arisen amongst the Canadians with respect to the provisions of the Canada Tenures Act, are the Committee to understand that you mean that

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the persons holding lands in the townships are discontented with those provisions, and that they wish the Canadian laws with respect to the descent of property to apply to them as they do in the seigneuries?—I am not acquainted with the sentiments of the majority of the inhabitants of the townships; I can say that with regard to the Canadians they would wish, of course, to preserve their laws of descent.

Is there any thing in the Canada Tenures Act which has a tendency in any way to interfere with the laws of descent with respect to the land which is held by the Canadians in the seigneuries?—It is very much the case indeed; because by this very Act, if the tenure of any land in the seigneuries is changed by arrangement with the Government, that land would be regulated by the laws of England, so that one farm would be regulated by the laws of England and the next farm would be regulated by the laws of Canada; and the Committee can judge what would be the consequence.

As no change of tenure under that Act can be made excepting at the desire of the proprietor, have you any reason to imagine that any individual wishing that change to take place with regard to his own lands would be likely to complain of the alteration that would take place in consequence of it?—Yes; a man that might wish to make a change in his tenure would not like that his land should be placed under a new system of law; it would operate as an obstacle to making a change in the tenure.

Supposing that no individual seeks to change the tenure of his land under that Act, in what way does that Act affect the seigneuries, so as to deprive them of that which they consider an advantage, namely, the French law?—Of course if there is no change there can result no inconvenience, except so far as there would be a different system in the courts of justice, which would create a great confusion in the ideas of the lawyers and judges.

Is not the law of the 6th of George 4, of this nature, that provided the Government, and the seigneur holding under the Government, change the system of holding into free and common soccage, the seigneur can force his vassal to change his tenure?—No; it is not a compulsory power, but there is something which is a great obstacle in that very Act, but if the seigneur were to change his title the cultivators of the soil would have a right to ask from the seigneur to change their tenures too, and upon his refusal, to force him to submit to arbitration; and this is an obstacle to the land being put in free and common soccage, because there is no seigneur that would be disposed to accept a price for his dues, to be paid in money, that was not fixed by himself.

Has the law been acted upon at all in the seigneuries?—I only know of two cases where application has been made to Government for a change, and I think that the arrangement has not been concluded.

Are there a great number of Canadians who reside in the townships?—A great number in some townships, and there would be a much greater number if facility had been given for their settlement.

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Denis Benjamin Viger, again called in ; and Examined.

SUPPOSING a person possessed of a fee simple estate of real property in Lower Canada, to die intestate, leaving a family, what would be the course of descent?—We have, generally speaking, only two species of property in Canada, that is *fief* or *seigneuries*, and *rotures*, besides *franc alleu*, free and common soccage. With regard to the first, the *seigneuries*, the eldest son has a greater proportion than the other children in the case of real property ; in the successions to *rotures*, every species of property is equally divided between the children.

Supposing he leaves a widow, has she any interest either in the one or the other?—By the laws of our country husbands and wives are partners and joint proprietors of every species of personal property whereof they are respectively possessed at the time of the marriage, or which may thereafter be acquired either by inheritance or otherwise ; but real property, which comes to them by descent, or which is acquired before marriage, does not fall into that species of partnership, which is termed in our law *communauté*. It is to be observed that the law is not imperative. A man who marries may by his contract of marriage renounce every such right, and then the wife has only what is stipulated in the contract of marriage.

In the event of his dying intestate, and the wife taking that half, upon her death what becomes of that half?—That part of what we call the *communauté*, which has once accrued to the wife by the death of the husband, goes in the first place to her children, and in the second place, if there are no children, it goes to her own relations, not to the relations of the husband.

Is there any distinction in your laws between dower and *communauté*?—Yes, a great deal.

Does the dower apply to the real property, and the *communauté* to the personal estate?—Dower applies sometimes to real property, as well as to goods and chattels, but it depends upon particular circumstances ; the dower established by law is the right to the enjoyment on the part of the wife of one half of the real property of which the husband is possessed at the time of the marriage, and of such property as devolves to him by descent in the *direct line* from ancestors ; the property, or the right in the thing itself, belongs to the children ; she has only the enjoyment of the property for her life, that is the dower which is granted by the *coutume* ; but very often a dower is stipulated in the contract of marriage ; generally speaking ; it is a sum of money, which is secured by *hypothèque*.

Then, in point of fact, if a person dies intestate, leaving a property which has come to him, partly by descent and partly a property acquired during marriage, the wife would be entitled to her dower out of the one, and to her share in the *communauté* in the other?—Exactly.

Suppose he makes a will, what power has he over, first of all, the land which comes to him by descent, and secondly, that which is acquired during marriage?—He has the right to dispose of all the property which belongs to him, whether by descent, or whether it is his part of the *communauté*, and to bequeath it in any manner he pleases, subject nevertheless to the stipulation of the marriage contract.

That is to say, if he has property which belonged to him previous to the marriage, he can bequeath the whole of it as he pleases?—Yes.

With respect to that which he acquired subsequently to the marriage, he can only dispose of one half of it?—Yes, as well as of that acquired to him by succession. Any real property which comes to either man or wife by succession they have respectively a right to dispose of ; any such real property which comes by inheritance to the wife, or to the husband during the marriage, never enters into the *communauté*, unless there is a particular stipulation

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stipulation to that effect in the contract of marriage; of course either the man or the wife has a right to dispose of that by their will as they please.

Supposing a person marries, and that during the existence of the marriage he makes a considerable fortune; supposing further, that he has a child by the marriage, who dies in the lifetime of the father and mother; then suppose the mother dies during the lifetime of the husband, what becomes of her share in the *communauté*?—Her share goes to her own relations, except that there is hardly a contract of marriage in which there is not a stipulation that they shall, if there are no children of the marriage, enjoy the property during their life, to the exclusion of the relations of either party.

But if no such contract exists, the law is as you state?—The *communauté* is divided, and the half of it goes to the relations of either husband or wife.

Supposing a person in possession of an estate is anxious to sell it, what is the mode of his conveying it to the person who is to purchase it?—The contract is always passed according to the laws of our country, before two notaries, or one notary, and two witnesses; for the form of these contracts are known to every notary in Canada. If there are no particular circumstances which may require special stipulations it is not necessary to travel out of those forms.

Is it a very short deed?—Pretty short, it generally contains about three pages of common folio paper.

Does it contain any recital of the former title, how it came to the person that sells?—It does generally; though it is not essential to the form of the deed or its validity that it should be so; there are people that will sell a farm as belonging to them, without mentioning any thing else; but, generally speaking, it is entered, not as matter of necessity, but as matter of convenience, and in order that the person may know the parties from whom the estate came.

How does the purchaser satisfy himself that the person who sells has a good title to sell, and also that the estate is unencumbered?—That depends upon his prudence, and particularly upon the good advice that he receives either from the notary himself or from a lawyer; for example, if you were to consult a gentleman in Canada about a purchase which you wanted to make, the lawyer would of course, before allowing the deed to be passed, require communication of the title of that property, would also require to know whether the vendor was married or not, whether there existed a dower upon that estate or not; of course this is very easy. I must besides observe, the laws of our country with regard to prescription are generally pretty simple; ten years possession, with a good title, where the parties are legally present in the province, are sufficient to operate prescription in favour of the buyer. Twenty years are necessary to prescribe against absentees; I must add, that a person must be of age, and capable of exercising his rights, for prescription to operate against him. Generally speaking, thirty years prescription is sufficient to cover some difficulties in a title in due form, which has no radical defect. A man could not acquire by prescription a farm, or any other real property, if his title was not a real *bonâ fide* sale; if, for example, he had been a tenant with a lease, he could not prescribe against his own title; but if the title is good, generally speaking, a prescription will operate in his favour after thirty years. Now the lawyer considering these circumstances, and perhaps some others, would easily find whether the man who sells can give a good title.

Then how are you satisfied that a good title is produced, either for ten years or for twenty years, or for thirty years, as the case may be?—It would depend upon particular circumstances; you must examine whether there are absentees, and there are minors, or other persons incapable of exercising their rights; all this is very easy for a man of experience, but it would be difficult to explain it to persons not exactly acquainted with the principals of our law; all that I can state upon that subject is, that I have been a little more than thirty years in practice, and have given a good deal of advice upon questions of this sort. I do not think I ever had any complaint by any persons of the insufficiency of their titles. It would be necessary to say, that if there is any fear of *hypothèques*, the only means we have at present, and the only possible means, I think, in any good system, is to have recourse to a *decret* (sheriff's sale), that would, to use a technical phrase, be sufficient to purge all charges except dower; but with regard to dower, it is always easy to know whether there is a charge of dower, because you can know the person from whom the property has come to the actual seller, or the person from whom his title is derived; if

is very easy to know whether they have been married or not, and to get the contract of marriage, to be satisfied as to the nature of the dower. All these things must be done of course by people who understand the laws of the land, they are very simple things ; but I must confess that a stranger coming to Canada may be subjected to some little difficulties, as is the case in any other country. I have a particular knowledge that two or three years ago an accident happened to a stranger ; he bought a farm, and was told by some persons that there was a dower upon it, or some such encumbrance, though the person who spoke to him was not conversant in the law ; I think he was a common farmer ; he informed him of the risk he incurred in buying that property ; the buyer would not listen to him, he bought the farm, and he experienced what every imprudent man would in that case, he lost his property.

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Is not real property in Canada subject to all, what are in this country called, simple contract debts, of a person borrowing money?—Every species of property, real or personal, may be seized and sold for the satisfaction of a judgment, whatever may be the nature of the debt.

What is the form in which a person in Canada in possession of real property borrows money?—In order to secure to the creditor the right of *hypothèque*, he generally constitutes that *hypothèque* before notaries, by an act in which the amount of the money is specified, and that is sufficient to give him the right to be paid out of the proceeds of the real estate, before any other who is not anterior to him in *hypothèque* ; according to our maxim of law in this case, *potior tempore potior jure*, the person that has the first *hypothèque* has the preference to the money which is raised by the (*decrêt*) sheriff's sale, and then in succession every hypothecary creditor.

Supposing a person borrows a sum of money upon his bond, does that carry *hypothèque*?—It does not, unless executed before a notary.

Must it have reference to the estate?—That is not necessary, provided it is passed before a notary, that carries by itself the right of *hypothèque*.

Then a person who sells an estate, wishing to deceive the purchaser, might keep back those *hypothèques*?—Yes ; and that is the very reason why we have recourse to a sheriff's sale.

Must not a great deal of inconvenience arise out of that system ; that till there is a sheriff's sale a person might go on borrowing money without its being known to the parties from whom he borrows money whether his estate is subject to a prior encumbrance or not ; would not a registration put an end to a man borrowing money upon his estate more than his estate was worth ; could you say to the Committee why some regulations to that effect has not been adopted in Lower Canada?—This question embraces a great variety of subjects. I must say that I labour under great disadvantage in giving my evidence in English, a language which is not familiar to me ; it will be a matter of great difficulty to speak with that exactitude and technicality of expression which would be desirable. I will endeavour to sketch the situation and some of the circumstances of Lower Canada as may be connected with this subject. I remember, that some years ago there was a great deal said in Lower Canada about this matter ; after examination it was found that the country in its actual situation did not admit of establishing a registration ; that was out of the question ; but what I should call a *bureau de conservation d'hypothèques*. After discussion with some gentlemen who were desirous of having these *bureaux* established, and after explanation with them upon that subject, and the nature of a *decrêt volontaire*, and its effects, they agreed that that was all that was wanted, and that if it was possible to have a sheriff's sale with a little more facility they would be perfectly satisfied. A law was passed for that purpose, but I understand that the expense was very great, and that people have not been quite satisfied. The fact is, the regulating of the cost belongs to the courts of justice, and I do not know whether the complaints were well founded, or not. I stated that a man may have granted *hypothèques* which he may conceal, but I must observe, that by the laws of the country a man who conceals *hypothèques* when he sells, or declares when he borrows money that the land which he hypothecates is perfectly free, is liable to go to gaol after it is discovered that he has committed that species of fraud, till he has paid the damage suffered. I do not know upon what ground it has been supposed in Canada that this law was no more in force. Every day in the courts of justice we take execution against the body for the satisfaction of penal damages under the old laws. I do not see that there could

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be any difference between the two ; however, it seems to be the opinion of the judges, as I have understood, that they could not grant an execution against the body in the case of the species of fraud which I have just mentioned, which we call *stellionat*. By the laws of the country for every species of debt, when you have obtained a judgment in a court of justice, you have a right to seize the property of your debtor, both real and personal, to seize every thing which belongs to him in the hands of third persons, and indeed you have every possible means of obtaining his property, whatever the nature of it may be. Besides, by a law which has been passed in 1785, the Legislature of the country for the time being has established in favour of merchants and traders the right of taking the body of their debtor, though he be not a merchant, after seizing and selling every species of property which belongs to him, and to keep him there as long as he does not pay the debt. Before that time this right of taking the body was not allowed, except between merchants and merchants, and in some other cases. By an interpretation which has been given to that ordinance, which I do not pretend to justify, it has been understood that the *cessio bonorum*, which is a part of the law of Lower Canada, had been abolished by that ordinance of 1785. I would say, that before adopting any such law for the establishment of *bureaux de conservation d'hypothèques*, it would be first necessary to re-establish the *cessio bonorum* ; because I look upon our code at present to be really barbarous ; and this was attempted in the House of Assembly of Lower Canada repeatedly by bills sent to the Legislative Council, which were not passed. It would be besides necessary to establish sub-divisions of the districts to place these *bureaux de conservation d'hypothèques* in such places that it would be of easy access, and not too expensive for the people of those different sub-divisions to register the deeds which would carry *hypothèque*. One of the objects of passing a bill for ameliorating the system of the administration of justice, and creating sub-divisions of the districts for that purpose, was at the same time to pave the way for future ameliorations of this description, and others. It would then be possible, if the Legislature thought that it was necessary to establish those *bureaux de conservation d'hypothèques*, to fix them in the very offices of the courts which would be established in the circuits. There would be besides a great facility of establishing those *bureaux de conservation d'hypothèques* by enforcing the execution of the law of the land, which is absolutely neglected, and obliging besides, notaries to keep double registers of the acts they pass every year, and to deposit one of the duplicates of the register in those offices. This would cost hardly any thing to the province ; it would add but very little to the expense of passing notarial acts, and would serve all the purposes of the *bureaux de conservation d'hypothèques*, as it would be necessary to establish them in our province if they were supposed to be desirable ; but before doing that, it would be necessary to re-establish the *cessio bonorum*, and in that case it would be necessary to abolish the right of taking the body in execution in many cases. I must observe here the very great difference between the laws of England and the laws of Canada upon a particular point. The great necessity of these registry bills in provinces where the laws of England are in force, is, that there is no record of sales as with us. Notaries are, by the laws of the land, obliged to keep the original act of the sale, and they only deliver copies ; every body has a right to get a copy of the Act, provided that he has an interest in it. In provinces, where the laws of England prevail, on the contrary, the original remains with the buyer, that makes it necessary, in order to know the proprietor, that there should be a public office where such sales should be recorded.

You probably are aware that in Scotland, where the law is a mixture of the feudal law and the Roman laws in Canada, they have a perfect system of registration ?—Yes ; I do not exactly know the principles upon which they are established, but they have the *cessio bonorum*. In our country, before we adopt this system we should take means of ameliorating our laws, re-establish the *cessio bonorum*, and subdivide the country. I ought to observe besides, that for one deed which there is to register in a country like England, we have a thousand that would require to be registered. Now, if a man was to come from a distance of 90 miles to register a deed for a lot of land which is worth 20*l.*, or an *hypothèque* for 12*l.*, it would be the most cruel thing imaginable. Therefore, if we were to establish register offices, or rather *bureaux de conservation d'hypothèques*, we should at least establish them in such a manner that they would not be a burden to the people, and that

the law might protect all persons equally. In case this establishment was to take place, it would be necessary, as I said, to subdivide the districts into smaller circles, that we might finally establish those *bureaux de conservation d'hypothèques* in the places where the courts would be held.

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Has there been any difficulty attending the registration of real property in the United States?—I cannot answer with regard to the United States.

Does the law you have stated to apply to the *communauté* apply equally to persons who have been married in England and who have settled in Canada, and who had after they got to Canada realized property in Canada; is it a case that often happens?—That is a question of great difficulty, embracing a vast number of considerations even of public law. It has not, to my knowledge, been the subject of direct discussion; yet in Canada, I know that some questions of this description were agitated with regard to persons who had married in the United States. I see very little difficulty with regard to a man who marries in the States, because, if I understand public law well, and it seems to me to be consistent with the principles of sound policy, no foreigner has a right to avail himself of the laws of his own country with regard to matters of real property. The real property must be subject to the laws of the land. It would be very different with regard to an Englishman, because being subject to the same empire, we would be inclined to suppose that he must have reciprocal rights. My reason for saying so is, that it was admitted as a principle of general equity and public law in France, that when a man living under a particular *coutume* married, that *coutume* was the law which was to regulate his property; he was supposed to contract his marriage with the intention that the effect of his marriage would apply to his property according to the law of the land where he had made the contract. Now if this principle was adopted in Canada, we might suppose that an Englishman who married with the intention that all the property which he acquired in our part of the empire would be regulated according to the laws of the country in which he contracted the marriage, and we might further suppose, that this privilege might be claimed reciprocally in different parts of the empire.

Do your observations apply equally to the two sorts of real property you have described to exist in Canada, except so far as you said they differed?—Yes.

Has the effect of the law of descent been to divide the property into a great number of small divisions?—It has in some cases; but I am just going to make here an observation which has been made by Baron de Stael in his late Letters in England upon this very subject. If I remember well, he says, that in France, in spite of the law as it is, by which an equal division takes place among the children, it seems that property has a tendency rather to accumulate. Since some years in Canada, I have noticed that the same subdivisions of real property have not taken place that did formerly. First, people make wills, and very often prevent divisions taking place. Farmers, particularly, generally divide their real property during their lifetime; if they have many farms they give a farm to each of their children; if only one, they generally choose one of the children to whom this property is given; that seems to be about the general practice at present in Canada.

Where a seignery descends according to your law, does it not multiply superiors to the vassal?—It has, in some cases; but of late years the divisions of seigneuries estates has decreased almost in the same proportion as the divisions of other estates, as mentioned in my last answer.

Then, in point of fact, the vassal may, under your law, be obliged to hold under many superiors?—The Committee are perhaps not aware that what is called feudal law in Canada has no precise analogy with what is called feudal law on this side of the Atlantic. In Canada the land is conceded to the farmer generally for a very small annual rent, the farmer pays this annual rent, and there is an end of all duties to his seigneur, this is in the nature of a quit-rent. Generally speaking, the only obligation which is imposed upon him, besides his going to the mill of his seigneur to have his wheat ground there, and when he sells his property the buyer is obliged to pay *lods et ventes*, a mutation fine equal to one-twelfth part of the value of it; these are about all the feudal duties to which our cultivators are generally liable.

So that a vassal is not subject to vexation by having a variety of superiors?—Not the least; it has little or no effect upon the vassal.

With regard to the law within the townships; you stated that in your opinion the Act of 1774

*D. B. Viger, Esquire.* 1774 had no effect within the townships until the Declaratory Act of 6 Geo. 4. stated that that was the case, and that much inconvenience had arisen in consequence of that Act of Geo. 4. ?—It is so.

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What was the mode of conveyance, and what was the law which existed within the townships up to the Act of Geo. 4. ?—I have seen many deeds passed according to the form prescribed by the laws of our country; they were generally made in that way, as I understood.

Were they made also according to the English form of conveyance ?—Since a number of years some persons in Canada have raised their voice against our forms, whether right or wrong. Some gentlemen conceived there might be a little doubt some day or other, in spite of the practice and of the opinions which were entertained by the judges, and the practice of the court with regard to sheriff's sales, and real and mixed actions relative to real property, and many other acts which affected, directly or indirectly, property in the townships; and I understand that some people had sales made, both according to the English forms and according to the forms prescribed by our laws, for the same estates. I have been told that that is the case, though I have not seen the deeds.

Have the courts of justice given any opinion as to the law that exists within the townships, whether in case of a person dying intestate his property is to be divided according to one law or the other ?—I do not know any direct decision having been given upon that point in our courts of justice. There is one fact that strikes as proving their opinion, and it is the sheriff's sales and actions respecting real property during more than 40 years in the townships; if the laws of England are really the laws of the townships, all those sales of course would be null and void; because, if I understand the laws of England upon this subject, real property cannot be sold; that you can seize the revenue, but not sell the land itself by execution; and with regard to actions, our actions *pétitoire, possessoire*, or others relative to real property, could not apply to estates governed by the laws of England.

Have those sales continued since the Declaratory Act of Geo. 4. ?—Yes.

You stated that the mode of conveyance, according to the English forms, was much more expensive than that which prevails according to the French forms ?—So I understand from all quarters; and I recollect that it was a subject of particular attention when the Legislative Council sent to us bills to change the late law, 6 Geo. 4, which the Imperial Parliament had passed upon that subject; of course we made some inquiry about it, and it was found, from all information, that it was more expensive; indeed the double deed, which is to be made according to English forms, and double actions, create expenses, whereas by the laws of Canada one deed and one action are sufficient.

Do you happen to know why they preferred that mode of conveyance by lease and release ?—It would be very difficult for me to explain.

Supposing you had an English deed of one page, should you complain of that, (*a form of deed being shown to the Witness*) ?—By no means; I have been informed that they have admitted such form in Upper Canada, and in some of the United States; but it was by changing the forms of conveyance; that is very simple I must confess, but it does not seem to me that this would be sufficient in Canada; I would not like quite so simple a form, because, though our forms are very simple, by the laws of Canada we are obliged to describe the property, and be more accurate in many other respects; even in our forms, simple as they are, there are a great many things which are entered which are not perfectly necessary. I will state some words which are to be found in all our contracts, we generally make use of this word on the part of the seller, that he obliges himself to guarantee; by the laws of the country that is not necessary, every man that sells is supposed to be obliged to guarantee, and yet by mere habit this stipulation is entered in all the deeds; I could cite a number of words of that kind which are quite useless, and which might be dispensed with; but the forms are generally printed beforehand, and of course the notaries will stick to them as a mere matter of habit.

Do you happen to know whether of late the land has descended according to free and common socage within the townships, or according to the Canadian law ?—I do not know what has passed upon this subject lately in the townships, since the passing of the Declaratory Act, which I have mentioned. I should have added in my preceding answer, we have all the advantages of the modifying system, as they have adopted it in Upper Canada and in the United States, with regard to the transfer of real property, only it is perhaps regulated



lated more precisely in our system of civil jurisprudence in Canada; we have all the advantages which they have endeavoured to get by adopting new forms different from those which are used in England.

As the law now stands, are you of opinion that if an individual died holding lands in free and common socage within the townships, they would go to his eldest son?—If the Act of Parliament is to be executed I should suppose it would be so. The only difficulty which there is in this matter is, that you have many different species of successions in England. I understand that in England there are some counties in which an equal division of property takes place among children. However, it is, I should suppose, more common to see the whole of the real estate go to the eldest son; and suppose that the Declaratory Act would be understood in this way, that the landed property would go to the eldest son.

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Hitherto that has not been understood?—It was understood that a division took place according to the laws of Canada; and it is generally the manner in which the laws of descent have been made, even in the United States, by changing their former system. The prejudice is so much in favour of this species of descent, that in Upper Canada the House of Assembly has passed, within a few years past, two or three bills successively to establish that law of equal division between the children; but the Legislative Council rejected those bills.

If heretofore lands in the townships, although held in free and common socage, have passed from the father to the children under the laws prevailing in Lower Canada, and supposing that, according to the statute which has lately passed, the English law is now to apply them, would it not be necessary to pass an Act in order to quiet existing titles; that is to say, in order to give them some assurance with respect to titles that have been derived from generation to generation under the French law?—Of course it would be necessary; it is an Act that might be easily passed in Lower Canada; and in the very Act of the Imperial Parliament, which is declaratory, it is particularly enacted, that the Provincial Legislature may change and alter the law, and indeed it was respecting that very clause which I cited from the Act of 1791. It was supposed that those who solicited the passing of that law by the British Parliament, saw probably that there would be some difficulty in its execution; and it is perhaps for that reason that they have added a provision, that the Parliament of Lower Canada may change, alter, and modify it, so as to make it convenient for Lower Canada.

Will you be good enough to point out to the Committee that clause in the Act of 1791 which induced the Canadians to believe that the English law was not the law of the townships?—It is not in consequence of the express enactment which is to be found in the 43d clause of that Act, that the Canadians were induced to believe that the laws of England were not the laws of the townships, but we considered that what is to be found in that clause afforded an additional reason to interpret the Act of 1774 as we did. We thought that from the general rules of interpretation of laws of a public nature, although the words might imply something in contradiction to the principles which the law seems to intend to lay down, as all public laws should be interpreted rather according to the intention of the Legislature than the ordinary grammatical meaning of words, it was thought that the Government of England did not intend to establish two different systems of law in the same country, and particularly one for persons in the townships and another for real property; because if the French laws were generally introduced in the country, that exception with regard to the townships would apply only to real property, not to persons, so that there would be one system of law for persons, and another system of law for real property; but supposing even that this was not the intention of the Legislature at the time, an error which has been fallen into by every body in Canada should certainly be looked upon at least as respectable. This would be a case for saying *error communis facit jus*, no inconvenience could arise with regard to real property in Canada from that interpretation; our law is simple and well defined, and such as every body would prefer to the system of real property, and transfer, as it exists in England. I do not pretend to be a judge of the laws of England, but I will take the opinion of every English writer upon the subject. I am sure that any body who will take the trouble of examining with attention the principles of our law with regard to real property, will see that there can be very little inconvenience arising out of this system. Is it right then, when that interpretation has been given to it for 40 years, when the whole system of the country is established upon it, that we should

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learn from the other side of the Atlantic that the law has been changed? Another reason for which the Lower Canadians must be supposed to think that they have a right to their own laws in those lands which were open to their own industry, was, that the greatest number of the people who have come to settle in those lands were foreigners; and it does not appear right that those Canadians who have before and since been called to defend their country in war, and to defend those institutions which are dear to them, should be deprived of the advantages which they can derive from the knowledge of their own institutions in their own country. The Committee will observe besides, that after the conquest a proclamation was issued by the King, which went upon the supposition that the conquest had the effect of destroying the laws of Canada. After an examination, it was found that this was not consonant with the principles of public law between civilized nations; that a conquest could have no such effect; that by the conquest allegiance only changed; but that property remained, and of course the laws, which are the safeguard to that property, and without which it could never be kept; and finally, this proclamation was looked upon as a nullity. It is to be remarked further, that even in the Act of 1774 there is a particular stipulation with regard to this subject. In the Act of 1774, c. 83, it is declared, in the 4th section, "And whereas the provisions made by the said proclamation have been found inapplicable to the state and circumstances of the said province, the inhabitants whereof amounted, at the conquest, to above 65,000 persons, professing the religion of the Church of Rome, and enjoying an established form of constitution and system of laws, by which their persons and property had been protected, governed and ordered, for a long series of years from the first establishment of the said province of Canada." In the fifth section it is enacted, "that the inhabitants may profess the Romish religion;" and in the 8th section it is enacted, "that in matters of controversy relative to property and civil rights, resort shall be had to the laws of Canada as the rule for decision of the same; and all causes shall, with respect to such property and rights, be determined agreeably to the said laws and customs of Canada, until they shall be varied or altered by any ordinances passed in the said province." Now the 10th clause goes to say that this shall not extend to lands conceded by His Majesty in free and common socage; but previous to that the seigneurial rights are of course kept up upon property. Now it was understood at that time that this exception could relate only to the encumbrances with which, by the feudal laws, those lands might be charged, but that it did not apply to the ordinary laws which affect every citizen; it was not understood that the property in the townships should be governed by another system in that respect; we could never imagine that we were to be shut out from the townships by the want of knowledge of the system of laws with which we were about to be affected in entering those townships; that the Government meant to establish two systems of law in the same country, and to establish the confusion that would result from such a division in the province; and I understand that it was the opinion of some of the best lawyers in England, who have been consulted on the subject, that this exception could not be understood in a different way from what I have stated; but even supposing it had been an error, when an error of that kind has been so long in existence in a country, would I not have reason to say, as I have already observed, that *error communitis facit jus*. If the conduct of every body was founded upon this kind of error, we might say, in a case of this kind, *optima interpret legum usus et consuetudo*.

Will you read the 43d clause of the 31st of Geo. the 3d, and state whether it is not evident by that clause of the 31st of George the 3d, that it was the deliberate intention of Parliament to establish two systems of tenure of property in Canada, namely, that they did not intend to abolish the seigneuries, and that they did intend to establish the system of free and common socage?—From this very Act I would probably come to a very different conclusion, because the free and common socage is no more nor less than a tenure known in our laws; what is the free and common socage tenure but the *franc aleu*?

Will you explain what the *franc aleu* is?—The *franc aleu* is the land which is subject to no kind of dues; there are two sorts of *franc aleu*, the *franc aleu noble* and the *franc aleu roturier*; the *franc aleu noble* is divided as fiefs, and the *franc aleu roturier* is divided as rotures. All the advantages and privileges which attend the free and common socage we attain by the *franc aleu*, and that is what we understood to be the species of tenure which the Parliament of England wanted to introduce. Moreover if there was any change to take place in the opinions of the public, or of the judges, or in the practice of the courts upon this subject, I would ask, who ought to have had the power of making such an alteration;

teration ; when besides the general power of making laws vested in the Legislature of Lower Canada, there is this particular provision in the 43d section of the Act, which gives the free and common soccage tenure, "subject nevertheless to such alterations, with respect to the nature and consequences of such tenure of free and common soccage, as may be established by any law or laws which may be made by His Majesty, his heirs or successors, by and with the advice and consent of the Legislative Council and Assembly of the Province." If we are to take the very words of this law, we must infer that it was the Parliament of Lower Canada who were to examine and to decide whether the judges had misconstrued the law, and to establish rules according to the power which had been given to them.

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Has any Act, originating in the Assembly of Canada, received the Royal Assent, which regulates or interferes in any way with the English law of property as applicable to land held in free and common soccage ?—As there was no doubt about this question, there was never any mention in our Legislature about it, that I know.

When was the first doubt raised upon this question, whether the English Law was to prevail in the townships or not?—It is not possible for me to say.

Is it long ago that the question was raised?—Yes ; I have heard many things said long ago, but the proceedings in the courts of justice and the general practice continued in the same way.

Did the courts of justice ever come to a decision that the English law did not prevail in the townships ?—I am not aware of any direct decision upon the subject ; but the practice of the courts was such, that it was impossible they could have acted in the manner in which they have if they had supposed that the laws of England were the laws in force in the townships.

What has been practically the course of inheritance in the townships for the last forty years?—If I were to speak from my personal knowledge of one particular case, I would say that an immense property, which is in the township of Hull, has been divided after the death of a woman according to the laws of Canada, and all the Acts have been passed according to the laws of Canada, the rights of *communauté* acknowledged, and the division made between the father and the children, and I know the notary who has done the whole ; but as I have very little practice in the townships for many years, I have not been very attentive to that subject.

Do you conceive that the rights of primogeniture have never been acted upon uniformly in the townships since the conquest ?—As far as my knowledge goes I know it was not considered to apply to the townships.

Your attention has been called to the 43d clause of the Act of 1791, in which it is provided, that in all cases for the future, within the province of Lower Canada, whenever grants are made it shall be at the option of the grantee whether they are made according to the French law or to the English law of free and common soccage ; are you or not aware that every grant that has since been made has, in point of fact, been made according to the English law of free and common soccage ?—I understand that they were made in free and common soccage ; and I have already said that we understood this free and common soccage to be like the *franc alev*, that it freed the land from feudal incumbrances, but that they were to be governed by the other laws of the country, that it exonerated those lands from the feudal incumbrances, and went no further.

Are the Committee then to understand that the interpretation which has been put in Lower Canada upon the 43d clause of the Act of 1791, is not that the free and common soccage there alluded to was the free and common soccage in use in England, but the *franc alev* system of the French law ?—It was understood that it was a free tenure, which was not liable to any of the feudal burthens imposed by our own laws either *en fief* or *roture*, and of course we considered it a *franc alev*, so far that it paid no rents or dues, but with regard to succession, sale and other laws which relate to property, we considered that those lands were liable to the civil laws of the country as they are received and acknowledged in Lower Canada. That was the common opinion, and as I have said already, this opinion seems to me as even confirmed by the very Act itself of 1791 ; because the Legislature of Lower Canada is specifically empowered to make regulations with regard to that tenure, and it was therefore for them to see whether the judges gave a right and faithful interpretation of the Act of 1791.

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You were understood to state that it was the duty of the Legislature of Lower Canada to watch the judgments of the courts, and that if those courts misconstrued the law of 1791 it would be their duty to check that misconception. You have also stated, that you are not aware of there being any record of any judgment of the courts in Lower Canada, deciding one way or another as to the law that prevailed in the townships; how then, under these circumstances, could the Legislative Assembly have any opportunity of considering that point?—I have stated, that I was not aware that any judgment directly pronouncing upon this question had been given in Canada, although there might have been a decision; but I must add, that the practice has been such, that it was impossible that the judges should entertain a different opinion; for example, with regard to the seizure of property by the sheriff for 40 years; we have been seizing property, and an immense quantity of these lands have been sold by the Sheriff, and have become the property of the gentlemen that bought at those sales. With regard to successions I have a knowledge that *tutelles* have been made according to the laws of Canada, and that a division of property had been made between man and wife in the townships. I know that divisions of property have taken place according to the laws of Canada, after being sanctioned in some measure by the judges, before whom all elections of *tutelles* are made, with the advice of parents, according to the formalities prescribed by writers of our country. Sales have not only been made, as I have stated, according to our forms, but actions instituted and determined on those sales and prosecuted invariably according to the forms prescribed by our laws. I could state a great many other subjects of daily practice, by which it would be evident that the general opinion in Canada was, in fact, that real property in those townships was to be regulated by the laws of Canada, except with regard to the burthens which are imposed upon the tenures according to the old law of the country, from which they were exempted by the clauses of the Acts of 1774 and 1791.

You have referred to a clause in the Act of the 31 Geo. 3, which, after empowering lands to be granted in free and common soccage, contains the following words: "Subject nevertheless to such alterations with respect to the nature and consequences of such tenure of free and common soccage as may be established by any law or laws which may be made by His Majesty, his heirs or successors, by and with the advice and consent of the Legislative Council and Assembly of the Province." Do you understand any thing more by that clause, than that it is open to the Legislature of Lower Canada, with the consent of the Crown, to make any alteration in the laws of property?—The manner in which this is inserted there shows that probable the Parliament must have meant a little more than an ordinary intention of conferring upon the Parliament of Lower Canada the power of making laws; and my reason for saying so is this, it was not necessary to repeat that in this particular article the general enactment of the law was, that the Parliament established in Lower Canada at that time was vested with the power of making laws for the interior of that country upon every subject. Now it is certainly a presumption in favour of my interpretation, that the Parliament of England should have thought it necessary to insert this clause, after having given a general power of making laws, which certainly must have comprised the right of making laws for that part of the country which was to be in free and common soccage. The Act even goes further, and after saying that the government of His Majesty will have a right to concede lands in free and common soccage, they say, as it were, to the Legislature of Lower Canada, "we have already given you the general superintendance over all the country, but even where the lands are granted in free and common soccage you will be particularly the judges of the effect which this species of tenure will have;" and I am sure that any gentleman in Lower Canada must have thought that there was something in this expression which, when added to the common general expressions which were used, were intended to give to the Legislature of Lower Canada the power of legislation, in particular with respect to those lands. But even supposing that this power had not been given, would it not be right that the Legislature of Lower Canada should rather have this power than the Parliament of England? Were we to suppose, when this Act of 1791 was given to us, that the Legislature of England would make laws without giving any notification to the province of Lower Canada with regard to subjects of interior legislation? Now we know very well that the Parliament of England has the superintending power over all the colonies, and I might say to the Committee, that if they had been present at some of the discussions which have taken place in Lower Canada, they would

see how far we rely upon its power for protection, as well as we acknowledge it with submission; but it is well understood, I think, since the colonies have become more advanced, that they are not to be treated as they were sometimes of necessity when in their infancy. How could we suppose then that a law of this kind would be passed in this Parliament without the province being aware of what was to be the result of that law? Supposing we had interpreted the law in a manner different from what the Parliament had interpreted, have not we the right even of repealing Acts of Parliament? Do not we change every day the laws of England in Canada? Is not the criminal law, as it stood in 1774, altered every day in our provincial Parliament? Nobody could deny that the Parliament of Lower Canada had a right to legislate upon these subjects; and as we had even a special right of making alterations with regard to that particular subject, we might have made any change supposed to be advantageous to the country without referring to the Parliament of England.

Are you aware that by the constitutional law of England no Colonial Act can repeal the enactment of a British Act?—I am not exactly aware of that, since it seems to me to be the daily practice in all the British colonies to alter and modify the laws of England, such as they are established by statutes, or by common law in England; and there is a particular enactment in our own constitutional act, which I suppose must have had in view to correct the abuses which might follow the too great extension of this power, which might be exercised by the Legislature of Upper or Lower Canada, because in the very Constitutional Act there is a particular power reserved to His Majesty to disallow such acts as are passed by the Parliaments of Upper or Lower Canada during two years after they had been enacted; I know that we have altered many statutes of England in criminal matters, and I think it would be very desirable that we should imitate even what is done in England at present with regard to the amelioration of criminal justice.

Are you aware that it is in the power of Great Britain to impose what laws it chooses upon a ceded colony, and that when the Act of 1791 gave Lower Canada an independent Legislature, as it provided that the law of free and common socage should be the law in future grants, if it had not given at the same time specifically a power to Lower Canada to alter that character of property, it would not have been within the power of the Assembly of Lower Canada to have made any alteration in it, and consequently, it became necessary at the same time that the law of Great Britain established the law of free and common socage, to give a power to the Assembly of Lower Canada to make such alterations in it as the King might choose to consent to; are you prepared to adopt this explanation?—I do not consider that the Parliament of England has more power with regard to a conquered country than is allowed by international laws, and public laws which I consider to be part of the laws of England; I speak of moral power, not of the power of force, which does not impose moral obligations, but which binds only as of necessity. Besides, the present natives of Canada are all natural born British subjects, and they conceive they have the common rights of British subjects. With respect to this particular subject of the tenures, supposing that the Parliament of England had an intention in 1791, that the effects of the concessions made in Canada of lands according to this tenure were to carry with them all the consequences which they might have in England, according to the laws of England, with regard to the laws of descent and transfer of property, I consider that even in virtue of the general power which was given by the Parliament of England to the Parliament of Lower Canada, to make laws for the interior of that province, the Parliament of Lower Canada would have a full and competent authority to make, with the consent of His Majesty, any alteration which might be necessary from the laws of England. The manner of changing the laws may vary, and even use and custom will establish laws, and will serve to interpret laws. This took place in Canada with regard to the tenures.

Can you inform the Committee what is the proportion of the area of Lower Canada in which the townships are included as compared with the area of the seigneuries?—No. About 30 or 40 townships have settlements in them. The extent of townships already granted in whole or in part, and the ungranted lands, form almost the whole superficies of the province, the seigneuries being chiefly combined to the shores of the St. Lawrence and the rivers falling into it. Lower Canada generally, however, contains relatively to its superficies but a small proportion of land fit for cultivation under that climate. It is in

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fact the lower part of the valley of a great river, and this valley towards the eastern extremity is reduced to a narrow limit by the meeting of the southern and northern chains of mountains, extending from the Alleghanies on the south, and Hudson's Bay on the north.

Do you think that the establishment of the English laws, which relate to property held in England on free and common soccage, and bringing them into operation in the townships in Lower Canada, and also applying them to all property wherever held in Lower Canada, which is held on the tenure of free and common soccage would be an infringement of the rights of the ancient Canadian inhabitants of the country?—The least that I could say of it is, that it would be unjust; I think it would be an infringement of the rights which belong to us if it was not done by the Legislature of Lower Canada.

Do you think that it would tend to retard the cultivation and civilization of the uninhabited and wild districts of Lower Canada?—If I were to enter into the details, I would demonstrate that it is that kind of fluctuation which has existed in Canada since the conquest, by which we have continually been threatened with seeing all our institutions which were dear to us destroyed, which has retarded the settlement of the country, and if you consider the immense progress which has been made by the Canadian population in spite of all the difficulties which they have experienced, it is easy to see what it would have been if a proper system of conduct had been followed with regard to the Canadians.

When you say a proper system, do you mean if the French system and the French law had not been obstructed in its operation?—So far as this, that they should have continued to let the French law prevail all over the country, and that they should have given facility to the people of the country to settle in those townships, that instead of putting obstruction, they should have given them the means to go there; that a system of education should have been followed in the country, according to the ideas and notions of the people, instead of raising obstacles in the way which I could detail to the Committee, and show them that every thing I am saying now I can support by facts, and facts of a most extraordinary nature; that particularly which has been a great obstacle to the development of the industry of the Canadians has been, that they have been too often looked upon as a species of enemies to the Government, and I beg the Committee to look at the distribution of places in Lower Canada, even of offices purely of honor, such as justices of the peace, &c.

Is not the real struggle which is now taking place in Canada a struggle between those who wish to promote French Canadian interests and to extend French law over the whole of Lower Canada, and those who wish to resist that operation, and to protect the English settlers in that country and place them under English law?—There is no such feeling; the desire of the Canadians must be necessarily to keep up their own institutions, and to preserve their laws in every part of the country. In that there is no kind of feeling against the English population; a prejudice of that kind does not exist in Canada. The best proof that there is no feeling against what are called the English is, that at least one half of the population sides with the Canadians in all the little difficulties we have had with our administration.

Is it not the wish of the Canadians to change the structure of the Legislative Council, and to take measures for ensuring its formation in such a way as to make it likely that it should agree with the Legislative Assembly?—I am sure we must wish that the Legislative Council should be composed of men who would side with the mass of the people.

Do you not believe that in effecting that arrangement you would secure the means of extending the French law and the French Canadian system over Lower Canada?—That might perhaps be the natural effect, but there is no particular system of this description; the whole mass of the people being attached to institutions which have been already in existence for two centuries, and which they were called upon the Government to defend at the breaking out of the last war with the United States. If the laws could be the expression of public opinion, it is very possible that what are called Canadian interests might in some measure prevail, and I think that the British interests would by the same consequence be prevailing; because I can say very boldly, that the Canadian interests and the British interests are the same.

In your individual opinion, do you think it desirable to adopt such measures as would secure

secure to the inhabitants of Lower Canada, of French extraction, a preference in settling the vacant lands in Lower Canada over emigrants from England, or the descendants of the inhabitants of the townships?—I would not wish a particular preference to be given to the Canadians, although they should be equally protected; but, in point of fact, it is evident that it would be well, even politically speaking, right as just, to protect equally the population, which must be naturally linked with the Government of Great Britain by its own interest, if it was not so even by affection and duty.

D. T. Figer,  
Esquire.

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Are you not aware that, taking the generality of emigrants who land at Quebec with the desire of settling in Lower Canada, the majority of those emigrants would prefer to settle upon lands under the English law of property and descent rather than under the French laws? I do not think that one in 10,000 ever thinks of the laws under which he is to live when he comes to Lower Canada; and if the Committee were to know the species of emigrants that comes to Lower Canada they would say I was right; but it is natural that a great number of them should go to Upper Canada, because there is the English language, and the greater number of emigrants have gone to that country, and above all, the climate of Upper Canada is much better than that of Lower Canada.

Is a great proportion of the emigrants who arrive in Lower Canada Scotch?—Yes.

Is the Scotch law under they have lived before more resembling the English or the French Canadian law?—Of course, the civil law of Canada being, generally speaking, the Roman law, wherever there is no special enactment of the *coutume de Paris*, and the *ordonnances* of the King of France, and other enactments, which are the smallest part of the laws of Canada; the consequence is, that the common law of both countries being as it were the same, there is more analogy between the laws of Canada and those of Scotland than between the laws of Canada and the laws of England; indeed, there is the greatest difference between the laws of England and the laws of Scotland, and the same difference exists between the laws of Canada and the laws of England.

Have the Committee understood you correctly to imply, that the French population in Canada would be more disposed to spread themselves, and to settle in the uncultivated parts of Canada, if they were secure of having their own laws and institutions when they so settled?—Yes.

Do you see any objection in principle to an arrangement of this sort, that although the whole of the area of Lower Canada may not be subjected to French laws, certain parts of that area should be reserved for the settlement of the native inhabitants of the colony, where they might enjoy their own laws and their own privileges, without any drawback or modification?—Yes; I do not think it is the desire of the native inhabitants of Lower Canada keep themselves distinct from the people that surround them; they wish to live in peace and quietness with all who now are or who may hereafter become inhabitants of the province, and that no alterations should take place in the existing laws and institutions without the consent of representatives equally and freely chosen by the whole population. They think that the province has already been too much divided into distinct parts which can only form barriers to its general improvements and welfare, and give rise to misunderstanding, jealousies and confusion. These can only be prevented or removed by a marked discouragement of them on the part of Government, and suffering the people of the province, without any distinction whatever, to have an equal voice in the management of its internal affairs.

Austin Cuivillier  
Esquire.

12 June, 1828.

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Austin Cuivillier, Esq. called in; and Examined.

YOU represent the County of Huntingdon in the Legislative Assembly of Lower Canada?—I am one of the members representing the county of Huntingdon.

How long have you represented that county?—Upwards of 14 years.

Have you had occasion to pay much attention to financial matters since you have been a member of the Assembly?—I have been generally appointed on committees, to whom have been referred the accounts of the receipts and expenditure of that province.

Are you engaged in mercantile pursuits in Lower Canada?—I am a commission merchant.

Are you also a landowner?—I am.

The Committee are informed that disputes have arisen between the Assembly and the Executive Government of Lower Canada, upon the subject of the appropriation of revenue; in your opinion, would the Legislative Assembly object altogether to voting permanently a part of the establishment for the Executive Government?—I cannot pretend to say what the Legislative Assembly of Lower Canada would do; all I can say is, that they have hitherto made a permanent appropriation for the salary of the lieutenant-governor during his residence; and they have offered to make a permanent provision for the judges, with retired allowances, on condition that the commissions should be during good behaviour, and that they should withdraw from the Councils, and that a tribunal should be appointed in the colony for the trial of impeachments.

You say that they have voted a salary to the lieutenant-governor; have they ever voted a salary for the governor-in-chief?—No.

Is there an indisposition to do so?—There has been an indisposition generally to vote any of the salaries of the officers of Government permanently: it was asked of them in the year 1821 by the present governor, and it was refused. Subsequently it was asked for during the life of the King, and that also was refused.

For what length of time did they consent to vote the salary of the lieutenant-governor? During his residence in the colony.

Can you state upon what ground they have objected to put the Governor himself upon the same footing?—It has never asked separately from the other expenses of Government; but it was asked generally, that the whole expenses of the Government, which they called the Civil List, should be voted permanently, or during the life of the King.

Do you believe that the Assembly would object to vote a salary for the governor as long as he continued to hold his office?—I cannot answer for others, I can only give my own opinion concerning what I would do. I should be disposed, individually, not to vote the salary of the governor-general of British North America at all; I think it more dignified for the Empire to pay its governor-general, rather than to fasten it upon the province of Lower Canada exclusively, which has its lieutenant-governor to pay as well as the other provinces; it only amounts to 5,000*l.* currency.

Is not the salary of the lieutenant-governor borne now upon the expenses of the colony? It is.

Is not the salary of the governor-general borne upon the establishment of Lower Canada only?—It is.

As far as the objection applies to his having authority in the two provinces, while the whole of his salary is paid by one province only, would not that be got rid of by dividing the salary between both the provinces?—It would diminish that objection so far as Lower Canada is concerned; but I think it would be very undignified for the governor-general of the colonies to be applying to every colonial assembly within his jurisdiction for a portion of his salary.

Would



Would there be any other objection than that which you have stated, to voting the salary of the governor-general, or a proper portion of it, for the time during which he held his office?—I can only answer for myself; I should feel inclined if I were so called upon, to vote the salary of the governor-general during the time that he administered the government therein.

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With respect to the judges, the Committee understand that they are appointed only during pleasure?—They are appointed during pleasure.

Would it, in your view, be safe and wise to appoint them *quam diu se bene gesserent*?—No question that holding their commissions during good behaviour, subject to impeachment in the colony, would be more advantageous; it would make them more independent of the Crown, and the people would have no objection to make them independent of them, giving them permanent salaries and retired allowances; that has already been proposed, but rejected in the Legislative Council.

Do you believe that if a judge could only be controlled by so troublesome a process as impeachment, it would be safe to appoint him during good conduct?—I should suppose a sense of duty would keep men within certain bounds; at the same time there may be some very bad men that may require to be controlled by the dread of punishment.

Do you propose to invest the power of impeachment of the judges in the House of Assembly?—The impeachment, I understand, virtually belongs to the representatives of the people; that is an inherent right of the inhabitants of the province as they conceive, as well as the right of taxation; but the trial, in my opinion, ought to be before the Legislative Council.

Supposing it should not be thought desirable to adopt the recommendation you have made, and to appoint the judges upon so permanent a footing, should you object to the judges having a salary voted to them as long as they held their office, although they continued dependent upon the Government?—I should decidedly object to voting any thing permanent to the judges without those conditions, that their commissions should be during good behaviour, that there should be a tribunal in the colony for their trial in case of malversation, and that they should retire from the Councils both legislative and executive; because it is a strange anomaly that the judges should be executive councillors and legislative councillors as well as judges; they in the morning advise the executive, in the afternoon they make the law, and in the evening they administer it.

Should you propose to carry that principle so far as to exclude the chief justice from either the Legislative Council or the Executive Council?—There might be some difference in opinion upon that subject. I think there would be no objection to the chief justice remaining president of the Legislative Council.

But you think there would be an objection to any of the other judges being members of the council?—Decidedly. The Assembly have, on various occasions, objected to any of the Judges remaining in the Legislative Council, and they have thought it very improper that they should be in the Executive Council.

Do you hold, that no person holding office in the Executive Government, of which he may be deprived at the will of the Governor, ought to sit in the Legislative Council?—If they did not form a majority of the Council there would be no great harm; but as the Council is at present constituted, they form the majority of that body, and holding their places during pleasure, they are liable to be influenced by the Governor. No greater example of that can be found than that of the same bill having been adopted in 1825, and rejected in 1826, with the same persons present, upon a change of governor.

Do you think, if any arrangement were made similar to that of the civil list in England, that it would be desirable, or not, to include the secretary to the Governor?—I do not see upon what principle the secretary's salary should be made permanent more than that of any other executive officer of the province. If the Committee would point out any disadvantage that the secretary would be under from his salary being annual instead of permanent, I might perhaps have a contrary opinion; but I do not see that any disadvantage would arise to the Government from the salary of the secretary being annual.

Do you think it is not desirable that the salaries of a certain number of officers belonging to the Executive Government should be made permanent?—None but the judicial officers; those should be made independent of the people, but upon condition that they should also be independent of the Crown.

Do

*Austin Cuivillier*, Esquire, Do you apply that principle to the Executive Council?—The executive councillors have but small salaries in that capacity.

Do you think that they should be dependent upon the annual vote of the Assembly?—My opinions are decidedly against any permanent appropriation of any description, except in favour of the judges, and those already made by the Assembly.

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Do you conceive that there would be on the part of the Assembly an insuperable objection to a permanent civil list, however limited in extent, or to any vote beyond an annual vote for the civil list, even supposing the Government should give up the claims which they have made, or should repeal those provisions under which they conceive that they have the power of disposing of certain revenues of the province?—I can only say that there now exists upon our statute book a permanent appropriation, conditioned upon the repeal of the Act of 1774, of nearly 12,000*l.* which, I believe, is far more than any permanent appropriation that would be consented to at this day under any condition.

Can you state from recollection what is the distribution of that 12,000*l.*?—It is for the support of the civil government, and the administration of justice in general terms, without any specific appropriation.

Has not the Assembly in late years objected altogether to voting any lumping sum to the Government permanently, leaving the distribution of it to them?—A bill very much of that description did actually pass in 1825; there was a sum of money voted to make up a sum equal in amount to that which was required, and certainly it left the distribution of the money entirely at the disposal of the Government. I objected to the bill in 1825, upon the principle that the Assembly denied to the Executive Government the right of disposing of the monies under the Act of 1774, at the same time that they left a much larger sum at their entire disposal; but to guard against that, so far as regarded that law, we entered resolutions on our own journals, stating that whenever a sum of money was voted for one service, it should be applied exclusively to that service, and not to any other; which guarded in some respect against the misapplication of money from one service to another. By obliging the executive to submit annually an account of the expenditure under that particular account, we thereby ensured to the Assembly an opportunity of judging whether monies of that description were misapplied.

Was not the objection to the Act of 1825, upon the part of the Government at home, that by voting a definite sum to make up a certain amount, the House of Assembly took upon themselves virtually to control over those funds which the Government maintained were subject to their appropriation?—No doubt; the Assembly considered it so also.

How is that to be reconciled with the position which you laid down just now, that the Legislature in 1825 passed a bill, granting a permanent appropriation to the Crown?—I did not understand that any permanent appropriation had been made in 1825.

What was voted by the bill of 1825?—£58,064 sterling.

Under what conditions was that voted?—The sum was voted under the condition that it should be expended for the general purposes of the Government, and that the account of the expenditure should be submitted to the Legislature within 15 days of the then ensuing session.

Was the vote worded in such a way as to assume the power of voting the monies arising from the taxes raised under the Act of 1774?—The bill had that effect.

In what way was that produced?—It was worded so that the sum given by the Legislature was to make up the sum of 58,000*l.* for the general expenses of the Government, including the sums already appropriated to that purpose.

Was there not also a provision that an account of the 58,000*l.* should within fifteen days of the next session of Parliament be laid before the Legislature?—There was.

Did not that provision bind the Crown down to account to the Legislature for those sums which they claimed to be under their special appropriation?—Unquestionably, it was so intended.

Did not the phraseology of the bill also include, virtually, a grant and appropriation of those taxes?—We did not appropriate those, because they were already appropriated for the purposes of Government; but we voted a sum that would, with those taxes, form the amount that was judged necessary for the expenses of the Civil Government, which had the effect of bringing the whole of that appropriated revenue under the control of the Legislature.

On what ground do you hold that the revenues arising under the Act of 1774 are not entirely at the distribution and under the control of the Government?—I think the Act of 1774 was virtually repealed by the Act of 1778.

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Explain the grounds of that opinion?—At the time that the Act of 1774 was passed, the colony had no Legislative Assembly; it had no power within itself of laying taxes for the support of its own Government. The principle adhered to by the British Government now, is, that in their regulations concerning trade generally, whenever taxes are raised for that purpose in the colonies, they are directed to be applied in the colonies, under the control of the local Assemblies, where there are Assemblies; and where there are no Assemblies, it is left as in the Act of 1774, to be applied by the Lords of the Treasury. I consider the Treasury at that time held the power of applying the taxes, in trust, to be exercised so long only as the colony had not a Legislative Assembly; but the moment the colony obtained a Legislative Assembly, that trust ceased in the hands of the Treasury, and we became virtually possessed of our inherent rights as British subjects, that is, the right of taxing ourselves, and the right of applying those revenues within the colony. That is my opinion of the Acts of 1778 and 1791, as applied to that of 1774.

Then you do not contend that the right of the Assembly to control those taxes arises from any definite provision of an Act of Parliament, but that it is a general inherent power connected with the legislative powers of the province?—I understand it so.

What would be the grounds upon which you would decline following the analogy of the British Government, in voting a certain sum for the King's life, or for a term of years, for a civil list?—There is no analogy whatever between the practice of the colonies and the practice of the mother country. The King here is supposed to be always in the midst of his people, surrounded by a nobility that have a real stake and permanence in the country; but in Canada there is no such thing; the Government of Canada cannot be administered by the King, it must be by a representative, accountable to the King and to his ministers. We have not in Lower Canada any thing like an aristocracy, and the consequence is, that there is no motive in the colonies for making that provision for the civil government of the colony that there is in England. Besides, in England the King has given more than an equivalent for the civil list, he has given large landed patrimonial estates, in consideration of which, the Parliament have given to His Majesty a permanent grant of money.

Has not the Crown the power to cede any casual or territorial revenue arising in Canada?—I conceive that the Government has already conceded part of its territorial revenue in 1794, for the public uses of the province.

Do you not conceive that in a government which admits of any monarchical principles in its constitution, it is essential that there should be certain officers of state who are independent of the popular voice?—I will not enter into the merits of any form of government, but I will merely say, that it is my opinion generally that the judges only in the colony should be made independent of the people.

Do you conceive that all other officers whatever belonging to the state should be subject to an annual vote of a popular assembly?—I do so, with the exception of the governor-general, who, I think, should be paid by the Empire.

You state that there can be no aristocracy in Canada, what makes you say so?—The laws of the country are against the acquirement of property sufficiently large to create an aristocracy in the country, and the manners of the people of America are decidedly against the system of aristocracy.

Do you apply that to America generally, or is there any thing peculiar to Canada?—America generally.

What is it that prevents the accumulation of property in large masses in the hands of individuals?—The subdivision of property.

What produces the subdivision of property?—The laws of descent.

Are the laws of descent similar all over America?—I believe they are pretty much the same in the United States of America as in the seigneuries of Lower Canada.

Is it not frequently the case among the French inhabitants of Lower Canada that they leave their property to the younger son, while the elder sons go elsewhere?—It has hitherto been the case, but that custom is dying away very fast; there have been considerable

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derable abuses of that mode of giving away property, I believe it is not now very generally followed in Canada.

Then the almost universal practice in Lower Canada is to divide the property among the children?—It is, by an equal division.

Does that system prevail in Upper Canada?—I do not know what system prevails in Upper Canada; but the Representative Assembly has frequently passed a bill for an equal division of the estates of persons dying intestate.

Do you know what system prevails in the United States of America?—I do not.

Was not there more than one offer made by the Assembly to the Government to take the civil list upon itself to a certain amount, if a sufficient control were given over the appropriation?—There has been no definite proposal to vote any additional sum permanently.

Was not there a proposal to take the civil list as it stood in 1819, provided a control were given to the Assembly?—The Assembly voted in 1819 nearly the whole of the sum that was required of it by the Executive Government in 1818.

Was not there an offer made by the Assembly to engage to pay the civil list as it stood in 1791, provided a control over the appropriation were given to the Assembly?—The offers which a legislative body generally makes are by bills, that is the language of the Legislature; that bill professed to make an annual appropriation in 1819, for all the necessary expenses of Government.

Were they specified item by item?—In 1819 it was voted item by item, and so expressed in the bill. In 1821 the sums were voted by chapters, that bill did not pass in the Legislative Council. In 1822 there was no money voted; it was asked for permanently during the life of the King, terms in themselves contradictory, but they were used in the message sent down by the governor.

Do you know on what ground the bill which voted the supplies by chapters was rejected by the Council?—I did not attend the debates in the Council, but I know that the Council passed certain resolutions against their proceeding upon any bill from the Assembly, which did not provide for the expenses of the Government in one entire sum, and during the life of the King.

Will you be so good as to state what control you hold that the Assembly has over what are called the rents of the King's posts, which amount to 1,200*l*.?—The rents of the King's posts amount to 1,200*l*. currency. Lord Dorchester, in his message to the Legislature in 1794, in the name of the King, gave those revenues to the province towards the support of its civil government. Hence the control which I conceive the Assembly has over those revenues. It is in consequence of a gift on the part of His Majesty to the province, for the public uses thereof, that the Legislature has the right of appropriating them to those purposes.

In what form was that gift made?—By message.

Did that message of Lord Dorchester's say that the King would appropriate those revenues for the use of the province, or that he made them over to the Legislature to be appropriated by them to the use of the province?—I do not recollect the precise words of the message; but this I recollect, that the casual and territorial revenue was given to the province in aid of its civil government; at that particular time the revenues of the province were not sufficient for the payment of its whole expenses.

Do you hold that the power of appropriating that revenue to specific objects is in the Legislative Assembly?—I conceive so; I conceive the right belongs to the Assembly of the colonies to appropriate every shilling of money levied on them generally.

Here is the sum of 500*l*. stated as arising from the forges of Saint Maurice; what is that?—That forms a part of the territorial revenue of the King.

Are the Committee to understand that you claim more than is claimed by any of the other British Legislatures in North America, because you are probably aware that there is upon record no claim whatever, by any other Colonial Legislature, upon what is peculiarly called the territorial revenue of the Crown?—I do not know what is claimed by other colonies. I have been asked my opinion as to what I think ought to be, and I have declared it unequivocally.

Do you mean, by the answers you have given, to imply that you think that the colony ought

ought to have such a claim, or that under the existing law they have such a claim?—I was asked my own private opinion, and I answered that I think they have a right under the existing law.

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You state that you objected to vote the civil list permanently; do you not consider that the power of granting or refusing supplies to the Executive Government is the principal means of exercising influence over it?—No doubt.

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Do you consider that by having the power of giving or refusing monies for the improvement of the navigation or the roads of the province, the Legislative Assembly would in any manner control the Executive Government?—I should conceive that the Legislature of the province has a great interest in the improvement of the country; it would be injuring, not the Executive Government, but the country generally, to refuse any thing like a reasonable grant for the purposes of internal improvement.

Therefore you do not believe that they exercise any control over the Government by refusing such appropriations?—No.

Are they called upon to furnish any means for the defence of the province; as in England, the House of Commons is called upon to furnish means to support the Army and Navy?—We have never been called upon to pay any part of our military establishment; we have, however, furnished very large sums for the defence of the province during the late American war, beyond the means of the country.

The only control that you exert over the Executive Government is by having the power of refusing to vote the civil list?—The only control we have over the Executive Government of the province is by refusing the supplies, and that I conceive to be a very great power. We do not know what is meant by civil list in Canada, it is a term used by the Government, but we have studiously avoided even the name of civil list in all our communications with the Executive Government of the province.

Do you not believe that, for the peace of the province, it would be better that the House of Assembly should be at their homes than that they should assemble once a year in order to remonstrate in vain, without having any control against any acts that may be unpopular?—Assuredly.

Are you aware that two appointments have lately been made by the Crown, one of our inspectors of woods and forests in Lower Canada, and the other of an inspector of the waste lands, for the purpose of raising a revenue and applying that revenue under the control of the Crown, and under the discretion of the Government, expressly and exclusively for the benefit of Lower Canada?—I am aware that there are two such appointments existing in Lower Canada. I believe Mr. Davidson is at the head of one office, and Mr. Felton, of the Legislative Council, is at the head of the other. I do not know what department of Government pays them their salaries; these salaries have never been asked of the Legislature of Lower Canada.

Are you aware that their salaries are to be derived from the proceeds of the sale of timber and the sale of land?—I do not know out of what fund their salaries are to be provided.

Are the Committee to understand that you consider that the Assembly have a right to the proceeds of the sale of land, and the proceeds of the sale of timber, and that they have a right to appropriate those proceeds instead of the Crown?—These are opinions that are required of me upon which I really should hesitate to pronounce. I know that the people in England are very jealous of any revenues of the Crown independent of Parliament, and any thing that can excite the same jealousy in the colonies is equally pernicious.

Are you not aware that there is this distinction between the situation of the people in the colonies and that of the people in this country, that the colonies do not contribute towards their military defence?—I consider that the colonies pay considerably towards the support of their defence. The monopoly of our trade is worth something to the Empire, and I think that in consequence of that monopoly we are entitled to be protected.

Is it your opinion, that under the circumstances of the change of the commercial law of this country under the late Act, it is now to be asserted that the mother country has a monopoly of the trade of Lower Canada?—I should consider so; because, in throwing open the ports of other parts of the world, Parliament has virtually closed them by laying heavy duties, which prevent our taking advantage of that intercourse; for instance, the

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ports of France have been thrown open to Canada for a direct trade, but the duties imposed upon the manufactures of France in Canada are so heavy that they amount to a prohibition.

Are the Committee to understand that you demur to that provision of the Act of 18th Geo. 3, which specifically reserved to the mother country the right of imposing duties for the regulation of the trade?—No, I do not; I think it very necessary that the Imperial Parliament should possess the power of regulating the general commerce of the Empire.

Does the colony pay any thing towards the support of the troops in Lower Canada?—No.

You complain of the waste and mismanagement of the revenues in Lower Canada, have you any further observations to make upon that point?—The petitioners of Lower Canada complain, amongst other things, of the mismanagement of their revenues. In 1809, the receiver-general, it appears, was in arrear about 40,000*l.* This sum was assumed by his son and successor, who was in default in 1823 about 100,000*l.*, besides about 100,000*l.* more advanced, which from that time till 1826 had not been settled, notwithstanding repeated addresses of the Assembly. This state of the receiver-general's accounts was not made known to the Assembly till after his failure.

What do you mean by saying that there were 100,000*l.* more advanced?—They were advanced by the receiver-general to persons employed to carry into execution Acts of the Provincial Legislature, containing special appropriations. The manner of advancing money is rather a bad one in Lower Canada; the receiver-general advances it upon what are called letters of credit; the Governor issues those letters in favour of the party on the receiver-general, the money is advanced by him, but he does not carry it to his account till those letters of credit are covered by a warrant, and the warrant is generally issued when the work is performed, and not before, which is the reason why there is such a large sum outstanding; the warrants have not been issued, because the work has not been or performed, the accounts not satisfactorily vouched.

You complain also in your petition of the want of sufficient check on the expenditure on the part of those who contribute the money; have you any observations to make upon that head?—The Representative Assembly of the province has in reality been allowed no check on the expenditures, from the commencement of the constitution in 1792 to the present time, and its votes and representations latterly have been generally disregarded by the local government, excepting in 1825, during the administration of Sir Francis Burton. The only check on these expenditures in the colony is in the Governor and Council, who spend and dispose of the money, and in the Treasury in England, upon reports of the Governor and Council. Since the year 1819, about 140,000*l.* of the provincial revenue, which the Government admits to be at the disposal of the Colonial Legislature, has been applied without appropriation, and partly to new and unnecessary expenditure. Besides advances to a great amount, made 10 years ago, remain unsettled.

Have you put any information upon paper, which you are desirous of communicating to this Committee?—I have.

Will you be good enough to refer to that Paper, and to state to the Committee the information which it contains?—In 1760 Canada was surrendered by the French government at Montreal by capitulation, providing that the inhabitants should preserve their property of every description and become British subjects. In 1763 Canada was ceded by the French King, providing for the freedom of the Catholic religion, &c. In 1763, a proclamation of the King, promising the benefit of the laws of England, and a Representative Assembly as in the other colonies. In 1774, the Quebec Act of 14 Geo. 3, c. 83, declaring ancient laws of Canada in force. The Quebec Revenue Act of 14 Geo. 3, c. 88. In 1778, the Declaratory Act for the application of duties by Colonial Legislatures. In 1791, the Constitutional Act, 31 Geo. 3, c. 31, establishing a Representative Assembly and a Legislative Council, and empowering His Majesty during the continuance of the Act, with their advice and consent, to make laws for the peace, welfare and good government of the province. In 1793, the first Revenue Act passed in the colony for the expenses of the Legislature. In 1794, April 19th, the message from the governor for the entire repeal of the Revenue Act of 1774, "as soon as the provinces of Upper and Lower Canada shall have passed laws laying the same or other duties to an equal amount to those which

which are payable under the Act, and such laws shall have obtained the Royal Assent, the King's Ministers will be ready to propose to Parliament a repeal of the Act above mentioned." In 1795 the second Revenue Act passed, appropriating 5,000*l.* sterling annually, for the administration of justice. In 1799, June 3d, an Act passed agreeable to the message of April 29th 1794, to be in force as soon as the repeal is made known by proclamation of the governor, &c. This Act is perpetual, and appropriates 11,799*l.* 18*s.* 1*d.* per annum for the general expenses of Government. In 1809 the expenses of the Civil Government were rapidly increasing, and had doubled in 14 years, namely, from about 20,000*l.* to about 40,000*l.* The Assembly addressed the King to be charged with all the expenses, part of which had before been paid by the mother country. In 1818 the Assembly was in His Majesty's name required to provide for the expenses of the Civil Government, on an estimate, amounting to about 66,000*l.* sterling, and it voted to complete the entire sum required for that year by address, which it covered by a bill, which passed the following year. In 1819 the governor required an increased expenditure for the Civil Government of about 16,000*l.*, which the Assembly refused; but voted and passed a bill on the footing of the expenses of the former year, with the exclusion of the allowances of some sinecurists and absentees, some of which were afterwards changed into pensions on recommendation of the Government. Since this time the bills sent up annually by the Assembly providing for the civil expenditure have been constantly rejected, with the exception of 1822, in which year a representation was forwarded by the assembly to His Majesty, explaining the grounds upon which it declined granting any additional supplies otherwise than annually, as had hitherto been required of it by message of the governor in chief, and excepting also in 1823 in part, and 1825, when the Supply Bill passed by the Assembly became a law during the administration of Sir Francis Burton. The supplies permanently appropriated by the Colonial Legislature are the proceeds of the Act of 1793, amounting to about 2,000*l.* annually for the expenses of the Legislature, and 5,000*l.* sterling annually for the administration of justice. The local Government claims also the territorial revenue given to the colony of His late Majesty, 29th April 1794, "to be applied towards defraying the civil expenses of the province," amounting to about 5,000*l.* annually, and the amount of the proceeds of the Quebec Revenue Act of 1774, before mentioned, which proceeds, by taking away in 1822 a drawback formerly allowed on exportations from the colony to the West Indies, has increased from about 10,000*l.* to about 20,000*l.* annually. The whole of these sums the executive has lately claimed to apply in such amounts as it pleases, to such expenses as it deems to be expenses of the Civil Government, and the administration of justice, without consulting the Assembly, and it calls on the Assembly to provide the deficiency. The Assembly, on the other hand, insists that no items form part of the expenses of government generally without its concurrence. In the mean time, since 1819, (with the exception of 1823 and 1825 above mentioned) the governor has paid such deficiencies as he thought proper out of the monies which he acknowledges to be at the disposal of the Colonial Legislature, to the amount of about 140,000*l.* leaving nothing or next to nothing for local improvements, education, or other pressing wants of the country.

You have stated that the claims on the part of the governor have only been made lately; that would appear to imply that the governor had originally recognized the right of the province to appropriate all the monies?—In 1819 it was so understood, that the Legislature of Lower Canada should have the control over the whole expenses.

How does that appear?—It appears by the message and estimates of that year.

By the Act of 1819, was there not an appropriation of the whole revenue of the colony made by the legislative assembly?—In 1819, an Act was passed appropriating to the amount of 40,000*l.* to make up the deficiency between the appropriated revenues and the expenses of Government, because those appropriated revenues were insufficient.

Did it include any clause similar to that which was inserted in the Act of the year 1825? I do not exactly recollect the clause, but I think it was similar to that; the bill of 1819 was to cover the expenses of the preceding year, which had been expended upon the address of the House.

What was done in the year 1820?—There was no session in 1820. In 1821, a bill was passed by chapters, voting the whole expenses of the Government, and applying the appropriated revenues to form a part of it.

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When do you consider the Government first to have made a claim to a permanent appropriation of a part of the revenue?—In 1822, the Governor, by a message to the Assembly, stated he had in his power certain revenues which he would apply to certain expenses of the Government, and requesting the legislature to make a provision for local establishments which form no part of the civil government, and among the items for which the Assembly was required to provide, which form no part of the civil government, was the expenses of the legislature of the colony.

In the year 1818, when the Governor called upon the province to supply monies for the support of the whole of the civil Government, did he not promise some conditions on his part, and were those conditions complied with?—The demand upon the Assembly of that day was to make provision generally for the expenses of the Government. It was understood at that time, that since the Assembly were charged with the whole expenses of the civil government of the colony, the whole of the means should be at its disposal. We considered as part of the means those revenues that were already partly appropriated to that purpose.

Did not the governor promise that the Act of 1774 should be repealed?—Not in 1818; in 1794, the Governor in his message to the Legislature at that time stated, that as soon as the Legislature of Upper Canada and that of Lower Canada shall have laid the same or other duties equal in amount, His Majesty's Ministers would recommend to Parliament a repeal of the Act of 1774; in 1799, an Act of that description passed the Legislature of Lower Canada, and received the Royal sanction. That Act is in our statute book, and it now remains for the British Parliament to repeal the Act of 1774, in order to have a permanent appropriation of 12,000*l*.

Do you conceive, supposing the revenue Act of 1774 now to be repealed, that the legislature would have a control over the permanent appropriation which was then provisionally voted?—There is some doubt upon that point I must confess; I would decidedly say, yes; but that is only an individual opinion.

Can you give the Committee a general statement of the present state of the population and representation in Lower Canada?—The population of Lower Canada, according to the census taken conformably to legislative enactment in 1824, was about 430,000. There were numerous omissions in this first census. The population was then upwards of 500,000; it must now be about 600,000. About nine-tenths of these live by agricultural labour, on their own land, say are proprietors to the extent of from 60 to 120 arpents. The ground is covered with snow about six months in the year; they are, however, able to live with some comfort, and rear numerous families. The incomes from lands, where the owner does not work himself, are trifling. There may be a few hundred proprietors who get annually as rent for land, to the value of from 100*l*. to 300*l*. The principal revenues from land are seigneurial revenues, they amount from 100*l*. a year to 1,500*l*. which is about the highest. The other tenth are connected with the towns in which the majority of the inhabitants are proprietors of houses and lots. The wealthiest have incomes from 500*l*. to 2,000*l*. a year; of the latter there are but very few indeed. The trading classes, generally, have been rather sinking than gaining money of late years.

The representation was fixed by the governor's proclamation in 1792 at 50, and the whole province included in the division of counties. Since this time a number of townships on the frontiers of the United States have been settled by American emigrants. Between these settlements and the old settlements there was and still is, in several directions, many miles of wilderness. Since the late war vast sums of public money have been expended and called for to open roads for them to the St. Lawrence, the greatest part of which has been uselessly spent. About ten years ago these people wished to have representatives, distinct from the old Canadian settlements, within the counties in which the townships are placed. Since 1818 bills have been almost annually sent up by the Assembly to the Legislative Council, to increase and apportion the representation of the province, and set off the townships in separate counties; with this bill the townships generally have declared themselves satisfied, but the bills were lost in the Legislative Council. These townships contain by census about 30,000 souls.

You are aware that a proportion of the lands in Canada are held upon the tenure of free and common socage?—The lands in the townships are under that tenure.

Have not all the lands granted since 1791 been granted upon that tenure?—I believe there



there was no grants in free and common soccage earlier than 1796; between 1774 and 1791, I think there were two grants under seigneurial titles. The King's instructions as late as 1786 were to grant *en fief et seigneurie*. The whole may be seen in the land report in Assembly's Journal of 1824.

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Esquire.

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Supposing the owner of lands held in free and common soccage were to die intestate, according to what law do you hold that his property would descend to his children?—Hitherto it has been considered that the property would descend to the children agreeably to the laws of Canada, but since the passing of the Act of the 6 Geo. 4, c. 59, commonly called the Tenures Act, it is understood that the property would descend according to the laws of England, because that Act made the laws of England applicable to lands in Canada held under that tenure. That Act has a retroactive effect, which will throw the country into great confusion if it is acted upon.

In what way will that confusion arise?—It will arise in annulling a vast number of sales that have been made by the sheriffs and otherwise, which hitherto have been considered legal; it will destroy the rights of minors and absentees, the rights of women and persons interdicted, and creditors who have lent money under the supposition that the laws of Canada applied to those townships, and that the property would be divided according to the laws of Canada.

Can you state any statute upon which the belief was founded that the French law applied to lands held in free and common soccage?—I confess that the Act of 1774 contains in the shape of a proviso an enactment that nothing therein shall extend to lands held or to be held in free and common soccage in Lower Canada; but it could never have been the intention of Parliament to establish in the colony two systems of law, and the judges have uniformly, upon that principle, decided that the lands under the free and common soccage tenure, should be regulated by the laws of Canada.

To what decisions of the judges do you allude?—In consequence of the decisions of the judges, all lands that were disposed of by sheriffs sales have come under the operation of the laws of Canada.

Is there any more specific and direct decision upon the subject?—I do not know that the question has been properly raised in any of the courts of justice in Canada.

Is it considered as legally established that the property in the townships is subject to the French law?—I believe that in one or two townships, particularly in the township of Hull, where there are some Canadian settlements, the laws of Canada have been applied to their property; they have inherited it in the manner and form that is prescribed by the laws of Canada, and that inheritance and transfer of property has been held good.

Was there any dispute upon the subject?—There was no dispute about it; because there was no difference of opinion upon the subject till the Act of the 6th of the King.

Are the Committee to conclude that you are not aware of any decision of a court of law upon the disputed point?—I do not know that the question has ever been raised in the colony.

Has the course of inheritance in the townships been practically according to the French law?—It has.

Can you assert that of your own knowledge?—I am no lawyer, and I have never been concerned in any suit in which that question has been raised.

On what ground do you form the opinion that it could not have been the intention of the Legislature, by the provisions of the Act of the 14 Geo. 3, to establish two different systems of law in the colony, with respect to real property?—Because of the impossibility of acting under two systems of laws without producing the greatest confusion. Besides it would be unreasonable to suppose that Parliament intended to introduce the law of England into a country already regulated by a different system, without at the same time enabling those who were to be guided by the law, to know what were the new laws introduced.

Are not aware that the law of gavelkind and of borough English applies to certain property in England, and that the law of free and common soccage applies to the greater part of the country, and that no inconvenience is found from that diversity of law?—I have heard of a great many different descriptions of tenure in England, and I believe that the people are very sorry that there are so many. Judging from a speech which I have read, as lately delivered in Parliament, I should not think the laws of England as existing at present desirable for Canada.

Will

*Austin Covillier*  
Esquire.

12 June 1828.

Will you state what, in your opinion, would be the inconveniences which would arise from the English law of descent to real property prevailing in the townships at the same time that the French law prevailed within the seigneuries?—I have already stated that there would result confusion in the courts of justice if they were called upon to act under two different systems of laws, and I believe the legal division of the districts is such now as prevent the exact operation of the English and French laws conjointly.

Would there be any difficulty in defining the different districts in which the different systems were to prevail?—It is not impossible.

Would there be any difficulty in establishing different courts, in which the two different systems of law respecting real property might be administered?—None.

Would any confusion arise in that case?—Not if the new courts located in the country wherein the free and common soccage tenure prevailed, and if the law of England applied to that particular territory.

Does not the law of England already prevail partially by custom in the townships?—I believe that in the townships neither the law of England nor any other law is known; they have been in a great measure without law in that country since their establishment. The laws, I believe, that are now prevalent in the United States of America are the laws which they understand best.

Have the English laws prevailed with respect to the descent of property by custom?—I am not aware that they have prevailed generally; there might have been some instances of it, but several of the people who hold lands in the townships hold them without titles; they are mere squatters; persons in possession of land that have no titles; they sell the improvements only; to make use of a word common to them, they sell the *betterments*; they never sell the land itself, they sell the mere possession, and the improvements.

Do you mean to apply that generally to all the townships in Lower Canada?—I believe that in more than one half of all the townships there is not one man in ten that has a legal title under the 6th Geo. IV. c. 59, probably one third may have an equitable claim to the land from possession.

Are there no settlers in the townships who have improved land which they have acquired lawfully under Government grants?—There are no doubt some who have made considerable improvements; I know a gentleman there that has spent a fortune upon the improvement of land, of which he got a grant from the Government; Mr. Felton.

How do you account for the circumstance of there being so few settlers in Lower Canada, and for the great preference which is shown by English settlers to go to Upper Canada?—There are various causes for that; in the first place the climate of Upper Canada is better, they have their friends there in greater numbers. Those emigrants from Ireland who are Roman Catholics generally prefer remaining in Lower Canada; Protestants prefer going to Upper Canada; but I do not consider that there is any thing in the laws of the country that prevents their settlement in Lower Canada.

Is there any thing which, in your opinion, discourages their settlement in Lower Canada, without absolutely preventing it?—I believe that the climate is the most discouraging thing.

How do you account for the circumstance of there being no settlers in the townships except the persons that you describe as squatters, and one or two individuals whom you describe as having laid out money upon the improvement of land; is the difference of climate alone sufficient to account for it, or is there any objection to the system of French law?—I do not believe that the existing system of law forms any bar to the actual settlement of the country in the townships; because I do not know that there has been any increase of settlement in the townships since the passing of the Act of the 6th of the present King, which declares the lands in those townships to be under the operation of the laws of England.

What, in your opinion, will be the effect of that provision in the Canada Tenures Act, which enables individuals in the seigneuries to change the tenure of their property, and to hold it in free and common soccage?—There is an objection in my mind to the commutation on the part of the seigneur; the seigneur in Lower Canada holds the property in trust for actual settlers, and the effect of the commutation would be to make him the proprietor of that which he holds in trust only for actual settlers.

Will you explain what you mean by the seigneur holding in trust only for actual settlers?

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—The concession of almost all the seigneuries in Lower Canada was made originally by the French King, upon the condition that the seigneur should grant the lands on demand to actual settlers, upon a very small annual rent; and upon his refusal the property is escheated to the Crown, who on application grants it to actual settlers. There have been some decisions upon that subject in the courts of justice in Canada before the Conquest, where the seigneurs have refused to concede, and the property so refused to be conceded was reunited to the domain of the King.

Austin Cuvillier  
Esquire.

12 June, 1823.

At the same time that the seigneur was called upon to allow settlers to settle upon his land, subject to the payment of a small rent, was not he on his part called upon to pay a certain rent to the Crown?—The only dues which a seigneur pays to the Crown is the *Droit de Quint*, which is paid only upon sale of the seigneury.

You are aware that the Tenure Act is not compulsory, but it is only giving facilities to parties who wish to change their right of property?—I understand it so.

Is not the proposition shortly expressed as follows: that a seigneur is placed in possession of his land upon the tenure of free and common socage, at a certain rate of payment, subject to his being compelled to consent to convert the land of his sub-tenant into free and common socage, upon the receipt of such an award as shall be made by arbitration upon a given principle?—I have already observed, that I thought the power given to the seigneur to commute was an unjust one; that it was converting to his own use that which was only given to him in trust. The obligation on his part to commute with his sub-tenant would naturally follow the commutation with the Crown, as a matter of course; on the other hand, I hardly think that the seigneur would find it his interest to submit, on his refusing to change the tenure of his sub-tenant, to an arbitration of the nature described by the Act.

Then you consider that the Canada Tenures Act will be inoperative, inasmuch as it will not be the interest of any seigneur to comply with the terms?—I do so, in a great measure.

If they were complied with, do you think it would retard the settlement and the cultivation of the land?—I do not think that the holding lands in seigneury is at all detrimental to settlements; on the contrary, I think it facilitates settlements.

Do not the seigneurs ever settle and cultivate the land themselves?—Most of the seigneurs reside on their seigneuries; they find it to their advantage.

Should you consider those seigneurs to be holding their lands in trust for settlers?—All the seigneurs hold their lands for actual settlers except a domain, which they are allowed to hold for their own use.

Do you mean that they are practically trustees, or only theoretically?—They are theoretically and practically trustees; the lands were given to them upon the condition of regranting to actual settlers; because, if the seigneur refuses to grant any lands to an applicant, that person making complaint to the Crown would have the power of getting that particular land annexed to the domain, and obtain the grant from the Crown at usual dues.

In case of a seigneur having settled and cultivated the land himself, is he bound to grant that land to a sub-tenant on demand?—He is not, because he performs the actual settlement duties. The object of conceding the land was for the actual settlement of it; if he were to cultivate the whole land himself he would cease to be a trustee, *quo ad* the particular part he cultivates.

Then with regard to the land he has cultivated the same motives would not exist against converting it into free and common socage?—Certainly not, if he could have any motive for it.

Has not a seigneury sometimes become vested in more than one proprietor?—Yes; the seigneuries have been very much sub-divided.

Supposing one of them will not consent to any application which is made for a piece of waste land?—There is another difficulty which the Tenure Act has not sufficiently provided for. Where there are co-proprietors in a seigneury held *par indivis*, the consent of the whole of the proprietors must be had to obtain a change of tenure. In respect to application for waste lands, the person in possession of the manor is the only one that applicants have to deal with where there is not a legal partition.

Do the petitioners whom you represent complain of the composition of the Legislative Council?—They do,

Austin Cuillier  
Esquire.

12 June, 1828.

Of what do they complain?—They complain that the majority of the members of the Legislative Council are persons holding places of profit during pleasure, and in consequence of that they are not considered independent of the Crown.

How do they propose to remedy it?—I do not know that their opinion has been taken upon that particular point. I can only give it as my opinion to the Committee that if it were not expedient to make the Legislative Council elective, certainly the judges ought to be excluded from that body, and also the collectors and receivers of revenue, and the auditors of accounts. If on the other hand the Legislative Council were to be elective, a certain qualification of course would be requisite in the electors, and a certain qualification for the members; but decidedly certain descriptions of persons ought not to be elected in the council, for instance, collectors and receivers of the revenue.

In the event of the appointment of the Legislative Council remaining still in the Crown, would you think it desirable to carry the exclusion of placemen, and persons holding employments under the government, beyond that of the judges and receivers, and collectors of revenue?—I should consider that for the better securing the independence of that body, all future appointments to the council should be made subject to be vacated on the acceptance of an office of profit during pleasure.

Supposing the appointment of the Legislative Council to remain still in the hands of the Crown, should you not think it desirable that persons holding offices under the Government, should form only portion of the Legislative Council?—They should certainly form by far the least portion of the council so as to have a majority of independent men.

Would you consider that a greater security would be effected in that way than by making the Legislative Council elective, and the members holding their seats for life?—With regard to that, I would not wish the Legislative Council to be elective.

How many persons are there in Canada who from character and property are qualified to be members of the Legislative Council?—There are a great many persons that might be called to the council now, with great advantage to the Government and to the country; there are several large landed proprietors, men of good education who might be serviceable in that capacity.

Are the majority of those persons of French extraction?—Decidedly; there are very few large English proprietors in the country; they come to the country for the purpose of trade, and their object is to acquire something easily transferable.

Will you state your objections to making the Legislative Council elective?—I think it would make that body rather independent upon the people, and I should like to see them independent of the people and of the Crown.

Would not that independence upon the people be done away with by their holding their seats for life?—Certainly, if they were elected, and that election lasted during their natural life, they would cease to depend upon the people.

Do you think that the principle of election might be advantageously introduced into the composition of the Legislative Council, by making not the whole council elective, but a part of it?—If the composition of that body could be so changed as to render it independent without an election, I would prefer it.

Do you imagine, that in case of any measures being passed by the Parliament or the Government at home, materially affecting the constitution of the province of Canada, that the province would be very ill disposed to receive such measures without having first had an opportunity of expressing its opinion upon them.

I consider the constitution of the governments of Upper and Lower Canada, as a compact between the mother country and the colonies, a kind of compact which cannot be changed without the consent of all parties. I should consider that any change whatever in the constitution of government of Lower Canada, without the inhabitants being previously consulted would be very ill received by them.

Have not the inhabitants of Lower Canada petitioned the Houses of Parliament to make certain alterations in their constitution?—I believe not; on the contrary they pray that no change whatever shall take place.

Generally speaking, do you not consider that the inhabitants of Lower Canada attribute the disorders and discontents that have taken place, not to the constitution itself, but to the manner in which that constitution has been administered?—Certainly; there is no doubt

doubt but that the form of government under which they now live is admirably well calculated to ensure their happiness, if it is properly administered.

Do you believe that is the opinion entertained of it in the townships?—The townships, I believe, have complained. I do not know whether the complaints come from themselves, or whether they are made to complain. Generally I have not heard an y complaint in the colony against the laws.

In the complaint which the petitioners make of the composition of the Legislative Council, do they not conceive that they are requiring the Legislative Council to be so composed, as it was intended to be composed by the Act of 1791?—It was no doubt intended that the Legislative should, in imitation of the House of Lords here, be an independent body, that should have a stake and interest in the country, and would rise and fall with it; but it is the reverse in Canada; those people are not independent of the Crown as the House of Lords is here; they are men directly dependent on the Crown, the majority having places of profit during pleasure, that is, they are actually dependent on the local government.

Do not the people of Lower Canada consider the want of a security for proper nominations to the Legislative Council as a defect in the constitution of the colony?—The persons that have been called to the Legislative Council have been called in virtue of the royal prerogative; the nomination, no doubt, must in some measure come from the colony, and although the Government here may have every disposition to nominate persons to that body, who are perfectly independent, yet they are frequently exposed to error, and from misinformation a number of people are called to it who ought not to be there.

Seeing the manner in which the prerogative has been exercised, do not you think that it requires some check?—No doubt. I should conceive that the system of appointment to the Council, if it were necessary that any enactment of law should take place upon the subject, should be qualified, by requiring that the persons appointed should have a certain landed annual income.

Would not that be a change in the constitution of the colony?—Certainly not; because it was intended that the large landed proprietors of the country should form an intermediate body between the Assembly and the Crown; there is no doubt, that upon instructions being sent from this country to the colony a bill might be introduced requiring certain qualifications in the members of the Legislative Council.

You state, that you consider the constitution of Canada as a compact between two bodies which cannot be altered without the consent of both; do you carry that opinion so far as to hold that no alteration of the Act of 1791, could be made by the British Parliament without the consent of the Assembly of Lower Canada?—I consider that the Parliament, in the exercise of its general superintending power, has a right to legislate for the colonies generally; but with regard to internal legislation, the Imperial Parliament has virtually given up that power, with respect to Upper and Lower Canada, in giving them an Act whereby they have the power of legislating for the peace, welfare, and good government of the country.

If the Act of 1791 is to be considered a solemn contract, to which three parties have been consentient, namely the Parliament of Great Britain and the two Legislatures of the two colonies, are the Committee, to understand that those clauses which relate to the reservation of land for the clergy, and which form part and parcel of that solemn compact, it is not in the power of the Parliament to change?—In that respect I verily believe that the Parliament has the power of changing that part of it which has reference to the lands; these and some other matters are specially reserved in the Act.

Supposing it be admitted that the Act of 1791 had the character of a formal compact, do you mean to state it as your opinion, that with a view to the benefit of those provinces, it is not constitutionally in the power of the Parliament of Great Britain, to legislate upon the subject of the government of the Canadas?—As to the power I do not deny it. The right may be questioned, and the expediency is more than doubtful.

Do you attach the same importance which one of the former witnesses did to the necessity of having an agent in this country for the colony of Lower Canada?—I think it most essentially necessary, inasmuch as Great Britain has reserved to itself the right of regulating our commerce, that there should be an agent here to attend to the interests of the colony.

*Austin Cuivillier*  
Esquire.

12 June 1828.

*Austin Cuvillier*  
Esquire.

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How do you think that agent should be appointed?—By the Legislature of the colony.

Do you mean by both branches of the Legislature?—The truth is, that no Act making provision for the appointment of an agent can take place without the consent of the three Branches. The agents, generally speaking, who represent some of the colonies, have been nominated by the representative assemblies. If any great objection were made to the appointment, one might be appointed by the Assembly, and the other by the Legislative Council, so that the country would have the benefit of two agents instead of one; but I verily believe that the Assembly would not consent to the payment of an agent, of whom they had not the choice.

There are certain items of charge of salaries to individuals to the payment of which the Assembly have objected, as considering that the situations filled by those individuals are unnecessary; are you of opinion that if those salaries were discontinued, and those situations done away with at the expiration of the lives of the parties holding those salaries, there would be any disposition on the part of the Assembly to pay them during the lives of the parties?—The Assembly have already done so in some instances, when it was required of them; and I verily believe that they would have no objection to convert these salaries into pensions; for myself I should decidedly vote for it; I verily believe there would be no objection, provided that all the other grievances were removed.

Sabbati, 14<sup>o</sup>. die Junii, 1828.

The Rev. *Crosbie Morgell*, called in; and Examined.

WERE you Chaplain to the Bishop of Quebec?—I was.

How long were you resident in Canada?—From the month of June 1826 to the month of December 1827.

Were you chaplain to the Bishop of Quebec the whole of that period?—I was; I went out with his Lordship from this country.

Had you any opportunity during your residence in Canada of becoming personally acquainted with the ecclesiastical condition of those provinces?—I had every opportunity. Six months of the time that I was resident with the bishop I was employed in travelling through the Country; we performed two summer and one winter visitation; in the course of those journies we visited every clergyman in the diocese, excepting five in Lower Canada and eleven in Upper Canada. When we were not occupied in visitation there was continual correspondence going on, through me, between the bishop and the clergy.

How many clergymen did you actually visit in each province?—Twenty-two in Lower-Canada and twenty-five in Upper Canada.

Have you got any memorandum of the actual residence of the clergymen whom you visited in Lower Canada?—It is stated in the Report of the Society for the Propagation of the Gospel in Foreign Parts. The station of each clergyman will be found in the synopsis of the society's missionaries and catechists.

Can you explain to the Committee the manner in which those clergy in Lower Canada are paid?—They receive, with, I think, two exceptions, a salary of 200*l*. while in priests orders; as deacons only 100*l*.; their drafts being honoured in this country by the treasurer of the Society for the Propagation of the Gospel in Foreign Parts; and, in speaking of the clergy of Canada, I beg leave to say, that all my information respecting them refers to those in the service of that society.

Have they any other advantages besides the receipt of that 200*l*. a year?—They have fees on marriages, burials, and nothing else. These fees in the country parts seldom, I imagine, exceed 20*l*. yearly; at Montreal and at Quebec they amount to a larger sum. There are some few clergymen in Canada who are not paid by the society. The rector of Montreal, the rector of Quebec, and the military chaplains, derive their incomes from other sources. In Upper Canada all the clergy, except the military and naval chaplains, are paid in the way I state.

Do the clergy in Lower Canada reside on glebe, that is to say, do they reside on any part or portion of the clergy reserves?—They may perhaps rent a lot, but they are not authorized, as clergy, to reside upon any such glebe lands.

Then they reside in the most convenient position which they can find with respect to their several congregations?—They do; first, with respect to their church, and next with respect to the congregations which they are directed to visit, and which may be at considerable distances from the church.

With respect to the churches; at whose expense have those churches been erected?—A few of the leading people in a settlement who are desirous of having amongst them a resident clergyman of the Church of England, draw up a petition, addressed to the Bishop of Quebec, in which they state the circumstance. This is generally accompanied by a proposal to build a church if their wishes respecting a clergyman are complied with; then follow the names of the persons who are willing to become subscribers to that church; if there is a sufficient sum, the Bishop of Quebec, from the fund which he himself raised in this country, promises them 100*l*. when the church, as it is expressed in that country, is closed in, namely, when the boards, of which the sides are composed, are put up.

The Rev.  
*Crosbie Morgell*,  
14 June 1828.

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The Rev.  
Crosbie Morgell,  
14 June 1828.

Had you the means of ascertaining the number of persons who usually attended the congregations of those ministers of the Church of England so located in the country?—In Lower Canada there are two different descriptions of country in which our clergy reside. In one the great mass of the people are Roman Catholics; throughout this Roman Catholic population is scattered a great number of persons who are adherents of the Church of England. Many of them are at very great distances from each other, and from the clergymen of the district, and perhaps may not be able to come to church with any degree of regularity. Wherever a certain number of them are to be found in any one spot, the clergyman goes and officiates. His residence is commonly among the larger proportion. Such congregations in the country places, although there may be several of them, are small. I think that there are not more than four clergymen so situated in Lower Canada. There is indeed one at Three Rivers, but Three Rivers is a town, and contains a considerable Protestant population; there is one also at William Henry, which likewise is a town similarly situated. Of the four I have alluded to one lies in the district of Gaspé, one at Rivière du Loup, and the other at the river of L'Assomption, the fourth at Chambly. In these parts the population is, with few exceptions, French Roman Catholics, and therefore our clergy have not at any one time such large congregations as elsewhere. But I have said that in Lower Canada there is another description of population: it is found to the south of Quebec. The district is generally designated the Eastern Townships. Here the population is non-Roman Catholic, and is composed chiefly of emigrants from the United States. Our congregations in those parts generally amount to from 150 to 200 on an average. In the spring and in the autumn they do not amount to any thing like that number, owing to the bad state of the roads in those seasons; the snow in the autumn not being sufficiently deep and trodden down to enable people to pass along; and in the spring the gradual melting of the snow produces the same effect. But there is a general mode of ascertaining the congregation, which is applicable in a general way to almost every country, as far as our church is concerned. It is this; discover the number of communicants, which is very easily ascertained; multiply that number by six, and you have the congregation; and that multiplied again by two will give you the number of adherents to the church. Now, in order to show that this is a right calculation, I would instance one case; I take that of St. Andrew's, in Lower Canada. In a late report from this mission the communicants are stated at 32; that number multiplied by six will show the congregation; that is, it will give 192.

Do you mean to apply that calculation to both the Canadas?—Yes, to both the Canadas; and I should go further and apply it, in a general way, to Great Britain, as far as my experience goes.

Do those clergymen make any circuits for the purpose of dispensing religious instruction at a distance from their actual residence?—On the Sunday they officiate in the church to which they are licensed. Besides this duty, unless there is an equal congregation assembled in the evening in that particular church, they are required to go to a distance of five or six, or sometimes ten miles, in order to serve another congregation. In addition to this duty they officiate during the week at certain fixed preaching places, at which notice is previously given when the roads are passable. But sometimes for a fortnight or longer our clergy cannot reach such remote congregations. I know that some of the Canadian clergy officiate at six district places regularly, some at more than two, but all at two; and besides they are called continually to very considerable distances in order to perform funerals, and to administer the sacraments. They obey the summons of persons of any denomination.

Taking the calculation with which you have furnished the Committee, what is the result of that calculation as giving the number of adherents to the Church of England in the province of Upper Canada?—Perhaps I cannot explain the matter better than by referring to the statement respecting the number of communicants in the settlement of Perth, a military settlement in Upper Canada, as it is given in the last year's Report of the Society for the Propagation of the Gospel in Foreign Parts. I select this case because I received a few days since a letter, dated the 21st of April, from the Bishop of Quebec, in which his Lordship mentions the relative population of that place. We find in the report that the number of communicants in that mission is 163; multiply this number by six and it will give you a congregation or congregations of 978; multiply his number by two, and you have the real number of adherents of the Church of England in that particular place, which is 1,956, according to the calculation.

Now



Now in the letter I have mentioned, the bishop of Quebec states, that the Episcopalians in the Perth settlements are 2,158. This number compared with that obtained by my calculation does not exhibit any considerable difference, and proves the calculation to be a fair one for all practical purposes, I take the case of Perth, because the bishop of Quebec happens to have stated the relative population of that settlement to me in a letter which I received a few days ago, and because it confirms my calculation.

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Have you any means of informing the Committee what the aggregate numbers of the adherents to the Church of England amount to in Lower Canada, as founded upon this calculation?—I am not furnished with sufficient data upon which I can found a calculation of any accuracy.

Can you state the number of persons of other denominations in Perth?—I can. The number of Presbyterians, including dissenters from the Church of Scotland, American Presbyterians and all other descriptions of Presbyterians, is 1,581; Roman Catholics, 766; Methodists, 206; Baptists, 80. The letter mentions 11 as being of no persuasion. Generally speaking, if you enter into conversation with a person whom you casually meet in that country, being an American, or a native Canadian, and ask him what religion he is of, he will reply, although he may be regular in attending at church, that he has not joined any religion. He will not, in fact, call himself belonging to any denomination till he is a communicant.

Are you of opinion that at this moment there is a real demand in the province of Lower Canada for more churches, and for more clergymen of the Church of England than are at present supplied?—I can only state, that when I was at Quebec, there were constant applications made to the Bishop of Quebec for additional missionaries. Petitions, offers of land for the erection of churches, and offers to deed the land to the bishop, and so on, were continually received by his Lordship. These were forwarded by the emigrants, in some instances, who had come out from this country, belonging to the Church of England. From others also, who had been long settled, there have been received continual applications to the same effect. Some of these last petitioners may have previously known something of our service and discipline, but it is not to be supposed that the majority of the settlement, who never heard the liturgy of the Church of England, and know nothing about it, should be particularly anxious for a minister of this church. It must be only because they may thus have a resident minister amongst them, who is no expense to them, that they join in the application. Their feeling with regard to our church must be the same as that of the people in heathen countries who have never heard of Christianity. They cannot be said to exhibit a demand for Christianity.

Is it within your own personal knowledge, that where a resident clergyman of the Church of England has been established there has been a disposition to join his congregation on the part of persons not previously supposed to belong to that church?—I should say that, generally speaking, the congregations are composed entirely of such persons, if the settlement is not formed of British emigrants. Perhaps there may be a few leading men in such a settlement who know something of the Church of England previously, but the population, generally speaking, can know but little of it till they have had a resident clergyman.

Is it your opinion, from your own personal observation, that there is a prevailing desire among the Protestants of Lower Canada to attach themselves to the national church rather than to any other?—I should say there are two national churches as far as this empire is concerned, that of England and that of Scotland. I have stated that the population, generally speaking, have known previously but little about the Church of England until a resident minister has been placed among them. I have also said, that they have by degrees been led to adopt this form of worship, or have at least attended it. What might be the case with regard to the national church of Scotland we cannot say, as the colonists can only know it in theory from the Scotch emigrants. But that the people of Lower Canada have no prevailing desire for it is plain from the case of Montreal, where a church of American Presbyterians exist, although there are in the place two resident kirk ministers.

What church had the people been connected with previously to their joining your church?—Of every possible description of denomination. Persons coming from every county in Ireland, and from every county in England and Scotland, many from the United States necessarily bring with them a multitude of religious opinions; and no one denomination

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denomination being sufficiently strong to support a minister, they are sure to adopt generally any church whose clergy are not chargeable to them, provided only you give the church which you establish sufficient time to take root among them.

Does any particular form of worship prevail with them?—I think that until one of our clergymen has been established amongst them, they are Methodists chiefly.

What description of Methodists?—Not Wesleyan Methodists, according to our idea in this country. They are in country places most wild in their religious worship, they have camp meetings constantly: during which they will stay out in the woods for a whole week, and continue their religious exercises, praying, singing and preaching the whole time, night and day. They call themselves Episcopal Methodists.

What system of church government have they?—They have a person who calls himself a bishop, having derived that order from the hands of Wesley originally. Wesley, if I recollect right, sent out a number of persons, whom he styled bishops, to America. Such a bishop presides over a district: there are several preachers and lay-assistants under him.

Have they any constant communication with the Americans in the United States?—They have hitherto always had connection with the American Methodists of the United States. But of late I perceive from a document to which I have had access, that they have begun to withdraw from that connection. It is very desirable that they should do so, for they are certainly, notwithstanding their wildness and extravagance in many respects, the most useful and most numerous sect in Upper Canada.

Have they chiefly emigrated from England?—No; they have come chiefly from the United States. They have gradually increased in Canada ever since the country has been opened. The first settlers may have been churchmen, or of other denominations, and as they have died away, their children have adopted the persuasion of the itinerant preachers, being the only form of religion within their reach.

Are those persons to be found all through Upper Canada?—They are. There are a few of the old settlements where the people are Lutherans, and Quakers. Some Scotch settlements are Presbyterians.

Of the population of Upper Canada do you believe that a large portion has come from the United States?—Till the last emigrations by far the greatest part of the old settlers were from the United States. Most of them were loyalists after the American rebellion.

In the account you have given of the prevalence of this particular description of dissenters, do you mean it to be understood that they are confined principally to the eastern townships in Lower Canada?—No. They are to be found in almost every part of both provinces. There they have decreased, because our ministers have been so long in those settlements.

Then you mean that they are to be found over Upper Canada?—Over Upper Canada, and those in the eastern townships, who do not belong to our communion, are generally Methodists. There are, indeed, some few Baptists.

Do those persons whom you describe as being willing to attend the worship of the Church of England, after a church has been established in their neighbourhood, cease to maintain any communication with their own ministers and cease to attend their meetings?—No, they will attend preaching of any description. Not so our communicants, they adhere to us, and will not attend any other ministrations. But here I would beg leave to remark, that there are few or no regular ministers throughout the country besides those of the Church of England. The rest, excepting a small number in Upper Canada are itinerants.

But the others, though they will attend your service, still continue connected with their own ministers?—It depends upon what they are. The Methodists often keep up their connection with their own people, and the American Presbyterian will attend us, but all the time say that he has not deserted his own church, though he may communicate with us. There are, however, but a very small number of the American Presbyterians; and they, in fact, in country settlements remain adherents of our church, and elsewhere, till an American Presbyterian minister is established among them, who is brought in from the United States. In country places they cannot support such a minister, and thus their descendants become rooted in their attachment to our church, having been educated from childhood in her communion.

In that case would you consider them as regular adherents of your church?—They attend no other ministrations, though if a Presbyterian preacher from the United States was to come into the settlement, they might attend him. I say from the United States, because

because there is a great difference between American Presbyterians and those of Scotland. The United States Presbyterians will not coalesce with the Presbyterians of the Church of Scotland, and I can quote several instances of the kind.

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Do you know why?—The difference of church government is one cause, and church discipline is another thing controverted.

With respect to Presbyterians who have emigrated from Great Britain and Ireland, do they ever conform to the Church of England?—Yes, the Irish Presbyterians will; and some instances are now fresh in my memory of persons so brought up in Ireland, asking permission to receive at our altar.

Do the Scotch Presbyterians?—They will, where there is no minister of their own. They will not attend the ministrations of any other denomination, except those of the clergy of the Church of England, and of their own.

Are they in the habit of attending the church till a minister of their own is appointed, and then withdrawing from it?—In Upper Canada there are only six Scotch Presbyterian ministers, one of whom has been ordained in the Church of England lately. In Lower Canada there are only three. With the permission of the Committee I will explain what I would here say, by stating the cases of Montreal in Lower Canada, and of Cornwall and of Kingston in Upper Canada; we have had ministers in each of those places for some years; at Montreal of course for a long time; at Cornwall about 10 or 12 years; at Kingston, perhaps, much longer. In each of those places there are Presbyterian congregations, and in each of them our people exceed considerably the Presbyterian congregation. At Montreal the wealthiest of our congregation were originally Presbyterians, but they have from the first conformed and adhered to the Church of England, and have not returned to the kirk, although there are two meeting houses in the place. At Cornwall our congregation so much exceeds the Presbyterian congregation, that it is well known the Scotch minister could not find sufficient support to live there, did he not hold the government-school establishment in the place. He has only one congregation to serve, whereas our missionary includes among those who profit by his ministrations upwards of 850 souls. At Kingston, which is a peculiar case, there is a minister of ours and a minister of the Scotch kirk; and, as a proof that the Presbyterians from the United States will not coalesce with the Presbyterians from Scotland, it is observable that the former have got in a preacher of their own from the United States, and our congregation is double as large, I am given to understand, as either of them. I will not say that it is larger than both together, though I have heard it asserted. At Montreal it is precisely the same; American Presbyterians have obtained a minister from the United States. These facts tend to show that if some few native Scotchmen should return to their national church on the coming of one of its ministers among them, our church would not suffer by the circumstance.

Are the United States Methodists Calvinists?—No, very much opposed to Calvinism, in the ordinary sense of the term, and for that reason the American Methodists will not unite with any Presbyterians, nor the Presbyterians with them. There are no two bodies of Christians more opposed to each other than the Presbyterians of Canada, who are Calvinists, and the Methodists who are altogether Anti-Calvinists.

Are they Arminians?—They are strictly Arminians, and very controversial in respect of their doctrines.

Do you consider all the denominations of Presbyterians to be Calvinistick?—I do. Their catechisms and other formulæ appear to me to be so.

Do the Presbyterians whom you describe as conforming to the worship of the Church of England continue Calvinists after they conform?—I think they might not perhaps be displeased if the clergy broached Calvinistic doctrines; but I am not aware that they do; as there is no other form of worship that these Presbyterians like so well, they attend their ministrations.

Has that state of things a tendency to incline the ministers to the adoption of Calvinistick doctrine?—I think not.

Are the Committee to understand that there are to your knowledge but three Presbyterian ministers of the Church of Scotland in Lower Canada?—I think there are but three, two at Montreal and one at Quebec.

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To the best of your belief, is the number you have stated the entire number of Scotch Presbyterian ministers in both the Canadas?—To the best of my belief it is.

Can you state the number of Presbyterian ministers of the other description?—Twelve in Upper Canada; I only know of two in Lower Canada.

In stating the number of your congregations and adherents, do you reckon in those persons who occasionally attend your service but also attend the service of other churches?—Yes, I reckon them amongst the congregations, if they attend with regularity the ministrations of our clergy.

Whether they attend other congregations also, or not?—Yes. But it is only, save in a few instances, the itinerant preachers, they can attend.

You consider them as Episcopalians?—I consider them as attendants upon the ministrations of an Episcopalian.

And your calculation with regard to the number of Episcopalians is always to be taken with that understanding?—I think so; because the people know nothing of the Church of England till it has been established some time among them; and they do not appear to regard an occasional attendance on other forms of worship as incompatible with their connection with that church.

Are all the clergymen whom you have enumerated in Lower and Upper Canada constantly resident?—I do not know an instance of non-residence. Now and then they get leave to come to England, but it is with great difficulty. After they apply for leave, it takes at least three months before they can attain it, as the sanction of the Board of Society for the Propagation of the Gospel must first be received.

Have all of them churches built, and in repair?—Not all, but there are very few who have not.

Are the Committee to understand that a minister is sent to a particular district upon a petition of a certain number of the inhabitants to have a church built, and that the bishop also subscribes out of a certain fund a certain amount in aid of that object?—The minister is not sent till the church is finished, which is always built by the people of the neighbourhood. It has otherwise occurred in two cases under particular circumstances. The applicants were our own people, and they had only lately come out from Ireland, having as yet no means of building a church.

Before a clergyman or a missionary is sent into a particular district, is it necessary to specify that there is any certain number of congregation ready to receive him?—The bishop judges by the number of persons that sign the petition, and the subscription paper. He does not inquire particularly who they are, because he knows very well that if our church is to take root it must be first put in the ground.

Upon what principle did the society act formerly, when, as you state, they were in the habit of sending missionaries without previously requiring the building of a church; what was then required, before they would send a missionary?—I was not connected with Canada at that time. It occurred in the time of the late bishop.

What is the occupation of those clergy who have no churches built?—The two I have alluded to, and there are only two in the diocese, officiate in the school-houses, and wherever they can get a congregation, and they have in general as good a congregation in the school-house as they would have in the church.

Have the clergymen in Canada generally been educated in England?—Many of them have been educated in England and Ireland. There are 22 in Upper Canada out of 39 who have been educated in Great Britain. The remainder have been educated in the country. They are, I believe, chiefly the sons of loyalists; men who have mostly received a gratuity from the society of 50*l.* a year, to enable them to pursue their studies in divinity.

What opportunities have they of pursuing studies in divinity in Canada?—The opportunity they had when I was there was, that they were ordered to Quebec, and I used to lecture them twice a week by the bishop's direction, it was part of my duty to him. The Archdeacon of Quebec used also to lecture them.

Are there any persons in holy orders in Lower and Upper Canada who have previously been ministers of any other denominations?—In Lower Canada I know of but one at this moment; but in Upper Canada there are 10, and there were several applications whilst I was there.

To what sect did those belong?—Some were Lutherans, some Scotch dissenters, one kirk clergyman, and two Roman Catholic priests.

To what circumstances do you attribute the cessation of so many clergymen from their own church, and their conversion to ours?—I must hope that they are the purest motives, but I cannot dive into mens thoughts. One cause, I should imagine, may be that their people desert them after having brought them into the country with promises of support; but when they come they find themselves without a means of living.

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Is any preference given to persons on account of their being converts?—When a dissenting minister can say that a great majority of his congregation will join our worship with him, he is received, if qualified. It is the case in one instance in Upper Canada, and two in Lower Canada. Under other circumstances, any person applying for holy orders undergoes a severe scrutiny, and certainly has no preference given him because he has previously belonged to another communion.

Is there any difficulty in procuring persons to serve as clergymen in Canada, who have been educated in the doctrines of the Church of England?—Certainly, I should say there is difficulty in procuring them in Great Britain.

Is not that the reason why they have been induced to take so many persons into the service of the church who have been formerly belonging to other denominations of christians?—When a mission becomes vacant it is very desirable to fill it up as quickly as possible, and if we were to exclude all who have not been regularly educated in England, we should have to wait several months, and in the mean time sectarians would come in and perhaps disperse the congregation.

Are you acquainted with the practical jurisdiction which the Clergy Corporation exercise over those lands called the clergy reserves, which were appropriated under the Act of 1791 in Lower Canada?—In Lower Canada they had the power of leasing in 1819; and I happen to know that they were not long since in debt to their secretary.

Have you any general idea of the number of adherents of the Church of England in the province of Upper Canada?—I cannot form any idea of it, except from the calculation with which I have furnished the Committee; and this is dependant upon a knowledge of the number of communicants in the several missions.

What proportion should you say they form of the whole population?—The missionaries have told me that their congregations, except in the French parts, amount to between 150 and 200 during the time when their roads are passable; but further information than that I cannot give respecting the number of Episcopalians in the Canadas; I am not acquainted with the population of the Canadas, but I know that wherever I travelled I found persons who belonged to our church, and in many places where no clergyman had ever penetrated.

Are you aware that the House of Assembly in Upper Canada have repeatedly by a very great majority declared it expedient that the clergy reserves should be applied to the maintenance of the clergy of all Protestant religious persuasions, and not of that of the Church of England exclusively?—I know that such resolutions have appeared in the public prints; I attribute them, in part, to the smallness of the number of Episcopalians in the House of Assembly, compared with the united strength of all denominations in that House. The Houses of Assembly in Canada, like many other colonial Houses of Assembly, are not very well affected towards the Government, and the Church of England being inseparable from the Government, they of course oppose the Church of England for the sake of opposition to the Government.

Was not there a formal vote of the House of Assembly carried by a majority of 37 to 3, that the church of England is the religion of a very small proportion of the population of Upper Canada?—I do not know, I have not attended much to the state of things in the House of Assembly; there might have been very few persons belonging to our church in the House of Assembly at the time. The House of Assembly is composed of 44 members: of the church of England there are 18; of the church of Scotland there are 4; the rest are of various denominations.

Do you take that from Archdeacon Strachan's report?—It is from his speech in his place as a legislative councillor, and I believe the statement.

Do not you know that that report is entirely contradicted by the resolutions of the House?—This is not the report alluded to; the one I hold in my hand has arrived within

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The Rev. the last few days. The circumstance I attest has been stated at York, where the Assem-  
*Crosbie Morgell*, bly meets.

14 June, 1828. Is the Committee to gather from your answers that you are very little acquainted with the relative proportions of the various sects in Upper Canada?—I am acquainted with the number which attend the ministrations of our own clergy.

In the visitation you made in the upper province did you personally inspect all the churches where you visited the clergymen?—Yes, in all cases.

In every instance of the 25 clergymen whom you visited were they resident and officiating in the church?—Yes, certainly.

Are you aware of the circumstances of the 11 others whom you did not visit?—Yes; I should say that they were resident also; in fact they cannot be otherwise than resident.

Is that principle universally acted upon in Upper Canada as in Lower, of not sending a minister till a church is built?—It is now acted upon in all cases; there is, however, one missionary who is employed without having any specific church; he goes all through the diocese; I mean the visiting missionary.

Excepting the fact of the number of each congregation, you cannot give the Committee any information of the relative proportion of the adherents to the Church of England to any other sect?—I can in one particular place; but not generally.

The Committee have before them a letter, signed by Mr. Ryerson, who is the agent in this country for the Christians of different denominations in Upper Canada; in his letter he states, amongst other things, that the adherents of the Episcopalian Church alone in Upper Canada do not exceed one tenth of the inhabitants of Upper Canada; do you believe that is correct?—We have a very small number of clergy proportionate to the wants of the people, and of course it follows that the number of churchmen cannot bear a very large proportion to the whole of the inhabitants; but the real adherents of the church exceeds any other denomination; at least I have always understood so.

From your knowledge of the country, have you any idea that the adherents of the Church of England exceed one tenth of the population of Upper Canada?—I have no means of ascertaining that; I cannot at all take upon me to say.

Do you believe it to be quite impossible that they can reach to a half?—I think it cannot be so large.

Can you inform the Committee of the composition of what is called the Clergy Corporation?—They are every one of them of the Church of England.

Have you any information you can give to the Committee with respect to the value of the clergy reserves in Canada?—What I am about to state will apply equally to Upper Canada and to Lower Canada; if in any one township the lots were capable of culture, and were actually leased for 21 years upon the terms on which they have hitherto been leased, they would produce a yearly amount less than 100*l.* sterling.

You say according to the rate at which they are now leased, will you explain what that rate practically is at this time?—I cannot state it.

Upon what basis have you formed that calculation?—Upon a calculation that has been made by a person that I can fully trust in that particular.

Then, according to that calculation the whole of one township would not let for more than 700*l.* year, as the clergy reserves are one seventh of the township?—I suppose that is so.

Will you be good enough to explain what you meant when you said that in Lower Canada the Clergy Corporation were actually in debt since the year 1819?—I know that the corporation were indebted to their secretary a few pounds for keeping the books, and after defraying the expenses connected with the management of the reserves.

In what way are the expenses of the Clergy Corporation incurred?—By collecting rents, which is an enormous expense compared with the receipts.

Is there any payment to the Clergy Corporation themselves, or to the secretary?—A salary is given to the secretary, and a certain sum is allowed each member of the corporation for his expenses in coming from a distance to attend the annual meeting; nothing is allowed to those resident where it is held; but there is not a single clergyman supported by the reserves, or that nets as such a sixpence from the reserves.

Are the Committee to understand that the expenses of the collection have in Lower Canada amounted to above 100 per cent upon the rental of the clergy reserves?—I know that

that the Clergy Corporation in Lower Canada were in the debt of their secretary, a few pounds, after the balance was struck, while I was at Quebec.

Do you know that not one farthing collected by the corporation has ever been available for the support of any clergyman?—I do.

Applying these observations to Upper Canada, do you happen to know what has been the annual amount that has been derived for the purposes of the clergy from any leased lands of the clergy reserves in that province?—I do not know the sum expended in the erection of parsonages; but in the way of income, none of the clergy of Upper Canada have been in any degree benefited by them, nor can they be: they contend for them as a provision for future clergymen, when new missions are opened; as far as they are individually concerned they are wholly disinterested. Perhaps it might be as well to say that the time when the corporation in Lower Canada were in debt to the secretary, was before the new arrangement had been made, by which they have rendered the collecting of the rents easier and cheaper than formerly; whether they are now in debt I do not know.

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Lord Viscount Sandon, a Member of the Committee, Examined.

Do you recollect having a conversation with Archdeacon Strachan upon the subject of the church reserves in Canada?—I remember two or three conversations which passed, principally, I believe, in the committee-room of the Emigration Committee; I do not remember distinctly any one.

The Committee observes, in a speech made by Archdeacon Strachan, on the 6th of March 1828, in the Legislative Council of Upper Canada, that Archdeacon Strachan says that he called upon your Lordship, in consequence of the debate which took place in the month of May last year in the House of Commons, with a view of ascertaining from you exactly what you had asserted to have been Lord Grenville's statement upon that subject; and Archdeacon Strachan proceeds to say, that he called upon your Lordship, and that you stated that Lord Grenville had stated that the Scotch Presbyterians were not intentionally excluded; and provided that provision should be found more than sufficient for the established church, he saw no objection to giving them aid. Is that a correct representation of what you said to Dr. Strachan?—That certainly is not a correct representation of what passed between us. It is difficult at this time to recollect distinctly what I said to him. All I can say is, that I could not have said what he represents me to have said; for it is not now, nor ever was, my understanding of what Lord Grenville said to me.

Lord Viscount  
Sandon.  
M. P.

Have you at this moment a distinct recollection of what Lord Grenville said to you?—I remember that he stated to me that the scheme upon which he built the system that was intended to be incorporated in the Canada Act of 1791, was a good deal derived from information they had collected from an officer that had been much in Pennsylvania, of the system with regard to lands appropriated to religion and education in that State; I understood him to say, that the distinction of a Protestant clergy, which is frequently repeated in the Act of 1791, was meant to provide for any clergy that was not Roman Catholic, at the same time leaving it to the Governor and the Executive Council of the province to provide in future how that should be distributed.

Austin Cuvillier, Esq. again called in; and Examined.

Austin Cuvillier  
Esquire.

The Committee believe that you have been more or less engaged in commercial pursuits in Canada? I have.

Are you at all acquainted with the trade that takes place between Upper and Lower Canada?—I have not been directly engaged in the trade between Upper and Lower Canada, but the trade has come under my observation very frequently.

Are not all imported goods which are consumed in Upper Canada introduced through the St. Lawrence and through Lower Canada?—The principal part of the goods consumed in Upper Canada are introduced by way of the St. Lawrence, but many articles are also introduced into Upper Canada from the United States.

What proportion do you think the one class may bear to the other?—The proportion introduced from the United States must be a trifling one; formerly there were considerable

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able quantities of tea introduced into that province from the States; that is now entirely done away with.

At present are not the duties which are payable upon commodities consumed in Upper Canada levied and collected in Lower Canada?—The duties levied in Lower Canada are upon all goods imported at the port of Quebec destined for Upper and Lower Canada.

Would it be possible to devise any means of separating the goods destined for the consumption of Upper Canada from those for the consumption of Lower Canada, and levying the duties upon them separately, so that Upper Canada might appropriate strictly to itself the amount of the duties upon the commodities consumed in it?—The separation of the goods in the first instance would depend upon the importers. I know but two or three merchants importing directly goods from England residing in Upper Canada; the principal part of the traders in Upper Canada draw their supplies from Lower Canada; but I conceive that a mode might be easily established whereby Upper Canada would tax itself on the introduction of goods imported in that country, by the establishment of custom-houses or by a system of drawbacks.

Will you describe in what mode you think the first course you have suggested could be carried into effect?—Two modes might be adopted; the one by warehousing in the first instance all goods destined for Upper Canada, either at Quebec or Montreal; and to exempt them from payment of duty when taken out, upon certificate of their introduction into Upper Canada, there entered and the duties paid: the other, by allowing a drawback of duties on all goods introduced into Upper Canada from Lower Canada.

Do you think that any adequate security could be taken to prevent such goods from being smuggled into consumption in Lower Canada, in their transit from the bonded warehouse to the confines of Upper Canada?—Yes.

Will you have the goodness to explain in what mode you would carry into effect the second course you have suggested, namely, that of levying upon the frontiers of Upper Canada duties upon the goods that were introduced?—To carry into effect the second mode I have suggested, it would be necessary that an understanding should subsist between the Legislature of the two Provinces. Goods imported into Upper Canada from the Lower Province should be entitled to debenture upon proof of entry. By the same operation, and without any additional expense, the same, or other duties might be laid at the place of entry, at the discretion of the Legislature of Upper Canada.

Would not the whole process connected with this drawback be extremely injurious and troublesome to commerce?—It would be very simple; formerly there was an officer stationed at Coteau du Lac, paid by both provinces, whose duty it was to take a correct account of every article passing through that post for Upper Canada, upon which an estimate was made of the quantum of drawback which was to be allowed to that province. By adopting the same system now, you might correctly ascertain the amount of drawback on goods liable to duty. I see no difficulty whatever in making the arrangement.

Is the frontier between the two provinces easily guarded by custom-houses?—Yes, the neck of land between the one river and the other is about 24 miles.

Are there not duties collected upon rum going into Upper Canada?—The principal part of the revenue of Lower Canada is raised upon rum and wines, and little of them are consumed in Upper Canada, where they now manufacture large quantities of spirits, some of which is sent to Lower Canada for sale.

What are the goods passing into Upper Canada which are liable to duty?—All goods upon which duty is paid on importation in Lower Canada; but the largest amount is of British manufactured goods; dry goods.

Would it not be necessary accurately to ascertain the quantities of those goods passing into Upper Canada?—Most assuredly.

Would not that be inconvenient?—No; because from the nature of the country, it is scarcely possible to take goods up there without passing through the locks at the Coteau du Lac; the navigation is such, that it would be attended with great expense to deviate from that course. It is at the locks where the custom-house is established. In the winter season the facilities of introducing goods into Upper Canada without stopping at the custom-house are much greater; but if individuals had no interest in the duties to be drawn back, they might be very correctly ascertained, they would have no temptation to smuggle. All British manufactured goods are subject to duty of two and a half per cent *ad valorem* on their importation into Lower Canada. Do



Do you think that either of those modes which you have mentioned would be preferable to the system which has been lately adopted by act of Parliament, of dividing the duties collected between the two provinces?—I think the system of drawback would be preferable; because in the apportionment of the amount of duties to Upper Canada, I think there has been great injustice to Lower Canada; in a great measure Lower Canada contributes to the expenses of Upper Canada.

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Will you state upon what ground you think injustice has been done to Lower Canada in the division?—Because the estimate is made upon the amount of revenue, and the proportion allowed to Upper Canada has been founded upon its population; now the habits of life of the population of Lower Canada are materially different from that of Upper Canada; they consume proportionately more British manufactured goods in Upper Canada than in Lower Canada, upon which a very trifling duty is paid; and they consume less of rum, upon which the greatest part of the revenue is raised, and in that point of view I think great injustice is done to Lower Canada.

Do you think that any apportionment ever could be made which one province or the other would not find fault with?—The present system of apportioning the duty by arbitrators named by each province is subject to less objection than any other mode.

Is it not considered an infraction of the rights of the Assembly of Lower Canada?—I have always considered it so; but that point has been sacrificed to harmony.

Do you think there are any data according to which it would be possible to adjust accurately the proportions that ought to be received by each province?—None but the establishment of a custom-house on the frontier of Upper Canada, to ascertain the amount of dutiable articles passing into that country.

How often is the proportion allotted to Upper Canada to be regulated?—I think every four years by the Canada Trade Act; when the last apportionment was made the arbitrators of Upper and Lower Canada differed very materially; the ultimate decision was left to an umpire, a gentleman from New Brunswick, he inclined in favor of Upper Canada, as we expected.

Suppose the two provinces to view differently their own interests as connected with matters of taxation, and that Upper Canada should be disposed to put a tax upon the importation of some commodity, either differing in amount, or differing altogether from that which Lower Canada should be pleased to impose upon it, in what way then would the system you propose of duty and drawback work?—The drawback being allowed entirely would leave the articles perfectly free for taxation; the whole of them might be taxed in the same way or differently, according to the disposition of the Legislature of Upper Canada: the rest is mere matter of detail, which would be easily arranged.

Then you think that goods might go into Upper Canada duty free, although they had been charged with duty in Lower Canada, provided only that that duty was wholly drawn back?—Certainly.

Suppose that any commodity imported into Lower Canada, and subject to duty, became in Lower Canada a subject of manufacture; as for instance, suppose that upon the importation of horse hair, that horse hair was manufactured into brushes; if those brushes were imported into Upper Canada, how would it be possible to draw back the duty?—There are scarcely any manufactures in Lower Canada, and there cannot be any to an extent for a considerable time; it is strictly an agricultural country; it can never become a manufacturing one even if the dominion were changed.

You think that no inconvenience could arise from that score?—I think not.

Do you think that Lower Canada would be frequently defrauded of the amount of the drawback, by goods being sent into Upper Canada which had not paid duty?—If proper precautions were taken I do not think that any kind of fraud could be committed, especially if it was a government affair between the two provinces, without individuals being interested in it; individuals should have nothing further to do with it than to make a report at the custom-house.

Would not the difficulties that arise in collecting the revenue between the two provinces be more effectually remedied by a union of the two provinces than by any other mode?—If the provinces were united there would be no necessity for a division of the revenue.

What objection do you see to an incorporating union of the two provinces?—The union

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union of the two provinces is insuperably objectionable on many grounds. The extent of country would be too great for advantageous local legislation. Eventually, and perhaps at no great distance of time, it would require to be subdivided; Upper Canada, from its size and geographical shape, may require it soon; and one part of Lower Canada might also be desirous of being subdivided; because there are two descriptions of tenures which, in some measure, create different wants. The extent of country which would be under the operation of the United Legislature is one of the greatest objections. People called from an immense distance to a central point to legislate for parts that are so far removed, must necessarily legislate under great trouble and expense, and without sufficient grounds to enable them to legislate with perfect and equal advantage to every part of the country. There are many other reasons which were stated on the part of the Lower Province, in a letter to the Under Secretary of State for the Colonial Department, in 1823, which I think unnecessary to repeat at present; but assuredly the feeling against the union of the two provinces is very strong in Lower Canada; and I believe equally strong in Upper Canada.

Do the opinions, you have expressed lead you to think that it would now be desirable to effect any separation between the two portions of Lower Canada, which you describe as having little common interest with each other?—No; I should suppose that no such step would be proper, unless it were first required by the people themselves; generally speaking, the more united people are the better; the stronger they are, in a political point of view.

You think it would not be desirable to separate off the townships into another province?—In the manner the townships are dispersed on both sides of the St. Lawrence it could not be done: the principal disadvantage that would arise to the inhabitants of Lower Canada would be, that they would be confined within very narrow limits; it would prevent them from extending their population, probably from a dislike to the different governments and laws which would exist in the two portions of the country.

Would it be possible to draw such a geographical line as to establish a complete separation between the townships and the seigneuries?—It is impossible.

With reference to the district of Gaspé, do you think that forms conveniently a portion of the Province of Lower Canada?—I think it forms a very important portion of Lower Canada, and a very valuable portion of it. The principal fisheries, and the wealth of the river lie there; the prosperity of Lower Canada might be considerably extended if those fisheries were properly attended to.

Do you think that by an alteration of the boundary between the two provinces, an arrangement could be made of the district which would tend to the convenience of either or of both?—I do not think that the convenience of either would be materially benefited. The dismemberment of any part of Lower Canada might be considered a breach of faith on the part of Great Britain in regard to that colony, to every part of it a system of law has been secured by the capitulations and Acts of Parliament, under which property has been long possessed and regulated. To dismember any part of it would be separating, by violence, children of the same family.

Is any alteration of the boundary wished for by the inhabitants of either province?—I am not aware that any wish has been expressed by Upper Canada, nothing of the kind is desired by Lower Canada. I have heard it mentioned by some persons, that it would be desirable that there should be a port of entry for Upper Canada, in some part of Lower Canada, but I do not see any advantage Upper Canada would derive from that measure. The object, I understand, of having a port of entry, is to enable Upper Canada to tax herself; now nothing is more easy if she is inclined to do so, than the mode I have suggested.

Are there not complaints of many persons in Canada, with respect to the possession of property by the Government which formerly belonged to the Jesuits?—Complaints have been very loud on that subject; they complain that the sources of education that had been left to the country before the conquest have been destroyed, and they have no permanent means of education left them but from their own personal means.

In what way do they undertake to show that the property held by the Jesuits, and distributed by them as they pleased, was applied to general purposes of education?—Those people could not hold property for their own use, or distribute it as they pleased; it was originally granted to them by the French King and individuals for the purposes of education.

tion, and some other duties that they were to perform, the conversion of the Indians to the Christian faith, and some other religious duties; but the chief object of those estates was, that they might be employed for the purposes of education in Canada. They built a very extensive college in Quebec, which is now used as barracks, the revenues of those estates are now very considerable, and we do not know what becomes of them.

*Austin Cuvelier*  
Esquire.

14 June 1828.

Do you happen to know what took place with reference to those lands upon the expulsion of the Jesuits?—They were taken possession of by the local authorities in Canada, and are still held by them.

When were the Jesuits expelled?—The order of Jesuits, I believe, was extinguished in Europe in 1774.

In what way have the proceeds of the Jesuits' estates been employed since?—They were generally employed in the colony, before the conquest, for the purposes of education; the conquest however put an end to the higher branches of education in Canada; they notwithstanding kept a school in Quebec after the conquest; they had schools in other parts of the province, but they also subsequently became extinct.

Do you happen to know whether the estates of the Jesuits in France that were confiscated in the same way, were applied to the purposes of education?—They were employed in France, I understand, for the purposes of education under other authorities and teachers, according to their primitive destination.

Has the Assembly frequently called for an account of the proceeds of those estates?—The Assembly did call before a Committee of that body one of the commissioners, and he refused to give any information whatever respecting those estates, we foresaw that it might create considerable difficulty to make use of the power of the House at that time to compel this gentleman to make a declaration of it; the House in some measure did not press it, we rather hoped for better times, and waived the exercise of a particular right for the time.

Did the Jesuits retain any influence over the management and application of the proceeds of those estates after the conquest?—They had a control and management of their estates, excepting the college, till the death of the last of the order.

When did that take place?—I do not now exactly recollect the time, I think it was in 1801.

From that time to the present have the Government been wholly in possession of the proceeds of those estates?—They have; and they are very valuable estates. There is one in particular, the Seigneurie of La Prairie, which is completely settled, a very populous parish in the county I represent, perhaps the most populous in the county, and the revenues of it must be considerable; but we know not what becomes of those revenues. There was another order in Canada, called the St. Franciscans, upon the death of the last of that order, that property was taken possession of by the Crown, and they have since exchanged part of it for other property, which has been applied to fortifications in the Island of St. Helen's.

Is there any other property that is possessed by the Crown now which formerly belonged to any religious order?—I know of no other.

What arrangement did the Assembly seek to make with respect to the land that formerly belonged to the Jesuits?—They desired that those estates should be employed for their original destination; that is, for the education of the youth of Canada, as might be provided by the Legislature.

Seeing that the Jesuits, to whose charge the management of those estates was given, no longer exist, to what class of persons would the Assembly propose to give the direction and administration of those funds?—I believe that no specific proposition of that nature has been made, but it is a matter of detail that might be easily settled; they no doubt intended the revenues of those estates to be applied to the education of youth generally, without distinction of religion or classes, as far as the original titles would permit.

Martis, 17<sup>o</sup>. die Junii, 1828.

The Rev. *Anthony Hamilton*, called in; and Examined.

The Rev.  
*Anty. Hamilton*  
17 June 1828.

YOU are Secretary to the Ecclesiastical Board for the purpose of providing colonial clergy?—I am.

Of whom does that board consist?—Of the Archbishops of Canterbury and York, and the Bishop of London.

When was it appointed?—In the year 1824 or 1825.

By whom was it appointed?—By Lord Bathurst.

What was the form of appointment?—A recommendation from Lord Bathurst to the Lords of the Treasury, and a confirmation of it by a minute of the Treasury.

Did the board receive any instructions or directions from Lord Bathurst at the time of its appointment?—The correspondence between Lord Bathurst and the Archbishop of Canterbury, and between the Right Hon. Wilmot Horton and George Harrison, Esq. will exhibit the grounds of the appointment, a copy of which is submitted to the Committee.

Will you describe what duties the board perform?—The investigation of the character and qualifications of candidates who apply for clerical appointments in the colonies.

Do the candidates apply to the bishops, or to the Colonial Office?—The practice varies; applications are sometimes directed to the Secretary of State, and sometimes to the Ecclesiastical Board.

In that case do you refer to the application to the Colonial Office?—No, when a vacancy is intimated to me from the Colonial Office, it is my duty to recommend, through the Ecclesiastical Board, a proper person to fill that vacancy.

Of the number of candidates who apply in the course of a year, do the greater number apply personally to yourself, or to the Colonial Office?—I should think the greater number to myself direct, not generally in person, but by letter; no person is ever recommended without personal intercourse.

Is there an account kept of the applications which would show the proportions of the numbers accurately?—Yes.

Does any appointment take place without a reference to you, either from the individuals, or from the Colonial Office?—I believe not.

Has there been any instance of a recommendation of your's not having been acted upon by the Colonial Office?—I believe not.

You receive a salary as secretary to the board?—I do, of 500*l.* a year.

Is there a clerk?—There is a clerk in the office.

Is that salary paid out of the colonial revenue?—No, it is paid by the Treasury recommendation.

Does the examination of clergymen apply to all the colonies?—To all the colonies.

Having ascertained the fitness of the candidate, what steps do you take?—I draw out a form of recommendation, which is signed by the members of the Ecclesiastical Board, and then transmit it to the Secretary of State.

And in consequence of that recommendation the appointment invariably takes place?—Invariably.

In the recommendation of clergymen to fill the vacancies that occur in Canada, what steps are taken by the board?—The clergy in Canada are under the control and appointment of the Society for the Propagation of the Gospel in Foreign Parts, of which I am also secretary.

Has the board you have described, consisting of the two Archbishops, and the Bishop of London, any thing to do with the appointments in Canada?—They have not yet had any thing to do with the colony, but there are several appointments in the Canada's which are in the patronage of the Secretary of State, the great majority are in the patronage of the Society

Society for the Propagation of the Gospel; none of those in the patronage of the Secretary of State have become vacant since the establishment of the board.

Have the goodness to describe those appointments in Canada which are under the influence of the Ecclesiastical Board?—I should conceive that they are limited to the Rector of Quebec, the Rector of Montreal, and the Rector of Three Rivers.

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How does it arise that those three are under the influence of the Ecclesiastical Board? They being in the patronage of the Secretary of State, and not in the patronage of the Society for the Propagation of the Gospel.

How does arise that those three clergymen are appointed by the Secretary of State?—I believe this has been the practice from the first settlement of the colony.

By whom are their salaries paid?—Either by the local Government, or by the Government here, but I am not aware in what manner they are paid.

When you say they are under the patronage of the Government, do you mean that nevertheless they are practically recommended and appointed by the Ecclesiastical Board?—I should conceive they would be in case of a vacancy, but no vacancy has yet occurred since the formation of the Ecclesiastical Board.

Will you explain what is the nature of the functions administered by the Society for the Propagation of the Gospel in Foreign Parts?—The supply and maintenance of a body of clergy for the North American colonies. The clergy appointed by the Society for the Propagation of the Gospel in Foreign Parts, are denominated missionaries, they are appointed to certain churches in different districts, and they receive a salary from the society.

Of whom does the society consist?—It is a voluntary society, consisting both of clerical and lay members, embodied under a charter, and certain dignitaries of the church named therein.

About what number?—The incorporated list consists of 300, and the management of the society is in those; there is also an associated list, which consists of about 4,000.

When was this society first formed?—In the year 1701.

Has it a charter?—The charter was granted by King William,

Does it publish an annual report of its proceedings?—It does.

What funds has it?—It has certain funds now vested in public securities, the produce of collections and bequests, amounting to between 4,000*l.* and 5000*l.* a year. Voluntary subscriptions, amounting in the last year to about 7,000*l.*, and assistance from Parliament, amounting to about 15,000*l.*

Are the 300 persons whom you have described to be the managers all clergymen?—No.

What portion of them are clergymen?—Much the largest proportion.

Does that comprehend all the bishops?—All the English bishops, but not necessarily so.

What is the qualification which is necessary in order to entitle a person to become one of the incorporated members?—As vacancies occur in the list, they are proposed and elected by ballot.

Are they all necessarily subscribers?—They are, they cannot subscribe less than two guineas.

What salary have you as secretary?—My salary is 180*l.* a year; but I have an allowance for house rent besides.

With respect to the Canadas, what duties does this society perform?—The supervision of the clergy, the correspondence with them, and the appointment of them, and the payment of them.

What control have they over them?—They have the control which the power of the purse gives generally.

Has not the bishop an episcopal control?—He has.

When you mentioned the parliamentary assistance which the society receives, did you include in the grant which is made specially for the Canadas?—I did. I think that amounts to 7,000*l.* out of the 15,000*l.*

Does the control of the society extend only to the North American Colonies?—It does.

In what way has the number of clergymen for Upper and Lower Canada been decided upon

The Rev.  
*Anty. Hamilton*  
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upon?—According to the means of the society to support them; it would be very much enlarged if the means of the society enabled it to encrease them.

Are applications transmitted from Canada, praying the society to send out missionaries for particular districts?—Frequently.

In what way does the society know to what district a clergyman is appointed, and whether or no there is actually a congregation for him to attend to when he gets there?—No clergyman is ever appointed by the society to a congregation, unless the people themselves have already built a church, and agreed to provide a parsonage house.

Then in every instance a church has been built before a clergyman has been appointed?—In every instance, and they have either provided a house, or raised a contribution to pay for one.

Is that fact always communicated by the bishop?—It is.

Is it certified in any way?—I will not say that in every instance it is certified by the bishop that such is the case, but I have not the least doubt that such is the case, because it is intimated to this society as the rule of his lordship.

In what way do you ascertain the numbers of the congregation that is likely to attend, or the number of persons who would belong to the church?—The only way in which we can form an estimate of the congregation is from a return of the communicants; that does not take place in every instance, but there have been returns from many; and from those I should judge that the congregations vary from 200 to 300, 400 and 500, scarcely any under 200; the calculation that I should adopt is to multiply that number by six for the congregation, and then by two, to find the number of the members of the church of England.

Is that a rule applicable to England?—It requires an active clergyman to make that rule applicable. If one sixth of the congregation is too high an estimate for the communicants, the number of the congregation must be greater. I believe, from what I have heard, that calculation will not answer in the settlements adjoining the United States, because there, although there are very numerous congregations, the people are not in the habit of communicating.

Do you know on what account that is?—I conclude that, being originally dissenters, they are not yet completely confirmed in faith and practice of members of the Church of England.

Do you know how the funds are obtained for the building of churches?—By subscriptions among the people. The Society for the Propagation of the Gospel grants some assistance, but it must form a small part of the whole.

Is that frequently the case?—In almost every instance in which it is applied for.

Do you mean that assistance is granted in almost every instance in which a church is built?—I think so.

What proportion does the grant bear to the whole expense of the church?—I should think about a fifth or a sixth part.

How do you estimate the amount of the expense of building a church?—From the returns that occasionally are made. An estimate of a church in New Brunswick reached me yesterday, which exceeded 600*l.*; in aid of this church the society granted 100*l.*

Is there subsequently, after a church has been built and a grant made by the society, an account sent of the actual expense that has been incurred?—Not as a regular practice.

Have you in many instances received it?—I should say not, in Canada; in several instances, in Nova Scotia and New Brunswick, we have. Some years since, a grant of 2,000*l.* was placed at the disposal of the Bishop of Quebec; and the paper delivered in exhibits a statement of the manner in which 1,300*l.* of that sum was appropriated in assisting the erection of 20 churches, from July 1821 to December 1824.

Have you any reason to believe that the grant made by the society towards the building of churches is ever a considerable larger proportion than one fifth of the amount actually expended?—I should say not, certainly.

By whom is the estimate furnished?—By the people themselves, through the missionary or the bishop.

Can you furnish the Committee with an exact account of the sums granted towards building churches in Canada in each of the last five years, specifying the amount granted in each case?—I could furnish that.

Could

Could you also furnish an account of the estimated expense of building each church?—*The Rev. Anty. Hamilton*  
Not of each church, but I could of some.

If you can furnish the estimate in some instances, why cannot you in all?—Because we have it not returned to us; we make the grant upon the recommendation of the bishop. 17 June 1828.

Have the society any fixed principle in apportioning the sums they grant for the building of churches?—They vary according to the wants of the place; I should not say there is any fixed principle.

Can you say what is the amount they usually grant?—From 50*l.* to 100*l.* and they have granted as much as 200*l.* in particular cases; but I know no instance in Canada in which they have granted 200*l.*

Has the whole of that sum been expended?—It has.

Are there returns of the expenditure?—There has been a return of this 2,000*l.*

Is there also a return of the sums alleged to be expended in individual cases?—Yes; in every case it is certified by the bishop; the bishop draws for the money.

Is any money granted towards building parsonage houses?—Not in Canada.

Can you state out of what funds they are built?—They are built in general by the subscriptions of the people.

Have the society had any income from the clergy reserves?—None at all; the society have nothing to do with them.

What portion of the grant of Parliament is applied towards the maintenance of the clergy in Canada?—£7,000 is voted, and a much larger sum than that is distributed; in Canada no separate accounts are kept, in reference to the several accounts; a separate account for each individual missionary is entered in the treasurer's book.

Could you state what proportion of it is applied to Canada?—No doubt the whole of the 7,000*l.* is, and much more.

Could you furnish the Committee with the annual returns of the expense of the society for the last five years?—Yes, it is published every year.

According to what rule do you decide the salary that shall be paid to each clergyman in Canada?—The average of the salaries is 200*l.* a year, there are very few instances in which they exceed or are below that.

In deciding whether the salaries shall amount to 200*l.* a year, or less, have you reference to the amount of the congregation?—No, it was considered that 200*l.* a year was the least sum that any clergyman could live upon with any degree of respectability.

The Committee have seen a report at the proceedings of the society, in which they observed several columns; one contained a specification of the salary paid to the clergyman, and there was also another column headed, "A Return of the Population of each Parish," that column was entirely blank; can you state whether the missionaries have been unable to furnish returns of the number of the Protestant population of their districts?—In some instances they have done it, but it is extremely difficult.

Does that profess to be the Protestant population generally, including all dissenters?—Yes.

In what way do you define the district in which each clergyman exercises his functions; is there any thing in the nature of a parochial division?—None in Canada; it has been considered as a great defect that such a division has not taken place, it has not been for want of representations on that subject; in Nova Scotia and in New Brunswick the country is divided into parishes.

Do you know whether they have any payments from fees?—They have surplice fees, but they are very moderate, their extent is not known; they may be considerable in the large towns, such as Kingston and York.

Do the subscriptions of the society increase or decrease?—Increase.

Have you difficulty in procuring English clergymen to serve in Canada at the salary you give?—I should say not; we have a great many applications at this moment before us; the only difficulty we have is in finding means to support them.

Of the money that you apply for the support of clergymen in Canada, do you think that the greater proportion comes from the Government grants, or from private subscription?—I should think that a large portion is from Government grants, because 15,500*l.* the grant from Government, exceeds the sum total of the other resources of the society, amounting to 11,000*l.* or 12,000*l.*

Does

The Rev.  
Anky. Hamilton

17 June 1826,

Does the bishop of Quebec in his communications with the society, or with the Ecclesiastical Board, state that if there was a greater opportunity of endowing churches, and pecuniary means of supplying clergymen, there does exist a demand in that country for clergymen of the Church of England?—No doubt, he has repeated it often, and Sir Peregrine Maitland has said the same thing in his communications with Government.

Does the bishop say so with regard to both Canadas?—He says it with reference to both.

Are the churches in Canada at present abundantly supplied with clergymen?—No, we have repeated applications for more clergymen, but we have not means to support them.

Are any of the churches without ministers?—A great many clergymen serve two or three churches.

Would it be possible to have an account of those?—Yes. May I be allowed to observe, that in the first instance I deprecated this examination, because I am assured that it is defective; measures have been preparing to give information of a very superior kind to the Committee, and that information is daily expected from the bishop of Quebec. With the permission of the Committee I will make an observation upon the subject of the clergy reserves, with respect both to the question of right and the question of expediency.

Do you know what is held by the clergy in this country upon the subject of the clergy reserves?—It has formed a subject of conversation very frequently, and they consider that the right of the clergy of the Church of England in the Canadas is exclusive.

Do you apply your arguments principally to the expediency of having religious instructions provided for in one way or another, rather than to the expediency of providing for them in the particular method pointed out in the Act of Parliament?—Yes.

Do you think the having an exclusive church would tend to promote peace and harmony among the population at large?—I should think so.

Even among the French Canadians? No, the circumstances of the case are totally different.

Are you aware that petitions, very numerous, signed, have been presented from both Canadas against an exclusive church, and that the House of Assembly of Upper Canada have by a very large majority passed resolutions to the same effect?—I do not think that is conclusive against the feeling of the people in favor of the church.

Mr.  
J. C. Grant.

Mr. James Charles Grant, called in; and Examined.

Are you a native of Canada?—I am.

Have you come over to England for the purpose of representing the views of any class of persons in that country?—Yes, I have come to represent the claims of the Presbyterians.

Are you of the Church of Scotland?—Yes.

Are there in Upper Canada many persons denominated Presbyterians who differ from the Church of Scotland?—There are many who are not in communion with the Church of Scotland.

Can you state the number of each class?—No, it is impossible to give a correct statement of the number of different sects in the country, as no census has been taken.

Can you state which forms the largest class of the Presbyterians, those which are called Scotch Presbyterians, or the others?—I cannot state the comparative numbers; no means have been afforded to encourage clergymen of the Church of Scotland to settle in that country; I am only possessed of general information received from the different parts of the country; but those who are considered as Scottish seceders in that province, would join in communion with the Church of Scotland if it was established there. In the opinion of most persons it is conceived to be established by law, but it has not been so viewed by the colonial Government.

Is there any class of Presbyterians in Upper Canada who have originated from the United States?—There is.



Do they form a third class, always assuming in the question that the Scotch Presbyterians are divided into seceders and others?—They are considered as a separate class.

Would they attend the same place of worship with the Scotch Presbyterians?—I cannot speak from my own knowledge; but from the information received from different parts of Upper Canada, I have reason to think that all who are attached to the Presbyterian form of worship would join the church of Scotland.

Do you know whether they differ in doctrine or in discipline?—Not in doctrine, I believe.

Have you brought over a petition from Upper Canada?—The petition which I brought over with me is, I presume, before the Committee; it is from Lower Canada, but it purports to be on behalf of both; this petition is signed by some persons in Upper Canada; another petition was to have been transmitted to me from Upper Canada, but I have not yet received it.

What do you represent on behalf of the petitioners?—The petition sets forth the claim of the Presbyterians to a portion of the revenue arising from the clergy reserves, which have been set apart for the support of the Protestant clergy in that country. The object of the petition is to obtain a permanent provision for the support of clergymen of the Church of Scotland.

What is the number of signatures to that petition?—Upwards of 4,000.

Are many of those in Upper Canada?—I cannot say what number or proportion of the petitioners reside in Upper Canada; there are many who reside in that Province.

Have you any general notion of what the numbers of the Protestant population of Lower Canada are?—I suppose the number in Lower Canada may amount to between 60,000 and 80,000.

Have you any notion what number of that population are members of the Church of England?—The only means I have of judging of the comparative numbers, is derived from the returns that have been made to some questions that were sent to different parts of the Protestant settlements, to respectable persons that were supposed to be competent to give information upon the subject. Much excitement and discussion arose in Canada last autumn, in consequence of the publication of an ecclesiastical chart and letter, purporting to give a statistical account of religious denominations in that province, which had been prepared by Dr. Strachan for the information of His Majesty's Government; a general feeling existed, that the distorted views and erroneous statements given in that chart, were calculated to make inaccurate impressions, and lead to the most erroneous inferences and conclusions on the subject. The mode above mentioned was adopted with the view of obtaining the most accurate information; I am in possession of the answers to those questions from some of the settlements both in Upper and Lower Canada, from which, I find that the number of Episcopalians vary in the different settlements, but they form but a small proportion of the Protestant inhabitants.

Have you any more accurate means of knowing what part of the Protestant population of Lower Canada the Presbyterians constitute?—No other mode of ascertaining it than that I have mentioned.

Have not the Scotch church in Scotland sent queries to the colonies, and got returns in answer to them?—Yes, returns have been obtained from some of the settlements only. It is necessary to observe that the Protestant part of the population in the townships is so dispersed over a vast extent of country, and the means of communication between the settlements so difficult, and in some cases interrupted and inaccessible, and the difficulty of finding persons, in the absence of clergymen in the different settlements, who would take the trouble of ascertaining the number of persons attached to the different forms of worship, that the information that has been derived is not so ample as might be expected.

Can you state the proportion of the Presbyterians to the members of the Church of England in Lower Canada?—I cannot say exactly, but I believe the Presbyterians are treble in number of the Episcopalians.

What is the proportion in Upper Canada?—It is very difficult to answer that question, but I imagine that there also those denominations will bear the same relative proportion.

Mr.  
J. C. Grant.  
17 June 1828.

Mr. *J. C. Grant.* Do you feel quite confident that neither in Upper nor in Lower Canada the members of the Church of England are equal in number to the Presbyterians?—That is my impression.

17 June 1823.

Are you aware that at present the clergy reserves have been very unproductive?—They have not been very productive hitherto.

Do you know what sum they have produced annually?—I believe not exceeding 500*l.* or 600*l.* or between that and 1,000*l.*

By whom are they managed at present?—By a corporation, consisting of the bishop and the beneficed clergymen of Lower Canada.

Is that corporation composed exclusively of members of the Church of England?—It is.

Does the Presbyterian population of that province view with alarm the circumstance of the management of those clergy reserves being given to a body composed exclusively of members of the Church of England, and augur from that that there is an intention of finally giving the property of those reserves to the Church of England?—Undoubtedly; those lands were set apart for the support of a *Protestant clergy*; the Presbyterians belonging to one of the established churches of Great Britain always conceived that when those lands became productive they would participate in the revenue arising from such reserves; and the appearance of an advertisement, announcing the formation of this corporation, first excited their alarm, and induced them to look more narrowly into the situation of their religious establishments.

In what year was that?—In the year 1820. Not only among Presbyterians themselves, but I may say it was the generally received opinion in the country that they had a legal claim to a portion of those revenues.

Do the Presbyterians of Lower Canada conceive that the Church of England and themselves have the exclusive right to the property of those revenues, or would they admit other descriptions of Protestants to share in them?—They conceive that according to the language of the Act itself, those lands being set apart for the support of a Protestant clergy, none but the Church of England and the Church of Scotland could have been contemplated by the Act, as no other denomination of christians are recognised by law; at the same time I cannot say that there would be any objection on the part of the Presbyterians to a provision being made out of those funds for other Protestant ministers.

What might be the proportion of the other descriptions of Protestants, compared with the members of the Scotch Church and the Church of England?—I cannot say with respect to the eastern townships; but I suppose that in the city of Montreal they amount to about half the number of Presbyterians; from the other Protestant settlements in Lower Canada, from which answers have been received, there are but few.

Do you know the number of Presbyterian ministers in either of the two Canadas?—I can furnish the Committee with the names of the different clergymen; but that is not a proper criterion by which to judge of the number of Presbyterians; because in consequence of an ample provision having been made for the support of ministers of the Church of England, and the facilities employed by them as a religious establishment, the number of clergymen of the Church of England have multiplied in a greater ratio than their flocks, whereas the Presbyterians have had no means of providing for the support of their ministers; and as no Presbytery in Scotland will ordain a minister unless a sufficient and permanent stipend is provided for his support, numerous flocks attached to the latter church have continued to be, and are still, without pastors.

The Committee have been informed that there are two Presbyterian ministers in Montreal and one in Quebec; can you inform the Committee whether there are any others that are permanently established?—There are but two congregations in Montreal that are under the ministration of three clergymen in communion with the Church of Scotland; there is one under the ministration of a clergyman in communion with the presbytery of New York. In Quebec there is but one congregation, under the ministration of a clergyman in communion with the Church of Scotland; there is another in communion with a presbytery in some part of the United States.

Are there any other congregations in Lower Canada?—In various settlements the Presbyterians are numerous, and congregations would be formed if there were clergy men provided for them.

From what do you conclude that they would be formed?—From the desire the inhabitants have manifested, and the applications they have made for clergymen. Are

Are there other Presbyterian ministers of the Church of Scotland officiating though not with regularly formed congregations?—Yes, there are two in Montreal, who go to adjoining settlements, occasionally to perform service for the settlers in the immediate vicinity of the town.

Mr.  
J. C. Grant,  
17 June, 1828.

Are there any others in Lower Canada?—In Lower Canada, not that I know of.

What is the number of Presbyterian ministers officiating who have not regular congregations?—I believe there are about five in Upper Canada who have congregations in communion with the Church of Scotland; and I suppose there would be 20 more congregations formed in that province if there were clergymen provided for the settlements where their services are required.

Can you specify those five?—There is one at Kingston, Mr. Machar; Mr. Urquhart, at Cornwall, Mr. Mackenzie at Williamstown, Mr. Connell at Martin Town, and Mr. Sheed at Ancaster.

Can you state the number of congregations and also of officiating ministers in Upper Canada?—I cannot state from my own knowledge, but I can relate the information received from different parts of Upper Canada in answer to the queries that were transmitted. In the western district of Upper Canada there are about 8,000 inhabitants altogether, 3,500 of whom are Roman Catholics and 4,500 Protestants; one half of the Protestant population are supposed to prefer the Presbyterian form of worship. The district of Niagara is supposed to contain a population of about 20,000, three-fourths of whom are supposed to be Presbyterians, and attached to that form of worship; there are eight Presbyterian churches erected within that district, but no Scotch clergyman; the number of Episcopalians is very small. The salaries that are provided for the ministers vary from 50*l.* to 100*l.* The ministers who officiate in those churches are in connexion with American presbyteries, with the exception of one at Niagara, a Mr. Frazer, who is a Scotch seceder. In the district of Bathurst, the population amounts to about 12,000, they are chiefly from Scotland, and the majority of them are Presbyterians; there are three congregations under the ministration of clergymen of the Scotch secession that officiate within that district. This district has been settled within the last 12 years, and the inhabitants in general are too poor to contribute towards the support of clergymen.

Do the causes for the separation between the seceders and other Presbyterians and the Church of Scotland which exist in Scotland exist also in America?—Those causes do not exist in the Canadas; the clergymen of the Scotch secession in Upper Canada are formed into a presbytery, and at a late meeting they resolved that the causes of difference which have divided Presbyterians in Scotland are locally inapplicable in the colonies, and expressed their willingness to join the Church of Scotland, I am in possession of the resolutions, and will hand them into the Committee if it is desired.

Do you suppose that in case of the establishment of a Presbyterian clergy in Canada, those Presbyterians that have a connexion with the Presbyterians in the United States would be willing to join the Scotch Presbyterians?—Yes, from the information I have received, it appears that all, or the majority of them, would join.

Will you proceed to state the information you are in possession of with respect to other districts?—The Midland district contains about 30,000, one third of whom at least are supposed to be attached to the Presbyterian faith, and would join in the communion of the Church of Scotland, if they were supplied with ministers from Scotland.

Can you state how many there are of the Church of England in that district?—No, I cannot; we have more particular information from some of the townships in the eastern districts. We have received returns from seven out of twelve townships in the eastern district; there are three clergymen of the Church of Scotland residing within the district. The following is a census of four townships; the township of Charlottenburgh contains 2,104 Presbyterians, 75 Episcopalians and 1,652 Roman Catholics. Lancaster contains 902 Presbyterians, no Episcopalians, 1,019 Roman Catholics. Kenyon contains 597 Presbyterians, no Episcopalians, 490 Roman Catholics. Lochiel contains 1,152 Presbyterians, one Episcopalian, and 662 Roman Catholics.

Have you selected those townships out of the ten as affording the strongest instances of the extent of the Presbyterians?—No. I have no other motive than because the information received from those townships is more minute than from other parts; and it arises from this circumstance, that in these townships there are clergymen who have taken

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the trouble of getting information, and it is probable that the number of Presbyterians is greater there, or at least there are not so many dissenters, from the circumstance of there being established clergymen in that part of the country.

Have you in those four townships returns of the respective places of worship?—I do not at present remember; but I believe that service is performed at Lochiel, Williamstown and other places.

Are you aware whether there is any Episcopalian church in any of those four townships?—I am not aware of any.

Are there any dissenters in those townships?—No; in fact those townships are principally inhabited by Scotch; the townships of Cornwall and Roxburgh contain a total population of 2,918, and there are 1,128 Presbyterians.

Are any of the clergy reserves leased in those townships?—I cannot say whether there are; I presume, however, that some have been leased, inasmuch as those townships are well settled; and consequently it is probable that those lands have been taken up.

How are the funds provided by which those people build their churches and pay their ministers?—By voluntary contribution, and in most of the new settlements the people are poor, and have not the means of providing sufficiently for a clergyman.

Do you know what is the ordinary expense in the newly settled townships of building a wooden church capable of containing from 150 to 200 persons?—Between 100*l.* to 200*l.* I do not mean a permanent building, but one which would answer every purpose for a few years; a more substantial building would cost probably 500*l.*

Do they derive any assistance in building those churches from any other quarter?—None whatever.

Do you know the proportions of persons from different parts of the united empire which prevail among the emigrants that come in?—Emigration proceeds principally from Scotland and Ireland.

Have the General Assembly of Scotland never furnished any assistance towards the building of churches?—They have not furnished any; I presume they have none at their disposal.

You have stated that the salaries of the ministers are inadequate?—I have stated that in some of the townships first settled, and in which the inhabitants are more wealthy than those in the more recent settlements, the salaries that are paid to the clergymen vary from 50*l.* to 100*l.* a year, which is not considered sufficient for their support; and no presbytery of the Church of Scotland will ordain a minister for any parish unless there is a sufficient stipend provided.

What do they consider a sufficient stipend?—There is no fixed sum, but 150*l.* or 200*l.* a year would be an adequate provision.

How are the clergymen at Montreal paid?—By voluntary contribution.

What may be the amount of their income?—I doubt whether they receive more than 200*l.* each per annum, which is as much as their congregations can conveniently afford to pay, notwithstanding that most of the wealth of the country is concentrated in the towns.

Should you say that generally in a country circumstanced as Canada is, you conceive that the religious wants of the country are better provided for by voluntary contributions, or by funds derived from setting aside a certain portion of the soil of the country for the support of the clergy?—The people in general are too poor to provide in a sufficient manner by voluntary contribution for the support of clergymen; in such a country, while in its infancy, they necessarily require assistance from some other source.

Do you think that under all circumstances it would be necessary to set aside a certain portion of the soil for the support of the religion in the Canadas?—I cannot say that it would be necessary to set aside a portion of the soil, but I think it would be proper that some provision should be made for the support of religion, in that or some other manner.

Do you think that there would be a sufficient provision from the reserves for the clergymen when civilization was in a more advanced state, as it is in some parts of Upper Canada?—Yes; although the lands that have been set apart for the maintenance of the clergy have not been hitherto very productive, if still retained for that purpose, those lands must eventually become very valuable, but in the mean time some provision ought to be afforded from other funds.

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Are you aware that certain resolutions were passed in the Assembly of Upper Canada, asserting a right in the Assembly of controlling the funds arising from the clergy reserves, and also asserting that it would be expedient for the benefit of the colony to apply those funds not only to the support of religion, but also to that of education?—I am not aware that they asserted the right of controlling the revenue arising from those lands. I have understood that resolutions such as those last mentioned have been recently adopted in the Assembly of Upper Canada, but I have also a knowledge that in 1824, resolutions of a very different nature were adopted by that body, and a petition framed upon such resolutions was presented to His Majesty, both of which I have in my possession.

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Did the Presbyterians of the Church of Scotland in the Assembly, concur in the second resolution which has been mentioned?—I cannot say; it is only from vague report that I have understood that resolutions of that tenor had been adopted by the Assembly in Upper Canada during the last session; but I can say that not only the Presbyterians, but all other denominations of Christians in that province adopted resolutions in favour of the claim of the Church of Scotland to those reserves in 1824, and I have the petition, predicated upon those resolutions, to lay before the Committee.

Is it the general opinion of the Presbyterian Church, that the management of those clergy reserves should be left to the Legislature of the province?—I cannot say what their opinion is in that respect; but I presume that the Provincial Legislature could not, nor can control the revenue arising from those lands, except under the restriction provided by the Act of the 31st Geo. 3, c. 31.

Are you not aware of a part of that Act which authorizes the Provincial Assembly to interfere?—It does to a certain extent, but I conceive that all enactments made by the Provincial Legislature upon that subject, would be subject to such restrictions, and could produce no effect until the same should have received His Majesty's assent, after having been previously laid before both Houses of Parliament in Great Britain. The House of Assembly of Upper Canada, in 1823 or 1824, adopted the resolutions I have already mentioned in favour of the Church of Scotland, those resolutions were sent up to the Legislative Council for their concurrence. But the Legislative Council having refused to adopt those resolutions, the Assembly of Upper Canada petitioned His Majesty on behalf of the Presbyterians; I hold a copy of that petition in my hand, and with the permission of the Committee I shall read it.

[The same was read as follows:]

“To the King's Most Excellent Majesty.

“Most Gracious Sovereign.

“WE your Majesty's dutiful and loyal subjects, the Commons of Upper Canada in Provincial Parliament assembled, most humbly beg leave to approach your Majesty, and to submit to your Majesty's most gracious consideration our earnest supplications in behalf of the clergy and members of the Established Church of Scotland, in this portion of your dominions. When the kingdoms of England and Scotland were (happily for both) united under the British Crown, the subjects of each were placed on a footing of reciprocity, they were to enjoy a full communication of every right, privilege, and advantage, and their respective churches were established as “true Protestant Churches,” within their particular limits; the clergy of both might therefore reasonably expect equally to participate in the benefits which might result from the union. Viewing the conquest of these provinces from the dominion of France, by the united exertions of Great Britain and Ireland as one great advantage resulting from the union, we humbly conceive that the Churches of England and Scotland had, after such conquest, equal rights as to the exercise and enjoyment of their respective religious privileges therein, and an equal claim to enjoy any advantages or support which might be derived from the newly acquired territory. By an Act passed in the thirty-first year of the reign of our late revered Sovereign, whose memory will long live in our hearts, an appropriation is authorized to be made of one seventh of the lands of the province for the support and maintenance

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nance of a Protestant Clergy in this Province; and under the general words, "A Protestant Clergy," used in that Act, your Majesty's subjects in this province, who belong and are particularly attached to the Church of Scotland, fondly hoped that a provision had been made for the clergy of that church, as well as for those of the Church of England, and though the allotment of lands thus authorized has hitherto been in great measure unproductive, they felt a degree of confidence that it would eventually afford a fair support to the clergy of both Churches. The lands reserved under the said Act being claimed and enjoyed exclusively for the support and maintenance of the Clergy of the Church of England in this province, we humbly entreat your Majesty's consideration of the subject, and if in the legal construction of the said Act it is considered that no provision for the Clergy of the Church of Scotland was contemplated thereby, we would most respectfully and earnestly express to your Majesty our hope that your Majesty will be graciously pleased to extend to them your royal protection and consideration, by directing such provision to be made for their maintenance and support as to your Majesty may appear proper. That your Majesty may long reign in the confidence and affection of all your subjects, to guard and secure their rights in every portion of your widely extended dominions, is the prayer of your Majesty's faithful subjects the Commons of Upper Canada.

"Commons House of Assembly,  
5th Jany. 1824."

(signed)

"Levi P. Sherwood,  
Speaker."

Do you know by what number that petition was voted in the House of Assembly?—In the Legislative Council there were six against, and five for the adoption of those resolutions.

Looking at the clergy reserves merely as a question of property, independently of appropriation, do you apprehend that they have been unproductively managed by the Clergy Corporation?—I conceive that those lands might have produced more, if a different course had been adopted in regard to them.

Are you not of opinion that their existence in their present form, without any reference to their appropriation, is prejudicial to the interests of the Provinces of Upper and Lower Canada?—It is conceived that they are prejudicial; but I believe that if longer leases were granted of those lands, and if the corporation or whatever person or persons who is or are to have the management of them, were compelled to perform the labour that is required to be performed by the persons holding lands contiguous to those of other persons (the expense of which might be defrayed out of the proceeds of the sale of a portion to raise a fund for that purpose), those reserves would not produce the injury they do at present.

Are you not of opinion, that if part of those reserves were sold, and their proceeds applied for the making of roads, and for the prevention of those inconveniences which result from their being left waste, that the remainder would be infinitely more valuable than the whole are under their present circumstances?—I cannot say whether that would be the case or not, because they are so dispersed and scattered; if those lands were set apart in a block or any particular section of the country, and a portion of that section was sold, and the money applied to the improvement of the remainder, it would enhance their value; but the reserves are scattered through the different settlements.

Are you not of opinion that the sale of those scattered lots which are mixed up with that part of the country which is now settled, would be desirable, leaving the proceeds to be disposed of in such manner as might be determined upon?—I think so, though I do not conceive the present to be a favourable time to dispose of them.

If it be deemed expedient to have a provision in land for the support of any clergy, do you think that provision might more advantageously be given in large blocks, than it could be by scattering them in that manner throughout the country?—The setting apart of such lands would not be so injurious to the settlement of the country generally, as the manner in which they are scattered over the country at present; but I cannot say that such provision would be more advantageous for those for whose benefit it is proposed to be made, than that which already exists.

Are you aware that a bill was brought into the House of Commons in the year 1826, authorizing the sale of 120,000 acres per annum, of those reserves, and that the sale was left to the discretion of the Governor in Council?—Yes.

Do you consider that advantage will accrue to the Canadas from that system being acted upon?—I think that it would be advantageous to the colonies.

Is it your opinion that the establishment of a prevailing and exclusive church of the doctrine and discipline of the Church of England, in both provinces of Canada, would contribute to the prosperity and happiness of those colonies?—I do not; the people in general are attached to the Presbyterian and other forms.

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When you say that the people in general are attached to the Presbyterian form, is it your opinion that it would be desirable to give that church any exclusive privilege?—My opinion is, that no church in the country ought to be dominant, or possess political or other powers which might be prejudicial to other religious denominations; but I think that the national churches ought to receive some provision for the support of their clergy; particularly while those colonies are in their infancy.

Does any proportion of the Presbyterian population attend the ministers of the Church of England?—In the cities of Québec and Montreal some persons brought up to the Scotch church joined that of England, at times when those cities were not provided with pastors, and having married and had their children christened in that church some may have since adhered to it, while other persons may have conformed to that church from interest. In Lower Canada, (particularly among the Protestant part of the population), as well as in the Upper Province, the Church of England has been made the avenue to office; and it is also probable that some may attend service in the Church of England in those parts of the country where there are no ministers except of the Church of England.

Of the other sects which should you say, from your knowledge of the country, is the most predominant?—The Methodists and Baptists in Upper Canada.

Do you mean the Wesleyan Methodists?—The Methodists generally; I cannot say that the Weslevans are more numerous than the other.

The Committee understand that you are a lawyer?—I am.

Do you reside at Montreal?—I do.

Has your business lain much among the English townships?—A good deal.

Have you long had opportunities of observing the working of the present system of laws in the province of Lower Canada?—The last 14 or 15 years I have.

Should you say that, generally, the great mass of the population was satisfied with that system of laws?—They are with the system generally.

Does that observation apply to the population of the townships, as well as to what has been called the French population of Lower Canada?—The complaints that I have heard from the inhabitants of the townships did not refer to the general system of laws; those persons complain more of the present system by which those laws are administered, the remoteness of their situation, and the great difficulty of access to the courts of justice, and other circumstances.

Do you conceive that it would be necessary, in any alterations that are made by the Parliament of this country in the state of the laws of Lower Canada, to proceed with the greatest caution?—I do, and should be sorry to see the system of laws changed I do not think that a general change could be effected without materially injuring the rights of subjects in that country.

Do you extend that observation to the townships, as well as to the seigneuries?—I do; the principal objections I have heard from persons in the townships related to the tenure, but that question has been set at rest by the Canada Tenures Act. The inadequacy of the road laws in respect to the townships, and the want of offices for the registration of all mortgages and *hypothèques* on real estate, have also been the subject of frequent complaints on the part of the inhabitants of the townships.

What should you say generally was the system of laws in force in the English townships?—The English laws are in effect with respect to the title of landed estates, but I believe that the laws of Canada generally have governed that portion as well as the other parts of the province.

Do you consider that the Declaratory Act merely referred to the tenure of landed property?—I am not prepared to give an answer to this question at the present moment, but all doubts respecting the laws governing real property are removed by the Tenures Act.

Do you consider that advantage or disadvantage has resulted from that Declaratory Act in the townships?—I cannot say that any disadvantage has resulted from it; I believe that the people who reside in that part of the country are satisfied.

Do you distinguish the law of tenure from the law of descent?—Yes; the English laws of descent, as affecting those lands, may and ought to be altered.

Therefore,

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Therefore, though the tenure may be regulated by the free and common soccage law, the descent may not be according to the law of primogeniture?—Under the present law those lands must descend according to the laws of England.

Would the people be satisfied with that?—I cannot say with respect to that; I think they would not.

Is it your opinion that the English population in the townships, who you say prefer the tenure of free and common soccage to the French tenure, would prefer to have the descent of land according to the French, or according to the English system?—In my opinion not according to the English system; I think they would be adverse to the law of primogeniture, but they would prefer the descent according to the laws of Canada, by which children inherit equally.

Do you think they would prefer the English law of conveyancing to the laws with regard to mutations of property under the French system?—There are few notaries resident in that part of the country. In Lower Canada lands are conveyed by an instrument executed before notaries; but I am of opinion that the lands held in free and common soccage might be conveyed with equal facility in the townships as they are conveyed in Upper Canada, by a deed of bargain and sale, if provision was made for the enregistrement of deeds, as in the latter province.

Do not the inhabitants of the townships object to that part of the French law which affects real property and mortgages?—They do object to those laws which create mortgages and liens upon real property. The Canadian system of law is an excellent one, but like all other systems, it has its defects.

Do not they also object to the law affecting personal property?—I have not heard objections made to those laws that I remember.

What is the law of descent in Upper Canada?—I believe there has been a provincial Act varying the law of England in that respect, but of this I am not certain; I know that a bill for that purpose was introduced, and passed the Assembly twice or thrice, but I am not certain whether it became a law or not.

Supposing that the Canada Tenures Act was found to produce injury to persons who had received deeds or transfers under the French forms prior to the Declaratory Act, might not any inconvenience from such *bonâ fide* transactions, in your opinion, be removed by a bill giving validity to deeds passed under the French forms prior to that Declaratory Act?—Undoubtedly.

Would not you think it convenient that such transfers should be registered within a limited time for the purpose of giving them validity?—Not for purpose of giving validity to such deeds.

Are not register offices much wanted in the townships?—They are.

Do you think that the scattered state of the population in the townships presents any greater obstacle to the establishment of register offices than in Upper Canada, or in any other newly settled country?—I think not.

Have you in your possession any representations which have been made by the townships complaining of grievances which they consider themselves as sustaining?—I have not; I am aware that they have petitioned the Provincial Legislature frequently.

In your opinion, does the difficulty of borrowing money upon landed security in the townships of Lower Canada arise from the general scarcity of money, or from a defect in the law as to giving security for money so borrowed?—There is not much capital in Canada, but I believe that it is owing to a defect of the law that money cannot be borrowed upon landed security in any part of Lower Canada; capital could be procured both from England and from the United States if the repayment of it could be secured upon landed estate.

Would not the registration of mortgages cure that evil to a certain extent?—That would be undoubtedly the effect.

Is there any difficulty in making out deeds with respect to land in the townships according to the English law?—I am not aware of any difficulty; but the deed would, of necessity, be longer than under the French form, or by bargain and sale, as in Upper Canada.

You said that the mode of conveyancing in Upper Canada is by bargain and sale?—Yes.

The Committee have been informed that the form of conveyance in Lower Canada is by lease and release; is that the fact?—I have executed deeds myself in that form, but it is not so convenient.

Why



Why should they have adopted that form rather than the form of bargain and sale?—Because doubts were entertained by some as to the legality of deeds by bargain and sale executed in Lower Canada; the transfer of property in the townships has frequently passed without any regular form, or by an instrument drawn by the parties themselves.

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Do you see any reason why it should not be by bargain and sale?—No other than that no provision is made in Lower Canada for the enrolment of such deeds.

Do you consider that the statute of Henry the Eighth, making it necessary to enrol a bargain and sale, applies to Canada?—Doubts were entertained upon the subject in the colony till the passing of the Canada Tenures Act; anterior to that event it was my practice, whenever consulted respecting the conveyance of lands situated in the townships, to advise the execution of the transfer both according to the French and according to the English form.

Do you know the nature of the law relating to a *décrot volontaire*?—Yes.

Do you consider it as affording a practical substitute for the system of registration?—No; the provincial statute, passed to facilitate sheriffs sales, interposed greater obstacles to bringing property to sale than the pre-existing laws; but the statute for the *décrot volontaire* has lately expired.

Can you describe the distinction that subsists between the French tenure of *franc aleu* and the English free and common soccage?—There is little difference between the *franc aleu roturier* and the English free and common soccage; in fact, I see none, except with respect to the law of descent. With regard to the *franc aleu noble*, the laws of inheritance are also different from the laws of England; the eldest son would be entitled to an additional proportion above the other children.

Then the law of descent is different in both cases from the English law?—Yes.

Are there rates levied in Lower Canada, and applied to local purposes, of the same character as county rates in this country?—No.

In point of fact then, it is the proceeds of the duties of customs that are applied to local purposes in Lower Canada?—Hitherto that has been the case.

When sheriffs are appointed in Lower Canada is security taken?—I have always understood that security was taken, and I believe the quantum was settled by the judges generally.

It has been stated to the Committee, that in consequence of the difficulty of knowing whether real property was charged with mortgage or not, resort has been had to sheriff's sales as the best means of establishing a good title, is that so?—It is so.

Would the system of registration render that to a great degree unnecessary?—Altogether unnecessary.

Do you entertain an opinion highly favourable to the system of registration?—I do; it would prevent a great many frauds, and would have the effect of introducing capital into the country.

Do you consider that the salaries of the judges and other public officers in Lower Canada, taking into consideration the means of living there, are too high?—With respect to the judges, I think, by no means; I am not aware of any office to which a salary is attached that is disproportionate; there may be some, but I am not aware of any. The duties of the judges are very arduous, and it is not to be expected that any gentleman in the profession, who is properly qualified, would accept the office of the judge if the salary was reduced below the present amount.

Supposing the consequence of the Declaratory Act being enforced to be, to alter the law of descent as a necessary consequence, should you conceive that to be a beneficially arrangement with regard to property in Lower Canada?—I do not think so.

Are you of opinion that it would be practicable, according to the present geographical divisions between the two provinces, to establish a system of customs in Upper Canada, so as to allow Upper Canada to raise a revenue upon goods imported, independently of the province of Lower Canada, in which the port is situated?—In my opinion it would be difficult to establish it in such a way as to prevent smuggling to a considerable extent.

Have you turned your attention very much to these subjects?—I have not; but I know that the communication by the St. Lawrence, and more certainly by the Ottawa, would afford facilities for smuggling.

Do you imagine that to be the general opinion?—I cannot say that I have heard any opinions expressed upon the subject.

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Mr. J. C. Grant. Are you of opinion that the proposition of a legislative union would be likely to do away with many practical difficulties arising in consequence of the separate interests of the two provinces?—I cannot say; it is conceived by many, that it would have the effect of removing difficulties in the collection of the revenue.

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What do you conceive to be the general feeling upon the subject?—I think the general feeling would be against the measure, certainly the majority of the people in Lower Canada would be against it.

What would be the feeling with respect to a sort of congress of the two provinces, in order to direct those concerns that are common to both provinces, leaving the Legislatures of both provinces to act in those matters in which they are each distinctly interested?—Probably there would be less objection to that; but I cannot say what would be the feeling in Upper Canada respecting the first proposition; upon a former occasion, the opinion they expressed was, that they would be perfectly satisfied with whatever might be done upon that subject by the Imperial Legislature.

What is your opinion as to the law of descent of property from father to son; do you think it the best system that the land should be divided among all the children?—Undoubtedly that is the general feeling, not only in all the British colonies, but in every part of America.

Do you think that it should be made compulsory, and that the father should be prevented from leaving the land as he pleases?—No, that would be impolitic indeed.

Then you would wish to provide, that if a person died intestate his lands should be divided equally among all his children?—There is a contrariety of opinion upon the policy of the law in that respect; but for myself I think it would be more equitable that it should be so, particularly if the parent possessed the power of leaving his property to whomever he thought proper; he would take the precautions which prudence would suggest if he was desirous of transmitting the whole or any part of his estate to any one or more of his own children in particular, or even to a stranger; the inhabitants of those townships have all some education, and they generally dispose of their property by will.

In making their will do they usually divide it equally amongst all the children?—It is difficult to answer that, but, I believe that, generally speaking, they do.

In the United States, you are aware that the power of devising by will is unrestricted, but that if a proprietor dies intestate his property is divided equally among his children; do you conceive that to be the best form of law of descent for a country situated like that?—I do.

In stating that you think that is the best system, do you apply that opinion only to countries situated as Canada is, or do you think it would apply equally to countries fully peopled?—Not equally so.

Do you think it has any tendency to lead to inconvenient subdivisions of property?—I think it has a tendency to lead to a more equal and just division of property, and preferable on that account to a system which would vest large tracts of lands in the hands of a few.

Does not inconvenience result from the small portions in which the land is subdivided in the seigneuries?—Inconveniences have resulted from it certainly.

Are they frequent?—I cannot say that they are.

What instances have come to your knowledge of an inconvenient subdivision, and what gives rise to such subdivisions?—I cannot charge my memory at present with any instance; it depends upon how the property is acquired; if acquired by persons between whom a community of property subsisted after the death of one of the parents, the children are entitled to their proportion out of the estate, and call upon the surviving parent for their proportion, and in that case the land is divided between the children and the surviving parent; in the division also of real property, among co-heirs, inconvenience may possibly be sometimes experienced, but not of a description to render any interference on the part of the Imperial Legislature necessary.

What is the practice that prevails in Canada with respect to the division of the land; is it usually sold and the proceeds divided; or is it the practice actually to divide the land?—It is sometimes actually divided, where it can be done without inconvenience.

Is that the most frequent course?—It is frequently divided.

In that case, what happens as to the buildings upon the land?—They are estimated by per-

sons appointed for that purpose, and after the land is divided into certain portions, they draw lots, and the one to whose share the property with the buildings upon it falls, upon an estimate being made of the value of the buildings, is bound to give a proportion to each of the other co-heirs.

Is there not reason, from that statement, to think that the buildings upon a given estate which may be appropriate for one generation become inappropriate for the next generation, and that a new set of buildings must be erected upon a smaller scale, and of a different character?—In Lower Canada property is generally disposed of by parents before death by a deed of gift; industrious persons generally acquire the means of purchasing more farms than one, and the common practice among the French Canadians is this: when a son attains the age of majority, the parents give him a farm to cultivate for himself, and the paternal farm is generally disposed of by gift to the last child.

When the country becomes more fully peopled, must not the inconvenience be more felt?—It must.

Does not that law work throughout the United States, without any inconvenience resulting from subdivision?—I believe it does.

Then are not those ill consequences, when they occur in Canada, very much to be ascribed to the peculiar habits of the Canadian people?—Yes; and they occur more frequently among those who are only possessed of one farm or estate.

You have mentioned several amendments which you think it would be desirable to introduce in the laws of Canada; do you think those amendments are likely to be carried into effect if the province is left to itself?—It is very difficult to answer that question; those amendments may be carried into effect by the local Legislature.

Do you think it would be advisable for the Imperial Parliament to interfere in those respects, under the impression that the province will not of itself make those arrangements?—With respect to the administration of justice, I doubt whether a change will be effected by the Colonial Legislature, from the contrariety of opinions which prevail respecting a system to be adopted calculated to provide a remedy to the existing evils; but I am of opinion that it is not desirable that any change in the laws should be effected by the Imperial Legislature.

Have not there been bills brought in for the better administration of justice?—There have been bills introduced to effect a change, and a disposition has been manifested, as well by the House of Assembly as by the Legislative Council, to amend the present system; but I do not think that those bodies as at present constituted are likely to agree upon any system, although I believe that both are sincere in their endeavours to effect the change.

Is the difficulty to be attributed merely to the differences between the two parties?—No, I do not think so.

Supposing a person who has been married in this country settles and dies in Canada, leaving property acquired in Canada, would his property be distributed according to the law of Canada or according to the law of England?—I suppose the object of the question is to know whether property so acquired would fall within the *communauté de bien* in Canada; I think it would not: the *communauté de bien* is regulated by the law of the country where the marriage takes place; but I am of opinion that in the case of a person domiciled in Canada who came to England or the United States, and married with an intention of returning to Canada to resume his domicile, the *communauté de bien* would exist.

That is always supposing that there is no marriage contract?—Of course, it is in the power of the parties themselves, by a contract, to make the law to regulate their marriage rights; according to the law of Canada the parties may make any stipulation in their marriage contract which is not against good morals.

Supposing a person purchases an estate in Canada, is the estate subject to dower or not; the conveyance being according to the form of the law of England?—I think that all property in Canada would be subject to dower.

Do you ever bar dower?—No; but the parties before marriage may by their marriage contract exclude dower altogether. If the laws of England establish and regulate dower within the townships where lands are held in free and common socage, an Act of Parliament would be required, with similar enactments to the one in force in Upper Canada, to bar dower.

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How is it done there?—I am not conversant with the provisions of that Act. The question supposes that there is no marriage settlement, and that the person purchases land after the marriage, would that be subject to dower?—Land so acquired would not be subject to dower under the laws of Lower Canada; if situated within the townships, and that the laws of England have been introduced there, such land, I presume, would be subject to dower, as established by the laws of England.

The Committee are informed that settlers from England who are desirous of settling in America are unwilling to acquire property in Lower Canada, from the aversion they have to the tenure of land in that province; do you know whether that is the fact?—I have known some instances of persons being averse to settle in the country; I cannot say that their aversion arose so much from the tenure, as the danger and uncertainty of the existence of mortgages and incumbrances upon property.

If an Act were passed making it necessary to register all sales and mortgages of land, would not that in a great measure remove that objection?—As I said before, I think it would, have the effect of introducing capital into the country, which is very much wanted.

Do you think that there is any thing that can be done by the Imperial Parliament that would remove any of the difficulties you have mentioned?—If the question refers to the difficulties resulting from the want of register offices, my answer is, that with respect to the seigneuries, it would be difficult to frame a bill for the regulation of register offices; the subject would require much consideration, and it ought to be framed by persons well versed in the law of the country. In regard to the townships, a bill might be framed upon the same principle as the law in force in Upper Canada for the enregistrement of deeds, &c.

Do you think there is any wish on the part of the townships that any such interference should take place?—I think there is a wish on the part of what we term the English part of the population, that register offices should be established; whether by the Imperial Parliament or by the Provincial Parliament is a question not very important.

Is there a disposition or an indisposition on the part of the inhabitants of the townships of Lower Canada towards the introduction of the English law?—There may be persons among them anxious for the introduction of the English law, but that of inheritance, as it exists here, with the right of primogeniture, they would all be adverse to; in fact, some persons in the townships may have prejudices in favour of the laws they have been accustomed to.

Would they desire that real property should not be subject to simple contract debts?—I do not think they would wish that.

Supposing that the law of primogeniture attached to all the lands in free and common soccage, would not the people in the townships be perfectly satisfied, provided they had the power to leave it to whom they would by will, so that the law should not take effect except in case of intestacy?—I cannot say; they have already the power of disposing of their property by will.

Do you think it would be desirable to establish any system of limited entail?—It might; I understand that is the case in the United States.

What power is there of entailing property in the United States?—I believe, to the second generation.

Have you ever heard persons in Canada express a wish that such a power existed there?—No; they possess the power of entailing in Lower Canada.

Is it common to do so?—It is not uncommon; we have a species of entail by substitution.

Will you describe its operation?—The testator may leave his property by will to any person, and substitute to such person his children, or any other person.

Are there many such entails?—Substitutions of property are frequently made by will. Has that the effect of taking a considerable proportion of the real property of the country out of commerce?—It is not acted upon generally by the people in the country.

You were understood to state just now that such practice is frequent?—It is frequent among those who make wills; the French Canadian population in general do not do so.

Do they generally make marriage contracts?—Yes, there is generally a marriage contract.

If the laws affecting the land held in free and common soccage were assimilated to the English system, would it, in your opinion, be desirable to have that law administered in separate courts?—Yes.

Would there be any difficulty in establishing a court, in which all cases might be tried relative to the land held in the townships, or elsewhere, under the tenure of free and common socage?—There would be no difficulty in establishing a tribunal within the townships.

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Would it be desirable in your opinion?—I do not conceive, that for the purpose of administering the laws relating only to the tenure, it would be necessary. If the laws of England generally are introduced, regulating all matters in that part of the country, it would be necessary to have a separate tribunal.

Are not the laws of England enforced throughout in the townships?—I cannot say that they are.

In what respect do the French laws prevail in the townships?—The French laws have generally been administered for the townships.

Has any case arisen since the Declaratory Act, where there has been a descent in consequence of intestacy?—No, nor am I aware of any judicial decision by which a division of property was had anterior to the passing of that law in the townships; there was always a doubt whether the laws of England or the laws of France ought to prevail in that part of the country.

Is the Executive Council, as a court of appeals, a satisfactory judicature to the country?—It is not.

In what respect is it unsatisfactory?—In the first place the members are not professional men, with a few exceptions. The chief justice of Quebec presides in that court upon appeals instituted from decisions in the Court of Montreal, and the chief justice of Montreal presides over those from the district of Quebec.

What are the objections you have to that arrangement; is not that better than if each chief justice should sit as a court of appeal upon the cases from his own court?—It approximates very much to that, for although they do not preside in the very court in which the causes, (the decisions in which they are called upon to revise,) were instituted, they preside in one of a corresponding jurisdiction. The members of the Council generally are not professional men. A tribunal so constituted is not calculated to establish a uniform settled jurisdiction.

Is there a considerable arrear of business in that court?—Not in the Court of Appeals believe.

Is there in the other courts?—Yes that arises from a defect of the system of administering justice; the manner in which the evidence is taken, which is in writing, is very tedious, except in commercial cases.

Is the witness examined in court, or by commission?—Two of the judges preside on the bench, and the witness is taken aside to a small table and examined by the advocates interested on each side.

Then there is no decision given when the evidence is produced?—No, unless objection is taken to the relevancy of any question that is put.

If there were to be a jury introduced in such cases, would not that in some degree shorten the process?—It would shorten it.

Would it diminish the expense?—That would depend in a great measure upon the distance from which the witnesses were brought, because the expense of a jury trial is greater than that of a case conducted before the court.

Arising from what circumstance?—The summoning of jurors; the costs incurred upon that in issuing the venire, juror's fee, and other incidental expenses.

What remedy would you recommend for the purpose of diminishing the expense, and getting rid of the delays that you have described?—I think that circuit courts would have the effect of remedying the defect.

Would you conduct the examination of witnesses in the circuit courts in the same way that it is conducted in the courts at Montreal and Quebec?—I think that commissioners might be appointed to take the evidence as practised formerly in France.

Why might it not be done *viva voce*?—That might answer, but in cases relating to real estate, I do not think it would be an advantage that they should be decided by a jury, in ordinary transactions, I think it would.

Are the pleadings of counsel in writing, or *viva voce*?—The arguments are *viva voce*. There are no written arguments?—No.

*Jovis, 19<sup>o</sup>. die Junii, 1828.*

Mr. James Charles Grant again called in; and Examined.

Mr. J. C. Grant. ARE you at all acquainted with the Eastern Townships of the Lower Province?—I have not travelled through those townships, but I have a good deal of business with the people in that part of the country.

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Are you acquainted with the complaints which the inhabitants of the townships make against the order of things existing in Canada?—They have complained, I believe, of the system of administration of justice, the inadequacy of the laws respecting roads as affecting the townships, and their having no representation in the Provincial Legislature.

Is there a prevailing feeling that the French Canadians wish rather to discourage the settling of persons of English origin in the townships?—That such a general feeling exists may be inferred from the addresses presented by the inhabitants of the townships to the Earl of Dalhousie, as well as from their petition.

Do you think that there is any foundation for such a feeling; do you think in point of fact that the inhabitants of Lower Canada of French extraction do wish to discourage the settlement of persons of English origin in the Lower Province, and the growth of English institutions?—I cannot say what is the feeling of people in general; I have heard some French Canadians express themselves in a way that induced me to think that they looked upon emigrants rather as foreigners and intruders, but I cannot say that that is the general feeling.

Do you see any thing in the conduct of the Assembly, or of persons in authority there, that leads you to think that they are desirous of removing the obstructions which at present have a tendency to prevent the settlement of English in the Lower Province?—I confess that I have not attended to public matters, nor watched the proceedings in the Legislature; persons who are not in the Legislature have little opportunity of judging of the motives which actuate members of the Legislature. The debates are never published.

Do not the wishes of the English part of the population of Lower Canada form subjects of general public attention in Lower Canada?—The English part of the population in general conceive, and very justly, that they are not represented in the Legislature; I mean that the eastern townships are not represented. The British part of the population in the seigneuries are so scattered and dispersed that they have it not in their power to return a single member, inasmuch as they do not constitute the majority of the people in any one county, unless it be Gaspé.

Are you aware of the attempts that have been made in the House of Assembly to alter the state of the representation, so as to admit representatives from the townships?—I am aware that a bill was introduced for that purpose, but I am ignorant of its provisions.

Are you aware that it passed the House of Assembly, and that it was rejected by the Legislative Council?—I have understood so, but I do not know upon what principle it was intended to increase the representation.

Are you aware that complaints have been made of the constitution of the Legislative Council?—Yes, I am aware that such complaints have been made.

What have you understood to be the nature of those complaints?—I have understood that the complainants have stated, that the judges ought to be excluded, as being totally dependent upon the Crown; but I am aware also that a message, was sent down to the House of Assembly, by which the Government offered to render the judges independent of the Crown, if the Assembly would make a permanent provision for their support.

Are you aware that the House of Assembly offered to provide permanently for them, if they were made independent of the Crown?—In consequence of the message I have mentioned a bill was introduced for the purpose of making permanent provision for them, but I understood that clauses were introduced in the bill that were thought objectionable, as tending to lower the judges in the public estimation.

Have

Have you heard also as a matter of complaint against the constitution of the Legislative Council, that besides the judges there are too many persons in that council dependent upon the Crown, and in the employment of Government?—I have heard such complaints.

Mr.  
C. Grant.

What proportion does the Canadian part of the population bear to the whole population of Lower Canada?—I suppose about five-sixths.

Then on the part of five-sixths of the population those complaints exist?—I do not know whether that is exactly the case; there is but little public opinion in Lower Canada, the majority of the population pay little attention to public matters.

Should you think it desirable that such a change should be made in the constitution of the Legislative Council, as should limit the number of persons who should sit in the Council in pay and employment of Government?—That is a question I am not prepared to answer; there are not materials in that country for forming an aristocratic body, without introducing some persons holding official situations.

Are not there persons living upon their own resources, and possessing independent incomes?—There are, and some of those are members of the Council already.

Are the members of the House of Assembly in Lower Canada paid for their attendance?—No.

Are not they persons living upon their own means?—Yes; but the law has required no qualification of fortune for members of the Assembly, which is considered to be a great defect.

If there are materials for forming a body of 50 persons in the House of Assembly of persons living independently upon their own means; from what do you infer that there would be an impossibility in appointing a Legislative Council, composed of the same description of persons?—There would be no difficulty if the Council were to be composed of the same description of persons, but many of the members of the Assembly are not possessed of any fixed revenue; they are persons engaged in different occupations of life.

Supposing that the majority of the Legislative Council consisted of persons entirely independent of the Government, having an independent property in the country, and who might be disposed therefore to sympathize in a great measure with the representatives of the people in the Assembly; what would be the effect of such a change?—The fact is, that the Government in that country have little or no influence; as it is they cannot return a member in the Assembly; and if all public officers were to be excluded from the Council, I conceive that it would be, in fact, establishing a species of republic. At the same time, it was a matter of surprize and regret, with all those who were competent to judge upon the subject, that the House of Assembly did not avail themselves of the opportunity of rendering the judges independent of the Crown upon any terms.

Have you any doubt, that if there was a Legislative Council appointed of independent landholders resident in Canada, that that Legislative Council would generally concur with their brethren of the Representative Assembly?—It is very difficult to answer that question; but I am inclined to think that they would be more likely to concur with them than otherwise.

Constituted as they are at present, do they not differ with the House of Assembly in general?—They do differ as they are now constituted.

Do you think it desirable that two such Assemblies should necessarily, by their constitution, be brought into a state of perpetual collision?—I do not think it is desirable that that should be the case; but I do not know whether any improvement to be introduced should consist in altering the Legislative Council alone.

What remedies would you propose?—I would suggest, as one, the increasing the representation of the country.

Do you consider that the House of Assembly has, whether right or wrong, uniformly represented the opinions and feelings of the great mass of the population in Lower Canada? I cannot say whether they have represented the feelings of the population in general or not, they are elected by the greater proportion of the inhabitants; but the mass of the population are uneducated, and take but little interest in public matters; they are not competent to judge, or to know what takes place in the Legislature till they are informed by the members themselves, or by their friends in the country.

If the inhabitants in general take little interest in public matters, how do you explain the fact that upon each successive dissolution the Government has been gradually losing a portion of its influence in the House of Assembly?—The country people in general are uneducated,

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uneducated, and easily led by persons in whom they have confidence, and upon each successive dissolution they may have been excited by representations to take steps to secure their religion, and preserve themselves from taxation and other evils; and to my personal knowledge those means have frequently been resorted to, for the purpose of securing the election of certain candidates, and the rejection of others.

Does not that show that they really do take a very lively interest in public matters?—It shows that they take an interest when any alarm is excited among them, respecting their laws, institutions or religion.

Do you mean that the population confide the whole of their interests to the Legislative Assembly, and take very little concern about them afterwards?—They do.

How would that inconvenience be remedied by extending the representative body?—I mean that if any change is effected in the constitution, it would be fair and right to give a representation to that part of the community that are not represented at all.

Do you mean the English part of the population?—Those within the townships, for the other part of the English population are nominally represented, although they are not represented by members of their choice, because they are always out-voted.

Has there been any complaint made respecting the administration of justice, in consequence of the judges being part of the Legislative Council?—I have not heard any complaints about the impartiality of the administration of justice; but it is conceived, that so long as the judges are totally dependent on the Crown, the same independence and integrity in the administration of justice is not secured which ought to exist.

You say that the Canadians are uneducated; are there any complaints of want of education?—There are.

What is the nature of the complaints?—I have heard complaints made that the funds which were appropriated for the purpose of education have not been applied for that purpose; that is, the revenues arising from the Jesuits estates; and that the public schools in the country have been placed under the superintendence of a corporation for the advancement of learning, which is composed of the Protestant bishop and the English clergy, and members of the Episcopal Church principally; however in the year 1827 there was a project in contemplation by the Government, with the co-operation of the Roman Catholic bishop, to constitute a separate committee for the support of schools for the education of the Roman Catholic part of the community.

If you were asked what class of persons you would exclude from the Legislative Council in order to render it more independent, what class of persons would you fix upon?—I do not think the same cause would exist for excluding the judges if they were rendered independent of the Crown that exists at present.

Is there any particular class of officers that are dependent upon the Crown that you would exclude in preference to others?—I see none but the judges particularly, should they continue to hold their offices only by the same tenure that they do at present.

Would you think it desirable that a large majority of the Legislative Council should be persons absolutely dependent for their pay and employment upon the Government?—Certainly not.

Are you not aware that that is the case at present?—There are some who are dependent on the Crown, there are others who receive small salaries, whom I do not conceive to be totally dependent upon the Government; and some of the independent landholders, who are members of the Council, seldom or never attend to perform their legislative duties.

Supposing it were referred to you to decide what Legislative Council should be established in Canada for the purpose of being a check both upon the Governor on the one hand, and the Representative Assembly on the other; have you ever considered what kind of a Legislative Council you would think best?—I have not considered the subject, but I think it would be fair that some of the principal landholders of the country should be introduced into that body, at the same time I do not think it would be proper that it should consist exclusively of them.

The Rev. John Lee, D. D. called in; and Examined.

The Rev.  
John Lee, D. D.

YOU are one of the Ministers of Edinburgh?—I am.

Have any communications taken place between yourself and the Government respecting the state of the Presbyterian clergy in the two Provinces of Canada?—As convener of a committee



committee of the General Assembly, I was instructed to apply to Government in the form of a memorial, soliciting aid towards the support of the Presbyterian ministers in communion with the Church of Scotland resident in Upper and Lower Canada.

The Rev.  
John Lee, D. D.

When was that application made?—The application was made about 12 months ago, 19 June 1828.

Have the goodness to describe the nature of the application?—I will deliver in a copy of the memorial which was presented to the Colonial Office.

[The witness delivered in the same, which was read as follows.]

“ To the Right Honourable His Majesty’s Principal Secretary of State for Colonial Affairs.

“ The Memorial of a Committee of the General Assembly of the Church of Scotland,

“ Humbly sheweth,

“ That your Memorialists have been appointed by the last General Assembly to inquire into the condition of the Presbyterian clergy and people in the British provinces in North America, and have been instructed to support, by all proper means, the applications made to Government for their relief, and particularly to embrace every favourable opportunity for promoting the object of the overtures transmitted from various Synods of this National Church, recommending to the General Assembly to use their best endeavours for obtaining suitable maintenance for regularly ordained Presbyterian ministers in the British American Colonies, and assistance towards the creation and endowment of places of worship for the accommodation of the numerous settlers in those colonies professing to be in communion with the Church of Scotland.

“ The attention of the Memorialists has of late been specially called to the condition of the adherents of the Church of Scotland resident in Upper Canada, on whose behalf claims have been put forth for a share in the proceeds of the lands reserved by the 31st of his late Majesty, c. 31, for the support of the Protestant clergy. The General Assembly, in 1823, directed this Committee to support the application by all means in their power; and it is in obedience to the command of the last General Assembly that this Memorial is presented.

“ Your Memorialists cannot conceive it to admit of a question that, under the designation of a Protestant clergy, it must have been the intention of the Legislature to include, not only the clergy deriving their orders from bishops of the Church of England, but all such as might at any time be regularly ordained by Presbyteries of this National Church. The law of the land has applied the same general designation of Protestant indiscriminately to the members of either of the two established churches within the United Kingdom. In the ratification of the Treaty of Union, and in the Act of the Parliament of England, intitled, ‘ An Act for securing the Church of England as by law established,’ the expression, *Protestant Religion*, is used at least as frequently in combination with Presbyterian church government as with the government of the Church of England. And your Memorialists are not aware of any law which can exclude the members of the Established Church of Scotland from the same privileges which are claimed and enjoyed by the members of the Church of England, resident in a colony which is confessedly *British*.

“ The Memorialists trust that it is unnecessary for them to advert to the great proportion of the settlers in Canada who are attached to the doctrine, government and worship of the church of Scotland. In the extensive range of country known by the name of Glengarry, inhabited chiefly by a race of Highlanders, there are three Presbyterian ministers, each of whom preaches both in Gaelic and English, and one of whom has about 500 communicants in his congregation. Since the termination of the war many thousands of persons have emigrated from the west of Scotland, and have formed congregations, particularly in the county of Carleton, including the settlements of Lanark, Perth and Richmond. Three years ago this county (the population of which was about 6,000,) was supplied with religious instruction by four Presbyterian ministers, two Roman Catholic priests, one episcopal minister, and one Methodist preacher, from the United States. The people of that district, and of several others, have manifested a decided preference for the forms of worship practised in the Church of Scotland.

“ Your

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"Your memorialists have reason to believe that the congregations in Upper Canada in communion with the church of Scotland have been represented to Government as being few in number, when compared with the congregations which avail themselves of the ministrations of clergymen of the church of England. It cannot, however, be denied that there are in Upper Canada at least 30 Presbyterian congregations professing to adhere to the doctrine and worship of the church of Scotland, and that the existing places of worship frequented by Presbyterians are numerous and respectably attended. Though the Presbyterian ministers in the province do not exceed 20 in number, and though only five of this number have been ordained by Presbyterians of the established Church of Scotland, it is ascertained that a great majority of the people are zealously attached by principle and education to this established church. But the settlers being in general poor, do not possess the means of affording an adequate provision to ministers, and as the Presbyteries of the church of Scotland are not entitled to confer ordination on any to whom satisfactory security for a competent living has not been given, many of the settlers, who before their departure from Scotland were in communion with the church, are compelled to connect themselves with some of the sectaries whose forms resemble those of the church of Scotland, although their religious principles may not be strictly conformable to our standards. The Church of England has not laboured under the same disadvantage; funds have been granted by Government for the erection of churches, which are in many instances, if not in all, supplied by the missionaries from the Society for the Propagation of the Gospel in Foreign parts. Within the last six years (as appears from the Report of the Society for the year 1821) the number of communicants at 17 stations in Upper Canada, served by 17 missionaries, whose salaries amounted to 3,345*l.* did not exceed 118. As a contrast with this admitted fact, it may be stated that in the year 1823 the Presbyterian congregation at Perth, which began to be formed only five years before, (and which, though not served at present by a minister of the church of Scotland, must by express stipulation be so served in time to come), contained not fewer than 270 communicants. In petitions which the General Assembly has received from several ministers and elders in Canada, it is expressly stated that there are many extensive and flourishing settlements, especially in Upper Canada, the inhabitants of which are desirous to obtain clergymen of our national church, and that their exertions in building churches and raising funds for the support of clergymen, would be greatly animated if they could be assured of being placed under the jurisdiction and protection of the mother church. These petitions represent a great majority of the Protestant population as being of Presbyterian principles, and as having no disposition to conform to the established Church of England; so that wherever they have no access to the instructions of ministers ordained in the church of Scotland, they are in danger of imbibing political disaffection, as well as extravagant and irrational views of religion from some of the unauthorized teachers who are said to intrude in considerable numbers from various parts of the United States.

"Your memorialists have only further to state, that as the want of a fixed and permanent provision for clergymen ordained to such stations has hitherto restrained the Presbyterians of this church from complying with requests which have often been preferred to them, and as the settlers who have been disappointed of ministers ordained by this National Church have been tempted to throw themselves into the arms of sectaries of various denominations, (some of them of undefined creeds) it appears to be well worthy of the consideration of Government how far it might conduce to the advancement of religion and morality, and to the preservation of the loyalty and patriotism of the Presbyterian colonists, and their attachment to the British constitution, to extend to them the means of enjoying the benefit of religious ordinances on the same footing with their brethren in communion with the sister establishment, with whom they wish to avoid all collision of interests, and to whom they do not yield in regard for the honor, stability and prosperity of the empire.

\* In name of the Committee of the General Assembly.

Edinburgh, }  
June 8th, 1827. }

"JOHN LEE, Convener."

What

What answer did you receive to that Memorial?—The only answer I received from the Government was this letter, which I will deliver in.

The Rev.  
John Lee, D. D.  
19 June 1829.

[*The Witness delivered in the same, which was read as follows :*]

“ Downing Street, 4th July 1827.

“ Sir,

“ I am directed by Viscount Goderich to acknowledge the receipt of your letter of the 8th ultimo, urging the claims of the Presbyterian ministers to participate in the lands reserved for the support of a Protestant clergy in Canada, and I am to request that you will communicate to the Committee of the General Assembly of the Church of Scotland, that instructions were conveyed by Lord Bathurst to the Lieutenant Governor of Upper Canada in October last, authorizing the appropriation of 750l. per annum from the proceeds of the sale of Crown lands to the Canada Company, which Lord Goderich trusts will evince the favourable disposition of His Majesty's Government towards the clergy of the Presbyterian Church, and whenever an available fund shall be established from the proceeds of the clergy reserves, the claims of the members of the Church of Scotland will be taken into consideration.

“ I have the honor to be, Sir, your most obedient humble servant,

“ R. W. HORTON.”

What information have you of the number and condition of the Presbyterian population in the Canadas, which are in connection with the Church of Scotland?—I have had a great number of letters from ministers and others who are resident there, as the Committee of the General Assembly was instructed to correspond with those persons for the sake of obtaining precise information; but the information which was expected by the Church of Scotland is not yet nearly completed, returns not having been sent by the whole of the districts to which the queries were transmitted.

Is it not a rule with the General Assembly of Scotland that no minister should be sent to any congregation of Presbyterians without there is a certainty of his being properly supported?—That has been the rule and the practice of the Church of Scotland.

Under that rule, how many ministers have been sent to the Canadas?—So far as I know, the number in Upper Canada who have been sent under that rule is not more than six.

Have any gone there of their own accord, without authority for whom no certain stipend has been provided?—We have access to know that a considerable number have gone out otherwise, some having been sent by particular societies, private associations, formed for the purpose of sending ministers and missionaries for the instruction of the settlers there; and there are a good number who call themselves Presbyterian ministers, in Upper Canada in particular, who profess to be in communion with the Church of Scotland, but with regard to the form of whose appointment the Assembly is not informed.

Of all those descriptions, what proportion of Presbyterian ministers connected with the Scotch Church do you believe to exist in the Canadas?—The precise number I cannot state without referring to documents which I have not sufficiently arranged, not having expected to be examined by this Committee; but in Upper Canada, as I have already stated, I personally know of six; in Lower Canada, I think the number is nearly the same.

Have you any information which has led you to form any opinion as to the probable number of Presbyterians connected with the Scotch Church in the two provinces of Canada?—I could not condescend, on any thing like an exact statement of the numbers. The returns from the different districts and townships all state that the numbers are very great, and that the proportion of persons attached to the doctrine and worship of the Church of Scotland is much greater than of those who are of any other communion.

Do you speak of Upper or Lower Canada?—I am speaking of Upper Canada at present.

The Rev.  
Jhon Lee, D. D.  
19 June 1828.

What stipends have been awarded to the ministers whom you describe as having gone out to Canada?—I have no direct method of knowing exactly what is the salary of any one of them; none of them have been sent from the General Assembly itself; but they have been ordained by Presbyterians throughout Scotland, with the exception of one.

Do you know what stipend would, under the circumstances of Canada, be thought sufficient for a Presbyterian minister of a congregation of a moderate size?—I understand about 200*l.* a year to be what is thought an adequate maintenance there, and that I know is possessed by one or two.

Do any of them derive a portion of their emoluments from subscriptions or other funds provided in Great Britain?—I am not aware of any who do so, with the exception of such as are sent out by a society in Glasgow for promoting the religious interests of settlers in British North America.

If any Presbyterian ministers from the north of Ireland have established themselves in Canada, would that fact be known to your body?—It could not be known otherwise than through the communications that the committee of the Assembly have received; we know that there have been instances of such persons going there, but they are not at all recognized by the Church of Scotland.

Has any portion of the money referred to in the answer to your memorial been received?—I do not know; I have understood that it is only a limited period.

Have any communications taken place between your body and the corporation for the management of the clergy reserves in Canada?—No, I have not been the medium of any communication, and I do not know that any has taken place.

Have the body to which you belong taken any pains to ascertain what is held to be the interpretation of the statute of 1791, as affecting the Scotch Presbyterian Church in Canada; whether in point of law you have any claim upon the property reserved for the maintenance of a Protestant Church?—Certainly, we have an understanding on that subject; and I was instructed to press that matter in the memorial to the Secretary of State for Colonial Affairs.

What opinion does the body to which you belong entertain on that subject?—I conceive that the General Assembly of the Church of Scotland, in so far as any opinion has ever been expressed there, conceive that the Church of Scotland is as well entitled as the Church of England to a share of that property.

Do you hold that the words, "Protestant Clergy" exclude other denominations besides the Church of England and the Church of Scotland?—I believe that the Church of Scotland has been disposed to consider it as applicable to the members of established churches.

And of established churches only?—If I state my own opinion I would say so; but I cannot take upon me to say that that is the universal understanding of the church, but I think it is.

When did the Assembly first take into consideration this claim?—I think about six years ago; I have been only for three years connected with the committee.

Does the separation which has taken place between the two bodies of the Scotch Church exist in Canada, or would the two bodies unite there in one congregation?—We do not think that the grounds of the separation exist, at least to the same extent there that they do in Scotland; but still, so far as we know, the members of that body, called the Secession, have not bound themselves to adhere to the same standards which we acknowledge. We understand that they generally recognize the confession of faith as being consistent with Scripture; but that they do not bind themselves so strongly to the support of it as the members of the Established Church are bound.

Do not all the ministers of the Secession sign the Westminster Confession of Faith?—I do not know that they do now, but I understand that if they do they do it with some qualification. As the question has been put to me it is my duty to state, that many of the ministers connected with the Secession, both in Upper and Lower Canada, have signified their willingness to profess strict adherence to the doctrine, and discipline, and worship of the Church of Scotland.

Have you any means of knowing whether the Presbyterians of American origin in Canada would also join in the same congregations with the Scotch Presbyterians?—I have no means of knowing that.

Was that declaration of their willingness to adopt your confession of faith made by the clergymen in Canada, made since the discussion has arisen with respect to this claim?—*The Rev. John Lee, D. D.*

So far as I know, it is only since this claim has been agitated.

Is it your opinion that all protestant dissenters of every description, whether Presbyterians or not, have a right to share in that fund?—I hope I shall be forgiven for stating that we do not consider ourselves as Protestant dissenters; the Church of Scotland is an established church.

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Do you conceive that Protestant dissenters will be entitled to a share of that fund?—I am not capable of speaking upon that subject.

You mean that you consider your claim is as good as that of the Church of England?—That is our opinion. I may perhaps be allowed to state why I seem to limit the words "Protestant Clergy" further than perhaps might have been expected. It is for this reason: the Acts, both of the Parliament of England and of Scotland, passed at the time of the Union, when they speak of the Protestant religion, certainly refer either to the Church of England as by law established, or to the Church of Scotland, the government of which was then secured and ratified; and I cannot venture to say that the construction of this Act would entitle one to go further. Now as many of the Protestant dissenters do not by any means hold the doctrines, or conform to the worship, or submit to the discipline which is established in the Church of Scotland, I do not perceive how they could claim under those Acts.

*Mr. Robert Gillespie*, called in; and Examined.

WHAT acquaintance have you with the two Provinces of Canada?—I have been in Canada for a great number of years, and know them principally as a merchant trading to that country.

*Mr. Robert Gillespie.*

Are you acquainted with both provinces?—Yes, I have been in both provinces.

Do you know any thing of a petition to the House of Commons from merchants and others connected with Canada?—Yes, I do.

Did you sign that petition?—I did.

Will you state your views in setting your name to that petition?—The views that I had in doing so were, that the improvement of that country is very much retarded in consequence of the dissensions prevailing in the Lower Province, and also as a merchant not having that security in the country which I think would be very desirable for the prosperity of it.

In what way do the dissensions which prevail in the Lower Province obstruct the operations of commerce, and the improvement of the Canadas?—By preventing the enactment of laws necessary for the security of trade. There is no such thing as knowing, at present, when real property is mortgaged or not, and we are in the general course of our trade in the habit of advancing to different people merchandize, taking security on their property, and frequently finding in the end that this security is good for nothing, inasmuch as it has been mortgaged before to its full value, and we lose the whole advance; this I know from experience as a merchant.

In what way have you experienced the inconvenience you mention?—In consequence of taking security for goods advanced to people who were ready to offer their property as security, but when we came to discuss the property, we found that others had previous mortgages on it.

Have you any reason to think that this has frequently happened?—In our general trade it has frequently occurred to us.

Is the lending of money upon mortgage materially discouraged by this difficulty?—No doubt it is.

In what way did you discover that the property had been previously mortgaged?—When we sued the individual in court, others came forward with prior claims.

What remedy do you think could be provided for this evil?—I think if the House of Assembly in Lower Canada were to pass an Act for the establishment of register offices in Lower Canada, where all mortgages and incumbrances should be registered, we should then know under what terms we either advanced goods on such property, or made purchases of landed estates.

Mr.  
Robert Gillespie,  
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Is the difference of opinion which arises as to the expediency of this register one of the dissensions which you describe?—A bill has been two or three times introduced into the House of Assembly for the establishment of registry offices, but the House of Assembly always have rejected it.

Has no register bill ever passed the House of Assembly?—Not to my knowledge.

Is there any thing else which prevents merchants from pursuing their business in Canada, or from investing their property in it?—I think those are the principal points on which the merchants have difficulty in transacting business, they also prevent purchases of real estate in Canada.

Do persons of English origin object to the tenure on which land is held in Canada?—Yes.

Can you state what the objections are which they urge?—I have not paid much attention to the laws of Canada.

Do you know any thing of the tenure of land in Canada?—Yes, I know something of it.

Were you ever an occupier of land there?—A very small proprietor of land; I owned a farm once on the Island of Montreal.

On what tenure did you hold that land?—On the French tenure.

Does the French system encourage or discourage the agricultural improvement of land?—I think it discourages it.

In what way?—Few settlers or emigrants from this country will remain in the Lower Province, because they are never certain when they make a purchase of land whether it is not under incumbrance.

Have you known any cases in which the land has been abandoned after a purchase has been made?—I know an instance of an emigrant who came to Lower Canada, and made a purchase of a farm, improved it, and afterwards found that it was mortgaged, and he was obliged to give it up, to lose the money that he had paid for it, and also the improvements he had made on it.

Are the circumstances such that no ordinary prudence, in the first instance, would enable a man to protect himself against those inconveniences?—I do not know that there is any other way, except by a sheriff's sale in which you can obtain a good title in Lower Canada.

Does a sheriff's sale confer a good title against previous mortgages?—Yes it does.

Are you at all acquainted with the eastern townships in Lower Canada?—I never was in the eastern townships.

Is it the practice for persons in Canada, either born there or who have settled there as merchants, to vest their fortunes in land in that country, or do they generally remit them to England?—It has generally been the case that merchants making money in Canada have remitted it to this country.

To what do you attribute that disposition?—Because they could not obtain what they considered a good security for investment in Canada.

Does the same remark apply to Upper Canada?—I think not; register offices exist there.

Do you mean that persons intending to continue to reside in Canada would invest their capital in this country, rather than employ it in purchasing land in Canada itself?—I know many individuals of capital in Lower Canada who have remitted their monies to be invested here, they continuing to reside in the province, but perhaps not with a view of residing there permanently.

Is not that a very easy mode of ascertaining whether a title be good or not?—It is a tedious and expensive mode.

Can you state what might be the expense of obtaining a good title by a sheriff's sale, with respect to a property of 200*l.* or 300*l.* a year?—I could not state exactly the expense.

Is there any other expense besides the expense of advertising and the sheriff's fees?—It must go through a court of law; it is by a decree of the court that the sale takes place.

Is not that a formal decree, which is had for asking for?—Yes, but still attended with expense.

Are you of opinion that the French law of descent, and the French law of personal property, operate to prevent the settlement of merchants who have made money in that country?—I think so.

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What degree of change in that respect would, in your opinion, diminish that disposition to invest their capital here, as compared with investing it in Canada?—If the lands were held in free and common soccage, I think it would be a favourable change.

Are there not many lands held in free and common soccage?—Not in the seigneuries, all the townships are held so.

Do you find any disposition on the part of merchants to invest their money in lands in the townships?—No; they have a fear of their title not being good, and a great portion of those lands are of very little value, not being settled.

In point of fact, do you apprehend that under any change of laws, it would ever be desirable for a capitalist to invest large sums of money in the purchase of land in the Canadas?—If waste lands in Canada remain without paying any tax, I should think that a purchase of land in the townships of Lower Canada at a low price would ultimately be a very advantageous thing.

Do you contemplate that advantage to arise from leaving the land waste for a considerable time, and then from the improvement of the land in the neighbourhood selling at a very advanced price?—I think that in time a great part of the waste lands in Lower Canada may get settled, and those remaining unsettled will then become valuable.

Then you would contemplate the purchase of land as leading necessarily to a considerable portion of it remaining waste?—Yes.

Do you consider that desirable for the province?—Certainly not.

Would you be disposed, if you had the opportunity of settling that land at an early period, of doing so, or would you wait?—I would rather wait, it is a very expensive operation, settling lands.

In general is not the purchase of land made there with a view of retailing it?—It is generally in this way: a person buys a large tract of land under the idea that he will retail part of it and retain the other part, so that it may become more valuable in consequence of the other part being settled.

Is it for the benefit of the province that that land should be held as a permanent investment?—No, I do not think it is, unless the proprietor settles it.

In point of fact can land in Canada be very profitable, except to the immediate cultivator?—Not immediately profitable.

Do you conceive that a purchaser is more safe in Canada, in purchasing lands that are held in free and common soccage, than in purchasing land under the title of seigneurie?—Yes.

Would not a purchaser of land under free and common soccage be liable to the same fraud, from there being a prior incumbrancer whose title was concealed from him?—The lands held under free and common soccage being granted at a later period are unlikely to have the same incumbrances upon them.

Supposing you were about to purchase land held in free and common soccage, and that you wanted to ascertain whether there was a prior existing title against it, what step would you take?—I could take no step if there was no register office established, unless I resorted to a sheriff's sale.

Then you are liable to be defrauded in the purchase of lands held in free and common soccage, notwithstanding the novelty of the tenure?—Yes; but as stated before, the land is not so likely to be burdened.

In point of fact, is land in Canada very often mortgaged?—Very frequently.

You are aware that the French law of descent divides the property equally among the children; do you consider that the English population of Lower Canada would prefer that to the English law of primogeniture?—No, I do not.

Supposing two offers were made to you of a quantity of land equally good in point of bargain, the one within the seigneuries, the other within the townships; which offer would you consider to be the best for the investment of your capital?—That in the townships, because I think they will be sooner settled.

Why do you think it would be sooner settled?—Emigrants would sooner go there than remain in the seigneuries, because they would then associate with people of the same language, feelings and customs, and expect a participation of the same laws to which they had been accustomed.

There is then something in the law which would produce that effect?—In the townships the English law was promised, I believe, by the treaty of 1791.

Mr.  
Robert Gillespie,  
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Mr. *Robert Gillespie*. As in general the land within the seigneuries is better situated, being nearer to a market, would not that be an inducement to a settler to settle in the seigneuries rather than the townships?—He goes to the townships because he meets with people of the same language, the same customs, and the same habits.

19 June 1828. Do you think that their disposition to settle in the townships is not the result of any difference in the law prevailing in the two districts, but that they are desirous to inhabit among a population of their own country?—It arises from a desire to settle among their own countrymen.

Is it generally understood that the French law prevails over the townships in Lower Canada?—Yes, it is, but I am not so conversant with respect to law as some other gentlemen.

Are you acquainted with the commercial intercourse which takes place between the two provinces?—Generally so.

Can you say whether it would be possible to arrange any system by which the duties on goods consumed in Upper Canada could be collected on the boundary?—I think it would be a very difficult thing.

Would it be possible?—Scarcely.

In what would the difficulties consist?—There is an extensive boundary open to smuggling.

Would it be possible to arrange that the goods destined for the Upper province should be warehoused either at Quebec or Montreal; and that by some system a bond should be given for their entry at some particular point in Upper Canada, and that they might be transferred in that way with security?—I think it would be a very difficult matter.

Will you state in what the difficulties would consist?—The merchants in Upper Canada resort to the Lower Province to make their purchases; they do not import many goods direct from this country to Upper Canada; they generally purchase in Montreal and Quebec, the variety of articles which in Upper Canada a retail shopkeeper wants is very great, in quantities so small that it is almost impossible to import them from this country, and therefore they resort to the Lower Province, and on those goods the duty has been already paid at Quebec.

Then you think that if the duties were to be taken in Upper Canada on the goods consumed there, it would produce an extremely inconvenient separation of the trade?—I do.

Would it necessarily establish merchants trading for Upper Canada as distinct from the merchants trading for Lower Canada?—I think it might have that effect.

Could the same merchants carry on both trades conveniently?—Not conveniently, on account of the variety and smallness of the assortments required.

Would it not be necessary to have an entire separation of the commodities imported for Upper Canada, for those imported for Lower Canada?—Yes, it would of course be necessary to pack separately those goods that were going to the Upper Province.

Would not that require the embarkation of larger capital?—It would be very expensive; it would require the employment of a greater number of people and of larger capital.

And that would be equally necessary whether the duties were collected at some dépôt in Lower Canada on the goods to be transported to Upper Canada, or whether they were collected at custom houses upon the boundary of the two provinces?—Yes.

Do you see any objection to the arrangement which has taken place of assigning a certain proportion of the duties collected upon Lower Canada to the use of the Upper Province?—The Upper Province complains that it does not receive a sufficiency of the duties collected at Quebec, and the principle is bad.

Is it not likely that the difference in the habits and manners of the two provinces would induce a separate system of taxation, by leading them to consume different commodities, and making it their interest to impose taxes on different commodities?—Yes, I think it is very likely that it would be so.

Under those circumstances, would not the division which at present takes place of the revenue collected, become inconvenient, and in some sense unjust?—Yes.

Do you know of any remedy for those inconveniences?—I know of none, but a reunion of the provinces.

Do you think that is a desirable measure?—I think so.

Will you state on what grounds you entertain that opinion?—I think that the difficulties that occur relative to the division of the revenue would be set at rest. Ans



Are there any other inconveniences that would be set at rest by the union?—The Legislature of Lower Canada may wish to impose taxes upon produce coming from the Upper Province, and though at present they have it not in their power to do so without the concurrence of its Legislature, I think this would be best attained by a union. The Lower Province in one instance, I believe, imposed a tax upon timber coming down.

Mr.  
Robert Gillespie.  
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Does that tax exist now?—It does not exist at present.

Was it upon timber that was supposed to be brought from the United States?—No, timber from Upper Canada.

Has any other transit duty been established?—Not to my knowledge.

What other inconvenience is there in the present system?—The inconveniences in Lower Canada are such, that the mercantile interests in the House of Assembly are unrepresented. By a union of the provinces a great number of English representatives would be obtained, and many Acts by which the country would be improved, would, I think be passed.

Do you think that the English mercantile interest is in any way discouraged in Lower Canada at present?—I think it is; the Lower Province at present raises comparatively little for the exports of the country. The merchant of Lower Canada has to look to Upper Canada, and to the townships for articles of export, as the Lower Province produces few or none.

Do not they export timber, ashes, and corn from the seigneuries?—With respect to corn, the last year they did not raise more than would be necessary for the consumption of the Lower Province.

Is there a surplus in the townships?—Not in the townships of Lower Canada; in Upper Canada there will be a surplus.

To what do you attribute the circumstance of there being no surplus of grain raised by the inhabitants of the seigneuries?—I think the Canadians are bad agriculturists.

Are they rendered so by the tenure of their land and their system, or is it any thing in their individual qualities?—I think their system of agriculture is bad.

To what do you attribute the badness of their system, and the superiority of the practice in Upper Canada?—In Upper Canada they follow the English, or more properly the English-American, system of farming; in Lower Canada they retain the old French custom of grazing the land one year and ploughing it the second, without the rotation of the English system.

Are not the soil and climate much more favourable in Upper Canada than in Lower Canada?—The climate is somewhat more favourable, and the new soil is better than the old in cultivation in Lower Canada.

Does the timber all come from Upper Canada?—Principally.

What are the principal articles of produce in Lower Canada which are exported from thence?—Grain and ashes.

Is the quantity of ashes from Lower Canada greater than that from Upper Canada?—I think not.

From what parts of the Lower Province are the grain and ashes exported?—The grain exported from Lower Canada, and raised there, is principally grown in the district of Montreal, and the greater proportion of ashes are made in the townships.

Do the descendants of French Canadians consume English goods to a considerable amount?—They do.

Is there any difference between the habits of the seigneuries and the habits of the townships and of Upper Canada in that respect?—In Lower Canada they dress somewhat differently; they use an inferior article of woollen cloth, for instance, to what they use in Upper Canada or in the townships.

Is there any trade direct between France and Canada?—Very trifling.

Is there much connection maintained between the descendants of the French settlers and France?—There are occasionally Canadian gentlemen who visit France and return.

Is there much emigration from France into the Lower Province?—Very little. I believe that the priests in the seminary at Montreal are generally Frenchmen.

What branches of trade are you most acquainted with?—With the trade of Canada generally.

Do you know whether the imports from the United States into Canada are increasing?

—There is a duty on American goods coming into Canada which checks them. Is

Mr.  
Robert Gillespie  
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Is Canada, in fact, supplied with many articles of the manufactures of the United States, some coming in under duty, and others coming in by means of smuggling?—A great many ashes from the United States come into Canada.

Is it not the fact, that ashes from the United States imported into Canada for the purpose of being re-exported pay no duty different from what they would pay if they were the produce of Canada?—None at present; and it is very desirable that it should be so.

It has been suggested to the Committee that it would be possible to carry on the trade between the two provinces upon the footing of duty and drawback, that is to say, that all goods imported into the Lower Province should pay duty in the first instance, and upon their being exported from thence into the Upper Province the duty originally paid should be drawn back, and that a fresh duty should be paid upon their admission into Upper Canada; do you think that such a system could be acted upon with security to the revenue and with convenience to the trade?—I am afraid it would be attended with great inconvenience: the boundary is extensive, and the great variety of goods imported into Upper Canada, on which there would be different duties, would make it a very intricate and troublesome operation.

Supposing a higher duty were imposed upon the article in the Upper Province than was paid in the Lower Province, do you think that increased duty could be collected, taking into consideration the facilities of smuggling from the Lower Province into the Upper Province?—I think not, but it would depend upon the difference of duty in some measure.

When you advert to the subject of smuggling, do you mean smuggling by means of water communication, or by land?—Smuggling principally in winter by land.

Is it your opinion that generally speaking the inhabitants of either province wish for a union?—The English part of the community in Lower Canada wish for a union of the provinces, and I think the majority of the inhabitants of Upper Canada.

Then you do not think that a union between those two provinces would excite any great discontent?—It would depend very much upon the nature of the Act that would unite them; a union bill was introduced into Parliament some years ago, in which there were clauses that were very objectionable.

Do not you think it would excite great discontent among all the French inhabitants?—It would depend entirely upon the Act. I conceive that there are many people in Lower Canada, who, provided the Act was a just one, and they thought that their laws and their religion were not to be interfered with, would not have serious objections.

You do not conceive that there is generally an objection in principle to the union of the two provinces?—Not generally.

Mr.  
George Ryerson.

Mr. George Ryerson, called in; and Examined.

ARE you acquainted with the Provinces of the Canadas?—Yes, I am.

In what capacity have you become acquainted with them?—I have lived there about 28 years.

Of what country are you a native?—I am a native of Nova Scotia.

Are you a landowner in either of the Canadas?—Yes, I am a landowner and magistrate in the district of London in Upper Canada, and have been for a number of years.

Did you come here as agent for any petition?—I was appointed agent after I came here, I came on private business.

What petition is that which you have been appointed to represent?—A petition relative to the constitution of the University of Upper Canada, and the appropriation of the clergy reserves.

By what number was that petition signed?—By about 8,000.

What were the prayer and the objects of that petition?—The object of the petition was to correct some erroneous statements in certain official communications from the Rev. Doctor Strachan to His Majesty's Government, to vindicate the character of several religious denominations whom they assert had been misrepresented in those communications; to procure such an alteration in the charter of the proposed university in Upper Canada as would render the institution equally beneficial and accessible to all denominations of Christians, and to solicit the Government to sell the clergy reserves and to appropriate the proceeds

proceeds for the support of public schools free from religious tests, and for the purposes of internal improvement in Upper Canada.

What religion is professed by the petitioners?—They consist of various denominations of Christians.

Did many Presbyterians sign that petition?—Yes; some of the principal signers are Presbyterians; the chairman of the committee, Mr. Ketchum, is one of the leading Presbyterians in Upper Canada.

The Committee have before them a paper, signed by Mr. Morrison as secretary to the central committee that was proved in the Upper Province of Canada for the object you have mentioned, what is the nature of that paper?—It was a letter I received from the secretary and chairman of the committee to authorize me to attend to the interests of that petition.

This paper refers to an ecclesiastical chart of the different denominations of Christians in Upper Canada, derived from different clergymen and persons much interested in the result of those petitions as to the numerical strength and number of the different denominations of Christians in that province; have you any such chart with you?—That chart is attached to the petition that was laid before the House of Commons.

Can you describe the manner in which that chart was formed, and what means were taken to insure its correctness?—The secretary of the committee wrote to ministers of the different denominations of Christians, and to other intelligent individuals, requesting a correct return of the number of their churches and members, and ministers, and of those who stately attended their religious instruction, &c.; much pains were taken to ascertain the correctness of the returns. The chart was published in Canada, where any errors would be discovered and exposed by those interested in the subject.

Can you certify the accuracy of that document?—I know the most material part of it to be correct, and I believe that the whole of it is so.

Can you state to the committee the substance of it?—I cannot at this moment. The chart does not profess to give a perfect view of the numerical strength of the English Church, the Presbyterians, Quakers, and Menonists, though it does in general of their ministers and places of worship. The account of the Methodists and Baptists is more detailed and complete; it gives the names of the ministers, the place of their birth and education, the number of chapels, regular and occasional religious services, members of their church and regular hearers. The Methodists are the most numerous denomination.

What denomination of Methodists, are they Wesleyan Methodists?—They are essentially Wesleyan in doctrine and discipline, but form a distinct body, denominated the Canada Conference; their ministers meet annually in a conference in Upper Canada.

What denomination is next to them in number?—I think the different classes of Presbyterians are the next, but they are not in organized societies, they have but few ministers.

What denomination do you conceive to be next to them in number?—I think that the Church of England and the Baptists are about equal in number, and next to the Presbyterians.

Does the chart you have referred to give a tolerably correct statement of the proportions of all those denominations?—It does, I believe, give a correct return of the churches, the ministers, and the religious services of the different denominations, but not a full account of the number belonging to each, except the Methodists and Baptists. They keeping an accurate account of all their societies, were able to furnish specific information. It is scarcely possible to give a return of the Church of England, because there are but few communicants. In the other societies none are returned as belonging to them but those who are adult communicants.

It is stated in Mr. Morrison's letter that the Presbyterians refused to join the petitioners generally?—By that part of the Presbyterians who are members of the Church of Scotland the petition was not, I believe, generally signed.

What do you attribute that to?—They wish to get half of the reserves themselves: but the largest proportion of the Presbyterians of Upper Canada, I believe, joined in the general petition.

It appears also that the Roman Catholics did not join; do you conceive them to be very numerous in Upper Canada?—In the upper part there are a few townships of French

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Canadians,

Mr.  
George Ryerson.

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Mr. George Ryerson. Canadians, and a township of Highland Scotch in the lower part who are Roman Catholics; in other parts of the province they are not numerous.  
 Are there many Irish Catholics?—There are in some few of the new townships recently in habited.

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In this letter there are many complaints of the manner in which the statement of the number of communicants of the Church of England was drawn up; have you any observations to make upon that subject?—No, I am not acquainted with that; I know the number to be very small.

You have stated that Dr. Strachan has made some mis-statements; what grounds have you upon which to offer opposite statements to those of Dr. Strachan?—Dr. Strachan says that the majority of people belong to the Church of England and I know that to be incorrect, and that the Church of England is amongst the least numerous of the different denominations; the congregations are generally very small, except in the town of York, where there are a number of Government officers. Dr. Strachan in his chart omits several denominations of Christians altogether, as the Baptists, the Quakers, and the Methodists; and he mentions the Methodist teachers as being disaffected and alienating the minds of the people from the Government. I know that to be wholly incorrect; for a large proportion of the ministers are old loyalists, and several of them men that have fought in defence of the country. A very large proportion of the Methodist societies also are the descendants of old American loyalists. In the late war no men distinguished themselves more in the defence of the country than the Methodist societies generally.

It has been stated that the tendency of a large part of the population of Upper Canada would be towards the established church, if ministers of the established church and suitable places of worship could be provided; do you believe that to be the fact?—No; they have greater means of providing places of worship and of procuring ministers than any other denomination: they receive a grant of 100*l.* towards building a very small church, and their ministers are paid by this country, and have several sources of emolument and peculiar privileges refused to ministers of other denominations; but they have not increased in the same proportion as others have done.

Do you know any district in which, there being an established church and a minister provided, the number of other denominations of Christians yet exceed the number of the members of the Church of England in a large degree?—Yes; in the town of York, where there are several Clergymen officiating in the Church; there is no place in Upper Canada where the other denominations are more numerous and increase faster. I was there about a year ago, and I visited several Sunday schools belonging to the Presbyterians, the Methodists, and the Baptists, but there was more attached to the Church of England; I believe it to be the case in almost every place in Upper Canada where there is a resident minister of the Church of England.

How many congregations of the Church of England are there in York?—There is one, Dr. Strachan's church.

Do you know the number of which that congregation may consist?—No, I cannot state the number exactly; I think not more numerous than the Methodists alone.

How many congregations of Methodists are there?—There is only one chapel of each denomination, Church of England, Roman Catholics, Presbyterians, Methodists, and Baptists.

What schools are there connected with the Church of England establishment?—The district schools, of which Dr. Philip is the teacher; and a central school on the national system.

Are there any district schools for the other denominations?—There are two large schools that consist of Methodists, Presbyterians, and others.

Have the churches for the other denominations of Christians been built entirely by voluntary subscription?—They have, and their ministers are maintained in the same way.

Has there been any select committee lately appointed by the House of Assembly in Upper Canada, upon subjects connected with the religious state of the province?—Yes, and I have forwarded a copy of their report to the Colonial Office.

What opinion did that committee express upon the accuracy of Dr. Strachan's statements?—They expressed an opinion that it is inaccurate in almost every particular.

Did

Did the committee express any opinion upon the university that has lately been founded in Upper Canada, with reference to its religious character?—Yes, they disapprove of the character of it, and I believe it is generally disapproved of by the largest proportion of the people in Upper Canada.

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Upon what grounds?—On account of its being under the exclusive control of one denomination of Christians, and requiring religious tests, and the large appropriation of lands which is made for its support, renders it unlikely that other institutions will be founded open to other denominations of Christians.

Has a strong feeling been excited in Canada by the representations of Doctor Strachan? Yes, very strong, I have never known any thing produce so much excitement through the country, except the Alien Bill.

Does it threaten to produce still greater excitement?—Religion has never been considered a party question before, but it is now likely to assume that form; and the ecclesiastical chart, and the charter of the college have tended to unite all the different denominations of Christians together in a party opposed to the Church of England, and to those that uphold its exclusive claims. They have not opposed the church before, but they feel themselves called upon to do it in defence of their civil rights and religious liberties now.

Have the seceders from the Church of England increased in number in consequence of this?—I think they have: those who were undetermined before have now assumed a more decided course of conduct in opposition to the Church of England and the university, and I think it will have a material influence upon the character of the House of Assembly that will be elected this summer.

Have you a copy of the resolutions relative to the appropriation of the clergy reserves, which were passed in the House of Assembly of Upper Canada on the 22d of December 1826?—I have.

[The witness delivered in the same, which were read as follows.]

“1st. Resolved, That the despatch of the Right Honourable Earl Bathurst, His Majesty’s Principal Secretary of State for the Colonies, communicated to this House on the 12th instant, by his Excellency the Lieutenant-Governor, in answer to the Address to His Majesty of this House at its last session, respecting the clergy reserves, is unsatisfactory to this Assembly, inasmuch as it is silent on a material part of the respectful representation of this House contained in the said address.”

“5th. Resolved, That the construction given to the Imperial Act which appropriates the clergy reserves to individuals connected with the Church of England, and the determination of the clergy of that church to withhold from all other denominations of Protestants residing within the province, the enjoyment of any part of the benefits arising, or which may arise, from the lands so set apart, call for the immediate attention of the Provincial Legislature to a subject of such vital interest to the public in general; and that such claim by the Protestant Episcopal Church, is contrary to the spirit and meaning of the 31st Geo. 3, and most injurious to the interests and wishes of the province.—Yeas 28. Nays 3. Majority 25.

“6th. Resolved, That a comparatively small proportion of the inhabitants of Upper Canada are members of the Church of England, and therefore ought not in justice to desire the sole enjoyment by their clergy of all the advantages which these lands present, to the exclusion of their fellow subjects, although equally loyal and firm in their attachment to His Majesty’s Government and the Constitution.

“7th. Resolved, That in a thinly inhabited country, such as Upper Canada, where the means of moral instruction to the poor are not easily obtained, it is the bounden duty of the Parliament to afford every assistance within its power towards the support of education.

“8th. Resolved, That the present provision for the support of district and common schools is quite inadequate to the wants of the people, and ought by every reasonable exertion to be increased, so as to place within the reach of the poorest inhabitant the advantages of a decent education.

“9th. That it is the opinion of a great proportion of the people of this province, that the clergy lands in place of being enjoyed by the clergy of an inconsiderable part of the population ought to be disposed of, and the proceeds of their sale applied to increase the pro-  
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vincial allowance for the support of district and common schools, and the endowment of a provincial seminary for learning, and in aid of erecting places of public worship for all denominations of Christians.

“ Yeas 31. Nays 2. Majority 29.”

“ Resolved, That the number of the Protestant Episcopal Church in this province bears a very small proportion to the number of other Christians, notwithstanding the pecuniary aid long and exclusively received from the benevolent society in England by the members of that church, and their pretensions to a monopoly of the clergy reserves.

“ Yeas 30. Nays 3. Majority 27.”

What was the object of those resolutions?—The object of them was to frame a law agreeing with them, for the sale of the clergy reserves.

Did all parties unite in passing those strong resolutions in the House of Assembly?—Yes.

It appears that they were moved by Mr. Rolph, is he a member of the Church of England?—He is a member of the Church of England, educated at Cambridge, and, I believe, a member of Lincoln's Inn.

They were seconded by Mr. Morris; is he a member of the Established Church of Scotland?—I believe he is, and is understood to represent that interest in the House of Assembly.

Dr. Strachan says that the Assembly contains 18 members of the Church of England; the minority in the division did not exceed three, were those members of the Government?—No.

Do you believe that there were 18 members of the House of Assembly professing to be members of the Church of England?—I am not certain on the subject, but I do not think so.

Mr. Morrison's letter states that Dr. Strachan has reported in his chart, that many churches were built, or likely to be built, in places where none had been built, or were likely to be built. Have you any information upon that subject?—There is no church in Ancaster, but one, called a *free church*, built for the use of all denominations of Christians, but the minister of the Church of England does not preach, nor is there any regular service by the church in it. The township of Woolwich he mentions as having a church and occasional service; that is a new township on the Grand River, and there never was a clergyman in it when I left the country, except a Methodist missionary, he had only visited it then once. There is no Indian village in the district of London, with a church, as stated. Other inaccuracies I have seen mentioned in newspapers from different parts of the province, but I am not sufficiently acquainted with all the localities to point out the mistakes.

It is stated in the same letter that Dr. Strachan has considerably mis-stated the case of the Methodist clergymen, representing them to be almost all natives of the United States, whereas the far greater proportion of them are stated to be British subjects; have you any knowledge upon that subject?—I know them to be all but four British subjects. There are 46 itinerant ministers who form the Canada Conference, and 31 of the 46 are British subjects by birth and education, 12 of them are British subjects by naturalization, and three only are aliens, and those have lived several years in the country, and can now under the new Alien Act be naturalized.

Are those ministers who constitute the Methodist itinerancy of Upper Canada under the orders of the conference of the United States of America, or do they assemble annually in Upper Canada?—They assemble annually in conference in Upper Canada; they receive no minister from the United States, nor any other country, without a vote of a majority of the conference, and a regular probation for two years.

What proportion do you conceive the members of the Church of England bear to the whole population in Upper Canada?—It is impossible for me to say.

Do you think they are one tenth part of the population?—I do not think they are.

Do you think they are one fifteenth?—It is probable they do amount to that, or perhaps to one tenth; I should think there is one fifth part of the population in Canada that do

do not belong to any religious denomination, although they may be more favourable to one than to another, and they generally attend one of the places of worship in preference to others.

What do you conceive would be the best way of settling a provision to supply the religious wants of the country in Upper Canada?—I think that at least nineteen twentieths of the country with that the clergy reserves should be appropriated for the establishment of schools.

Do you think that it would be desirable to allow the ministers of religion in Upper Canada to depend wholly upon voluntary contribution for support?—Yes, I think it would be much the best; I think it would be conducive to the interests of religion, and it is not mere theory; we are living by the side of the United States where the ministers are supported in that way; I was several months in that country attending different places of worship, and I found them much more respectably attended, and the ministers better supported, and a greater decency prevailing in congregations both in the Episcopal Church and in others. The Episcopal Church in the United States is decidedly superior to ours in Canada, and it is supported by voluntary contributions of the people. In addition to this, occasional aid might be granted by the Legislature of the province.

Do you believe that the Church of England would have a better chance of becoming popular in Canada if the causes of jealousy were removed which at present exist?—Yes, decidedly so, and her greatest enemies are those who would establish invidious distinctions between her ministers and others. The ecclesiastical chart has done her a fatal injury. If the system commenced be persisted in, it will destroy the influence of the church in Canada.

Did the Legislative Council concur with the House of Assembly in those resolutions about the clergy reserves?—No.

Has not the Legislative Council very frequently been opposed to the wishes of the House of Assembly on other subjects?—They are always expected to oppose the House of Assembly on all acts of a liberal and popular tendency, particularly if they have for their object the extension of religious liberty.

Does the Legislative Council consist chiefly of placemen?—Yes.

Can you give the committee any statement relative to the persons of whom the Legislative Council is composed?—It contains five who are members of the Executive Council; they are, the Honourable William Campbell, chief justice, the Speaker, the Right Reverend the Bishop of Quebec, the Honourable James Baby, inspector-general, the Honourable Archdeacon Strachan, and the Honourable George Markland. Seven of the other members of the Council are persons holding offices of emolument under the Government; they are, the Honourable W. D. Powell, who is now in England on a pension, the Honourable John McGill, the late inspector-general, &c. who is retired on a pension, the Honourable Joseph Wells, who is on half pay, and a commissioner, &c. the Honourable Duncan Campbell, the provincial secretary, the Honourable John H. Dunn, the receiver-general, the Honourable Thomas Ridout, the surveyor-general, and the Honourable William Allan, who holds numerous offices; the other five are persons not holding places of emolument under Government, and they are, the Honourable Thomas Clark, the Honourable William Dickson, the Honourable Neil McLean, the Honourable George Crookshank, and the Honourable Angus McIntosh; the Honourable Thomas Talbot has never taken his seat as a legislative counsellor.

Can you state any other subject on which the Legislative Council have differed from the House of Assembly in Upper Canada?—I can state with confidence that several instances of the character before mentioned occur every session of the Legislature, but as I have not been furnished with documents on the subject I am not prepared to enter into details; the fact is notorious, and has been the subject of much discontent for a number of years; we have in fact but two branches of a Parliament, the Commons and the Executive; an enlightened and independent aristocracy is unknown in Canadian legislation, I speak of a large majority of the Legislative Council.

Have the same quarrels with regard to the independence of the judges taken place in Upper Canada which have taken place in Lower Canada?—There is a difference of opinion, but I cannot bring to my recollection the particulars, with sufficient clearness to state them in evidence. The House of Assembly are for the independence of the judges, but I do not know that any specific measure on the subject has been matured.

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Do you conceive that any alteration in the composition of the Legislative Council is generally desired by the inhabitants of Upper Canada?—Yes; and I believe that nearly all our grievances would be removed by the Legislature of Upper Canada were the Legislative Council independent: without some change in this part of our constitution I believe no remedy can be effectual; and this I have reason to think is the general opinion in Upper Canada.

Do you imagine that the feelings of the population of Upper Canada are favourable to the idea of a union of the two provinces or not?—I do not think they are: the feelings of commercial men are in favour of it, but not of the public generally; it is very unpopular in most parts of Upper Canada.

Has the province of Upper Canada an agent in England?—No.

Has the House of Assembly ever expressed a wish to have an agent resident in England?—I believe they have, but I do not recollect the particulars.

In what way would it be possible to give the Upper Province a seaport without joining Montreal to it?—I do not know any other way; our difficulties with Lower Canada relate to revenue, and would all be settled by giving Upper Canada a seaport. This is a measure much desired in Upper Canada, and it would enable us to conduct our commercial financial concerns without being subject to continual collisions with Lower Canada.

Do you consider that there would be insuperable difficulties to questions of trade being decided between the two provinces without resorting to a union?—I cannot say; the union of the provinces would most probably be injurious to both.

Could not it be settled by deputation from the two Houses?—I think no satisfactory and permanent arrangement could be effected in this way; we have tried it long without any beneficial results.

Additional particulars, in answer to the questions of the Canada Committee relative to the Religious Denominations of Upper Canada:—

These are, 1st, Episcopalians; 2d, Presbyterians; 3d, Methodists; 4th, Baptists; 5th, Quakers; 6th, Menonists; 7th, Roman Catholics; and few others very inconsiderable in number.

The Episcopal clergy are paid by the British Government and the Propagation Society, and in no instance by their congregations; therefore the number of clergymen affords no criterion by which to judge of the probable number of churchmen in Upper Canada.

Under the term Presbyterian, I include the Independents and the Presbyterians of Upper Canada, as well as the less numerous congregations connected with the Church of Scotland. They are, in general, in favour of an impartial appropriation of the religious funds of the colony for the benefit of all denominations of Christians. I do not know that any of the Presbyterians in Upper Canada have petitioned for a division of the clergy reserves between themselves and the Episcopal Church. I believe that a more equitable appropriation for the good of all classes is approved not only by them but even by a majority of churchmen in Upper Canada.

The Baptists I do not think are so numerous as the different classes of Presbyterians, but I believe they are in general more influential. They are stated to have 45 ministers and 36 chapels; they occasionally itinerate, but not on a regular system.

The Quakers and the Menonists, a large body of German settlers, are valuable inhabitants, and occupy several very flourishing settlements.

The Methodists are represented in an annual conference consisting of 46 itinerant preachers. They have 117 itinerant and other ministers; 66 chapels; 623 places, including chapels, where Divine Service is regularly performed, and 130 places where it is occasional; there are 9,009 communicants belonging to their societies, and about 38,000 regular hearers, making about one-fifth of the population of Upper Canada. They have the only mission for the conversion of the Aborigines of Upper Canada, I mean the Chippewa or Mississauga Indians, 500 of whom have been brought to christianity. The astonishing and beneficial change which they have been the means of effecting in the character, habits and condition of these poor savages, has been noticed with approbation by Sir Peregrine Maitland, as well as by the House of Assembly. The Methodists maintain 10 schools, where 251 Indian children are instructed, and are rapidly acquiring the arts



arts and habits of civilization and of christianity. The methodists, by means of a systematic itinerancy, affords religious instruction to every part of the country, and the religious services rendered the colony by this body of christians alone, would, if performed by a resident parochial clergy, cost the Government at least 20,000l. per annum. The Methodists formerly received missionaries from the United States, but they have for some years been under the care of their own ministers. They have now dissolved all connection with the Methodists in the United States, and measures are in progress which will probably lead to a more intimate connection with the Wesleyan Methodists in England. Under the existing regulations, the Methodists, in common with other dissenters, are excluded from any participation in the provisions made for the support of a Protestant clergy in Canada, as well as from the honours and privileges of the University.

I have stated it as my opinion, that a permanent endowment for the maintenance of a clergy in Upper Canada would not be beneficial. But the present state of the country requires that aid should be granted to build places of worship, to support missions and schools, and in some instances, to a limited extent, to assist in the maintenance of ministers. A partial measure for the assistance of one denomination to the exclusion of all others, would do a great injury to the country, and would more than can well be imagined in this country tend to destroy British influence in Canada. The clergy reserves are generally acknowledged to be a very great hindrance to the improvement of the country. They might be sold to form a permanent fund for the encouragement of religion, education and internal improvement generally, and would no doubt be usefully and equitably appropriated for those purposes by the Provincial Legislature, were they authorized to do it.

I firmly believe that the prosperity of the Episcopal church in Canada, the interests of religion generally in the colony, as well as its peace and welfare, would be the most effectually promoted by removing every invidious distinction on account of religious opinions, and by giving assistance and protection to all.

I believe it to be the wish of full nineteen-twentieths of the inhabitants of Upper Canada that all the clergy reserves should be sold, and the proceeds appropriated by the Provincial Legislature, on such principles as will not countenance any distinction on account of religious profession or belief, for the purposes of education and internal improvement in their most extensive sense, including the building of schoolhouses, places of worship, assistance to mission or native schools, to poor settlements for the maintenance of clergymen, &c. &c. The clergy reserves, which are now considered a great public injury, and which are the cause of much jealousy, contention and dissatisfaction, would, by such an appropriation, become the source of incalculable benefits and advantages to every class of the inhabitants, and would proportionably increase their attachment to the Government, and restore harmony and confidence in the colony.

I fully acquiesce in the sentiments expressed in an Address to His Majesty from the House of Assembly of Upper Canada, on the subject of the clergy reserves and of the University of Upper Canada, dated March 1828. I believe this address to be a real expression of public opinion in Canada, and I form this conclusion from an intimate knowledge of the country for many years. The report of a Select Committee of the House of Assembly of Upper Canada, on which this address was founded, dated 15th March 1828, I wish also to state, contains important facts connected with these subjects.

In explanation of my answers to the questions relative to the Legislative Council, I wish to remark,

The change desired in this body, is, that the Legislative Council be so constituted that a majority of its members be gentlemen whose interests are identified with those of the inhabitants, and who neither hold offices of emolument under the Colonial Government, nor belong to the Executive Council. I wish also to correct a very erroneous opinion which I have heard expressed in this country, namely, that the inhabitants of Upper Canada wish for or prefer a democracy. They are warmly attached to the British Government, and give it a deliberate and decided preference to that of the United States. Liberal institutions will, I have no doubt, increase these predilections, and also bring many valuable emigrants from the United States, men who would prefer liberty under a regular government to the anarchy and strife of democracy.

Mr.  
Geo. Ryerson.  
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Mr.  
*Geo. Ryerson.*

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Additional remarks, in answers to the questions relating to the Union of the Two Canadas :—

This I said is generally unpopular in Upper Canada. But the annexation of Montreal to Upper Canada, to which it naturally and equitably belongs, would, I believe, meet with universal approbation. This extension of Upper Canada to its obvious and natural boundary, the eastern branch of the Ottawa, by giving us a sea port, would settle our financial difficulties with Lower Canada, and would be doing no injustice to that province. The commerce of Montreal is chiefly with the Upper country, whence it derives its wealth and prosperity. This commerce is principally profitable to the Montreal merchant; all our wealth flows to it, and we receive no advantages in return: we labour to enrich another Province, and have no control over the wealth which our industry produces. In Upper Canada we possess no means for internal improvement, and scarcely a circulating medium sufficient for the ordinary transaction of business. The advantages to Upper Canada, and to Great Britain, that would result from such a measure, are, I think, many and important. In Upper Canada it would give a powerful impulse to industry, commerce and general improvement, would increase the facilities for transporting produce, and consequently augment the consumption of British manufactures. It would more entirely detach the interests of Upper Canada from the United States, and unite us more intimately with Great Britain. I have no doubt that in a very few years, steam-boats would navigate to Lake Huron. It would more than realize to us every possible advantage of the union, without any of its obvious and perhaps insurmountable difficulties. I have reason to believe that the commercial and influential inhabitants of Montreal would be pleased with the measure.

GEO. RYERSON.

Sabbati, 21<sup>o</sup>. die Junii, 1828.

James Stephen, junr. Esq., called in ; and Examined.

J. Stephen, junr.  
Esquire.

21 June, 1828.

What office do you hold in the Colonial Department?—I am Counsel to the Colonial Department.

In that situation have you frequently subjects connected with the two Canadas under your attention?—Frequently; because as all the Acts passed by the Legislatures of the two Canadas are referred to me for my opinion in point of law, it becomes necessary for me in considering them to make inquiries into the public affairs of those provinces.

Are you at all acquainted with the mode in which clergymen are appointed to the different districts in Upper and Lower Canada?—The clergymen of the church of England in the Canadas are not incumbents of livings. They are rather missionaries of the Society for the Propagation of the Gospel.

Has the Colonial Department any control over their appointment?—When a vacancy occurs among the clergy of the church of England in either of the Canadas it is reported by the Governor to the Secretary of State, who calls on the Ecclesiastical Commission to nominate a proper candidate. Of course their recommendation is usually accepted.

Are there any applications made by individuals to the Colonial Department for appointments, or do they always go in the first instance to the Ecclesiastical Commission?—Applications are often made directly to the Colonial Department. In strictness all applications should be made to the Secretary of State, because the Ecclesiastical Commission exists merely as a board of reference from the Colonial Department.

Can you state how long the practice has been disused of having all applications made to the Colonial Department?—I should say that the practice is not disused at present. The applications made to the Ecclesiastical Commission are not applications to the patron, but to persons who have it in their power to recommend applicants to the patron.

Was not the course taken of this kind, that the names of certain persons who were desirous of appointments in the church in Canada being known to the Colonial Office, that office was desirous of ascertaining, through the means of the Ecclesiastical Commission, whether they were fit persons or not?—Just so; the Secretary of State conceived himself inadequate to form a right judgment of the competency of a clergyman for his spiritual duties.

In the other case, would not the suggestion of individuals to be appointed originate with the Colonial Department, and does it not now happen that the suggestion of individuals rests with the Ecclesiastical Commission?—If the fact is inquired into, and not the theory, I should answer that in point of fact the Ecclesiastical Commission is substantially patron of all the church preferment of the government of the colonies.

Does Mr. Hamilton hold any situation connected with the Colonial Department, or is he solely employed by the Ecclesiastical Commission?—He is secretary to the Ecclesiastical Commission, and, as I suppose, received his appointment from the commissioners. The Colonial Department is in constant communication with that body, and he is the acting member.

By whom was the Ecclesiastical Commission appointed?—I apprehend that the Ecclesiastical Board are not constituted by any "commission" in the legal sense of that word, but the Secretary of State requested the Archbishops and the Bishop of London, to render him their assistance in the proper disposal of this part of his patronage. In order to relieve those prelates from some of the difficulty in which they were involved by complying with that request, the Treasury authorized their Lordships to employ a secretary, which secretary is Dr. Hamilton.

By whom was Mr. Hamilton recommended for appointment to the situation which he now holds?—I believe by the Secretary of State for the Colonial Department.

J. Stephen, jun.  
Esquire.

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Does the Colonial Department exercise any control whatever over either the appointment of individuals to, or the management of, the affairs of the church in Canada?—It has no other management, that I can perceive, of the affairs of the church in Lower Canada, than that which consists in appointing the dignitaries and the clergy.

Can you give the Committee any information respecting the Church Corporation?—The Church Corporation is created by a Commission under the public Seal of the province of Lower Canada, and it has always been doubted whether the Governor had any strict legal right to issue such a commission.

When was it issued?—I believe about nine years ago.

Of whom does it consist?—I believe it to consist of the bishop, the archdeacons of the two provinces, and the clergy of the church of England. They are all, as I understand, members of this corporation *virtute officii*, but I have never seen the instrument; we have no copy of it in Downing-street, and I can therefore speak of it only from the representations of others.

Do you know what powers they have under that commission?—I think their powers are confined to granting leases for the term of 21 years, and to the prevention of trespasses on the clergy reserves. They are a corporation of management merely; they have no power to appropriate the rent which they receive.

Is the rent received by them?—The rent, I apprehend, is paid over to the receiver-general of the province.

To him directly?—I believe that the clergy collect it in their different districts, from the tenants, and pay it over to the receiver-general.

In what way is it appropriated?—Hitherto the sum has been so inconsiderable that no discussion has arisen about the appropriation of it. I understand that it goes in aid of the funds out of which the clergy are paid.

To whom does the receiver-general account for the money?—The receiver-general accounts for all his receipts to the Lords Commissioners of the Treasury.

Does not he make a separate account to all the other persons of the money received for the clergy reserves?—He would also, I apprehend, if required, account to the corporation.

Is any copy of the account rendered of this money annually transmitted to this country?—It is not very much in my way to know what accounts of money are transmitted; I think however that they are not sent annually.

Would they appear in the details of the accounts rendered to the Treasury?—Yes.

Have you ever heard what it amounts to annually?—I have heard it stated, that in Lower Canada the gross rent amounts to 900*l.* a year; but there is in Downing-street an exact account of the gross rent and actual receipt from the clergy reserves in Lower Canada, and of the appropriation of it.

Do you know whether it is rapidly increasing?—I apprehend it is not.

Have they any other power than that of leasing the land?—I am not aware that they have any other powers except that of leasing, and that of preventing trespasses.

Has any wish been expressed by the Church Corporation to alter or to increase those powers?—A wish to that effect was expressed by some of the Canadian clergy.

What powers did they think that it would be expedient to vest in the Church Corporation?—They wished to have powers resembling those which were granted to the Corporation in New South Wales, which powers are much more ample.

What are those powers?—In New South Wales, in every county, a block of land is set apart, which is conveyed to a corporation, called "Trustees of the School and Clergy Reserves." The Corporation have the power of selling one third of what is so set apart for them, and applying one half of the produce of those sales to the improvement of the rest. The Corporation are to grant leases of what remains in its improved state, and the rents which they are to receive from those leases, with the interest arising for one half of the proceeds of the sales, are to be divided into two equal shares. Of these, one is to be applied in supporting schools for the education of children in the principles of the established Church of England; the remaining half is to be applied to the support of the bishop and archdeacon in the first place; and then for the support of the other clergy of the Church of England. When those objects are effectually provided for, the surplus is to be applied in whatever manner the King shall be pleased to direct.

Have

Have any steps been taken towards extending the powers of the Church Corporation?—  
No.

Are you at all acquainted with the course of their proceedings?—I apprehend they have little to do, and meet but rarely. I am however unacquainted with their proceedings.

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Esquire.

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Do you know what number of leases have been made?—I do not.

Are you of opinion that the Act of 1791 contemplates the endowment of the Church of England, but that at the same time, with respect to lands which are not necessary to be applied for the endowment of the church, the rents and profits of those lands may be applicable, at the discretion of the Crown, to the purposes of a Protestant Clergy, speaking generally?—As I understand the Act of 1791, it distinguishes between the clergy of the Church of England and a Protestant clergy. To the clergy of the Church of England, and to them alone, it gives the capacity of receiving endowments as parochial ministers. To "a Protestant Clergy," whatever those words may mean, it gives the capacity of receiving any parts of these lands which the Royal Bounty may deal out to them. The expression, "a Protestant Clergy," is understood by the law-officers of the Crown to mean any Protestant Clergy, recognized by the law of Great Britain, or in other words the clergy, either of the Church of England, or of the Church of Scotland.

When you speak of the Royal Bounty, do you mean the rents and profits that may be made from the clergy reserves?—Not the rents and profits merely. I apprehend that the King might, if it should so please him, appropriate in perpetuity a certain portion of land for the sustentation of one or more English clergymen, or of one or more Presbyterian clergymen of the Church of Scotland.

Do you mean beyond the one-seventh reserved, or out of that one-seventh?—Out of the one-seventh.

How do you reconcile that answer with the statement that the Act appears to you to contemplate an endowment only of the Church of England?—Because I apprehend that it is one thing to erect a parsonage and endow it with a glebe, and a different thing to appropriate a piece of land for the maintenance of a clergyman.

Have the law-officers of the Crown given their opinion distinctly, that by the term Protestant Clergy no other sect is included, except the Presbyterian clergy of the church of Scotland?—They have, as I understand them, given their opinion distinctly, that no body of clergy, not recognized by the law of this land, can be candidates for this property.

And that consequently no such body is contemplated under the term Protestant clergy, under the Act of 1791?—Yes.

Can you point out in the Act the words upon which you take the distinction you have stated to the Committee?—The 37th clause enacts "That all and every the rents, profits or emoluments which may at any time arise from such lands so allotted and appropriated as aforesaid, shall be applicable solely to the maintenance and support of a Protestant clergy within the province in which the same shall be situated." The 38th clause enables the King to authorize the Governor, with the advice of the Executive Council, to erect within every township or parish, one or more parsonage or rectory according to the establishment of the Church of England. The 39th clause enables the King to authorize the Governor to present to every such parsonage an incumbent, or minister of the Church of England, who shall have been duly ordained according to the rites of the said church. The 40th clause declares that every presentation of an incumbent to any such rectory, and the enjoyment of the rectory and the profits of it by the incumbent, shall be liable to all the rights of institution and other spiritual jurisdiction which may have been granted by the King to the Bishop of Nova Scotia, or which may be granted to any other person according to the laws and canons of the Church of England. And the 41st clause enacts, That the several provisions hereinbefore contained respecting the allotment and appropriation of lands for the support of "a Protestant Clergy" within the said provinces, and also respecting the constituting, erecting and endowing parsonages or rectories within the said provinces, and also respecting the presentation of incumbents or ministers to the same, and also respecting the manner in which such incumbents or ministers shall hold and enjoy the same, shall be subject to be varied or repealed by any express provisions

J. Stephen, jun.  
Esquire.

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visions for that purpose contained in any Act or Acts which may be passed by the Legislative Council and Assembly of the said provinces respectively, and assented to by His Majesty, his heirs and successors, under the restrictions which are afterwards mentioned. Those restrictions are the laying them before Parliament. The 42d section enacts, that whenever any Act is passed by the Legislative Council and Assembly of either of the provinces, to vary or repeal any of those provisions respecting the allotment and appropriation of lands for the support of a *Protestant clergy* within the said provinces, or respecting the constituting, erecting or *endowing parsonages*, or respecting the presentation of incumbents or ministers to the same, or respecting the manner in which such incumbents shall hold them, & that whenever any Act shall be so passed containing any provisions affecting the exercise of any religious form or mode of worship, or shall impose or create any penalties, burthens, disabilities, or disqualifications in respect of the same, or shall in any manner relate to or affect the payment, recovery or enjoyment of any of the accustomed dues or rights hereinbefore mentioned, or shall in any manner relate to the granting, imposing or recovering any other dues, or stipends or emoluments whatever, to be paid to or for the use of any minister, priest, ecclesiastic or teacher, according to any religious form or mode of worship in respect of his said office or function, every such act must, before it receives the King's assent, be laid before the Parliament of Great Britain. Now as it seems to me in all these passages the Church of England is expressly mentioned where the Church of England is meant. And where the more comprehensive sense is to be conveyed, the more comprehensive term, "a Protestant clergy" is employed.

What meaning do you attach to the latter part of that paragraph, especially to the words "any other dues"?—I explain the words thus: this Act of Parliament, in the earlier sections, refers to the dues and rights belonging to the Roman Catholic clergy. In this passage its language is, "If the Legislature of the Canadas shall grant or impose any other dues,"—*other*, that is, than those which belong to the Catholic clergy,—"then the King shall not have the power of assenting to such an Act until Parliament has had the opportunity of seeing and considering it."

Do you consider that clause as in any way a guarantee against the possible invasion by the Assembly of what had been granted to the Catholic clergy?—I apprehend that the object of the clause is rather to take some security that the Legislature of the Canadas should not establish any objectionable form of worship, or impose on the King's subjects there any dues for its support. Before the King can assent to any such law Parliament claims an opportunity of seeing it. This is, in fact, a jealousy of the King legislating, with the consent of the Provincial Assembly, on the subject of religion.

In clause 37, it is enacted, "That all and every the rents, profits or emoluments which may at any time arise from such lands so allotted and appropriated as aforesaid, shall be applicable solely to the maintenance and support of a Protestant clergy within the province in which the same shall be situated, and to no other use or purpose whatever." As the next clause limits the endowment to the Church of England, is it your opinion that the rents, profits and emoluments arising from lands not endowed must be, at the discretion of the Crown, applicable for the general purposes of a Protestant clergy?—Applicable for any Protestant clergy established by the law of this land.

Will you point out to the Committee any provision in this Act which appears to permit the appropriation and allotment of land specifically to a Protestant clergy, as contrasted with the appropriation of a portion of the rents and profits arising from the lands?—I apprehend that the 37th clause, which authorizes the application of "rents, profits and emoluments" to the maintenance of a Protestant clergy, carries with it a power to the King to appropriate, in perpetuity for that purpose, any portion of the land whence those "rents, profits and emoluments" are to arise. The land so to be appropriated may, in my apprehension, be given either to the English or to the Scotch clergy. That the land itself is to be held in mortmain, and is to be inalienable, I suppose to be a matter of course.

Do you conceive, according to your interpretation of the term Protestant clergy, that other Presbyterians than those in communion with the Church of Scotland would come within the letter of the Act?—I think not. I apprehend that no man is a clergyman of the Kirk of Scotland who is not appointed to that office either by the General Assembly, or by some of the Presbyteries dependent upon it. A person calling himself a Presbyterian

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byterian who is altogether unallied with the Church of Scotland, does not, as I conceive, come within the meaning of the term "a Protestant clergy," as that expression must be understood when used by the United Parliament of England and Scotland.

Do you then consider the Presbyterians of the Synod of Ulster as not recognised by law as a Protestant clergy in the country?—I apprehend the Presbyterians of the Synod of Ulster are not recognised by law as an established church in this country. The Acts of Union prevent the legal establishment of the Church of Scotland in any part of the United Kingdom except Scotland.

Did not the arrangement that was made with the Canada Company contemplate the sale of a part of the clergy reserves?—Yes, a sale of one half.

Were the powers of that sale obtained under a special Act of Parliament?—Yes.

Were they confined to the sale to the Canada Company, or were they sufficiently extensive to enable the Government to sell the clergy reserves to any person that would buy them?—No; Parliament authorized merely a sale to the Canada Company.

Do you know any thing of the appropriation of the income of the estates that formerly belonged to the Jesuits?—I understand them to be appropriated for the education of Protestants exclusively.

Do you hold that according to the existing statutes, the Government have the power of appropriating them at their own discretion?—Supposing them to be the territory of the Crown, the revenue arising from them is part of the territorial revenue of the Crown, and may be appropriated at its discretion. Whether the Crown really is, in point of strict law, entitled to those estates, is a question of the most complex and intricate nature. It depends on the proceedings in the Parliament of Paris on the dissolution of the order of Jesuits, and on the judicial sentences to which those proceedings gave occasion.

Can you give the Committee any information upon that subject?—I can give no information which it would be worth troubling them with.

In what way can the Committee obtain information upon this subject?—There is a Report of a Committee of the House of Assembly on Education, on the subject of the Jesuits estates, which forms a thin octavo printed volume. They were promised to Lord Amherst, but it was found impossible to carry the promise into execution, in consequence of objections made to the title of the Crown. The consequence was, that Lord Amherst's heirs resigned their pretensions to these estates, and an application was made by the Crown to Parliament to grant a pension as a substitution for them. A pension was accordingly granted. From that time to the present the estates have been in the possession of the Crown, which has been receiving the rents, and applying them for the education of the Protestant children of the country.

Are you aware of there being any legal opinion in favour of the right assumed over them by the Crown?—Yes, there were legal opinions by the law-officers of the province.

Have there been any legal opinions by the law officers of the Crown in England?—Yes, by the late Sir James Marriott, and the attorney and solicitor general De Grey, and Norton.

Do you know the amount of the revenues arising from those lands?—I do not with accuracy; I suppose the net revenue to be small; a few hundred pounds annually.

Can you state what was the amount of the revenues of the Jesuits estates under any previous management?—I cannot.

In other colonies, where independent Legislatures exist, can you inform the Committee what has been the course with regard to the appropriation of the revenue; does there exist in any of those colonies, any fund which is at the disposal of Government; or is there in any of those colonies any permanent establishment, independent of the vote of the Legislature, for the governor or the judges, or any other officers of the colony?—By the general instructions which the governor takes with him to all the colonies in which there are legislative assemblies he is required not to consent to any act till a proper settlement has been made upon himself during his administration of the government. In point of fact, the administration of a new governor almost always begins by the enactment of a law, which places him in a state of independence of those whom he is to govern. But with this exception there is not any permanent establishment beyond the control of the Legislature. I believe I can undertake to say, that there is not any one of the Legislative colonies in which the King has any settled revenue which is not virtually

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ally subject to legislative control. The territorial revenue and the revenue arising from fines, forfeitures and other incidents of that nature constitute the only exceptions.

Is there any other permanent provision made, excepting that for the governor?—In Jamaica, and in many other colonies, salaries are settled upon the judges; but still it is in the power of the Assembly not to vote the funds out of which those salaries are to be paid. The votes are invariably annual.

Is there a deputy-governor in any other colony?—There are many lieutenant-governors acting as governors. But there is no colony, except Lower Canada, in which there is at the same time a governor and a lieutenant-governor.

Are you aware whether the House of Assembly in Lower Canada has ever offered to vote the salary of the governor and deputy-governor, during their residence in the province?—I think they have never made any such offer; nor am I aware that any opportunity has hitherto been afforded them of negotiating on the subject; for, under the highest legal authority, the Government have always maintained their right to pay the governor out of the existing revenue.

Are you certain of that, or is it only a general impression?—I have only a general impression; but it is an impression derived from some familiarity with the journals of the House of Assembly, a great part of which I have read and considered attentively.

In your opinion, would any inconvenience be likely to arise from appointing judges upon the same footing upon which they are appointed in this country?—Yes, I should regret the appointment of judges independent of the Crown, in any colony.

What reasons have you for entertaining that opinion?—My reasons are these. The gentlemen of the bar who go out to the colonies as judges, are of course seldom selected from the most successful members of the legal profession. They are frequently young men, and (without meaning to say one word disrespectfully of them) they are seldom well known. They go to a small society, where as a matter of course, (for it may be said to be the natural state of all small societies) they find violent feuds and parties. How they will conduct themselves in such situations must always be a matter of conjecture, and doubtful experiment. If the judge were independent and irremovable, I fear he would too often become the ally of some one or other of the local parties. His authority and influence would be almost without limit, and he would be obnoxious at once to unbounded adulation and reproach. Holding in his hands all the power connected with the administration of justice, he would be violently tempted to abuse it to party purposes. The grievance of the dependence of the judges on the Crown is, I think, on the other hand, nearly imaginary. Remembering the responsibility under which the ministers of the Crown act in this country, the danger of their removing a judge without the most grave and sufficient cause, is surely very inconsiderable. You must remember too, that every other public officer in the colony, even the governor himself, holds during pleasure. If you arm the judge with the whole powers of the law, and place him in perfect independence, without any large society to check and control him, can you expect that he will not be a little intoxicated with that elevation, and that the judicial will not be gradually merged in the political character.

If it were thought desirable for any reasons to make, from any source, a permanent provision for the judges, would there not be something absurd in making a permanent provision for a judge removable at pleasure?—It would be a permanent provision, not for the removable judge, but for the permanent office.

Since you think it desirable that the judges should be in a certain degree dependent upon the Crown in the colonies, do you not think it a natural and proper wish on the part of the Legislatures of those colonies to retain a certain check upon the proceedings of the judges, by keeping in their hands the power of annually voting their salaries?—I think not. In a small colony, or even in a large colony, people are exceedingly united to each other by domestic, social and party ties, and such unions exercise the most powerful influence in the legislative bodies. When a judge is dependent upon them, there will always be a danger lest he should make unworthy and unbecoming concessions to conciliate their good-will or to avert their displeasure.

Has much practical inconvenience of that kind arisen in the other colonies where the judges are dependent upon the Legislatures?—In most of the colonies the judges depend much more upon fees than upon the Legislatures. In the island of St. Vincent's they

have



have voted the judge a salary, and they have done the same thing in Jamaica and in some other islands; but fees are the general resource.

Is there no danger of a dependent judge, such as you are speaking of, becoming a partizan with the executive power if there should be any difference between that and the representatives?—I think there is; but you must make your choice between opposite dangers.

Then it is a mere question of choice between the two degrees of danger?—It is, as in all other human affairs.

Supposing that a judge should so misconduct himself, as you have stated is possible, could not he be removed by an application to the Crown for misbehaviour?—He might be removed for misbehaviour; but my opinion is that the consciousness of dependence on the Crown would have a great tendency to prevent a sort of misbehaviour, for which, though it might be extremely injurious to the colony, he could not be removed.

Do you not consider that there would be less danger of the kind you before stated, of an influence upon the minds of the judges from their dependence upon the colonial assemblies, in so great a colony as either of the Canadas, than in similar colonies where that dependence at present exists?—In proportion as the population is greater, and the transactions of life are more numerous, local influence will press less on the mind of the judge; but still, even in Canada, the dense population meet together in a very small space. In Upper Canada particularly, this is so.

Do you consider that there is any thing peculiar in the situation of the Canadas which entitles this country to ask the Assemblies in those colonies for a greater degree of independence of the judges upon those Assemblies than it has asked or obtained in any other colony?—I think that in other colonies we have not asked nor obtained enough. If the question relates to what it would be abstractedly convenient to do, I should not take the practice of the other colonies as a standard.

What are the practical inconveniences which have occurred in the other colonies in consequence of the dependence of the judges upon the Legislature?—The practical inconveniences are that the judges are inadequately paid; that well-instructed and successful lawyers decline the employment; that you have frequently judges who have no education preparing them for the judicial office. It would be invidious to refer to particular cases; but throughout the colonies a body of gentlemen are acting as judges, who, however accomplished in other respects, are totally destitute of a legal education.

Are you aware that in those disputes which led to the separation of the North American colonies, which at present form the United States of America, from the mother country, this question of the independence of the judges formed a great part?—Yes.

Are you aware of Dr. Franklin's expressed opinion on this subject, of the utter impropriety of people in any free state allowing judges that were dependent upon the Crown to become independent of them, as being utterly subversive of every free constitution?—When the Canadas shall have grown into a nation, large and extensive as the United States had become, even at the time when Doctor Franklin spoke, I should say that the time had arrived for constituting independent judges. The danger of their independence, in my estimate, arises almost entirely from the peculiar constitution of small colonial societies.

Does not a greater degree of danger arise from the necessity which prevails, or is supposed to prevail, for sending judges from this country, and thereby placing them out of the sphere of their own natural dependence?—It is not a necessity which is merely supposed to prevail, but which, as I conceive, does to a great extent in fact prevail. If a sufficient number of gentlemen were educated in Canada to be competent judges, (and there is at this time in Upper Canada and I believe also in the Lower Province, more than one gentleman at the bar competent to discharge the judicial office in this or in any part of the world) if the choice were sufficiently large, then the most urgent reason for sending judges from England would be at an end.

Do you think it necessary that the judges should be in the Legislative Council in Lower Canada?—I suppose it to be necessary from the want of other competent persons. *Ceteris paribus*, I should prefer, as a member of council, a man who was not a judge; but if the superiority of knowledge, talents, and other accomplishments, were decided and unequivocal

quivocal, I should prefer the inconvenience of employing the judge to the inconvenience of losing his assistance.

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Do you think that the circumstance, either of the dependence of the judges upon the Government for their continuance in office, or of the dependence of the judges upon the Assembly for their salaries, is at all influenced by the circumstance of their sitting in the Legislative Council?—I do.

Is it more or less desirable on that account?—If a judge, dependent on the Assembly for his judicial salary, is also sitting in the Legislative Council with a salary, he is bound to the Assembly by two ties instead of one. The dependence in which he is placed is consequently increased, and the objection to that dependence augmented.

Do not you think that if that independence of the judges was once ascertained it would lead to the sending out of men of rather a higher character as judges?—Not unless their emoluments were much greater than it is. At this time a puisne judge in Upper Canada receives only 900*l.* sterling annually; he has no outfit nor passage found him; it is a mere 900*l.* sterling. Now there are few men who have borne the expense of a legal education, and who have had any sort of success in their profession, who would emigrate to a foreign land for such a remuneration.

Would not the Government, if the judges were made independent, send out men of higher moral character, and men less likely to violate their public duties?—I entirely disclaim having meant to impugn the moral character of those who go at present; I have questioned only their discretion.

Do not you think that the sacrifice of duty to party feeling intimates a moral want?—As an abstract question, I should say so; but in truth, men slide so easily from the highest morality to a lower and more easy standard of morals, that one would hardly impeach a man's character upon that ground.

Is it not within your own knowledge that the individuals who are appointed to judicial situations in the colonies always receive such testimony as to their character and competency as to justify their appointment?—It is an established rule, and I should say a settled practice also.

Do you consider that it would be safe to leave to the Colonial Legislature the power of impeachment of the judges?—That depends altogether upon the constitution of the tribunal by which the impeachment was to be tried.

What should you consider to be the requisites of the tribunal before which such impeachments should be carried, under the conditions of which it would be safe to leave that power in the Legislative Body?—They should be judges perfectly independent of the parties preferring the impeachment; and they ought, if possible, to be judges quite remote from all the feuds and party feelings of the colony in which the impeachment arises. In the case of the charter which has recently been issued for the constitution of new courts in the Cape of Good Hope, the power of removing a judge is reserved to the King in Council, but only upon proof of misconduct. The King in Council then is the tribunal before which the supposed impeachment is to be preferred; and that, in my mind, is the best possible tribunal for such a purpose.

Are the Committee to understand that in the charter to the Cape, the King is deprived of the power of removing a judge except under circumstances of misconduct?—Yes.

Then in point of fact, at the Cape, if a judge were to mix himself up with local parties, unless it amounted to some ostensible act of a violent nature, it would be impossible for the Crown to remove him?—It would; but the charter is avowedly an experiment, and as long as it is regarded in the light of an experiment it may perhaps have a salutary effect in preventing any misconduct which might lead to an alteration of it.

*Mr. William Parker*, called in; and Examined.

*Mr.*  
*William Parker.*

YOU are a Merchant in the city of London?—I am.

Of what country are you a native?—Of Scotland.

Have you resided in Lower Canada?—I resided there 13 years without leaving the country, and afterwards made upwards of 20 voyages to Canada and Britain.

Have you any connection and interest in that country at present?—Yes, very considerable; I have debts owing; I have retired from business in that country, but I have very considerable debts outstanding there.

What

What is the opinion you may have formed of the general character of the population of that province from your own knowledge?—I consider that the peasantry there are the finest people in the world that ever I met with; I had an opportunity of knowing them very intimately, I succeeded as a partner in a French house in 1784, which had extensive connections with French Canadian merchants, in the district of Montreal, when there was very little accommodation in the town of Montreal, and they all staid with us when they came to town, which was very frequently, and therefore I was very much in their company.

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What are, in your opinion, the causes of the dissensions which have prevailed in Canada for some time past?—I think it is, in some measure, owing to my countrymen the merchants there, who are ambitious to be legislators; and they are very much hurt that the French Canadians prefer their own countrymen as their representatives to them.

What is the character of the mercantile population in Montreal which you have spoken of; are they permanently resident in the country, or are they generally people who make their money there, and then come over to England?—The French Canadians consider them not as fixtures, but as movables, and therefore they have not that confidence in them that they have in their own educated countrymen.

Has the interest you have in Canada induced you to enter into any correspondence of a public nature relative to the dissensions which have prevailed there, with a view to quieting them, and preventing their recurrence?—In 1822, when the union business was brought forward, I, jointly with Mr. Munro and Mr. Stansfield, addressed Lord Bathurst on behalf of the Canadians, and since the late dissensions I wrote to Mr. Huskisson in September 1827 and January 1828; and these three letters I desire may be taken down as part of my evidence, and inserted as such; as also the letter from Mr. Wilmot Horton in 1822.

[The witness delivered in the same.]

—No. 1.—

LETTER to the Right Honourable Earl Bathurst, dated 8 July 1822.

9, John Street, America Square, 8th July 1822.

My Lord,

Our attention having been drawn to a bill recently introduced into the House of Commons, for uniting the two provinces of Upper and Lower Canada into one government, we most respectfully, but most earnestly, entreat of your Lordship that the measure may not be proceeded in until the sentiments of the inhabitants shall have been ascertained. A long residence in the province of Lower Canada, and a connection of upwards of forty years valuable colonies, have afforded us the means of forming an opinion on the subject, and with both these in we feel it our indispensable duty to state to your Lordship our strong conviction, that the hurrying of this measure without giving the Canadians a hearing, is pregnant with the most disastrous consequences.

Allow us, therefore, most earnestly to entreat that it may not be proceeded in until His Majesty's Government shall have had an opportunity of learning in a direct manner the sentiments and feelings of the parties whom it most concerns.

We have the honour to be with much respect,  
—Your most obedient servants.

The Right Honourable,  
Earl Bathurst, K. G.  
&c. &c. &c.

(signed) Wm. Parker,  
D. Munro,  
G. Stansfield.

—No. 2.—

Mr.  
William Parker.

LETTER from R. Horton, Esq., dated 10th July 1822.

21 June 1828.

Colonial Office, 10th July 1822.

Gentlemen,

Lord Bathurst directs me to acknowledge the receipt of your letter of the 8th instant, requesting that the Bill lately introduced into the House of Commons may not at present be proceeded in; and I am to acquaint you, that the measure having been brought forward in Parliament after a full consultation and strong conviction of its expediency, his Lordship cannot recommend that it should be withdrawn in the present stage of its progress.

I am, Gentlemen, your most obedient servant,

(signed) R. Horton.

To William Parker, Esq. &amp;c.

—No. 3.—

LETTER to the Right Honourable William Huskisson, dated 27th September 1827.

9, John Street, America Square, 27th September 1827.

Sir,

The controversies and increasing hostile feeling between the Representatives of the House of Assembly in Lower Canada, and the Executive Government of that province, make so strong an impression on my mind as to the political consequences of such an unhappy state of things, that I feel it my duty to make a communication to you on the subject; for impressed as I am with a deep conviction that the British North American colonies are of the most vital importance to the empire, as well in a political as commercial point of view, especially the two Canadas, which not only consume largely themselves of British manufactures, but are the indirect cause of probably more than three fourths of their present consumption in the United States of America, the government of which, were it not for the vicinity of our colonies, would exclude them by high duties in favour of their own infant manufactures. Being at the same time convinced that these most valuable colonies can only be preserved to the British Empire by uniting the whole population of the two Canadas, and especially the French Canadians of the Lower Province, in a zealous and unanimous defence against any possible hostile invasion on the part of the Government of the United States. From the knowledge I have of the temper and feelings of the French Canadians, derived from a long residence amongst them, and an intimate connection with all the different classes of these most invaluable British subjects, and more especially with those of the higher orders, for nearly the last fifty years, I religiously believe, that a more loyal, brave, and hardy race of men do not exist on the face of the globe; nor who are more capable of the greatest military exertions, and which they gave convincing proofs of at their conquest by the British, when their numbers were not one sixth part of their present population. I feel truly proud of them as British fellow-subjects, and would ever deplore any unhappy circumstance that might throw them into the arms of the United States, the most dangerous rival of the British Empire, and who are impatiently waiting for this most important event to enable them to rid North America of British residence, influence, and interference with their ambitious and aspiring Republic. Under this deep conviction, I am fully persuaded that Government would consult the best interests of the empire by granting (and without delay) to the inhabitants of the two Canadas every right and privilege that the citizens of the United States of America enjoy, with the exception of their dependence on the Crown of this empire as colonies. They ought, in my humble opinion, to have the election (as the citizens of the United States of the Union have) of every officer of the province, including their Governor, Lieutenant-governor, judges, &c. &c. Under these very liberal circumstances I am convinced they would cheerfully consent to pay all their own expenses, Great Britain of course to pay any military force she might deem

deem it prudent to keep in any of these provinces, and which would be all the expense attendant on keeping the two Canadas as colonies.

So liberal a measure as this would effectually secure the gratitude, confidence, and cordial attachment of every French Canadian in these provinces, and would determine them to make every sacrifice of life and fortune that may be necessary to preserve their connection with this empire against any hostile attempt on the part of the Government of the United States, whom they certainly do not like. I beg leave once more to repeat my firm conviction, that we cannot preserve our North American colonies from the grasp of their ambitious neighbours without the zealous and cordial co-operation of every French Canadian in the Lower province; but, on the contrary, if we secure their exertions, supported by a moderate British force of about 10,000 men, I would not fear any numbers that the United States could employ against them. They would soon find their graves, or a prison, in that interesting province. I would be most happy personally to explain the grounds on which my opinion is founded, when you think fit and at your convenience, will do me the honour to appoint a time to wait upon you for that purpose.

I have the honour to be, with great respect,  
Sir, your obedient servant,

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The Right Honourable  
William Huskisson,  
&c. &c. &c.

(signed) Wm. Parker,

—No. 4.—

LETTER to the Right Honourable William Huskisson, dated 28th January 1828.

9, John Street, America Square, 28th January 1828.

Sir,

I did myself the honour of addressing you on the 27th September last, with my sentiments in regard of the unhappy differences existing between the Executive Government and the Legislative Assembly of the province of Lower Canada, and of stating the dangerous consequences that might follow thereupon, if not speedily removed; but as I have received no intimation that my letter has reached your hands, I am induced, in order to guard against its possible miscarriage, to hand you a copy of it herewith enclosed.

I am the more desirous of doing this, as every event that has occurred in that province since the date of my said letter to you, tends to widen the breach, and to alienate the affections of the French Canadians, who have hitherto been justly considered the most loyal subjects (without any exception) of His Majesty; I feel it my duty, therefore, to repeat my former conviction of the urgent necessity of a speedy and radical change in the system which has much too long prevailed of governing the Canadas, and more especially the invaluable province of Lower Canada; for, constituted as things now are in that country, in the event of war, or invasion on the part of their neighbours, no effectual resistance could rationally be expected from the French Canadians who compose more than nine tenths of the population. The other tenth part, who are called English, consist of American loyalists, American citizens, and emigrants from the United Kingdom—chiefly from Scotland; and from whose insignificant numbers and composition no effectual resistance could possibly be made to an invading enemy. And yet, small and unimportant as this part of the population of Lower Canada is, they have in a great measure (ever since the American Rebellion) monopolized every place of honour and emolument under the Government, to the exclusion of the French Canadians, who, if justice were done to their abilities, education, loyalty, and importance in respect of influence with the whole of their virtuous countrymen, would fill at least nine tenths of all these places. If this part of the subject were to undergo a fair discussion it would naturally be asked, Who are the chief justices of the province? Who the attorney-general? Who the solicitor-general? Who judge-advocate? Who president of the two councils Legislative and Executive? Who compose the

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the majority of the members of these councils? Who are the sheriffs? Are they French Canadians? Oh no! they are a conquered people, and French, and not fit to be trusted. American loyalists and others must therefore have almost the exclusive preference of all places of honour and profit. Lower Canada now abounds with young French Canadian subjects of brilliant talents, cultivated by the best education; and who, from their respectability and influence are qualified to fill every situation in the province with credit and honour to themselves, and benefit to the colony and mother country. They very deservedly enjoy the most unlimited confidence of all their virtuous countrymen, who would rise to a man—and I might almost say to a woman—in defence of the province, if encouraged and led on by them. But how can such devotion be reasonably expected from men circumstanced as they are under the present administration of things in that colony? Fortunately for the best interests of this country, the French Canadians are a virtuous people, and wish to remain so, (distinct from the mixed classes around them), and enjoy in peace and quietness their religion, language, and manners; and happily for us, they consider they have a better chance of so doing with British connection than with American. On this account, and for the advantages enjoyed by them as British colonies, they will adhere to Britain, if its Government have the wisdom and good policy to do them justice. I am still, therefore, of opinion that they should have every privilege of independence granted them consistent with their remaining colonies; and that our other North American colonies should also be promised to be placed on a similar footing, so soon as their population reached a certain number. Under so very liberal a system of government, when war with their neighbours takes place, we would be more likely (if so disposed) to colonize their neighbouring states than lose any of our present North American colonies. Unless that some arrangement is made, and soon, that will satisfy and tranquilize the minds of His Majesty's French Canadian subjects of Lower Canada, whenever war takes place between this country and the United States, we will most assuredly lose all our North American colonies. They will be added to the stripes for the back of John Bull. It is not yet too late to avert this calamity.

I have the honour to be, with great respect,

Sir, your most obedient servant,

(signed) Wm. Parker.

The Right Honourable  
William Huskisson,  
&c. &c. &c.

DID you sign a petition lately presented to the House of Commons from the Canadian merchants residing in London?—No, I did not; it is a very improper one, in my opinion.

Why do you think so?—To unite 1,500 miles of country in one province would be the most inconvenient thing that could be; and it is a most insulting measure to the French Canadians; the object of it appears to me to be only to overpower them in the House of Representatives, and it would not be attained by that means. In Upper Canada it is said that there are very able republican members, and if they sent them down to Lower Canada as representatives, they would be very apt to republicanize the French members, who are not republicans, but loyal, and in my opinion, even ultra royal in their present sentiments and wishes.

Do you know any Canadian merchants now resident in London who entertain the same opinion upon that point as yourself?—Perhaps not.

How long is it since you have been in Canada?—Not since 1811.

You have described what you call the English population, by which it is presumed you mean the population from Great Britain, as being unsettled and transitory?—Not unsettled; but the French Canadians do not look upon them as settled; the educated part of their own population, being born in Canada, remain there; the English part of the inhabitants remain there or not, according to circumstances.

According to what circumstances are they there?—They are there for the purposes of trade.

Are they in the habit of investing their money there in purchasing lands?—Some few have done so.

Can you state why it is that only a few are disposed to do so?—There are not many that

that have money to invest ; there are but few of them that make money. I believe that since I went out in 1780 there are not half a dozen houses in Montreal and Quebec that were in existence at that time.

Do you believe that in the English population there is an indisposition to acquire property and to settle in Canada ?—I cannot speak to that ; I think that if they made money they would be more inclined, perhaps, to return to Europe.

To what circumstance do you attribute that ?—That if they had fortunes they would enjoy them better in England than in America. Canada is a very cold country, there is one half of the year that they are locked up with ice.

Is there any other reason than the climate which renders the persons emigrating from this country indisposed to acquire property in Lower Canada ?—They would like to have the confidence of the French Canadians ; they would like to represent them in the Legislature ; and the French Canadians have not that confidence in them, from the circumstances I have mentioned, that they have in their own countrymen, who are numerous and well-educated men.

Do the English settlers dislike the state of the law and tenure of property in Canada ?—Perhaps they would like some other tenure better ; I do not know ; some of them, I suppose, would prefer other tenures.

Have you ever held landed property in Canada ?—I have land that has come to me in payment of debts.

From your acquaintance with Lower Canada, do you think that if the minds of the inhabitants of that province were quieted as to any apprehension of uniting them with the Upper Province, and if the present constitution was administered in a conciliatory manner, that that would be sufficient to make things go on smoothly ?—Yes ; I think it would, unless there was an invasion on the part of their neighbours. But they have been so much teased and tormented for the last 20 years that it must shake their confidence in their constitution ; and I question almost if even such palliations would be sufficient. It would tranquilize while there is peace with America, but it would require the exertions of every man in the country, in co-operation with any force that this country might furnish, to defend the colonies against the Americans. I do not think that 50,000 British troops would keep the two Canadas for two campaigns.

You mean without the hearty co-operation of the French Canadians ?—Yes ; with their co-operation 10,000 men would be quite sufficient to drive out the Americans.

What system of government towards the Canadians is it that you would recommend ?—I would give the whole civil government of the four British North American colonies, Upper Canada, Nova Scotia, and New Brunswick, to the inhabitants, under such vetoes and restrictions as might be deemed proper with colonies, the fewer, however, and more liberal these were, the better, and keep them as military and commercial stations, and give them all the privileges that they see their neighbours of the United States enjoy, and under which system they are so happy and prosperous.

Do you think it desirable to leave the Lower Province of Canada to the management and direction of the French Canadians ?—Certainly ; they are in my opinion the best subjects that this country has in any part of the world.

Supposing that there exists on the part of persons emigrating from England any dislike of French institutions, would you think it desirable to take such steps as would remove the grounds of objection taken by the English, by letting them have in such parts of the country as they are disposed to settle English laws and English institutions ?—Not in Lower Canada ; you could not have separate institutions in Lower Canada ; the English are confined chiefly to the towns of Montreal, Quebec, and Three Rivers.

Are you aware that the land granted to the English, is granted upon a tenure similar to that on which land is granted in England ?—In Lower Canada I think it ought not to be so ; it is contrary to their capitulation, by which, I understand, they were to enjoy their laws as to landed and fixed property.

Do you also think that it would be contrary to good policy ?—I think it would be contrary to good policy to infringe in the least the rights they capitulated for.

Do you think that the unsettled lands that now exist in Lower Canada should be left to the descendants of the French Canadians to occupy them as they may hereafter be able to do

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Mr. *William Parker* do ; or that it would be wise to adopt such institutions as would encourage the settlement of individuals from this side of the water ?—I would encourage the French Canadians, they are the only people you can depend upon ; the population of the other provinces is of a mixed character (a great many loyal, brave and good men, no doubt, amongst them) ; the French Canadians are united in their origin (of which they are justly proud) in religion, in manners, and in virtue ; they have a character to support, and they have always nobly supported it ; whilst they were under the French government, they were the bravest subjects that France had ; and with one sixth of their present number they gave the greatest opposition to the British army that they met with at the conquest in Canada. I am persuaded if the French Canadians had been as numerous at that time as they are now, we would not have wrested Canada from France, and if such had been the result, we would not now have the youthful, powerful and federative North American republic encroaching on us as they do at present. The French Canadians are reproached for not Anglefying themselves : Are the inhabitants of Jersey and Guernsey worse British subjects for having preserved their language, manners and Norman laws ? or are they so reproached ?—and yet I will boldly assert that Lower Canada, and other North American colonies, are of ten thousand times more vital importance to this empire than these islands are of. I consider them more than the right arm of the British Empire. I am convinced that if the French Canadians were double their present number, they would set all the union of America at defiance ; they are the best subjects this country have.

For that reason you think it would be wise to let them have an opportunity of extending their numbers and their institutions over the whole of the Lower Province ?—Certainly ; you have no other chance of keeping your North American colonies but by that means ; if you do not do it, you lose them as sure as ever you have an invasion on the part of America, and what then ?—With the American republic one and indivisible from the Gulph of Mexico to Hudson's Bay, how would this empire be circumstanced in regard of ships, colonies, and commerce ? This (in my humble opinion) most important and indeed most vital question deserves the most serious consideration of the British Legislature ; once the North American Colonies lost, they are for ever.



J. Stephen, jr.  
Esquire.Martis, 24<sup>o</sup>. die Junii, 1828.

24 June 1828.

James Stephen, junior, Esq. again called in ; and Examined.

When you were last before the Committee, some questions were put to you with respect to the rents of the clergy reserves, have you been able to ascertain what is the gross amount of the rent actually received, and what are the net receipts?—I have with me an account, which I believe will answer that question with sufficient accuracy. In the province of Lower Canada the total quantity of Crown reserves is 488,645 acres, of which there are in lease for 21 years, 38,366 acres. The terms of the leases are, that upon a lot of 200 acres eight bushels of wheat, or 25s. per annum, are to be paid for the first seven years, 16 bushels of wheat, or 50s. per annum for the next seven years, and 24 bushels of wheat or 75s. per annum for the last seven years. The *nominal revenue* of these Crown reserves, upon the average of several years is 830l. ; and the *actual receipt* is less than 30l. per annum. The total quantity of clergy reserves is 488,594 acres, of which 75,639 acres are granted in lease upon the same terms as the Crown reserves. The *nominal rent* of the clergy reserves is 930l. per annum, and the *actual receipt*, upon the average of the last three years, is 50l. per annum. These statements are made on the authority of a letter addressed by Mr. Cochran (the private secretary of Lord Dalhousie) to Mr. Wilmot Horton, of the 20th March 1826. It is the latest account on the subject in the Colonial Office.

Can you account for the great difference between the nominal rent and the net receipt?—It is accounted for by the great difficulty of collecting the rents, and by the tenants absconding. The resident clergy act as local agents in the collection of the rents. It appears that the sum of 175l. has been deducted for the expenses of management, and that at the date of Mr. Cochran's letter there was in the hands of the receiver-general a sum of 250l., the gross produce of the whole revenue of this estate.

The Committee are informed that an arrangement was made with the Canada Company for disposing of a considerable portion of the clergy reserves, and that that arrangement has practically failed ; is there any other arrangement in operation to dispose of a portion of the clergy reserves, excepting that which you have informed the Committee of, which exists under the power which the Clergy Corporation possess of leasing a portion of them?—The statute 7th and 8th Geo. IV, c. 62, authorizes the sale of one-fourth of the clergy reserves, provided that in no one year more than 100,000 acres be sold.

What persons are directed to carry that sale into effect?—They are to be sold by the Governor, acting under instructions issued by His Majesty, through the Secretary of State. Mr. Peter Robinson is appointed in Upper Canada as the Agent to carry this power of sale into effect. I believe, but am not certain, that in Lower Canada Mr. Felton has the same appointment. The proceeds of the sales are to be invested in the public funds of this country, and the interest arising from the investment, after defraying the expenses of the sale, is to be applied to the improvement of the unsold land, or for the purposes for which the land itself was originally reserved.

Have they the power of selling, subject to lease, any portion of those lands that have been leased?—They will, I understand, sell wild land only.

It has been suggested to the Committee that it might be desirable to invest the Ecclesiastical Corporation with a power of letting leases for a much larger term than 21 years, even for the term of 100 years ; if they were invested with such a power would it not conflict with the power of sale granted to the Governor under the Act you have alluded to?—The power of granting long leases would of course have a tendency to withdraw from the agent appointed by Government some of the property which is now at his disposal. But I do not apprehend that there is any probability that, except in a few peculiar cases, the leases would be accepted.

Even of as long a duration as that alluded to?—No ; not if they were granted for 1,000 years.

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years; the duration of the interest would indeed be virtually unlimited, yet a leasehold tenure is always of less value than a freehold, because the tenant is subject to forfeitures for breaches of covenant. It is unpleasant also to stand to another person in the relation of tenant, because during the term the landlord has many rights over the property which are burdensome and vexatious, in the Canadas freehold is to be obtained so readily that, *ceteris paribus*, no one will accept a lease however long. I apprehend also that the Church Corporation have already granted in lease those portions of their lands which are the most desirable. The choice lots have been culled already.

Is the quantity which the Government are empowered to sell, under the Act alluded to as great as the state of the market would enable them to sell?—I of course have no personal knowledge of the state of the market, but what I have been able to learn, renders me utterly incredulous that there is an annual demand for 100,000 acres of land in either of the provinces. You may of course create a demand by lowering the price, but there is no effective demand for it.

The Committee are informed that the distribution of the clergy reserves is extremely inconvenient, as far as it affects other land occupied by independent settlers; has it ever been considered worth while to make an exchange of the land, and to give to the clergy a large mass of land in any particular spot, and to dispose of the particular portions now allotted as clergy reserves?—A power of exchange is contained in the Statute 7 & 8 Geo. IV. c. 62.

Do you know whether any thing has been done under that power?—I think not.

Does any thing occur to you which would improve the situation in which the clergy reserves now stand, or may be placed by the existing laws?—Nothing; I apprehend the only wise course of proceeding is to get rid of them altogether.

Do the existing laws contain such powers as would enable the Government to get rid of them as speedily and as advantageously as possible?—My own opinion is that the reservation of wild lands is precisely the most inconvenient provision for a clerical body in Canada that ever was imagined, and that both the clergy and the colonists at large would be benefited by disposing of them entirely, and at once, and by substituting some other mode of provision.

Do you recollect to what extent that Act gives a power of exchange?—The power is given without any restriction as to quantity.

How would you propose otherwise to provide for the clergy?—I would provide for them by granting wild lands subject to small quit-rents. Those rents I would not actually levy for a considerable length of time. I would allow the parties ample leisure to cultivate their lands, and to invest capital upon them. When this was effected you would have an adequate security for the punctual payment of the quit-rents. Ten or perhaps 20 years might first elapse, but at the expiration of that time the quit-rents so reserved would be sufficient for the sustentation of as many clergy as the province could require. I see no distinct prospect that this wilderness, so long as it is held in mortmain by a clergy totally destitute of funds, or leisure or skill for its improvement, will ever yield any revenue adequate for their support. In the mean time it remains the subject of discontent, and the source of innumerable inconveniences.

Upon what ground do you understand that the clergy objected to a fair sale of their lands?—Their objection was that the valuation was too low.

Did that appear to you to be so when you compared it with the market price of land?—On the contrary, my opinion, after a frequent and most laborious study of the subject, was that the valuation was too high. In confirmation of that opinion I refer to the fact, that persons conversant with the subject, and deeply interested in the welfare of the clergy of Canada afterwards advised the Crown to grant to the Canada Company a block of land on Lake Huron, not at 3s. 6d. an acre, the price at which the clergy reserves had been valued, but at 2s. 9d. an acre, and of this 2s. 9d. a large part was to be returned to the company on their effecting certain improvements on the territory.

Is not that less valuable as being in a large block?—I apprehend it is more valuable, because the company will have the entire and undivided benefit of every shilling they expend upon it. In improving the vicinity they will be improving their own property. In improving detached lots the benefit would in part have accrued to their neighbours. I should observe also, that only the worst parts of the clergy reserves were comprised in the valuation. The best had been previously culled.

Has

Has any other mode of providing for the clergy been under consideration besides that of reserving quit-rents on the clergy reserves?—I apprehend not; I have heard of none. Are you aware what portion of the clergy reserves have been actually sold under the provisions of the late Act of Parliament?—There is as yet no report of any sale.

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What, in your opinion, would be the law which in Lower Canada would regulate the inheritance of land held in free and common socage; if an owner of such land died without a will, leaving children, how would it be distributed among them?—The question, I presume, refers to the state of law as it stood before the enactment of the Canada Tenures Act, 6 Geo. IV. c. 59. The law since that statute is quite clear. My opinion is, that before the enactment of the Canada Tenures Act, lands held in free and common socage in Lower Canada would have descended in the same manner, and according to the same rules, as seigneuries holden of the Crown. The grounds of that opinion are, that the words "free and common socage," in their proper and legal sense, are always used in contradistinction to the ancient tenures in chivalry. The essential quality of a free and common socage tenure is, that the services to be rendered by the tenant are definite and certain. In tenures in chivalry they were fluctuating, and depended on many accidental events: Such is the case at this day with the feudal tenures subsisting in Lower Canada. Therefore the provision in the statute of 1791, that lands in Lower Canada might be granted in free and common socage to those who should desire it, meant, as I conceive, only that the lands should be holden, not upon those varying services which the ancient feudal tenures of the province would have imposed upon the tenants, but by services fixed and certain. The policy of this enactment was obviously to promote cultivation and improvements, and to relieve the agriculturist. What is essential to that end is enacted, and nothing more. The rule of law established by the Act of 1774, that in all matters of civil right resort should be had to the laws of Canada, was invaded so far, and only so far, as was necessary for giving effect to this general policy. The departure from the ancient code was precisely co-extensive with, and limited by, the motives which required it.

You are probably aware that subsequent to the enactment of that law the courts of justice in Canada, and the people in Canada, both seem to have concurred that the old French law should be applicable, in all its parts, to those lands that had been granted in free and common socage, and those lands have therefore descended from that time to the present according to the principles of the old French law. Does it occur to you that that circumstance of the courts of justice having governed themselves upon the principles of French law, does not give validity to those titles which have been thus conveyed?—My own opinion is, that the courts were right in those decisions. And at present the only doubt is as to the effect of the Canada Tenures Act upon the question. That Act recites that doubts have arisen whether lands granted in the Province of Lower Canada in free and common socage will be held and alienated, and will descend according to the Canadian or to the English law; and proceeds to enact that such lands *may and shall* pass, by conveyance or descent, according to the law of England. But the statute does not contain any retrospective language. I suppose the Legislature to have meant to legislate only for the future, leaving the past to be regulated by judicial decisions.

Then with that view you do not think it would be desirable to pass an Act to quiet titles, and to confer on those individuals that have acquired property under the French forms an undoubted right?—It would first be necessary to ascertain with great exactness to what extent the grievance really exists. It would scarcely be wise to pass an Act of Parliament to provide for an insulated case or two. At present your statute prevents the Canadian Assembly from legislating on the subject. I think it would be far better to impart the necessary powers to them. They are incomparably more competent to provide for the real exigences of the case than Parliament can be. If an Act were passed for the single purpose of erecting a legislative body properly constituted, and fairly representing the inhabitants, I would expunge from the Statute-book every single enactment respecting the internal concerns of the province, and leave them to make laws for themselves.

Do you know what difficulties have prevented the exchange of land from the French tenure to the English, under the powers contained in the Canada Tenures Act?—The Canada Trade Act was defective, inasmuch as it did not impose upon the seigneur obtaining a commutation

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commutation the obligation of making a corresponding commutation in favour of his censitaire. That defect was supplied by the Canada Tenure Act.

Has any land been emancipated under the powers of those two Acts?—I apprehend not. Do you know what has prevented them?—As far as I am informed, the difficulty has arisen from the terms which the Governor in Council required from the only applicant for a commutation, and which that gentleman thought too high.

Is there, in fact, a value attached to the right of the Government, the extinction of which would make Government practically a loser?—I apprehend that the value is considerable; but the rights of the Crown are not to be estimated on the same principles as those of a private person. The Crown holds this property in trust for the public; and as the public interest would greatly be promoted by these commutations, I think that the Crown would act wisely in making a large immediate pecuniary sacrifice in order to promote them. To tempt others to follow the example, I would, if necessary, give the earliest applicants a decided advantage. If I could not effect a sale of these rights of the Crown, I would even surrender them gratuitously, on condition that the seigneurs should emancipate their censitaires on the terms of the statute. I am persuaded that before long the revenue would be benefited by such a concession. You would increase the taxation, by increasing the value of all taxable property.

Would any inconvenience, in your opinion, arise from the circumstance of one mass of land being held in one tenure, and another mass of contiguous land being held on a tenure totally different?—The single circumstance of the difference of tenures would not, I think, produce any material inconvenience. In every part of this country are to be found contiguous tracts of land held on different tenures, and descending according to different rules. Some are free old, others copyhold, others are held in gavelkind, or in borough English. An universal identity of tenure would of course be more convenient; but the difficulties which arise from the variety are not found in the administration of justice to be very formidable. Still, however, I should apprehend that serious impediments to the right execution of the law would arise in a country like Canada, when to the differences of tenure you superadd all the consequent varieties between the modes of conveyancing, and between the rules of law applying to a French fief and an English freehold.

If you are right in saying that the French law is properly applied to the free and common soccage lands after they are once granted, does any inconvenience afterwards arise with respect to descents? The question is without reference to the Declaratory Act?—Supposing the Canada Tenures Act not to have been passed, and the law to revert to the state in which I suppose it to have stood before the enactment of that statute, I do not understand what difficulty on the subject of descents could, on that hypothesis, be proposed for consideration. The French law of descents, whether convenient or otherwise, is at least intelligible and well known. Supposing, on the other hand, that the English law respecting real property, in all its strictness, has been induced upon the soccage lands in Canada by the Tenures Act, the difficulties will, I apprehend, be found quite insuperable unless some modification of our English rules be made. I suppose that the courts in Canada would be somewhat perplexed if they had to try a real action, or to apply the law of contingent remainders to the lands in these townships. There is no end to the illustrations. What would they make, for example, of a term of years in trust, to attend the inheritance.

Would it be necessary, if the English tenure of land is established, to adopt the mode of conveyance in practice in England; would it not be possible to adopt a more simple form, one resembling that which exists in Upper Canada, or in the United States?—I think there would be no insuperable difficulty in superseding altogether the English law of conveyancing, and borrowing the simple forms of the Roman law. Our English forms are peculiarly inappropriate to the circumstances of a colony, and most of all to those of a newly settled colony. Wherever English colonists have been unfortunate enough to find any of the continental codes in force respecting the conveyance of land, they have clung to it with great eagerness, and have congratulated themselves in their deliverance from a heavy burthen. This is especially the case with the Dutch law in Demerara, the Spanish in Trinidad, and the French in St. Lucia.

Are you acquainted with that particular tenure of the French law called the *Franc Aleu*?—I am not so well acquainted with it as to give any useful information about it.

Can

Can you say whether you consider it more burthensome to the proprietor than the English tenure of free and common soccage?—I apprehend it has the essential qualities of *J. Stephen, jun. Esquire.*

Do you consider the French system of tenure in Lower Canada as burthensome to the proprietor or not?—That it is burthensome in one sense of the expression is plain enough, inasmuch as the tenant owes various dues to the lord. Of course there can be no question as to the relative freedom of a holder of land who is exempt from all such obligations. As a question of general and public good, I could never bring myself to doubt that it were better that all lands in Canada should be holden in free and common soccage, than in fief and rôtur.

In those colonies where the Dutch law and different foreign laws exist, do they exist concurrently with English law?—No; all lands in Trinidad are holden under Spanish law; and in Demerara and the Cape under Dutch law. This applies even to lands granted by the King of England.

Is there any colony in which the same courts decide upon questions of English form, and upon questions as to the form of any other country?—I do not think there is any colony in which the English law exists concurrently with a foreign law. Each form may come into question in their courts incidentally and indirectly, but never as an established part of their judicial system.

Is it your opinion that upon all those questions, complicated as they are with regard to the tenure and transmission of property, the Colonial Legislature, with the advantages of their local knowledge, are much more competent to decide than the British Legislature?—I cannot suppose any man at all conversant with the subject hesitating respecting the answer to that question. Except there be a well-founded distrust of the disposition of the Colonial Legislature to do right, no plausible reason can, I think, be suggested for taking this work out of their hands. They are incomparably better qualified for it than you can be. What should we think of the Canadian Assembly passing acts for the improvement of the law of real property and conveyancing in this country! Yet I suppose they understand our system of tenures at least as well as we do theirs.

Then the remedy which you think ought to be applied to this state of things is rather some change in the Local Legislature than any change in the law upon that particular subject?—Yes; establish a proper legislature, and you may safely repeal every Act in your Statute Book respecting the internal concerns of Canada.

Have you any doubt that if the regulation of the tenure of land was left to the Colonial Legislature they would entirely get rid of the English tenure?—That depends upon the constitution of the Local Legislature. If you leave the Assembly in its present form, the French members, if left to themselves, would infallibly get rid of the English tenure.

If the lands now granted in free and common soccage continued to be held on that tenure, and subject to the English law of descent, is there any thing which makes it necessary on that account to adopt the inconvenient forms of English conveyancing?—As I have already said, I think there would be no formidable difficulty in superseding the English method by forms borrowed from the French, or any other foreign code. In legislating for these two countries you have a tabula rasa before you, and are free from the many difficulties which impede such improvements in an old settled country like this.

Do not you conceive that as the law stands at present the Provincial Legislatures have the power of modifying even the English law, as applicable to free and common soccage lands?—I should have said so, but for the last Act of Parliament which, while it authorizes the adaptation of the law to the free and common soccage tenures, prohibits any modification which would abrogate their tenures altogether.

Have you any reason to believe that persons of English origin are deterred from settling in Lower Canada by the prevalence of the French law, with which they are not acquainted?—I have reason to believe it, because I have heard the statement made by many persons intimately acquainted with the country.

Is it not necessary, in your opinion, if it is thought desirable to introduce persons of English descent to settle in Lower Canada, to establish, with reference to real property, though not with reference to personal property, some law with respect to the possession

of

of that property, so far similar to the law of England as to get rid of the inconvenience they complain of?—I apprehend that so long as the law respecting notarial registries, and the law respecting the legal consequences of marriage on the property of the parties, remains unaltered, the English will be deterred from settling in the country. I am aware of no other rule of law on the subject of civil rights which would deter them.

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Esquire.  
24 June, 1828.

Do you think that persons with English ideas and habits prefer the mode of distributing land after their death equally among their children, and that they have no opinion in favour of the right of primogeniture?—In new countries, where there is no aristocracy of birth, and where the opinions or prejudices which flow from that institution are scarcely known, the law of primogeniture of course has a very weak hold on public opinion.

May not those consequences of marriage that you have alluded to be barred by marriage settlement?—They may be barred by an ante-nuptial contract; but the settlers are generally ignorant persons, who marry with very little attention to the consequences of the contract upon their present or future property.

Supposing a person with considerable property, real and personal, goes to Canada, becomes domiciled there, makes a marriage, and settles his property, real and personal, and afterwards comes back to England, do you know what inconveniences, if any, would follow from that arrangement?—Of course the effect of the settlement, as it respects real property, will always depend upon the *lex loci rei sitæ*.

Might not a settlement of that description be as valid and beneficial to him after his change of place from Canada to England, as if it had been made under the English law?—A man resident in Canada may, in Canada, make a marriage settlement, which upon his return to England shall, in England, be just as effective as though it had been executed in the city of London.

Supposing a person marries in England, and goes to Canada, having made no marriage settlement, acquires property in Canada, and dies there, by what law is his property in Canada to be administered?—It would depend, I think, upon the place of his settled domicile at the time of his death.

Supposing he becomes domiciled in Canada?—If he becomes a settled inhabitant of Canada, and acquires a domicile there, then I suppose that the consequences of a marriage previously contracted in England without any ante-nuptial contract, must depend upon the law of Canada. I conceive this to be the general international law of Europe, I should rather say of Christendom. The general principle may perhaps be superseded by some positive law existing in Canada. But in the absence of such positive law, I should in the case supposed, look to the *lex domicilii*. I mean of course to be understood with many limitations, which I could not state without a large demand on the time of the Committee, even were I prepared to state them.

In any other colonies are you aware that the obstacles to the settlement of Englishmen have arisen from their not finding the English laws in force?—I am not aware that the want of English laws has ever formed an effectual obstacle to the settlement of Englishmen in the other colonies; but I am well aware that after they have settled, the want of so much of the English law as respects political and civil liberty has been the subject of the most constant and bitter complaint.

Do you consider that is a discouragement to settlement in other colonies as well as in Canada, that they do not find the English law to be the law of the land?—I do not think it prevents any man going there, but it makes many men discontented when they get there.

Is it any practical discouragement in other colonies, or is there any reason to presume that it is a practical discouragement in this colony?—It is a greater discouragement in Canada than any where else. The United States present at once an invidious contrast, and a place of easy migration. If a settler at the Cape of Good Hope be discouraged, he has at least no inducements to remove to Caffreland.

Do you apprehend that there is more difficulty in the same judge to deciding in civil actions, both upon the English law and the French law, than there is the English House of Lords in the same judges deciding similar cases both on Scotch and English law?—The English and Scotch codes are much less remote from each other than are the codes of England and Canada. The Peers in Parliament have many aids in learning the Scotch law upon each subject as it arises, to which, in the case supposed, nothing parallel would

be found in Canada. Persons intimately acquainted with Scotch law argue at their Lordships' bar. The whole law has been previously discussed by the advocates and judges of the Court of Session. There are Scotch digests and indexes at hand, and there are some peers who have been trained to Scotch law.

*J. Stephen, jun.  
Esquire.*

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Can the difficulty of language be a great one to any educated man?—I apprehend there are few English gentlemen, whatever may be their familiarity with the French language, who would easily understand a French law-book, or an oral argument on a question of French law.

Does an English lawyer opening a book of Scotch law understand it at first perusal?—He understands it with little comparative difficulty, because the derivation of the technical words suggest their probable meaning, and because there is a general and prevailing analogy between the Scotch law and the law of England.

Are not the French and the Scotch laws equally founded upon the Roman law?—I do not pretend to the knowledge requisite for drawing that comparison; but in general I conceive that the law of Scotland has deviated much farther from the original stock than the law of old France.

If the lands now held in free and common soccage are to continue to be held on that footing, and the existing laws regulating that tenure are to continue in operation, would it not be desirable to have separate courts in which the law respecting real property held on the tenure of free and common soccage should be administered?—Perhaps that is a mere question of economy. If you can afford the English a separate court, with competent English judges, it is of course desirable that you should do so. It appears to me, however, that without any additional expense, the object might be obtained by a modification of the present system. There are now nine judges, four at Quebec, four at Montreal, and one at Three Rivers. This is a very ample establishment for 500,000 persons. The nine might be easily so stationed and selected as to administer justice to both the races.

If a court for the administration of the laws relating to real property, under the tenure of free and common soccage was established in Montreal, might there not be circuits into the townships, and courts held from time to time in particular districts, in which causes might be tried arising out of matters connected with property held on that tenure?—There may be conclusive objections to that scheme arising from localities, of which I know nothing. I can perceive no technical objection, or at least none which could not be readily removed.

When it is considered that the French law in Canada is applicable to all personal contracts and all personal property, could it be worth the expense to have any courts established for the administration of those few cases in which the law of England as applicable to real property might apply?—The more closely you can bring the administration of justice home to the doors of the people the better. A man living in the townships has much to do, and would have a formidable journey to take for the redress of his grievances, or to give his evidence, if the only courts were established in the three towns on the Saint Lawrence.

Supposing that state of things to exist again which did exist previous to the passing of the Canada Tenures Act; in that case would there be any necessity for any new courts to administer English law as applicable to real property?—On that supposition the nature of the law to be administered would create no such necessity. But the topographical circumstances of the country would create it. A court of justice, easily accessible, is a matter of the first and most urgent importance in every society. Even if the same law prevailed over every acre of land in the province, the remoteness of the courts, and the difficulty of approaching them, would be a serious evil to the inhabitants of the townships. As the communications improve, that evil will be diminished; but till then it must be felt very sensibly.

Must not the instances be extremely few in which it would be necessary to administer the English law with regard to real property, if a state of things existed in which the French law was applicable to all lands in free and common soccage after the first grant of the lands?—If that state of things did exist, I cannot perceive how any question upon the English law could arise for decision.

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J. Stephen, jun. Esquire. Then your opinion is, upon the whole, with respect to that subject, that either an enactment placing the law upon the footing upon which you suppose it to have stood before that Act, or a declaration of the law upon the subject, would be beneficial?—My opinion is, that the only reasonable course of proceeding is to create a legislative body in which you can repose confidence; and having done so, to leave them to make such laws as they may think necessary. It is vain to attempt to establish laws of minute detail on subjects of this nature by acts made on one side of the Atlantic which are to operate on the other.

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Would it not be necessary to infuse into the Representative Assembly a larger portion of persons representing the interests of the townships, in order to secure the enactment of such laws as they desire?—My opinion is that you must very greatly alter the constitution of the Legislature of that country before you can implicitly trust it with carrying the necessary forms into effect. What the proper alteration would be is a question on which it would probably not be required of me to express any opinion.

What would be the consequence of introducing a larger proportion of representatives returned by the English townships?—The consequences will be so numerous that it is impossible to advert to them all, and it is difficult to make a selection. One obvious result would be the excitement of new and bitter controversies between the French and English parties in the Assembly. If the members were returned with reference to population, the French would be powerful enough to carry all their measures, and you would have more violent conflicts, and probably still greater discontents, than at present. If indeed the two parties in the Assembly approached an equality, the Governor, by the sagacious, just and temperate use of his powers, might so moderate between them as to produce comparative repose.

Where there are conflicting interests in a population like that of the Canadas, does not it appear reasonable that those conflicting interests should each of them have representatives to support those interests?—It seems to be a very bad system of government to be making a studied provision for conflicts between opposite parties in the state. The great object is to secure tranquility and peace; and I think you secure them best by that sort of balancing of parties which, as we see in this country, leads to mutual concessions, by producing in each party a wholesome dread of its antagonist.

You are aware that in this country it is supposed by some that there is a conflict between the commercial interest and the agricultural interest; would you think it desirable for the sake of peace that one of those interests only should be represented?—Certainly not.

Can you inform the Committee what system prevails in Upper Canada for the purpose of increasing the number of representatives in that province?—In Upper Canada the Representative Assembly consists of the representatives of counties and of towns; and each county containing 1,000 persons sends one member; when it contains 4,000 persons, it sends two; but however much the population may increase beyond 4,000, there is no further increase in the number of members for the county.

Is a large portion of the surface of Upper Canada parcelled out into counties?—A considerable portion.

Are their many counties in existence in which there is this latent right, which have not yet acquired population enough to give them one member?—I cannot answer that question with accuracy. Whenever there is a county in that predicament it is thrown into the next least populous county of the district, and votes with it. Thus if there is a county possessing only 900 inhabitants, those persons would vote as freeholders of the least populous county in the district containing above 1,000.

Can you state whether that system is found to operate well, or whether it affords a subject-matter of complaint?—As far as my knowledge extends, no party in the province, (and parties there are in violent opposition to each other), has ever complained of it.

Do you happen to know, whether, in the United States, any similar system exists?—I believe, but am not certain, that it exists in the States of Vermont and New York.

Is it within your knowledge that the Legislative Assembly of Lower Canada at one time passed a bill, the object of which was to provide for the increase of that Assembly? Yes.

That bill stopped in the Upper House?—It was rejected by the Council.



Do you know for what reason it was rejected?—It is stated to have been rejected upon the ground that it was improperly framed. The imputed impropriety, as I am informed, was, that instead of diminishing the inequality between the French and the English interests in the Assembly, it tended to increase it in favour of the French.

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If in adding to the number in the Legislative Assembly in Lower Canada the principle of population is alone looked to, must it not necessarily follow that the influence of the French Canadians will be constantly increased?—Supposing the French race to increase with the same rapidity as the English, there will always be a great preponderance of the French interest if population be made the single basis of the representation, because at the present time the French are about 400,000, and the English cannot exceed 80,000.

Do you believe that any scheme of representation can be adopted which shall not give a great preponderance to the French interest?—I can suppose a scheme of representation which at some remote period would deprive the French of that preponderance. The territory occupied by the English is more extensive, and is capable of sustaining more inhabitants than the territory occupied by the French. If then, in the scheme of representation, you have regard to the extent of territory as well as to the extent of population, a day will at length arrive when the French and English members will be equally balanced.

What are the instances that occur to you in which the French population of Canada have interests distinct from those of the English population?—I conceive that their divisions do not originate in any real contrariety or in compatibility of interests. Large bodies of men are seldom much moved by a mere computation of interest, and still more seldom have any clear view of what their interest really is. The contest is not upon any questions of political arithmetic; it has much deeper roots; it grows out of national prejudices, and is a matter of pride, passion and sentiment. The interests of the two races, rightly understood, are the same; but they feel too warmly to understand those interests correctly.

Do you know, of your own knowledge, that the law which was proposed for altering the representation would have had the effect of diminishing the English interest in the Assembly?—I know it only from the information of other persons.

Are you aware what number would have been returned in the English interest under the new law, and what number is returned under the present law?—The calculation is, that there would be nine new French, and two English representatives, which, being added to the existing state of things, would make about fifty-three French to about seven or eight English.

Would not that have been rather more than the existing proportion of English?—The proportions fluctuate so continually that you cannot compute them with any exactness. Men are occasionally changing their parties; and one movement of that kind will in this case largely affect the population.

Do you think it would be desirable to apply the system acted upon in Upper Canada in any alteration that may take place in Lower Canada, in the election of the Representative Assembly?—If I may express my own opinion as to what alteration should be made, I should say that the two Canadas ought to be re-united. If that plan be rejected, the next best measure would, I think, be the introduction of the Upper Canada law.

What steps ought to be taken in order to carry the Upper Canada law into effect; in what way could it best be ascertained into what portions Lower Canada ought to be divided?—Of course it can only be ascertained by persons resident there; and there must be a new Act of Parliament.

Must it be passed by the English Parliament?—Yes; because the existing division of the country, with a view to representation, depends upon the proclamation issued under the authority of the English statute; and because this is an innovation which the existing Assembly will not voluntarily introduce.

Do you consider the inconvenience arising from having two systems of descent of real property in one province a sufficient ground to overturn the system of legislature of the province, for the purpose of removing that inconvenience?—To the question proposed in that abstract form I should answer no. If that were the single inconvenience, I would not alter the legislative system in order to remedy it.

Was it not upon that ground principally that you rested your wish to have the legislative system altered?—My reasons for wishing to have the legislative system of Canada altered are many, but chiefly this: If you persevere in the present system, I fear it is but too evident that you are sowing the seeds of separation between the Canadas and this country.

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In what way would the continuance of the existing state of things unaltered be likely to lead to a separation between the Canadas and this country?—I cannot too anxiously disclaim the intention of impeaching the loyalty of His Majesty's subjects in the Canadas; it would be the height of impropriety were I to suggest a doubt of their fidelity to the government under which they live. I have no reason to doubt it; and on the contrary, have many reasons to know that a spirit of cordial affection to His Majesty's person and government has been very recently manifested in those provinces. I speak only of what is future and probable. Consider then what is the situation of the Upper Province, and of the English part of Lower Canada. The colonists occupy a territory imbedded among foreign states: on the one side are the Americans, on the other the French Canadians, who though living under the same sovereign are essentially foreign to the Upper Canadians in language, laws, institutions, habits and prejudices. Nature provided the Hudson to the south, and the St. Lawrence to the north, as the great channels of communication between the English territories and the rest of the world. But the people of New York command the Hudson, and the people of Lower Canada the St. Lawrence. The city of New York on the one stream, and of Quebec on the other, are outposts interdicting all commercial intercourse with English Canada, except on such terms as the Legislatures of New York and Quebec are pleased to prescribe. Is it reasonable to think that the people of English Canada will permanently acquiesce in this exclusion? Is it good policy to make them continually feel that a union with the great republic to the southward would open to them channels of commercial intercourse, from which your laws have interdicted them?—Can it be supposed that they will always be content to lose the vast commercial advantages which they would derive from their unequalled inland navigation if their intercourse with the ocean were unimpeded? A capitalist in Upper Canada can employ his property only in agriculture. If he engages in trade, it must be either in the United States as an alien, or in Lower Canada under all the restraints which a French Legislature may impose on him. I recommend a union, therefore, as the only effectual mode of rescuing the Upper Province and the English townships from disadvantages to which I think it is neither just nor safe to subject them. But I advise it also on this further ground: It is vain to conceal the fact that the Act of 1791 has established a monarchical government without securing any one means of authority or influence to the monarchical branch of it. The Government can neither control by its prerogative, nor influence by its patronage. The ties by which the people are bound to their Sovereign are not of the same strong and enduring character as the corresponding obligations between the King and the people in the old European States. It is impossible to suppose that the Canadians dread your power. It is not easy to believe that the abstract duty of loyalty, as distinguished from the sentiment of loyalty, can be very strongly felt. The right of rejecting European dominion has been so often asserted in North and South America, that revolt can scarcely be esteemed in those continents as criminal or disgraceful. Neither does it seem to me that the sense of national pride and importance is in your favour. It cannot be regarded as an enviable distinction to remain the only dependent portion of the New World. Your dominion rests upon the habit of subjection; upon the ancient affection felt by the colonists for their mother country upon their confidence in your justice, and upon their persuasion, that they have a direct interest in maintaining the connection. I fear that all these bonds of union, and especially the sense of interest, will be greatly weakened if you persist in excluding them from all control of the navigation of the St. Lawrence. But even if all these ties remain, they are not the surest supports of empire. When thinking, as I have often thought, on the apparent fragility of our tenure of the Canadas, one, and only one, mode of strengthening it has occurred to me. I would bring the French and English representatives with an equality, or some approach to equality of numbers, into the same Legislature. I would appoint over them a governor possessing temper and wisdom enough to moderate between the two parties. By maintaining a severe regard to justice, and to the constitutional rights of the King's subjects of every class, he might acquire a large and legitimate influence. This I know is a task not to be committed to vulgar hands. But I am much mistaken if a great and permanent accession of power to this country would not be derived from the mild, firm and just management of the two great parties, equally balanced and counterpoised in the same assembly.

If the state of colonial dependence is so injurious to the commercial interests of the Canadas, is it evident that a union would improve their condition?—I do not apprehend that the commercial dependence is injurious to their interest; on the contrary, as the law of England now stands, it is highly advantageous to them. They have privileges in the English markets which other nations have not. What I said rather was, that the English population of the Canadas are so surrounded by foreign nations that in fact all commerce is interdicted to them, except on the most inconvenient terms.

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Have they not a great advantage over the states of North America by having a free access to the trade of Great Britain?—I think they have.

Does not that more than counterbalance any disadvantage that they are under from their exclusion as colonies from a free trade with other countries?—A dry and accurate computation would, I believe, prove it; but large bodies of men are not much governed by calculations of any kind. You must address their affections or their imagination if you desire to move them.

Did you in your answer mean to refer to the inconvenience which arises to the Upper Province, from the circumstance of the Lower Province being interposed between them and the port of entry?—From the circumstance of the Lower Province legislating for the navigation of the St. Lawrence, and imposing, at its discretion, all the duties payable there. The English Canadians stand towards the Lower Province in a relation not dissimilar to that in which they stand to the State of New York. That state legislates for the trade of the Hudson; the Province of Lower Canada legislates for the trade of the St. Lawrence. On either side the outlet is barred by laws which they have no share in making.

Is there no mode of reconciling that but by a union?—I can imagine none.

Is there any risk under such a system of the party who is not favoured by the Governor looking to foreign aid?—I assume, as a postulate, that you have a Governor who will have magnanimity and discretion enough to favour neither party, but who will maintain a just, an equitable, and a benignant mediation between both.

Do not you see very great inconvenience in the circumstance of the immense distance of different points of the Canadas from each other, along a line of country extending no less than 1,500 miles; do you not think that that circumstance would present the greatest difficulties to uniting them in one Legislation?—In the first place there is not a line of inhabited country extending 1,500 miles; it scarcely reaches 1,000. In the next place the country is intersected by great navigable waters, and the steam-boats would convey the legislators backwards and forwards readily enough. But the difficulty anticipated probably is, that a Legislature sitting at Montreal or any other central place, would be inconveniently remote from the different parts of the country, and that the members could not be adequately acquainted with the localities. Now I assume that the Legislature would be disposed to delegate a part of its own powers to various local and subordinate authorities, such as quarter sessions, corporate towns, and justices of the peace. It would reserve for its own interference only the great and more important questions. Just as in this country Parliament does not make laws for every hundred or parish, but establishes a kind of county and parochial legislation throughout the kingdom.

Are you not aware that in the United States the disposition has constantly been in favour of subdivision rather than in favour of amalgamation?—The circumstances of the United States and of Canada are so different, that analogies of this kind must be admitted very cautiously. The motives, which in my judgment should lead to a legislative union between the Canadas, could not operate on any of the states composing the great American Union.

Do you not consider, that as the whole English population of the Canadas is about 26,000, while the French population is about 400,000, that the disadvantage would be greater than the advantage, in disaffecting so large a proportion of the population as would be disaffected by the union?—I hold it as a settled point, that whatever you do, or whatever you decline to do, you must reckon upon a great mass of discontent and uneasiness. The measure I propose would at least conciliate many. If you leave things as they are, I believe that no one will be gratified; some change seems to me inevitable.

Do you not consider that part of the discontent and inconveniences that have arisen may be attributed rather to the administration than to the constitution itself?—Some part has probably so arisen, but comparatively a very small part. The great source of these con-

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troversies is the difference of the two races, combined with the differences between the territories on which they are settled. Their national antipathies are whetted by many accidental contrasts between their respective situations. Bad government may exasperate these evils, but the most perfect government, without a radical change in the system, could never cure them.

Do you consider that the difference arising between two nations are better healed by bringing them face to face in the same Assembly than by keeping them apart?—You cannot avoid bringing them face to face in the Assembly, for that is the present system. Upon the plan I propose there would, it is true, be a greater number of opposing faces, but then the number so opposed would be in much greater equality. They will learn to respect each other's power, and will become comparatively quiet.

Do you suppose that the Act of 1791 is founded upon false principles?—I do. The Act of 1791 was, I think, in effect an Act to create two new Republics upon the continent of North America. It contains no one effectual provision for supporting the monarchical power.

Supposing the measure you contemplate to take place, do not you think one of its effects would be to render Upper Canada much more physically powerful?—Yes, I should think it would.

Would not it also have a tendency to depress the French population of the province who are not commercial men, and people of different habits?—I think that the comparative depression of the French, at no very remote period, is inevitable. They will sink under the weight of the English, or of the Anglo-American influence in these provinces.

Have you had any means of forming an opinion of what the sentiments of Upper Canada are upon the subject of the Union?—I apprehend them to be in favour of that scheme. I cannot doubt their concurrence in a measure by which their great object of legislating for the Port of Quebec would be secured. There is also this negative proof of their approbation of it, that when the scheme of the Union was agitated the Upper Canadians never concurred in any of the protests against it.

Do you think it would be desirable for the Government of this country to propose that or any other great alteration in the fundamentals of the constitution of the Canadas, without giving that country full time to express its opinion upon the subject?—Extreme measures of that kind are only to be justified by an extreme and evident necessity. If the extreme necessity could be made out, I would not hesitate to take the extreme measure. It is just reduced to that question; and there are many persons intimately connected with the Canadas who are greatly alarmed as to the consequences of postponing this measure, even till the 1829.

Do you apprehend no danger from giving the French Canadians so extensive an influence over Upper Canada as they must necessarily acquire if the provinces are united? I believe the danger will be wholly in the opposite direction. In a Legislature which is to debate in English, to make laws in English, and to proceed according to English parliamentary rules, the English influence must necessarily predominate. Besides there is a peculiar aptitude in the English character for success in this species of controversy.

If an alteration was made in the Assembly of Lower Canada, by laying out, for the purpose of representation, divisions of the townships, and such portions of the country as were likely to be settled by the English, do you think that the change thereby effected in the Legislative Assembly of Canada would be likely to lead to an union, and to diminish the objections made to it?—You will never have a *voluntary* union until there is a majority of English to carry the question of Union; but up to that point you must proceed through a series of conflicts which would tear the province in pieces.

Supposing a union to take place, and that the English interest should become quite paramount, and the Canadians quite depressed, do you consider that this country would have a stronger or weaker hold over the country on that account?—I can hardly anticipate the possibility of such a total depression of the French interest as the question supposes. I would legislate from the commencement upon this principle, that the representatives shall be drawn equally from the two races; of course I do not mean with precise numerical equality. But if provision were made for equalizing the two races in the Assembly, then you might, I suppose, calculate with great confidence upon either party retaining considerable strength for a great length of time to come.

Do you mean that they should be equalized in point of numbers?—I would have a legislature

gislature (assume for example's sake) of 100 members, of whom I would propose that 50 should be French and 50 English, and I should expect that under the mediation of a wise government they would proceed amicably by compromises, as other legislatures proceed.

Do you think that the habits of the English population, and their tendency to commerce, make it likely that they will have a superiority over the French population?—I think they will always form the commercial part of the society, and having the superiority of wealth, and probably, of intelligence, they will gradually obtain (as on that hypothesis they ought to obtain) a superiority in all other respects.

Are you acquainted with the Act called the Sedition Act in Upper Canada?—I am acquainted with it by having read it some years ago.

Do you know the circumstances under which it was passed?—It was passed in the year 1814, soon after the commencement of the late war with the United States of America.

Do you know the powers it gives?—It gave very ample powers: it suspended the Habeas Corpus Act, and it gave the governor and members of council a power of imprisonment in all cases of treason or suspicion of treason.

Is that Act still in force in Upper Canada?—No, it expired at the end of the war.

Have there not been several bills from time to time which have passed the Legislative Assembly, and have been rejected by the Upper House in Lower Canada?—Several.

Can you give the Committee any information as to the reasons for which those bills were rejected?—The bills that have been rejected, so far as I have any knowledge of them, are these. First, various bills of supply were rejected on the ground that the Assembly asserted by them the right of appropriating the whole revenue of the province. Secondly, a bill for enabling the inhabitants of Canada to maintain suits against the Crown was rejected, because as that suit would have been tried before the Governor and Council, the same object could be more readily answered by a petition addressed at once to that body. Thirdly, a bill for regulating fees of offices was rejected because the Council did not think the offices useless or the fees improper. Fourthly, bills for establishing corporate bodies for the government of the cities of Montreal and Quebec were rejected as not having been properly framed so as to promote the interest of those places, but as tending to promote the private advantage of particular individuals. Fifthly, some bills for improving the administration of justice were rejected under the following circumstances. In the years 1819, 1821 and 1823, bills for the same purpose were sent from the Council to the Assembly and rejected by the Assembly. In 1824 the Assembly sent a bill to the Council, which was lost, because the Council had not time adequately to consider it before the close of the session. In 1826, another bill transmitted from the Assembly underwent great amendments in the council, but failed from the lateness in the period at which it was sent up. In 1827, a bill for the administration of justice was read a second time in the Council, but the prorogation of the House prevented any further proceeding upon it. Sixthly, a bill for regulating gaols was rejected on the ground that the object ought to have been provided for by a local rate, instead of the charge being thrown upon the public revenue. Seventhly, a bill to regulate the office of justice of the peace was rejected, because it fixed the qualification at 100*l.* per annum of freehold estate, and the Council were of opinion that this was unsuited to the circumstances of the country, and would have excluded a great many useful men. Eighthly, the Militia Act was amended by the Legislative Council and returned by them four days before the prorogation in 1827, but never came back to them from the Assembly. Ninthly, the bill for increasing the representation of the province was rejected for the reason I have formerly mentioned. Tenthly, a bill for securing public monies in the hands of the receiver-general was lost, because it deprived the executive government of their authority over that officer, and did not require that the public money should be accounted for to the Lords Commissioners of the Treasury. Eleventhly, a bill for the independence of the judges was rejected because the effect of this bill would have been to render the judges subservient to the Assembly by exposing them to impeachment and trial before that tribunal. Twelfthly, the bill for appointing an agent was rejected because it was intended to establish a distinct correspondence between the Assembly and the agent of the colony, in which the Governor would not have participated. I should state that in assigning the reasons for the rejection of those bills, I am taking upon me to speak on subjects of which I know nothing except from inquiry and hearsay; I cannot pledge myself to the accuracy of this account. I can only say that such is the account received in the Colonial Department.

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What are the usual powers of colonial agents?—There are two classes of colonial agents. In those colonies which we call (the phrase is an unfortunate one) "*Conquered Colonies*," where there is no legislative assembly, the agent is appointed by the Governor, and corresponds with the Governor. There is no other constituted authority competent to make the appointment. In colonies where there are representative assemblies the agent is appointed by an Act of Assembly. He is so appointed by name, and a salary is granted to him in the Act itself. The Act usually constitutes a joint committee of the Assembly and of the Legislative Council, to correspond with the agent. That officer is in habitual communication, on the affairs of his constituents, with the Colonial Department. Making all due allowance for the disparity of the two offices, the agent of a colony is accredited in the Colonial Department in the same way in which a foreign minister is accredited in the Foreign Department. Of course the analogy is very imperfect, but the duties have a general resemblance. Canada is the only colony having a representative legislature in which there is no agent appointed by the Legislature.

Does the sort of agent which the two provinces of Canada desire to have differ in any remarkable degree from the sort of agent you have described to exist in the other provinces? It differs, as I believe, only in the circumstance, that the Assembly in Canada wish to conduct the correspondence entirely to themselves, and to leave the Council out of it.

Should you see any objection to the Canadas having an agent in this country in the same manner that other colonies having legislatures have agents?—On the contrary I should see great advantage in it; I apprehend that the appointment of an agent for any colony is attended with the greatest advantages both to the government and the colonists. The only objection I can state is, that such an appointment would disturb the existing agent in his office. I do not mean to say that this should weigh as a senior objection, but it is an accidental inconvenience.

Has not the ground on which the appointment of an agent has been resisted in Lower Canada been, that the Governor always said that he was the only proper medium of communication between the Government and the colony?—I believe the Governor has said that he was the representative of the colony. Language of that kind has perhaps been thrown out without much consideration, and ought not, I conceive, to be very closely criticised.

In those colonies which have agents, is there any check by the Governor upon the money voted as the salary of those agents?—Of course the Governor must assent to the Act appointing him.

Has any practical inconvenience arisen from that where the agent has been obliged to put himself in opposition to the Governor in any respect, that there has been any difficulty with regard to the voting of his salary?—Never, in my recollection. Acts appointing agents arrive from year to year constantly.

Is not there an Act of the province of Upper Canada of a late date repealing the power to appoint an agent?—I think not of a very late date. I have read very diligently through the Acts for the last fifteen years, and I do not, at present, recollect such an Act.

Is not the salary of the present agent, appointed by the Governor, one of those salaries that is always made a matter of difficulty with respect to the appropriation in Lower Canada?—It is.

Does it occur to you that it would tend in any degree to promote peace in the provinces, if a power of appeal to the King in Council were given?—There is at present a power of appeal to the King in Council in all judicial matters, and all legislative matters. The King in Council acts as the ultimate judge, and as the ultimate legislator.

Is not the Executive Council the ultimate court of appeal in the Canadas?—The Executive Council, with a president appointed for the purpose by the Governor.

For the purpose of trying appeals from the courts?—From the courts of Quebec, Montreal, and Three Rivers; from their decision there is an appeal to the King in Council.

Why should the appeal not be at once from the courts of Montreal and Quebec to the King in Council?—In all codes founded on the civil law a double or appellate jurisdiction is an essential part of the system of jurisprudence; a French process always supposes a power of appeal; it would have very greatly deranged the ideas and habits of the whole society to have refused it.

Is the Executive Council calculated as a court of appeal to give satisfaction to the province?—It contains all the judges in the country, except the judge against whose decision the appeal is brought; I suppose it to be the best constituted tribunal which the province affords.

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Do you happen to know what regulations have been made in the Canadas for the making or maintaining of roads in those provinces?—What may be called the General Road Bill of Lower Canada is the 36th of Geo. 3, c. 9. The effect of that bill is to put all public roads under the direction of the grand voyer of each district. The occupiers are bound to keep the roads in repair. If a new road is wanted application is to be made to the grand voyer, a public meeting is to be held at a place which he is to appoint by advertisement; he is to hear the parties, to visit the proposed line of road, and to make an order granting or rejecting the application. From his order there is an appeal to the quarter sessions. Various grants have been made in the province for the improvement of internal communications; I have made a list of some of them; it is as follows. In 1815, 8,600*l.* were granted for roads and bridges. In the same year 25,000*l.* were granted for the La Chine Canal. In 1817, 55,000*l.* were voted for internal communications by land and water. In 1821, a further grant of 10,000*l.* was made towards the La Chine Canal; 12,000*l.* more were granted in 1823 for the same purpose. In the same year 50,000*l.* were voted for Chambly Canal. In 1824, a loan of 20,000*l.* was raised for the La Chine Canal; and in 1825, various sums amounting to 2,580*l.* were voted for roads.

Do you know any thing about the application of those monies?—They are applied by commissioners appointed by the Governor.

Do you know whether that expenditure of money has been attended with any good results?—It is not in my power to give any information on that subject.

Do you think that an improved system might be adopted with regard to roads?—I apprehend it would be desirable that matters of that nature should be done by the vicinage, and under their immediate direction.

Would it not be desirable that an officer should be appointed in each township or each sub-division of the province, who should have power to provide for the making of roads?—That depends on many local considerations, which I cannot estimate; I can only say, that I think it would be desirable to act upon the principle of leaving the local districts as far as possible to regulate their own local concerns.

Do you know what bills have been passed, the object of which has been to regulate the education of the people?—The bills for regulating education are the 41st of George the 3d, c. 17, by which the Governor was authorized to incorporate certain persons as trustees of the schools of Royal foundation. A president was to be appointed by him. Free schools were to be erected in each parish, which were to be governed by rules to be made by the corporation. That body was to buy the land, the parishioners were to build the school-house, and the Governor was to appoint the school-master. The statute 4 Geo. IV. c. 31, declared every *fabrique* or vestry in the province capable of holding land for the support of an elementary school. One school was to be established in every parish having 200 families. The schools were to be under the same administration and inspection as the *fabrique*, and the *fabrique* was at liberty to employ one-fourth of its income in supporting the school. The Assembly have made various grants for the support of schools, 400*l.* were granted for the support of schools at Quebec and Montreal, and one of 18,000*l.* in 1826 for the support of schools generally; besides four other grants which were made for the same purpose in the same year.

Is that system in operation which was enacted by those bills?—I apprehend that the first Act has not been enforced; the Act erecting elementary schools I believe to be in operation.

Do you know any thing of the system of education pursued in those schools?—Not at all.

Is it complained of at all on the ground of its religious character?—I have never heard of any such complaint.

Do you know whether there is much conflict in Lower Canada, upon the subject of education, between the two denominations of Christians?—I understand that there has been. I believe that much controversy arose respecting the Act for erecting the corporation. The Roman Catholics were afraid that their children would be exposed to some temptation to change their religion, and did not choose to send them to those schools.

Are

J. Stephen, jun.  
Esquire.

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Are you acquainted with the steps that have been taken for the apportionment of the revenue between the two provinces? In the year 1793 commissioners were first appointed to treat with Upper Canada respecting the collection of duties, and the payment of drawbacks. An agreement was accordingly made between the two provinces, to the effect that Upper Canada was not to impose duties on goods imported into Lower Canada; and that one eighth of all duties levied in the Lower Province should be paid to the Upper Province. This contract was to be in force till December 1796. In 1796 a second commission of arbitration with Upper Canada was appointed. In the year 1798 the powers of this commission were prolonged, and its number increased. In next year, 1799, they completed a contract, the terms of which I do not very exactly understand; but I think it continued in effect the former agreement. In the year 1800 commissioners were again appointed. In the year 1801 they a third time revived the old contract. In 1804 there was another appointment of commissioners; and in 1805 the contract was again confirmed. In 1811 the agreement was continued till 1814; in that year it was further prolonged till 1816. In 1817 commissioners were again appointed to meet; and in the interval 20,000*l.* was paid to Upper Canada on account. In 1818 a new compact was made with Upper Canada; the effect of which was that one fifth of all duties was to be paid to the Upper Province, and that no import duties were to be levied there. The provinces could not afterwards come to any agreement; and the Act was passed by which the Parliament gave the Upper Province one fifth, till the arbitrators should have investigated the case. The result of that investigation has been to give to Upper Canada one fourth.

In the Act of the 31 Geo. 3, giving the constitution, there is a clause which enacts that when the provincial legislature enacts any thing respecting the church-lands, modifying either the state of those lands or affecting to regulate the appointment to benefices, such acts must be laid before the British Parliament, and if the British Parliament disapproves of those acts of the Colonial Legislature, the British Parliament is empowered to petition the King to withhold his assent. Do you think there is any possibility of extending that kind of remedy to any of the matters which have been the subjects of dissension between the two legislative bodies of Canada?—I think that would be nothing else than to transfer to Parliament the duty which at present belongs to the ministers of the Crown. Instead of those controversies being agitated in Downing-street, they would be carried on in one of these committee rooms. The plan suggested, as I understand it, is this: supposing either House of General Assembly to pass a bill, and the other to reject it, that Parliament should decide whether the bill was properly rejected. If you adopt such a measure, I think that in that case you must appoint a standing Canada committee here; and I am well convinced that the two Houses of General Assembly would provide that committee with such abundance of occupation, that its duties would be of the most formidable nature. I confess I think the present constitution in that respect is incomparably better.

Your opinion upon the whole is that nothing of that kind would be practicable?—Yes; the practical objection is that they would give you more to do than you would ever get through with.



*Jovis, 26<sup>o</sup> die Junii, 1828.*

Mr. *William Hamilton Merritt*, called in; and Examined.

Mr.  
*W. H. Merritt,*  
26 June 1828.

Are you a native of Upper Canada?—I am.

Are you a proprietor in that province?—Yes.

Are you at all acquainted with the disputes now going on in that province, respecting the clergy reserves?—I am not particularly acquainted with them. I know the situation of the clergy reserves, and the way they are held.

Is the improvement of the country materially retarded by the manner in which the clergy reserves have been laid out?—Yes; their being separated and distributed through the country proves injurious to the settlement of the remainder, as they do not equally contribute to the general improvement.

Do you think it would be possible to sell any large portion of the clergy reserves in the course of a few years?—I think it would, if the country was properly improved; but in the present situation of that country it is impossible to sell land at any thing like its real value; and to this subject I am particularly desirous to draw the attention of the Committee, to show the relative value of property in Upper Canada compared with the state of New York, and the price of land in the two countries.

To what causes do you attribute the difference in the value of land in Upper Canada and in the state of New York?—The principal cause is in the present boundary line or division of the country, which excludes us from the advantages we should derive by participating in the commercial wealth of the country, and enabling us to improve its internal communications. Lands in Upper Canada are not one-fourth of the value they are in the state of New York, and property not one-tenth.

To what particular districts of country do you allude?—I allude to the whole extent of both provinces, with the exception of 150 miles on the St. Lawrence in Upper Canada, between the boundary line and Kingston; in this distance we possess equal advantages in our internal communications, and property is equally valuable on either side, according to its local situation.

Will you point out some particular part of Upper Canada to which your observations apply?—From Kingston upward; particularly on Lake Erie or above the Niagara river.

In what way does the want of a sea-port town affect the value of land in Upper Canada?—By excluding us from any participation in its wealth. The capital of all countries centres in its cities; for instance, the wealth of the state of New York centres in the city of New York, and the wealth of Upper Canada centres in Montreal; they bring a portion of that wealth back from New York to improve the country by building mills, making roads, canals, &c. &c. in consequence of which, together with the cheapness, facility and regularity in their communications, they can employ capital once a month during the navigable part of the season in converting grain into flour, and sending it to market. Wheat always brings a better price with them, although the market may be better with us at Montreal than with them at New York; this has a tendency to make property more valuable, and to change hands readily; whereas with us there is not a single instance of a Montreal or Lower Canada merchant ever expending a farthing in Upper Canada. It is true they possess large tracts of land in that province, which they have been under the necessity of taking in payments of bad debts, but never lay out in improving them for the general advantage of the country. We have not five flouring mills which can be considered mercantile within 60 miles of the Niagara frontier, while the Americans have upwards of 50; the consequence is, while wheat always commands cash with them it can only be bartered with us, and instead of once a month we cannot employ capital in purchasing

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chasing grain to make a remittance oftener than once a year. Property is merely nominal, it cannot be turned into money. We think by possessing a sea-port we would improve the interior, make it an object for individuals to invest money, create business, and produce an entire change, and place ourselves in full as good a situation as our neighbours.

If a merchant in Montreal had capital to dispose of, and had an opportunity of employing it advantageously in Upper Canada, would he be prevented from doing so by the circumstance of the territory lying under a different jurisdiction?—No; but we know Upper Canada is not now in a situation to have capital advantageously employed, and we think it never will as long as that unnatural territorial line exists. Almost every British merchant, for years past, has been dissatisfied with the country; and a great portion of the capital accumulated in Montreal has been sent either to this country or the United States. We hope to place it in a situation to induce the inhabitants to look forward with a view of making Canada their permanent residence, and produce a favourable change even in this feeling.

Is it solely with the view to the probable return of capital into the country that is amassed at Montreal, that you recommend this measure, or is it with a view to any commercial object?—It is with a view to the general interests of the country in every respect, the accession of both capital and credit, that port would give us, would enable us at once to set about the improvement of the St. Lawrence, by following the example of the state of New York. Within three years we would make a sea-coast of all those upper lakes, and possess nearly the same natural advantages over the Americans, in our access to the ocean, we did before the completion of their canals, relieve ourselves from paying a tax of 4l. 10s. sterling per ton on all our imports, 1l. 4s. on our exports; save the country from 100,000l. to 200,000l. per annum; materially promote the agricultural and commercial interest of that country, as well as the mercantile, manufacturing and shipping interest of this, and enhance the value of all property fully equal to what it now is in the state of New York.

Then your complaint is that the Assembly of Lower Canada does not improve Montreal as you would improve it?—Our complaint is not with respect to the city of Montreal, but the whole country; the improving of the one part will benefit the remainder; they have only one general interest.

Is your complaint then that the Assembly of Lower Canada does not meet you in improving the navigation of the St. Lawrence between Montreal and your limits?—When we see a neighbouring state, without the aid of any revenue from foreign commerce, or duties on imports of any description for its own use, connect lake Erie with the Hudson, from Buffalo, Lake Ontario, from Oswego, and lake Champlain from White Hall, by canals; to construct which they had to ascend high summits and surmount the most formidable obstacles; while the natural outlets of all those lakes are in the St. Lawrence and could have been connected with the ocean in Canada, by a steam-boat or ship canal, for one-fourth of the money it required to construct their boat-canals, we have reason to think there has been at least a very great want of attention to the subject. At the same time I have much satisfaction in stating that the Legislature of Lower Canada contributed to the connection of Lakes Erie and Ontario, by taking stock to the amount of 25,000l. in the Welland Canal Company, and manifested at the time the best disposition to promote any useful improvement, and many individual members since then have expressed their readiness to assist in the improvement of the St. Lawrence, although it is not reasonable to suppose on general principles the people of Lower Canada can feel the same interest in improving the country above them, as those who have to pay for every barrel of flour they send to Montreal; *one-third* of its value for freight, and on our heavy and most useful articles from Montreal, such as English iron, *one-half* the amount of its cost. I will mention a case in point to prove this. Every member from the city of New York opposed the appropriation of money for the construction of the Erie canal; it was carried by the influence and number of the western members, who felt the same interest in the undertaking we do in this; and although it has proved equally beneficial to the city, they would not have had a canal to this day if the state had been divided or separated as we are in Upper and Lower Canada above Montreal.

How can a line which only separates two jurisdictions prove such an insurmountable barrier to the wealth of Upper Canada?—The reason is simply this: Upper Canada cannot participate in the commercial wealth and advantages of a sea-port, the same as it would be in the state of New-York if there was a line drawn across the state above Albany, and it was laid out into two separate states; the upper could not participate in the wealth of New York, and would remain poor. The main cause of the prosperity of that state is in having capital returned from the city, and the Legislature possessing power to command the credit and capital of the whole for their mutual benefit. So satisfied are they that their boundaries could not be bettered, that with all their propensity to changes and to try experiments, no man ever dreams of cutting the state into two parts; they change the constitution, cut it up into counties, and create as many new offices as they can, but the natural boundaries of the state remain untouched, although their population is about 2,000,000. Every state in the union, where an angle can by possibility be run to the ocean, possesses a sea-port; and it so happens that the money to effect the internal improvements in those states is always provided in those very cities.

When we see two countries lying side by side, as the western part of the state of New York and Upper Canada, possessing equal advantages in soil and climate, and find the one increase in the most astonishing manner, while the other, comparatively speaking, remain stationary, our attention is naturally drawn to discover the true cause. The whole country, within near 300 miles of the Niagara river, 46 years since, was a perfect wilderness. Our side of the Niagara frontier settled and improved full as fast as theirs, until the late war, since which their rapid increase has taken place. They borrowed 9,000,000 of dollars on the credit of their state, constructed their canal, added 100,000,000 of dollars wealth to the state by the increase in the value of property. The tolls now pay the interest of the money, and will redeem the principal in a few years. It is impossible to conceive the effect opening those communications produce in a new country unless they are witnessed. This is the true cause of their prosperity, which they could not have effected without the aid of the city of New York; and I maintain we only want the city of Montreal to enable us to produce similar results on a much greater and more beneficial scale.

Do you contemplate as necessary for the attainment of that object the union of the two provinces, or do you think that your object would be sufficiently attained, if the division of Upper Canada were to extend as low as Montreal?—I think that would be sufficient without a union.

Do you conceive that such a division would answer all the purposes of commercial intercourse, and would be more advantageous than an incorporation of the two provinces into one?—I think that ultimately a union would be more advantageous, but we would avoid all the difficulties that the people of Upper Canada anticipate if a union was to take place: they think they would be under the influence of a majority in Lower Canada.

Would it be possible to make such a geographical division of the provinces by running a line down the river Ottawa, and then passing north and west of Montreal, so as to include in the Upper Province none of the seigneuries of the Lower Province?—No, it would not; there are four or five small seigneuries between Montreal and the present boundary line.

Supposing a similar line were run from La Prairie, on the other side, to the river Richelieu; are there any seigneuries south and west of such a line?—Yes, there are four or five.

Is not a great proportion of the English population in Lower Canada included within the town and seignory or island of Montreal?—Yes.

Do you conceive that the majority of the property and wealth of the town of Montreal is in the hands of the English or of the French Canadians?—The numbers are in favour of the French, but I should think the commercial property is in favour of the English.

Were not the whole of the seigneurial rights of Montreal in the hands of the seminary?—Yes, I understand they were, but the Government had a claim to them.

Are you aware that the Government have come to an agreement by which they have in

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their power those seigneurial rights, with the intention of making a mutation of the tenure?—No, I was not aware that they had.

Would the commercial object of the Upper Province be answered by annexing Montreal to it?—Yes.

In what way can goods be carried to Montreal?—Any vessel of 400 tons can go direct from this to Montreal; and as I before mentioned, although the distance is 3,200 miles, the freight is only £1 2s. 6d. per ton; whereas the next 400 miles it is 6l. 12s. 9d.

Do you think, if you had the town of Montreal as a port of entry, you would be able to control your own imports, and levy your own duties?—Yes, without any difficulty.

Without interfering in any manner with the province of Lower Canada?—Yes; the inhabitants of each country should be allowed to purchase freely in the other.

Supposing a vessel bound to Upper Canada were to pass through the St. Lawrence, and no duties were to be collected upon her at Quebec, would it not be possible for her, in her passage up the St. Lawrence, to smuggle those goods into Lower Canada for consumption there?—They could not smuggle into Lower Canada between Quebec and Montreal with any greater facility than they can now smuggle between Quebec and Anticosti. There is no smuggling now, that I am aware of; and it would be much against the interest of this country, as well as Canada, to put on such high duties as would tempt smuggling. We are not, and should not be put on a footing, or considered as two foreign nations with separate interests. A manifesto, or clearance, is put on board the vessel in this country; they would enter at Quebec or at Montreal, as they pleased.

Do you know any thing of that district of country below Quebec?—No, I merely passed down on the river once.

Do you object to the arrangement that has been made with regard to the division of the duties between the Upper and the Lower Province?—No; I do not think the division of duties important; it is of very little consequence to the general prosperity of the country, whether a few pounds, more or less, are paid either to Lower or Upper Canada; their general interest is, or rather should be the same. I am warranted in my opinion respecting the effect of duties by witnessing their proceedings in the state of New York, from which I draw my inferences. She derives no particular advantage from the revenue of her imports; they are exclusively under the control of the general government; still she is enabled to appropriate large sums annually for education; pays her civil list, and accomplishes the most extensive internal improvements, without any aid from the general government; while we, with a revenue of 90,000l per annum, cannot pay even our civil list. The principal object and the greatest advantage the provinces will derive by the accession of Montreal to Upper Canada is, that by placing the internal wealth of the country at her own disposal, she will be enabled to appropriate a portion of that wealth in the improvement of the interior, and make the country rich enough to defray its own internal expenses, and not depend wholly on taxing British commerce for every local purpose.

Do you apprehend that there would be any serious objection, on the part of the French Canadians of Montreal, to be transferred to the Upper Province?—I cannot say. My own opinion is, if they had an opportunity to compare their present situation, with the advantages they must derive by the change, they would not; and I know that every man in Upper Canada would be in favour of it.

Do you think it would be just to introduce among that population a new law, with all its incidents?—I do not see the necessity for altering the law as it at present stands. The French law, I have no doubt, would be gradually altered, as changes might seem advantageous. If the accession takes place, they would rapidly become English, if we can, judge from the result at New Orleans, and as this state of things, from our local situation must take place, I think it just and politic to bring it about as soon as possible, that we may be one people.

What is the law that prevails with respect to personal property in Upper Canada?—The same as here.

Does it differ in any way from the administration of the law, as to personal property in Lower Canada?—I am not acquainted with the administration of the law in Lower Canada.

Is there, or is there not, any difference with respect to the law of personal property in Upper Canada and in Lower Canada?—I cannot say.

It has been stated by some of the witnesses before this Committee, that it would be easy in practice to establish such a system of custom-house regulations, at the present point of division between the two provinces, as to enable the inhabitants of Upper Canada to impose what taxes they please upon goods coming into that province, and to levy them without any danger of smuggling from the Lower Province, in case of any variation of duty between the two provinces; is it your opinion that that would be a practicable arrangement?—No, I think it quite impracticable.

Will you state why you think so?—There are many reasons. If a temptation was offered for smuggling it could not be resisted; for instance, in the winter the country is covered with snow, and they could go into Upper Canada whenever they pleased; they might enter in various ways, by boats, sleighs, waggons, &c. as they formerly smuggled between the United States and Canada.

What is the extent of the frontier between Upper and Lower Canada, throughout which smuggling might be carried on?—Many miles, from St. Regis, opposite Cornwall, near the whole length of Lake St. Francis, thence along the boundary to the river Ottawa, and so on all the line of that river.

Supposing Montreal was the port of entry in the Upper Province, what would prevent smuggling from the Upper Province into the Lower Province?—There would be no necessity for that. The inhabitants of Lower Canada might go and buy from the port of Montreal, and the inhabitants of Upper Canada might go and buy from the port of Quebec the same as they do now; they pay no duty on crossing the line between Montreal and Upper Canada.

Supposing an inequality of duty in the two provinces, and that no article were to pay a less duty in Upper Canada than it paid in Lower Canada, what would there be to prevent that article from being smuggled into Lower Canada in consequence of that inferiority of duty?—If either province were impolitic enough to put a higher duty on any one article than was paid in the other province, the consequence would be, that every body would go and buy in the place where it was lowest; but as I have before mentioned, there should be no second duty after goods are once landed, either at the port of Quebec or Montreal.

Supposing that Lower Canada imposed a duty upon rum, and that the Upper Province imposed no duty upon rum, would it not be the interest of the inhabitants of the Lower Province to buy their rum in Montreal, and to bring it into consumption in the Lower Province?—It would.

Do you suppose it possible that there should be different scales of duties in the two Canadas under any circumstances?—I do not. The duties at present are regulated by the Trade Acts; and if a much higher duty on any one article were imposed, it would prove injurious to ourselves as well as the grower or manufacturer. For instance, rum, coffee, sugar, to our West India colonies, who receive our flour in exchange, and our goods to the manufacture here. The cheaper these can be introduced into Canada the more will be disposed of, and we will obtain a much greater revenue from lower Duties than high ones. If Lower and Upper Canada were two distinct countries, with separate interests, like the United States and Canada, some restrictive measures, in crossing the boundary line, would be necessary, as they are, it is not.

You are aware that by the schedule of the Trade Act in 1824 and 1825, various duties were imposed upon articles which might be imported from the United States into the two Canadas, do you conceive that in Upper Canada the payment of those duties is avoided in consequence of the difficulty of preventing smuggling?—Not in general; there may be some articles smuggled in consequence of the duties upon them being too high, but in general they are not.

Mention the articles upon which you conceive smuggling to take place;—I cannot mention any particular articles.

Are you of opinion that in consequence of the nature of the frontier, between the United States and Upper Canada, it never would be practicable to enforce the payment of duties upon articles which can be afforded cheaper from the United States to Upper Canada than from England, including the expense of freight?—No, I think not; if you

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place a higher duty upon articles from the United States than will pay the expense and risk, they will smuggle them in, and it will be impossible to prevent it. For instance; the whole of Upper Canada was supplied with tea from the United States, before the India Company sent their ships to Quebec direct (although the article was prohibited altogether.) Now the tables are turned, the Americans will be supplied through Canada with British manufactures, because we take less duty than they do; they will smuggle one hundred to one more than we do. The British manufactures will be sent in by the St. Lawrence, and if we improve the facilities, they will be carried to the remotest part of Upper Canada, and they will be smuggled in great quantities into America along that line.

Can you inform the Committee how far the English law of descent prevails in Upper Canada? has it been modified by local statute?—It has not; a bill was passed in the Lower House, but not in the Upper.

Can you inform the Committee of the modification which that bill proposed?—It was making a certain distribution of the property when a person died intestate, but I do not know exactly what the division was.

With respect to the law of mortgage in that colony, can you state precisely how that law stands?—A mortgage is given as a security upon property, any person can foreclose it and sell it.

Is money in point of fact lent upon the security of mortgage?—It is.

Is there a general system of registration?—Yes, the registration is very simple, each county has a register office; if a person wants to buy property, he goes on and pays 1s. 6d. and he finds immediately whether it is incumbered or not; for if the person had incumbered it and not registered it, the person who bought it and registered it would hold it.

Then all mortgages must be registered in order to be effectual?—Yes, every thing affecting the conveyance of land.

Is that system found to work well?—It is universally approved of; there is not a person in the country who does not feel the advantage of it.

Do you know in what form marriage settlements are drawn?—There are no marriage settlements there that I know of; it is very seldom that any thing of the kind is entered into.

Is there any system of entail of property?—No.

How do they provide for widows?—They get one-third at the death of the husband; they are entitled to dower according to the English law.

Do they get one-third both of all the original landed property of the husband and of all after acquired land?—Of all that he has at the time of his death; if he sells any property, she bars her dower on the deed.

Can you state what is the prevailing practice in Willing; is it the practice to make an eldest son as it is called, or to leave the property equally distributed?—That depends altogether upon the wish of the person.

Have you known instances of both?—No; if a person does not wish to divide his property, he does not make a will, because it then goes to the eldest son.

Which is the more frequent occurrence of the two?—The general practice is to make wills.

Do you conceive that the American settlers who have settled in Upper Canada are attached to the laws of Upper Canada, or that they have a preference for the laws of the United States?—I think they are decidedly attached to the laws of Upper Canada, which are very similar to those of the United States. The inhabitants of Upper Canada are more attached to the present form of government than they are to that of the United States. They gave the most convincing proof of it by their conduct during the late wars, at the commencement of which there was but one regiment of soldiers, the 41st, on the whole frontier between Kingston and Sandwich. The country was repeatedly invaded during that year; and to its inhabitants, as then composed, is its defence during that period principally to be ascribed. Those people were admitted into Canada on the most liberal principles before the war; and the most impolitic and injurious measure the Government of this country ever adopted towards that was in excluding them since. Many people, to my certain knowledge,

ledge, sold their property in the state of New York, where they were dissatisfied in paying heavy taxes for the support of what they conceived an unjust war, with a view of settling in Upper Canada, came to the frontier, found a restriction, and proceeded on with their capital to the state of Ohio, to the unexampled increase of that state. We most materially contributed to the very great injury of Upper Canada, and the depreciation in value of property. The Americans are the most useful and enterprising people which can settle a new country; and their principle is to defend the country they live in, not the one of their birth and many who had not settled in Canada one year were as faithful to it as any native.

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However loyal the general character of the American settlers might have been, were there not some exceptions?—Yes, there were a few; but full as many among Europeans, in proportion to their number.

Are you a native of Upper Canada?—I am not a native of it; my father was an American loyalist, and I happened to be born in the state of New York; but I have lived all my life in Upper Canada, and my feelings are wholly Canadian.

Do you consider it to be the prevailing wish of the Upper Canadians to remain connected with this country?—Yes. There never was a country more happily situated than Upper Canada in her connection with this country. From her soil, climate and situation she must be wholly agricultural; you receive her produce on more favourable terms than the produce of the Americans; we receive your manufactures on paying a moderate duty of about two and a half per cent, while the Americans are now paying from 50 to 100, consequently we must obtain our supplies at a much cheaper rate. Every person will not only see but feel this advantage, so that by securing our interest you have the best guarantee of our attachment and connection. We are naturally rivals to the Americans; we grow the same articles, seek the best markets, and endeavour to draw the products of each other through our different communications. The only thing we require as before stated, to place Upper Canada in the most enviable situation, is unrestricted immigration, an uninterrupted communication to the ocean, and the possession of a commercial port.

Independently of the advantages they derive from the trade of this country, do you conceive it to be their wish to continue a province of this country?—Yes. The only measure adopted by our Government, that I know of, which gave general dissatisfaction, was in placing restriction on emigration. The reason I heard assigned for this measure immediately after the war, when it took place, was that the admission of American settlers would be a means of disseminating democratical principles, although no evil had arisen from those who came before the war; on the contrary, they proved equally zealous in its defence. If, in truth, their form of government is better adapted for our country, it is quite impossible, from our continual intercourse with them, to prevent our imbibing those principles; and any attempt to prevent it conveys an admission that we think it the best, and does far more injury than service. That portion of the inhabitants of the United States who would settle in Canada would give a decided preference to our Government, and would make the best subjects and settlers, upon the same principle, and for the same cause, that the great majority of English, Scotch and Irish who settle in America become the most vile democrats in that country; for neither party would go and settle under any government without being predisposed in its favour. The only difference in the form of government in the state of New York and Upper Canada, consists in the appointment of Governor, Upper House or Legislative Council, and magistrates: the former, with us, is appointed by the Crown during pleasure, the Upper House for life, (independent of both Crown and People,) magistrates, &c. by the executive; our parish officers elected by the people. They in New York elect the whole, and in this only do we differ. We have the full benefit of their democracy without its attendant evils. They are continually electioneering and changing every officer in the state, from a governor to a constable; constitution and all. In a late change in their constitution they adopted universal suffrage as it is termed, paying no regard to property. This is found on trial to create much dissatisfaction among themselves. A man in office being dependent on popular favour, (if he wishes to retain his situation,) makes it a study to please the majority, right or wrong, and cannot act independently. Many of them feel the effect of this, and we see it; and I am sensible but

Mr. *W. H. Merritt.* but few, if any, in Canada desire a change. Therefore independent of our interests, which is the governing motive, we have good reason to be satisfied with our form of Government.

26 June 1828. Then you think it the prevailing wish not to make the Government more democratic than it is at present?—I do.

Are they satisfied with the constitution of the Legislative Council as it at present exists?—They are so far as I have any knowledge; it would be better if they appointed, in the Legislative Council, men more generally distributed over the province instead of so great a proportion being resident at York, as it would add more weight to the body; and I think late appointments have been more distant. They were at an early day.

Are they satisfied with the constitution of the clergy corporation?—Those that do not belong to the Church of England are not. The Church of Scotland want to get a share of the property, and if they were to get it, and it was only between those two churches, I think the people in general would be more dissatisfied than they are now, because all the other denominations would lay claim to it.

What is the prevailing religious belief in the Upper Province?—They are divided among a number; I think the Methodists are the prevailing opinion, and I think they have done more good than any others.

Do you mean the Wesleyan Methodists?—They are of the same faith, but belonging to a conference established in the state of New York; they came into that country when it was very new.

Do they connect themselves at all with the Church of England?—No, they are quite separate.

Are their ministers generally Americans or Englishmen?—They are divided; there are a number of Upper Canadians among them.

Have you any reason to believe that persons of different religious persuasions are in the habit of conforming to the worship of the Church of England when churches are built and clergymen provided?—I do not think they are; I do not think they like the form of it generally; my reason is, that there are more of other persuasions than of the Church of England.

What persuasion do you belong to yourself?—I belong to the Church of England.

Do you happen to know how many members of the Assembly in Upper Canada are members of the Church of England?—I do not.

Are the churches fully attended as far as you know?—In some places they are; it depends altogether upon the situation of them.

Are you acquainted with the Act by the name of the Sedition Act?—Yes.

Do you know the history of that Act?—It was an Act passed a long time ago, during the troubles in Ireland, in order to prevent Irishmen, who might be conceived to entertain dangerous principles from coming into the country; the only instance I know of its ever being acted upon, was in the case of Mr. Gourlay.

What are the powers that it gives?—It gives power to a commissioner of the Court of King's Bench to order a person out of the country; if I go and take an oath that I believe that such a person has not taken the oath of allegiance within a certain time, and that he is a dangerous man, the Commissioner orders the person out of the country, if he does not choose to go, he is then confined.

Is there no appeal?—No. Mr. Gourlay is a case in point; he was ordered to leave the country, he would not, and was put in gaol.

Has the House of Assembly repeatedly passed bills to do away with that Act?—It has.

Have they been constantly rejected by the Legislative Council?—They have.

It is then in existence at this moment?—It is.

Do you happen to know by what majorities in the House of Assembly those Bills were carried?—They were carried almost unanimously in the House of Assembly.

Has it not been for some time past the first bill that the House of Assembly always passed before it proceeded to other business?—Yes.

Do you know upon what principle the Legislative Council refused to repeal the Bill?—I have heard the Bill was rejected because they conceived no evil had arisen from the existence



existence of the Act, and they did not conceive it necessary to repeal it; but, in my opinion, it would be a good thing if it was done away with, it is a useless law, and it gives needless dissatisfaction.

Mr.  
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Do you follow any profession in Canada?—No, I do not.

Do you hold any situation under the Government?—Nothing but an honorary one, I am a commissioner of the peace.

Are you a holder of land in Upper Canada?—I am.

You state that a law was made for preventing Irish from coming into Upper Canada, is there any prejudice at this moment against the introduction of Irish emigrants?—On the contrary, they conceive it very beneficial.

Is it the general opinion in Upper Canada, that their interests and their resources would be materially advanced by the increase of their population?—Certainly, the interests and resources of Upper Canada would be materially advanced by the increase of population.

Do you think the Legislature of Upper Canada would be prepared to concur in any measure for the introduction of population into that country?—I think they would, but it would depend upon what footing their concurrence was required, they could not contribute money just now, if their natural situation is improved in the way I have mentioned, they will be able to assist in any thing.

Do you think that if they had the means of assisting they would be disposed to assist in it?—Yes, if we are placed in the situation that the state of New York is, by possessing a part of our own, we will be enabled to contribute to any measure for the advancement of the country.

What part of Upper Canada do you reside in?—In the district of Niagara.

Do you know any thing of the administration of justice there?—Yes.

Is it in a respectable state, or is it disapproved of?—It is in a respectable state.

*Samuel Gale, Esquire, again called in; and Examined.*

YOU have already stated to the Committee that you attend here with a view to represent the feelings and the opinions of the inhabitants of the townships of Lower Canada; the Committee wish to ask you, with respect to the tenure of lands in the townships of Lower Canada, and particularly with respect to the laws which are held to be applicable to it; the Committee are informed that in the opinion of many persons, although the land is held in free and common soccage, yet nevertheless all the French laws apply to it, both with respect to dower, alienation, descent, and giving security for money borrowed; what is your opinion upon those subjects?—I consider the Canada Tenures Act not to have established a new law, but to have confirmed the law which pre-existed for township lands. I consider the Canada Tenures Act to be in short no more than it purports to be, namely a declaratory Act. My opinion upon those subjects, even antecedently to the passing of the Canada Tenures Act was that English laws alone were legally applicable to the lands in free and common soccage.

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Do you mean with all the incidents?—All the incidents relating to land in free and common soccage in the townships of Lower Canada I have supposed to be the same as those which, derived from the English law, have been always held applicable to land in free and common soccage, upon the establishment of other English colonies.

Is that the general opinion entertained in the townships?—That I know to be the prevailing opinion in the townships, and I can state that I have understood it to be the opinion of gentlemen of the highest consideration in England at the time that the Act of 1791, giving a constitution to Lower Canada, was passed; I have understood also that Mr. Grenville sent out to Lower Canada a draft of the Act of 1791, upon which draft it was distinctly stated by him in a marginal note, that, as under the Act of the 14th George the Third (1774), soccage lands were exempted from the French laws, they were considered as falling under English laws. In 1804 I believe the opinions of some of the Judges in Lower Canada were taken upon this subject, and as far as I understand there was some difference of opinion among them upon that point; but I always conceived, in common with almost all whom I have heard discuss the subject (except the French Canadians) that the Act of the 14th Geo. 3, (unless one of its most important clauses was to be blotted out, and considered a perfect nullity and a dead letter,) intended to assure to the soccage lands, in other words,

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words, to the townships, the English laws. The clause must be so interpreted, or it could have no meaning at all; it is as follows: "Provided always that nothing in this Act contained," (namely the Act of 1774, which established French laws for the seigniories,) "shall extend or be construed to extend to lands granted or to be hereafter granted in free and common soccage." If that clause was intended to have any meaning at all, it was intended to exclude absolutely the French laws from operating upon soccage lands, and this was obviously the interpretation given to the Act of 1774 in England, as well as by the English generally in Lower Canada. The laws of England were assured to Canada by His Majesty's Proclamation of 1763; they were acted upon under this Proclamation. The right to English laws was therefore considered universal in Canada when the Act of 1774 was passed. And that Act, not as a right but as a boon to the seigniories, established French laws for them, but declared that their operation should not extend to soccage lands. The former right to English laws out of the seigniories was therefore still maintained even by the Act of 1774. The Canada Tenures Act was only confirmatory of this right. It would be somewhat strange, and not very just, if what was given as a boon to the seigniories should be allowed to destroy the right was reserved to the givers and their descendants in the lands granted or to be granted in the soccage tenure.

Though that matter appears so clear to you, and though you state the authority of Mr. Grenville, confirming your view of the subject, does it appear that the Judges of Lower Canada unanimately concurred in that view of the subject, or that others have the same view?—I have stated that I have understood that there was a difference of opinion among the Judges on that subject before the passing of the Canada Tenures Act. The French Canadians of the seigniories and their adherents I believe interpret the matter differently from the English inhabitants of the townships. The French desire the extension of French laws and institutions, the English of English laws and institutions. The French law was given by the Act of 1774 to the seigniories, although England was bound by no pledge or promise to do so; it was probably meant as an act of favour to the French Canadians, because they formed the majority in the seigniories. The English constitute a greater proportionate majority in the townships than the French do in the seigniories. The same claims to favour in the establishment of their laws, which can arise from their constituting the majority, the English possess in the townships as the French do in the seigniories, even if that were all; but the English Government and English Parliament are bound, by repeated and solemn pledges and promises, to confirm English laws to the townships. The townships are entitled to English laws as a right, and must have them, unless indeed it shall please the parent country, after doing more for one portion of the population than it promised, not only to do less, but even to break its faith to the English portion; a course of conduct which will not tend to render the wild lands in the townships of Lower Canada a fitter home for English emigrants, nor much accelerate the progress of improvement, nor consequently much advance the interests or character of Great Britain.

In point of fact, from the time of passing the Act of 1774 to the time of the Canada Tenures Act, was there any descent in the townships according to the law of England, or was not it uniformly according to the law of Canada?—I have not heard of any contest raised upon that point in a court of justice, but I have known instances where the whole of the township lands of the father were taken by the eldest son, with the assent of the whole of the rest of the family, they considering that to be the law; they would not have acquiesced in their own exclusion had they supposed that they possessed claims which the law would enforce.

Were you present at those agreements?—I was not; but I have understood so from the different branches of the family.

Is it not even within the seigniories a common arrangement that the younger branches of the family waive their right under the law, and permit the eldest son to take it?—I have never known any thing of that kind, and it is not very consistent with the common habits of mankind to give up the rights which they possess to property without compensation or equivalent.

Has there ever been a decision of a court of justice determining that the law of England prevailed within the townships, and not the Canadian law, between the year 1774, and the passing the Canada Tenures Act?—I have heretofore stated that I am not aware of any legal contest having been raised and decided upon those specific points in a court of justice.

What

What has been the practice with regard to the descent of land held in free and common soccage?—With respect to township lands, I do not know an instance of division in cases of intestacy, where there has been a son, although I cannot take upon me to state that a division may not sometimes have been voluntarily made; but I have known instances where the eldest son has taken all.

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If you have never known an instance of the Canadian law applying in cases of intestacy, what law has applied?—I have known parties take according to the English law, which I think to be Canadian law for soccage lands, as the French law is Canadian law for the seigniories.

Do you mean that the general custom has been within the townships, that the eldest son has taken to the exclusion of all the rest of the family?—I have never known an instance of the contrary, where wills have not been made; but I believe that people generally make wills in the townships if their property be of much value.

Do you believe that state of things to be agreeable to the wishes of the people?—No; I believe that the majority of the people there would prefer to have a law making that distribution which they themselves probably from parental affection would make, that is an equal division; I believe such to be their feeling, but at the same time they consider that the English law secures them from so many disadvantages in other particulars (besides its being a law of which they know something, or can learn in their own language) that they would willingly receive it even with what they consider an imperfection in the law of succession to an intestate's lands, because those who dislike that law of succession can obviate its effects by making a will whenever they please.

When you say that the other institutions connected with the English tenure are advantageous, can you confidently state it to be the wish of the inhabitants of the townships, that they should not have the French laws applicable to the land held in free and common soccage, but that they should have the principles of English law as they affect the several points of the security for money borrowed, the conveyance of land to persons purchasing it, and dower, and the law of descent?—I am perfectly confident that almost all the English inhabitants who constitute nearly the whole of the population of the townships, desire to have the foundation of English law applicable to those lands, in like manner as the same foundation exists in other English colonies, and not to have those lands subject to the liabilities of the French law, that is to general mortgages, tacit mortgages of every description, the French dower, and a variety of incumbrances, many of which there are no means of ascertaining, and which operate against the freedom and safety of mutations and destroy confidence in titles and securities, thereby obstructing commerce and improvement. The townships wish, besides, for register offices to record transfers and incumbrances upon lands, as in Upper Canada, because, as the inhabitants of the townships have stated in some of their petitions to the Assembly, they cannot otherwise have certainty in transactions regarding real estate, nor can parents be satisfied that they do not leave their children a bequest of law-suits instead of property; and they have further stated, that from want of register offices their lands are much depreciated in value, there being no security in the title; and that the establishments of such offices would remedy that evil, and be attended with no expense to Government, as the fees of office, as established in the sister province, would amply repay the register.

If you are right in your interpretation of the law, that the English law does exist in the townships, and if you are also right as to the fact that the practice of the English law has prevailed in the townships, where is the grievance, and how does it happen that those persons who desire the prevalence of the English law, should never have tried the question in a court of justice?—I have not stated the English law has been carried into general operation in the township lands: one of the difficulties they complain of is, that they have not had courts among them to establish what should be practised, that they have been kept as it were out of the pale of the law: I have merely stated that in the townships real property upon the death of an intestate proprietor, in such cases as have come to my knowledge antecedently to the passing of the Canada Tenures Act, has been taken, and that transfers are often made according to the English law. But I believe in some instances, where lands in the townships have been sold under sheriff's sales, the money arising from those sales has been distributed by orders of courts of justice as if the tacit and other mortgages applied to those lands. It is true that in those instances I have not known that the matter was contested in the courts of justice, upon the ground that, under the English law, those mortgages did not

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apply; where the parties acquiesced, whether to avoid law expenses, or for other causes, they would have little right to find fault: but I know that there were numbers of persons prepared to contest on that ground, in the first case in which they were concerned, and if the decision had been against them in the Canadian courts, they would have brought an appeal to England. As to the grievances of the townships they are contained in the petitions before the Committee, which set forth not only the matters alluded to in my answers of this day, but also the want of adequate road laws, the want of representation and other evils.

Then, in point of fact, as far as the courts of justice have decided any thing upon the subject, they have decided that the Canadian law prevailed?—It cannot be said that the Judges have decided upon the subject, where the subject has not been contested; they would of course heretofore in the courts in the seigniories apply the French law to the distribution of monies arising from sheriff's sales of lands, if it were not urged that the lands producing the monies were situate in the townships, and the application of the French law resisted on that ground.

Is there any thing in that answer inconsistent with the statements you have previously made?—Not in the slightest degree, as I conceive.

Can you undertake to say that you know what the actual state of the law was in the townships of Lower Canada previous to the passing of the Canada Tenures Act?—Before that period I have already stated there were two opinions upon the subject; and there never have been courts in the townships having jurisdiction over real property. The only courts having jurisdiction over real property in Lower Canada have been in the seigniories.

Were you distracted between two opinions?—There were some that were distracted between the two opinions antecedently to the passing of the Canada Tenures Act, but others had but one opinion both before and since.

What was the actual practice with respect to the law in the Townships?—The practice where no courts exist to constitute a practice it may not be easy to state; I suppose it was according to what might be expected from entertaining different opinions upon the subject; those who supposed the English law prevailed there would probably endeavour to regulate their transactions in accordance with it, and those who supposed the French law prevailed there would probably act in conformity to their own views.

Can you state what was generally the conduct of individuals with respect to applying the law to their property in the townships in Lower Canada?—It is probable, although I cannot assert it, that some may have divided property as they would have done if the French law had existed, but others have allowed it to descend as if the English law prevailed there.

Are you able to state what was the prevailing habit in that respect?—I am only enabled to state, that I believe a vast majority of the inhabitants of English origin have considered the English law to prevail there, and that prudent persons have governed themselves accordingly.

Why do you confine that to the inhabitants of English origin?—Because the others no doubt are not desirous of seeing the English law prevail there.

You have just stated that there was a diversity of practice in the townships with respect to the descent of property, you stated before that you never knew an instance of property having been equally distributed; how do you reconcile those statements?—I stated not that there had been, but that there might have been; but I state again that I know no instance of the distribution of an intestate's real property in the townships according to the French law.

What opportunity have you of knowing what has been the practice in the townships with respect to property?—I resided there some years, and since that period I have, in the course of my practice, been applied to by a number of individuals who have asked me what I considered to be the law in the townships, and I have told them, that I considered the English law to be in force in respect to real property there.

When you state what has been the practice in the townships with respect to the descent of property, you refer to those cases in which you have yourself advised parties upon the subject?—Yes, in part; but I know some similar instances in which I did not give any advice.

Do you recollect the doctrine of the English law with respect to entails ever having been acted upon in the townships?—No, I do not.

Was any such thing ever heard of, to your knowledge?—I do not recollect ever having seen a will that established an entail in the townships.

Do you recollect ever to have heard of any case arising and brought before the courts of justice in which that question, or any thing like that question, has been discussed?—I do not recollect.

Do you recollect any instance in which any point of English law applicable to real property in the townships has ever been discussed and brought before a court of justice in that country?—I do not recollect any instance where the question whether English or French law prevailed upon those lands was made the subject of litigious controversy, as I have very frequently stated.

Do you recollect any instance in which it has been made the subject of amicable arbitration even?—No, I do not.

Then does not it follow from what you have said that all you have said about the English law prevailing in the townships is a mere matter of opinion, unsupported by any proof?—There have been no courts in the townships to determine matters of real property, nor are any likely to be established by the Seigniorial Assembly. I have stated what is thought and what is done; I have stated instances. But whether all these amount to any proof or not, is not for me to determine. But I can add, that I have had in my possession hundreds of deeds which have transferred large tracts under English forms, and I know those who hold thousands of acres under such deeds; nor is it my own opinion merely which I have given; I have heard similar opinions expressed by thousands. The full proof can only be obtained from the laws themselves which relate to the subject; and if they have been of doubtful import, the uncertainty, I take it, has been removed by the Tenures Act, of which the townships desire the continuance.

In cases where you have given it as your opinion that the English law prevailed, and where your opinion has been acted upon, have you known any attempt to reverse that opinion?—No, not that I recollect.

It has been stated to the Committee that the French tenure of *franc alev roturier* is practically the same as the tenure of free and common soccage; is that your opinion?—It would be by no means practically the same, supposing the French tenure of *franc alev* to be subject to the encumbrances and liabilities sanctioned by the French law, and the English tenure of free and common soccage to be subject only to those established under English laws.

Will you explain how those liabilities affect the question?—The French tenure would be subject to the liabilities of French law, such as general and tacit mortgages or *hypothèques*, peculiar marriage rights of *communauté*, and dower, and various other contingencies, that place the inhabitants of the seigniories of Lower Canada in a situation not to know whether they are secure in many transactions.

Supposing that land is mortgaged for any given sum, and that that land is to be divided under the French Canadian law amongst all the children, how would such a division be consistent with the security of the mortgage, and what is the operation or nature of the mortgage?—The mere division of land under the French law among children is not inconsistent with the security of a mortgage under that law, because the creditor's right would extend to each and every portion; that right could only be defeated by claims superior in privilege, or, if of the same nature, prior in date. What, however, the English in Lower Canada commonly know and call by the name of a mortgage is rather the *hypotheca* of the Roman or civil law, and the French style it an *hypothèque*. It establishes a right to be paid out of the real estate the sum stipulated or due, for which purpose all lands may be brought to sheriff's sale. It is the privilege of notaries and certain official characters, that whatever acts are passed before them, (supposing these acts to be even no more than a simple acknowledgment of a debt, or an engagement to be security,) shall produce a mortgage or *hypothèque* upon all the real property of the obligor; nor is this *hypothèque* confined to the real property which the obligor possesses in the district where the notary officiates, but extends to all the real property of the obligor in other jurisdictions and districts as far as the French tenures extend; nor is this mortgage confined to the property which the obligor possesses at the time of passing the Act, but it attaches

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attaches to all the real estate which he may afterwards acquire in the French tenures, and remains attached to all and every portion of the property during many years, even though it should have passed into the hands of *bonâ fide* purchasers. Real property, by merely coming into the hands of those who are debtors under Acts passed before such official characters, although it may be immediately transferred to others, is enthralled, and stands charged with all such debts, for which it will remain liable for years, or until payment, into whatever other hands it may pass. As acts passed before notaries are to be paid *in toto*, by preference, according to the order of their dates, creditors are alway desirous to have them so passed, because although they have no means of knowing by how many previous creditors they have been anticipated, they wish to avoid being anticipated by subsequent creditors. The want of information in the generality of the people also compels them to have recourse to notaries. Almost all the legal instruments in seigniorial Canada are therefore passed before notaries. The giving bail before a Judge, the becoming tutor or curator, the being executor to a friend, and various other matters, produce also tacit and general mortgages; and if a notarial mortgage or *hypothèque* be given only on a particular piece of land in the seignories, the law nevertheless makes this also a general mortgage, and extends it over every county, district and jurisdiction throughout the French tenures of Lower Canada; and from all these causes the property of immense numbers is therefore liable, in a manner of which themselves have often no idea. Some of the consequences of such a state of things may not be difficult to be imagined, although it could be hardly possible to state them all. I may suppose a case: A. B. C. & D., like most others in Lower Canada, may have respectively passed notarial acts, or otherwise constituted general and tacit mortgages or *hypothèques* in any of the various modes in which they can be effected. A. sells a farm to B.; the farm is liable for years to be brought to sheriff's sale, not only for the hypothecary or mortgage-claims constituted by A, but also for those constituted by B. B. sells the farm in a few months to C., and it becomes further liable to the hypothecary claims against C. C. in a year or two sells the farm to D. The farm has gone on with increasing burthens, and is now charged with all the claims against A. B. C. & D., when perhaps a British emigrant purchases, pays for it, and after increasing its value by the outlay of money and labour, is called upon to pay some of the claims, and in consequence abandons the property. The case supposed is not fancy, but fact. I have known even a lawyer purchase property, which, after making payments to the vendor and creditors, he afterwards abandoned to the claims of other creditors, whose demands he had previously no means of knowing; and I have known lawyers lend money on mortgage or *hypothèque*, and after a lapse of eight years be deprived of principal and interest by an unsuspected claim of twenty years standing. I have been in this predicament myself. Sheriff's titles are indeed held to bar all hypothecary claims except the French dower, and I have sometimes, for this object, obtained a sheriff's title. On one occasion it cost me upwards of 30l., and on another upwards of 25l., which last was more than the land for which I obtained the title would sell for. It is not surprising if the townships should be desirous to avoid the introduction of these tacit and general mortgages, and should prefer the English laws, which, whatever may be their imperfections, and they are not denied, have nevertheless carried colonies forward in wealth and improvement with a rapidity unexampled under other institutions.

Is it possible that any system of registry could make manifest every security of this description, so as to enable a lender or a purchaser to know what encumbrances exist on the land?—I should consider it extremely difficult, if not impossible, (unless some changes be made in the laws which now exist in the seignories, whereby almost every act passed before a notary carries a general mortgage, like a judgment of court in Canada, without specification of property, and whereby various other acts passed before other public functionaries constitute similar tacit and general mortgages,) to establish for the seignories a system of registry sufficient to enable persons to know whether they are secure or not in making purchases, or in lending money on mortgage. The objections made by many French Canadians to the establishment of registries in the seignories is, that they could not be rendered efficient without producing alterations in their French laws. Now this is an objection which cannot hold in the townships if the English laws alone affect real property there; and this is one among other reasons why the inhabitants of

of the townships, and all who desire the improvement of the country, are so anxious that the lands in the townships should only be subject to English liabilities, because then registers may be established, as they are established in Upper Canada, without interfering with the French laws in the seignories, which the Canadian leaders wish to maintain and extend; besides, if any portions of the English law should occasion inconveniences in their operation, fears are not entertained that the seignorial legislators would be withheld by any fondness for such laws from altering them when desired.

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In what form is security given for money borrowed on land in Upper Canada?—It is granted by a mortgage of a description similar to the English mortgage, but shorter, which sets forth the specific property, and this mortgage is registered. There are registers, I believe, in each of the counties. These matters are there attended with no difficulty, although the inhabitants are more scattered than they are in Lower Canada. Enregistration in Upper Canada gives publicity to every deed or encumbrance on land, and a prior instrument, not registered, would not affect a subsequent one which is registered; so that a prudent man in Upper Canada can always ascertain whether he is secure, which in Lower Canada he cannot do.

Can you say, of your own knowledge, whether persons who have accumulated money in that country are more willing to lend on mortgage on the security that exists in Upper Canada than that which exists in Lower Canada?—I do not reside in Upper Canada; but I should take it for granted that they must be more willing to lend where they can ascertain their security than where they cannot.

Will you be good enough to explain why, in your opinion, the law of registry is more easily and more effectually applied to lands held in Upper Canada than to those held upon the French tenure in Lower Canada?—Because in Upper Canada there is no such doctrine of general mortgages affecting property acquired and to be acquired without specification. The notarial or official mortgage, or *hypothèque*, is not known there. The mortgages there are special, and they may be drawn and passed before any persons. Property not described is not bound; and the registry of the land described, which is what gives effect to the mortgage, must take place in the county where the land is situate, to which registry all may have access.

Cannot you register a general mortgage as well as a particular or special one—must not there be an act done in order to create a general mortgage as well as a special one?—There must of course be an act before a notary, or some official act, in order to effect a mortgage in the seignories of Lower Canada; but almost every notarial act does constitute a general mortgage or *hypothèque* upon the whole property which the person has or may afterwards acquire in all the French tenures, throughout every district and count, in the province. These acts remain with the notary, and he is legally bound to keep them secret: the law in Lower Canada requiring those things to be concealed which for the interest and safety of the community the laws of many other countries have required to be made public.

Supposing this consequence to follow from the institution of a registry, that every act of that kind would be bad unless it were registered, would not that cure the evil?—I should conceive that the evil could not be cured without abolishing general mortgages or *hypothèques*, and rendering all mortgages special, and confining them to the particular lands they described. But it might be effectually cured if that were done, and registers established.

Why do you think so?—It seems evident that mortgages or *hypothèques* of the number and description which have been stated must destroy the beneficial effects of registers, or that registers must abolish the principles of such mortgages. The land which is not mentioned in the mortgage cannot be specified in the register. The land which is not yet acquired by the debtor cannot be mentioned in the register.

You are aware that a judgment, or any security of that kind, affects not only the property that a man has *in presenti*, but the property that he acquires *in futuro* in this country?—I am not aware that a judgment for a sum of money would in this country affect and enable to be brought to sale, like an *hypothèque*, all the land belonging, or which might afterwards belong to the debtor.

Does not the whole of the difficulty, as you state it, arise from the trouble and inconvenience

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nience of registering a great number of transactions?—By no means. That would doubtless be an inconvenience, but the principal utility of registers must depend upon the property being designated or specified.

Has any bill for establishing a registry ever passed the Assembly of Lower Canada?—No.

Did any bill upon that subject go from the Upper House to the Lower?—Yes; I have brought a copy of such a bill passed in the Legislative Council before the passing of the Canada Tenures Act, and wherein care was taken that all mortgages should be special.

Can you state what form of security is given in Upper Canada when money is borrowed upon land?—It is substantially like the English mortgage, but shorter, as I have already stated.

What may be the expense of it?—I suppose it may cost about 11.; but I dare say the expense may depend a good deal upon the person who is employed. One individual may probably be got to draw an instrument of that kind for half the sum which another would charge.

Do you happen to know what form of security is given in the United States?—I know that they in some measure resemble the English, only they are much shorter, because all unnecessary repetitions and prolixity are avoided.

You have spoken of the English law as applicable to free and common soccage lands, according to your notion, prevailing in the townships; has there been any such thing as a court of English equity established there to modify the strict severity of that law?—No court at all, except the inferior of the district of Saint Francis recently established, which has only a trifling jurisdiction in personal causes.

Is there any court of English equity in either Canada?—Yes, I have understood that there is one in Upper Canada.

What is the constitution of it?—It was only established shortly before I left Canada, as I have heard, and I know not its constitution.

Do you conceive that wherever the English law prevails, as applicable to real property, it is almost indispensably necessary that there should be a court of equity?—I conceive that unless there be some modification of the law, it might become necessary that there should be a court of equity; but it was taken for granted, that after the English law was declared all other necessary concomitants would be established in due time.

If you wish to get possession of an estate in the townships, what form of action would you adopt; is there any court in which you could bring an action of ejectment?—There are no courts at present constituted for the townships.

Then how can the English law be said to prevail?—I looked upon the right to the English law, and its being put into actual practical operation, as being two different things?—I never said that the English law had been rendered efficient in the townships. I should state, as my opinion, that the English law was, as near as might be, the law of the Hudson's Bay territories; yet I doubt whether it has ever been carried into practical operation there.

Supposing that previous to the passing of the Canada Tenures Act you had had to advise upon a marriage contract, would you have guarded against the incidents that would follow from the French law, or against the incidents that would follow from the English law?—I would have endeavoured to have framed it so as to have guarded against the incidents of either that it was wished to guard against; but to many the incidents of the English law without contracts would not be so unpleasant with respect to marriage, because they are by no means so burthensome as those of the French law; and they do not interfere so greatly with the right of the husband to the disposal of his property.

Then you would have framed the contract of marriage upon the notion that the French law was the prevailing law, the effects of which were to be guarded against?—I should undoubtedly have endeavoured to guard against the possibility of misinterpretation with regard to the provisions of either law, which might be disagreeable to the parties.

Is there any doubt that the French law applies to personal property and contracts?—I have mentioned that I have heard a difference of opinion expressed on the subject, as to what ought to apply; but if I am asked my own opinion, I believe that the French law, with regard to personal property and contracts, does apply, except that the mere employment of an official character, such as a notary, to pass the contracts, would not produce



produce a mortgage or *hypothèque* upon soccage lands, as it would upon seigniorial lands.

Do you happen to know upon what clause in any Act that difference of opinion rests? It is, I suppose, upon the same clause in the Act of the 14th of Geo. 3, before cited, and upon the circumstance of the English law having been considered antecedently the law of the country. It was supposed that a change was introduced for a part of the country only, and that that part did not include the soccage lands.

In a marriage settlement which included the settlement of land held in free and common soccage, in what manner do you think that settlement would most conveniently and most properly be drawn in Lower Canada, supposing the English law is held to apply to such land?—I should presume that the English forms of settlement would be adopted, or so much of them as might be deemed advisable.

Could they be simplified?—Possibly they could be simplified, or reduced in prolixity. I have seen deeds of moderate compass transferring land according to the English form; I have seen numbers passed for 10s. each.

Supposing the Canada Tenures Act to be in full force, and that a person about to marry, being possessed of real property in the townships, were to call upon you as a professional man to prepare a marriage settlement, and that he stated he wished to have a life-estate for himself, and to have his property secured for his eldest son, and so on, would you create in that settlement an estate-tail, with all its incidents, with remainder over?—I am not prepared to answer that question, as my professional pursuits have been almost wholly limited to French civil law. Before I attempted to draw an instrument of that description, I should have to consult authorities.

Supposing that, according to the English law, the proper course would be to create an estate-tail, by giving the life-estate to the first son and his issue, and upon failure of his issue to the second son and his issue, would you adopt that practice, and create an estate-tail?—I might perhaps do so; but I am not prepared to answer.

Are you aware that by doing that you would bind up the property for ever, unless there were some court in which that entail could be barred by fine and recovery?—As I have said, I should have consulted authorities, and have endeavoured to avoid inconveniences. If I had felt myself sufficiently aware of consequences, such consideration and consultation would have been unnecessary.

Supposing a proposition was made to you to make such a marriage settlement as has been referred to, would you or would you not adopt that mode by which the property should be bound up for ever, or would you not endeavour to create some other mode of securing that object, without binding the property for ever?—I should endeavour to avoid whatever the parties might consider an inconvenience that would be likely to arise under the English law.

If you found that the French law afforded an opportunity of doing it without inconvenience, would not you in that particular instance rather adopt that than the English law?—I should very readily adopt the forms of the French law, as often as I considered them more convenient, and equally valid.

Can you say whether it would not be very easy to make a settlement according to the French law, without incurring that difficulty?—I think it could easily be done.

When you have used the word prevail in your evidence, have you used it in the sense of, actually prevail, or legally prevail?—I have commonly meant legally prevail.

In your former examination you said that the mode you recommended to convey property in the townships was by lease and release?—Yes.

What was the reason of your adopting that least convenient form of conveyance?—It was considered necessary that there should be a tradition, or as it is called in the English law, livery of seisin under some modes of conveyance; whereas the lease and release were considered to render that unnecessary, the lease giving the possession, and the release the property.

Then you thought that all the niceties and the technicalities of the English law must, as a matter of course, be transferred to Canada?—No, I did not think they all must, because the English laws, when they are introduced into any of the English colonies, are considered to be introduced in so far only as they are applicable to the state of the country. The English criminal laws are introduced by statute into Lower Canada; yet there are many parts

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parts of those not considered applicable. The cutting a tree or a sapling would hardly be considered the same offence in a country where the grand object is to clear away the forests, which it would be in England.

Why could not you take the simple mode of conveyance by bargain and sale?—Because doubts were suggested; and I considered that where it was easy to avoid any doubts or difficulty it was better to do so.

What difficulty did you avoid by that mode?—If it should be held, even unreasonably as to the townships, that other modes of conveyance under the English law required tradition or enrolment, such doubts or difficulties it was presumed would be avoided. The parties to the deeds were generally at a great distance from the lands transferred, and it seemed well to adopt the form of lease and release, as conveying possession and property at once. It seemed an act of prudence, and arose from motives like those which have induced several individuals to take deeds with respect to lands in the townships, in two modes, that is, both according to the French law, and according to the English law.

Are there not local rates paid in Upper Canada of the nature of county rates?—I have understood that there are county rates and taxes, and they build gaols and court-houses in every county by those local rates.

Is there any arrangement of that sort in Lower Canada?—None; almost all the gaols and court-houses have been built out of money arising from duties upon English merchandize and manufactures. The expense of the gaol at Sherbrooke in the townships was indeed, as I believe to be, defrayed by a tax upon the law proceedings; but the expense of building the gaols at Quebec, Montreal and Three Rivers in the Seignories, was provided for out of the duties.

They have been built out of the public revenue?—They have.

Where are those duties imposed?—At Quebec.

Has there been any attempt in Canada to establish turnpike-roads?—There have been a number of petitions for turnpike-roads within the last 18 years, which have been all uniformly rejected; and the state of the roads in some instances, even very near the cities, is extremely bad, and sometimes dangerous.

Where are the roads situated that it was wished to establish turnpikes upon?—Near towns, or in places where there was a great deal of travelling.

Have those bills or applications been rejected in the Lower House?—They have, as I understand.

Can you inform the Committee what were the grounds generally pleaded for their rejection?—The Canadian inhabitants of the country do not like them, and they consider them a species of taxation.

And they would rather be without the road than have that taxation?—Yes, I have known a number of carriages broken down from the badness of the roads even in the vicinity of the towns. The English inhabitants were the general petitioners for turnpikes, and they would have subscribed money for that purpose.

Do you know any thing of the law of descent to landed property in Upper Canada?—The law of descent in Upper Canada, I believe, is the English law of primogeniture; but I believe the mass of English inhabitants there would desire that law to be altered.

Is there not some local statute which has modified that law?—A local statute has either been passed, or has been attempted to be passed, but I cannot say which.

Is it, or not, the prevailing opinion in both provinces that the law of primogeniture is not suited to those colonies?—I believe that the inhabitants in general would prefer a law making an equal division, which would save them the trouble of making a will.

Do you think that the inhabitants of Upper and Lower Canada would not be perfectly satisfied with having it in their power to distribute their property as they please by will?—They possess that power already, but they would prefer that without the trouble of making a will the law should distribute it as they wish.

Does it suggest itself to you as a possible mode of remedying the inconveniences arising out of the present division and distinction of the two provinces of Upper and Lower Canada, that Montreal and the district immediately around it should be transferred to Upper Canada, thereby giving Upper Canada the benefit of a sea-port, and the consequent power of regulating the duties upon her imports?—There is no doubt that a sea-port would be highly advantageous to Upper Canada; and I think that province will not be satisfied until it has a sea-port, unless there be a union of the two provinces.

Mr.

Mr. *James Charles Grant*, again called in ; and Examined.

Mr.  
*J. C. Grant.*

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WHEN you were last before the Committee you stated that you had reason to believe that some Act had passed the Legislature of Upper Canada, altering the law of primogeniture, have you since obtained any information upon that subject?—I have made inquiry upon the subject, and found that although a bill to that effect was introduced into the House of Assembly more than once it never became a law.

Is there any thing that you wish to state to the Committee in addition to your former evidence?—I am desirous of communicating to the Committee all the information which I possess respecting the religious statistics of the provinces of Upper and Lower Canada, and with permission of the Committee I shall proceed to make the following additions to the statement given in my former testimony.

In the western district of Upper Canada there are two Roman Catholic chapels and one church, four Episcopal Churches, viz. one at Sandwich, one at Chatham, one at Amherstburgh, and another at Colchester ; the service at these churches is regular, with the exception of Colchester, where it is occasional ; the number of attendants at Chatham is from 20 to 30, and at Amherstburgh and Chatham 50 to 60. There are five Episcopal Churches in the district of Niagara. The number of attendants at the church in the town of Niagara does not exceed 90, the average number at Queenston and Chippawa, and the other churches, is but 15 ; the Episcopal Churches at Queenston and St. Catherine's were originally built by Presbyterians, who by some unjustifiable means (it is said) were deprived of them. The Presbyterian congregation at St. Catherine's are about to build another. The names of the clergymen of the Scottish Secession having congregations in the district of Bathurst are Mr. Bell, at Perth, Mr. Buchanan, at Beckwith, and Mr. Gemmil, at Lanark. A church has been built at Lanark for a clergyman of the Church of Scotland. There are 590 Presbyterian communicants in Perth, Dalhousie and Beckwith. We have only received returns from four townships out of 17 in this district, viz. Drummond, Beckwith and Dalhousie, which contain a Presbyterian population of 2,903. At Bytown a lot of land has been allotted for a Scottish Church and minister's house, and where a congregation of not less than 300 could be formed at present. There are two Episcopal Churches in the district, one at Perth, the other at Richmond ; the number of communicants at the former (in the town of Perth) is about 20, and at the latter about 10 ; but the mission of each, I believe, embraces several townships. Presbyterian Churches are required in every township. There is only one clergyman within the district of Gore in communion with the Church of Scotland ; altogether there are eight congregations in the district. Answers have been received from some of the townships showing a population of 2,200.

The following statement has been communicated from three other townships in the same district. In the townships of Trafalgar, Nelson and Flamborough East, there are 250 heads of families attached to the Church of Scotland ; about 15 Episcopalians, 75 of the Church of Rome, and the remainder of the population are Methodists and Baptists ; in these townships the number of souls attached to the Presbyterian Church exceeds 1,300. There are several other townships in this district from which no returns have been obtained. In the town of Guelph there are upwards of 100 families, and several more in the adjoining township of Aramosa attached to the Presbyterian Church. In Streetville the number of Presbyterians exceeds 300 heads of families, representing 1,263 souls. The church at Ancaster, which Dr. Strachan describes in his chart as being episcopal, in which he states the service of the Church of England is regularly performed, is a free Protestant Church, and the only service regularly performed in it is by Mr. Sheed, a Scotch Presbyterian minister. The church in Barton was built conjointly by the Presbyterians and Episcopalians in the neighbourhood, and is open to the clergymen of either denomination. In Woolwich there never was a church, nor service of any denomination. There is not an Episcopal Church at Dundas, nor has service of the Church of England been performed there for the last four or five years. In the Indian village on the river Ouse there is an Episcopal Church, which in fact is the only one of that denomination in the district. This exhibits a state of things different from the Doctor's representation.

Although the Presbyterians in the Newcastle district exceed 2,000, there is not a clergy-

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man of that church within it. The following has been furnished as exhibiting an aggregate account of the religious sects in the townships of Hope, Haldimand, Ramach, Percy and Murray: 225 Presbyterians, 133 Episcopalians, 57 Roman Catholics, 361 Methodists, 296 Baptists, 18 Universalists, besides 1,186 who are not attached to any particular church, but are understood to prefer the following religious persuasions in the following proportions, viz. 227 Presbyterians, 98 Episcopalians, 485 Methodists, 301 Baptists, 75 Quakers.

There is not a clergyman of the Church of Scotland in the district of Johnstown, but there are two of the Scottish Secession, viz. Mr. Smart, at Brockville, in the township of Elizabethtown, and Mr. Boyd at Prescot, in the township of Augusta. There are 1,177 souls of the Presbyterian faith in Elizabethtown, which is only one out of ten townships in the county of Leeds, forming the western section of the district. The number of communicants in Mr. Smart's Church is 115. There are two Episcopal Churches in the township of Leeds, one at Brockville, and another at Bastard; the hearers at the former vary from 40 to 60, the communicants not exceeding 20; at the latter the hearers are from six to eight, the communicants four or five. No answers have been transmitted from the other townships of this district, but the petition on the table has received the signatures of 203 persons in the township of Augusta, in the county of Grenville and eastern section of the district, principally heads of families, representing a Presbyterian population of 804 souls.

The total population in the township of Finch, in the eastern district, is 222, of which 216 are Presbyterians.

No answers have been received from the London, Home, or Ottawa districts. There has never been any clergyman of the Church of Scotland in the London or Home districts, although it is believed that many of the inhabitants are of the Presbyterian faith.

In Lower Canada about five sixths of the population is Roman Catholic. At Coteau du Lac the Presbyterian population exceeds 400 souls; there are very few (if any) members of the Church of England, or Dissenters, in that vicinity. The township of Grenville, in the district of Montreal, contains 600 souls attached to the discipline and government of the Church of Scotland, about 120 Episcopalians, 100 Roman Catholics, and a few families of other denominations.

In the townships of Lochabar and Buckingham, on the north bank of the river Ottawa, the population is composed as follows: Church of England 10 persons, Church of Scotland, 250, Church of Rome, 30, and other denominations, 20. There is not a Presbyterian Church or clergyman within any of those townships. The inhabitants are extremely desirous of having clergymen of the Church of Scotland.

In the parish of St. Therese (a French Canadian settlement), there are 97 individuals, principally heads of families, attached to the church of Scotland, a Presbyterian church has been built by voluntary contributions, in which service is regularly performed by a minister of the Scottish Secession, who also officiates occasionally at St. Eustache and New Glasgow, at the request of the Presbyterians in those places; there are about 40 Presbyterians at St. Eustache. New Glasgow, a settlement which has been formed within the last six years, contains as many Presbyterians as St. Therese and St. Eustache together. There is another Presbyterian settlement at Paisley, adjoining New Glasgow. The persons within these settlements, professing to belong to the Church of England, constitute about a twelfth part of the Protestant population.

No answers have been received from St. Andrews, but our petition is signed by 147 heads of families resident there, representing 819 souls of the Presbyterian faith.

The following is the census of the township of Rawdon, (a settlement recently formed) 92 Presbyterian families, 72 Roman Catholic, and 20 Episcopalian. There is a minister of the Church of England established in this township. The village and neighbourhood of La Chine contains about 239 Presbyterians and 70 Episcopalians. From the village of Laprairie and the surrounding country the petition has received the signatures of 163 heads of families representing 600 souls. There is a Scotch settlement at St. Peter's, and another about 16 miles from Laprairie, chiefly composed of Scottish Presbyterians. From the seigniorie of Beauharnois the petition before the Committee has been signed by 188 individuals, principally Scotch, representing a population of 791. In the settlements of North and South George Town, and part of William's Town, there is a population of 366 Presbyterians of the church of Scotland. A Presbyterian church has been erected at South

George

George Town, but it is not provided with a clergyman. In other parts of the same seigniory and the adjoining one of La Salle, the Presbyterian population exceeds 500 persons, 92 heads of families, representing 477 souls, in the township of Dundee; and 70 heads of families, representing 431 souls, resident at Isle-aux-Noix, have also signed the petition. Mr. J. C. Grant.  
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There are comparatively few Protestants in the district of Three Rivers. It is believed that the Presbyterians in the town of Three Rivers and at Nicolet are at least equal in number to the Episcopalians, notwithstanding that a minister of the Church of England has officiated at the former place since the cession of the country. There is an Episcopalian church at Rivière du Loup, in which service is regularly performed by a minister of the Church of England; the total Protestant population within the parish consists of three Episcopalian and twenty Presbyterian families. There is another Protestant settlement on the borders of Lake Masquinongé, computed at 30 families, the majority of whom are Presbyterians; and it is supposed that that denomination is also the most numerous in the townships in this district.

From some of the Protestant settlements in the district of Quebec the following information has been collected:—At Lake Beauport there are 92 persons, at St. Patrick 45, and at Valcartier 100, who profess to be Presbyterians in communion with the Church of Scotland; the seigniory of St. Giles contains 110 Presbyterians of the Church of Scotland and 23 Episcopalians; in the township of Leeds there are 70 persons who would prefer the ministrations of a clergyman of the Church of Scotland, and five families of the Church of England; the township of Inverness contains between 50 and 60 Presbyterians and 15 Episcopalians; in the township of Frampton there are 100 Presbyterians; at St. Charles Belle Alliance settlement, as well as in the seigniory of Metis, there are few inhabitants who do not profess to be Presbyterians.

No answers have been received from the district of Gaspé; but I am warranted in stating, upon the authority of the Crown agent, that the great majority of the people are Presbyterians.

None of the townships or settlements I have named are provided with clergymen except those particularly mentioned. The Presbyterian inhabitants are all extremely desirous of having ministers and teachers of their own persuasion.

The Presbyterian congregation in the city of Montreal, under the charge of a minister in connection with a presbytery in New York, consists of between 600 and 700 persons, while the two others, under the ministration of clergymen of the Church of Scotland, are composed of between 800 to 1,000 persons each; the number of communicants in one of the latter is 335, in the other 170. Dr. Harkness's congregation in the city of Quebec is constituted of about 1,200 or 1,500 persons; the number of communicants about 300. There is also another congregation in the city of Quebec under the ministration of a clergyman, a native of England, but who had resided as a clergyman in the United States of America. In these towns, where there have been Episcopalian clergymen since the conquest and cession of the country, and one of them the residence of the Lord Bishop for the last 35 years, the Presbyterians are more numerous than the Episcopalians.

This assertion is made, as well from personal knowledge, as far as respects Montreal, as upon certain data relating as well to Montreal as Quebec. The following is an account of the number of marriages, &c, performed by the clergymen of the English and Scotch churches, including the chaplains to the forces in Quebec and Montreal, taken from the registers of the different ministers, which are deposited annually with the prothonotaries of the Courts of King's Bench, as required by law. The garrison at Quebec generally consists of two regiments, besides artillery, engineers, commissariat and other departments; at Montreal of one regiment, less one or two companies, artillery, engineers, staff corps, commissariat and other departments, who are attended by chaplains to the forces, and the services performed by such chaplains are registered with those of the Episcopal clergy:—

In Quebec for 11 years, up to 31 December 1821,

Episcopalians :				Presbyterians :			
Marriages	-	-	340	Marriages	-	-	555
Baptisms	-	-	1099	Baptisms	-	-	966
Funerals	-	-	1626	Funerals	-	-	698
							In

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In Montreal, for 12 years, up to 31 December 1821.

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Episcopalians :					Presbyterians :				
Marriages	-	-	-	377	Marriages	-	-	-	735
Baptisms	-	-	-	900	Baptisms	-	-	-	1744
Funerals	-	-	-	1261	Funerals	-	-	-	1022

The disproportion between funerals and baptisms, may be accounted for from the numbers of persons belonging to the military who died in the hospitals, of sickness and wounds, during the late war.

At the town of Kingston, in the province of Upper Canada, where an Episcopal minister has resided since the peace 1783, a Presbyterian minister began his ministry in a church built by subscription about five years ago, and his congregation is at present more numerous than that of the Church of England.

The foregoing particulars are not offered as exhibiting a complete statement of the relative numbers of the whole Protestant population professing different forms of religion, and much less as containing a census of the total number of Presbyterians in the Canadas. These particulars have been extracted from information received only from some parts of those provinces, while there are whole districts and numerous extensive settlements in both, particularly Upper Canada, from which statements have not been furnished. It is also necessary to bear in mind that five-sixths of the population of Lower Canada are French Canadian Roman Catholics. I have been enabled to furnish a statement of the Presbyterian population only in the towns, some of the French Canadian settlements, and in few of the townships near the St. Lawrence, where settlements have recently commenced, without comprising that in the townships of Lower Canada beyond the French Canadian settlements in the seigneuries on the south side of the St. Lawrence, many of which have been long settled, and contain a Protestant population estimated at 30,000 souls; and, considering that those townships and other Protestant settlements in Lower Canada, as well as the other inhabited parts of the Upper Province, (from which no returns have as yet been received,) have been peopled by persons who have emigrated from Scotland, Ireland, and the United States of America, it may be inferred that there also Presbyterians bear the same relative proportion to Episcopalians. The great sources of emigration to Canada are Scotland and Ireland, and there can be little or no doubt that among the new settlers the numbers of the Church of England will continue to bear but a small proportion to the numbers of the Church of Scotland. That more ample information has not yet been received must be ascribed to the causes I have already mentioned, and the short interval of time employed in collecting it. The Church of England has at all times possessed the means of extending herself by increasing the number of her clergy,

who are supported as missionaries by a salary of 200*l.* sterling, paid to each minister by the Society for Propagating the Gospel in foreign Parts, in aid of which annual grants have been made by the Parliament of Great Britain. On the other hand, the Church of Scotland has been left to contend, unsupported, against every difficulty; and although a few congregations in the large towns and in some of the old and extensive settlements have, by means of voluntary contributions, procured for themselves the services of clergymen of their own persuasion, in general the inhabitants are too poor to support clergymen, having to struggle hard for their own maintenance. They cannot have a regular minister of their own, as no Presbytery will ordain one unless some permanent provision is made for him. Under such circumstances, it may have happened that some individuals educated in the Church of Scotland have joined the Church of England in those townships and settlements where establishments have been formed by that church, but their numbers are very inconsiderable; and even where such establishments have been formed the Presbyterians, accustomed and attached to a different mode of religious worship and instruction, unite themselves in preference to other denominations whose doctrines and forms of worship are more congenial to their mind.

I cannot take upon myself to vouch for the accuracy of the foregoing statements, but considering the sources from which the information has been derived, I believe it to be

be (as far as it extends) as correct as could be obtained without enumeration under public authority.

I feel it my duty to bring under the consideration of the Committee some of the disabilities imposed upon the Church of Scotland in Upper Canada, which are considered by the clergy and members of that church as humiliating and degrading.

By a provincial statute, passed in the 38th year of the reign of his late Majesty, clergymen of the Church of Scotland, though regularly ordained by a Presbytery in Scotland and called to a congregation in Upper Canada, are bound, before they can solemnize marriage, to apply to the court of Quarter Sessions for a license, and to submit to forms extremely grating to their feelings. Constituted as the Legislature of Upper Canada is at present, it is not expected that a repeal of that Act can be obtained, and it is only to the Imperial Parliament that the petitioners can look for redress.

None of the Presbyterian churches in Lower Canada are incorporated, nor are there any in Upper Canada, to the best of my belief, although applications have been frequently made to the Provincial Government for that purpose.

The clergy of the Church of Scotland have in both provinces been excluded from any share in the instruction of youth. Within every district of Upper Canada there is a grammar-school, to each of the teachers of which a salary of 100*l.* is paid out of the funds of the province. The further sum of 2,500*l.* is appropriated for the encouragement of common schools.

In Lower Canada all the schools established by the authority of Government are under the direction of a corporation, styled "The Royal Institution for the Advancement of Learning," composed of the Protestant bishop, clergy, and members of the Episcopalian church, one or two Presbyterian, and three Roman Catholic members. The Roman Catholic clergy having no share in the nomination of the masters to, or any right of superintendence over these schools, have withheld their countenance and support from them; and the progress of education under this system has hitherto been slow. In the year 1827 it was in the contemplation of Government, with the co-operation of the bishop and clergy of the Roman Catholic church, to form a separate committee of this institution, for the exclusive regulation and superintendence of Roman Catholic schools; but this project has not yet been carried into full operation. Such an arrangement would have the effect of preventing the Church of Scotland from having any share in the direction of the education of youth, even of those of their own persuasion, although a bill putting that church on an equal footing with the Churches of Rome and England in respect to education has been repeatedly passed by the representative body of the province since 1817.

From the facts which I have stated, it is obvious that the number of clergymen does not afford a standard by which an estimate can be made of the proportion which the members of each religious denomination bear to the general population of the Canadas. Without presuming to offer any opinion upon the construction of the Act of Parliament by which those reserves have been set apart for the support of a *Protestant clergy*, I beg leave to state that the petitioners rest their claim of right, to a full and unrestrained exercise and enjoyment of their religion in those colonies, upon the 5 Anne, c. 8. The Canadas were acquired by Great Britain after the kingdoms of England and Scotland became united; and the members of the Church of Scotland conceive that their church has an equal right with that of England to enjoy any advantage or support which may be derived from the territory so acquired. Nor can they suppose for a moment that at the time of the passing of the Act, by which those reserves have been made, when the greater part of Upper Canada, and a large proportion of Lower Canada, was still ungranted, and a wilderness, the King and both Houses of Parliament intended to appropriate one-seventh of all the lands still to be granted for the support of the clergy of the Church of England, before it was known whether the country would be settled by members of that church or by Presbyterians. Many grants of those lands have been made to Presbyterians, the very men and their descendants who earned laurels on the plains of Abraham, and in other honourable feats both by sea and land, as rewards for faithful services. Presbyterians have also been encouraged by His Majesty's Government at different times to emigrate from Scotland and other parts to settle in the Canadas, and those persons cannot imagine, that it was intended to give the reserves in townships settled by them to the clergy of their fellow subjects

south

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south of the Tweed, and to leave the clergy of their church altogether destitute; on the contrary, they have always conceived that under the general words "*a Protestant clergy*," used in that Act, provision has been made as well for the clergy of the Church of Scotland as for that of England.

But as the Act in question has been interpreted by some persons in a narrow and unfavourable manner, and the provisions made thereby have been claimed and enjoyed exclusively by the clergy of the Church of England, His Majesty's Presbyterian subjects in the Canadas hope, that through the interposition of Parliament all doubts respecting the appropriations intended by that Act may be removed, and that their church may be endowed with an equitable proportion of those reserves, or the proceeds which may arise therefrom, should it be deemed expedient to dispose of them; and as the provision contemplated by those reserves is still only prospective, the petitioners pray that some further provision be made in aid thereof (or otherwise), until the revenue arising from such lands shall be sufficient for the maintenance of a number of clergy men of their church, proportionate to the extent of the Presbyterian population. They disclaim any desire to encroach upon any rights which may have been secured to the Church of England, and they would regret to see her clergy deprived of any support that might add to their usefulness and respectability.

They only claim that measure of support and protection to which their proportionate number and importance in the general population of those provinces may entitle them. Considerations of equity, and the soundest policy, demand the repeal of the provincial statute of Upper Canada, 38 Geo. 3, c. 4, and a recognition of the Church of Scotland, as well in that province as in Lower Canada, and that a suitable provision be made from the clergy reserves, or some other fund, for the maintenance of the clergy of that church. And as the attachment of the Presbyterians in those provinces to their own church has been called in question, and their numbers represented as inconsiderable, they are perfectly willing that the conditions on which any provision or aid, to be afforded to them for the support of their clergy, shall previously require a certain amount of voluntary contributions from the members of every congregation claiming such assistance, as well as that such a number of heads of families as may appear to His Majesty's Government sufficient to constitute a congregation. I take the liberty of handing to the Committee a copy of the resolutions adopted by the Presbytery of the Scottish secession of Upper Canada, in the month of January last.

" At a Meeting of the United Presbytery of Upper Canada, held at Brockville, on Wednesday the 23d day of January 1828, the following Preamble and Resolutions were considered and adopted :

" Whereas, at a meeting of the General Committee of Presbyterians in Montreal, held on the 10th December 1827, the following Resolutions were passed: (*Vide Resolutions of Montreal Committee of 10th December.*) These Resolutions of the Montreal Presbyterian Committee being communicated to this Presbytery, and maturely considered, it is thereupon resolved,

" 1st. As the opinion of the Presbytery, that the Presbyterians in this province are agreed on all essential points of doctrine, worship and discipline, having for their common standard the Westminster Assembly's Confession of Faith.

" That the causes of difference which have divided Presbyterians in Scotland being locally inapplicable to this country, may here be obviated in such a manner as to render a general union of Presbyterians in this province practicable without any sacrifice of principle.

" 3d. That such a general union of the Presbyterians in this province is in the opinion of this Presbytery highly desirable, as it will tend to strengthen the Presbyterian interest, and subserve the cause of true religion and promote the peace and prosperity of the province.

" 4th. That the Presbytery receive with satisfaction the proposition of the Presbyterians of Montreal in communion with the Church of Scotland, and are disposed and ready to unite with them upon fair and practicable terms.

(Signed " Geo. Buchanan, Modr.  
" Wm. Bell, Clk.")



Sabbati, 28<sup>o</sup> die Junii, 1828.

John Neilson, Esq. again called in; and Examined.

Are there any points upon which you wish to give any explanation in addition to the statements you made when you were last before the Committee?—I wish to give explanations upon certain points noticed in a memorandum I have given in.

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The first point noticed in that memorandum is, that some copies of bills given in by you are not in the state in which they were actually sent up to the Council; will you state whether the bills as they are now before the Committee differ in any important particulars from those which were sent up?—I apprehend not in any important particulars; but I got the copies from one of the clerks of the House of Assembly, and he was not able to get copies of them all from the Council, just as they had gone up: he either gave the printed copies that were in his possession, or copies that had been used for engraving the bills from. It is possible that, in one or two instances, an unimportant alteration may have occurred between the time they were printed and the time when they were passed in the House and sent up to the Council; I am, however, not aware of any.

Did any doubts exist heretofore as to the laws of England with respect to real property being in force in Canada between 1764 and 1774?—Yes; since I was here I have consulted some papers, and I find that in a Report laid before the House of Assembly by the Land Committee in 1824, there are the opinions of the law officers of the Crown in England and in the colony, which say that there were doubts on the subject, whether the English law, with regard to property, was in force or was introduced into the colony by the King's proclamation in 1763.

Have any instances come to your knowledge in which what you have considered as the laws of Canada with respect to real property have been applied in the province to lands held in free and common soccage?—I cannot state the instances having come to my knowledge, but I never conceived that any other law was applied at all.

Have you known any instances of persons holding lands in free and common soccage dying intestate, and their property being equally divided amongst their children, or have you known the contrary that in such case the right of primogeniture has been acted upon?—The right of primogeniture was never thought of as being in existence in the colony. I purchased some land granted on free and common soccage, I purchased it according to the laws of Canada, and from persons who were entitled to hold it by the laws of Canada. A deed was passed according to the laws of Canada, and I examined into the title of the holder; according to the laws of Canada, whenever you purchase there, you look at the title of the person from whom you purchase; and in doing that I was guided entirely by the laws of Canada.

Was that property situated within the townships?—It was situated in the township of Stoneham, within 30 miles of Quebec.

Can you inform the Committee in what mode security is given for money borrowed on land held in free and common soccage in Lower Canada?—The security is given in the same manner as it is given generally throughout the country by notarial deed, by what English lawyers, I have understood, call a *lien* upon the land; it is what they call in that country an *obligation*; it is in fact authenticating a debt upon the property, and it stands according to its priority.

In your opinion, does any indisposition exist among the French Canadians to see British settlers fixing themselves in the lands of Lower Canada?—I have stated before generally that I did not believe there is any such indisposition, but I have recollected facts, which in my mind prove that there does not exist amongst the peasantry of Lower Canada, who form the body of the population, any such feeling. In 1816 I began, with three others, two of whom were natives of Canada, of French descent, a settlement, to be composed of people from Europe, in one of the seigneuries in the county which I represent. I have been by that means more instrumental in introducing people from Europe than any  
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body else in Lower Canada. I have been, I may say, the cause of upwards of 1,000 of those persons being settled in the county which I represent and in the adjoining county; I have continued actively employed in that for the last ten years, to the knowledge of the whole county.

Will you state how you settled them?—It would be a long detail, but in the Seventh Land Report (Assembly's Journal, 1824,) there is an account of it.

Have you found that European population to be generally contented?—Very contented, and they agree remarkably well with the Canadian population; and so far from the Canadian population being in any way dissatisfied with me, who was the active person in introducing those people in the county, I never have felt any diminution of their confidence; on the contrary, I believe it stands higher than it did 10 years ago.

Were those people settled in a seignery?—They were settled in a seignery just at the back of the people by whom I am elected, and the new settlers pass through the Canadian settlements every day in going to and coming from market.

Do they hold under you as seigneur?—No, I hold no lands in seignery; the reason why I made the settlement there, was, that it was near Quebec, and that it is only in the seigneuries that you can get any extent of land lying in a lump; the township lands are all divided into reserves and other grants lying waste, in the possession of absentees and persons that you cannot find out; therefore I fixed upon that spot: there were two Canadian gentlemen, an advocate and a notary in Quebec, and an English advocate and myself engaged in the project: we took from the commissioners of the Jesuits estates about 75 lots lying together on the usual conditions by the old laws, and we determined upon having settlers there. Nobody thereabouts would go upon these lands, because they said the climate was too severe; it was too much to the north, and we could not get any body from the vicinity to commence the settlement, but we got people from the river St. Francis, people in fact from the state of Connecticut; we opened the settlement, we gave them the lands upon the same condition that we had obtained them ourselves, without any payment to us, and we advanced them sufficient to subsist one year; there were three of them; the moment that opening was made there came people from Scotland and Ireland, and we gave them lots, and they settled on the land likewise; and now that settlement and the vicinity contains about 500 souls; they are all Scotch or Irish, with perhaps a few English and one or two Americans.

To what circumstances do you attribute the preference that is shown by the persons emigrating to Lower Canada to settling in the United States or in the Upper Province?—The real cause of the preference is the want of a *nucleus*, a settlement of people connected with them. The reason why that does not take place is that you cannot get any extent of land in such a way as to commence a settlement; whoever commences a settlement in Lower Canada, even under the most favorite circumstances, is almost a ruined man, unless he can spare the money and throw it upon the waters in fact.

Is there not a large Irish settlement called St. Patrick's, to the north of Quebec?—That is contiguous to the one that we made; the lands belong to a Canadian *seigneur*, it rose in consequence of our settlement; we were the first that penetrated the swamps at the back of the seigneuries and opened the settlement; that gave them an idea that the thing could go on, because our people seemed prosperous; there is one a Scotchman from Penicuck, near Edinburgh, that to my knowledge sold in the market of Quebec during the last year to the amount of about 300l.

Do you attribute the unwillingness to settle in those places to the effect produced by the clergy reserves?—Yes; The great cause of people coming from Europe not settling in Lower Canada is because there is no place for them to go to; generally speaking, every man that comes from Europe comes to somebody; he has his sixteenth cousin, or somebody from the same parish or neighbourhood, and from whom he has heard by letter, and he goes and sits down beside them if possible; but in Lower Canada there are none such; and there can be none such, because the lands are cut up in such a way, that you cannot get a contiguous tract in any direction. The length of the winter and its severity are also subjects of great dread to the new comers, and real disadvantage to all.

Did not your English connection aid your settlement?—No, the whole of the concern was rather a Canadian concern than a British concern, for the whole of the gentlemen that were engaged in it were of what they call the Canadian party.

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Do the French Canadians experience any obstacles in their attempts to get possession of new lands?—Very great indeed. The laws which provide for and regulate concessions or grants by the seigneurs to the actual settlers, have, since the conquest, been suffered to be nearly a dead letter. The attorney-general ought to see that they are executed. The King is authorized by law to grant to real settlers, upon the seigneurs refusing. Nothing of that kind has been done since the conquest; the consequence is, that the English seigneurs particularly have imposed onerous conditions upon the settlers, conditions that they are not authorized by law or usage to impose, and which a fresh settler is unable to satisfy. They dare not venture to take up the lands, and are confined in a narrow limit. There is hardly any difference between the system that was introduced after the settlement in Canada under the French Government, and the system that was introduced under the English Government in the old English colonies: it was always granting away lands to any man that would actually settle upon them, or cause them to be settled, and taking care that those that got possession of any quantity of land did actually sit down upon it and settle (*tenir feu et lieu*).

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Would not a French Canadian living in the country naturally settle upon the lands granted to him?—The seigneur is like any other man: if people are not looked after they will take advantage of it, and they have taken the advantage of it, particularly the English seigneurs, for they are the worst of all. When they are placed in the shoes of a Canadian seigneur they think that there is no limit to the raising of rents, and every thing burthensome to the settler; and they have not been compelled to observe the laws, the laws have not been enforced that were intended to preserve the advantages and encouragement to the actual settlers; and that has kept the people from extending themselves. The Assembly passed a bill twice or thrice to produce a remedy, and that failed in the Council.

What difficulty is there in the way of a seigneur having lands in Canada extending his settlement?—He may buy as many seigneuries as any body will sell to him; but where the lands are waste he holds them upon the condition that he will grant them to actual settlers upon payment of certain dues; and instead of the dues and the regulations being adhered to according to the old laws, the laws have been suffered to be extinct, and the people cannot get land at any reasonable rate.

You mean that the landlords insist upon too much?—They insist upon what they have no right to, so much that the people cannot pay it; the people could pay it during the war, when wheat was selling at a high price, but now they cannot pay it.

Then the landlord is ultimately the loser?—He is not a landlord in the usual sense in this country, but a person to whom lands have been granted on condition that settlers should be put upon them as proprietors, on their paying certain customary dues. He is certainly ultimately the loser, because instead of joining with the people in selling the lands and making them ultimately valuable, in consequence of *moutures* and *lots et ventes*, he by his extravagant demands prevents the settlement of the lands. This is the effect of that blind greediness, which, in a thousand instances, leads to a violation of law and justice, and sets a man in his own light.

You have said that the lands were so cut up that the settlement of the country is prevented; in what way are they cut up?—I explained that in my former evidence. In the townships they are intersected with clergy and crown reserves, and with lots, the titles of which are in persons that cannot be found; they are perhaps living in England, Scotland, or some other country; and now it is impossible to tell who is the proprietor of a lot of land in the townships of Lower Canada.

Do you conceive that a tax upon waste land, such as is raised in the United States and in Upper Canada, would tend to remedy that grievance?—I have no doubt that it would tend to remedy that grievance, but it is a power which is very liable to be abused; for I conceive that it is almost a spoliation to say that you will put it in the power of residents to tax the lands of non-residents.

The question had reference to the idea of a general law, which shall impose a general land-tax upon all land lying waste, without reference to whether they are the lands of residents or of non-residents?—That would be safer, because then the residents would have their lands taxed too.

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Do you conceive that a law of that nature would remove, in a great degree, the grievance of those lands which are lying waste if a tax were imposed; and in default of payment of that tax, the land was forfeited?—I conceive that would be one way of remedying it; it would have exactly the effect which the rents of the seignoural grants have at present. The seignoural grant is conditioned, with the payment of a small annual rent, which every one is bound to pay. It is not considered that it cannot lawfully exceed a penny a superficial acre, and every one who may like to settle has a right to an unoccupied grant on demand. This rent, however, compels a man to relinquish his land or to settle it; because if it is standing wild he gets nothing from it, and he has ever year this rent to pay, besides the visits of the road officers under the existing laws, which puts him in mind that he is a proprietor of land. He gets angry with always paying and never receiving; and at last he says, "I wish to be rid of it," and he gives it away to any body that will settle; that frequently occurs in the seigneuries. The seigneuries in fact do not want any tax of that kind, because they have got it already in the shape of *redevances*. If the grants of the crown lands had been accompanied with such annual payment, to be looked after by an interested individual, you would have found that there would be very little monopoly of wild land, the most pernicious of all monopolies, as it costs nothing to persevere in it.

Would not the remedy that has been suggested be an effectual remedy against waste lands, namely, that a general tax should be imposed upon all waste lands, and that if that tax was not paid, the lands should be forfeited?—All that I can say is, that it would tend to remedy it; but it is impossible for any body to say what would be an effectual remedy in colonies under all the circumstances.

Can you suggest a remedy more likely to be effectual?—I think not; I think it is likely to be effectual.

Do you see any disadvantage in it?—I do not see any disadvantage, except that I think it would not be executed: there are too many powerful men interested in the non-execution of it.

Are the Committee to understand then that it is an irremediable evil?—No; the remedy that was proposed in the House of Assembly in 1824 I have already explained, and it was adopted in a law passed in 1825 in this country; it was getting back those lands into the possession of the Crown, to be given to persons that would actually sit down upon them, or rather sold *near the spot* to the best bidder for cash.

Did that produce any effect?—It has produced no effect, because they passed a law here which cannot be executed: they are not aware of the circumstances of those countries.

To what class of individuals did you allude as being so powerful as to be above the law? Those who administer the law are so sometimes.

Do they possess land to a great extent?—Yes, they do.

Are those grants from the Crown?—Mostly grants from the Crown.

Are they of a recent date?—From the commencement down to a few years past. There has been a great noise made about it during the last four or five years, and I believe that the thing is stopped to a great degree. Besides, the value was spoiled by too many grants.

Is there no condition as to cultivation made in those grants?—There is an absolute condition to that effect attached to all grants. The King never granted an acre of land, even as a reward for services in America, without the condition of actual settlement and cultivation being entailed upon it: those lands are quite a different thing from the Crown lands here; it is an important part of the administration, enabling the people to settle and spread over the country, the only thing that has made the countries in America valuable.

It has been suggested to the Committee that many of the difficulties which exist between the two provinces as to commercial and financial matters, might be adjusted by annexing Montreal as a port to the Upper Province, what in your opinion would be the effect of such an alteration?—The effect of such an alteration, in fact, would be to annihilate Lower Canada as a separate government. If the town and island of Montreal are to belong to Upper Canada, and they are to impose duties upon goods that are imported there, as all goods coming into that part of the country will go to the principal city at the head of the navigation, the people will go to that common centre to buy the goods they want, and pay the duties upon those goods, and those duties would go to the Government of Upper Canada, and the Government of Lower Canada, instead of having a revenue such as it has now, would in fact have a revenue of only one third, the population

population of Lower Canada resorting to Montreal, being two thirds of the whole population; the Government of Lower Canada would be a useless piece of machinery altogether, and could not be supported.

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How do you consider that Montreal is the centre of two thirds of the population of Lower Canada, since it lies nearly upon the extreme boundary between Lower and Upper Canada?—It is the centre of the population of the district of Montreal, and the population of the district of Montreal is about two thirds of the whole province; it is to that centre, which is the head of the ship navigation, that all the people living in the district of Montreal naturally go, and must go to buy all the goods that they consume; whoever consumes the goods pays the duties, and those duties would go away to the Upper Province.

What effect in your opinion would be produced, by the annexation of Montreal to Upper Canada, upon the means which would exist on the part of this country of defending the Provinces in case of an attack by the United States?—Of course, if the United States ever put forth their means for the conquest of Canada, England cannot meet them upon equal terms, or at least upon terms which this nation would be willing to submit to, that is, without undergoing an expense beyond all calculation, unless it be where the naval power of Great Britain can easily penetrate without danger from the land: there the power of England in reality does extend, in spite of the United States of America, and in spite of every transatlantic power. No part of the St. Lawrence below the Richelieu Rapids, 45 miles above Quebec, can possibly be out of the reach of her power; but it is understood that the navigation can be interrupted by fortifications at that place. If you take the means of two thirds of the population of Lower Canada, and combine them out of the reach of the power of England, I think that it very much tends to diminish the means that this country may have against the United States in a future war: where the Government is, there will be the power, and for the safety of the country it seems to me that that power ought always to be within the reach of the effective power of Great Britain, her naval power, which is that upon which her military operations beyond the Atlantic must always be based.

Do you suppose that depriving Lower Canada of Montreal would excite great dissatisfaction in that province?—There is no doubt about it.

As great as a union of the two provinces?—It seems to me that it would be worse, both as regards the interests of this country, and the interests of Lower Canada.

How does it affect the interests of this country?—By removing nearly the whole power of that country out of the reach of this country, and placing that power within the reach of the power of the United States of America.

Have you given much attention to the state of the clergy reserves in the province of Lower Canada?—Yes, I have given a good deal of attention to it, for since 1817 the matter has been particularly under my consideration; I recollect, in 1817, being employed by the people of a township near Quebec to draw up a petition against those reserves; it was brought to this country by Sir John C. Sherbrooke, governor in chief.

Do you consider the state of those clergy reserves as a great impediment in the way of the settlement and of the prosperity of the country?—I suppose there is not any person connected with Canada that can have any doubt upon that subject.

Do you consider the present state of the clergy reserves as having had a very unfortunate effect upon the religious peace, and the general harmony and good will of the population of Canada towards one another?—Yes; if that were the only cause things would not have been so bad as they are; they no doubt are the present bone of contention, but a contention connected with religion has been going on a considerable time, and it originated altogether, in my opinion, in the pretension which has been set up by the church of having an exclusive establishment in Lower Canada.

Are the clergy reserves managed at this moment by a corporation composed exclusively of members of the Church of England?—Yes, nearly the whole government is composed of members of the Church of England.

Have you any means of forming an estimate of the relative numbers of members of the Church of England compared with the whole population in Lower Canada?—There has been no enumeration, and every one of course will be inclined to make his own party the most powerful, but if you wish to know the real proportion of the different religious denominations amongst Protestants in the Canadas you may judge from what it is in the United States of America;

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America; there is in fact no difference as to the countries from which they come and the causes of their coming, and the division amongst them with respect to religion.

Judging from your means of observation, do you think that a tenth of the Protestant population of Lower Canada are members of the Church of England?—I should suppose of the Protestant population in Lower Canada they may be more than a tenth.

Should you say they are one eighth?—I cannot say; perhaps they may be a fifth of the Protestant population.

Are you a member of the Church of Scotland?—I am.

What proportion of the Protestant population of Lower Canada do you conceive to be members of the Church of Scotland?—I should conceive that there are more members of the Church of Scotland than of the Church of England, but there cannot be a very great difference between them; I speak of those that are actually born and brought up in the Church of Scotland; members of the persons who belong to the Church of England have come from the old colonies, from the United States of America.

Do you think that the majority of the Protestant population in Lower Canada is connected either with the Church of England or with the Church of Scotland, or that the majority is unconnected with either of those churches?—I think the majority does not belong to either one or the other. I do not think that there is more than 50,000 Protestants altogether in Lower Canada, and I should suppose that the Church of England may contain about one fifth, and the Church of Scotland another fifth; the rest are Congregationalists, or Presbyterians, from the United States, Wesleyans and others.

Do you think the principle of providing for the clergy from the proceeds of land a convenient principle in a country situated as Lower Canada is?—Any thing that will produce dissension or jealousy among the different denominations is fatal altogether. I do not see how you can provide for them all by land; and if you provide for any by land there will be a jealousy against those that are so provided for; and there will be religious dissensions, which I think is a greater curse than any thing we have had yet.

Do the members of the Church of Scotland consider that they have an equally good claim with those of the Church of England to a share of the proceeds of the clergy reserves?—They surely do conceive so.

Would dissenters that do not belong to either the Church of England or the Church of Scotland acquiesce in any arrangement that went to give the proceeds of those lands to the members of the Church of England and the Church of Scotland, to their own exclusion?—No; all over America there is a jealousy against any church that is connected with temporal power.

How are the clergy of the Church of Scotland provided for?—By their own people; by voluntary contributions.

Are they respectably provided for; and are they a respectable body of men?—They are a respectable body of men any that we have; but we have only regularly ordained clergymen of the Church of Scotland in the cities of Montreal and Quebec; these are the only places that could secure a sufficient stipend, as required in the Church of Scotland.

Are the Committee to understand that the religious wants of the Presbyterian population of Lower Canada are not adequately provided for upon the present system?—Certainly not. It is a cruelty, when people are encouraged to go out to those new countries to settle in the wilderness, dispersed as they must be all over that wilderness, not to give them some kind of assistance to procure religious instruction; and I do think that there might be something done in favour of those who have been born and brought up in the National Churches, without exciting jealousy on the part of others; but if it were to excite jealousy on the part of others, I would say, away with it! for if there is to be jealousy in this matter, we shall have no rest till we fall into the arms of the United States, where such jealousies are effectually prevented.

What do you conceive would be the best way, under all the circumstances of the colony, of dealing with this question, and of providing for the religious wants of Lower Canada? It is very difficult to find out what is the best way. The law has certainly made a provision in land for a Protestant clergy. I am always very dubious of interfering with what is established by law. If you give people any thing, it seems to be given; and I do not know how far your right extends of taking away what you have given; but I should say the country will be ruined altogether, it cannot be settled, nor can any thing be done, till such time

as those reserves are done away with, or till those who hold them are compelled to do exactly what every other holder of land in the country is bound by law to do, to sit down upon it, and cultivate it; if they reside and cultivate, it is no matter who holds the land.

Are you sufficiently acquainted with Upper Canada to know whether the same causes in that province have produced the same results, in impeding the prosperity of the country, and in producing religious and political dissension?—Yes, I know from my own observation in Upper Canada, that a great deal of the difficulties there have arisen from the abuses in the land-granting department, and from the impediments put in the way of settlement, in consequence of all those reserves.

If some means of setting this question at rest is not taken by the Government at once, do you think that those dissensions and animosities will increase or not?—Surely they will increase.

You have stated that the Scotch Church is supported by voluntary contribution; has no part of the proceeds of the Jesuits estates been supplied to the Scotch Church?—I am one of the trustees of the Scotch Church in Quebec, and I have heard that 300l. out of that estate was given to the Scotch Church; we subscribed about 2,000l. for the building of our church in the first instance; we enlarged it, and raised about 2,000l. more by actual payments and loans; there was some deficiency, and we got 300l. from the Government, but the whole might be said to be done at our expense. I have heard it asserted that the money was out of the Jesuits estates, and that the Church of England in Quebec was paid about 6,000l. from the same estates.

Was not there also an annual stipend granted to the Scotch minister at Quebec?—Yes, there has been from the commencement; I believe the Scotch ministers were the first that were in Canada; when there was no minister of the Established Church they attended the troops, and still do attend some of them; and there was an allowance of about 50l. given to one of them out of the military chest.

Are there any religious animosities between the Protestants and Catholics in Lower Canada?—No, not among the people generally; but there has been a good deal of apprehension on the part of many Catholics since 1817; the whole Government and the Legislative Council being in the hands of Protestants, and particularly of one church; the corporation that was to manage the schools happened to be of the same description, and they attempted to establish those schools all over the province; some of the Catholics imagined that it was a kind of proselyting plan, and it raised some jealousy.

Are the Committee to understand from what you have said that if both the Protestant and Catholic religions are protected in their establishment in that country, and there is no appearance of any design on the part of Government to infringe on the rights of one or the other, that you do not apprehend that there will be any religious animosities between Protestants and Catholics in the province of Lower Canada?—I should think so. It was not till 1821, upon the rejection of the school-bill sent up by the House of Assembly giving the direction of the schools severally to the clergy of all religious denominations, that there did seem to break out any great jealousy on the part of the Roman Catholics. That confirmed them in the jealousies which they probably had internally before, on account of certain instructions already mentioned; but then they burst forth to a great extent; since that time they have gone on increasing, but they did not believe, nor do they yet believe, that the Government of this country was at the bottom of it; they generally thought that it was something started in the colony, and it has not, in consequence of that, got to so great a height as it would otherwise have got; for amongst the body of the people at this present moment, no man asks whether his neighbour is a Catholic or Protestant; there are Catholics and Protestants in the same family and neighbourhood, and all living in perfect harmony. In truth, no country was ever more exempt from religious animosities than Lower Canada has generally been during the 37 years I have resided there.

Are there any attempts to proselyte on the part of the Catholic Church?—No; I think they are the least proselyting people that ever I have seen. I have been frequently at the houses of the clergy, and they never talk to you about religion; generally the Canadian Roman Catholics shun every conversation about religion.

Are the Catholic clergy much respected by their flocks generally?—They are respected, I believe, by every body in the country; I have never heard any body speak ill of them generally.

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Do they mix themselves up in the general politics of the province, or in matters disconnected with their own religion?—No, they never have interfered with politics to any extent; they generally have kept away even from appearing or voting at an election; they do not think that it is consistent with their interest and religious duties to have any thing to do with politics.

Did not they materially assist the Government in the defence of the province during the war?—That is with them a religious duty. In the war in 1775 they took a very active part in encouraging the people to defend the country; and in the war of 1812 they also took an active part; but the whole body of the people took an active part at that time; they were opposed to the Americans, and they were strongly attached to a connection with the Government.

Generally, is not the idea of the people of the Lower Province that any measures that have come from this country, of which they may have thought they had reason to complain, have proceeded very much from the imperfect information which the framers of those measures have had of the situation of the Canadas?—Yes; there is nobody in that country that ever conceived that this country can have any interest in doing an injury to any living soul in the colonies.

Has not that feeling tended very much to soften any feelings of irritation which such measures may have produced?—Surely it has. I should conceive that after the imprisonments and dissolutions in 1810, had it not been for the confidence the people then reposed in the justice of this country, we should have in 1812 had a deal of difficulty in getting them to come forward with the spirit they showed in defence of the country; but they said that "the King would do us justice;" (*"Le Roi nous fera justice."*)

How are the Catholic clergy paid?—By the people.

Are tithes levied?—I believe there has been hardly an instance of a compulsory levy of tithes: no man is bound to pay tithes unless he belongs to the church; if he declares off from the church he is exempt from paying tithes.

Is not the amount that is payable fixed by an ordinance of the King at a twenty-sixth part of the grain raised?—One twenty-sixth part of all grain is to be delivered into the priest's house; that is the tithe fixed by the ordinance of the French King, and they claim nothing else, and that only from those that belong to their church.

What do you suppose to be the average amount of the receipts of each of the Catholic clergymen, according to that system?—I should suppose the average will not exceed from 100l. to 150l. a year, taking the whole together. I know that the clergyman in the parish in which I live has not more than about 50l. or 60l. a year, but that is a very poor parish upon a big spot of ground; there are some that I dare say have got 300l. or 400l. a year even at present, although the times are bad.

Is that exclusive of any Easter offerings, or fees paid upon marriages and baptisms?—I believe that the clergyman gets nothing of all those, excepting 5s. on marriages. The rest generally goes for the use of the church.

Is an income of 100l. to 150l. a year one upon which a clergyman can support himself with decency, and live in a manner consistent with his station in society?—They do support themselves with decency; they are most highly respected by the people: if they did not support themselves with decency they would not be so respected.

To what purpose are the fees applied which go to the church?—For the small repairs of the church; for furnishing the linen and the wine, the plate and the lamps, and all those things. There are assessments for building or heavy repairs of either church or parsonage house.

In the settlement you spoke of as having directed yourself, which consisted of about 500 persons, how are the religious wants of that society provided for?—They can hardly be said to be provided for at all. The Roman Catholic clergymen come there occasionally, and the Irish Catholics have only six or eight miles to go to the parish church of Saint Ambrose. The Scotch seldom see any body, excepting some travelling Methodists, and sometimes a minister of the Church of England, who occasionally comes out from Quebec; the Scotch minister has also been out. There are there, I should suppose, 20 or 30 Scotch families, and they do attend to such preaching and praying as they can get; but they are all steadfastly attached to their own church.

Is there any regular Protestant service in the settlement?—No. I gave to the bishop of



of the Church of England a lot of land upon which to build a school house, and in that school house the Church of England minister comes out occasionally and reads the service, and preaches; and others come out and get into any house that they can, and they give notice to the people to come and attend prayers, psalm singing and preaching.

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Esquire.

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Is the result that on Sundays there is generally Protestant worship of some kind?—No; but whenever there happens to be service, when I am there I attend, and I have always found that there will be about 100 persons attending service: in fact there is not any new settlement where the people are not desirous to have religious instruction, generally according to the form in which they have been educated.

Do you find that in that new settlement there is a great eagerness for education?—In the school house that was erected upon the lot of ground that I gave to the bishop there was a schoolmaster placed, and he had a small salary that was paid out of the provincial funds; he began shortly after to require the children to learn the catechism of the Church of England; before that the children had all attended the school; the moment that happened they nearly all withdrew, and he remained with two or three scholars. The people then joined together, those belonging both to the Protestant and to the Catholic Church, and employed an old soldier to be their schoolmaster; this old soldier was a native of England, and a member of the Church of England; the person that actually served as clerk when the Church of England minister came out to officiate. They took this man and paid him for teaching their children. The Catholics, Scotch and Dissenters sent their children to him without the least hesitation; but they would not let their children go back to the school in which they had attempted to teach them the catechism of the Church of England.

Do they read the Bible in that school?—In all the schools in America they usually read the Bible or Testament.

Both in the Protestant and the Catholic schools?—No, the Catholics will not allow any Bible but the Bible that is sanctioned by their own church.

Is the Bible that is allowed by the Catholic Church generally read in the Catholic schools?—No; there is what they call the *Epîtres* and *Evangiles*, and a History of the Bible, consisting of extracts from the Gospel and Epistles and some other books, which contain large portions of the Scriptures which are read in the Roman Catholic schools; but generally speaking they do not go through with the reading of the Bible the same as they do in the schools in Scotland. A translation into French of the New Testament is frequently found in families; but I believe not used in schools.

Has any attempt ever been made by the Assembly of Lower Canada to provide more liberally for the Catholic Church?—No.

Which is considered the better provided for of the two, the Catholic Church or the English Church?—The English Church have more pecuniary emoluments than the Catholic Church. The duties of the Catholic clergy in Canada do not leave them a day in the week to themselves.

Have you any doubt that when the population increases to a certain extent, and when there is a greater degree of wealth in the country, there will be always a clergy ready to administer the duties of religion to the population?—I have no doubt that in every country in North America they will have a clergy of one description or another, that is, such a clergy as is most to their liking, to teach religion and perform public worship; but at the present time the settlers from this country, particularly those that belong to the national churches, I conceive to be rather destitute; for the Dissenters are much more active than those of the national churches, who have been in the habit of being provided for. Dissenting teachers are going backwards and forwards constantly. I conceive there ought to be some assistance given to the emigrants of the national churches for the present. I have made out a statement of the numbers of the clergy of the different churches in the two provinces; the Catholics are counted from a list given by the secretary of the Roman Catholic Bishop of Quebec, the Church of England by the Archdeacon of Quebec, and the denominations by the clergymen of the different denominations.

How did you obtain that statement?—It was obtained for a publication at Quebec.

Can its correctness be relied upon with respect to the various denominations?—I have no doubt of it. The number of the clergy of the different denominations are as follow:

Religious

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Religious Teachers in the Canadas, 1827.

Roman Catholics :				
In Lower Canada	-	-	-	275
Upper Canada	-	-	-	10
Other parts of the Diocese	-	-	-	27
				----- 312
Church of England :				
In Lower Canada	-	-	-	34
Upper Canada	-	-	-	32
Army Chaplains	-	-	-	6
				----- 72
Church of Scotland :				
In Lower Canada	-	-	-	7
Upper Canada	-	-	-	6
				----- 13
Seceders from the Church of Scotland, or other Presbyterians :				
In both provinces	-	-	-	12
Wesleyans, or other Methodists :				
In Lower Canada	-	-	-	11
Upper Canada	-	-	-	39
				----- 50
Baptists :				
In Upper Canada	-	-	-	41

Besides Independents, Congregationalists, Moravians, Quakers, Jews, &c. The clergymen of the Church of England alone are provided for from public funds.

What is your opinion with respect to the conduct of the Church of England clergy; are they zealous and successful in the discharge of their duties, or the contrary?—I conceive them to be a very respectable body of men.

Are they adding to the number of the established church?—If things go on as they do at present they will diminish very much the number of the established church, for any thing like irritation will take away from an establishment. Protestants formerly had no animosity against any church in Canada; they aided one another, and went to that church which happened to be the most convenient. The exclusive claims now openly announced by the English church in Canada will set all others against it.

Revd.  
*Harry Leith.*

The Revd. *Harry Leith*, called in; and Examined.

You are now the minister of Rothemay, in Scotland?—I am.

What acquaintance have you with the province of Upper Canada?—I was resident in that country for nearly four years and a half, from September 1822 till about the end of January 1827.

Are you connected with the Church of Scotland?—I am.

In what capacity were you in Canada?—I officiated as a clergyman, and likewise had charge of the eastern district public school.

Are you acquainted with the wish that has been expressed by the members of the Church of Scotland, to obtain a portion of the proceeds of the clergy reserves?—I am.

What have you to state to the committee on that subject?—That they consider they have an equal claim with the Church of England to a share of those reserves, on two grounds:

1st.

1st. As members of one of the Established Churches of Great Britain; and also as the Members of the Scotch Church in Canada are by far more numerous than those of the Church of England. They consider that, on both these grounds, they have a claim to a participation in those reserves, which were set apart for the support of a "Protestant clergy." The Rev.  
Harry Leigh;

Is it their opinion that their right arises out of the Act of 1791?—It is their opinion that it was the intention of the framers of that Act, that the Scotch as well as English Church should be comprehended in its provision.

Can you give the committee any information as to the number of the members of the Scotch Church in Canada, and the proportion they bear to the numbers of the Church of England?—In the district in which I resided during those four years there are four congregations in connection with the Church of Scotland, and two in connection with the Church of England. In one of the churches in connection with the Church of Scotland, namely—that at Williamstown, the average number of communicants is from 450 to 500; at Martin, town the number was about 250, and at Lochiel I think about the same number; at Cornwall the church was only erected a few months before I left that, so that the sacrament had never been dispensed there; but I am fully convinced that it is at least equal to the Episcopal congregation, both in numbers and respectability. The number of communicants in the Episcopal Church Cornwall averages, I think, about 40; and the number of hearers, from 30 to 40. The only other Episcopal congregation in the eastern district is at Matilda. I have never understood it to be more numerous than that at Cornwall. There is no Episcopal Church at Osnabruck, as stated in Dr. Strachan's Ecclesiastical Chart. There was a Presbyterian clergyman from Ireland, who resided there, preached once a fortnight, and performed all the duties of a minister. I have, however, understood that the Episcopal clergyman at Matilda used to officiate in the same church occasionally; it may be once a fortnight, or once a month, I cannot state the interval exactly. In the Ottawa district, which has been but recently settled, a Mr. M'Laurin has been officiating for three or four years as a minister of the Church of Scotland to two or three congregations; I cannot state their numbers, but think they must be considerable, as I have understood from Mr. M'Laurin that a Mr. Hamilton was almost the only Episcopalian in that quarter. At Kingston, in the midland district, there is a highly respectable Scotch congregation; it has only been organized for about six years, and the number of communicants already amounts to 119. In the districts of Niagara and Gore, where, according to Dr. S.'s chart there are no Presbyterians at all, I am able to state that there are at least 16 Presbyterian congregations; that the number of communicants in all the Episcopal Churches of these two districts does not exceed, 40: this has been ascertained from authentic sources. In one case, viz. Fort Erie Church, the communicants are eight in number; in another ten, and the average number in all the Episcopal Churches of the four districts, Niagara, Gore, London and Western District, amounts to no more than 25. The state of the English Church in the Gore district is so grossly misrepresented in Dr. S.'s chart, that I cannot refrain from pointing out a few of its inaccuracies. It is stated, in said chart, that there is an Episcopal Church at Ancaster, and Divine Worship regularly performed in it. There is, I believe, but one church at Ancaster, and in it there is Divine Service regularly performed by a Mr. Sheed, who was ordained to that charge in April 1827 by the Presbytery of Aberdeen. At Burton, where Dr. S. states there is an Episcopal Church and Divine Service regularly performed, there is only what is called a *free church*, i. e. a church erected by the united subscriptions of Episcopalians and Presbyterians, &c., and in which ministers of both these denominations have an equal right to officiate. At Dundas there is a Catholic Church building, but there is no Episcopal Church; neither has the worship of that church been performed there for four or five years. At Woolwich there is no church, neither has religious worship been ever performed there. At the Indian village there is a church which was built by Government for the Indians, and which is in fact the only place in the district where there may be said to be an Episcopal Church.

Do you believe that many persons originally connected with the Scotch Church conformed to the worship of the Church of England, where a church is established in that communion?—Where no Scotch Church has been established, those who were members of that church have been in the habit of attending the worship of the Church of England, and some may have thus from necessity become members of the Church of England; but that same

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a much greater proportion of them prefer remaining unconnected with that church, is obvious from the numerous bodies of Dissenters that are invariably found in those districts in which there are no Scotch clergymen, or where they have been but recently settled.

Are not the members of the Church of Scotland in the habit of attending the worship of the Church of England, though without becoming communicants?—Many do, in places where there is no clergyman of their church.

Have you ever known an instance in which a Presbyterian Church was opened in Upper Canada, and the members of the Church of England attended worship in it, although they did not cease to be attached to the Church of England?—Episcopalians do occasionally attend Divine Service in the Scotch Church. In Kingston, where, if I mistake not, there was only one sermon delivered in the English Church, and there were two delivered in the Scotch Church, several members of the English Church attended the afternoon service in the Scotch Church. It is also, I think, very probable that in such churches as those at Burton in the Gore district, and Osnabrock in the eastern district, which are *free* churches, many of both denominations will attend the services of the different preachers that may officiate.

Have those unsettled and contending claims of different religions sects tended to produce feelings of animosity, political and religious, in the province of Upper Canada?—They have; and there is every reason to expect that the same feelings will continue to distract the province till such time as the Scotch Church obtains that recognition and support from Government to which it considers itself equally entitled with the Church of England. There are also other circumstances which tend very much to keep alive, if not to increase, these feelings. Scotch clergymen in Upper Canada are subjected, by provincial enactments, to disabilities in the discharge of their ministerial functions. A clergyman, after having been regularly ordained and appointed by a Presbytery in Scotland to a particular charge in Upper Canada, finds on his arrival there, that before he can legally solemnize marriage he has to intimate, at a meeting of quarter sessions, his intention of applying to next meeting of quarter sessions for a license to solemnize marriage as the clergyman of ———; and even after he has waited these three months, and obtained this license, or rather certificate, he will still find that he can only solemnize marriage when either of the parties has been six months a member of his congregation. So that should any of his brother clergymen become sick, go to assist some other clergyman in dispensing the sacrament, or be otherwise prevented from solemnizing the marriage, he cannot officiate in his brother clergyman's stead; and the parties wishing to contract marriage must either wait till their own clergyman recovers from his sickness, or if absent, returns home, which from the great distance they have sometimes to go, may not be for several days, or else they must submit to be married by an Episcopal clergyman, who happily labours under no restriction or limitation whatever, but can legally marry any parties upon their producing a license, whatever their church or length of residence may have been. This disability may at first sight seem unimportant, but is indeed far otherwise, as will appear when is considered the situation of the country, that there are in every part of it new settlers almost daily arriving, and frequently applying for marriage before a residence of six months; and that there are many extensive settlements of Presbyterians who, unable to support a clergyman of their own church, and from their great distance from a place where there is a Scotch clergyman, unable to connect themselves with any congregation in connection with the Church of Scotland; and that these latter have not only to depend for their religious instruction on the public ministrations of itinerant preachers, principally American, and of all denominations, but after they have travelled 40 or 50 miles to have their marriage solemnized by a clergyman of their own church, are informed by him that he is disqualified by a provincial statute from the solemnization of their marriage, and that they must apply to an Episcopal clergyman for its solemnization. These disabilities do not exist in Lower Canada, nor any other British colony. A repeal of these statutes by the Provincial Legislature amounts almost to an impossibility. The House of Assembly would pass no Act for their repeal which did not include all sects and denominations; and the Upper House would with difficulty be brought to pass an Act in which the Church of Scotland was alone included. Relief can be had from an Act of the Imperial Parliament alone, placing the Scotch Church in the North American provinces on an equal footing with the Church of England, and conveying to its ministers full power to exercise all the functions of their sacred office, as ministers in connection with one of the Established Churches of Great Britain. And as the Scotch clergymen in Canada have not received power to form themselves into a Presbytery, so

as to be enabled officially to examine the credentials of those professing themselves clergymen of the Church of Scotland, should it be deemed prudent, in order to prevent imposition, that their credentials should be subjected to examination in Canada, this might be done, if not by the Scotch clergymen already acknowledged in the country, by the Government, by the Governor in Council, which would enable clergymen regularly ordained to enter immediately upon their arrival in the country, on the full discharge of all their ministerial duties. The disabilities laid on the Presbyterians naturally produces discontent and jealousies. The Government of Upper Canada places its chief dependence on the loyalty of those districts that are most numerous settled by Scotch; but as the Scotch are strongly attached to their National Church, no course of policy could tend more effectually to alienate their loyalty, and lead to a revolt, than a perseverance in the policy hitherto pursued with respect to the Church Establishment.

Are you acquainted with all parts of Upper Canada, or with the most populous districts of it?—Not with all the province, but with the most populous districts.

Have you been able at all to ascertain the total number of Presbyterians of the Church of Scotland in that province, including the Seceders and others?—I have not, unless in perhaps four or five districts.

In the districts with which you are acquainted, can you state what were the general proportions of the different religious sects?—They vary very much. With respect to the Church of England and the Church of Scotland, I should think that the members of the Church of Scotland are, to those of the Church of England, at least as ten to one.

Do the grounds of difference which exist in Scotland between the congregations of Seceders and the congregations of the Church of Scotland exist in North America?—I think not.

What are the circumstances under which Presbyterians, living in North America, will remove from them the ground of difference which is found to separate them in Scotland?—The difference in Scotland is principally on the ground of patronage, which cannot be said to exist in Canada. When any Presbyterian settlement becomes sufficiently numerous to be able to support a minister of the Scotch Church, they usually appoint a committee to draw up a bond and call, and to transmit them to some Presbytery in Scotland, or else to some private friend, to whom they may intrust the nomination of their minister. If they are either personally, or by report, acquainted with any young clergyman in Scotland, they may insert his name in the call, or name him to the individual to whom they transmit their papers.

Is there any difference in doctrine between the Church of Scotland and the Seceders, so as to prevent them being united in the same Church in Canada?—I am not aware of any; and I can state, from my own personal knowledge, that there is not a Scotch congregation in Canada in which there are not several of the members who were Seceders in Scotland, previous to their emigrating to Canada, and that there are not now more zealous supporters of the Established Church of Scotland than these individuals. In farther proof of this I may state, that the congregation to which I was appointed at Cornwall had previously been under a dissenting clergyman; that of Mr. Connell at Martintown, and Mr. Mathieson at Montreal, were both connected with the Dissenters, and had ministers from them. In the eastern district, where the Presbyterian population are better supplied with Scotch clergy than in any other district, there is not now one dissenting clergyman, although there were formerly two. And I have little reason for doubting that, with the exception of perhaps the towns, the same would be the result from having Scotch clergymen placed in all the different Presbyterian settlements.

Practically speaking, from your knowledge of Canada, do those two bodies of Presbyterians act with good understanding towards one another?—One of the most respectable of the dissenting clergymen applied, nearly six years ago, to the Scotch ministers in Canada to recommend to the General Assembly the receiving of him and some others of that body into connection with the Church of Scotland. The congregation at Niagara, to which Mr. Fraser was lately appointed by a dissenting body in Scotland, previously applied to the Scotch ministers in Canada for advice how to proceed in order to obtain a clergyman in full connection with the Church of Scotland; but they could not give a bond for such a provision as would authorize any Presbytery to grant ordination, and the application was

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in consequence dropped. I am acquainted with two other congregations that have expressed a similar wish, and that will in all probability be supplied after the present incumbrances by ministers of the Scotch Church.

Was there any collision or misunderstanding between them?—I am not aware of any. Are you acquainted with the manner in which the churches in Upper Canada are built?—Those built by Presbyterians are built entirely by voluntary subscriptions.

How are the ministers supported?—While I was in Canada they were supported entirely by the voluntary contributions of their respective congregations.

Are those churches of the Presbyterians as large structures as the churches of the Church of England?—In some instances they are larger, and in others not so large.

Do you know what the average expense of building one of those Presbyterian churches is in Canada?—I should think from 500*l.* to 700*l.*; I know that the church that was built at Cornwall cost about 500*l.*; it is a frame building. Those built of stone or brick will cost from 900*l.* to 1,000*l.*

The Rev.  
*John Lee, D. D.*

The Rev. *John Lee, D. D.* again called in; and Examined.

The Committee are informed that you are desirous of adding some explanations to the evidence you gave upon a former occasion?—The thing that I was most anxious to state is this, I find it represented in a speech published, I believe, by Doctor Strachan, that his letter to Mr. Wilmot Horton was written hastily in consequence of having learned that some members of the House of Commons had received letters from me, stating that there were 30 organized congregations in Upper Canada in communion with the Church of Scotland. Now I beg leave to state, that prior to the time when Dr. Strachan's letter was written and printed by order of the House of Commons, I had never written any letter on the subject, and on the contrary, my letters relating to that matter were written in consequence of the printing of his letter, which appeared to me, and to every member of the Committee of which I am convener, as well as to every member of the Church of Scotland with whom I had any conversation, to contain very great misrepresentations; my letters were written, I believe, about a month after Doctor Strachan's letter, and what I did state was to this purpose, that it was a thing that could not be denied that there were 30 congregations in Upper Canada professing to adhere to the doctrine and to the worship of the Church of Scotland, at the same time I did not state that they were organized or that they had ministers ordained by the Church of Scotland, but I stated at the same time that only five or six had ministers who were ordained by the Church of Scotland.

Have you a copy of that letter?—I cannot say that I have a copy, but I stated in my letters exactly what is in the memorial which I laid before the Committee; the letters that I wrote were chiefly to Lord Binning, now the Earl of Haddington; Sir Henry Moncrief, I believe, likewise wrote to Mr. Kennedy and Mr. Abercrombie upon the same subject, and I think that he enclosed one or two letters from me to himself upon the subject. The information which I had received ought to have been correct, for I had been in communication with many individuals connected with Upper Canada, three or four persons who either were or had been ministers there, and several other people who had been in the country, and I am quite confident that I could have even given the names of the individuals that I mentioned.

Will you have the goodness to explain in what way this bears upon the subject under the consideration of the Committee?—This letter of Doctor Strachan's professes to give a representation not only of the state of the Church of England in Upper Canada, but of the ministers and members in communion with the Church of Scotland, and also the ministers of other orders; now it is very material to us to establish that those statements of Doctor Strachan's have been hastily and inadvertently drawn up.

Will you state what are the inaccuracies in his statement and the ground upon which you hold them to be inaccurate?—First of all, with regard to the Church of Scotland, he allows only two ministers of the Church of Scotland to be in that province. Now, at that time I named five, and I believe there was at least one other whose name was not known to me; I have also to state that Doctor Strachan allows only six other congregations  
instead

instead of the number which we had reason to represent to exist, and those he states to be of the Independent or Presbyterian order.

How many do you believe there were?—I believe there were fully 20 ministers.

How many congregations were there?—The number of the congregations, according to our information, was at least 30. We have also now this information with regard to two of the districts, which Doctor Strachan takes notice of as containing no Presbyterian congregations, with regard to Niagara and Gore; there are eight Presbyterian congregations in each, 16 in all, although Dr. Strachan does not admit one.

Are there any other points upon which you wish to make any statement to the Committee?—I trust it will not be irregular to take this occasion to represent to the Committee that it is very easy to account for the increasing number of clergymen of the Episcopal persuasion, as the encouragement they have received is so much greater; and, according to the information the General Assembly have received, a number of persons that have gone out as schoolmasters, some of them being licensed preachers in the Church of Scotland, have been prevailed upon to become Episcopalians, and have received orders. I find that in one district, the western district, three are mentioned as having in a short period become Episcopalians, and received orders in the Church of England. But although those individuals, who have had presbyterian education, may be induced to change in this manner, it has not been found so far as we can learn that their congregations are disposed to go along with them; but on the contrary, that the congregations are more disposed to adhere to that doctrine and worship, and church government, which they prefer. Dr. Strachan himself was a schoolmaster, and educated for the Church of Scotland, and the circumstance of his having gone over to the Church of England, so far as I can learn, has not at all tended to increase the number of proselytes among the laity.

Will you have the goodness to state to the Committee what are the grounds upon which the Seceders have separated from the Church of Scotland, and whether those grounds exist or not in the province of Upper Canada?—The fact is, that among the original grounds of separation of the Secession from the Church of Scotland, the strongest was the revival of the law of patronage: there were some other grounds which certainly are admitted by many members of the Secession not to exist now to the same extent as formerly in Scotland. It was alleged, by many of the earliest seceders, that the Church of Scotland had separated in some measure from the doctrine of the Confession of Faith, but I rather believe that they are now convinced that a vast majority of the Church of Scotland entertain the same views of doctrine which they themselves do.

Is the ground of difference which still separates them confined solely to what you call patronage, or to the mode in which their respective ministers are appointed?—I conceive that to be the chief ground; and indeed I may state that in Scotland a very great portion, at least in large towns, of those that attend the places of worship in communion with the Secession, are compelled to do so by the impossibility of obtaining accommodation in the parish churches; the lower orders of people find it impossible to find accommodation.

What is the rule held by the members of the Secession with respect to the patronage of the ministers?—That rule is, that the people must elect their own pastors, and there was a period in the Church of Scotland when that was the law.

In what way is the right of patronage, which you describe as being denied by the Secession, admitted by the congregations of the Scotch Kirk?—At present in the Church of Scotland the ministers in general are appointed either by private patrons or by the Crown.

Can there be in the state of the Presbyterian church in Upper Canada ministers appointed either by the Crown or by private patrons?—There is a possibility of the thing existing, but the thing does not exist at present.

Are the ministers actually elected by the people?—I believe not. I understand that this is the practice generally adopted with regard to those who are in connection with the Church of Scotland: a number of people, feeling that they are capable of contributing in some measure to the maintenance of a minister, write to Scotland requesting some ministers in whom they have confidence, or in some instances requesting of the Presbytery to appoint a minister to be sent out to officiate among them, engaging that they will give

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give an adequate maintenance to that minister; and I rather believe that something like the same rule is observed in the Secession, although I have likewise reason to believe that some of those who call themselves Presbyterians in Canada are persons who have gone out on their own adventure, probably have gone out as teachers, having previously received an education qualifying them to be ordained, and they have come home and been ordained by the religious body with which they were previously connected.

Are the Committee to conclude from the answer you have given that in point of fact, neither can the right of election exercised by the seceders, nor can the right of patronage in the congregations of the Church of Scotland, be acted upon in Canada in the same way as they are in Scotland?—No, I would not exactly wish that that should be inferred; for in the case to which I have last adverted, there is probably an election. I shall state one case: there is in connection with the Church of Scotland a Mr. Sheed, now at Ancaster; that gentleman went out to that country, I believe, five or six years ago; he was licenced as a preacher in the church of Scotland, but not in full orders; a chapel was built, and it is one of the churches which Dr. Strachan, as I am assured, mentioned as one of the established churches; but a church was built at Ancaster; this Mr. Sheed was in the habit of preaching there for some time, and at last the people united to call him to be their minister, to support him adequately; and in consequence of this he came to Scotland, nearly two years ago, and was ordained to the charge by the Presbytery of Aberdeen: in that case there was an election.

Was that a congregation of Seceders?—Not of Seceders, but of persons in connection with the Church of Scotland; so that even in the Church of Scotland there is nothing to prevent a minister being elected by the people; and there are parishes in Scotland where the minister is elected; there is one of the most populous in Scotland which is vacant at this moment, North Leith.

If that point is settled, are there any grounds of difference left between the Established Church of Scotland, and the Seceders?—The fact is, that we of the Established Church of Scotland feel that there is some difference between the education of the one class and of the other; not that I would in general say that the education of the Seceders is inferior to that of the Established Church, for in many cases it is fully equal, but it is not necessarily so strict as ours.

Are you aware that the *regium donum* which is given to the members of the Presbyterian Church in the north of Ireland is distributed equally to the ministers of the Secession, and to those of other congregations?—Probably it is; but none of those congregations, so far as I know, are properly speaking, in communion with the Church of Scotland.

If it were stated to you that the two descriptions of Presbyterians that have been alluded to, consisting of the Church of Scotland and the Seceders, though differing in Scotland, were willing to reconcile their differences in Canada, in order that they might obtain a portion of those reserves which by some are supposed to belong exclusively to the Church of England, what answer would you give to that statement?—I may be allowed to state, that so far as regards the information which the General Assembly of the Church of Scotland has received, many of the congregations, although served by ministers who are not in communion with the Church of Scotland, have really been long desirous of being connected with the Church of Scotland; and I know that there are other congregations, at least I know of one other congregation, whose minister is at present connected with the Secession, but who are determined to have their next minister of the Church of Scotland; and in such cases as I have now described, I should think it exceedingly hard if the members of the Church of Scotland are at all admissible to the benefit of a share in those reserves. That persons who really have long been attached to the Church of Scotland, although from circumstances which they deplore they have not had ministers of that church, should be deprived of that benefit. I may take the liberty of stating further, that although I know that it has been recently represented that those ministers and people in Upper Canada, who hitherto have been differing about matters of doctrine and worship, are now willing to unite, for the sake of receiving a share of those clergy reserves, I know that a vast number, and I believe the greater part of those who now profess their willingness to be connected with the Church of Scotland, have long been making the same profession. I have in my possession a number of memorials and petitions which  
were



were sent to the General Assembly of the Church of Scotland, some of them six, some of them seven years ago; they have no reference whatever to any share of the clergy reserves; and many of those persons state that they have not ministers at all; others say that they are supplied in some measure with religious instruction, but that they are particularly anxious to be connected with the Church of Scotland. I conceive that those persons have been quite disinterested in that profession, and there can be no greater mistake than to represent that this is done from any view to spoliation, or to taking what is not legally their own.

The Rev.

John Lee, D. D.

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Supposing that a portion of those reserves were to be made over to the Church of Scotland, have you any definite idea of the manner in which that church would propose to deal with them so as to make them beneficial and useful?—I cannot venture to say that any plan has ever been proposed.

Is it your belief that a portion of that unanimity that has appeared lately between the Seceders and the Scotch Presbyterians has arisen from the wish to share in that provision which is alleged to have been made for the established clergy?—I cannot take upon me to answer for the ministers at all, but I do admit in the fullest extent what they represent, that the grounds of difference are very inconsiderable there, and I can sufficiently account for this unanimity without any reference to the prospects that have been held out to them; but at the same time I would hope that this distinction shall be kept in view; whatever may be the case with regard to the ministers who may have an interested motive in joining in this solicitation, assuredly the same motive cannot extend to the laity, who, as I have already endeavoured to represent, have for many years past professed a strong desire to be connected with the Church of Scotland, and to have ministers of that communion; and for that reason I think there is little ground to question the sincerity of the professions of those persons.

Are you sufficiently acquainted with the tenets of the Seceders to be able to say whether in case a provision was for the Presbyterian ministers, and their appointment placed in the hands of the Crown or vested in the General Assembly of the Church of Scotland, those Seceders would concur in those appointments?—I cannot venture to say that they would, I can only answer that from the petitions and returns the Assembly has received from many quarters, it appears that there are a vast number of persons in every corner of Upper Canada who would wish to have ministers in connection with the Church of Scotland, and as we are led to believe the majority of them would; it is not stated whether they are at present Seceders or no.

How are the ministers appointed among the Presbyterians of the Church of Scotland?—I believe by election.

By whom is the jurisdiction of the Presbytery exercised in the Canadas?—I am not aware that, properly speaking, there is any Presbytery; there is what is called a Presbytery in connection with the Secession, but there is no Presbytery in connection with the Church of Scotland, and I do not think that the Church of Scotland consider themselves as having the right of establishing Presbyteries beyond the bounds of the kingdom of Scotland.

Is not the Scotch clergyman at Calcutta in connection with the General Assembly of Scotland?—There is something anomalous in that constitution, and it is rather conceived to be departing from the strict practice of the church.

*Martis, 1<sup>o</sup>. die Julii, 1828.*

The Rev. *Robert Alder*, called in; and Examined.

The Rev.  
*Robert Alder*,  
1 July, 1828.

You have acted as one of the missionaries of the British Wesleyan Conference in Canada?—I have.

Are you acquainted with the circumstances of the Wesleyan Methodist connection in Upper and Lower Canada?—I am very well acquainted with their circumstances in Lower Canada, and partially acquainted with their state in Upper Canada.

Can you state what the number of Wesleyan ministers at present in Lower Canada is?—There are nine.

Are those all of them natural born subjects of the King?—They are all natives of the United Kingdom of Great Britain and Ireland.

By whom are they employed, and under whose direction do they act?—They are employed by the British Conference, a body that is recognized in a deed enrolled in the High Court of Chancery in England, and they continue to act under the direction of that Conference during the whole period of their missionary labour. From the peculiar nature of our discipline, the conduct of every minister abroad is as well known to the Conference at home as is the conduct of any of our ministers in England.

In what way are the Wesleyan Missionaries in Lower Canada set apart to the work of the ministry?—By the imposition of hands and prayer, after they have been examined three several times respecting their general knowledge and theological attainments, &c.

Are they entirely devoted to their profession as Missionaries, or are they engaged also in any secular employment?—They are wholly devoted to the work of the ministry; they are not allowed even to keep a school for their own private emolument, whatever instruction they give to the rising generation is wholly gratuitous.

From what sources do they derive their income?—From the voluntary contributions of the people amongst whom they labour, and the British Conference.

What is the average amount of income of each minister, and upon what principal is it regulated?—A married Missionary is allowed a furnished dwelling-house, and a sum of about a hundred guineas per annum; if he have three children he is allowed 35*l.* additional for his children, and so on in proportion to the number of his family.

Then are the Committee to understand that the British Conference annually expend a sum to cover the deficiency of the voluntary contributions of the people in Canada?—They do.

Can you state what sum is generally expended by the British conference for the support of the mission in Canada?—From 500*l.* to 700*l.* in support of our mission in Lower Canada.

Have each of those ministers a chapel at which they perform service?—Yes; and with the exceptions of the ministers stationed at Quebec and Montreal, whose labours are chiefly confined to those two places, our Missionaries in the country preach on the average to five congregations weekly, and frequently travel from 50 to 70 miles.

What is the number of chapels or school-houses in Lower Canada, which are used for the purposes of public worship in your connection?—I think we have 10 chapels in Lower Canada, and probably between 40 and 50 other places in which we usually perform Divine Service.

Can you state the number of the members in your societies, and the number of those who generally attend your congregations?—We have about 1,500 members in our societies in Lower Canada, and our congregations probably amount to between 5,000 and 6,000.

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Do you find that considerable numbers, exclusive of those 5,000 or 6,000 attend occasionally, though belonging to other denominations?—They do occasionally.

In what manner are the chapels and places of public worship erected?—By the voluntary contributions of the people who sometimes involve themselves in pecuniary difficulties in erecting places of worship, our chapel at Montreal cost between 4,000*l.* and 5,000*l.* and the expense was defrayed entirely by the people there.

Do you conceive there is an abundant supply of religious instruction for the demands of the people?—No, I do not conceive there is a sufficient supply; there is not a sufficient supply of Wesleyan Missionaries in Lower Canada.

What do you conceive to be the reason of that?—The want of pecuniary means. The monies raised by the Methodist connection in England for missionary purposes are appropriated for the support of Missionaries in Ireland, in Western and Southern Africa, and in the East and West Indies, as well as in North America. The reason why we wish to obtain a portion of the clergy reserves is not for our private emolument; but that we may be enabled to extend our missionary operations in Lower Canada.

Have not the Wesleyan ministers been particularly active in the eastern townships of Lower Canada?—Yes, and with the exception of the clergymen of the Church of England, there are no other ministers connected with any ecclesiastical body in England that preach in those townships.

Do you conceive that if the Wesleyan ministers were withdrawn from the townships, the Church of England would be capable of supplying them with clergy?—No, I think not, and this is the opinion of the Governor General, from whose letter to me, which I received a few days before I left the province, I beg permission to read an extract:—"We all know, (his Lordship observes,) that the Established Church cannot provide clergymen at all places where they are required and desired, in that difficulty the Wesleyan ministers have rendered most valuable services, and I think they are qualified and capable to render much greater services under the protection and encouragement which they desire from His Majesty's Government."

Are there no Presbyterian ministers of the Kirk of Scotland in the eastern townships of Lower Canada?—Not one.

What other religious communities are there besides the Church of England and the Wesleyan Methodists having ministers in the country parts of Canada who act under the direction of ecclesiastical authorities in Great Britain?—None; there is not a minister in any of those townships, with the exception of the clergy of the Church of England, and our own ministers, who acts under the direction of any ecclesiastical authority in Great Britain.

You have stated the number of Methodist ministers in Lower Canada, and the number of their congregations; will you give the Committee the same information with regard to Upper Canada, so far as you are acquainted with it?—In Upper Canada there are 46 Methodist ministers; there are 66 chapels, and about 530 other places in which Divine Service is regularly performed.

What do you consider to be the number of your members, and the number of your regular hearers, in Upper Canada?—The number of members of the Methodist Society in Upper Canada is 9,000; the number of regular hearers is 37,000, making one fifth of the whole population of the province.

In addition to those you have mentioned, is there not also a Methodist mission among the Missisagua Indians?—There is; and according to the testimony of the venerable Archdeacon of Quebec, the labours of the Wesleyan ministers amongst those Indians have been of great advantage to them, in a social as well as in a religious and moral point of view.

Are the Methodist congregations in Upper Canada under the direction of the missionaries sent out by the British conference?—They are not: hitherto they have been under the direction of the Methodist conference of the United States; that connection, however, is now dissolved, and we expect that an arrangement will soon be made, by which the Methodists of Upper Canada will be brought to act under the direction of the British conference, as the Methodists of Lower Canada have done for several years.

Is there any point of difference, either in doctrine or discipline, between the British and American

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Robert Alder,

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American conference?—Not any of importance. We consider ourselves to be one body; but we do not deem it right that the Methodists of Upper Canada should be under the jurisdiction of a foreign ecclesiastical authority.

Then are the committee to understand that there would be no objection, on the part of those congregations, provided you had the means of furnishing ministers, to receive those ministers sent by the British conference fully as readily as those sent by the conference of New York?—The conference of the United States does not now send any ministers to Upper Canada. The people are very anxious to be supplied with ministers from this country; and we have the most pressing petitions sent to us annually for English ministers.

By whom has the supply of Wesleyan ministers from the United States been prohibited?—By an agreement between the Methodists of Upper Canada and the Methodist conference in the United States.

Then you consider that it is the desire of the methodists in Upper Canada rather to have ministers furnished by the British conference than by the conference of the United States?—Yes, I have reason to believe that is the case.

And that it is from the wish of the people themselves that the Methodist ministers of the United States are now prevented from coming into Upper Canada?—Yes, from the influence of British feeling.

Do you conceive that the Colonial Government in Upper Canada has manifested any desire for the extension of the British Wesleyan Methodists in that province?—I believe there are documents in the Colonial Office addressed to Earl Bathurst and to Mr. Huskisson from Sir Peregrine Maitland, which will show that His Excellency is very anxious that the number of British Methodist ministers should be increased as far as possible in Upper Canada; and I understand that he wrote home, a short time ago, recommending that pecuniary aid might be allowed us for that purpose.

Do you consider that under the 31st of the late King the Wesleyan Methodists have any claim, according to the letter of the Statute, to any share of the clergy reserves, or are they only desirous of obtaining a portion of them, in case the Statute should be altered in that point?—There is a difference of opinion amongst us on this subject; but the general opinion of our ministers in Lower Canada, I believe, is this, that if the revenues be appropriated to the sole use of the Church of England, we shall offer no objection to it; but that if the Presbyterians are to have any part of those reserves, then we conceive that we have at least an equally good claim with them; and we should be very much dissatisfied if our claims were disallowed.

Do you mean then to found your claim to a share in the clergy reserves only upon a principle of equity as being one of the most numerous bodies of Protestants in that country, and not upon the principle of the precise construction of the law?—As I have already stated there is a difference of opinion upon that subject, some of our friends think we have a legal claim, and others think that no other denomination has any claim in law but the Church of England; however, the general opinion amongst us on the subject is what I before stated to the committee.

Suppose there were an alteration to take place in this respect, by which you were enabled to make good your claim to any portion of the reserves, upon what principle would you exclude other denominations of Protestant Dissenters?—We do not wish to exclude them, but we conceive that we are placed in totally different circumstances from Dissenters in Lower Canada, because the British conference of the Wesleyan connection is accountable to Government and the Public of Great Britain, for the good behaviour of all their missionaries, whereas the ministers of the dissenting churches can only give their own personal security for their good behaviour; we conceive that on that ground our claim is much better than theirs. The Wesleyan conference also, as I have stated, expends a considerable sum annually in support of our mission in Canada. We rest our claim also on the good that has been effected in the Canadas through the instrumentality of the Methodists, and their present numbers and respectability.

Has there been any dissatisfaction felt among the Wesleyan Methodists in Lower Canada at their not being allowed to keep a register of their births, marriages and burials?—Very great dissatisfaction, for although we are of opinion that a refusal so completely opposed to every thing like toleration does not at all lessen us in the estimation of the people

people of Lower Canada, we feel it to be a degradation to the community to which we belong; besides, either the children of our members must grow up without receiving from us Christian baptism, and the bodies of our deceased friends remain without the rite of Christian burial, or we must expose ourselves to a very severe penalty in performing those duties.

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Is there any provincial statute which, according to your interpretation of it, would give you the right of registry?—There is.

Has there been a difference of opinion among the Judges as to the explanation of that statute?—There has. Judge Sewell, the chief justice of the Province of Lower Canada, has put such a construction upon the law as has been the means of depriving us of a legal register; he has decided that the Methodists and Dissenters are not Protestants, and that as the Act merely provides for the celebration of those services by Protestant ministers, we are not entitled to perform them! Judge Reid and his associates of the Court, of King's Bench in the district of Montreal, are of a different opinion; as a proof of which Judge Reid for some years granted our missionary in Montreal a legal register.

Was there not a bill passed in the Provincial Legislature for the purpose of remedying this inconvenience?—There was.

Are you aware of the grounds on which the Royal assent was refused to that bill?—I believe it was not on account of any objection to the principle of the bill, but on account of some informalities connected with it.

Would it be satisfactory to the Weslevans in general if a short Act were passed, being a declaratory Act of the intentions of the disputed statute of the 35th of George the 3d?—It would.

Upon what footing does this matter stand in England?—We are allowed to administer the sacrament of baptism, and to bury the dead in England; and we keep regular registers of our baptisms and burials.

Have you similar rights in the other North American colonies?—In all the North American colonies we are allowed to administer the sacrament of baptism, and bury the dead; and in the province of Nova Scotia we are allowed also to solemnize marriages; we have always enjoyed this privilege in Nova Scotia as all other ministers of the gospel do there.

Do you know whether the law is different, or whether the construction put upon it is different?—The law is different.

Have there been any disputes with regard to burial-grounds in Canada, between the Church of England and the Wesleyan Methodists, as to solemnizing the rite of burial, as there have been between the Church of England and the Presbyterians?—No, we have not been involved in any such controversy.

You have stated, that the Wesleyan Methodists in Canada, would be dissatisfied if any portion of the clergy reserves should be applied to the Presbyterians; are you not of opinion that they stand upon a different footing with yourselves seeing that they are one of the churches established and recognized by law?—We know nothing of the Presbyterian Church of Scotland as an Established Church out of Scotland: we view it as a strictly local establishment, and we think that its ministers have no right to enjoy any peculiar privileges in any of His Majesty's colonies because they belong to the Church of Scotland.

Do you consider it as confined to Scotland?—Yes.

In what light do you view the Presbyterian Church that is established in Ireland?—I am aware that there are a few Presbyterian Churches established in the North of Ireland, but I am not aware that the Presbyterian Church is established in Ireland generally.

Are you aware that at one time they had possession of the tithes in the North of Ireland?—Yes; but they never were in possession of such a privilege in Canada, nor in any of the North American colonies; it would be felt as a grievance if we were to have two ecclesiastical hierarchies endowed in the colonies.

In what way do you suppose that that burthen would press upon you?—We mean, that if the Presbyterian Church, as well as the Church of England, were to be established and endowed in the colonies, there would be two Ecclesiastical establishments in the country, which other denominations would be very much dissatisfied with.

You

The Rev. *Robert Alder*. You are aware, that in case those two establishments were erected they would not be paid out of the taxes upon the country?—No, they would not; but the Wesleyan denomination has a much greater number of ministers and of organized churches in Canada than the Presbyterians have, and at least done as much to promote the religious and moral improvement of the people; their loyalty is well known, it is acknowledged in this letter, and has been acknowledged upon various occasions by the different Governors in British North America; and we should be dissatisfied if the Presbyterians were to be placed in more favourable circumstances than we are, as we cannot conceive of any good claim that they have to the enjoyment of any privilege in the colonies to which we are not entitled.

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Are there any members of your persuasion in either of the Legislative Assemblies?—There are in the Lower House of Upper Canada; and several of them are in the commission of the peace, and hold commissions in the Provincial Militia.

Are any of them either in Legislative or the Executive Councils?—I believe not.

Are there any Presbyterians in either Council?—I do not know; I should wish to state, that we consider ourselves as a branch of the Church of England both at home and abroad.

The Right Honourable *Robert John Wilmot Horton*, a Member of the Committee examined:

Right Hon.  
*R. J. W. Horton*  
M. P.

ARE you of opinion that under the Act of 31 Geo. 3 c. 31, the Assembly of Lower Canada were legally entitled to appropriate the duties collected under the 14 Geo. 3, c. 88?—I am of opinion that they were not legally entitled, for the following reasons; first, there were two Acts passed in the year 1774, relating to the Government of Canada, the one the 14 Geo. 3, c. 83; the other the 14 Geo. 3, c. 88; the Act, of the 31 Geo. 3 c. 31, commonly called the Quebec Act, specifically repeals *so much* of the Act of 14 Geo. 3, c. 83, as in any manner relates to the appointment of the Council for the affairs of the said Province of Quebec, &c. it appears to me to be conclusive that that partial repeal involved the continuance in full force of the *remainder* of those Acts, the latter of which imposed the duties in question.

Secondly, the 46th clause of the 31 Geo. 3, c. 31, which is mainly founded on the 18 Geo. 3, c. 12, commonly called the Declaratory Act, enacts, "That nothing in this Act contained shall extend or be construed to extend to prevent or affect the execution of any law which *hath been* or shall at any time be made by His Majesty, his heirs or successors, and the Parliament of Great Britain, for establishing regulations or prohibitions, or for imposing, levying or collecting duties for the regulation of navigation, or for the regulation of the commerce to be carried on between the said two provinces, or between either of the said provinces and any other part of His Majesty's dominions, or between either of the said provinces, and any foreign country or state, or for appointing and directing the payment of drawbacks of such duties so imposed, or to give His Majesty, his heirs or successors, any power or authority, by and with the advice and consent of such Legislative Councils and Assemblies respectively, to vary or repeal any such law or laws, or any part thereof, or in any manner to obstruct the execution thereof;"—a reference to the rates contained in the 14 Geo. 3, c. 88, will show that they regulate the commerce to be carried on between the colony and other parts of the world, according to the phrase employed in the 46th clause, they impose a duty of 3d on every gallon of brandy and other spirits, of the manufacture of Great Britain; 6d. for every gallon of rum or spirits imported from any of His Majesty's sugar colonies in the West Indies; 9d. for every gallon of rum imported from other colonies in America; 1s. for every gallon of foreign brandy or other spirits, of foreign manufacture, imported or brought from Great Britain, and so on; thus presenting a graduated scale of duty, leaving a reference to the commercial interests of the country. If the Committee will then refer to s. 47, I think they will be convinced that it was intended to maintain this Act in force, and not to repeal it; the section runs thus—"Provided always and be it enacted by the authority aforesaid, that the net produce of all duties which shall be so imposed," (making no allusion whatever to the duties which have been so imposed) "shall at all times hereafter be applied to and for the use of each of the said

said Provinces respectively, and in such manner only as shall be directed by any law or laws which may be made by His Majesty, his heirs or successors, by and with the advice and consent of the Legislative Council and Assembly of such province."

Thirdly, because if reference be made to the case of other colonies which possessed Legislatures at the period of passing the Declaratory Act, it is perfectly notorious that not a single year has elapsed since that Declaratory Act was passed, in which duties have not been levied, and even remitted to this country, and deposited in the Exchequer, *which have been raised under British Acts passed prior to the Declaratory Act*. I beg leave to call the attention of the Committee to the case of Jamaica. The Commissioners of Customs in Jamaica have annually remitted to this country, duties levied under the following Acts; I take the schedule as it appears in the year 1822; duties per Act 25 ch. 2, £31 18s. 6d.; ditto, 6 Geo. 2, and 4 Geo. 3, £3,252 8s. 1½d.; if the construction contended for by the Assembly of Lower Canada be legal, it is quite clear that all these duties have been illegally transmitted from the period of the Declaratory Act.

Fourthly, because the Colonial Acts which were in force prior to the Declaratory Act, and which directed the appropriation of monies other than by the Legislature, *have still continued in force*, notwithstanding the Declaratory Act; this fact appears to me to afford by analogy a proof in defence of the construction for which I contend. I would call the attention of the Committee to the Bahama Act, passed in the 8th Geo. 2, for levying divers sums of money for the payment of Officers salaries, defraying the expense of holding Assemblies, and other contingent charges of Government; not only has this Act been in force since the period of the Declaratory Act, but law officers of the crown gave an opinion in February 1821, that as certain suspending Acts had terminated, under which, this Act had been repealed, it must be considered to have revived, and that His Majesty might apply the monies levied under it, without the intervention of the House of Assembly, and without any other specific appropriation by the Legislature of the Bahamas. For these reasons I am decidedly of opinion, that the construction contended for by the Colonial Assembly of Canada, namely, that they have a legal right to the appropriation of the revenue raised under the 14th Geo. 3, is a construction not to be maintained.

I would now beg further to explain to the Committee, that the disputes arising between the Executive Government and the Assembly, have mainly arisen out of this construction. From the year 1818 up to the year 1825, difficulties constantly occurred in consequence of the maintenance of that opinion by the Assembly; but in 1825 an Act was passed during the Administration of Sir Francis Burton, (5 Geo. 3 c. 27.) in which is the following passage:—"Whereas, by the message of His Excellency the Lieutenant Governor, bearing date the 18th day of February 1825, laid before both Houses of the Legislature, it appears that the funds already appropriated by law are not adequate to defray the whole of the expenses of your Majesty's Civil Government in this Province, and of the administration of justice and other expenses mentioned in the said Message: and whereas it is expedient to make further provision towards defraying the same," &c. It is evident here, that the validity of the 14th Geo. 3, is admitted under the phraseology of this Act, it has admitted that the funds raised under it are *legally appropriated*; and under this Act of the local Government no difficulty whatever existed, except that they practically reduced the estimate of the charges placed by the Executive Government upon the Crown revenue, by diminishing the proposed grant of £65,002 1s. 8d. to a sum not exceeding £61,611 7s. 11d. thereby leaving a deficiency of £3,390 13s. 9d.; this sum of £3,390 13s. 9d. had reference to certain items specifically objected to by the Assembly, which items had been specially charged upon the Crown revenue; but as the Assembly voted this sum collectively, and not by items it was necessarily left to the discretion of the Lieutenant Governor to deal with that deficiency as he might think best. The simple fact being, that under that Act, £3,390 13s. 9d. deemed to be necessary for the public service, as would appear by the Lieutenant Governor's estimate, was not voted by the Assembly. With respect to the manner in which that deficiency was practically met, the Secretary of State (Lord Bathurst) abolished some of the Offices included in this £3,390 and transferred others to the territorial revenues of the Crown, over which the Assembly did not so directly, at least, claim to have any jurisdiction; it is perfectly true that in the first instance, Lord Bathurst remonstrated against the conduct of the Lieutenant Governor

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nor in having sanctioned this Act; but it was under the impression that the words of the Act did not maintain the integrity of the Crown revenue, and consequently that it was contrary to the Royal instructions. In the succeeding year 1826, the Assembly, with a view of obviating the construction of the Act of 1825, as sanctioning the integrity of the Crown revenue, passed the following resolutions before they commenced the vote of supply for that year.

Resolved, first, That the appropriation of any sums of money already levied, or which hereafter may be levied on His Majesty's subjects in this Province, otherwise than such application is or may be directed to be made by the express provisions of law, is a breach of the privileges of this House, and subversive of the Government of this Province as established by law. Secondl, That no law imposing duties or taxes on His Majesty's subjects in this Province, providing funds for the defraying the expenses of His Majesty's Civil Government, and those of the administration of justice, or of the Legislature in this Province, can be held to confer upon any person a power or right of applying the monies to be arising, or making a special appropriation and distribution thereof, without the consent and authority of the Legislature. Third, That the sums granted and appropriated for any special service should be applied by the Executive power only to defray the expenses of that service, and that the application of any surplus offunds to uses for which they were not appropriated, is a misapplication of the public money, a breach of public trust, a violation of the rights and privileges of this House, and subversive of the Government of this Province as established by law. Fourth, That this House will hold personally responsible His Majesty's receiver general of this province, and every other person or persons concerned, for all monies levied on His Majesty's subjects in this province, which may have legally come into his or their hands, and been paid over by him or them, under any authority whatsoever, unless such payments be or shall be authorized by an express provision of law. "I am not enabled to state to the Committee whether the bill of 1826 was *verbatim* the same as the Act of 1825, because the bills are not sent over to this country; but that bill was amended by the Legislative Council for the purpose of unequivocally maintaining in its terms the integrity of the Crown revenue raised under the 14 Geo. 3; and the consequence of that amendment was, that the Assembly refused to proceed with it upon its return from the Upper House, and the supplies were in consequence not voted. I must not omit to represent most distinctly to the Committee, first, that the manner in which the proceeds of the 14 Geo. 3, were disposed of, were uniformly laid before the Assembly, who had consequently the power to remonstrate against any of the items included therein, or by diminishing the general supply, practically to affect the appropriation of that revenue; but the Assembly were determined to do nothing less than contend for the legality of the appropriation of that revenue by themselves, and that construction was considered as one to which His Majesty's Government, consistently with the maintenance of the interests of the Crown, could not consent.

I have thus endeavoured to afford accurate information to the Committee upon this point, and beg to remind them that there never was an indisposition to give the Assembly the absolute appropriation of this revenue, provided they would consent to vote the existing Civil List for a term of years, or for the period of the King's life; and it was considered in the state of collision of feeling between the Assembly, as those representing the French interest, and the Legislative Council as representing the English interest, that if the Civil Government was dependent annually upon a vote of the Legislature for its support, there was little chance of the public service being carried on in that colony. It appears to me impossible for any person to form a just view of the case in dispute between the Colony and the Executive Government, without ascertaining whether the charges which were made by the Executive Government upon the Crown revenue, were such as ought, or ought not, in fairness to have received the sanction and approbation of the Colonial Assembly.

On what ground is it stated that in the 11 years that elapsed between 1773 and 1774, the English law prevailed in the Townships of Lower Canada?—A Royal Proclamation was issued in 1763, of which the preamble was in the following words: "Whereas We have taken into Our royal consideration the extensive and valuable acquisitions in America, secured to Our Crown by the late definitive treaty of Peace, concluded at Paris, the 10th day of February last; and being desirous that all Our loving subjects, as well of Our Kingdoms as of Our Colonies in America, may avail themselves with all convenient speed of the great benefits and advantages which must accrue therefrom to their commerce, manufactures and navigation, We have thought fit to issue this Our royal proclamation." In the body of the proclamation there is the following passage: "And whereas it will greatly contribute to the



the speedy settling Our said new Governments, that our loving subjects should be informed of our paternal care for the security of the liberty and properties of those who are and shall become inhabitants thereof, We have thought fit to publish and declare by this Our proclamation, that We have in the letters patent under Our great seal of Great Britain, by which the said Governments are constituted, given express power and direction to Our governors of Our said colonies respectively, that so soon as the state and circumstances of the said colonies will admit thereof, they shall, with the advice and consent of the members of Our Council, summon and call general assemblies within the said Governments respectively, in such manner and form as is used and directed in those colonies and provinces in America which are under Our immediate Government; and We have also given power to the said governors, with the consent of Our said Councils and the Representatives of the people so to be summoned as aforesaid, to make, constitute, and ordain laws, statutes, and ordinances for the public peace, welfare, and good Government of Our said Colonies, and of the people and inhabitants thereof, *as near as may be agreeable to the laws of England, and under such regulations and restrictions as are used in other colonies*; and in the mean time, and until such assemblies can be called as aforesaid, all persons inhabiting in or resorting to Our said colonies may confide in Our royal protection *for the enjoyment of the benefit of the laws of Our realm of England*; for which purpose we have given power under Our great seal to the governors of Our said colonies respectively, to erect and constitute, with the advice of Our said councils respectively, courts of judicature and public justice within Our said colonies, for the hearing and determining *all causes as well criminal as civil* according to law and equity, and as near as may be agreeable to the laws of England, with liberty to all persons who may think themselves aggrieved by the sentence of such courts, in all civil cases, to appeal, under the usual limitations and restrictions to Us in Our Privy Council."

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In what respect do succeeding Acts of Parliament affect the proclamation of 1763? The Act of the 14th Geo. 3, c. 83, was intituled, An Act for the making more effectual provision for the Government of the Province of Quebec in North America. Under the 4th Clause of that Act all former provisions made for that province were to be null and void after the 1st of May 1775; And with reference to the proclamation of 1763, that clause proceeds as follows: "and whereas the provisions made by the said proclamation in respect to the civil government of the said Province of Quebec, &c. &c. have been found upon experience to be inapplicable to the state and circumstances of the said Province, &c. &c.; Be it enacted, That the said proclamation, so far as the same relates to the said Province of Quebec, and the commission under the authority whereof the government of the said province is at present administered, and all ordinance and ordinances, &c. &c. and all commissions, &c. &c. be hereby revoked, annulled and made void." The clauses of the Act from four to nine, contain provisions affecting the French Canadians; and then the ninth clause is as follows: "Provided always, that nothing in this Act contained shall extend or be construed to extend to any lands that have been granted by His Majesty or shall hereafter be granted by His Majesty, his heirs and successors, to be holden in free and common soccage." It appears to me, therefore, that as far as affects the English population resident in the townships, the proclamation of 1763 was to be in full force as respected them. In the Act of the 31st Geo. c. 31, commonly called the Quebec Act, the Act of the 14th George 3, c. 83, just quoted, was only repealed as far as relates to the appointment of a council for Quebec, consequently the rest of its provisions must be considered to remain in force, and the 43d clause of that Act is as follows: "And be it further enacted by the authority aforesaid, that all lands which shall be hereafter granted within the said Province of Upper Canada shall be granted in free and common soccage in like manner as lands are now holden in free and common soccage in that part of Great Britain called England; and that in every case where lands shall be hereafter granted within the said province of Lower Canada, and where the grantee thereof shall desire the same to be granted in free and common soccage, the same shall be so granted." The concluding part of this clause provides for any alteration to be made by local laws in the Canadas, and proceeds as follows: "But subject nevertheless to such alterations with respect to the nature and consequences of such tenure of free and common soccage as may be established by any law or laws which may be made by His Majesty, his heirs or successors, by and with the advice and consent of the Legislative Council and Assembly of the Province." The next reference to this subject which appears in legislation is in the eighth clause of the

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the 6th Geo. IV. c. 69 commonly called the Canada Tenures Acts, which declares that lands holden in free and common soccage in Lower Canada are to be subject to the laws of England, as it appears to me in the strictest accordance with the 43d clause of the 31st of the late King, when that clause is taken with reference to preceding legislation; which clause as already cited provides absolutely that grants in Upper Canada, shall be made in free and common soccage; but with respect to Lower Canada there was a power to the local Legislature to modify that enactment if it should be deemed expedient by the Legislature and by the Crown.

What is the substance of the Act which has provided for an increase in the number of representatives in the Legislative Assembly of Upper Canada?—The preamble of this Act, passed 7th of March 1820, is to the following effect; “Whereas from the rapid increase of the population of this province the representation thereof in the Commons House of Assembly is deemed too limited, so much of the several laws now in force as regulate the number of representatives to serve in the Provincial Parliament are repealed.” It then proceeds to enact that counties containing 1,000 inhabitants should be represented by one member; when they contained 4,000 inhabitants, by two members; that certain towns, when they contained 1,000 souls, should be represented by one member; that the population should be ascertained by the returns of the several town-clerks; that whenever a university should be established in the province it should be represented by one member. The governor to issue writs of election, as provided, by the 31st of the late King. The Act not to lessen the number of any members now returned for any county, nor to make it necessary to issue any new writs of election on account of any increase of inhabitants since the last election. Counties containing less than 1,000 souls to be attached to the next adjoining county, having the smallest number of inhabitants. No person qualified to vote in a town to be allowed to vote for a county in respect of the same property. Inhabitants of towns sending a member not to be included among the inhabitants of counties, for the purposes of this Act.

What was the substance of the bill for uniting the Legislatures of the Provinces of Upper and Lower Canada, which which was brought in and withdrawn in the session of 1822?—So much of the 31st Geo. c. 31, was repealed, as provides a Legislature for each of the Provinces of Upper and Lower Canada, henceforth to be one joint Legislative Council, and one joint Assembly for both provinces. The joint Legislative Council was to consist of the existing members of both Councils, with a power for His Majesty from time to time to summon such other person or persons as His Majesty, his heirs and successors, should think fit. Such summons to be carried into effect under the enactment of the 31st Geo. 3. The governor was to have the power of appointing and removing the speaker of the Legislative Council; the joint Assembly was to consist of the present members of the assemblies of Upper and Lower Canada, and continue till the 1st of July 1824, unless sooner dissolved. The Act of Upper Canada of the 6th Geo. IV. was to continue in force, and to be applied, subject to any alteration in the Union Bill, to the representation of the said province of Upper Canada in the joint Assembly, in like manner as it had been applicable to the special representation of Upper Canada, prior to the passing of the Act. The governor of Lower Canada was authorized to erect new counties out of the townships, such counties to be represented in the Assembly, or any old county now returning one member to be represented by two members. It was provided at the same time that no sub-division of any counties now erected, or to be hereafter erected within either of the said provinces, except as hereinbefore provided with respect to the townships, shall extend or be construed to extend to encrease the number of representatives for such counties. It was also provided that the number of representatives for each province should not exceed 60. No Act to alter the number of representatives was to be passed unless sanctioned by a majority of two thirds of the Legislative Assembly, as well as the Legislative Council. The provisions of the 31st Geo. 3, respecting elections were to remain in force. The qualifications for a member was to be of the value of £500 sterling of real property, and an oath was prescribed to ensure that qualification, and persons swearing falsely to be guilty of perjury. The trials of contested elections were to be the same as under the 31st of the King. The Governor was to have the power of summoning two members of the Executive Council in each province to the Assembly, who were to sit with power of debating therein, and with all other powers and privileges and immunities, except that of voting. The united Legislature was to meet once in every twelve months,

and to continue for five years, till the period of a general election : majority of votes to decide. The oaths prescribed by the 31st Geo. 3, for the members of the Council and Assembly, to be taken ; the declaration of the Royal Assent to be regulated by the enactments of the 31st of Geo. 3 ; all laws in force at the time of the passing of the Act within the said provinces, or either of them, or any part thereof, to be unchanged, and the privileges of members to continue precisely the same. It was further enacted, that from the period of the passing of this Act all written proceedings whatever should be in the English language, and at the end of 15 years after the passing of the Act, all debates in either House to be carried on in English, and in no other language ; that nothing in this Act, nor any Act to be passed by the joint Legislature, nor any resolution or other proceeding of the Legislative Council or Assembly, was to affect or be construed to affect the free exercise of the religion of the Church of Rome, or to prejudice such accustomed dues and rights as the clergy of the said Church might hold, receive and enjoy, subject to the King's supremacy as recognised in the Act of the 31st of Geo. 3, and the clergy and curates now performing clerical duties, or who hereafter, with the approbation and consent of His Majesty, expressed in writing by the governor, &c. should be duly collated, appointed or inducted to any parish, were to continue to hold, receive and enjoy their accustomed fees and rights as fully as they were entitled to do under the Act of the 31st of the King. All the remaining provisions of the Act of the 31st of the King were to be in force.

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Were the objections that were made to that bill chiefly to the principles of the bill, or to any part of the details ?—There were objections made from both the Canadas, but more especially from Lower Canada, against the principles of the bill ; there were also objections made to some of the details.

Will you have the goodness to point out to the Committee what parts were objected to ? It was objected that the principle prescribed for the representation would necessarily give a greater proportion of representation to Upper Canada, inasmuch as the Act for increasing the representatives of the commons of that province according to the scale of population, was to be still in force ; whereas no Act existed in Lower Canada to the same effect, consequently the enactment of any legislation to that effect in Lower Canada would depend upon the united sanction of the two Assemblies after the period of union. There was an objection also made to the qualifications, and to the introduction of two members of the Executive Council, as debaters and not as voters ; but the enactment which prescribed that all written proceedings were immediately to be in the English language, and that after 15 years, all debates were to be in English, was considered as affording a pretty conclusive indication that it was intended progressively to render the united province English as to its institutions.

Have you any observation to make upon that provision of the bill ?—It is impossible to deny that the intention of that bill was to realize the expression employed by Mr. Pitt in 1791, namely to assimilate the Canadians to the language, manners, habits, and above all the laws and institutions of Great Britain.

Did not Mr. Pitt accompany that declaration by saying, that he only looked forward to such an assimilation taking place, if it could take place with the free will of the French Canadians, and was not the very ground on which he separated the colony into two provinces in order to ensure the French Canadians from the possibility of the Government attempting to produce such an assimilation without their entire assent and concurrence ?—The Union Bill was considered to be necessary in consequence of the inherent defects in the bill of 1791, which placed the two provinces in a state of perpetual collision, from which no escape was anticipated at that time, except through the medium of a Legislative union, and consequently whatever abstract objections there might have been to that measure it was considered as one of permanent public necessity.

But the Committee are not to understand that you represent Mr. Pitt as having desired to assimilate the laws and habits of the two populations in Canada upon any other ground than the entire concurrence of the French population in such assimilation ?—I only mean to imply that Mr. Pitt contemplated from the Legislation of 1791 that such assimilation would take place. I think the Union Bill of 1822 was defective in not more explicitly securing the rights, privileges, immunities and advantages enjoyed by the French population under their own laws, and making such laws so far permanent as to be incapable of repeal by the operation of this united Legislature.

Right Hon. Do you think that any bill could now be framed, the object of which should be uniting  
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 M. P. provinces?—I am satisfied that no bill could be made which would be free from objection, but  
 1 July, 1828. I am convinced that that bill of 1822 might be so materially improved as to remove a great

part of the objections which were not unjustly preferred against it, and I do not myself see any alternative between the proposition of transferring to the province of Upper Canada a Port which shall enable her to maintain her communication with the sea, and thereby affect her independence of the Lower Province; with respect to revenue arising from duties on goods imported seawards, or on the other hand, the carrying into effect the provision of a Legislative Union.

Could a Port be given to Upper Canada by any other means than by annexing Montreal to that province?—I am not aware of any other geographical facility of accomplishing that object.

Do you think that the objections to the latter arrangement on the part of the Lower Canadians would not be almost as strong as to an incorporating union of the two provinces? I entertain no doubt that very strong objections would be made by the Lower Canadians against such a proposal, but I repeat, that under the relative circumstances of the two provinces, and the bounden duty of the mother country to act justly between them, I do not myself perceive any other than these alternatives. I cannot, however, avoid remarking, that should considerations of mutual defence, and a sense of common interest, create a growing opinion in favor of a Legislative union in the two provinces, there does not appear to me to be any conclusive mode of adjusting their interests, with respect to the appropriation of their common revenue, other than by an identification of interests, involved in the measure of union; but, at the same time, of a union which should guarantee to the French population their laws and institutions in the seigneuries, to the extent of preventing the combined Legislature from voting away those laws and institutions, and at the same time should reserve space enough in the unsettled part of the province, so as to allow the French population to spread itself within the sphere of the operation of the French law.

Can the difficulty which arises in adjusting, collecting and distributing the customs revenue of goods imported into the St. Lawrence, in your opinion, be better provided for them by the provisions which are contained in the Canada Trade Act?—I do not imagine that, under the present circumstances of the two provinces, any mode can be suggested more likely to accomplish this object than that which is prescribed under the provisions of that Act.

Several witnesses have stated to the Committee that, in their opinion, a system of duty and drawback might be adopted, and that a system of warehousing, in Lower Canada, goods which should be afterwards imported into Upper Canada and pay duty there might be adopted, and that either of them would be preferable to the course which has been enacted by law; were those modes under the consideration of the Colonial Department at the time that that measure was decided upon?—A variety of suggestions were made to the Colonial Department at that period, and it was found then, as I believe it will be found now, that the Lower Canadians were disposed to think that those facilities might exist, and that the Upper Canadians were almost unanimously of a contrary opinion.

Mr. Ellie in his evidence alludes to certain obstructions which prevented the provisions of the Act called the Canada Tenures Act from being carried into effect, and he refers to instructions which were sent to the local government to carry into effect the provisions of the Act of 1822; can you inform the Committee of the nature of those instructions?—The Executive Council considered the question only in the abstract, and simply with reference to an equitable valuation of the rights of the Crown, which the seigneurs might wish to redeem; but the great object of the clause was not only to relieve the seigneurs from the feudal dues payable to the Crown, but also to enable them to free their *consitaires*, or sub-tenants, and thereby to introduce generally a system of tenure more favorably to agriculture and to the general improvement of the province. Lord Dalhousie was therefore instructed to give every encouragement to the seigneurs to free those who hold under them, and to make it known that in the event of any seigneur distinctly engaging to free his *consitaire* on a principle of equitable composition whenever any of them may demand it, the Crown will in that instance free the seigneur at the rate of 5 per cent, or in other words, one twentieth instead of one fifth of the value.

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The Committee have been informed that a large portion of the land in Lower Canada has been granted in such large masses to persons who are not resident, and can hardly be found; have the goodness to state what, in your opinion, would be the best mode of removing the difficulties which now retard the cultivation of those lands?—I should be prepared to concur with Mr. Ellice in opinion, that if a taxation of the waste lands could be carried into effect, it might be as convenient a mode of remedying that defect as the remedy of escheats; but, at the same time, I do not at all concur with Mr. Ellice in his opinion of the practical difficulties of carrying a practical system of escheat into effect. It has been practically carried into effect in New Brunswick to the extent of a million of acres; and I see no reason why, under proper regulations, it might not be equally carried into effect in Lower Canada. It would be necessary for this purpose that time should be given to enable parties to execute those stipulations of settlement duty, which hitherto they have omitted to execute; as it would be unfair to visit upon them suddenly the consequences of that omission which has been tacitly submitted to by the Executive Government. There is one mode by which this principle of escheat may be carried into effect, which is, the forfeiting a certain portion of the land itself to the Government as a penalty for non-improvement, such forfeiture to take place periodically until the whole would be forfeited, supposing the party not to carry the stipulated improvements into effect. Instructions were sent out from Lord Bathurst, of the date of 1826, for the purpose of forming a commission of escheat, and of considering the best practical remedy of applying the principle; but nothing is more certain than that unless some practical remedy be supplied, either of taxation or of escheat, the granted lands which are now in a state of waste in Lower Canada, must effectually prevent all improvements upon an extended scale in that province.

Would the operation of a tax on land remaining waste conflict in any way with the system of escheat that is directed to be carried into operation?—I should think the principle of escheat might be carried into effect by the Crown simultaneously with any tax which the Legislature might impose upon uncultivated land. Lord Dalhousie's states, in a letter addressed to Lord Bathurst, of the 5th of April 1825, that with respect to escheat and forfeiture of grants of land for non-performance of conditions of settlements stipulated in the letters patent, he has to observe, that of two and a half millions of acres granted in this manner in Lower Canada, not less than seven-eighths remain uncultivated, and therefore liable to resumption by the Crown. It is supposed that six millions of acres held under seigneurial tenure are under similar predicament, but with respect to this description of lands it is doubtful how far the Crown will have a right to resume them if the proposed conversion of tenure should take place to any extent. Lord Dalhousie adverts to the expediency as well as the right of recovering such immense tracts of lands for the settlement of emigrants. He adds, the obsolete course of proceeding which the ancient law of Canada points out for the resumption, both of soccage and seigneurial lands, is so incumbered with difficulties, and so inapplicable to the present state of the province, particularly with regard to grants in the townships, that it is next to impossible for the Crown to resume its just rights. In consequence of this suggestion of Lord Dalhousie, that clause was introduced into the Canada Tenures Act which provides for the formation of courts of escheat.

What steps have been taken by the Colonial Office to remedy this evil?—In the 6th Geo. 4, c. 56, commonly called the Canada Tenures Act, the 10th clause provides, that courts of escheat shall be constituted in the province of Lower Canada to try forfeitures of uncultivated lands liable to escheat to the Crown. In the year 1826, Lord Bathurst sent instructions to Lord Dalhousie to appoint one of the Inferior Judges to act as commissioner of the court of escheats under the clause of the Act of Parliament. Lord Dalhousie, replied, that the judge had not time to execute the duties, and that some other person must be appointed, upon which Mr. Huskisson wrote out instructions to him, authorizing him to appoint a person competent to perform the duty. It is to be recollected that no fund whatever exists, unless voted by Parliament, for carrying into effect this principle of escheat. The difficulties attached to carrying into effect a satisfactory principle of escheat were considered so great, that when Colonel Cockburn was sent out inspector and commissioner, he received separate instructions to communicate with the Governors of all our North American Colonies, and especially with Lord Dalhousie, for the purpose of reporting to the Government

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at home the best practical method of carrying the system of escheat into effect at the earliest possible period. I beg to express my opinion, that unless a system of escheat be carried completely into effect, there can be no possible improvement for those colonies, and that I have every reason to believe that the information in the hands of Government is such as will enable them at an early period to execute such a system.

Is the system upon which land is now granted in Canada such as to prevent the probability of a recurrence of this inconvenience?—Entirely; but a statement of the system upon which it is granted may be given in to the Committee. The system upon which it is now granted is, it is granted precisely in proportion to the capital which the individuals has to lay out upon it.

Is adequate security insisted upon for the expenditure of capital upon the land?—I consider that such security is involved in the prescribed regulations.

The Committee were informed by Mr. Ellice, that he had found great difficulty in effecting a commutation of the tenure of his land from seigniorial into free and common socage, under the provisions of the Act for that purpose; will you state in what mode the difficulties may be removed?—The first arrangement that was made by Government, with respect to the change of the tenure from the feudal tenure to free and common socage only, provided for the release of the immediate tenant under the Crown. The consequence was, that the purposes of that change of tenure were not carried into effect. The seigneur became released from his engagement to the Crown, but was not compellable to release his sub-tenant from similar engagements. The Canada Tenures Act provided, that in cases where the Crown thought fit to remit its rights to the seigneur for a consideration of five per cent on the estimated value, that the seigneur on his part should be compelled by law to submit to arbitration as between himself and his sub-tenant, so that the sub-tenant could claim from him the same change which he had effected in his own case with the Crown.

What are the difficulties which prevent that arrangement being carried into effect?—I consider the difficulties that interpose upon that point are the entire indisposition of the French population to avail themselves of this permission, and in point of fact it is a permission which is only available on the part of the English.

But Mr. Ellice, who was very anxious to avail himself of it, found so many difficulties in his way, that he was obliged to give it up; and one of the difficulties that he states is, the very large fine of one fifth of the value demanded by the Crown?—The original claim of the Crown, was one-fifth, but the Crown, in consideration of the advantage which was expected to accrue from a change of tenure, remitted that one-fifth, or 20 per cent for five per cent.

Do you think it advisable, seeing the difficulties that still exist, for the Crown to contract its demands still more?—If the seigneur would contract his demands upon his sub-tenant at the same time that the Crown contract its demands with respect to himself, I might be disposed to answer that I think it would be very desirable; but I do not understand upon what principle of fairness it is, that while the Crown on the one hand is to release the seigneur, the seigneur is to maintain his full rights with respect to his sub-tenant. It was considered at the time, by all the information which could be obtained by Government, that a much greater sacrifice was made by the Crown to the seigneur, than the seigneur made to his sub-tenant; and it did not follow, that supposing the Crown had remitted altogether its demand, that that would have facilitated in any degree the conversion of the tenure on the part of the seigneur with respect to his sub-tenant.

Do you think it advisable for the Crown still to contract its demands in order to facilitate the improvement of the colony by the change of tenure?—If it were proved by presumptive evidence that the effect of a contraction of the demands of the Crown would be practically to effect the release of this sort of property, in that case I should say that it would be worth while for the Crown to make a sacrifice; but it was considered that the arrangement was as fair and equitable, and as likely to produce the effect, as any arrangement could be: it is impossible not to perceive that if this change of tenure were to take place extensively in the seigneuries, and the consequence of it were to be to introduce the English law into those lands of which the tenure was commuted, it would bring a great deal of confusion in having property intermixed alternately as it were, and having a different law applied to it.

Do you think that any instructions could be given to make this change of tenure more practicable?—I certainly am not aware that instructions could be given to make it more practicable.

Could the Act be so amended as to facilitate the exchange?—I have only to repeat, that I consider that the advantage of this permission will only be taken by the English possessors of property within the seigniories; and I do not imagine that any greater facilities can be given than what are now given under the instructions, as combined with the provisions of the Act.

Mr. Ellice mentioned that an English receiver is appointed for the province, insufficient security being taken in England; what regulations do you think may be applied to remedy this for the future?—The appointment of the receiver rests exclusively with the Treasury, and consequently I have no detailed knowledge upon the subject, which would enable me to give any specific suggestions upon it. At the same time, I would observe that, in my opinion, it is expedient that the most unqualified publicity should be given, both in the colonies and in the mother country, to all pecuniary accounts, appropriations and matters of finance. If this principal be fairly acted upon, it will in my judgment, effectually prevent for the future all serious difficulty upon such subjects.

Mr. Ellice stated that the Governor of Lower Canada has been instructed to remedy the difficulty arising from the Assembly not voting supplies by his own warrants on the receiver, to whom the taxes are paid, under the provisions of the Canada Trade Act; have you any information to give to the committee upon that point?—The Governor did not receive instructions to appropriate any duties received under the Canada Trade Act; but under the emergency in which he has been not unfrequently placed, from the total cessation of all supplies, to carry on the government of the colony, he has drawn upon the unappropriated revenue, and such a proceeding is necessarily to be justified only from the extreme difficulty and embarrassment of his situation; the discretion which he has been compelled to exercise on such occasions has received the sanction of the Secretaries of State.

Will you have the goodness to state to the Committee, the circumstances that attended the introduction of the Alien Bill?—The object of the Upper Province, in desiring that the Alien Bill should be passed, was for the purpose of enabling aliens (in the strict sense of the term) to sit in the Legislature, and of quieting titles; no person could be legally entitled to the possession of land who was not a natural born subject, or who had not taken the oath of allegiance, and there were a great many persons who were not qualified under those restrictions.

Are you aware what proportion of the population of Upper Canada were so situated?—A very considerable proportion of the population of Upper Canada were subject to this restriction; and it was necessary to have an Act passed in this country, in the first instance, to give effect to any local Act that might be passed in the province for remedying this inconvenience respecting elections.

With respect to the provisions of the local Act, which the Lieutenant Governor in Upper Canada was directed to have introduced into the Assembly, its provisions were framed with the anxious desire to produce a measure of entire conciliation; and with respect to the conduct of the Colonial Department, it is necessary to mention that these instructions, which Lord Bathurst sent out to the colony for the passing of a local bill, and which excited dissatisfaction, were regulations which had received the approbation of a member of the Legislature, who was over in this country more or less in the character of an agent for the province, with respect to certain grievances complained of. When those objections which were unexpectedly found to exist in the Legislature were made known to the Colonial Department, Lord Goderich sent out instructions, upon which a bill was brought in, which has finally settled the question.

Were there any essential differences between the bill as proposed by Lord Bathurst, than that which was proposed by Lord Goderich, and accepted in Canada?—Undoubtedly; the principal distinction was this, that by the bill suggested by Lord Bathurst, all parties however long they might have been resident, were required to resort to the same means of establishing their titles as those who were comparatively late residents; and the distinction taking by Lord Goderich, was to put a limitation to the time for which this was necessary

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necessary, and to consider possession prior to the year 1820 as itself constituting a title; but I repeat that it was not expected that any reclamation would have been made by the province against the absence of such limitation, or against the appointment of a registry, which was also made a subject of complaint.

Do not you consider the Colonial Office as responsible for any line of policy long continued by any Governor of a colony?—Undoubtedly, in cases which can be characterized as involving a line of policy.

With a view to judge what measures should be adopted by the Government, is it not necessary that the Colonial Office should be well aware of every thing which passes between the Assembly of the province and the Governor?—It certainly is, and for that purpose the Journals of the Assembly are transmitted, accompanied by such comments as the Governor may think right to add; but it does not follow that bills rejected by the Legislative Council should necessarily be made matter of observation.

Are the measures that have been taken for disposing of the crown reserves such as in your opinion are likely to effect the object that is desired?—I differ very much in opinion from Mr. Ellice with respect to the course that has been taken by the Government for disposing of the crown and clergy reserves to the Canada Company; he states that “an attempt was made by the Government to dispose of all this property to the Canada Company, but the church, always careful of their interest, did not approve of the price awarded by the commissioners, and which was in fact greatly exceeding its present value, and that chance of removing part of that nuisance has passed away, and it is impossible to avoid observing on the vacillating policy of the Colonial Office, which did not insist upon the arrangement being carried through.” The principle upon which those lands were disposed of to the commissioners was a principle of general average, and the church, who was bound to consult their own legal rights, complained, as I consider justly, that whereas the clergy reserves were the more valuable lands, the average that was taken upon their lands necessarily gave per acre a less amount to them than they would have done if the clergy reserves had been taken specially.

Is there any reason to believe that the clergy reserves are more valuable per acre than the crown reserves?—All the reports that have been made to the Colonial Department go to prove that the clergy reserves, which always have been most carefully selected, are in fact more valuable than the crown lands.

In the laying out of a township, who has the selection of the clergy reserves?—The Governor and Council. It is necessary to observe that the seventh appropriated to the clergy is appropriated by a statute; the seventh appropriated to the Crown is merely at the discretion of the Crown.

In your opinion will the steps that have been taken to provide for the alienation of the clergy reserves be sufficient for that purpose?—The committee are aware that a bill has passed, enabling the Governor and Council in Upper Canada to settle 100,000 acres of clergy reserves every year, in my opinion that bill is insufficient to effect the remedy which is so imperiously called for, because I think it would be extremely expedient to allow portions of the clergy reserves to be sold for the purpose of giving value to the remainder for the purpose of making roads, and performing settlement duties, and preparing them for cultivation, and I am of opinion that if those duties were done, and the clergy reserves improved to a certain extent, there would be no difficulty in leasing them on long leases, so as to make them productive at a much earlier period than might be expected. The proceeds of the sale of those reserves, as directed by statute, are to be impounded, and the rents and profits applied to such purposes as the Act of the 31st Geo. 3 directed, whatever those directions may be; but I am alluding to an absolute alienation of part of those reserves, for the purpose of applying the money for which those reserves are sold towards the improvement of the remainder, thereby making that remainder more valuable than the whole was prior to such alienation.

Is there any thing in the Act of 1791 that appears to contemplate the expenditure of a sum of money upon those reserves for the purpose of improving them?—There does not appear to be the slightest allusion to the necessity of capital being laid out upon them before they could be made productive. It is evident that the object of those who framed the Act of 1791, as well as the regulation respecting the crown reserves, was founded upon



upon the expectation that civilization would surround those waste lands, and give value to them in consequence of that circumstance, whereas the actual effect has been, that the existence of those reserves has prevented that very civilization from taking place.

It appears that out of the Crown lands granted to the Canada Company, a reservation of £750 a year has been awarded for the Scotch Church, with what view was that award made?—It was considered highly expedient that the Scotch Church should have a provision, and whatever might be the adjudication with respect to the clergy reserves, it was quite evident, that even if the principle of dividing the profits of those reserves between the two churches had been adopted, it would have yielded only £200 per annum to the Scotch Church, which would be insufficient to meet the demands for their pastors, and consequently the Secretary of State recommended the appropriation of a part of the proceeds of the payments of the Canada Company to the payment of the Scotch clergy.

How long is that £750 to be continued to the Presbyterian Church?—The £750 is necessarily at pleasure; but it is to continue as long as the payments are made from the Canada Company, which involved a period of 15 years absolutely, and a probability of a much longer period. Mr. Ellice observes that “the clergy reserves are either kept in a state of wilderness, no person being liable for road duties through them, and the industrious settler being exposed to all the inconvenience of large tracts of forest intervening between his settlement and a market, or persons have occupied the more improved and accessible parts of them without title.” I am of opinion that much of this inconvenience, if not all, would be removed by the principle of alienating a portion of the clergy reserves, for the purpose of applying the proceeds of them for the formation of roads, and in the general execution of what are called settlement duties; and that the effect of this would be, not only to improve the general condition of the province, but to make, as I have already observed, the remaining part of those reserves immeasurably more valuable than they are in their present state.

What has been the method of disposing of the Crown reserves in all those districts?—It is perhaps unnecessary to remark that the Crown, having the undisputed appropriation of the six-sevenths, after the subtraction of one-seventh for the purposes of the clergy, there could be no motive in separating one-seventh from the remainder, except a motive founded upon the expectation already adverted to, that some peculiar value was to attach to this reservation. In consequence of the settlement of the surrounding country, and the quantity of ungranted land in Upper Canada having been so great, it has never been necessary for the purpose of satisfying the demands of settlers to appropriate those crown reserves; and therefore they have remained upon the same principle as the clergy reserves, practical nuisances in the province.

Has the attention you have paid to this subject led you to doubt of the policy of providing for the religious wants of the community in such a country as Canada, by a permanent revenue derived from the appropriation of any portion of the soil?—In answering that question, I would beg to draw a distinction between glebe appropriated for the actual use of a clergyman, and large masses of land set aside to provide a revenue for the church; I think, that the first is in the highest degree expedient; I think the other necessarily presents practical difficulties, which it would be very desirable to remove; and it appears to me that the practical remedy in the present instance is to appropriate glebe land, when circumstances require it, for the use of clergymen of the Church of England; and with respect to the general revenues of the church, to apply the proceeds of the sale of those revenues as they are progressively released from mortmain. I would wish to explain that when I allude to appropriating glebe specifically to a clergyman of the Church of England, I do not mean necessarily out of any lands reserved by the Act of 1791, but out of lands at the disposal of the Crown, if such were more conveniently situated, which could be exchanged for lands so reserved.

From the opportunities you have had of ascertaining the feelings and opinions of the people of Canada on this subject, should you not be disposed to say that Government and the Legislature of England should be very cautious of doing any thing which could give rise to the slightest suspicion that there was any intention of establishing a dominant church in that country?—The Act of 31st Geo. 3, c. 31, clause 36, established the clergy reserves, that is directed that one-seventh part of the grants of land should be allotted and appropriated for the support and maintenance of a Protestant clergy within the

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colonies; and it is stated that this is done for the purpose of making the best arrangement, with a view to the due and sufficient support and maintenance of a Protestant clergy within the said provinces. The 37th clause enacts, "that all and every the rents, profits or emoluments which may at any time arise from such land so allotted and appropriated shall be applicable solely to the maintenance and support of a Protestant clergy, and to no other use or purpose." Up to this point therefore no reference is made to an endowed church; but the 38th clause proceeds to enact, "that it should be lawful for His Majesty, &c. &c. to constitute and direct within every township or parish, which now is or hereafter may be formed, constituted or erected within either of the provinces of Lower or Upper Canada, one or more parsonage or rector; or parsonages or rectories according to the establishment of the Church of England, and from time to time, by an instrument under the Great Seal of such province, to endow every such parsonage or rectory with so much or such part of the lands, &c. "meaning the clergy reserves, as it might be judged to be expedient under the then existing circumstances of such township or parish then to appropriate." The next clause attaches the same terms and conditions to those parsonages or rectories, and the same performance of duties, as are incident to a parsonage or rectory in England. The next clause places them under the jurisdiction of the bishop. The 41st clause gives a power and a most important one, to the local legislature, of varying or repealing several provisions there recited in any Act or Acts which, being passed by the two Assemblies, should receive the consent of the Crown. In answer therefore to the inquiry, whether I should not be disposed to recommend caution, lest any suspicion should arise that there was an intention of establishing a dominant church in that colony, I beg leave to be permitted to make the following observations: It is perfectly clear to me, that the framers of that Act entertained the erroneous impression that this system of reserved lands would in a short time, comparatively speaking, produce a fund which might be generally applicable for the purposes of furnishing income to the clergy of the Established Church, whether of England or of Scotland, as I conceive the words "Protestant clergy" to refer to clergy of the two recognized establishments; and it appears to me, from the construction of those clauses, that a special endowment of land, in cases where there was a demand, for the Church of England was provided for, whereas there was no such provision made for the Scotch Church; I consequently consider that I am justified in inferring that the Church of England was intended to be so far a dominant church as to have the advantage of lands specifically appropriated for its maintenance, as contradistinguished from the Scotch Church, which was to have such proportion of the profits, rents and emoluments of those reserves as, under the discretion of the Executive Government, it might be expedient to allot to them. But it appears to me quite conclusive, that there was no intention of necessarily establishing the Church of England as a dominant church, inasmuch as the 41st clause gives a power to the local legislatures, with the consent of the Crown, of altering all the provisions which are contained in the 36th, 37th, 38th, 39th and 40th clauses.

Would the measures you have suggested go to affect the appropriation of the clergy lands when they become improved, according to your plan?—If the committee will allow me to re-state my suggestion, it is this: that for the purpose of relieving the province from the practical inconvenience of those portions of reserves which impede the general cultivation and civilization of the province, I propose that part of it should be alienated for the purpose of making roads, in preparing them for cultivation, and for settlement. At present there is no power under any Act of effecting this purpose, inasmuch as the law only allows of their being sold; and the proceeds of such sale being impounded for future appropriation. If these reserves were to be retained for any very extended period, there can be no doubt that ultimately, after the lapse perhaps almost of centuries, they would acquire very great value; but if they are sold at an early period, it appears to me that the money for which they may sell may legitimately be applied for the purposes contemplated under the Canada Act, namely, the support of a Protestant clergy, including under that term the clergy of the Established Church; and I do not perceive what detriment can possibly accrue to the colony (provided those lands are progressively released from mortmain) in consequence of the interest of the money for which they may be sold being applied for that purpose. I should propose that all the better portion of the clergy reserves, which have already acquired a value from their proximity to cultivated lands, should

should be first subjected to sale, and so on till the whole are disposed of. Mr. Ellice states, in his evidence with regard to these reserves, that there is no hope of their being sold to the extent of 100,000 acres annually, or even of 25,000 acres being so sold. He adds, "They do nothing to encourage settlers; they neither make roads, build mills, nor lay out one shilling of capital." Now I propose to remedy those defects, by allowing the absolute alienation of part of those very reserves for the purpose of making those very improvements.

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What has been the object of limiting the quantity of clergy reserves than can be sold in one year?—From the supposition that there would be no demand for their sale beyond that amount, considering the quantity of land that the Canada Company has to dispose of, and the mass of land that is ungranted.

Would not that state of things make the limitation unnecessary?—The reason is this: if it were not limited, 500,000 acres might be brought into the market and sold for nothing, and therefore it was to prevent the reserves being hastily and improvidently brought into the market that limitation was made; but if there was any chance of effecting a sale of those reserves at an early period I should consider the limitation as most impolitic.

The Committee have been informed that the establishment of the University of Upper Canada, from the government of which all denominations of Protestants, except those that belong to the Church of England, have been excluded, has materially tended to increase the jealousy that already existed in Upper Canada, with regard to the Church of England; can you inform the Committee under what instructions that University was so founded?—It was founded by a charter under the Great Seal, and it relieved the students from an obligation to subscribe to the Thirty nine Articles, which had been an obligation imposed by the constitution of the other North American provinces.

In what way is it endowed?—It is endowed with land, and an appropriation made to it from the proceeds of the Crown reserves sold to the Canada Company.

Has not the Council the appointment of the professors?—Undoubtedly.

Are not all the members of the Council required to be members of the Church of England?—Yes.

Have the Crown reserves been effectually disposed of, so as to prevent the inconvenience continuing which has arisen from them?—All the Crown reserves in Upper Canada have been disposed of to the Canada Company, with the exception of those in new townships, which have been laid out since the 1st of March 1824.

On what footing do they stand in Lower Canada?—They still remain unsettled; in fact, the quantity of land that is settled is so much less in the Lower than in the Upper Province, that there is a much smaller proportion of Crown reserves in the one than in the other. But nothing in my opinion can be more impolitic than to make any distinction in the six-sevenths that belong to the Crown. I consider the principle of reservation of a seventh for the Crown to be an erroneous one, as the first object should be the entire settlement of particular districts, rather than a partial and general settlement.

Will you inform the Committee of the sums that have been paid by the Canada Company and their appropriation?—The sum which the Canada Land Company is actually bound to pay in 16 years in annual instalments amounts to £301,367 stlg. They are compelled to lay out on the improvement of the block of a million of acres, given in lieu of the clergy reserves, a sum amounting to £43,000. On the 1st of July 1826, the first payment commenced of £20,000; that payment exceeded some of the subsequent years, in order to cover the expenses of the arrangement. In 1827, £15,000; in 1828, £15,000; in 1829, £15,000; in 1830, £16,000; in 1831, £17,000; in 1832, £18,000; in 1833, £19,000; in 1834, £20,000; and £20,000 every succeeding year to the end of the term, it being at the option of the Company to increase the annuity payment as it may seem fit, it being provided, that in the last year the account shall be completely settled, that is on the 1st of July 1834. The appropriation, which the Secretary of State recommended to the Lords of the Treasury is as follows: first, the sum of £8,500 per annum for the Civil establishment of Upper Canada, which till that year had formed an item in the estimate annually voted by Parliament; secondly, £1,000 as an annual grant towards the building of a college for the province; thirdly, the same of £400 as an annual salary to the Roman Catholic Bishop resident in that colony; fourthly, the sum of £750 as an annual provision for Roman Catholic Priests in that Province; fifthly, the sum of £750 as an annual provision for the

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Presbyterian Ministers in connection with the Church of Scotland, having stated congregations in the province; sixthly, the sum of £400 as a pension to Colonel Talbot, as a reward for the services of that officer, and the sacrifices he had made in settling the London and Western districts; the sum of £2,566 as an annual compensation for the period of seven years to those officers of the land-granting department in Upper Canada, who by the adoption of the new regulations for granting lands are deprived of their emoluments. The sum total of those appropriations amounts to £14,766, which leaves an unappropriated balance of £733 per annum.

Mr. Ellice has stated that there was no occasion for the Government applying this money to the payment of the civil list in Upper Canada, as the ordinary revenue received on the trade of Canada is perfectly adequate, or might be made perfectly adequate, to the discharge of the civil lists of both provinces; do you concur in that opinion?—I am at a loss to understand upon what data Mr. Ellice gives that opinion. I believe nothing can exceed the economy with which the Legislature of Upper Canada dispenses the finances under their control; and I know no fund from which the payment of the £8,000 annually voted by Parliament could be forthcoming.

How is the clergy corporation appointed?—The clergy corporation was established at the recommendation of the Governor and Executive Council, and appointed by instructions sent out to the Governor of Canada to appoint a Committee of the clergy, of which the Bishop should be at the head, for the purpose of considering the most productive mode of dealing with the lands set apart for the clergy, under the 31st of the King, such disposition being necessarily limited to leasing, as there is no power of alienation under the Act.

By what instrument has that corporation been appointed?—Such an appointment would be made under the great seal of the province, under instructions from the government at home.

Is there a copy of that instrument in the Colonial Office?—I believe not, the instrument having been prepared in the colony.

Is there in the Colonial Office any copy of the instructions which directed the Governor to issue such an instrument?—There is.

You are aware that Mr. Ellice has stated his opinion that blame ought not to be imputed to any persons connected with the Executive Government in either province, but that the dissensions in Canada were the inevitable consequences of a determination on the part of the Government at home to persevere in a wrong system?—I find great difficulty in reconciling Mr. Ellice's evidence on this point. He states that the great object of the Assembly of Lower Canada is to retain their separate institutions, their laws, their church, and their condition as distinct from the people of America, and that though much may be done by mutual concession, all their objects can only be effected at the expense of the interests of the English population, and by the retardment of all improvement in the country. The Committee are aware that this is precisely the language which is maintained in the petitions from the townships, which have been presented to Parliament, and especially in those which are laid before this Committee, from the townships to the Governor General in the year subsequent to the proposition of the Union. Those petitions distinctly express the gratitude of the petitioners to the Legislative Council, for having resisted the attempt of the Assembly to prejudice the English population and to retard improvement. Whereas the Legislative Council is complained of, on the part of the French Canadians, as being the main source of all the dissensions existing in the province. Mr. Neilson employs these words: "The laws that are conceived by the people to be necessary for the common welfare are rejected by the Legislative Council, that being chiefly composed of persons who are dependent on the Executive Government of the province." The object of the opposition of the Legislative Council to the measures of the Assembly, if Mr. Ellice's view of the purposes of that Assembly be correct, is to maintain the interest of the English population, and to prevent that retardation of the improvement of the country which Mr. Ellice states the French Canadians to contemplate. I would wish to show that the opinion of the English population is such as I describe, by reference to the following paragraph, which appears in the petition to the House of Commons from the townships: "That while your petitioners waited patiently the effect of the repeated solicitations for redress of grievances, to be administered by the Provincial Legislature, the Legis-

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tive Council, in the session of the year 1825, by recommendation of His Excellency the Governor in Chief, passed a bill of the most salutary description, introducing into those townships the English law of dower and conveyance, and making incumbrances special, establishing also public offices therein for the enregistration of all mutations of real property and of all mortgages on the same; that though this bill, carefully abstaining from every unnecessary innovation, neither disturbed the routine nor touched the customs of the French Canadians in the seigneuries, the House of Assembly, evincing its characteristic disregard for the claims of your petitioners, neglected to proceed upon the same bill when sent down for concurrence, &c. And Mr. Robert Gillespie, one of the witnesses before this Committee, being asked in what manner the dissensions between the different branches of the Legislature obstructed the operation of commerce and the improvement of the Canadas, answers in these words, "By preventing the enactment of laws necessary for the security of trade, there is no such thing as knowing at present when real property is mortgaged or not;" and so on. On the other hand, Mr. Neilson states, "that no change which will be for the general good of the country will be resisted by the Assembly, for the Assembly are the true representatives of the people, and must do what will be for the good of the people; if they do not, they had better go home and mind their own business." The Committee cannot fail to observe that the question turns upon, whether the good of the people is to be promoted by approximating their institutions towards the English system, or by not only maintaining the French institutions in their present integrality, but by extending it over all that portion of the Lower Province which is inhabited by an English population. This is the real key to the dissensions which have existed in that province, and which I consider to have grown out of the short-sighted legislation of 1791; in proof of this I would remind the Committee that Mr. Viger adverts in his evidence to the improved condition of Lower Canada, which would have taken place if a proper system of conduct had been followed with regard to the Canadians. This question is then put to him: "When you say a proper system, do you mean if the French system and the French law had not been obstructed in its operations?" He answers, "So far as this, that they should have continued to let the French law prevail all over the country." In point of fact, nothing can be more discrepant than the views which are entertained by the agents for the French population of Lower Canada with respect to the functions and duties of this Legislative Council, which one party supposes to be the source, and the other the prevention of all mischief. Mr. Neilson says, "that an independent Legislative Council would give to Canada something like a British Constitution, in that case there would be a body that would have a weight in the opinion of the country when the Governor and the Assembly were at variance, and on which ever side they declared they would incline the balance; whereas Mr. Viger is asked, "Is it not the wish of the Canadians to change the structure of the Legislative Council, and to take measures for ensuring its formation in such a way as to make it likely that it would agree with the Legislative Assembly?" He answers, "I am sure that we must wish that the Legislative Council should be composed of men who would side with the mass of the people."

Mr. Neilson states that in Nova Scotia, where things go on very well, the revenue depends upon an annual vote of the Legislature, so that not only the appropriation of the money, but the very collecting of the money is dependent upon an annual vote of the Legislature, and there the Government and the Assembly go on very well in concert; can you inform the Committee whether that is correctly stated?—Mr. Neilson totally omits to state that the civil list is voted by the British Parliament, and that consequently the same cause of collision does not exist there would exist in Lower Canada. It is unnecessary for me to explain to the Committee that this is the case in all our North American Provinces, with the exception of Upper Canada, the expenses of whose civil list however are defrayed from proceeds of funds belonging to the Crown, and are not dependent on a vote of the local Legislature.

You have heard much observation from the witnesses respecting the constitution of the Legislative Council; have you any remarks to offer to the Committee on that subject?—Here again I would call the attention of the Committee to the different evidence which is received on such points; Mr. McGillivray, states that those who are opposed to the measures of Government complain of the Legislative Council, who generally have sided with the Governor

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when there has been any question in difference between them ; but he adds, " I have not heard of any complaint of the composition of the Council ; where there are parties, however, there will always be complaints." I have no hesitation in expressing my concurrence in the abstract opinions respecting the composition of the Legislative Council which have transpired during this enquiry, but I doubt extremely whether, under the circumstances of Lower Canada, it is possible to bring this Legislative Council to that state of theoretical perfection which is looked for by some members of the Committee ; at the same time, with respect to this Council, as well as to all other points where an improved system can be applied, it is necessarily the duty of Government so to apply it.

You are aware that Mr. Neilson has given evidence respecting the dismissal of Militia Officers by Lord Dalhousie ; have you any information to give to the Committee on that point ?—The following general orders, which were issued at two different periods by Lord Dalhousie's directions, will explain the grounds which his Lordship assigned for the measure in question. The Committee will perceive, from the general tenor of those orders, that it was for conduct connected with their duty as Militia Officers that His Lordship was mainly induced to dismiss the individuals in question. " Office of the Adjutant-General of Quebec.—Quebec, 12th of September 1827.—General Order of Militia.—His Excellency the Governor and Commander in Chief takes an early opportunity to express to the battalions of militia in Lower Canada his sentiments on certain recent proceedings which nearly concern their loyalty and honour. It is well known that the laws under which the militia force has been regulated for many years have been enacted for short periods, and have been repeatedly renewed as a substitute for the permanent laws passed in 1787 and 1789. Those temporary Acts, however, not having been renewed in the last Session of the Provincial Parliament, expired on the 1st of May ; and it was immediately notified to the militia by His Excellency's directions, that under the existing circumstances the old permanent ordinances came into force. Evil disposed persons were not wanting to spread doubts on the subject, and to those were added gross misrepresentations and calumnies regarding the intentions of the Executive Government, all tending to create discontent and dissatisfaction in the province, but more particularly to induce the militia to object against and disobey the orders issued under those ordinances for the usual musters in summer. The Governor in Chief, has seen with great satisfaction that the utmost exertions of the ill disposed have totally failed to disturb the natural disposition of the people to order and obedience, with very few exceptions, and those chiefly of officers holding commissions. The musters in July and August have been unusually numerous and well attended. It is therefore an important and a most agreeable duty to His Excellency to offer his warmest acknowledgments in approbation of that conduct by which the battalions of militia have shown their loyalty and proper sense of duty ; but while the Governor in Chief thus gives the reward of praise where it is so well merited, he feels that his duty imperiously calls upon him at this time to deprive of the distinction of holding commissions in the militia all such persons as have neglected to attend at the musters required by law, or who by their conduct or language at public meetings have failed in that respect which is due to the representative of their Sovereign. This, however, is a work of time and investigation, which, though necessarily attended with some delay, will not fail to receive His Excellency's serious and deliberate consideration. By order of His Excellency the Governor General and Commander in Chief, F. Vassal de Monviel, Adjutant General M. F."

The other order is as follows : " Office of Adjutant General of Militia, 12th December 1827.—General Order of Militia.—The Governor in Chief having for some time past occupied himself in considering reports of reviews by officers commanding battalions of militia, has great satisfaction in again expressing his approbation of the general disposition and orderly conduct of this great national force. The reviews have been fully attended, and there are but few instances in which the Governor in Chief would think it at all necessary to express censure ; his Excellency therefore conveys to all, and to each battalion, his thanks for their conduct, trusting that the next summer he shall find no cause to repeat the only disagreeable part of duty which remains for him to perform, that is, to publish the names of those officers who can offer no sufficient apology for their neglect of duty and absence from muster."

I have only further to explain that Lord Dalhousie states that His Majesty's Attorney General in the Province of Lower Canada, gave an opinion that the old ordinances of 1787 or 1789 had revived, and certain militia officers having impeached Lord Dalhousie's consequent judgment upon this occasion, founded, as it was, upon the opinion of the Attorney General, not only refused to attend the summer musters, but otherwise exhibited a spirit of disobedience to orders; in consequence of which Lord Dalhousie dismissed those persons, the circumstances of whose conduct and situation made such an example necessary; and on the grounds stated His Lordship's conduct received the sanction of the Secretary of State.

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Mr. Cuivillier in his evidence states, that Lord Dorchester, in his Message to the Legislature in 1794, in the name of the King, gave the casual and territorial revenues to the Province of Lower Canada, towards the support of its civil government; hence, he says, the control which the Assembly has over those revenues. It is in consequence of this gift on the part of His Majesty to the Province, for the public uses thereof, that the Legislature has a right to appropriate them. He is then asked, "In what form was that gift made?" and he answers, "By message." Again he is asked, "Did that message of Lord Dorchester say that the King would appropriate those revenues for the use of the Province, or that he made them over to the Legislature, to be appropriated by them for the use of the Province?" he answers, "That he does not recollect the precise words of the message, but that he does recollect that the casual and territorial revenue was given to the Province in aid of its civil government."

Can you supply the Committee with any decided information upon this point?—It appears in the Journals of the House of Assembly of the 29th of April 1794, that "a message from his Excellency the Governor, signed by his Excellency, was presented to Mr. Speaker, which message was read in English and repeated in French, all the members of the House being uncovered, and the same is as followeth:—Dorchester, Governor.—The Governor has given directions for laying before the House of Assembly an account of the provincial revenue of the Crown, from the commencement of the new constitution to the 10th of January 1794: first, the casual and territorial revenue, as established prior to the conquest, which His Majesty has been most graciously pleased to order to be applied towards defraying the civil expenses of the province." The Committee will not hesitate to admit that an expression, on the part of the Crown, that orders have been graciously given to apply the territorial revenue towards defraying the civil expenses of the province, cannot, in reason or in justice, be considered to be a gift to the Legislature, by which the Legislature obtains the right of appropriation. I would beg leave to lay before the Committee, in illustration of this distinction between applying the local revenues at the discretion and under the sanction of His Majesty's Government for the benefit of the colonies, and the surrendering them to the colonies for their absolute appropriation, by the following letter, which was addressed by Lord Bathurst, as a circular letter to the colonies having local Legislatures, on the 8th of October 1825, and which appears to me to express most clearly the reasons why an annual vote of the Civil List is less preferable to a more permanent arrangement. "Downing-street, 8th October 1825.—Sir, You are aware that in all discussions which of late years have taken place in Parliament on the subject of the Colonial Estimates, it has been objected that the North American Colonies ought to take upon themselves those permanent and necessary expenses of their civil government which have hitherto been charged upon the revenue of this country. I have always felt unwilling to enter upon this subject until the period should arrive when, from the growing prosperity of those colonies, and from the condition which they had, in fact, attained with respect to their population and resources, I could press it with the conviction that the proposition was not only one which ought to be entertained by the Legislature, but one which would be met by a most anxious disposition to comply with the wishes of Government. I also deferred pressing this point until Parliament has actually removed those restrictions to which the commerce of the colonies had hitherto been subject; because, though it might not have appeared unreasonable to have made the extension of a policy so liberal towards the colonists, in some measure dependent upon their assuming upon a just footing the charges of their own Government, yet I felt it a more pleasing course, (and one which I trusted would be found not less effectual) to rely rather upon the disposition of His Majesty's subjects in the

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the colonies to evince a just sense of these advantages after they should have been conferred upon them, than to have attempted to induce them to a compliance with the proposition by any promise of consequent concession and advantage. By the measures which Parliament has recently adopted the restrictions I have referred to are removed, and the colonies now enjoy, under the protection of His Majesty, the same freedom of trade with the parent state and with foreign countries as if they constituted, in fact, integral parts of the United Kingdoms. Such a state of things, it is confidently hoped, cannot fail to produce an increase of prosperity that will either enable the colonists to bear the charge of the Civil Government without necessity for imposing additional taxes, or will make the increased taxes, which it may be necessary for a time to provide, less burthensome than those which they are now obliged to sustain. I have had frequent occasion to regret the inconvenient consequences which have arisen in some of His Majesty's colonies, from the practice of providing by an annual vote for those charges of the Civil Government which are in their nature permanent, and which therefore ought not, consistently with those principles of the constitution common both to the United Kingdom and to the colonies, to be classed with those contingencies of the public service which, being necessarily fluctuating, may be fitly provided for as the occasion appears to demand. In point of fact, the necessity of an annual vote for the maintenance of a fixed and permanent establishment is only calculated to embarrass the public service, and to disturb the harmony which ought to exist among the different branches of the Legislature; it even tends to impair that confidence between the Government and the inhabitants of a colony, which is equally necessary to the just support of the former and to the happiness and prosperity of the latter. In the practical execution of this proposition, it cannot fail to be satisfactory to the Legislature to observe, that it is not intended that the provincial revenues should be charged with any excess beyond the long established and ordinary charges, unless a further increase should by them be deemed expedient. The charges of which the present estimate consists being all strictly of a permanent description, I should propose that the Act, which will be necessary to make provision for their assumption by the colony, should continue in operation for the space of ten years. The cordial adoption of this proposition on the part of the Legislature cannot fail to draw still closer the ties which so happily subsists between the mother country and her dependencies, and to induce a favourable disposition on her part to apply her capital for colonial purposes. And when it is considered how heavy an expenditure is necessarily incurred by Great Britain in the military defences of her colonies, it would seem unreasonable, under present circumstances, to question the readiness of the latter to provide in a proper manner for the necessary charge of their civil government. You will explain in the fullest manner to the Legislature, in the course of the next session, the expectations of His Majesty's Government upon this subject, and you will at the same time inform them, that whatever funds may be raised or received within the province, such funds not being under the control of the Legislature, will be appropriated for the benefit of the province, at the discretion and under the sanction of His Majesty's Government."



Martis, 15<sup>o</sup>. die Julii, 1828.

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John Neilson, Esquire, again called in ; and Examined.

A PETITION, signed by yourself, D. B. Viger and Austin Cuvillier, has been referred to this Committee; from which they perceive that since you left Lower Canada the Government of that colony has committed certain other acts of which you complain; the Committee are desirous of hearing any thing you have to say in support or explanation of your complaints?—I know nothing of what has occurred in Lower Canada since my departure but by private letters and newspapers, and certain resolutions that have been forwarded to Messrs. Viger, Cuvillier and myself, containing complaints, to be added to those that were contained in the Petition presented to the House of Commons some time ago. Those Resolutions are now in my possession.

Have the goodness to deliver them in?—

[The witness delivered in the following Papers:]

PROVINCE OF LOWER CANADA.

At a meeting of Landholders and other Proprietors, composing the committees appointed at the general meetings of proprietors held for the purpose of petitioning His Majesty and both Houses of Parliament against the present administration of the Provincial Government, and for furthering the said Petitions, assembled at the House of Louis Roy Portelance, Esq. in the City of Montreal, 17th April 1828;—

Present, François Ant. Larocque, Esq. in the Chair;—Members of the Committee of Montreal: Frans. Ant. Larocque, the Honourable P. D. Debartzch, Member of the Legislative Council; Louis Roy Portelance, James Leslie, Robert Nelson, Jules Quesnel, F. W. Desrivières, Hertel de Rouville, Jo. Waller, Chs. F. Roy, Frans. Picard, Roch de St. Ours, F. A. Quesnel, F. Peltier, jun., L. M. Viger, D. Mondelét, M. F. Valois, J. D. Bernard, Joseph Allard, Jos. Roy, Michel Viau, R. J. Kimbert, And. Papineau, Jos. Valois, P. Richot, Ales. Berthelot, U. Desrochers, J. B. Lebourdais, Louis, Barré, Jq. Bertrand, sen., Frans. Roy, Simon Valois, L. Bouton dit Major, Frans. Desautels, André Jobin, A. N. Morin;—of the General Committee of the District of Three Rivers, J. E. Desmoulin, J. Desfossés;—of the Committee of the County of Richelieu, the said Honourable P. D. Debartzch, M. L. C., the said Roch de St. Ours, W. Nelson;—of the County of York, Ignace Raizenne, J. B. Dumouchelle and Alexis Demers;—of the County of Effingham, the said André Papineau, Frans. Coyteux;—of the County of Kent, R. Boucher de la Bruère, René Boileau, jun., Pierre Papineau, Augustin Blais, Jos. Bresse, Jos. Demers, Timothée Kimbert, P. C. B. de la Bruère;—of the County of Surrey, Joseph Allard;—of the County of Bedford, the said Hertel de Rouville;—of the County of Huntingdon, Eustache Masson, Esquires;—

The following Resolutions having been severally read, were unanimously adopted:—

Resolved, 1.—THAT it is expedient that the central committees of the district of Montreal and Three Rivers, and the other committees, and the people of the province in general, express their sentiments and opinions on the subject of certain acts of the administration of his Excellency the Earl of Dalhousie, and on certain proceedings and decisions in the courts of justice in support of that administration, and tending to impair the liberties

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liberties and security of the people, which acts, proceedings and decisions have taken place since the departure of the agents for the petitioners for England, and justify and support the charges contained in the Petitions to His Majesty and the two Houses of Parliament, transmitted by the said agents against His Excellency the Governor in Chief, his administration, and the system of government followed in this province.

Resolved, 2.—That His Excellency and his administration have avowed, by public acts, their intention of destroying the liberty of the press, and to prevent public discussion of the acts of his administration, unless it should be favourable, and to inflict punishments for the exercise of the inherent right of British subjects to assemble and declare their opinion on acts of administration considered as unjust and oppressive, and to take the necessary steps to make known these acts, and their opinion thereon, by petition to His Majesty and the authorities in England.

Resolved, 3.—That in furtherance of these intentions, His Excellency, since the departure of the said agents, has, under colour of certain militia Laws, of which the legal existence is contested on strong grounds, insulted several respectable gentlemen, natives of the country, extensive landholders, and enjoying the general esteem; among others, Hertel De Rouville, R. Boucher de la Bruère, Francis Legendre, Ant. Poulin De Courval, and J. M. Raymond, Esquires, lieutenant-colonels and major of divisions of militia in the districts of Montreal and Three Rivers, in depriving them of their rank for having assisted at meetings held in their respective counties for adopting resolutions on the subject of their grievances, and petitioning thereon to His Majesty and both Houses of Parliament, against his Excellency and his administration of the government.

Resolved, 4.—That His Excellency caused the first notice of their dismissal to be given to these respectable individuals by publication in his official journals, without having at any time previously communicated any complaints against them; that the arbitrary order so published accused these loyal and respected individuals, in face of the whole country, merely because they had acted with their fellow-subjects in a measure concerning the common weal of their native country, in which they have a deep and permanent interest, of "having been active instruments of a party hostile to His Majesty's Government;" thus resorting to his official paper and the newspapers for defaming loyal and respectable subjects and the whole country; and that the said order expressly avowed and acted upon the illegal, unconstitutional, dangerous and oppressive doctrine, that military subordination and respect for military authority require that militia officers and militia-men should not participate in public meetings, in a country where every proprietor from the age of 18 to 60 is a militia-man, and all the male inhabitants of that age are militia-men; thus attempting to prohibit the inhabitants of the country from all discussion of public affairs and the misconduct of the administration, and from petitioning the King and Parliament; virtually subjecting them to martial law.

Resolved, 5.—That two meetings of landholders and other proprietors, composing the committees of petitioners in the district of Three Rivers, named at a general meeting of petitioners to farther their Petition against his Excellency and his administration, and other matters connected therewith, for the information of their agents, passed certain resolutions on the subject of the said defamatory and unconstitutional order so published by His Excellency, which said resolutions contained in substance, that the said individuals so attempted to be disgraced and insulted had lost nothing in the esteem of their fellow-citizens; that the attack made by his Excellency on their loyalty and honour was unmerited; one of the said committees having also expressed their opinion that those who would accept of the situations of which these respectable individuals had been thus deprived could not be considered as friends of their country; which said resolutions were ordered to be transmitted to the Agents of the petitioners, to obtain the recall of His Excellency and a change in the administration of the government.

Resolved, 6.—That these resolutions so taken in defence of the reputation of individuals attacked by a public document, and put into general circulation by the journals of the administration, were also published in the Quebec Gazette by order of the said committees, and signed by the secretaries, Charles Mondelèt and Ant. Zepirin Leblanc, Esquires.

Resolved, 7.—That in the last term of His Majesty's Court of King's Bench for the district of Quebec, James Stuart, His Majesty's Attorney-general for the said province, who is also one of the executive councillors for the the said province, and one

of the advisers of the present administration, and a violent opponent of the Representative Assembly of the province, presented to the grand jury five bills of indictment against the said Quebec Gazette, for publications relating solely to public measures in the said province; two of which were for publishing the said resolutions; four of which bills, including the two for publishing the said resolutions were found by the grand jury; and the said Attorney-general also presented two bills against the said Charles Mondelet, Esquire, one of which was for having signed and communicated the said resolutions, and the other for having addressed to his Excellency a letter on the dismissal of the said Charles Mondelet from the militia, which said bills were also found by the grand jury.

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Resolved, 8.—That a criminal term of the said court had just then been held at Three Rivers, where the said Charles Mondelet resides, and where the acts of which he was accused, however innocent and praiseworthy they may be, were committed; that the said Attorney-general might and ought to have proceeded against him at Three Rivers, but instead of following this equitable and legal mode of proceeding, he, for the purpose of better succeeding in his designs against the said Charles Mondelet, and in a vexatious and oppressive manner, proceeded against him at Quebec, to which place he also compelled five other individuals to attend as witnesses, at the distance of 90 miles from their homes, and in another district, and at a time when it was dangerous to travel, when the lives of several of these witnesses were actually put in peril; when Mr. Mondelet was withdrawn from the most busy time of his profession as an advocate: that the compelling an individual to answer for a simple misdemeanour out of his district, where he might have been accused and judged, and compelling him to appear 90 miles from his residence, is an arbitrary act, tending to vex and injure His Majesty's subjects who are not the devoted instruments of the present administration.

Resolved, 9.—That the said Attorney-general who laid the said bills before the grand jury at Quebec, is an executive councillor, and a component part of the administration which is complained of by the petitions of the people of the province; that the Chief Justice of the province, Jonathan Sewell, Esquire, presiding in the said Court of King's Bench at Quebec, before whom these individuals are to be tried, is also an executive councillor, and a principal adviser of the present administration; that the sheriffs, who arbitrarily empanel the juries in this province, are officers depending entirely on the pleasure of the administration for the enjoyment of their lucrative offices; and that the sheriff for the district of Quebec is the son of the said Chief Justice so presiding, and zealous in the support of the administration, the suppression of complaints against it, and preventing them from being made known.

Resolved, 10.—That the influence of the foregoing circumstances are sufficiently proved by the composition of the aforesaid grand jury, of which several members hold offices during pleasure, and of which 14, or more, were drawn from the small party which is violently opposed to the general opinion of the country, and are impelled by the same passions and opinions as the executive authority; and that all the said grand jurors for the district of Quebec, with the exception of one, were summoned from the City of Quebec alone.

Resolved, 11.—That in the Court of Oyer and Terminer, held for the district of Montreal in the month of November last, and in the term of the Criminal Court for the said district, held in March following, three bills of indictment for libel were returned by the grand jury against Jocelyn Waller, Esquire, and Ludger Duvernay; and one against James Lane, for innocent, and in the opinion of this committee, praiseworthy publications; being all articles on the public affairs of this province, and the misconduct of the provincial administration; entirely free from any thing prejudicial to the laws or to public order, but on contrary, replete with uniform loyalty and attachment to His Majesty's Government; and that the said publications have been made the subject of complaint on the part of the Attorney-general, only because they contained the free, legal and constitutional expression of the opinion of the great majority of the people of the province on the public measures of the administration; and that the said publications, as well as the aforesaid resolutions adopted in the district of Three Rivers, are not different in substance from the matters of complaint against the present administration contained in the Petition of 87,000 of His Majesty's subjects in this province, forwarded, to be laid before His Majesty and the Imperial Parliament.

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Resolved, 12.—That the sheriff of the district of Montreal, Louis Gagy, Esquire, is an alien born, and a member of the Legislative Council of this province, and holds a lucrative situation during the pleasure of the executive, of which he adopts the opinion and passions.

Resolved, 13.—That Juries arbitrarily chosen by officers dependent on the administration, do not inspire sufficient confidence in an equal dispensation of justice and law; that the two grand juries in particular, who returned the said bills at Montreal, and which were chosen by the said Louis Gagy, were, for the most part, composed of violent partisans of the provincial administration, and notoriously hostile to the opinions of the great majority of the inhabitants of the country, whether considered as landholders and proprietors, or in respect to numbers; that the said grand jurors were conspicuous for violent prejudices, and were chiefly drawn from the small fraction of the inhabitants who had signed virulent addresses against the representative branch of the Government.

Resolved, 14.—That the said Attorney-general obtained a rule to try some of the said indictments by a special jury, at Montreal, in the ensuing September Term, although it may be held that the rules by which special juries are granted in certain cases in England, do not apply here; and that the juries termed special here, being selected under a law to try certain civil causes, from a small class of individuals, the selection of the mere special juries, as well as the grand and petty juries, depends entirely on the said sheriffs, so that, far from affording additional protection to the subject, they are much less favourable to impartial justice than those called common juries; and it is in the power of the Attorney-general to bring on the trial before jurymen selected from a small portion of the district, who may be biassed in their judgment by preconceived antipathies and notoriously violent prejudices, however honest and respectable they may otherwise be; and that there is reason to fear that a special jury may be so biassed in their decision on the said indictments.

Resolved, 15.—That the said James Stuart, Esquire, in speeches delivered before His Majesty's courts has falsely accused divers loyal subjects of His Majesty in relation to the publications of which he complained, by asserting that they had a seditious tendency, and were seditious libels against His Majesty's Government; and that the said James Stuart has exercised his official duties in these causes with extraordinary rigour and violence, subjecting the accused to hardships and inconveniences unnecessary for the due administration of justice in cases of alleged offences against the Government, namely, the administration, of which the said James Stuart is a member.

Resolved, 16.—That the choice of the grand juries on the three occasions before mentioned, at a time when offences of a political nature were to be laid before them, and the conduct of the Attorney-general in relation to the said prosecutions, have inspired a strong suspicion concerning the principles and opinions of the said Attorney-general, as well as of those public officers therein concerned, and weakened the public confidence in the administration of criminal justice in this province.

Resolved, 17.—That Charles Richard Ogden, Esquire, Solicitor-general for this province, is also one of the principal advisers of the present administration, and has on various occasions manifested violent prejudices against the opinions of the inhabitants of this province, particularly on the 15th December last, when the freeholders and other electors of the County of Montreal were about to meet legally to discuss the measures of the administration, the said Charles Richard Ogden did, with an intent to prevent the said meeting and suppress the expression of its opinions on the said public measures, cause to be arrested the said Jocelyn Waller and Ludger Duvernay for the said alleged libels, with a view to alarm and intimidate His Majesty's loyal subjects.

Resolved, 18.—That if any other proof were wanting to persuade the inhabitants of this province that the processes of the criminal courts therein are in the hands and under the influence of the provincial administration, and that the prosecutions before mentioned have been directed to hinder or prevent the expression of the opinions of His Majesty's subjects on the measures of the present administration, they could not fail to find ample proof of such a state of things in the avidity with which the Attorney-general lays before the grand juries bills against the publication of the constitutional proceedings of the inhabitants of the country, and other writings equally innocent, while he suffers the journals and newspapers published under the authority and control of the administration to indulge in the most violent and insulting abuse of the country and its inhabitants, tending manifestly to inspire

inspire them with prejudices against His Majesty's Government, and particularly as they see these writings altogether overlooked by the Attorney-general in his proceedings before the courts of justice.

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Resolved, 19.—That since the commencement of the administration of His Excellency the Earl of Dalhousie, and particularly for some years past, the newspapers under the control and patronage of his administration, and especially "The Quebec Gazette," published by authority, "The Quebec Mercury," printed by His Majesty's printers, and "The Montreal Gazette," published by authority, by Robert Armour, also printer to His Majesty, have been made the vehicles of the most odious calumnies and low abuse of the representatives of the province, its inhabitants, their laws, religion and manners, attacking the rights and privileges granted to them by the most solemn acts and the laws of the Imperial Parliament, and tending to the subversion of the established constitution; that similar writings have also been issued from other presses patronized by the administration, the whole under the eye of the said Attorney-general, who has suffered them to proceed unnoticed, while he prosecutes officially, with great warmth, expressions on the part of the country unfavourable to the administration of the government,

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Resolved, 20.—That this conduct on the part of the Attorney-general is equivalent to a full protection by the administration and the courts of justice to whatsoever opinions, calumnies and insults the partisans of the present administration may publish in its organs, and that the conviction is becoming universal on the part of the inhabitants of the province that the false and abusive writings of which these papers are the vehicles, counselling and exciting to the subversion of the social order, the institutions and constitutional privileges of the people, are nothing but the expression of the opinion and wishes of the present administration, its chief, and members; and the people, the public bodies, and the individuals so insulted and vilified can hope for no redress within this province from the courts of justice, the said Attorney-general and other officers equally dependent on the administration, being the sole channels through which an attempt could be made to obtain it.

Resolved, 21.—That the said Jonathan Sewell, Esquire, Chief Justice of this province, has declared that any justice of the peace might lawfully arrest the printer or author of any writing which, in the opinion of the said justice, was a libel, and oblige such printer or author to give bail for appearance and good behaviour; and that the said Chief Justice and the Court of King's Bench at Montreal have decided that security for good behaviour may be required in cases of libel on indictment before conviction.

Resolved, 22.—That these doctrines excite the greater alarm, as in the commissions of the peace lately issued by His Excellency, a system of exclusion has been adopted, so as to leave out of the commission nearly all those justices of the peace who were not notoriously devoted to the views of the present administration; and that the commission is now nearly altogether composed of its decided partisans.

Resolved, 23.—That the foregoing proceedings, and the system now adopted, are destructive of the liberty of the press in this province, or subject it to incessant prosecution, unless it be agreeable to the provincial administration and its partisans.

Resolved, 24.—That His Excellency the Earl of Dalhousie, recently, and after he had official communication of the Petitions of the subject in this province to His Majesty, and both Houses of Parliament, in which they particularly complain of the intermixture of the legislative and judiciary authority in the person of several public officers, has issued a mandamus, appointing Jean Thomas Taschereau, Esquire, a member of the Legislative Council of this province, although the said Jean Thomas Taschereau is also one of the Puisné Judges of the Court of King's Bench for the District of Quebec, and without awaiting the decision of His Majesty on the said complaint.

Resolved, 25.—That His Excellency the Governor-in-Chief, by the abuses and mal-administration more particularly complained of in the said Petitions, and by the general tenor of his administration, since the departure of the agents of the petitioners, has entirely forfeited all confidence on the part of the people; and is utterly incapable, in the opinion of this committee, of acquiring the confidence of the Legislative Body, should it be re-assembled under his Excellency.

Resolved, 26.—That the attempts and acts stated in the foregoing Resolutions tend

To impede the exercise of civil rights, and subject the people to martial law:

To prevent public meetings for lawful purposes:

By

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By defaming respectable individuals in documents officially published :  
By prosecuting as libellous, the Resolutions taken on these documents by British subjects, for the purpose of repelling the defamation contained in the said documents :  
By withdrawing the accused, in a vexatious manner, from their natural jurisdiction to another and distant district.

The connexion between the sheriffs and the administration, and their entire dependence on a Governor who has publicly announced, that every public officer should conform to his wishes on pain of dismissal ; and at Quebec the relation of father and son, between the Chief Justice and sheriff, the former being a principal member of the administration :

The power held by these sheriffs of impannelling juries agreeable to their wishes and those of the executive :

The scandalous indications at the three last terms of an intention of using this power, by composing juries of violent and devoted partisans, predetermined to condemn every person and every act disagreeable to the executive ; and of a character to express in their decisions merely the opinions and passions of a small fraction of the community :

The proceedings against the press, and the doctrines destructive of its freedom, promulgated under the sanction of Government :

The protection afforded to the abuse and calumnies of the journals and partisans of the administration, and the certainty that this abuse and calumny proceeds from the administration :

The suspension of the Session of the Legislature, and particularly of the influence and protection of the Representative Body, in violation of the Act of the British Parliament, 31 Geo. 3. c. 31 :

The insufficiency of public opinion to restrain a hostile administration, which has corrupted and usurped all the powers of law and the magistracy :—  
HAVE alarmed the country, and kept it in a state of great agitation, under the intimate conviction of its dangerous and unprotected state, exposed to the passions of a small but exasperated party, and an exasperated administration breathing vengeance. That the perversion of the noble institution of juries to the purposes of passion, leaves the inhabitants of the province without security for their persons or property.

Resolved, 27.—That the country cannot be restored to a sense of security and to quiet, but when his Excellency the Earl of Dalhousie shall have been recalled from his government, and his administration changed ; when the places of the present Attorney-general, James Stuart, esquire, and the present Solicitor-general, Charles Richard Ogden, esquire, shall be filled by other persons ; and the Representative Body of the province be assembled, and placed in a condition to proceed with all its privileges and just powers, for the safety of the people.

Resolved, 28.—That the agents of the petitioners be requested to make an immediate and pressing representation to His Majesty's Secretary of State for the Colonial Department, on the continued vexatious and unconstitutional proceedings of the administration of His Excellency the Earl of Dalhousie, praying his recall, and particularly the immediate meeting of the Legislature, which is become indispensable to the peace and security of the province ; and also, the appointment of other persons in the stead of the present Attorney-general and Solicitor-general for the province ; representing that under the present circumstances it would be conducive to the public welfare if these offices were filled by enlightened men sent from England, qualified by the liberality of their sentiments, and the absence of local prejudices, to discharge their public duties without being influenced by solicitations and intrigue.

Do you consider those Resolutions as expressing the opinions of that part of the population of Lower Canada for whose petitions you were the agent ?—There is no doubt that they express the opinions of almost the whole of the population of the district of Montreal and Three Rivers ; the district of Quebec, has not interfered on this occasion ; there were committees appointed at the different meetings by the petitioners, and those committees of the districts of Montreal and Three Rivers have met, and come to those resolutions.

Is not the Militia service in Lower Canada compulsory?—I have already stated here that every man from 18 to 60 has been held by the law of the country to be subject to militia duty when called upon according to law.

Those resolutions complain of the dismissal of militia officers; have there not been two classes of dismissals of militia officers in that colony lately, upon totally distinct grounds?—There have been a great many dismissals; by the official list that was published, there were between 50 and 60 dismissals, and about 200 *retraites*, mostly without consulting the parties. The dismissions may be divided into several classes; the first list were dismissals concerning electioneering meetings in the county of York; the next numerous class was for declining to attend at the reviews or parades required, under the plea that no militia law was in force; the next was the dismissal of Colonel Bourdages and M. Vallières, late speaker of the Assembly, shortly after the former had proposed Mr. Papi-neau as speaker, and the latter had moved the address, praying the Governor to confirm the choice of the House. The grounds alleged for the principal dismissals that have occurred since my departure, are to be found in the general order that has been entered upon the minutes already; it is for having "been active instruments of a party hostile to His Majesty's Government;" we know of none, nor does any body know of any act on the part of those individuals, other than attending and acting at those meetings that agreed to the petitions that were presented to His Majesty and to the House of Com-mons.

Those dismissals for attending the election meetings come within your own knowledge?—I was in Quebec at the time the order for their dismissal was published by authority; their colonel, with a Mr. Simpson, was a candidate at the election, and they were sup-ported on the part of the executive in Lower Canada; the gentlemen dismissed attended meetings that were in opposition to these candidates, and supported other candidates; some time after the election, I cannot say what number of them, but several of them were dismissed by a general order.

The resolutions you have given in, complain of political prosecutions that have lately taken place in Lower Canada; do you know what number of the newspapers of Lower Canada have been actually prosecuted?—There are three presses prosecuted, publishing five newspapers, the only ones, in fact, in the province who speak with any freedom of the administration of the government.

How many newspapers are there altogether in Lower Canada?—Twelve.

And five have been prosecuted?—Yes; the prosecutions are against three presses that print five papers.

When will the trials come on of those persons so prosecuted?—The trials at Montreal are to come on in September.

When will those take place in Quebec?—I cannot say; probably in September.

The Committee observe that in these resolutions it is complained that these political trials at Quebec will take place before a special and not before a petty jury, and the reso-lutions state that this circumstance will act against the defendant; in what way is that the case in Lower Canada?—I believe that it is not determined how the trials at Quebec are to come on; but at Montreal it has been determined that the trials are to be by a special jury: the lists for the special juries are made out by the sheriffs, under an old ordinance passed before the existence of the present constitution, by the Governor and the Legislative Council, which relate to juries in civil causes.

Have you lately received any account of the political differences in the province of Upper Canada?—There is a misunderstanding between the Lieutenant-governor and the Assembly; the Assembly was prorogued rather unexpectedly after the imprisonment of some Gentlemen called upon to give evidence by order of the House of Assembly.

You know nothing upon that point, except what you have seen in the newspapers?—No; except what I have seen in extracts from the journals of the House of Assembly published in the newspapers of Upper Canada.

The Committee observe that in the resolutions put in, it is complained that the com-mission of the peace has been new modelled throughout the colony of Lower Canada?—Yes, it has.

With a view to political purposes; has that been the case?—It is generally believed to be the case; a great many persons have been left out of the commission, and it has  
been

John Neilson,  
Esquire.

15 July, 1828.

John Neilson,  
Esquire.  
15 July, 1828.

been publicly avowed by persons in the employ of the executive, that omissions have been made upon political grounds.  
Have there not been many members of the House of Assembly excluded from the commission?—Yes, about six or eight.

It has been stated that an individual has been deprived of his commission, and reduced to the ranks in the militia; in what manner does the law enforce the performance of his duty as a private?—The law says that every able bodied man from 18 to 60 is bound to serve in the militia; and if he is not an officer, or exempt by law, he must serve as a private.

How is that enforced?—By imposing fines for non-attendance; there is a contest now in the courts of justice respecting the law; they are prosecuting the persons who exacted the fines under the old ordinances for damages.

Are the fines heavy?—The fines by the laws that existed were not heavy; but those by the ordinances of the Legislative Council of 1787, which the Governor pretends to be in force, are rather heavy; and what is worse, they are exacted by the sentence of a court-martial, instead of being exacted in a civil court.

Do you know any thing of the correspondence that took place between Monsieur Parant and Narcisse Duchesnay, Esq., Lieutenant Colonel?—I have seen it in the newspapers.

Do you know the parties?—I do.

[A newspaper is handed to the witness.]

Is that the newspaper you allude to?—In this paper is a translation, the original of which I have read in the French, of the correspondence between M. Duchesnay and Mr. Parant, who was an ensign in the militia of Beauport; these letters are correct translations of the originals I have seen in French.

[The same were delivered in, and are as follows:]

“ To Narcisse Duchesnay, Esquire, Lieutenant-Colonel, &c. &c.

“ Beauport, 28th January 1828.

“ Colonel!

“ Under the administration of a man never to be forgotten, and worthy of the love of all good and loyal subjects, I was honoured by being considered worthy of an ensign's commission.

“ But at this period, when being a commissioned militia-man prevents one from being a citizen, when persons a thousand times more respectable than I am have been displaced, and others, strangers and unknown, have been substituted in their place, I would consider myself dishonoured if I retain a commission which has nothing but what is degrading in my eyes.

“ However honoured I might be when I received that commission, I did not accept it until I knew that the duty it required was conformable to law; that conformity existing no longer, my commission ceases to exist. It is your's; dispose of it.

(Signed) “ M. PARANT.”

“ Adjutant-General's Office, Quebec, 22d February 1828.

“ Lieutenant-Colonel N. J. Duchesnay, commandant of the 5th battalion of the County Quebec, having transmitted to me your letter, dated the 1st of this month, I have submitted it to His Excellency the Commander-in-chief, who has ordered that your commission of ensign, which accompanied your insolent letter, should be burned, as a mark of his  
greatest



greatest contempt, and that Colonel N. J. Duchesnay should place you in the rank as a simple militia-man, that you may do duty as such.

{John Neilson,  
Esquire.

"Vassal De Monviel, Adj. Gen. M. F."

15 July 1823.

"To M. Parant, Militia-man."

[Another newspaper was handed to the witness.]

Does that newspaper contain a correct copy of the Resolutions that were entered into at a constitutional meeting of the Three Rivers, on the 25th of February 1823, which are alleged to be the subject of a public prosecution at this moment?—Yes; the resolutions in French have been sent to us as agents.

Have the goodness to read them?—

[The witness read the same, as follows:]

Constitutional Meeting :—Three Rivers.

At an extraordinary meeting of the Constitutional Committee of the District of Three Rivers, held in the house of R. Kimber, esquire, Monday the 25th of February 1823;—present, René Kimber, esquire, in the Chair; M. M. Pierre Défossés, Jean Dornet, Etienne Tapin, J. Dubord Lafontaine, Jean Défossés, Louis R. Talbot, William Vondenvelden, Antoine Garcean, M. M. Joseph Douval, Etienne Leblanc, Pierre Blondin, Ls. Oliv. Coulombes, Laurent Craig, Charles Mondelet, Ant. Z. Leblanc :—Read the Militia General Order of the 21st instant.

Resolved, 1.—That the loyalty, the integrity, the firmness and the independence which have characterized all the public and private actions of François Legendre and Antoine Poulin de Courval, esquires, deputy chairmen of this committee, and especially the conduct which they have displayed in the crisis, which has rendered necessary, on the part of the inhabitants of this country, accusations against the Earl of Dalhousie, deserves the confidence and the respect of all their fellow citizens.

Resolved, 2.—That this Committee has learned by the Militia General Order of the 21st instant, that His Excellency George Earl of Dalhousie has dismissed from the rank of lieutenant-colonel in the militia these two gentlemen, alleging, "that they have shown themselves active agents of a party hostile to His Majesty's Government."

Resolved, 3.—That in the opinion of this Committee, that allegation on the part of His Excellency is entirely unfounded.

Resolved, 4.—That consequently this committee is of opinion, that these dismissals cannot prejudice the respectability of those who are the objects of them.

Resolved, 5.—That the following address to Messrs. François Legendre and Antoine Poulin de Courval, be adopted by this committee, and that a special committee, composed of four members, to wit, Messrs. Jean Doucet, Joseph Dubord Lafontaine, Etienne Leblanc, and Jean Défossés, do take measures for having the same presented to Messrs. Legendre and Courval.

(A true Extract.)

Charles Mondelet, } Secretaries.  
A. Z. Leblanc, }

Are you certain that the prosecution was for the simple insertion of those Resolutions, or did any remarks accompany them?—I cannot speak very correctly as to what occurred; but I know this is one of the articles indicted in the bill presented by the attorney-general:

John Neilson, Esquire.  
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general; it was published in French, this is a translation of that article; there are eight or ten, or perhaps twelve bills brought forward against those presses I have mentioned; and they are bound under heavy penalties to appear and be of good behaviour; I think, to the amount of several thousand pounds, 4,000l. or 5,000l.; there are other resolutions. I believe I could furnish copies of all the articles under indictment, if it was desired.

Has the language of the government papers been very temperate during the whole of this time?—No, by no means. It has been very violent sometimes; it is quite natural when parties run high at electioneering times, and soon after, that the papers should run high also. The first indictments for offences connected with local politics were shortly before the meeting of the Assembly, after the dissolution of 1827. The bills were thrown out at the regular term, and a court of Oyer and Terminer was held, at which new bills were presented for the same offences, and found.

## APPENDIX.

## APPENDIX, No. 1.

To the Honourable the Knights, Citizens and Burgesses, representing the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled.

No. 1.  
Petition of the  
Inhabitants of  
the Townships  
of Dunham, &c.  
in Lower Cana-  
da.

The PETITION of the Subscribers, His Majesty's dutiful and loyal Subjects, of British birth or descent, Inhabitants of the Townships of Dunham, Stanbridge, St. Armand, Sutton, Potton, Stanstead, Barnston, Barford, Hereford, Farnham, Brome, Bolton, Hatley, Compton, Clifton, Granby, Shefford, Stukely, Orford, Ascott, Eaton, Newport, Bury, Hampden, Milton, Roxton, Durham, Melborne, Windsor, Shipton, Stoke, Dudswell, Simpson, Kingsey, Grantham, Wickham, Wendover, Brompton, and other Townships and Places situate in the Province of Lower Canada;

Humbly Sheweth.

That your Petitioners have learnt with the greatest heartfelt satisfaction, and the most profound gratitude, that a Bill was introduced into the Honourable the House of Commons, at the last session of the Parliament of the United Kingdom, for uniting the Provinces of Upper and Lower Canada under one Legislature; a measure to which the inhabitants of the Townships of Lower Canada look forward as the only effectual means of terminating the difficulties and troubles under which they have laboured in times past, and of preventing the evils with which a continuation of the present state of things would threaten them for the time to come.

That the situation of the inhabitants of the Townships is different from that of any other portion of the British empire, and is likely to prove most unfortunate and disastrous for themselves and their posterity, unless the legislative aid of the land of their ancestors be extended to relieve them; as will be briefly shown in the following statement:—The province of Lower Canada, according to its present condition, may be separated into two parts: viz.: first, the Seigniories, or French Lower Canada, which comprehends a narrow tract of land on each side of the river St. Lawrence, varying in breadth from ten to forty miles; and secondly, the Townships or English Lower Canada, which comprehends the remainder of the Province, and is more extensive, and capable of containing a far greater population than the Seigniories, or French Lower Canada. The Seigniorial part of Lower Canada, whose population may be considered as about half filled up, is inhabited chiefly by Canadians, whose origin and language are French; but contains, besides these, a population of about 40,000 inhabitants of British origin. The Townships, or English Lower Canada, are peopled *wholly* by inhabitants of British birth and descent, and American loyalists, amounting at present to about 40,000 souls, who have no other language than that of their British ancestors, who inhabit lands granted under the British tenure of free and common socage, who have a Protestant clergy, for whose maintenance a portion of those lands are set apart, and who, notwithstanding, are subjected to French laws, (the custom of Paris,) of which they know nothing, compiled in a language with which they are unacquainted.

In addition to the evil of subjection to foreign laws in a foreign language, the Townships, or English Lower Canada, labour under the further difficulty of having no courts within

No. 1.  
Petition of the  
Inhabitants of  
the Townships  
of Danham &c  
in Lower Cana-  
da.

within their own limits, for the administration even of those foreign laws, but are compelled, for the most trifling legal redress, to resort to courts established at the cities of Quebec, Montreal, or Three Rivers, in Seigneurial Canada, at a distance frequently from 100 to 150 miles, through a country where the travelling, by reason of the inadequacy of the laws regarding communications, is frequently difficult and dangerous; and to complete the measure of their grievances, the Townships are *de facto* without any representation whatever in the Provincial House of Assembly in Lower Canada. Their complaints to the Provincial Assembly have been always treated with contempt or indifference; nor can your Petitioners account for their being placed, as it were, almost out of the pale of civil government, by a neglect so different from the course pursued in the Legislature of other British provinces, except on the supposition that the French Canadian House of Assembly has not been desirous that emigrants from Britain or of British origin should have inducements to seek an asylum or become settlers in Lower Canada. If such indeed were the object, it has not failed of partial success; as of the many thousand emigrants who, within the last few years, have arrived from Great Britain, scarcely 1,000 have settled in the Townships of Lower Canada; but great numbers of them have gone into the United States, considering, possibly, that they should there find themselves in a less foreign country than in this British colony under its present circumstances, and under the foreign aspect of the representative branch of its Legislature.

Your Petitioners will not enlarge upon the general statement they have given of their condition, by entering into the detail of the numerous hardships and difficulties with which they have had to contend, although sensible that the recital would call forth commiseration. They will content themselves with stating, that as settlements under these English tenures have been commenced, as immense tracts still remain to be settled, and as the population of Lower Canada is trifling compared to the amount which it is capable of attaining, there can be no sound reason for rearing up any portion of the province so as, at its maturity, to constitute a nation of foreigners, or for continuing a system calculated to deter Britons and their descendants from settling upon the waste lands of the Crown. In the management of colonies, as in the management of youth, prudence would seem to dictate that the lasting interests of the future maturity, not the momentary inclinations of the present condition, should be considered of the deepest import. Already within a recent period, near 100,000 emigrants of British birth have made Lower Canada only a place of transit; who, if the foreign aspect of the Legislature had not urged them to take an abode elsewhere, might have augmented the strength and means of the English population in the province. But notwithstanding the past checks to colonial increase, unless similar causes are allowed to operate hereafter, future emigrants and their descendants, joined to the English already established here, may ultimately form a great majority of the inhabitants, and render the country in fact, as it is in name, a British colony. And in the attainment of this happy result, no injury could be done to the just rights of others; nor could even any prejudices be affected, except those delusions circulated and fostered by demagogues. "that the Canadians of French extraction are to remain a distinct people, and that they are entitled to be considered a nation;" prejudices from which it must follow as a necessary consequence, that the province of Lower Canada (of which not one-sixth part is settled) should be deemed their national territory, where none but those willing to become French ought to be allowed to establish themselves; prejudices which, however absurd they may appear, will obtain strength and influence if not speedily and completely discouraged, and will be found not only incompatible with colonial duty and allegiance, but also dangerous to the future safety of the adjoining colonies, and subversive of the rights of all the inhabitants of the Townships, as well as of all the English settled in seigneurial Canada, through whose hands the entire trade with the mother country is conducted.

Your Petitioners, the inhabitants of English Lower Canada, had always flattered themselves that no laws would be imposed or continued on that portion of the country, having a tendency to compel them to resemble a foreign nation, and to deprive them of the characteristics of their British origin; and their confidence on this occasion was increased by their recollection of the promises of his late Majesty, to give English laws to his subjects settling in Canada, and by the exception (an exception never yet enforced in practice) contained in the Quebec Act of 1774, declaring that the provisions of that Act, estab-

lishing

growing state of the country, and also of necessity be ultimately proportioned to wealth and population.

And your Petitioners, as in duty bound, will ever pray, &c.

The foregoing Petition was transmitted from the Townships in 1823, and signed almost unanimously by all the heads of families in the Townships: the number of signatures exceeded 10,000. This Petition, together with others, even from the Seignories of Lower Canada, as well as from Upper Canada, in favour of the union of the two provinces, can now be produced, if required.

No. 1.  
Petition of the  
Inhabitants of  
the Townships  
Dunham, &c.  
in Lower Ca-  
nada.

## APPENDIX No. 2.

PETITION of the Counties in the District of Quebec; and of the County of Warwick, District of Montreal.

To the King's most Excellent Majesty:

May it please your Majesty,

WE, your Majesty's faithful and loyal subjects, inhabitants of your province of Lower Canada, most humbly supplicate your Majesty to receive graciously this our humble petition, which we now lay at the foot of your Imperial throne, with hearts full of gratitude and unviolable attachment to your august Person and your Majesty's paternal Government.

Amongst the numerous benefits for which the inhabitants of Lower Canada are indebted to your Majesty's Government, there is none that they more highly prize than the invaluable Constitution granted to this Province by the Act of the Parliament of Great Britain, passed in the 31st year of the reign of Our beloved Sovereign, your august Father, of ever-revered memory.

Called by that Act to the full enjoyment of British constitutional liberty, and become the depositaries of our own rights, under the protection of the mother country, we contracted the solemn obligation of preserving inviolate this sacred deposit, and of transmitting it to our descendants, such as it was confided to us by the great men who then presided over the destinies of your powerful and glorious empire.

Deeply impressed with a sense of this obligation, alarmed by the abuses which have crept into the administration of the Government of this province, and suffering under the evils which weigh on its inhabitants, we entertained an anxious hope that at the House of Assembly, in the Session of the Provincial Parliament, called for the dispatch of business on the 20th November last, would take into consideration the state of the province, and adopt efficacious measures to obtain the remedy and removal of these abuses and evils. We had a sure reliance on the well tried loyalty and disinterested zeal of our representatives; but we have had the mortification of seeing our hopes frustrated by the refusal on the part of His Excellency the Governor in Chief to approve the Speaker elected by the Assembly, and by the proclamation of the 22d of the same month of November, proroguing the Provincial Parliament. In these circumstances, deprived of the services of our representatives, suffering under great evils, and threatened with others still greater, we humbly implore the protection of your Majesty, the source of all grace and of all justice.

The enlightened and patriotic statesman who devised our Constitutional Act, and the British Parliament by which it was granted, intended to bestow on us a mixed government, modelled on the constitution of the parent state; the opinions publicly expressed at the time in Parliament, and the Act itself, record the beneficent views of the Imperial Legislature; a Governor, a Legislative Council, and an Assembly, were to form three distinct and independent branches, representing the King, the Lords and the Commons; but the true spirit of that fundamental law has not been observed in the composition of the Legislative Council; for the majority of its members consisting of persons whose principal resources for the support of themselves and their families are the salaries, emoluments and fees derived from offices which they hold during pleasure, they are inter-  
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No. 2.  
Lower Canada  
Petitions; Dis-  
tricts of Que-  
bec, &c.

No. 2.  
I Lower Canada  
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&c.

ested in maintaining and increasing the salaries, emoluments and fees of public officers paid by the people, and also in supporting divers abuses favourable to persons holding offices. The Legislative Council, by these means, is in effect the executive power, under a different name, and the Provincial Legislature is, in truth, reduced to two branches, a Governor and an Assembly; leaving the province without the benefit of the intermediate branch, as intended by the aforesaid Act; and from this first and capital abuse have resulted, and still continue to result, a multitude of abuses, and the impossibility of procuring a remedy.

We acknowledge that the Legislative Council ought to be independent; and if it were, we should not be entitled to complain to your Majesty of the repeated refusals of that branch to proceed upon various bills sent up by the Assembly, however useful and indispensable they might be; considering these refusals as the natural result of the composition of that body, and of the state of dependence in which the majority of its members are placed, we are compelled to consider its acts as the acts of the Executive Government; and we most humbly represent to your Majesty, that the Legislative Council of this province, the majority of which is composed of Executive Councillors, judges, and other persons dependent on the Executive, have, year after year, rejected several bills, refused and neglected to proceed on several other bills sent up by the Assembly, for the remedy of abuses, for encouraging education, promoting the general convenience of the subject, the improvement of the country, for increasing the security of persons and property, and furthering the common welfare and prosperity of the province: particularly—

Various annual bills granting the necessary sums for all the expenses of the Civil

Government of the province, but regulating and settling limits to the expenditure.

For affording a legal recourse to the subject having claims against the Provincial Government.

For regulating certain fees and offices.

For enabling the inhabitants of the towns to have a voice in the management of their local concerns, and a check on the expenditure of monies levied upon them by assessment.

For facilitating the administration of justice throughout the province, for qualifying and regulating the formation of juries, and introducing jury trials in the country parts, and diminishing the expenses occasioned by the distance of suitors from the present seats of justice.

For providing a new and sufficient gaol for the district of Montreal.

For qualifying persons to serve in the office of justice of the peace.

For continuing the Acts regulating the militia of the province.

For increasing and apportioning the representation in the House of Assembly equally, among the qualified electors throughout the province, particularly in the new settlements and townships.

For the security of the public monies in the hands of His Majesty's receiver-general in this province.

For the independence of the judges, by securing to them their present salaries, upon their being commissioned during good behaviour, and for providing a tribunal for the trial of impeachments by the Assembly, so as to ensure a just responsibility in high public officers within the province.

For appointing and providing for an authorized agent for the province, to reside in England, and attend to its interests there.

It is with the most profound grief that we find ourselves compelled to represent to your Majesty, that during several years past the incomes derived from real estate in this province, the profits of trade and industry, and the wages of labour therein, have greatly diminished, and still continue to diminish; that under these circumstances it would not be equitable to impose taxes or new duties on its inhabitants for the public uses; and that there exists no other resource which can reasonably be depended upon, to aid in the diffusion of knowledge and facilitate the exertions of individual industry, than the proceeds of the existing revenues levied within the province.

Nevertheless, more than one half of the gross amount of all its public revenues has been applied, for several years past, in payment of salaries, emoluments and expenses of the officers of the Civil Government, exclusive of the usual and indispensable special appropriations; and our anxiety is the greater, as these salaries and emoluments and expenses have been

been greatly increased without the consent of the Legislature, and have in some instances been paid to persons who do not reside in the province, or have rendered no service there; and in other cases the said salaries and emoluments and expenses are excessive, when compared with the incomes derived from real estate in this province, and the usual recompense obtained therein by the individuals of talent, character and industry equal to those possessed by the persons to whom the said salaries and emoluments are paid out of the public revenue of this province; and lastly, in addition to those unnecessary and excessive salaries and expenses, your Majesty's subjects of this province are also burdened with various and increasing fees paid to the officers of the Civil Government, which are grievous to the subject, diminishing the protection of the laws, the benefits of government, and the resources of the country for its necessary wants.

We are convinced, that besides the most perfect security of persons and property, one of the most efficacious means of promoting the public prosperity and preventing its decline, is to aid in the diffusion of useful knowledge, and the free exercise of individual industry and enterprise; and we have witnessed with satisfaction and gratitude that our Provincial Legislature has appropriated very large sums of money for these objects since the close of the last war with the United States of America; but we have to perform the painful duty of humbly representing to your Majesty, that the monies thus appropriated and applied under the direction of the Provincial Executive, have not produced the beneficial results that were to be expected from a legal and judicious application of them, and have been tardily or insufficiently accounted for.

It is with the utmost pain that we are compelled to represent to Your Majesty, that in this province of the British empire large sums of public money of the revenue levied within this province, have been applied, year after year, by warrant of the Executive Government, without any appropriation by the Legislature of the province, (at a time when the necessary appropriations were rejected in the said Legislative Council,) in payment of alleged expenses of the Civil Government, and other expenses for which no services were rendered to the province, or for new and increased salaries and allowances never recognized by the Legislature. Were we to refrain from complaining of such an enormous abuse, we should co-operate in consolidating our slavery, and we humbly implore your Majesty's justice.

Alike negligent in the preservation of the public monies and prodigal in their expenditure, the Executive Government of this province has not only suffered the dissipation of large sums of money in the hands of the receiver-general, and other depositaries thereof, then and still under its superintendence and control, but has appointed other officers in the stead of these faulty depositaries, without taking any sufficient security for the future; and having advanced to different persons large sums of money appropriated by the Legislature, the neglect of the Executive Government in this respect has been such, that several of those persons have not accounted at the time when they ought to have accounted; some have insufficiently accounted, or not rendered any account; and notwithstanding their negligence and default, some of those persons have been appointed by the Executive Government to offices of trust, honour and profit; and we most humbly represent to your Majesty, that the Executive Government of the province, by its negligent conduct in these respects, has exposed your Majesty's subjects in this province to heavy and grievous losses, dissipated and endangered the resources of the province, and subjected its inhabitants to unnecessary burthens.

Your Majesty's faithful subjects in this province have already forwarded humble representations to your Majesty's Government on the subject of the college and estates heretofore in the possession of the late order of Jesuits in this province, and while we deplore the unfavorable result of our past endeavours, we nevertheless continue to entertain the most perfect confidence; that so soon as the truth shall be fully known to your Majesty, justice will be rendered unto us; and we humbly represent, that as the said Order was never the proprietor of the said college and estates, but merely the depositary thereof for the education of youth of Canada, the extinction of that order could not confer on the Sovereign any other rights on that property than were possessed by the said Order; and that your Majesty succeeded to the possession of those estates, subject to their being applied to the education of the youth of this province, conformably to their primitive destination; and it is with the most profound grief that we find ourselves still deprived of the benefits which were formerly derived from the actual application of that property to

No. 2.  
Lower Canada  
Petitions: Dis-  
tricts of Que-  
bec, &c.

No. 2.  
Lower Canada  
Petition: Dis-  
tricts o. Quebec,  
&c.

these objects under the direction of the Jesuits, while education is languishing amongst us for want of those resources.

The settlement of the waste lands in this province, the importance of which has already, at various times, occupied the attention of your Majesty's Imperial Government, has been neglected in the most unaccountable manner by the Executive Government of the province, so that large portions of the said lands, granted or reserved by the Crown, have been long held, and continue to be held in the midst of, or in the immediate vicinity of actual settlement, without the owners or possessors thereof having been compelled to perform the duty of settlement upon which said lands were granted by the Crown, or any other duty in relation to the said lands, to the grievous burden of the actual inhabitants, the discouragement of new settlers, and the obstruction of the general increase and prosperity of the province.

But of all the abuses of which the inhabitants of this province have to complain, the most afflicting to your Petitioners is, that during the prevalence of the aforementioned and various other abuses and grievances, false representations and repeated attempts have been made by divers officers of the Provincial Executive, possessing the confidence of your Majesty's Government, to obtain from your Majesty's Government in England, and the Parliament of the United Kingdom, various alterations in the constitution of the Government of this province as established by law, without the knowledge of your Majesty's faithful subjects in this province, in contempt of their most sacred rights and dearest interests; and this at a time when a majority of Executive Councillors, Judges and other officers in the Legislative Council, prevented the inhabitants of the province from having an authorized agent in England to watch over and support their interests, and enable them to be heard by the Government of the mother country; and it is under these circumstances that the Act of the Parliament of the United Kingdom, 4th Geo. IV. c. 6, reviving or continuing certain temporary Acts of the Provincial Legislature levying duties within this province, and the Acts affecting the tenure of lands therein, were passed, without the knowledge of its inhabitants, to the subversion of their rights and dearest interests, and particularly without the knowledge or consent of the proprietors more immediately interested in the last mentioned Acts. It is with the most afflicting sensations that we have witnessed the intrigues which have been in operation to despoil your Majesty's faithful subjects in this province of the rights and benefits which were granted and guaranteed to us by the supreme authority of a powerful and generous nation, under the auspices of its most illustrious citizens.

We most humbly implore your Majesty to take this our petition into your most gracious consideration, to exercise your Royal Prerogative, so that your Majesty's faithful subjects in this Province be relieved from the aforesaid abuses and grievances, and justice be done in the premises, that your petitioners may be maintained and secured in the full enjoyment of the constitution of government, as established by the Act passed in the 31st year of the reign of our late Sovereign, your Royal Father, without any alteration thereof whatsoever.

And your Petitioners, as in duty bound, will ever pray.

December, 1827.

[N. B.—The Petitions to the Lords and Commons are the same as the above, with only the necessary change of style.]

Recapitulation of Signatures to the above Petition :

County of Cornwallis, - - - - -	3,583
Devon - - - - -	2,139
Hertford, - - - - -	2,394
Dorchester, - - - - -	4,157
Part of Buckinghamshire, - - - - -	1,532
Ditto of Hampshire, - - - - -	1,346
Quebec, - - - - -	5,870
	County



County of Orleans, - - - - -	1,018	No. 2. Lower Canada Petitions: Dis- tricts of Quebec, &c.
Northumberland, - - - - -	2,445	
Total, District of Quebec, - - -	24,484	}
County of Warwick, - - -	4,904	
	<hr/> 29,388 <hr/>	

2nd. February 1828.

Resolutions on which the foregoing Petition was founded.

At a Meeting of the Electors of the City and Suburbs of Quebec, who approve of the conduct of the House of Assembly, called for the purpose of considering the expediency of submitting, by humble Petition to His Majesty and both Houses of Parliament, the present state of the Province, and the abuses and grievances which prevail therein and praying for relief and justice; held at Malhiot's Hotel, 13th December 1827 ;—

Louis Abraham Lagueux, Esquire, in the Chair.

It was Resolved,

1st.—That there was reason to hope, that in the Session of the Provincial Parliament, assembled on the 20th November last for the despatch of public business, the state of the province would have been improved, and the evils which weigh on its inhabitants remedied, or put in a course to be removed, and its peace, welfare and good government promoted.

2nd.—That the said session has been interrupted by the refusal on the part of His Excellency the Governor-in-chief to approve, according to Parliamentary usage, the Speaker chosen and presented by the Assembly in the usual manner, and by the proclamation of the 22d November, proroguing the Provincial Parliament.

3d.—That it is expedient, under the foregoing circumstances, to submit, by humble petition to His Majesty and the two Houses of the Parliament of the United Kingdom, the present state of the province, and the evils to which its inhabitants are exposed, in the hope that in the exercise of the Royal Prerogative, and the justice of Parliament, a remedy may be applied, whereby the constitution of this province, as now established by Act of the Parliament of Great Britain, may be preserved and maintained unimpaired.

4th.—That for several years past the income of real estate in this province, the profits of trade and industry, and the wages of labour therein, have greatly diminished, and are still diminishing, with new and alarming features.

5th.—That besides the ensuring to the subject the most perfect security of his person and property, the aiding and facilitating the diffusion of useful knowledge, and the free exercise of industry and enterprise, are amongst the most efficient means of promoting the general prosperity, and preventing its decline.

6th.—That although large sums of public money have been appropriated by the Legislature of this province, since the conclusion of the late war, in aid of education, and for facilitating industry, by opening and improving internal communications, and that these appropriations have been applied under the direction of the Provincial Executive, they have produced no adequate advantages, while many of the persons entrusted by the said Executive with the expenditure of the said monies have tardily or insufficiently accounted for the same.

7th.—That under the present circumstances of the province, no taxes or new duties for the public uses thereof can equitably be imposed, and no dependence can be placed on any funds for aiding in the diffusion of education, and facilitating the exertions of individual industry and enterprise, other than such funds as may be derived from the existing public revenue of the province.

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8th.—That more than one half of the gross amount of the said public revenue has been applied for several years past to the payment of the salaries, emoluments and expenses of the officers of the Civil Government of the province, exclusive of the usual special appropriations.

9th.—That the said salaries, emoluments and expenses have been greatly increased without the concurrence or consent of the Legislature for many years past, and are in several instances paid to absentees and persons who have rendered no service therefore to this province; and in other instances the said salaries, emoluments and expenses are excessive compared with the services rendered, and with the income derived from real estate, and the usual recompense obtained by individuals of talent, character and industry equal to those of the persons who hold the said salaries and emoluments.

10th.—That besides the unnecessary and excessive salaries, emoluments and expenses, fees increasing to a heavy and grievous amount are paid by the subject to divers officers of Government, whereby individuals are burthened, the protection of the law and the benefit of government are lessened, and the resources of the country for its necessary wants diminished.

11th.—That a majority of persons, chiefly dependent, for the support of themselves and their families, on the salaries and emoluments of public offices held during pleasure, have been placed in the Executive and Legislative Councils of this province, several of whom have a direct individual interest in maintaining and increasing the said excessive salaries, fees, emoluments and expenses, and perpetuating other abuses profitable to persons in office.

12th.—That a majority in the said Legislative Council, chiefly consisting of Executive Councillors, Judges and other officers so holding, during pleasure, have year after year rejected, refused or neglected to proceed upon various necessary bills sent up, by the Representative Assembly of the province, for the remedy of abuses grievous to the subject, for aiding in the diffusion of education, for furthering the general convenience and improvement of the country, for increasing the security of persons and property, and promoting the common welfare and prosperity; particularly,

Various annual bills, granting the necessary sums for all the expenses of the Civil Government of the province, but regulating and settling limits to the expenditure.

For affording a legal course to the subject having claims against the Provincial Government.

For regulating certain fees and offices.

For enabling the inhabitants of the towns to have a voice in the management of their local concerns, and a check on the expenditure of monies levied upon them by assessment.

For facilitating the administration of justice throughout the province, for qualifying and regulating the formation of juries, and introducing jury trials in the country parts, and diminishing the expenses occasioned by the distance of suitors from the present seats of justice.

For providing a new and sufficient gaol for the district of Montreal.

For qualifying persons to serve in the Office of Justice of the Peace.

For continuing the Acts regulating the Militia of the province.

For increasing and apportioning the representation in the House of Assembly equally among the qualified electors throughout the province, particularly in the new settlements and townships.

For the security of the public monies in the hands of His Majesty's receiver general in this province.

For the independence of the judges, by securing to them their present salaries, upon their being commissioned during good behaviour, and for providing a tribunal for the trial of impeachments by the Assembly, so as to ensure a just responsibility in high public officers within the province.

For appointing and providing for an authorized agent for the province, to reside in England, and attend to its interests there.

13th.—That the repeated rejection, the refusal or neglect to proceed upon these and other necessary bills sent up by the Assembly to the Legislative Council, by a majority of the said Council, formed of Executive Councillors, judges and officers holding their commissions

commissions during pleasure, must be held to be the Act of the Executive Government of the province, and as such constitutes a public grievance, destructive of the ends of the constitution of the government as by law established in this province.

14th.—That large sums of money of the proceeds of the public revenue levied in this province, have been applied by warrant of the Executive Government, year after year, without any appropriation by the legislative body therein (while the necessary appropriations were rejected in the said Legislative Council,) for the payment of alleged expenses of the Civil Government, and other expenses, for which no services were rendered to the province, or for new and increased salaries and allowances never recognized by the Legislature.

15th.—That large sums of monies of the proceeds of the public revenue raised within this province, in the hands of the late receiver-general, and other depositaries of public monies, then and still under the control and superintendence of the Provincial Executive, have been dissipated, and other officers appointed in their stead, without any adequate securities being taken for the future, thereby occasioning and exposing the public to grievous losses, wasting or endangering the resources of the province, and subjecting its inhabitants to unnecessary burthens.

16th.—That various other sums of money appropriated by the Legislature have been advanced to divers persons appointed by the Executive, many of whom have not accounted for such advances in due time, have insufficiently accounted, or not accounted in any shape whatsoever, as appears by the statement laid before the Assembly, on address, in the session of 1826; and that persons then in default on the said statement have been appointed to other situations of honour, trust and profit.

17th.—That the college and revenues of the estates of the late order of Jesuits in this province, originally erected and formerly applied for the civil and religious education of the youth of this province, have not been so applied for many years past, and are in no way accounted for to the Legislature or the inhabitants of this province.

18th.—That large portions of the waste lands granted or reserved by the Crown in this province have been long held, and continue to be held, in the midst of, or in the immediate vicinity of actual settlements, without the owners or possessors thereof having been compelled to perform the duty of settlement upon which such lands were granted by the Crown, or any other duty in relation to the said lands, to the grievous burthen of the actual settlers, the hindrance of new settlers, and the obstruction of the general increase and prosperity of the province.

19th.—That during the prevalence of these and other abuses and grievances, false representations and attempts have been repeatedly made by divers officers of the Provincial Executive, to obtain from His Majesty's Government in England, and the Parliament of the United Kingdom, various alterations in the constitution of the government of this province, as established by an Act of the British Parliament, prejudicial to the rights and interests of this province, without their knowledge, and at a time when the said inhabitants were prevented by the said majority of executive councillors, judges and other officers in the Legislative Council, from having an authorized agent in England to attend to their interests, and enable them to be heard by the Government of the mother country.

20th.—That the revival or continuation, by the Act of the Parliament of the United Kingdom (4th Geo. IV. c. 6), of temporary duties imposed by the Provincial Acts, were so obtained, as well as the Acts affecting the tenures of land in this province, the whole prejudicial to the dearest rights and essential interests of the inhabitants of this province, and without the knowledge or consent of the persons chiefly affected by the said Acts.

21st.—That the aforementioned

Application of monies levied in this province, without appropriations by the Legislature thereof,

The said advances of money to persons who have not sufficiently accounted for the same,

The said dissipation of public money, and appointment of persons to be entrusted with public monies without full security given,

The diversion of the revenues of the estates of the late order of the Jesuits from purposes of education of the youth of this province,

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The inexecution of the conditions of the grants of the waste lands of the Crown, and aforesaid attempts on the part of the officers of the Executive Government to obtain alterations in England of the established constitution and laws of the province, without the knowledge of the inhabitants generally, and without their having had an opportunity of being heard,

Are grievances dangerous to the peace, welfare and good government of this province.

22nd.—That the prayer of the petition to His Majesty be, that He would take the premises into His most gracious consideration, and so exercise His Royal Prerogative that His subjects in this province be relieved from the said abuses and grievances, and that justice be done therein; that the inhabitants of this province be secured in the full enjoyment of the constitution of government, as established by the Act passed in the 31st year of the reign of His late Royal Father, of revered memory.

23d.—That the prayer to both Houses of Parliament be, that they would take the premises into consideration, cause an inquiry to be made, and the petitioners to be heard, that justice may be done thereon, and the subject in this province be secured in the full enjoyment of the constitution of government, as established by the Act of the Parliament of Great Britain, passed in the 31st year of the reign of His late Majesty, without any alteration thereof whatsoever.

24th.—That a Committee of Thirty-five electors, duly qualified by law to vote for members of the Assembly of this province, be appointed to draft and prepare petitions on the foregoing resolutions, with full power to take all the necessary steps for submitting them for the signature of the electors generally, for causing the said petitions to be laid at the foot of the Throne and presented to the Lords and Commons, and also to give effect to and support the same by evidence.

25th.—That this meeting will contribute and assist in procuring voluntary subscriptions to cover the necessary expenditure for the aforesaid purposes.

26th.—That Messrs. Amable Berthelot, François Blanchet, J. L. Borgia, J. B. E. Bacquet, Robert Blakiston, Michel Borne, J. Bigaouette, Michel Clouet, John Cannon, Joseph Dorion, Etienne Defoy, John Duval, John Fraser, H. G. Forsyth, Pierre Faucher, Joseph Gagné, A. R. Hamel, H. S. Huot, Louis Lagueux, Joseph Legaré, père, Louis Lagueux, fils, Jacques Leblond, Et. C. Lagueux, Jean Langevin, Ignace Legaré, J. L. Marett, Louis Massue, Joachim Mondore, John Neilson, Vallières de St. Réal, Pierre Pelletier, Joseph Roy, Augt. Gauthier, and Louis Fortier, do compose the said Committee, and that nine form a quorum; notices in writing of the time and place of meeting being previously left at the domicile of each of the said Committee.

27th.—That the said Committee have power to add to their number, and be empowered to aid in forwarding similar petitions from any other parts of this district, in cases where applications may be made to them to that effect, and where contributions may have been made to the funds of the said Committee in aid of the afore-mentioned expenditure.

28th.—That Joseph Roy, esquire, be treasurer of the said committee, and be held to account to the said committee, and a meeting of electors publicly called, and that all payments made by him be vouched by orders of the said committee, attested by the signature of the secretary.

LOUIS A. LAGUEUX, President,  
H. S. HUOT, Secretary.

At a meeting of the Committee, Friday, 14th December 1827, the following officers were appointed:—J. R. Vallières de St. Réal, esquire, president; Henry George Forsyth, esquire, and Louis Abraham Lagueux, esquire, vice-presidents; Messrs. H. S. Huot and J. B. E. Bacquet, secretaries.

H. S. HUOT, Secy.

PROVINCE

## PROVINCE OF LOWER CANADA.

Petition of the Counties in the Districts of Montreal and Three Rivers.

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[The Original of this Petition having been in French, it is given in preference to the English. The Petitions to the Lords and Commons are the same as the Petition to the King, with the necessary changes in the style.]

A la Très Excellente Majesté du Roi.

La Pétition des soussignés fidèles et loyaux Sujets de Votre Majesté résidens dans le Bas Canada.

Qu'il plaise à Votre Majesté.

Dans une partie éloignée des immenses domaines de votre Majesté, il existe un peuple peu nombreux, il est vrai, mais fidèle et loyal : il jouit avec orgueil et reconnaissance, sous la domination de votre Majesté, du noble titre de sujets Britanniques, qui lui a été conféré sous le règne de votre père de glorieuse mémoire, avec tous les droits qui font de ce titre un objet d'envie. Plus ce bienfait était grand, plus votre bon peuple du Bas Canada a cru devoir montrer de reconnaissance : l'histoire est là pour déposer en notre faveur : laissons lui le soin de prouver que nous avons deux fois empêché ce pays de passer sous une domination étrangère.

Reconnaissans de l'inestimable présent que nous a fait la mère patrie en nous accordant notre constitution, convaincus qu'elle peut faire le bonheur de vos fidèles sujets en Canada, le premier de nos vœux est de la conserver intacte et de jouir librement des droits précieux qu'elle nous assure.

Parmi les droits inhérents au titre de sujets Britanniques, celui de pétition est un des plus importants et des plus sacrés : il assure au plus pauvre individu le droit d'être entendu et l'espoir de la justice lors même qu'il se plaint des personnes les plus élevées en dignité. La voix de tout un peuple sera sans doute encore plus puissante, lorsqu'elle parviendra aux pieds de votre trône, et qu'elle révélera à votre Majesté que l'oppression peut exister sous son Gouvernement paternel.

L'éloignement où nous sommes du siège de l'empire, et l'espoir d'un changement pour le mieux, nous ont engagés jusqu'à ce jour à un pénible silence ; mais l'excès du mal nous force enfin à le rompre. Il ne convient pas au caractère de sujet Britannique de souffrir servilement l'oppression : la patience dans ce cas n'est une vertu que pour des esclaves.

Nous venons déposer à vos pieds nos justes plaintes contre Son Excellence George Comte de Dalhousie. Chargé par vous même de vous représenter dans votre Colonie, et de nous faire éprouver les bienfaits du Gouvernement de votre Majesté, il s'en faut de beaucoup, malheureusement pour nous, qu'il ait rempli la haute mission dont vous l'aviez gracieusement chargé pour le bonheur de vos fidèles sujets Canadiens.

Il a, pendant son administration, commis différents actes arbitraires, tendant à aliéner l'affection des fidèles sujets de votre Majesté, et subversifs du Gouvernement tel qu'établi par la loi dans cette province.

Il a, par warrant ou autrement, tiré des mains du receveur-général de cette province, des sommes considérables sans y être autorisé par la loi.

Il a, volontairement et méchamment, tronqué, supprimé, gardé par-devers lui et soustrait à la connaissance du Parlement Provincial, divers documens et papiers publics nécessaires à la dépêche des affaires et au bon gouvernement de cette province, et ce au grand détriment du service public et au grand préjudice des sujets de votre Majesté en la dite province.

Il a volontairement et en violation de son devoir envers son souverain et ses fidèles sujets en cette province, conservé dans l'exercice de ses fonctions, John Caldwell, écuyer ci-devant receveur-général, entre les mains duquel le revenu public de cette province était versé, en vertu de la loi et des instructions royales, long tems après que ce fonctionnaire public avait avoué sa malversation et déclaré son incapacité de satisfaire aux demandes faites contre lui pour le service public ; et ce au grand détriment des habitans de cette province, et au préjudice du service, et de la foi publique. II

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Il a en opposition à la pratique constante du gouvernement de votre Majesté, et en violation de son devoir comme administrateur du gouvernement de cette province, nommé John Hale, écuyer, pour remplacer le dit John Caldwell, comme receveur-général, sans exiger ni requérir de lui les sûretés ordinaires requises pour assurer la due exécution des devoirs de cette place.

Il s'est en différens tems servi de son autorité comme Commandant en Chef, pour influencer, intimider les habitans de cette province dans l'exercice de leurs droits civils et politiques.

Il a comme Commandant en Chef renvoyé et disgracié un grand nombre d'officiers de milice dans la province, sans cause juste, ou raison suffisante.

Il a sans cause, ou raison suffisante, arbitrairement et despotiquement, renvoyé et privé plusieurs officiers civils des places de confiance et de responsabilité qu'ils occupaient, et ce au préjudice de ces officiers et du service public.

Il a maintenu et conservé, conserve et maintient en place, plusieurs fonctionnaires publics, après qu'il a été prouvé que leur nomination à telles places ou que leur conduite dans l'exercice de leurs fonctions était préjudiciables au service de votre Majesté et aux intérêts de ses sujets dans cette province.

Il a multiplié dans des tems de tranquillité, et sans aucune nécessité, des cours spéciales d'oyer et terminer, outre les termes réguliers et ordinaires des cours criminelles établies par la loi, imposant par là un fardeau considérable aux sujets de votre Majesté, et une dépense énorme à la province.

Il a, par des prorogations et dissolution subites et violentes du Parlement Provincial, nui aux intérêts publics de cette province, retardé ses progrès, empêché la passation d'actes utiles. Il a dans ses discours lors de telles prorogations, faussement accusé les représentans du peuple, afin de les décrier dans l'opinion de leurs constituans et dans la vue de créer auprès du gouvernement de votre Majesté des préjugés défavorables à la loyauté et au caractère des sujets Canadiens de votre Majesté. Il a toléré et permis que les Gazettes du Gouvernement publiées sous son autorité ou sous son contrôle, portassent journellement les accusations les plus fausses et les plus calomnieuses contre la Chambre d'Assemblée, ainsi que contre tout le peuple de cette province.

Il a parlé même moyen menacé le pays d'exercer la Prérogative Royale d'une manière violente, despotique et désastreuse, c'est-à-dire, de dissoudre continuellement, ou selon l'expression insultante de ces menaces, de chasser le corps représentatif jusqu'à ce que les franchises et les propriétaires se vissent obligés de choisir pour représentans, non plus ceux qui auraient leur confiance, mais ceux qui seraient disposés à tout accorder à l'Exécutif et à lui sacrifier le droit qu'a le peuple de cette province, agissant par ses représentans, de déterminer quelle somme des deniers publics l'administration aura le droit de dépenser, et d'assurer l'emploi fidèle de ces deniers; ou bien qu'il punirait la province en rejetant les bills passés par les représentans du peuple pour l'avantage général, jusqu'à ce qu'ils abandonnassent le droit de fixer et de contrôler la dépense; et que les magistrats et les juges du pays seraient, aussi bien que les bas officiers, destitués des hautes et importantes places qu'ils occupent, et qui, dans l'intérêt public comme dans l'intérêt des particuliers, exigent l'indépendance et l'impartialité la plus absolue, s'ils n'étaient pas agréables à la présente administration.

Il a, conformément à la politique vindicative ainsi avouée par ces écrivains par lui employés, puni en effet le pays, en ne donnant point la sanction Royale à cinq bills d'appropriation pour aider les progrès et l'amélioration du pays en 1826, auxquels votre Majesté a bien voulu depuis donner sa sanction, et en permettant à ses conseillers exécutifs et autres personnes sous son contrôle et possédant des places durant plaisir, de se servir de leur prépondérance dans le Conseil Législatif dont ils sont aussi membres, pour supporter cette politique vindicative et rejeter en 1827, tous les bills d'appropriation pour l'avancement de la Province et pour des objets de charité qui avaient été passés annuellement depuis un grand nombre d'années.

Il a violé les franchises électives des habitans de cette province, en essayant directement et indirectement d'influer sur l'élection des membres de la Chambre d'Assemblée de cette province.

Il a enfin, par tous ces divers actes d'oppression, créé dans tout le pays un sentiment d'alarme et mécontentement, déprécié l'autorité du pouvoir judiciaire dans l'opinion publique, affaibli la confiance du peuple dans l'administration de la justice, et inspiré dans toute la province un sentiment insurmontable de méfiance, de soupçon et de dégoût contre son administration.

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Nous ôsons donc supplier votre Majesté de vouloir bien prendre en sa Royale considération les vexations qu'ont éprouvées vos fidèles sujets dans cette partie éloignée de vos domaines. Pressés sous le poids de tant d'actes d'oppression nous avons cru devoir supplier votre Majesté de vouloir bien, pour l'intérêt de son service dans cette colonie, et l'avantage de ses fidèles sujets y résidens, rappeler pour toujours son Excellence le gouverneur en chef, comme ne pouvant plus jouir de la confiance publique dans cette province, ni en administrer le gouvernement avec honneur pour la Couronne où avec avantage pour le peuple.

Qu'il plaise à votre Majesté,

Privés comme nous le sommes maintenant, par la prorogation du Parlement Provincial, des services publics de nos représentans, des services que nous avions droit d'attendre de leur zèle connu pour les intérêts de la province, et de leur patriotisme éprouvé, nous sommes dans la nécessité de soumettre nous-mêmes à la bienveillante considération de votre Majesté, quelques objets que nous estimons de la plus haute importance pour le bien-être du pays, objets qui tendent également à assurer le bonheur du peuple, et à rendre cette colonie plus utile à l'Empire Britannique, ce qui ne peut qu'intéresser le cœur Royale de votre Majesté, sous le double rapport de père de son peuple et de chef suprême d'un puissant empire.

L'éducation est le premier des biens qu'un père puisse donner à son fils, le premier des biens qu'une législation éclairée puisse assurer aux peuples. En rendant justice aux efforts qui ont été faits dans ce pays vers cet objet important, par plusieurs corps et par un grand nombre de particuliers, on ne peut cependant disconvenir que l'éducation publique n'est pas encouragée dans ce pays en proportion de ses besoins. Et pourtant la province n'était pas dépourvue de moyens : la munificence des Rois de France et les bienfaits de quelques particuliers n'avoient rien laissé à désirer à ce sujet. Des fondations vraiment royales tant par leur objet que par leur étendue, assuraient à ce pays des ressources suffisantes pour le tems, et croissantes avec les besoins de la population. Depuis l'extinction de l'Ordre des Jésuites en ce pays, ses biens sont passés aux mains du gouvernement de votre Majesté. Votre Majesté peut seule les rendre à leur première, à leur bienfaisante destination. Nous l'en supplions très-humblement. Qu'il ne puisse pas être dit que cette province a été privée sous le gouvernement du Roi constitutionnel de la Grande Bretagne, des bienfaits que le Roi absolu de la France lui avait conférés pour l'éducation de ses habitans.

Un des droits naturels, fondamentaux, inaliénables des sujets Britanniques, un des titres de leur gloire et de leur sûreté, c'est le droit de se taxer eux-mêmes et de contribuer librement aux charges publiques selon leur moyens. A ce titre naturel nous joignons encore les droits résultans de la loi écrite, des Actes du Parlement Impérial qui déclarent que l'Angleterre renonce à imposer des taxes dans les colonies, et qui donnent à cette province le droit de faire des lois pour sa tranquillité, son bonheur, et son bon gouvernement. Nous supplions humblement votre Majesté d'excuser notre témérité, ou bien plutôt d'approuver la confiance en votre justice et en celle du Parlement Impérial, qui nous engage à nous plaindre de ce que ces droits ont été lésés d'une manière grave par des Actes du Parlement Impérial. Nous faisons allusion surtout à l'acte de commerce du Canada, passé dans la troisième année du règne de votre Majesté, ch. 119, et à celui des tenures des terres, passé dans la sixième année du règne de votre Majesté, ch. 59, contre lequel nous avons déjà adressé par la voie de nos représentans à votre Majesté nos humbles réclamations : l'un établit directement des impôts dans cette colonie, et les rend perpétuels sans la participation du Parlement Provincial ; l'autre touche à des objets de législation intérieure sur lesquels nous croyons humblement que la législature coloniale avait pleine juridiction.

Nous croirions, Sire, mériter bien peu les inestimables bienfaits que nous procure la constitution qui nous régit, si nous ne fisions tous nos efforts pour la conserver intacte. C'est prouver combien nous en sentons tout le prix.

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La cumulation dans une seule et même personne de plusieurs places importantes dans ces colonies et qui nous semblent incompatibles, est un obstacle vivement senti, un obstacle considérable au bon gouvernement de cette province. Nous voyons dans ce pays les places de juges du Banc du Roi, de conseillers exécutifs et législatifs, possédées par la même personne. Nous croyons humblement que ces hautes fonctions devraient être exercées insolément au lieu d'être cumulées: que les Juges bornés aux importantes fonctions de leur état ne devraient pas siéger dans les conseils: que les conseillers législatifs ne devraient pas être admis au conseil exécutif, et *vice versa*: qu'il serait convenable que les juges fussent plus indépendans, sujets seulement avec les autres grands fonctionnaires publics à un tribunal établi dans la province pour juger des *impeachments*. Nous avons déjà fait des représentations et des démarches concernant ces différens objets par le moyen de nos représentans dans la Chambre d'Assemblée. Les mesures par eux proposées ont échoué dans les autres branches de la Législature. Nous supplions humblement votre Majesté de vouloir bien prendre en sa considération royale les maux nombreux qui doivent inévitablement résulter de cette distribution impolitique, et peu sage de tous les pouvoirs du gouvernement afin qu'étant très-justement condamnés par votre Majesté, il vous plaise ordonner à vos Ministres de donner des instructions au gouvernement coloniale à ce sujet, de manière à autoriser la passation d'Actes par le Parlement Provincial, qui tendraient à corriger ces abus.

L'accroissement rapide de la population depuis la première démarcation des comtés, rendant nécessaire un changement correspondant dans la représentation provinciale, notre Parlement jugea prudent, comme mesure préliminaire, de constater l'état actuel de la population, par un recensement qui devait servir de base aux changemens à faire dans la représentation. La Chambre d'Assemblée passa ensuite à plusieurs reprises un bill pour augmenter le nombre des comtés et des représentans. Ces bills ont également échoué dans les autres branches de la législature.

Il est encore un objet qui intéresse vivement le peuple de cette province; c'est la nomination d'un agent provincial accrédité, auprès du gouvernement de votre Majesté, qui pourrait faire parvenir aux pieds du Trône, l'expression de nos besoins, fournir aux ministres de votre Majesté des renseignemens utiles et veiller à nos intérêts particuliers. Cette province à déjà plus d'une fois éprouvé le besoin d'un semblable agent: ses représentans n'ont pas encore pu réussir à obtenir la passation d'un Acte à cet effet. Les accusations mal fondées portées par le Gouverneur-en-chef contre la Chambre d'Assemblée, dans son discours de prorogation du dernier Parlement, auxquelles la Chambre n'a pas encore eu occasion de répondre, démontrent la nécessité d'un agent; le Gouverneur qui accuse la Chambre ne pouvant guère être le canal de communication dont les plus accusés puissent se servir avec confiance pour défendre leur cause. Nous supplions humblement votre Majesté de vouloir bien ordonner à vos Ministres de donner des instructions au Gouvernement Coloniale, en vertu desquelles un bill pour l'augmentation de la représentation puisse être sanctionné, ainsi qu'un bill pour accorder à cette province l'avantage dont jouissent la plupart des autres colonies de votre Majesté, celui d'avoir un agent colonial, nommé et député par le peuple de la colonie, pour veiller à ses intérêts en Angleterre.

Le tout très-humblement soumis à la bienveillance et à la sagesse de votre Majesté, par les fidèles et loyaux sujets de votre Majesté dans le Bas-Canada, les Petitionnaires sous-signés qui comme il est de leur devoir ne cesseront de prier.

Bas-Canada, Janvier 1828.



Recapitulation of Signatures, to February 6, 1828 :

County of Montreal, - - - - -	7,753
Kent, - - - - -	2,163
Huntingdon, - - - - -	5,327
Leinster, - - - - -	6,192
Surrey, - - - - -	3,080
Bedford, - - - - -	1,342
York, - - - - -	4,199
Richelieu, - - - - -	8,175
Elfringham, - - - - -	2,654
Total District of Montreal, - - - - -	40,885
Total District of Three Rivers, - - - - -	10,663
	51,550
District of Quebec, - - - - -	29,338

No. 2.  
Lower Canada  
Petitions: Dis-  
tricts of Quebec,  
&c.

Total to both Petitions - - - - - 80,888

Forwarded since, to 17th February 1828 :

Districts of Montreal and Three Rivers, and District of Quebec, 6,212

Grand Total, 87,090

Chairmen of the several county committees who have certified the appointment of the agents to the Petitioners, viz : Messrs. Neilson, Viger and Cuvillier, members of the Assembly of Lower Canada ;—Fran. Desrivieres, chairman of the petitioners in the county of Montreal ; Frans. Ant. La Rocque, Montreal ; René de la Bruere, county of Kent ; Lnt. Le Roux, county of Leinster ; Pierre Amiot, county of Surrey ; Chs. St. Ours, county of Richelieu ; P. D. Debartzch, county of Richelieu ; Hertel de Rouville, county of Bedford ; François Xavier Malhiot, county of Surrey ; Ignace Raizenne, county of York ; Louis Roy Portelance, Montreal.

District of Montreal, February 1828.

APPENDIX No. 3.

To the Honourable the Knights, Citizens and Burgesses, representing the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled.

The PETITION of the Subscribers, His Majesty's dutiful and loyal Subjects, of British birth or descent, Inhabitants of the Townships of Dunham, Stanbridge, St. Armand, Sutton, Potton, Stanstead, Barnston, Barford, Hereford, Farnham, Brome, Bolton, Hatley, Compton, Clifton, Granby, Shefford, Stukely, Orford, Ascott, Eaton, Newport, Bury, Hampden, Milton, Roxton, Durham, Melborne, Windsor, Shipton, Stoke, Duds-well, Simpson, Kingsley, Grantham, Wickham, Wendover, Brompton, and other Townships and Places situate in the Province of Lower Canada ;

No. 5.  
Petition of the  
Inhabitants of  
the Townships  
on S. E. of St.  
Lawrence, in  
Lower Canad

Humbly Sheweth.

That the number of inhabitants, of british birth or descent, now residing in the province of Lower Canada, exceeds 80,000 souls, a greater amount than all the inhabitants of the country when it first became a colony of England.

That the townships of Lower Canada from a large portion of the territorial extent of the

No. 5.  
Petition of the  
Inhabitants of  
the Townships  
on S. E. of St.  
Lawrence, in  
Lower Canada.

the province, separate from the seignories or old French feudal grants thereof, and are inhabited by a population of upwards of 40,000 souls, almost wholly composed of persons of British birth or descent, whose numbers are continually augmenting, besides their natural increase, by the desirable accession of emigrants from the mother country.

That, so long as the year 1763, His Majesty's proclamation assured to his subjects, coming to settle upon the then ungranted lands in Canada, the benefit of the laws of his realm of England. That the assurances of this proclamation were as to them sanctioned and confirmed, by the exception contained in the Statute, 14th Geo. 3, which declared that the provisions of the said Act, establishing French laws, should not extend nor be construed to extend to lands to be granted in free and common soccage, the exclusive tenure of the townships.

That no provincial enactments or provisions were made towards carrying into practical operation the valued privileges of the English laws, which had been as aforesaid assured to them; although the wishes of the townships in that particular were loudly expressed and universally known. That in consequence, the Imperial Parliament, in its beneficence, was pleased in the sixth year of the reign of His present Majesty to pass an Act, not less called for by a due regard to national honour, than by a sense of justice to your Petitioners; wherein any doubts too *scrupulously* entertained in respect to the construction of the aforesaid statute 14th Geo. 3, have been happily removed, in relation to the townships and the English laws regarding tenures established therein.

That it hath come to the knowledge of your Petitioners that numbers of the inhabitants of the seignories, influenced by the French Canadian leaders of the House of Assembly, are now petitioning the Imperial Legislature for the repeal of the before-mentioned statute of the sixth year of His present Majesty, commonly called the "Canada Tenures Act."

That your Petitioners, for the blessing conferred by the said statute of the Imperial Parliament, in bestowing upon them the benefit of the laws of their parent country, and preserving the ties and character which connect them with the empire to which they belong, feel a weight of gratitude greater than they can express, and will at all times be ready to defend *those ties* against every invader or *enemy* either in *Lower Canada* or elsewhere. Their gratitude is also deeply felt on behalf of their countrymen the emigrants from Great Britain, who may now be induced in great numbers to settle among them, but who, without the benefit of English laws, would for the most part have been led to seek an asylum elsewhere, as they have unhappily for this province too often done in times past.

That in order to give practical effect and scope to the benefits conferred upon them by the recent Act of the Imperial Parliament, and also to prevent the machinations of the French Canadian House of Assembly to their ruin, it becomes necessary that the townships, which have never hitherto been represented in the Provincial Legislature, notwithstanding their repeated solicitations in that behalf, should be divided into counties entitled to send members to the Provincial Legislature, and that competent courts and jurisdictions should be established among them for the administration of justice in conformity to the laws which have been beneficently accorded to them by the mother country.

That while your Petitioners were waiting patiently the effect of their repeated solicitations for redress of grievances to be administered by the Provincial Legislature, the Legislative Council, in the session of the year 1825, by recommendation of His Excellency the Governor-in-Chief, passed a bill of the most salutary description, introducing into these townships the English law of dower and conveyance, and making encumbrances special, establishing also public offices therein for the enregistration of all mutations of real property and of all mortgages on the same.

That though this bill, carefully abstaining from every unnecessary innovation, neither disturbed the routine nor touched the customs of the French Canadians in the seignories, the House of Assembly, evincing its characteristic disregard for the claims of your Petitioners, neglected to proceed upon the said bill when sent down for concurrence; and they are therefore constrained to pray the interference of the Imperial Parliament for the establishment of register offices as aforesaid.

Your Petitioners therefore humbly pray that your honourable House will be pleased to pass an Act to authorize the erection of the townships into a competent number of counties according to extent of territory, to the end that the interest of the population of  
emigrant

emigrant settlers may be provided for by a due proportion of representation equivalent to their just claims; and also to establish such competent number and description of courts and jurisdictions as the interests of these extensive sections of the province and the ends of justice may require. And further, to establish public offices of registry, for the en- registration of all Acts and deeds conveying or encumbering real property therein.

No. 3.  
Petition of the  
Inhabitants of  
the Townships  
on S. E. of St.  
Lawrence, in  
Lower Canada.

And your Petitioners, as in duty bound, will ever pray, &c. &c.

APPENDIX No. 4

INDENTURE for conveying a certain Tract of Land in the County of Montgomery, now the County of Herkimer.

No. 4.  
Indenture for  
conveying land  
in the county of  
Montgomery.

THIS Indenture made the thirteenth day of May, in the year of our Lord one thousand seven hundred and ninety-six, between  
York, counsellor of law, and  
of the same place, counsellor of law, and  
part; and  
his wife, and  
his wife, of the first  
of the city of London, in the Kingdom of Great Britain,  
and  
merchant, of the other part; Witnesseth, that the said  
and  
his wife, for and in con-  
sideration of the sum of three thousand two hundred pounds, lawful money of the state of  
New York, to them in hand paid, at or before the ensealing and delivery of these presents,  
by the said  
the receipt whereof is hereby confessed and acknow-  
ledged; and the said  
and his heirs, executors and administrators,  
for ever released and discharged from the same by these presents; Have granted, bargained,  
sold, aliened, remised, released, conveyed, assured, enfeoffed, and confirmed, and, by these  
presents, do graunt, bargain, sell, alien, remise, release, convey, assure, enfeoff and con-  
firm, fully, freely and absolutely, unto the said  
and his  
heirs and assigns for ever, all that certain tract of land situate in the county of Montgo-  
mery, now the county of Herkimer, being part of the Indian purchase made by  
and their associates, under a license  
granted to  
and  
and known and dis-  
tinguished, in a division of the said purchase into townships, by the name of Township  
Number Forty, beginning at the most westerly corner of township Number Six, in the  
north east bounds of township Number Five and running thence along the said north east  
bounds of township Number Five, and the north east bounds of township Forty-one, north  
thirty degrees, west five hundred and twenty-five chains, thence north sixty degrees,  
east four hundred and eighty chains, thence south thirty degrees, east five hundred and  
twenty-five chains, and then south sixty degrees, west four hundred and eighty chains, to  
the place of beginning, (all which courses are run as the needle pointed in the year one  
thousand seven hundred and seventy-two), containing twenty-five thousand two hundred  
acres, granted by the people of the state of New York to  
by  
letters patent, bearing date the fourteenth day of August, in the year of our Lord one  
thousand seven hundred and eighty six; subject nevertheless to the exceptions, reserva-  
tions and conditions in the said letters patent contained: Together with all and singular  
the appurtenances, privileges and advantages whatsoever, unto the said above-mentioned  
and described premises in any wise appertaining or belonging, and the reversion or re-  
versions, remainder and remainders, rents, issues and profits thereof; and also, all the  
estate, right, title, interest, property, claim and demand whatsoever, as well in law as in  
equity of the said parties of the first part; and also all dower and right of dower, of, in  
and

No. 4.  
Indenture for  
conveying land  
in the county of  
Montgomery.

and to the same, and every part and parcel thereof, with the appurtenances: To have and to hold the above granted, bargained and described premises, with the appurtenances, unto the said \_\_\_\_\_ and his heirs and assigns, for their own proper use, benefit and behoof for ever. And the said \_\_\_\_\_ and \_\_\_\_\_ for themselves, their heirs, executors and administrators, do covenant, promise, grant and agree, to and with the said \_\_\_\_\_ and his heirs and assigns, that the above granted premises, and every part and parcel thereof, with the appurtenances, now are and for ever hereafter should be and remain unto the said \_\_\_\_\_ and his heirs and assigns, free and absolutely clear, discharged and unincumbered, of and from all former and other titles, charges, estates or incumbrances, of what nature and kind soever, had, made, committed, done or suffered, or to be made, committed, done or suffered by the said \_\_\_\_\_ and \_\_\_\_\_ or either of them, or their heirs and assigns, or by any other person or persons whomsoever, any thing having or claiming in the premises. And also, that the said \_\_\_\_\_ and \_\_\_\_\_ and their heirs and all every other person or persons whomsoever, lawfully or equitably deriving any estate, right, title or interest of, in or to the herein before granted premises by, from, under or in trust for them, shall and will, at any time or times hereafter, upon the reasonable request of the said \_\_\_\_\_ and at the proper costs and charges, in the law, of the said \_\_\_\_\_ or his heirs and assigns, make, do and execute, or cause or procure to be made, done and executed, all and every such further and other lawful and reasonable conveyances and assurances in the law, for the better and more effectually vesting and confirming the premises hereby intended to be granted, in and to the said \_\_\_\_\_ his heirs or assigns for ever, as by the said \_\_\_\_\_ or his heirs or assigns, or his or their counsel, learned in the law, shall be reasonably devised, advised or required: And the said \_\_\_\_\_ and \_\_\_\_\_ for them and their heirs, executors and administrators, will warrant, and by these presents for ever defend the above described and released premises, and every part and parcel thereof, unto the said \_\_\_\_\_ and his heirs and assigns, absolutely for ever.

In witness whereof, the parties to these presents, have hereunto interchangeably set their hands and seals the day and year first above written.

(Signed)

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Signed, sealed and delivered  
in the presence of

\_\_\_\_\_  
 \_\_\_\_\_

INDORSEMENTS.

State of New York, ss: Be it remembered, that on the thirteenth day of May, in the year of our Lord one thousand, seven hundred and ninety six, personally appeared before me \_\_\_\_\_ one of the Masters in Chancery of the State of New York, the within named \_\_\_\_\_ and \_\_\_\_\_ his wife, and \_\_\_\_\_ and \_\_\_\_\_ his wife, who severally acknowledged,

ledged, that they respectively signed, sealed, executed and delivered the within deed and release as and for their voluntary act and deed, to and for the uses and purposes therein mentioned; and I having examined the said \_\_\_\_\_ the wife of the \_\_\_\_\_  
 said \_\_\_\_\_ and the said \_\_\_\_\_ the wife of the said \_\_\_\_\_  
 separately and apart, and privately and apart from their said \_\_\_\_\_  
 respective husbands, they severally confessed and acknowledged that they had executed the said deed freely and without any fear or compulsion of or from their said respective husbands, and there being no material rasures or interlineations therein, except the one noted, I do allow the same to be recorded.

No. 4.  
 Indenture for conveying land in the county of Montgomery.

(Signed) \_\_\_\_\_

Received this thirteenth day of May, in the year of our Lord one thousand seven hundred and ninety-six, the sum of three thousand and two hundred pounds from the within named \_\_\_\_\_ the within grantee, being the consideration money within mentioned; in witness whereof we have hereunto set our hands.

(Signed) \_\_\_\_\_

Witnessed by \_\_\_\_\_

Recorded in the Secretary's Office of the State of New York, in book of deeds endorsed M R G page 362, &c. this seventeenth day of May, one thousand seven hundred and ninety six.

(Signed) \_\_\_\_\_ D. Secy.

APPENDIX, No. 5.

No. 5.  
 Letters Patent to

LETTERS PATENT to \_\_\_\_\_, Township No. 40, in  
 and \_\_\_\_\_ Purchase, in 1772, continuing 25,200 acres.

THE People of the State of New York, by the Grace of God, Free and Independent: To all to whom these present shall come, greeting: Know ye, that we have given, granted and confirmed, and by these presents, do give, grant and confirm unto \_\_\_\_\_ all that certain tract of land situate in the county of Montgomery, being part of the Indian purchase made by \_\_\_\_\_ and \_\_\_\_\_ and their associates, under a license granted to \_\_\_\_\_ and \_\_\_\_\_ and known and distinguished, in a division of the said purchase into townships, by the name of township Number Forty. Beginning at the most westerly corner of township Number Six, in the north-east bounds of township Number Five, and running thence along the said north-east bounds of township Number Five, and the north-east bounds of township Number Forty one, north thirty \_\_\_\_\_ degrees, west five hundred and twenty five chains; then north sixty degrees, east four hundred and eighty chains; then south thirty degrees, east five hundred and twenty-five chains; and then south sixty degrees, west four hundred and eighty chains, to the place of beginning, (all which courses are run as the needle pointed in the year 1772), containing twenty-five thousand two hundred acres; together with all and singular the rights, hereditaments and appurtenances to the same belonging, or in any wise appertaining, excepting and reserving to ourselves all gold and silver mines, and five acres of every hundred acres of the said tract of land for highways: To have and to hold the above described and granted premises unto the said \_\_\_\_\_ his heirs and assigns, as a good and indefeasible estate of inheritance, for ever; on condition, nevertheless, that within the term of seven years, to be computed from the first day of \_\_\_\_\_ January

No. 5.  
Letters Patent  
to

January next ensuing the date hereof, there shall be one actual settlement made on the said tract of land hereby granted for every six hundred and forty acres thereof, otherwise these our letters patent, and the estate hereby granted, cease, determine and become void: In testimony whereof, we have caused these our letters to be made patent, and the great seal of our said State to be hereunto affixed. Witness our trusty and well-beloved

Esquire, Governor of our said State, General and Commander in Chief of all the militia, and Admiral of the Navy of the same, at our city of New York, this fourteenth day of August, in the year of our Lord one thousand seven hundred and eighty six, and in the eleventh year of our independence.

Examined, approved of by the Commissioners of the Land office, and passed the Secretary's office, the 14th day of August 1786.

\_\_\_\_\_, Secretary.

SEAL:

A RISING SUN: EXCELSIOR, encircled with "THE GREAT SEAL OF THE STATE OF NEW YORK."	A ROCK Rising out of the Sea, encircled with "FRUSTRA, 1772."
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APPENDIX No 6.

No. 6.  
Conveyance for  
38900 Acres of  
Land.

CONVEYANCE for 38,900 Acres of Land, in the Counties of Washington and Clinton, in the State of New-York; July 1769.

THIS Indenture, made the sixteenth day of June, in the year of Our Lord one thousand seven hundred and ninety five, between \_\_\_\_\_ and \_\_\_\_\_ his wife, of the first part, and \_\_\_\_\_ of the city of London, in the Kingdom of Great Britain, of the other part; Witnesseth, that the said parties of the first part, for and in conderation of the sum of ten thousand pounds lawful money of the State of New York to them in hand paid, at or before the en sealing and delivery of these presents, by the said the receipt whereof is hereby confessed and acknowledged; Have granted, bargained, sold, aliened, remised, released, conveyed, assured, enfeoffed and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey, assure, enfeoff and confirm, fully, freely and absolutely unto the said \_\_\_\_\_ his heirs and assigns forever, all those two certain tracts of land situate, lying and being in the counties of Washington and Clinton, in the State of New York, the first beginning at the north-west or most northerly corner of tract of one thousand acres of land granted to \_\_\_\_\_ the twelfth day of July one thousand seven hundred and sixty-nine, and running thence west four hundred and eighty chains, then south four hundred and eighty chains, then east two hundred and sixty-eight chains, to a tract of fourteen hundred and forty acres of land surveyed for \_\_\_\_\_ then along the same north fifty two degrees, west eighty-eight chains, north thirty-eight degrees, east one hundred and twenty chains, south fifty two degrees, east one hundred and twenty chains, and south thirty-eight degrees, west \_\_\_\_\_ west

west ninety-six chains, then east one hundred and twelve chains, to Lake George, then northerly along the same to a tract of six hundred acres of land granted to  
then along the same north fifty-two degrees and twenty minutes, west eighty-four chains, and north thirty-seven degrees and forty minutes, east eighty chains, to a tract of land of eight hundred acres granted to the said

No. 6.  
Conveyance for  
38900 Acres of  
Land.

then along the same north fifty-two degrees and twenty minutes, west thirty-three chains and forty-five links, north thirty-seven degrees and forty minutes, east eighty-nine chains and forty-five links south fifty two degrees and twenty minutes, east eighty nine chains and forty five links and south thirty seven degrees and forty minutes, west eighty-nine chains and forty-five links, to the said tract of six hundred acres, then along the same south fifty-two degrees and twenty minutes, east thirty chains to the said lake, then northerly along the same to a tract of land granted to

then along the same south eighty-eight degrees, west four chains and north five degrees, east one hundred and fifty one chains, to a tract of land granted to  
then along the same, and along a tract granted to north eighty-five degrees, west eighty chains, and north five degrees, east eighty chains, to the said tract granted to  
then along the same north sixty two degrees, west one hundred and ten chains, and north twenty eight degrees, east fifty-eight chains, to the place of beginning; excepting and reserving out of the same so much of the patents granted to and as is comprehended within the same, containing, exclusive of the said exception and reservation, twenty-two thousand and one hundred acres. The second tract, beginning at the south-east corner of the said first tract on the west shore of the said Lake George, and running thence west one hundred and twelve chains to the tract of fourteen hundred and forty acres of land surveyed for

then along the same south thirty-eight degrees, west twenty-four chains, and north fifty two degrees, west thirty-two chains, to the said first tract, then along the south bounds thereof, and the same continued west two hundred and eighty-eight chains, then south four hundred and eighty chains, then east twenty-one chains, to a tract of land granted to  
then along the same

north forty-two degrees and twenty minutes, east sixty-three chains, north twenty degrees and thirty minutes, east sixty-six chains, south seventy-four degrees and thirty minutes, east fifty chains, south twenty-three degrees and thirty minutes, west sixty-six chains, and south forty-two degrees and twenty minutes, west twelve chains, then east two hundred and sixty-five chains, to the said Lake George, then northerly along the same to lands granted to  
then along the same north fifty-two degrees and twenty minutes,

west one hundred and twenty-four chains, north thirty-seven degrees and forty minutes, east sixty-one chains and fifty links, north fifty-two degrees and twenty minutes, west one hundred chains, north thirty-seven degrees and forty minutes, east one hundred chains, south fifty-two degrees and twenty minutes, west one hundred chains, south thirty-seven degrees and forty minutes, west fourteen chains, and south fifty-two degrees and twenty minutes, east sixty chains, to the said Lake George, then northerly along the same to a tract of land granted to  
then along the same, and along a tract of land

granted to north thirty-six degrees and thirty minutes, west sixty-six chains, south eighty-eight degrees and thirty minutes, west sixteen chains, north one degree and thirty minutes, west seventeen chains, and north seventy-one degrees, east sixty chains, to the said Lake, and then northerly along the same to the place of beginning, containing seventeen thousand and six hundred acres; which said two tracts of land were granted to the said the said and by letters patent bearing

date the third day of March, in the year of our Lord one thousand seven hundred and ninety five, herewith delivered up; also a deed of conveyance from the said

and his wife, to the said and bearing date the twenty-second day of April, and twentieth day of May in this present year, likewise herewith delivered up, reference to the said patent and deed being had will more fully appear: and also excepting and reserving out of the said two tracts of land, one tract if six hundred acres conveyed to and; also one other tract of two hundred acres conveyed to the said and subject nethertheless to the conditions, covenants and agreements expressed in the patent aforesaid: Together with all and singular the appurtenances, privileges and advantages whatsoever, unto the said abovementioned and described premises in any wise appertaining or belonging, and the reversion or reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate,

right

No. 6.  
Conveyance for  
38900 Acres of  
Land.

right, title, interest, property, claim and demand whatsoever of the said parties of the first part: To have and to hold the said two tracts of land with the appurtenances (subject to the exceptions, reservations and conditions aforesaid) to the said his heirs, and assigns, for the only proper use, benefit and behoof of the said his heirs, executors, administrators or assigns for ever. And the said parties of the first part for themselves, their heirs, executors and administrators, doth hereby covenant, promise and agree to and with the said his heirs, executors, administrators and assigns, that they the said parties of the first part, at the time of the ensealing and delivery of these presents, are lawfully seized in their own right of in and to the said two tracts of land hereby conveyed, with the appurtenances, and have in themselves good right, full power and lawful authority to grant and convey the same (with the exceptions and reservations aforesaid) to the said his heirs and assigns, as of a good, sure, perfect, absolute and indefeasible estate of inheritance in the law in fee simple, and also that he the said his heirs or assigns, shall and may from time to time, and at all times hereafter, peaceably and quietly occupy, possess and enjoy the before-described premises, with the appurtenances, subject to the exceptions, conditions and reservations aforesaid. And the said parties of the first part, for themselves, their heirs, executors and administrators, engage to warrant, and by these presents for ever to defend the above-described and released premises, and every part and parcel thereof. In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

\_\_\_\_\_ L. S.  
\_\_\_\_\_ L. S.

\_\_\_\_\_ L. S.  
\_\_\_\_\_ L. S.

#### INDORSEMENTS.

Be it remembered, that on the seventeenth day of June, one thousand seven hundred and ninety-five, appeared before me \_\_\_\_\_ one of the Masters in Chancery for the State of New York, and \_\_\_\_\_ his wife, and \_\_\_\_\_ and his wife, who severally acknowledged that they signed, sealed and delivered this instrument for the purposes therein mentioned; and the said \_\_\_\_\_ and \_\_\_\_\_ being by me privately and apart examined from their husbands, respectively acknowledged that they had signed, sealed and delivered the same without any threat, fear or compulsion of their said respective husbands; and I having examined the said instrument, and finding no razures or interlineations therein (except those noted) do allow the same to be recorded.

The within Indenture of Release, signed, sealed and delivered in the presence of \_\_\_\_\_

and his wife, \_\_\_\_\_ and \_\_\_\_\_ his wife, to \_\_\_\_\_ conveyance for 38,900 acres land.—16th June 1795.

Recorded in the Secretary's office of the State of New York, in book of deeds endorsed  
M R  
G page 359, &c. this 16th day of May, 1796.

\_\_\_\_\_ D. Secretary.



## APPENDIX No. 7.

POPULATION of Lower Canada; taken from a printed Copy of the Census published in 1827.

Counties.	Townships.	Seignories.	Indians, or Inhabitants of Indian Lands or Villages.	Total Population.	Members of Assembly.	OBSERVATIONS.
1. Gaspé,	4919	1125	381	6425	1	Of the places mentioned in the census referred to, which are in the seignories and which are in the townships of Gaspé is often not stated; but the population, it is supposed, may be estimated as approximating the numbers given for the townships and seignories respectively. This county is believed to be chiefly peopled by emigrants from the British Isles and their descendants, and by its geographical position adapted to form part of New Brunswick.
2. Cornwallis,		20012		21002	2	None of the townships in this County are mentioned in the census.
3. Devon,		11934		11934	2	- - ditto.
4. Hertford,		14044		14044	2	- - ditto.
5. Dorchester,	249	19458		19707	2	Several of the townships in this county are not named in the census.
6. Buckinghamshire,	6450	27032	40	33522	2	The greater part of the townships in this county are not named in the census.
7. Richelieu,	9544	26712		36256	2	Some townships in this county, known to be inhabited, are not named in the census.
8. Bedford,	10782	12672		23654	1	St. Armand (although one of feudal grants) having been settled more than 30 years ago by old loyalists, and having been sold in farms exempt from seignorial rights (an exemption which, however, could not be rendered legal before the passing the Canada Tenures Act,) and having united in the petitions of the townships to the Imperial Parliament, as considering themselves rather to belong to those than the seignorial por-

Counties.	Townships.	Seignories.	Indians or Inhabitants of Indian Lands or Villages.	Total Population.	Members of Assembly.	OBSERVATIONS.
8. Bedford, (continued.)						tions of the province, its population is here added to that of the townships, as is also that of St. Thomas and St. George, or Caldwell's Manor. There are, besides, many English in the seignories.
9. Surrey,		11573		11573	2	There are no townships in this county.
10. Kent,		10890		10890	2	- - ditto.
11. Huntingdon,	5745	31433	2408	39586	2	Among the inhabitants of the seignories in this county many thousands are of British birth or descent.
12. City and County of Montreal,	}	25976 } 11109 }	}	37085	6	There no townships in this county. The census referred to does not distinguish between the English and French inhabitants; but it is estimated that the English inhabitants in the city and county are between 10,000 and 15,000.
13. York.	2876	26913		30096	2	The greater part of the townships in this county are not named in the census. There are several thousands of British origin in the seignories.
14. Effingham,		14921		14921	2	None of the townships appear named in the census of this county.
15. Leinster,	484	19273		19757	2	But one of the townships is named in the census of this county. The seignories contain numbers of English inhabitants.
16. Warwick,	11	15924		15935	2	- ditto.
17. Town of Three Rivers and County of St. Maurice,	}	2906 } 18160 }	}	21066	4	None of the townships are mentioned in the census. The seignories and town contain considerable numbers of English.
18. Hampshire,		13212		13312	4	The map does not represent any townships as being yet laid out in this county.
19. City and County of Quebec,	}	22021 } 6602 }	162	28623	2	The names of the townships in this county are not given in the census. There are many thousands of British origin in the city and county.
20. Northumberland,		11210		11210	2	No names of townships are given.
21. Orleans,		4022		4022	1	This county consists of only one small seignory.
	41110	379272	2991	423373	50	

The *Seignories*, which include the cities and most of the villages, are estimated to contain nearly 50,000 inhabitants of British origin. However, deducting only 45,000 from the seignories as their proportion of inhabitants of British origin, the statement of the population of Lower Canada will stand thus: French population, 334,272; Indians, half-breeds, &c. inhabiting Indian lands, 2,991; English, 86,110; Total, 423,373.

The population of the counties of Orleans, Northumberland, Hampshire, Devon, Quebec, Surrey and Kent, taken together, are by the census numbered at 91,564; but they send seventeen members to the Legislature: while the English population of between 80, and 90,000, its distribution and the state of the representation, can be considered to send only one, viz: from Gaspé; whereas, in the same proportion, it would be entitled to send sixteen. There is, in fact and in truth, no proportionate representation of the respective population of varied interests, including the commercial, which exist in Lower Canada; but it is, in fact, drawn from the feudal and anti-commercial portion of the territory. The ratio of the rate of increase of the English population during the two or three years which have elapsed since the census, has been, and must continue, greater than that of the French, in consequence of immigration; and it is to be recollected that several of the inhabited townships are not noticed in the census.

## APPENDIX No. 8.

RESOLUTIONS relative to the appropriation of the Clergy Reserves, passed by the Commons House of Assembly of Upper Canada, in the 3d Session and 9th Parliament of 7 Geo. IV.; 22d December 1826.

No. 8.  
Resolutions of  
the Commons  
House of As-  
sembly of Up-  
per Canada,  
1826.

Extracted from the Journals, pp. 23, 24.

1.—Resolved, That the despatch of the Right Honourable Earl Bathurst, His Majesty's principal Secretary of State for the Colonies, communicated to this House on the 12th instant by His Excellency the Lieutenant Governor, in answer to the Address to His Majesty of this House at its last session, respecting the clergy reserves, is unsatisfactory to this Assembly, inasmuch as it is silent on a material part of the respectful representation of this House contained in the said Address.

5.—Resolved, That the construction given to the Imperial Act, which appropriates the clergy reserves to individuals connected with the Church of England, and the determination of the clergy of that church to withhold from all other denominations of Protestants residing within the province, the enjoyment of any part of the benefits arising, or which may arise from the lands so set apart, call for the immediate attention of the Provincial Legislature to a subject of such vital interest to the public in general, and that such claim by the Protestant episcopal church is contrary to the spirit and meaning of the 31 Geo. 3, and most injurious to the interests and wishes of the province.

Yeas 28.—Nays 3.—Majority 25.

6th.—Resolved, That a comparatively small proportion of the inhabitants of Upper Canada are members of the Church of England, and therefore ought not in justice to desire the sole enjoyment, by their clergy, of all the advantages which these lands present, to the exclusion of their fellow subjects, although equally loyal and firm in their attachment to His Majesty's Government and the Constitution.

7.—Resolved, That in a thinly inhabited country, such as Upper Canada, where the means of moral instruction to the poor are not easily obtained, it is the bounden duty of the Parliament to afford every assistance within its power towards the support of education.

8.—Resolved, That the present provision for the support of district and common schools is quite inadequate to the wants of the people, and ought by every reasonable exertions to be increased, so as to place within the reach of the poorest inhabitant the advantages of a decent education.

9.—

No. 8.  
Resolutions of  
the Commons  
House of As-  
sembly of Up-  
per Canada,  
1826.

9.—Resolved, That it is the opinion of a great proportion of the people of this province that the clergy lands, in place of being enjoyed by the clergy of an inconsiderable part of the population, ought to be disposed of, and the proceeds of their sale applied to increase the provincial allowance for the support of district and common schools, and the endowment of a provincial seminary for learning, in aid of erecting places of public worship for all denominations of christians.

Yeas 31.—Nays 2.—Majority 29.

Resolved, That the number of the Protestant Episcopal Church in the provinces bears a very small proportion to the number of other Christians, notwithstanding the pecuniary and long and exclusively received from the benevolent society in England by the members of that church, and their pretensions to a monopoly of the clergy reserves.

Yeas.—30 Nays 3.—Majority 27.

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APPENDIX, No. 9.

No. 9.  
Fourth Article  
of Peace, be-  
tween Great  
Britain and  
France on the  
10th Feb. 1763.

THE Fourth Article of the Definitive Treaty of Peace, concluded between the King's of Great Britain and France, on the 10th February in the year 1763; containing the Cession of Canada to the Crown of Great Britain.

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

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

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

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

## APPENDIX, No. 10.

PROCLAMATION of the King of Great Britain, dated 7th October 1763.

By the King.—A Proclamation.

GEORGE R.

WHEREAS We have taken into our Royal consideration the extensive and valuable acquisitions in America secured to our Crown by the late definitive treaty of peace, concluded at Paris the 10th day of February last; and being desirous that all our loving subjects, as well of our kingdoms as of our colonies in America, may avail themselves with all convenient speed of the great benefits and advantages which must accrue therefrom to their commerce, manufactures and navigation; we have thought fit, with the advice of our privy council, to issue this our Royal Proclamation, hereby to publish and declare to all our loving subjects, that we have, with the advice of our said privy council, granted our letters patent under our great seal of Great Britain, to erect within the countries and islands ceded and confirmed to us by the said treaty, four distinct and separate governments, styled and called by the names of Quebec, East Florida, West Florida and Grenada, and limited and bounded as follows, viz:

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

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

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

Fourthly, the Government of Grenada, comprehending the islands of that name, together with the Grenadines, and the islands of Dominica, St. Vincent and Tobago.

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

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

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

And whereas it will greatly contribute to the speedy settling our said new governments, that our loving subjects should be informed of our paternal care for the security of the liberty and properties of those who are and shall become inhabitants thereof, we have thought

No. 10.  
Proclamation  
of the King of  
Great Britain  
dated 7th Octr.  
1763.

No. 10.  
Proclamation of  
the King of  
Great Britain,  
dated 7th Octo-  
ber 1785.

thought fit to publish and declare by this our proclamation, that we have in the letters patent under our Great Seal of Great Britain, by which the said governments are constituted, given express power and direction to our governors of our said colonies respectively, that so soon as the state and circumstances of the said colonies will admit thereof, they shall, with the advice and consent of the members of our council, summon and call general assemblies within the said governments respectively, in such manner and form as is used and directed in those colonies and provinces in America, which are under our immediate government; and we have also given power to the said governors, with the consent of our said councils and the representatives of the people, so to be summoned as aforesaid, to make, constitute and ordain laws, statutes and ordinances for the public peace, welfare and good government of our said colonies, and of the people and inhabitants thereof, as near as may be agreeable to the laws of England, and under such regulations and restrictions as are used in other colonies; and in the mean time, and until such assemblies can be called as aforesaid, all persons inhabiting in or resorting to our said colonies may confide in our royal protection for the enjoyment of the benefit of our laws of our realm of England; for which purpose we have given power under our Great Seal to the governors of our said colonies respectively, to erect and constitute, with the advice of our said council respectively, courts of judicature and public justice within our said colonies, for the hearing and determining of causes, as well criminal as civil, according to law and equity, and as near as may be agreeable to the laws of England, with liberty to all persons who may think themselves aggrieved by the sentence of such courts, in all civil causes, to appeal, under the usual limitations and restrictions, to us in our privy council.

We have also thought fit, with the advice of our privy council as aforesaid, to give unto the governors and councils of our said three new colonies upon the continent, full power and authority to settle and agree with the inhabitants of our said new colonies, or any other persons who shall resort thereto, for such lands, tenements and hereditaments as are now or hereafter shall be in our power to dispose of, and them to grant to any such person or persons upon such terms, and under such moderate quit-rents, services and acknowledgements as have been appointed and settled in other colonies, and under such other conditions as shall appear to us to be necessary and expedient for the advantage of the grantees, and the improvement and settlement of our said colonies.

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

To every person having the rank of a Field Officer,	- - -	5,000 acres.
To every Captain,	- - -	3,000 do.
To ever Subaltern or Staff Officer,	- - -	2,000 do.
To every non-commissioned officer	- - -	200 do.
To every private man,	- - -	50 do.

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

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

of

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

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

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

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

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

No. 10.  
Proclamation  
of the King of  
Great Britain  
dated 7th Octo-  
ber 1785.

No. 10.  
Proclamation  
of the King of  
Great Britain,  
dated 7th Octo-  
ber 1783.

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

Given at our Court of St. James's, the 7th day of October 1763, in the third year of our Reign.—God save the King.

## APPENDIX No. 11.

PROCLAMATION of Sir Alured Clarke, Lieutenant Governor of Canada, dated 7th May 1792.

Alured Clarke :

No. 11.  
Proclamation of  
Sir Alured Clarke,  
dated 7th May  
1792.

GEORGE the Third, by the grace of God of Great Britain, France and Ireland, King, Defender of the Faith, &c. : To all our loving subjects whom these presents may concern : Whereas in pursuance of an Act of Parliament lately made and provided, passed in the thirty-first year of our reign, and of authority by us given for that purpose, our late province of Quebec is become divided into the two provinces of Upper-Canada and Lower Canada, and our Lieutenant-governor of the said province of Lower-Canada, by power from us derived, is authorized, in the absence of our right trusty and well-beloved Guy Lord Dorchester, Captain-general and Governor in Chief of our said province of Lower-Canada, to divide the said province of Lower-Canada into districts, counties, circles, or towns and townships, for the purpose of effectuating the intent of the said act of Parliament, and to declare and appoint the number of representatives to be chosen by each to serve in the Assembly of the said province ; Know ye, therefore, that our trusty and well beloved Alured Clarke, our Lieutenant-governor of our said province of Lower-Canada, in the absence of our said Governor in Chief, hath and by this our proclamation doth divide the said province of Lower-Canada into counties, cities and towns, and declare and appoint the number of the representatives of them, and each of them, to be as hereinafter limited, named, declared and appointed ; that is to say, that the first of the said counties be all that part of the said province on the southerly side of the river of Saint Lawrence, now called the district of Gaspé, as described in our royal proclamation under the great seal of our late province of Quebec, bearing date the twenty-fourth day of July in the twenty-eighth year of our reign ; and that the second of the said counties, to be called Cornwallis, shall comprehend all that part of our said province on the same side of the river St. Lawrence, between the said county of Gaspé and a line running south-east from the westerly angle of a tract of land commonly called the seigniory of Mr. Lauchlan Smith, or St. Ann's, together with the islands of St. Barnaby and Bic, and all other islands in the said river nearest to the said county, and in the whole or in part fronting the same ; and that the third of the said counties, to be called Devon, shall comprehend all that part of our said province on the same side of the said river of St. Lawrence, between the westerly side of the said County of Cornwallis and a line parallel thereto running from the westerly angle of a tract of land commonly called the seigniory of the river Du Sud, together with all the islands in the river St. Lawrence nearest to the said county, and in the whole or in part fronting the same ; and that the fourth of the said counties, to be called Hertford, shall comprehend all that part of our said province on the southerly side of the said river St. Lawrence, between the westerly side of the said county of Devon, and a line parallel thereto running from the north-easterly angle of a tract of land commonly called the seigniory of Lauzon, or the seigniory Point Levy, together with all the islands in the said river St. Lawrence nearest to the said county, and in the whole or in part fronting the same ; and that the fifth of the said counties, to be called Dorchester, shall comprehend all that part of our said province on the southerly side of the said river Saint Lawrence, between the



the westerly side of the said county of Hertford and a line parallel thereto running from the westerly angle of the aforesaid tract of land called the seigniory of Lauzon, or the seigniory of Point Levy, together with all islands in the said river Saint Lawrence nearest to the said county, and in the whole or in part fronting the same; and that the sixth of the said counties, to be called Buckinghamshire, shall comprehend all that part of our said province on the southerly side of the said river St. Lawrence, between the westerly side of the said county of Dorchester and a line parallel thereto running from the north-easterly angle of a tract of land commonly called the seigniory of Sorel, together with all the islands in the said river St. Lawrence (or lake St. Peter) nearest to the said county, and in the whole or in part fronting the same; and that the seventh of the said counties, to be called Richelieu, shall comprehend all that part of our said province on the southerly side of the said river St. Lawrence, between the westerly side of the said county of Buckinghamshire and the following lines, that is to say, a line running south-east from the westerly angle of a tract of land commonly called the seigniory of St. Ours, until the same shall intersect the easterly bank of the river Sorel, otherwise called the river Richelieu or Chambly, thence up the easterly bank of the said river to the north-easterly bounds of a tract of land commonly called the seigniory of Rouville, and thence by a line running south east to the limits of our said province, together with all the islands in the river St. Lawrence (or lake St. Peter) nearest to the said county, and in the whole or in part fronting the same, and together also with all the islands in the river Sorel, Richelieu or Chambly, nearest to the said county, and in the whole or in part fronting the same, including in the said county the tract of land comprehended within the limits of the town or borough of William Henry hereinafter described; and that the eighth of the said counties, to be called Bedford, shall comprehend all that part of our said province on the easterly side of the river Sorel, otherwise called the Richelieu or Chambly, between the said river and the westerly side of the aforesaid county of Richelieu, together with all the islands in the said river Sorel, otherwise called Richelieu or Chambly, nearest to the said county, and in the whole or in part fronting the same; and that the ninth of the said counties, to be called Surrey, shall comprehend all that part of our said province on the southerly side of the river St. Lawrence, between that river and the river Sorel, Richelieu or Chambly, and between the afore-mentioned south-east line running from the westerly angle of the tract of land called the seigniory of St. Ours, and a line parallel thereto running from the westerly angle of a tract of land commonly called the seigniory of Varennes, together with all the islands in the said river St. Lawrence nearest to the said county, and in the whole or in part fronting the same, and together also with all the islands in the river Sorel, Richelieu or Chambly, nearest to the said county, and in the whole or in part opposite thereto on that side; and that the tenth of the said counties, to be called Kent, shall comprehend all that part of our said province on the southerly side of the river St. Lawrence, between that river and the river Sorel, Richelieu or Chambly, and between the westerly side of the said county of Surrey and a line parallel thereto running from the westerly angle of a tract of land commonly called the barony of Longueuil, together with all the islands in the said river St. Lawrence nearest to the said county, and in the whole or in part fronting the same, and together also with all the islands in the said river Sorel, Richelieu or Chambly, nearest to the said county, and in the whole or in part opposite thereto on that side; and that the eleventh of the said counties to be called Huntingdon, shall comprehend all the rest of our said province of Lower Canada on the southerly side of the said river St. Lawrence, together with all the islands in the said river St. Lawrence and in the river Sorel, otherwise called the Richelieu or Chambly, nearest to the said county; and that the twelfth of the said counties, to be called York, shall comprehend all that part of our said province of Lower-Canada on the northerly side of the said river St. Lawrence, between the uppermost limits thereof and a line running west north-west from the south-easterly angle of a tract of land commonly called the seigniory of Dumont, together with the island of Perot and Bizarre, and all the other islands in the rivers St. Lawrence and Ottawa nearest to the said county, and in the whole or in part fronting the same, excepting the islands of Jesus and Montreal; and that the thirteenth of the said counties, to be called Montreal, shall comprehend the island of Montreal, including likewise such part thereof as shall be comprehended within the limits of the city and town of Montreal hereinafter described

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dated 7th May  
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No. 11, described; and that the fourteenth of the said counties, to be called Effingham, shall comprehend all that part of our said province on the northerly side of the rivers St. Lawrence and Ottawa, between the easterly side of the aforesaid county of York and a line parallel thereto running from the south-easterly angle of a tract of land commonly called the seigniory of Terrebonne, together with the island of Jesus, and all the other islands in the said rivers St. Lawrence and Ottawa, in the whole or in part fronting the said county, except the aforesaid island of Montreal; and that the fifteenth of the said counties, to be called Leinster, shall comprehend all that part of our said province on the northerly side of the said rivers St. Lawrence and Ottawa, between the easterly side of the said county of Effingham and a line running north-west from the south-easterly angle of a tract of land commonly called the seigniory of St. Sulpice, together with all the islands in the said rivers St. Lawrence and Ottawa nearest to the said county, and in whole or in part fronting the same; and that the sixteenth of the said counties, to be called Warwick, shall comprehend all that part of our said province on the northerly side of the river St. Lawrence, between the easterly side of the said county of Leinster and a line parallel thereto running from the south-easterly angle of a tract of land commonly called the seigniory of Berthier, together with all the islands in the said river St. Lawrence nearest to the said county, and in the whole or in part fronting the same; and that the seventeenth of the said counties, to be called St. Maurice, shall comprehend all that part of our said province on the northerly side of the river St. Lawrence, between the easterly side of the said county of Warwick and a line parallel thereto running from the south-easterly angle of a tract of land commonly called the seigniory of Batiscan, together with all the islands in the said river St. Lawrence nearest to the said county, and in the whole or in part fronting the same, including within the same county the tract of land comprehended within the limits of the town and borough of Three-Rivers hereinafter described; and that the eighteenth of the said counties, to be called Hampshire, shall comprehend all that part of our said province on the northerly side of the river St. Lawrence, between the easterly side of the said county of St. Maurice and a line parallel thereto running from the south-westerly angle of a tract of land commonly called the seigniory of St. Gabriel, together with all the islands in the said river St. Lawrence nearest to the said county, and in the whole or in part fronting the same; and that the nineteenth of the said counties, to be called Quebec, shall comprehend all that part of our said province on the northerly side of the river St. Lawrence, between the easterly side of the said county of Hampshire and a line running north north-west from the south-westerly angle of a tract of land commonly called the seigniory of Beaupré, near the mouth of the river Montmorency, together with all the islands in the said river Saint Lawrence nearest to the said county, and in the whole or in part fronting the same (except the island of Orleans) including within the said county the tract of land comprehended within the limits of the city and town of Quebec hereinafter described; and that the twentieth of the said counties, to be called Northumberland, shall comprehend all the rest of our said province on the northerly side of the river St. Lawrence and on the easterly side of the said county of Quebec, together with the island of Coudre and all the other islands in the said river St. Lawrence, nearest to the said county, and in the whole or in part fronting the same, except the island of Orleans; and that the twenty-first of the said counties, to be called Orleans, shall comprehend the said island of Orleans: And that the first of the said cities, to be called (as heretofore) the city and town of Quebec, shall comprehend all that tract or promontory of land (being part and parcel of the aforesaid county of Quebec) between the rivers of St. Lawrence and St. Charles, bounded in the rear by a right line running along the easterly front of the convent called the General Hospital, and continued from river to river; and that the said city and town of Quebec be, and the same is hereby declared to be divided into two parts, to be called respectively the Lower Town and the Upper Town, and that the said Lower Town shall comprehend all that part of the said tract or promontory of land situate below the hill called Cape Diamond, and the fortifications and high ground beyond them, including both sides of the road passing the intendant's Palace and St. Roc, until the said road shall meet the aforementioned rear line continued from the easterly front of the General Hospital aforesaid, together with the ground up Mountain Street, on the easterly side thereof as high as the ground of the Bishop's Palace, not including the same, and on the westerly side of Mountain Street as high as the alley leading to the old Chateau of St. Lewis,

Lewis, from the head of the steps opposite to the gate of the said Bishop's Palace; and that the said Upper Town shall comprehend all the rest of the said tract or promontory; of the second of the said cities to be called (as heretofore) the city and town of Montreal, shall comprehend all that tract or parcel of land (being part and parcel of the aforesaid county of Montreal) bounded in front by the river Saint Lawrence, and in the rear by a line parallel to the general course of the fortification walls on the rear of the said town, at the distance of 100 chains from the gate commonly called the St. Lawrence Gate, and bounded on the easterly or lowermost side by a line running parallel to the general course of the fortification walls on the easterly or lowermost side of the said town, at the distance of 100 chains from the gate towards the Quebec Suburbs commonly called the Quebec Gate, and on the westerly or uppermost side by a line running parallel to the general course of the fortification walls on the easterly or uppermost side of the said town, at the distance of 100 chains from the gate towards the St. Anthony suburbs commonly called the Recollet's Gate, and that the said city and town of Montreal be, and the same is hereby declared to be divided into two parts, to be called respectively the Easterly Ward and Westerly Ward, and that the said Easterly Ward shall comprehend all the easterly or lowermost part of the said tract above described, bounded on the westerly or uppermost side by a line running through the middle of the main street of the St. Lawrence suburbs and the continuation thereof, and through the middle of the street called the Congregation Street, Notre-Dame Street, and along the middle of the same westerly to the middle of St. Joseph Street, and thence down the middle of St. Joseph Street to the river; and that the said Westerly Ward shall comprehend all the rest of the said tract or parcel of land within the limits above described: And that the first of the said towns or boroughs, to be called the town or borough of Three-Rivers, shall comprehend all that tract or parcel of land (being part and parcel of the aforesaid county of St. Maurice) bounded in the front by the river St. Lawrence, and in the rear by a line parallel to the general course of the said front, at the distance of 160 chains from the westerly point of the mouth of the river of St. Maurice, on the easterly side by the said river St. Maurice, and on the westerly side by a line rectangular to the aforesaid rear line, running from a point therein at the distance of 160 chains from the westerly bank of the said river of St. Maurice, until it strikes the said river St. Lawrence; and that the second and last of the said towns or boroughs, to be called the town or borough of William Henry, shall comprehend all that tract or parcel of land (being part and parcel of the aforesaid county of Richelieu) bounded in front by the river Sorel, otherwise called the river Richelieu or Chambly, in the rear by a line parallel to the easterly side of the Royal-square of the said town, at the distance of 120 chains therefrom, on the northerly side by the river St. Lawrence and on the southerly side by a line parallel to the southerly side of the Royal-square of the said town, at the distance of 120 chains therefrom. And know ye also, that our said Lieutenant-governor hath also declared and appointed, and doth hereby declare and appoint, that the several counties of Cornwallis, Devon, Hertford, Dorchester, Buckinghamshire, Richelieu, Surrey, Kent, Huntingdon, York, Montreal, Effingham, Leinster, Warwick, St. Maurice, Hampshire, Quebec and Northumberland aforementioned, shall and may be represented in the Assembly of the said province, by two members or representatives, to be duly chosen in and for each of the same counties respectively, and the counties of Gaspé, Bedford and Orleans, by only one member or representative for each of the said counties respectively; and the cities or towns of Quebec and Montreal respectively by four members or representatives for each of the said cities or towns, to wit, two for each subdivision thereof respectively, and the town or borough of Three-Rivers by two members or representatives for the said town or borough, and the town or borough of William Henry by only one member or representative for the said town or borough; of which our loving subjects and all others concerned are to take due notice, and govern themselves accordingly. In testimony whereof, we have caused these our letters to be made patent, and the great seal of our said province of Lower Canada to be hereunto affixed. Witness our trusty and well-beloved Alured Clarke, esquire, our Lieutenant-governor and Commander in Chief of our said province of Lower-Canada, and Major-general commanding our forces in North America, &c. &c. &c.; at our Castle of St. Lewis, in the city of Quebec, this 7th day of May, in the year of our Lord 1792, and in the 32d year of our reign.

No. 11  
Proclamation of  
Sir Alur. Clarke,  
dated 7th May  
1792.

*Hugh Finlay, Acting Secretary.*

A. C.

AP-

## APPENDIX, No. 12.

No. 12.  
Act to provide  
for increasing  
the Representa-  
tives of the Com-  
mons of Upper-  
Canada.

AN ACT to provide for increasing the Representation of the Commons of the Province of Upper Canada, in the House of Assembly ;

[Passed 7th March 1820.]

WHEREAS from the rapid increase of the population in this province, the representation thereof in the Commons House of Assembly is deemed too limited ; Be it therefore enacted, by the King's most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, intituled, " An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, intituled, " An Act for making more effectual provision for the Government of the Province of Quebec in North America," and to make further provision for the Government of the said Province," and by the authority of the same, that so much of the several laws now in force as regulate the number of representatives to serve in the Provincial Parliament, be and the same is hereby repealed.

2. And be it further enacted, by the authority aforesaid, that from and after the end of the present Parliament, each and every county now formed or organized, or which shall or may hereafter be formed or organized, the population of which shall amount to one thousand souls, shall be represented in the Provincial Parliament, by one member ; and when the population of such county or counties as aforesaid shall amount to four thousand souls, the said county or counties shall be represented by two members ; and that each and every town in which the quarter sessions for the district are or may by law be holden, and in which there shall be one thousand souls, shall be represented by one member.

3. And be it further enacted, by the authority aforesaid, that the population required to be contained in each and every town or county for the purposes aforesaid, shall be ascertained by the returns of the several town clerks of the number of souls in the several towns and townships of this province, certified copies of which returns the clerk of the peace of the district in which such town, township or county, shall or may be situated ; is hereby required to transmit to the office of the Governor, Lieutenant-Governor, or person administering the government of this province.

4. And be it further enacted, by the authority aforesaid, that whenever an university shall be organized and in operation as a seminary of learning in this province, and in conformity to the rules and statutes of similar institutions in Great Britain, it shall and may be lawful for the Governor, Lieutenant Governor or person administering the government of this province for the time being, to declare by proclamation the tract of land appendent to such university, and whereupon the same is situated, to be a town or township by such name as to him shall seem meet, and that such town or township so constituted shall be represented by one member : Provided always, nevertheless, that no person shall be permitted to vote at any such election for a member to represent the said university in Parliament, who, besides the qualification now by law required, shall not also be entitled to vote in the convocation of the said university.

5. And be it further enacted, by the authority aforesaid, that it shall and may be lawful for the Governor, Lieutenant Governor, or person administering the government of this province, to issue writs of election for members to serve in the Commons House of Assembly for such counties and towns as aforesaid, and for the said university, in like manner as is provided by the eighteenth clause of an Act passed in the thirty-first year of His Majesty's Reign, intituled, " An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, intituled, " An Act for making more effectual provision for the government of the province of Quebec in North America," and to make further provision for the government of the said province."

6. Provided always, and be it further enacted, by the authority aforesaid, that nothing in this Act contained shall extend or be construed to extend to lessen the number of members

members now returned for any county or counties under the authority of any law heretofore in force in this province, or to make necessary the issuing of any new writ of election during the continuance of any Parliament, by reason of the increase of inhabitants in any town or county since the then last preceding general election.

7. And be it further enacted, by the authority aforesaid, that when any county now formed or hereafter to be formed shall contain less than one thousand souls, the said county or counties shall be attached to the next adjoining county of the district in which there shall be the smallest number of souls.

8. And be it further enacted, by the authority aforesaid, that the number of souls residing in any town as aforesaid, shall be ascertained and distinguished, in the return of the town clerk of the township in which such town shall be situated, from the number of souls of such township.

9. And be it further enacted, by the authority aforesaid, that no person qualified to vote in any town as aforesaid, shall be allowed to vote in the county in which such town is situated upon the same freehold which may qualify him to vote for a member to represent the said town.

10. And be it further enacted, by the authority aforesaid, that the number of souls contained in any town which may hereafter elect a member as aforesaid, shall not be considered as a part of the number of souls required to give the county in which such town shall be situated, two members.

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## APPENDIX, No. 13.

UNIVERSITY of King's College at York, in Upper Canada.

## THE CHARTER, &amp;c.

GEORGE The Fourth, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, and so forth; To all to whom these presents come, greeting:—

Whereas the establishment of a college within our province of Upper Canada in North America, for the education of youth in the principles of the Christian Religion, and for their instruction in the various branches of science and literature which are taught in our universities in this Kingdom, would greatly conduce to the welfare of our said province; and whereas humble application hath been made to us by many of our loving subjects in our said province that we would be pleased to grant our royal charter for the more perfect establishment of a college therein, and for incorporating the members thereof for the purposes aforesaid: Now know ye, that we have taken the premises into our royal consideration, and duly weighing the great utility and importance of such an institution, have of our special grace, certain knowledge and mere motion, ordained and granted, and do by these presents, 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 hereinafter directed, for the education and instruction of youth and students in arts and faculties, to continue for ever to be called "King's College."

And we do hereby declare and grant that our trusty and well beloved the Right Reverend Father in God, Charles James, bishop of the diocese of Quebec, or the bishop for the time being of the diocese in which the said town of York may be situate, on any future division or alteration of the said present diocese of Quebec, shall for us and on our behalf be visitor of the said college; and that our trusty and well beloved Sir Peregrine Maitland, our Lieutenant Governor of our said province, or the Governor, Lieutenant

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tenant Governor or other person administering the government of our said province for the time being, shall be the Chancellor of our said college.

And we do hereby declare, ordain and grant, that there shall at all times be one president of our said college, who shall be a clergyman in holy orders of the united church of England and Ireland; and that there shall be such and so many professors in different arts and faculties within our said college, as from time to time shall be deemed necessary or expedient, and as shall be appointed by us or by the chancellor of our said college in our behalf, and during our pleasure.

And we do hereby grant and ordain that the Reverend John Strachan, Doctor in Divinity, Archdeacon of York, in our said province of Upper Canada, shall be the first president of our said college, and the Archdeacon of York, in our said province, for the time being, shall by virtue of such his office, be at all times the president of the said college.

And we do hereby, for us and our heirs and successors, will, ordain and grant, that the said chancellor and president, and the said professors of our said college, and all persons who shall be duly matriculated into and admitted as scholars of our said college, and their successors for ever, shall be one distinct and separate body politic and corporate in deed and in name, by the name and style of "the Chancellor, President and Scholars of King's College, at York in the Province of Upper Canada," and that by the same name they shall have perpetual succession and a common seal, and that they and their successors shall from time to time have full power to alter, renew or change such common seal at their will and pleasure, and as shall be found convenient; and that by the same name they the said chancellor, president and scholars, and their successors from time to time, and at all times hereafter, shall be able and capable to have, take, receive, purchase, acquire, hold, possess, enjoy and maintain, to and for the use of the said college, any messuages, lands, tenements and hereditaments of what kind, nature or quality soever, situate and being within our said province of Upper Canada, so as that the same do not exceed in yearly value the sum of fifteen thousand pounds sterling above all charges, and moreover to take, purchase, acquire, have, hold, enjoy, receive, possess and retain all or any goods, chattles, charitable or other contributions, gifts or benefactions whatsoever.

And we do hereby declare and grant that the said chancellor, president and scholars, and their successors by the same name, shall and may be able and capable in law to sue and be sued, implead and be impleaded, answer and be answered, in all or any court or courts of record within our United Kingdom of Great Britain and Ireland, and our said province of Upper Canada, and other our dominions, in all and singular actions, causes, pleas, suits, matters and demands whatsoever of what nature or kind soever, in as large, ample and beneficial a manner and form as any other body politic and corporate, or any other our liege subjects being persons able and capable in law, may or can sue, implead or answer, or be sued, impleaded or answered in any manner whatsoever.

And we do hereby declare, ordain and grant, that there shall be within our said college or corporation, a council, to be called and known by the name of "the College Council;" and we do will and ordain that the said council shall consist of the chancellor and president for the time being, and of seven of the professors in arts and faculties of our said college, and that such seven professors shall be members of the established united church of England and Ireland, and shall previously to their admission into the said college council, severally sign and subscribe the thirty-nine articles of religion as declared and set forth in the Book of Common Prayer; and in case at any time there should not be within our said college seven professors of arts and faculties being members of the established church aforesaid, then our will and pleasure is, and we do hereby grant and ordain, that the said college council shall be filled up to the requisite number of seven, exclusive of the chancellor and president for the time being, by such persons, being graduates of our said college, and being members of the established church aforesaid, as shall for that purpose be appointed by the chancellor for the time being of our said college, and which members of council shall in like manner subscribe the thirty-nine articles aforesaid previously to their admission into the said college council.

And whereas it is necessary to make provision for the completion and filling up of the said council at the first institution of our said college, and previously to the appointment of

of any professors or the conferring of any degrees therein ; now we do further ordain and declare, that the chancellor of our said college for the time being, shall, upon or immediately after the first institution thereof, by warrant under his hand, nominate and appoint seven discreet and proper persons resident within our said province of Upper Canada, to constitute, jointly with him the said chancellor, and the president of our said college for the time being, the first or original council for our said college, which first or original members of the said council shall in like manner respectively subscribe the thirty-nine articles aforesaid, previously to their admission into the said council.

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And we do further declare and grant, that the members of the said college council holding within our said college the offices of chancellor, president or professor in any art or faculty, shall respectively hold their seats in the said council, so long as they and each of them shall retain such their offices as aforesaid, and no longer; and that the members of the said council not holding offices in our said college shall from time to time vacate their seats in the said council when and so soon as there shall be an adequate number of professors in our said college, being members of the established church aforesaid, to fill up the said council to the requisite number before mentioned.

And we do hereby authorize and empower the chancellor for the time being of our said college to decide in each case what particular number of the said council not holding any such office as aforesaid, shall vacate his seat in the said council, upon the admission of any new member of council holding any such office.

And we do hereby declare and grant, that the chancellor for the time being of our said college shall preside at all meetings of the said college council which he may deem it proper or convenient to attend, and that in his absence the president of our said college shall preside at all such meetings, and that in the absence of the president, the senior member of the said council present at any such meeting shall preside thereat, and that the seniority of the members of the said council, other than the chancellor and president, shall be regulated according to the date of their respective appointments; provided always, that the members of the said council being professors in our said college shall in the said council take precedence over and be considered as seniors to the members thereof not being professors in our said college.

And we do ordain and declare, that no meeting of the said council, shall be or be held to be a lawful meeting thereof, unless five members at the least be present during the whole of every such meeting; and that all such questions and resolutions proposed for the decision of the said college council shall be determined by the majority of the votes of the members of council present, including the vote of the presiding member, and that in the event of an equal division of such votes, the member presiding at any such meeting shall give an additional or casting vote.

And we do further declare, that if any member of the said council shall die or resign his seat in the said council, or shall be suspended or removed from the same, or shall by reason of any bodily or mental infirmity, or by reason of his absence from the said province, become incapable for three calendar months or upwards of attending the meetings of the said council, then and in every such case a fit and proper person shall be appointed by the said chancellor, to act as and be a member of the said council in the place and stead of the member so dying or resigning, or so suspended or removed, or incapacitated as aforesaid; and such new member succeeding to any member so suspended or incapacitated, shall vacate such his office on the removal of any such suspension, or at the termination of any such incapacity as aforesaid of his immediate predecessor in the said council.

And we do further ordain and grant, that it shall and may be competent to and for the chancellor for the time being of our said college, to suspend from his seat in the said council any member thereof for any just and reasonable cause to the said chancellor appearing; provided that the grounds of every such suspension shall be entered and recorded at length by the said chancellor in the books of the said council, and signed by him: and every person so suspended shall thereupon cease to be a member of the said council unless and until he shall be restored to and re-established in such his station therein by any order to be made in the premises by us, or by the said visitor of our said college acting on our behalf, and in pursuance of any special reference from us.

And we do further declare, that any member of the said council, who without sufficient cause, to be allowed by the said chancellor by an order entered for that purpose in the

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books of the said council, shall absent himself from all the meetings thereof which may be held within any six successive calendar months, shall thereupon vacate such his seat in the said council.

And we do by these presents, for us, our heirs and successors, will ordain and grant, that the said council of our said college shall have power and authority to frame and make statutes, rules and ordinances touching and concerning the good government of our said college, the performance of divine service therein, the studies, lectures, exercises and degrees in arts and faculties, and all matters regarding the same, the residence and duties of the president of our said college, the number, residence and duties of the professors thereof, the management of the revenues and property of our said college, the salaries, stipends, provision and emoluments of and for the president, professors, scholars, officers and servants thereof, the number and duties of such officers and servants, and also touching and concerning any other matter or things which to them shall seem good, fit and useful for the well-being and advancement of our said college, and agreeable to this our charter; and also from time to time, by any new statutes, rules or ordinances, to revoke, renew, augment or alter all, every or any of the said statutes, rules and ordinances as to them shall seem meet and expedient; provided always, that the said statutes, rules, and ordinances, or any of them, shall not be repugnant to the laws and statutes of the United Kingdom of Great Britain and Ireland, or of our said province of Upper Canada, or to this our charter; provided also, that the said statutes, rules and ordinances shall be subject to the approbation of the said visitor of our said college for the time being, and shall be forthwith transmitted to the said visitor for that purpose; and that in case the said visitor shall for us and on our behalf, in writing, signify his disapprobation thereof within two years of the time of their being so made and framed, the same, or such part thereof as shall be so disapproved of by the said visitor, shall from the time of such disapprobation being made known to the said chancellor of our said college, be utterly void and of no effect, but otherwise shall be and remain in full force and virtue.

Provided nevertheless, and we do hereby expressly save and reserve to us, our heirs and successors, the power of reviewing, confirming or reversing, by any order or orders to be by us or them made in our or their privy council, all or any of the decisions, sentences or orders so to be made as aforesaid by the said visitor for us and on our behalf, in reference to the said statutes, rules and ordinances, or any of them.

And we do further ordain and declare, that no statute, rule or ordinance shall be framed or made by the said college council touching the matters aforesaid, or any of them, excepting only such as shall be prepared for the consideration of the said council by the chancellor for the time being of our said college.

And we do require and enjoin the said chancellor thereof to consult with the president of our said college, and the next senior member of the said college council, respecting all statutes, rules and ordinances to be proposed by him to the said council for their consideration.

And we do hereby for us our heirs and successors charge and command that the statutes, rules and ordinances aforesaid, subject to the said provisions, shall be strictly and inviolably observed, kept and performed from time to time in full vigour and effect, under the penalties to be thereby or therein imposed or contained.

And we do further will ordain and grant, that the said college shall be deemed and taken to be an university, and shall have and enjoy all such and the like privileges as are enjoyed by our universities of our United Kingdom of Great Britain and Ireland, as far as the same are capable of being had or enjoyed, by virtue of these our letters patent; and that the students in the said college shall have liberty and faculty of taking the degrees of bachelor, master and doctor, in the several arts and faculties at the appointed times, and shall have liberty within themselves of performing all scholastic exercises for the conferring such degrees in such manner as shall be directed by the statutes, rules and ordinances of the said college.

And we do further will, ordain and appoint, that no religious test or qualification shall be required of or appointed for any persons admitted or matriculated as scholars within our said college, or of persons admitted to any degree in any art or faculty therein, save only that all persons admitted within our said college to any degree in divinity, shall make such



such and the same declarations and subscriptions, and take such and the same oaths, as are required of persons admitted to any degree of divinity in our University of Oxford.

And we do further will, direct and ordain, that the chancellor, president and professors of our said college, and all persons admitted therein to the degree of master of arts, or to any degree in divinity, law or medicine, and who from the time of such their admission to such degree, shall pay the annual sum of twenty shillings sterling money, for and towards the support and maintenance of the said college, shall be and be deemed taken and reputed to be members of the convocation of the said university, and as such members of the said convocation shall have, exercise and enjoy all such and the like privileges as are enjoyed by the members of the convocation of our University of Oxford, so far as the same are capable of being had and enjoyed by virtue of these our letters patent, and consistently with the provisions thereof.

And we will, and by these presents for us our heirs and successors, do grant and declare, that these our letters patent, on the enrolment or exemplification thereof, shall and may be good, firm, valid, sufficient and effectual in the law according to the true intent and meaning of the same, and shall be taken, construed, and adjudged in the most favourable and beneficial sense, or to the best advantage of the said chancellor, president and scholars of our said college, as well in our courts of record as elsewhere, and by all and singular judges, justices, officers, ministers, and other subjects whatsoever of us, our heirs and successors, any misrecital, nonrecital, omission, imperfection, defect, matter, cause or thing whatsoever to the contrary thereof in anywise notwithstanding.

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

Witness Ourself at Westminster, this fifteenth day of March one thousand eight hundred and twenty seven, in the eighth year of our reign.

## APPENDIX, 14.

Copy of the opinion of His Majesty's Law Officers relative to the Clergy reserves; dated 15th Novr. 1819.

Doctors Commons, 15th Nov. 1819.

My Lord,

We are honoured with your Lordship's commands of the 14th September last, stating that doubts having arisen how far, under the construction of the Act passed in the 31st year of his present Majesty, (c. 31.) the Dissenting Protestant ministers resident in Canada have a legal claim to participate in the lands by that Act directed to be reserved as a provision for the support and maintenance of a Protestant clergy.

And your Lordship is pleased to request, that we would take the same into consideration and report to your Lordship, for the information of the Prince Regent, our opinion, whether the Governor of the province is either required by the Act, or would be justified in applying the produce of the reserved lands to the maintenance of any other than the clergy of the Church of England resident in the province; and in the event of our being of opinion that the ministers of Dissenting Protestant congregations have a concurrent claim with those of the Church of England, further desiring our opinion, whether, in applying the reserved lands to the endowment of rectories and parsonages, as required by the 38th clause, it is incumbent upon His Majesty to retain a proportion of those lands for the maintenance of the Dissenting clergy, and as to the proportion in which, under such a construction, the provision is to be assigned to the different classes of Dissenters established within the province.

We are of opinion, that though the provisions made by 31st Geo. 3 c. 31, s. 36 and 42, for the support and maintenance of a Protestant clergy, are not confined solely to the clergy of the Church of England, but may be extended also to clergy of the Church of Scotland, if there are any such settled in Canada, (as appears to have been admitted in the de-

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bate upon the passing of the Act,) yet that they do not extend to Dissenting ministers, since we think the terms Protestant clergy can apply only to Protestant clergy recognized and established by law.

The 37th section, which directs "that the rents and profits of the lands, &c. shall be applicable solely to the maintenance and support of a Protestant clergy" does not specify by what authority the rents and profits are to be so applied. Supposing the Governor to be duly authorized by the Act to make such application, we think that he will be justified in applying such rents and profits to the maintenance and support of Clergy of the Church of Scotland, as well as those of the Church of England, but not to the support and maintenance of ministers of Dissenting Protestant congregations.

With respect to the second question, the 38th clause, "which empowers His Majesty to authorize the Governor to constitute and erect parsonages or rectories according to the establishment of the Church of England;" provides also, "that he may endow every such parsonage or rectory with so much of the lands allotted and appropriated in respect to any land within such township or parish which shall have been granted, as the Governor, with the advice of the Executive Council, shall judge to be expedient."

Under these terms he might endow any particular parsonage or rectory with the whole lands allotted and appropriated in that township or parish.

It would be inconsistent with this discretionary power that any proportion of such lands should be absolutely retained for any other clergy than those mentioned in that clause, and we think that it is not incumbent on His Majesty so to retain any proportion of such lands.

We have the honour to be, my Lord,

Your Lordship's most obedient humble servants,

(signed)

*Christ. Robinson.*

*R. Gifford.*

*J. S. Copley.*

Earl Bathurst,  
&c. &c. &c.

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APPENDIX, No. 15.

Copy of the Opinion of the Law Officers of the Crown, as to the Right of the Crown to appropriate the Revenue raised under the Act of 1774, independent of the Legislative Assembly.

Serjeant's Inn, 13th Nov. 1824.

My Lord,

No. 15.  
Opinion of the  
Law Officers as  
to the Revenue  
raised under the  
Act of 1776.

We have had the honour to receive your Lordship's letter, transmitting to us the copy of a letter from Lieutenant-General the Earl of Dalhousie, dated the 28th April 1823, inclosing a report made by a Committee of the Assembly of Lower Canada upon the province accounts, in which a question is raised as to the right of Government to apply the proceeds of the revenue arising from the 14 Geo. 3, c. 88, as they invariably have been since the passing of that Act, towards defraying the expenses of the administration of justice, and the support of the civil government, by the authority of His Majesty, without the intervention of the Colonial Legislature; and your Lordship was pleased to desire that we would take the same into our consideration, and report to your Lordship, for the information of His Majesty, whether the power granted by the Act of the 14 Geo. 3, is repealed by the Declaratory Act of the 18 Geo. 3, or by the Act of the 31st Geo. 3, granting a constitution to the provinces of Lower and Upper Canada, so as to take from the Crown the appropriation of the money levied under the 14 Geo. 3, and to vest it in the Provincial Legislature.

In compliance with your Lordship's request, we have taken the same into our consideration, and beg leave to report, for the information of His Majesty, that by the 14 Geo. 3, c. 88, the duties thereby imposed are substituted for the duties which existed at the time of the surrender of the province to His Majesty's arms, and are specially appropriated by Parliament to defraying the expenses of the administration of justice, and of the support of the civil government in the province. This Act is not repealed by the 18 Geo. 3,

c. 12, the preamble of which declares that Parliament *will* not impose any duty, &c. for the purpose of raising a revenue; and the enacting part of which states, that *from and after the passing of this Act*, the King and Parliament of Great Britain *will* not impose, &c. except only, &c.; the whole of which is prospective, and does not, as we think, affect the provisions of the Act of 14 Geo. 3, c. 88. It may be further observed, that if the 18th Geo. 3, had repealed the 14 Geo. 3, the duties imposed by the latter Act must immediately have ceased; and the Act 18 Geo. 3, cannot affect the appropriation of the duties imposed by the 14 Geo. 3, since the 18 Geo. 3, is confined to duties *thereafter* to be imposed, and imposed also for purposes different from those which were contemplated by the Legislature in passing the 14 Geo. 3; viz. the regulation of commerce alone.

We are further of opinion, that the Act 14 Geo. 3, c. 88, is not repealed or affected by the 31 Geo. 3, c. 31. It is clear that it is not repealed: in fact, as we observed with respect to the 18 Geo. 3, if the Act had been repealed the duties must immediately have ceased; and as to the appropriation of the duties, or the control over them, nothing is said upon the subject, either in the 46 and 47th section, or in any other part of the Act 31 Geo. 3, c. 31.

With respect to any inference to be drawn from what may have taken place in Canada within the last few years as to these duties, it may be observed, that the duties having been imposed by Parliament, at a time when it was competent to Parliament to impose them, they cannot be repealed, or the appropriation of them in any degree varied, except by the same authority.

We have the honour, &c.

(Signed) *J. S. Copley.*  
*Chs. Wetherell.*

Earl Bathurst,  
&c. &c. &c.  
Colonial Department, Downing-street, 26th June 1828.

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APPENDIX, No. 16.

Copy of a Petition from Canada, praying that the Presbyterian Clergy may participate in the Revenues set apart for the Protestant Clergy; dated 20th of December 1827, Quebec.

To the King's Most Excellent Majesty.

May it please Your Majesty,

Your Majesty's Presbyterian subjects, whose names are hereunto subscribed, as well for themselves as for other your Majesty's subjects professing the same creed in your Majesty's provinces of Upper and Lower Canada, most humbly beg leave to approach your Majesty's throne, and to claim Your royal support and protection.

A great number of Your Majesty's petitioners, descended from those North Britons who so eminently contributed under the immortal Wolfe to the conquest of these colonies, have, with the influx of emigrants from Scotland and Ireland, formed large communities professing the hereditary faith.

From a zealous and steadfast attachment to that faith your petitioners have hitherto (in the absence of any other support) endeavoured by voluntary contributions to obtain the inestimable advantage of the services of ministers of their persuasion; but the extent of the means derived from that source has been wholly inadequate to procure a number of pastors proportionate to the extent of the population, and is also insufficient to place those already settled among them in a state of suitable independence.

The Imperial Parliament feeling the necessity of extending its fostering care to religious establishments in these colonies, enacted by a statute passed in the thirty-first year of the reign of His late Majesty, of happy and glorious memory, that the one-seventh of the ungranted lands in these provinces should be allotted for the support and maintenance of a Protestant clergy within the same.

The

No. 16.  
Canada Petition

The liberality of the Imperial Parliament did not stop here, as that provision could only be prospective, and as the wants of infant and growing colonies required, in a religious point of view, a more efficient succour, the Episcopalian clergy in these provinces have been allowed to participate in the sums voted annually by the Imperial Parliament, for the Society for the Propagation of the Gospel in the North American provinces.

Your Majesty's petitioners beg leave to express to Your Majesty their regret that the Presbyterian clergy in the Canadas have not hitherto been permitted to participate in any portion of the reserves arising from the lands so set apart for the maintenance of a Protestant clergy in the said province, nor have they received assistance from any other source.

Your Majesty's petitioners referring to the Act of Parliament passed in the 5th year of the reign of Queen Anne, c. 8, and finding the religion professed and established in the Church of Scotland, as well as that professed and established in the Church of England, to be there recognized as the true Protestant religion, are at a loss to conceive why their church should be placed in a worse situation than the Church of England, and why the ministers of their persuasion should not be considered as coming under the designation of a Protestant clergy.

Your Majesty's petitioners beg leave, most gracious Sovereign, to observe that the parent church, from which they sprung, has been eminently distinguished for diffusing the principles of religion and sound morals, and they are persuaded, from the experience of ages, and especially from the example of the land of their forefathers, that a people blessed with the advantages of a suitable provision for religious instruction and education, are thereby trained to order and virtue; and that in a country where effectual provision is made for these purposes, nothing remain for the Government but to enjoy the spectacle of its progressive improvement and increasing happiness, and to receive from a loyal, virtuous and happy people the spontaneous effusion of their gratitude and attachment.

Your petitioners, most gracious Sovereign, indulge the hope, that they may now obtain that support of which they stand in need, from the munificence of the Imperial Parliament, by being allowed to participate (as they humbly conceive they are entitled) in the revenues to be derived from the lands reserved for the support of a Protestant clergy, according to the ratio of their population, or in such other proportion as may be deemed equitable and just; and by granting to them such other provision as the Imperial Parliament may in its wisdom deem expedient.

Your Majesty's petitioners having reason to believe that the interests of the Protestant clergy of these provinces may become the subject of legislative enactment, during the ensuing session of Parliament, they most humbly beseech Your Majesty to weigh and consider the interests of Your Majesty's petitioners in the premises, and to do therein whatever to your Majesty may seem meet and just.

And Your Majesty's petitioners as in duty bound will ever pray.

Quebec, 20th December 1827.

(Here follows signatures of individuals to the amount of several hundreds.)

APPENDIX, No. 17.

No. 17.  
Petition from  
the Inhabitants  
of Quebec.

Copy of the Petition from Inhabitants of Quebec, in favour of the Union of the Provinces of Upper and Lower Canada.

To the King's Most Excellent Majesty.

The Petition of the undersigned Seigniors, Magistrates, Members of the Clergy, Officers of Militia, Merchants, Landholders and others, Inhabitants of the City and District of Quebec, Province of Lower Canada.

Humbly

Humbly sheweth,

THAT your Petitioners have learnt with the greatest satisfaction that Your Majesty the Inhabitants of Quebec has taken into your gracious consideration the state of the provinces of Upper and Lower Canada, with a view to adjust certain differences relating to matters of revenue complained of by the province of Upper Canada; and as it appears that Your Majesty's Government, in the course of its inquiry into the sources of these differences, has become satisfied of the necessity of some change being made in the constitutions of these provinces, but has postponed the adoption of final measures in order to give time to the people thereof to express their sentiments, your Petitioners beg leave humbly to approach your Majesty with a statement of various evils under which they have laboured for some years, and from which they have no hope of relief, except by the interposition of Your Majesty and the Imperial Parliament;

The experience of thirty years has now demonstrated the impolicy of the Act of the British Parliament, 31st Geo. 3, c. 31, by which the late province of Quebec was divided into the provinces of Upper and Lower Canada. To this division your petitioners ascribe the present ineffective state of their Legislature, and the want of those necessary measures for diffusing throughout the whole population of the country feelings becoming their character as British subjects, and introducing that general spirit of improvement, which, encouraged by the commercial system, universally pervades and invigorates other British colonies. This division has created a difference of interest between the provinces in matters connected with revenue highly injurious to both, inevitably producing a spirit of dissension and animosity, and infusing into the Legislatures principles of a narrow and selfish policy, adverse to the general development of their resources, and in an especial manner to the improvement of the channels of intercourse between them; and it is essential here to notice, that nearly the whole of the revenue of the two Provinces arises from duties levied on merchandize imported at the port of Quebec, under laws enacted by the Legislature of the Lower Province. It has also, from the control which the geographical situation of the Lower Province enables it to exercise over the trade of the Canadas, placed the export trade of the Upper Province at its mercy, being subject to such regulations and restrictions at the shipping port as its Legislature may choose to impose. From this circumstance, and from the feeble attempts made to improve the grand natural channel of the Canadas, strikingly contrasted with the enterprise and energy evinced by the neighbouring state of New York in the rapid formation of canals, together with the indifference manifested on this subject by the Legislature of the Lower Province, your Petitioners have just reason for alarm, that if a similar system be persisted in, it may tend in a most injurious degree to increase the commercial intercourse of the Upper Province with the United States, and divert the enterprise and trade of its inhabitants into a foreign channel; and from these causes your Petitioners not only apprehend the immediate loss of beneficial trade, but that the gradual effect would be to interweave the interests of the Upper Canadians with those of the neighbouring States, thereby alienating their minds from the people of this province and weakening their affection for your Majesty's Government, notwithstanding their present known and tried loyalty.

The Legislature of this province has for a long time past been agitated by dissensions, and their deliberations so much interrupted thereby, that trade, agriculture, education and other objects of general interest have been neglected. There exists no law for the registry of lands and mortgages, so necessary for security in commercial transactions; no Insolvent Debtors Act; and your Petitioners have looked in vain for a law to provide for the unrepresented state of the townships, a fertile and valuable portion of this province, settled by inhabitants of British origin; of these Legislative enactments, and many others necessary to quicken the enterprise and industry of a commercial country, your Petitioners entertain little hope, until a re-union of the provinces shall have weakened the influence which has hitherto prevented their adoption in our statute book. The existence of this influence your Petitioners chiefly attribute to the impolitic division of these provinces; which, instead of rendering it the interest, as it is the duty, of every individual of the community to concur in measures to assimilate the whole population and to allay the jealousies naturally existing between the several classes, has unavoidably presented to the

No. 17.

Petition from

the Inhabitants  
of Quebec.

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of Quebec.

the individuals who first attained a majority in the Legislature a temptation to perpetuate their own power by adopting a course directly opposite. To the same influence may be traced the small encouragement which has been held out to the settlement of the vacant lands of this Lower Province by British population, and consequently that upwards of 80,000 souls, (a number equal to one-fourth of the actual French population) who since the last American war have emigrated to this province from Great Britain and Ireland, scarcely one-twentieth part remain within its limits.

Your Petitioners have observed with gratitude the disposition which your Majesty's Government has evinced by the Act of the present year of Your Majesty, c. 119, to apply a remedy to the existing political evils of these provinces, but it is their humble opinion that the provisions thereof are insufficient; that numerous circumstances concur to render vain any attempt permanently to regulate to the satisfaction of both provinces the division of the revenue collected at the port of Quebec, unless united under one Legislature; and further they humbly beg leave to express their fears, that some of the provisions of this Act, although dictated by the necessity of regulating the conflicting claims of the two provinces, may afford a pretext to others for imputing to the Imperial Parliament a disposition remote from the intentions and views of Your Majesty's Government.

Having thus stated the evils under which they have suffered, your Petitioners feeling the fullest confidence in the justice and wisdom of your Majesty's Government, and being satisfied that the subject will receive the most serious and deliberate consideration, would have felt much hesitation in presuming to suggest remedies; but as the re-union of the two provinces has been proposed in the Imperial Parliament, they beg leave to express their entire acquiescence in the adoption of that measure, upon such principles as shall secure to all classes of Your Majesty's subjects in these provinces their just rights, and protect the whole in the enjoyment of existing laws, and their religion as guaranteed; such a union would, in the opinion of your Petitioners, afford the most effectual remedy for existing evils, as it would tend gradually to assimilate the whole population in opinions, habits and feelings, and afford a reasonable hope that the wisdom of the United Legislature would devise a system of government of more consistency and unity, and of greater liberality to all classes than has hitherto been experienced.

A union, on the equitable principles humbly suggested by Your Majesty's Petitioners, will necessarily include a representation proportionate, as near as possible, to the numbers, wealth, and resources of the different classes of inhabitants of these provinces—will require no innovation in the laws or religion of the country, nor proscription in debate or motion in the Legislature, of the language of any portion of the inhabitants, in every class of whom bravery and loyalty have been evinced as fellow soldiers in defence of the provinces.

May it therefore graciously please Your Majesty, that a bill for the union of the two provinces of Upper and Lower Canada, on the equitable terms prayed for by your Petitioners, do pass into law, and the constitution established thereby be preserved inviolate to your Petitioners and their posterity.

And your petitioners, as in duty bound, will ever pray.

Quebec, December, 1822.

Colonial Department, Downing street, }  
7th June 1828. }

No. 18.  
Petition of Mer-  
chants and o-  
thers connected  
with the Cana-  
das, dated 17th  
May 1828.

## APPENDIX, No. 18.

To the Honorable the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled.

The PETITION of the undersigned Merchants and others connected with the Canadas.

Humbly

No. 18.  
Petition of Mer-  
chants and o-  
thers connected  
with the Cana-  
das, dated 17th  
May 1828.

Humbly sheweth,

THAT your Petitioners have perceived with alarm and deep regret the dissensions which have for many years prevailed in these provinces, and which are now so much matter of public notoriety, that your Petitioners deem it unnecessary to occupy the time of your Honourable House in their detail, neither is it the purpose of your Petitioners to blame the conduct of any man or party of men in these provinces, and thus by recrimination aggravate the evils, but your Petitioners are actuated by the more laudable motive of calling the attention of your Honourable House to what appears to them the only effectual remedy for these unfortunate differences in time to come.

That in the honest conviction of your Petitioners, the Act of the 31st Geo. 3, c. 31, whereby the late province of Quebec was divided into the provinces of Upper and Lower Canada has been the fruitful source of all the evils with which the Canadas have been and are now afflicted.

That this most impolitic measure was passed at the time without being desired by the then few inhabitants of what now constitutes the province of Upper Canada, and in direct opposition to the wishes of the inhabitants of what now constitutes the province of Lower Canada, whether of French or British extraction, as clearly appears by the representation of their joint agent made at the bar of your Honourable House, on the 23d of March 1791.

That the baneful consequences of this measure were even then so clearly foreseen, and brought so fully before your Honourable House, that your Petitioners cannot describe what has actually occurred in more appropriate language than that used by the individual above alluded to on that occasion: in urging the continuance of the province of Quebec undivided he says, "There is one consideration of the utmost importance to the tranquillity of the people inhabiting all parts of that country, and which will alone, I hope, be sufficient to engage this Honourable House to reject the plan of a new independent government. I beg leave to request that Honourable Members will recollect and attend to the geographical situation of that country, from which it will appear evident that no vessel of any kind can proceed farther up the river St. Lawrence than the city of Montreal, on account of the Rapids, which are immediately above that town. Of course, as every article of necessity or luxury which the inhabitants of the upper districts have occasion for from Britain, or any foreign country, must come to them by the river St. Lawrence, they must be landed at or below Montreal, where they must be stored by the Merchants of Quebec or Montreal, until carriages or boats are provided to send them forward; likewise that every article of produce which the people of these upper districts wish to export must be sent in boats to Montreal, or perhaps to Quebec, for the purpose of being shipped for exportation; and that as well the articles of import as of export must, in passing through the Lower Country, become subject to the laws, regulations, duties and taxes which may be imposed by the Legislature of the Lower Country. Now supposing the division to take place, as it may be expected, that the new Legislature of Quebec shall, in due time, provide a revenue towards the support of the civil government of that part of the province, it is more than probable, that whatever money is raised for that of any other public purpose, will be done by duties payable upon importations. It is therefore an object that deserves the most serious reflection of Honourable Members to consider how far the people inhabiting the Upper Government will approve of, and be content to pay taxes and duties on their importations or exportations when the produce of those taxes and duties is to be applied towards supporting the expenses of the civil government of the Lower Province, or for building public edifices, or otherwise improving or beautifying that part of the country; or for the purpose of granting bounties or encouragements to promote agriculture, or particular trades or manufactures, of which the people in the Upper Province cannot, from their situation, participate the advantages.

"It is impossible, Sir, if the province of Quebec is divided, for the wisdom of man to lay down a plan for these objects that will not afford matter of dispute, and create animosities between the governments of the two provinces, which, in a few years, may lead to the most serious consequences. This would be sowing the seeds of dissensions

"and

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“ and quarrels which, however easy it may be to raise, it will be found exceedingly difficult to appease.”  
Again he adds: “ Sir, I have considered the subject a thousand times since I first heard of this intended division, but have not been able to form any reasonable idea of the motive which has induced the proposition of such a dangerous experiment: if at any future period experience should point it out as expedient for the advantage and safety of Government, or for the general convenience or prosperity of the people, to divide that country, it may then be done with more judgment, from a more certain knowledge of the consequences of such a division. The inconveniences that may arise from continuing the province united under one Legislature are few, and they are well known and understood: the advantages are unanimity, mutual support and strength; but no man can tell the dangers of a separation. The dangers, however, to be apprehended are political weakness, disunion, animosities and quarrels.”

That it is within the knowledge of several of your Petitioners that the above Act had hardly become a law when the impolicy of the division of the province of Quebec became apparent to His Majesty's ministers, as was declared by them to the individual who made the representation from which your Petitioners have now quoted.

That although by the wisdom of the Imperial Parliament an Act was passed in 1822, intending to set at rest, at least for the moment, the disputes between the two provinces in regard to duties, for which end the power of determining upon the share of duties to which Upper Canada may be entitled is taken out of the hands of the two Colonial Legislatures and given to arbitrators, yet as the very passing of such a law implies the existence of a very great evil, so your Petitioners are well assured that this remedy, viewed as a permanent measure, would in its execution prove a source of endless dispute, dissatisfaction and jealousy between the two provinces; and as pregnant with the same effects do your Petitioners regard the depriving of the Legislature of Lower Canada of the power to raise any duties on importation, into that province without the previous communication of any projected law for that purpose to the Government of Upper Canada, and the transmission of it to England for the approval of Government there: the more consideration your Petitioners bestow on the subject, the more confirmed is their conviction that instead of palliative remedies, an effectual and complete remedy should be resorted to, and this can only be found by the union of the provinces under one Legislature.

That as British subjects, and persons whose interests are deeply involved in the prosperity of the provinces, your Petitioners cannot view the present state of affairs and their inevitable result without the most serious apprehensions. Situated as the Canadas are with respect to the United States of America, it is the interest of Great Britain to give as rapid a development to the resources of these provinces as they are capable of, and augment and increase their strength as much as possible, with a view to their continuing a distinct portion of America, secure under British protection, and furnishing Great Britain the means of exercising an important influence over that country, in such a manner as circumstances may render expedient. In furtherance of this object, it would be obviously fit that a communion of feeling and an identity of political views, with a sense of increased strength and importance, should, as far as can be produced, prevail in the two provinces; this policy is altogether counteracted by a division which tends to increase the opposition of the inhabitants of Lower Canada to the institutions, habits and feelings of those of Upper Canada, while the latter, becoming gradually more estranged from their sister province, must be naturally and imperceptibly drawn into closer ties of connection with the adjoining states, whose inhabitants have the same laws, language, habits and manners; whereas, by the union of the provinces, the present divided parts of the population would be gradually moulded into one common mass, with the same political views and feelings, ready to act in concert, and to combine their resources for their common defence.

That from the state of the representation in Lower Canada, a very large body of His Majesty's subjects, amounting, it is estimated, to 80,000 souls of British birth or of British descent, are unrepresented in the Legislature, either directly or indirectly; His Majesty's subjects of French descent having it in their power to exclude, and actually excluding



excluding from the House of Assembly all who do not fall into their views, (which views, right or wrong, it is not the present object of your Petitioners to discuss;) and the effect has been that of the vast number of emigrants who of late years have arrived from Great Britain and Ireland, probably not one twentieth part have remained within its limits, the rest have sought protection under English institutions, by settling in Upper Canada or in the United States.

That by a union of the two provinces every British inhabitant therein would be represented were some measure at the same time to be adopted to enable the townships to retain members for themselves, and the claims of these inhabitants of British origin are strongly built upon justice, that your Petitioners cannot doubt but your Honourable House would see fit to provide for the unrepresented state of these valuable and fertile portions of the province.

That the Legislature of the Lower Province has for a long time past been so much agitated by dissensions, and their deliberations so much engrossed thereby, that trade, agriculture, education and other matters of general interest have been neglected; whereas, under an enlightened and efficient Legislature, undistracted by partial views and interests, your Petitioners confidently anticipate the rapid advancement of these, together with the improvement of the navigation and internal means of communication, the establishment of an Insolvent Debtors Act, of offices for the registry of lands and mortgages, and other objects so necessary for security in commercial transactions.

That while your Petitioners thus point out to your Honourable House the necessity of, and advantages which, in their humble opinion, would flow from a union, they are far from wishing such a measure on any other than equitable principles, without innovation in the laws or religion, or without doing violence to the feelings of any party more than may be found necessary to conduce to the general good.

May your Honourable House therefore be pleased to take these premises into your consideration; and your Petitioners rely with full confidence on your wisdom for taking such measures thereupon as will promote the best interests of these provinces and long preserve them as valuable dependencies of the Crown of Great Britain.

And your Petitioners, as in duty bound, will ever pray.

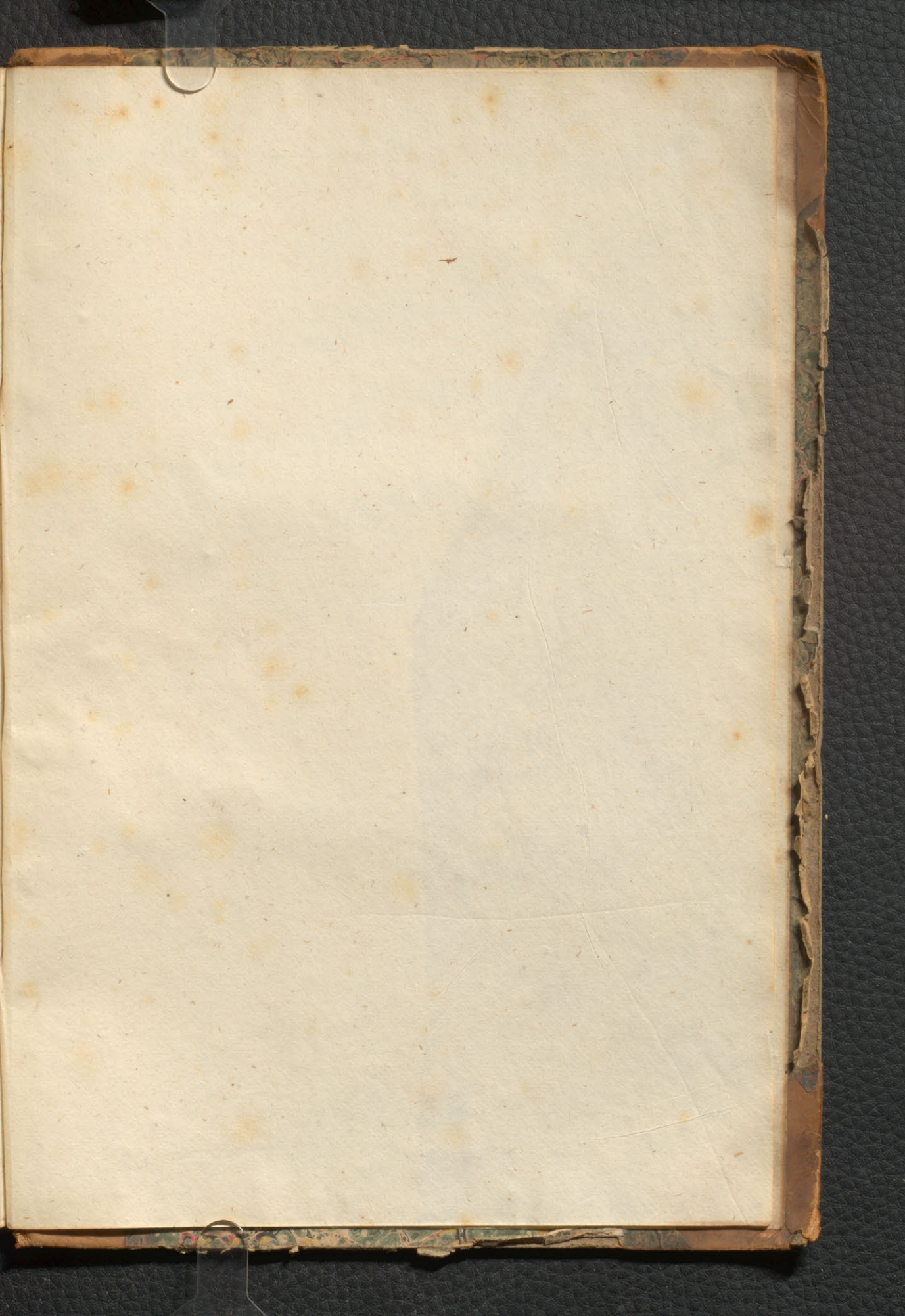
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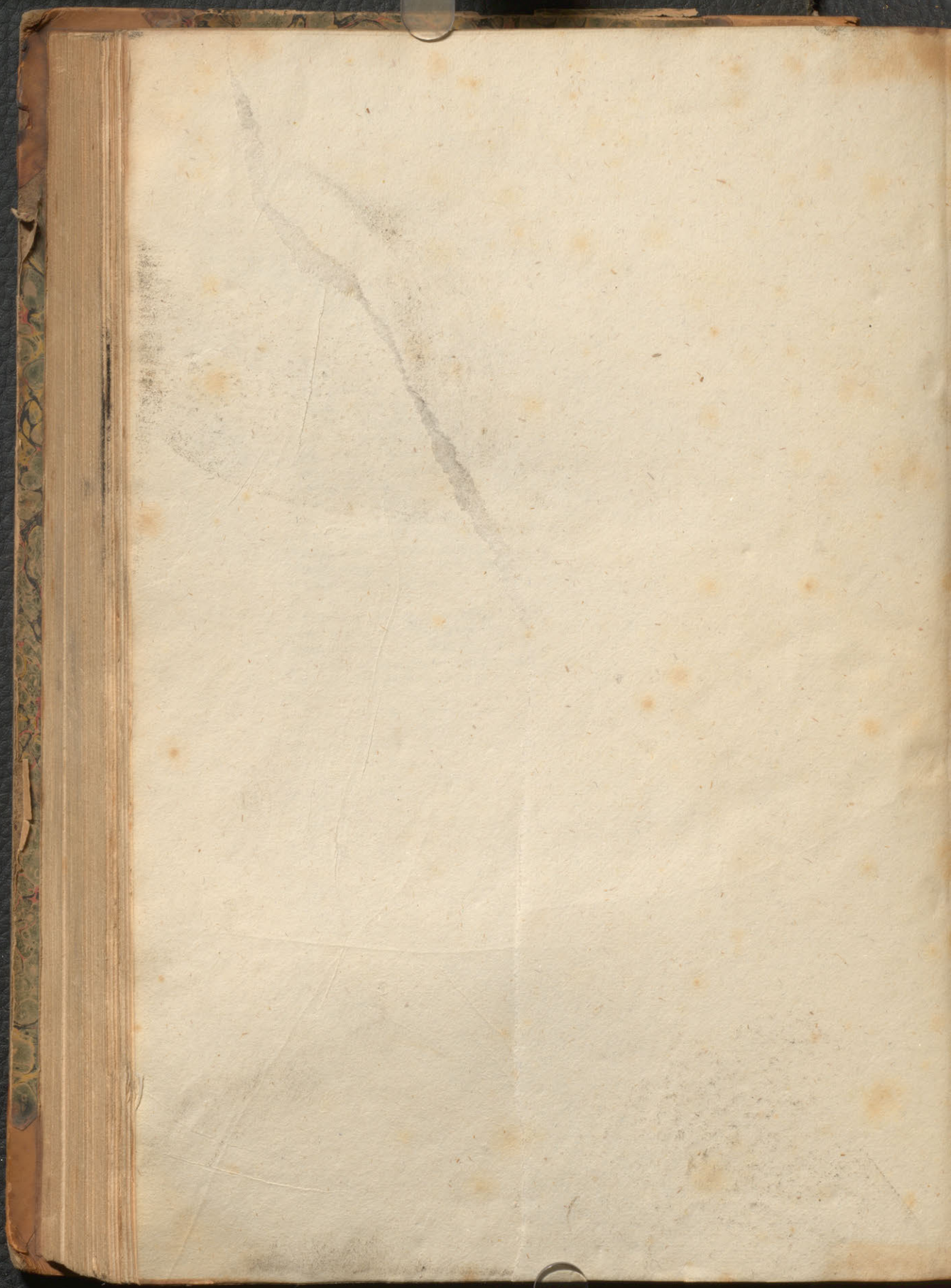
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THE CIVIL GOVERNMENT OF THE STATE

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