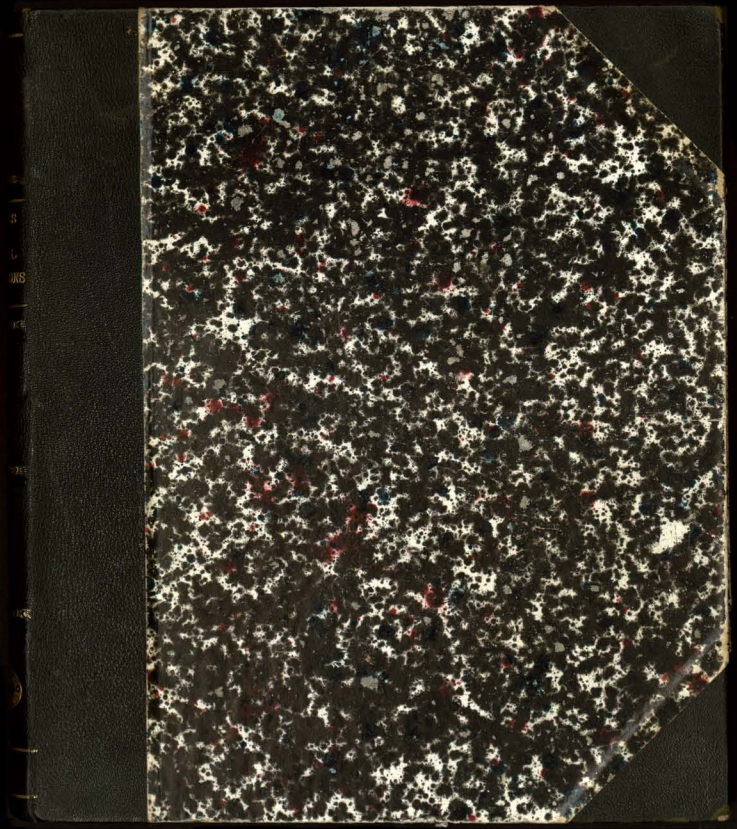

E. R. CHABOT
RELIEUR
QUEBEC

A

COLLECTION

OF

SEVERAL COMMISSIONS,

AND

OTHER PUBLIC INSTRUMENTS,

Proceeding from his Majesty's Royal Authority,

RELATING TO THE PROVINCE OF QUEBEC.

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A

COLLECTION

OF

SEVERAL COMMISSIONS,

AND

OTHER PUBLIC INSTRUMENTS,

Proceeding from his MAJESTY's Royal Authority,

AND

OTHER PAPERS,

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

COLLECTED BY

FRANCIS MASERES, ESQUIRE,

His MAJESTY's Attorney General in the said Province.

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PREFACE.

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

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

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

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

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OF

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

CONCERNING

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

May it pleaſe your Majeſty,

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

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

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

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

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

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

The commiſſion of the chief juſtice refers to them.

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

Purport of this ordinance.

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

The words of the ordinance.

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

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

" In

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

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

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

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

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

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

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

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

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

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

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

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

" authorized

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

The ordinance of the 6th of November 1764.

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

The words of this ordinance.

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

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

Concluſion neceſſarily following from this ordinance in favour of the introduction of the laws of England.

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

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

Other public inſtruments which have tended to produce the ſame effect.

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

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

Acts of parliament.

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

Stat. I. Eliz. cap. 1.

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

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

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

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

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

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

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

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

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

Stat 15 Car. II. cap. 7.

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

Stat. 7 and 8 of Will. III. cap. 22.

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

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

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

Stat. 1, 12 Ann. cap. 18.

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

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

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

Stat. 4 Geo. III. cap. 15.

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

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

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

Stat. 4 Geo. III. cap. 15. The next act of parliament of this kind is of the ſame 4th year of your Majeſty's reign, chap. 19. This ſtatute expreſsly relates to this province by name, being intitled, "An Act for importing "Salt from Europe into the Province of Quebec in America "for a limited Time." It enacts, "that it ſhall be lawful for "any of his Majeſty's ſubjects to carry and import ſalt from "any part of Europe into the ſaid province of Quebec in America "in Britiſh ſhips and veſſels manned and navigated according to the "act of navigation; *any law, ſtatute, uſage, or cuſtom to the contrary "in any wiſe notwithſtanding.*"

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

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

Theſe

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

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

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

the

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

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

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The definitive treaty of peace. The next public inſtrument relating to the condition of this province is the definitive treaty of peace concluded at Paris on the 10th day of February 1763. In the fourth article of this treaty it is declared, that your Majeſty will give the moſt effectual orders that your new Roman Catholic ſubjects may profeſs the worſhip of their religion according to the rites of the Romiſh church, *as far as the laws of Great Britain permit*. By this reference to the laws of Great Britain it ſhould ſeem to have been your Majeſty's intention that thoſe laws ſhould be the fundamental rule of government in this province.

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

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

The ſenſe in which this proclamation has been underſtood by the Britiſh inhabitants of this province;

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

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

and by his Majeſty's late governour and council;

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

and the lords commiſſioners for trade and plantations in September, 1765.

We know at the ſame time that your Majeſty's attorney and ſollicitor general, in the following month of April 1766, underſtood

The ſaid ſe which under his

Attorney and solicitor general, in April 1766.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Criminal proceedings.

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

Civil proceedings in the court of King's Bench.

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

Civil proceedings in the court of Common Pleas.

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

Arreſts of the body for debt.

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

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

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

Remarks on ſome of the foregoing inſtruments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The uncertainty of the laws.

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

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

Other inconveniencies attending the preſent ſtate of judicature in this province.

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

The expences of law proceedings.

The expences attending law-ſuits ariſe evidently from two different ſources, the fees of the officers of the courts of juſtice, and thoſe of the attornies and advocates whom the parties employ in the management of their cauſes. The former are capable of being properly regulated, as the perſons to whom they are due are all ſervants to your Majeſty, and under the immediate controul of your Majeſty's governour and council; and meaſures have been already taken to eaſe your Majeſty's ſubjects in this province of ſome part of theſe fees: your Majeſty's chief juſtice and clerk of the crown have remitted thoſe that uſed to be taken by them in the ſupreme court; and thoſe of the attorney-general for the conduct of criminal proſecutions have always been charged to your Majeſty: and if thoſe which are taken by the clerk of the ſupreme court for the civil buſineſs that is tranſacted there, and by the provoſt-marſhal, or ſheriff, and his bailiffs, for their ſummonſes, arreſts, and other miniſterial buſineſs done by them in the courſe of the proceedings, and thoſe which are taken in the court of Common Pleas, or the quarterly and weekly courts of the juſtices of peace, by the ſeveral officers of thoſe courts, are found to be unreaſonable, it will be eaſy to reduce them to a more moderate ſtandard by a provincial ordinance for that purpoſe, if your Majeſty will condeſcend to make ſuch a reaſonable addition to the ſalaries of theſe ſeveral officers as ſhall be a compenſation for ſuch diminution of their fees. The other cauſe of the expenſiveneſs of law-ſuits is the rate of the fees of the attornies and advocates. Theſe fees, it is evident, are not capable of a like reduction with the former, but muſt always be ſuch as the parties and their lawyers ſhall agree upon; ſince it is the

the natural right of every man to ſet what price he pleaſes upon his labour. All that can be done to keep thoſe fees from growing exorbitant is to prevent a monopoly of law buſineſs in the hands of a few lawyers, who might thereby be enabled to exact unreaſonable rewards from their clients by the neceſſity the people would be under of either employing them upon the terms they thought proper to demand, or letting their buſineſs remain undone: and this has been already done by your Majeſty's wiſdom and indulgence in permitting Canadian notaries, attornies, and advocates to practiſe their reſpective profeſſions notwithſtanding their continuance in the profeſſion of the Romiſh religion.

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

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

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

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

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

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

Impriſonment for Debt.

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

To

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

A plan for the adminiſtration of juſtice in this province.

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

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

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

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

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

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

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

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

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

Method of proceeding in theſe courts.

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

Juries to the ſummoned, if the parties deſired it.

They ſhould be paid for their attendance.

Manner of chuſing them.

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

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

A majority of the jury ſhould carry the verdict.

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

The juries ſhould always give ſpecial verdicts.

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

Examination of witneſſes.

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

Execution againſt the defendant's goods and lands.

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

able

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

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

Coſts.

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

Sheriffs to the three ſeveral ſhires, or diſtricts.

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

King's attornies in each of the three courts.

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

From

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

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

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

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

The nature of theſe appeals.

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

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

A ſecond trial by a double jury.

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

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

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

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

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

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

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

And

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Advantages and diſadvantages of the ſecond method.

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

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

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

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