

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

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

Advantages and
disadvantages of
the third
method.

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

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

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

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

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

Advantages and
disadvantages of
the fourth
method.

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

Conclusion.

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

Your MAJESTY'S

Most loyal and devoted

Subjects and Servants.

N. B. The

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

G

NUMBER

N U M B E R II.

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

C O N C E R N I N G

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

W I T H

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

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

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

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

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

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

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

Other inconveniencies would follow from such a measure.

First inconvenience.

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

Second inconvenience.

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

Third inconvenience.

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

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

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

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

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

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

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

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

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

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

Laws of tenure.

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

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

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

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

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

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

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

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

FRANCIS MASERES,
Attorney General.

QUEBEC,
September 11th, 1769.

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

N U M B E R III.

P L A N

O F A

Convenient METHOD of administering JUSTICE in the
Province of QUEBEC.

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

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

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

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

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

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

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

power

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

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

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

These courts to
sit every week.

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

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

Method of proceeding in civil actions.

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

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

When

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

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

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

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

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

Manner of appointing the juries.

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

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

A majority of the jurymen to carry the verdict.

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

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

All the verdicts of jurors to be special verdicts.

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

Examination of witnesses.

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

Execution against goods and lands.

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

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

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

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

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

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

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

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

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

Appeals from these courts to the governor and council, and the king.

from thence
to the King in
council.

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

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

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

The nature of
these appeals.

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

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

A second trial
by a double jury.

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

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

FRANCIS MASERES,
Attorney General.

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

F. MASERES.

N U M B E R IV.

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

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

Preamble.

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

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

Enacting part of
the ordinance.

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

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

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

By the lieutenant-governour's command.

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

NUMBER V.

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

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

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

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

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

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

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

and two at Montreal.

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

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

Power of adjourning the session.

next

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

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

and of changing the beginning of the next ensuing session.

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

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

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

Trials in civil actions.

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

Qualifications of jurors.

K

and

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

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

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

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

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

N U M B E R VI.

ARTICLES of CAPITULATION granted by

Sir GEOFFREY AMHERST to the CANADIANS,

U P O N T H E

Surrender of MONTREAL and the whole Province of CANADA to the British Arms in September 1760.

[N. B. The articles that are here omitted are entirely of a temporary nature, and no ways affect the present constitution of the province.]

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

Granted.

Article VII. The magazines, the artillery, firelocks, fabres, ammunition of war, and in general every thing that belongs to his most Christian Majesty, as well in the towns of Montreal and Trois Rivières, as in the forts and posts mentioned in the third article, shall be delivered up, according to exact inventories, to the commissioners who shall be appointed to receive the same in the name of his Britannic Majesty. Duplicates of the said inventories shall be given to the Marquis de Vaudreuil.

This is every thing that can be asked on this article.

Article XII. The most convenient method that can be found shall be appointed to carry the Marquis de Vaudreuil, by the straightest passage, to the first sea-port in France. The necessary accommodations shall be made for him, the Marquis de Vaudreuil, M. de Rigaud, governor of Montreal, and the suite of this general. This vessel shall be properly victualled at the expence of his Britannic Majesty; and the Marquis de Vaudreuil shall take with him his papers,

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

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

Article XXI. The English general shall also provide ships for carrying to France the officers of the supreme council, of justice, police, admiralty, and all other officers having commissions or brevets from his most Christian Majesty, for them, their families, servants, and equipages, as well as for the other officers; and they shall likewise be victualled at the expence of his Britannic Majesty. They shall, however, be at liberty to stay in the colony, if they think proper, to settle their affairs, or to withdraw to France, whenever they think fit.

Granted; but if they have papers relating to the government of the country, they are to be delivered to us.

Article XXIV. The provisions and other kind of stores which shall be found in the magazines of the commissary, as well in the town of Montreal and of Trois Rivières as in the country, shall be preserved to him, the said provisions belonging to him, and not to the King, and he shall be at liberty to sell them to the French or English.

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

East-India company.

Article XXV. A passage to France shall likewise be granted on board his Britannic Majesty's ships, as well as victuals, to such officers of the India Company as shall be willing to go thither, and they shall take with them their families, servants, and baggage. The chief agent of the said company, in case he should chuse to go to France, shall be allowed to leave such person as he shall think proper, till next year, to settle the affairs of the said company, and to recover such sums as are due to them. The said chief agent shall keep possession of all the papers belonging to the said company, and they shall not be liable to inspection.

Granted.

Article

Article XXVI. The said company shall be maintained in the property of the earlatines and castors, which they may have in the town of Montreal; they shall not be touched under any pretence whatever, and the necessary facilities shall be given to the chief agent to send this year his castors to France on board his Britannic Majesty's ships, paying the freight on the same footing as the English would pay it.

Granted, with regard to what may belong to the company, or to private persons; but if his most Christian Majesty has any share in it, that must become the property of the King.

Article XXVII. The free exercise of the Catholick, Apostolick, Free exercise of the Roman Catholic religion. and Roman religion, shall subsist intire, in such manner that all the states and people of the towns and countries, places, and distant posts, shall continue to assemble in the churches, and to frequent the sacraments as heretofore, without being molested in any manner directly or indirectly.

These people shall be obliged, by the English government, to Payment of tithes and other church-dues. pay to the priests the tithes and all the taxes they were used to pay under the government of his most Christian Majesty.

Granted, as to the free exercise of their religion. The obligation of paying the tithes to the priests will depend on the King's pleasure.

Article XXVIII. The chapter, priests, curates, and missionaries shall continue with an intire liberty their exercise and functions of their cures in the parishes of the towns and countries.

Granted.

Article XXIX. The grand vicars, named by the chapter to administer to the diocese during the vacancy of the episcopal see, shall have liberty to dwell in the towns or country parishes, as they shall think proper. They shall at all times be free to visit the different parishes of the diocese, with the ordinary ceremonies, and exercise all the jurisdiction they exercised under the French dominion. They shall enjoy the same rights in case of death of the future bishop, of which mention will be made in the following article. Power of the grand vicars to exercise ecclesiastical jurisdiction.

Granted, except what regards the following article.

Article

Nomination of
the future
bishops.

Article XXX. If by the treaty of peace Canada should remain in the power of his Britannic Majesty, his most Christian Majesty shall continue to name the bishop of the colony, who shall always be of the Roman communion, and under whose authority the people shall exercise the Roman religion.

Refused.

Their power.

Article XXXI. The bishop shall, in case of need, establish new parishes, and provide for the re-building of his cathedral and his episcopal palace; and, in the mean time, he shall have the liberty to dwell in the town or parishes, as he shall judge proper. He shall be at liberty to visit his diocese with the ordinary ceremonies, and exercise all the jurisdiction which his predecessor exercised under the French dominion, save that an oath of fidelity, or a promise to do nothing contrary to his Britannic Majesty's service, may be required of him.

This article is comprised under the foregoing.

Communities of
Nuns.

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

Granted.

Jesuits, Recollet
Monks, and
priests of Saint
Sulpice.

Article XXXIII. The preceding article shall likewise be executed with regard to the communities of Jesuits and Recollets, and of the house of the priests of Saint Sulpice at Montreal. These last and the Jesuits shall preserve their right to nominate to certain curacies and missions as heretofore.

Refused, till the King's pleasure be known.

Property of the
religious com-
munities and
the priests.

Article XXXIV. All the communities, and all the priests, shall preserve their moveables, the property and revenues of the seigniories, and other estates which they possess in the colony, of what nature soever they may be. And the same estates shall be preserved in their privileges, rights, honours, and exemptions.

Granted.

Article

Article XXXV. If the canons, priests, missionaries, the priests of the ceremony of the foreign missions, and of Saint Sulpice, as well as the Jesuits and the Recollets, chuse to go to France, passage shall be granted them in his Britannic Majesty's ships; and they shall all have leave to sell, in whole, or in part, the estates and moveables which they possess in the colonies, either to the French or to the English, without the least hindrance or obstacle from the British government.

They may take with them, or send to France, the produce, of what nature soever it be, of the said goods sold, paying the freight, as mentioned in the 26th article. And such of the said priests who chuse to go this year shall be victualled during the passage at the expence of his Britannic Majesty, and shall take with them their baggage.

They shall be masters to dispose of their estates and to send the produce thereof, as well as their persons and all that belongs to them, to France.

Article XXXVI. If by the treaty of peace Canada remains to his Britannic Majesty, all the French, Canadians, Accadians, merchants, and other persons who chuse to retire to France, shall have leave to do so from the English general, who shall procure them a passage. And nevertheless, if, from this time to that decision, any French or Canadian merchants, or other persons, shall desire to go to France, they shall likewise have leave from the English general. Both the one and the other shall take with them their families, servants, and baggage.

Granted.

Article XXXVII. The lords of manors, the military and civil officers, the Canadians, as well in the town as in the country, the French settled or trading in the whole extent of the colony of Canada, and all other persons whatsoever, shall preserve the intire peaceable property and possession of their goods, noble and ignoble, moveable and immoveable, merchandizes, furs, and other effects, even their ships: they shall not be touched, nor the least damage done to them, on any pretence whatsoever. They shall have liberty to keep, let, or sell them, as well to the French as to the English, to take away the produce of them in bills of exchange, furs, specie, or other returns, whenever they shall judge proper to go to France, paying

paying the freight, as in the 26th article. They shall also have the furs which are in the posts above, and which belong to them, and may be on the way to Montreal: and for this purpose they shall have leave to send this year, or the next, canoes, fitted out, to fetch such of the said furs as shall have remained in those parts.

Granted, as in the 26th article.

The Accadians.

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

The King is to dispose of his ancient subjects: in the mean time they shall enjoy the same privilege as the Canadians.

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

Granted, except with regard to the Canadians.

The Indians in alliance with the French.

Article XL. The savages, or Indian allies of his most Christian Majesty, shall be maintained in the lands they inhabit, if they chuse to remain there: they shall not be molested on any pretence whatsoever for having carried arms, and served his most Christian Majesty. They shall have, as well as the French, liberty of religion, and shall keep their missionaries. The actual vicars-general, and the bishop, when the episcopal see shall be filled, shall have leave to send them new missionaries when they shall judge it necessary.

Granted, except the last article, which has been already refused.

Article XLI. The French, Canadians, and Accadians, of what state or condition soever, who shall remain in the colony, shall not be forced to take arms against his most Christian Majesty or his allies,

allies, directly or indirectly, on any occasion whatsoever. The British government shall only require of them an exact neutrality.

They become subjects of the King.

Article XLII. The French and Canadians shall continue to be governed according to the custom of Paris, and the laws and usages established for this country; and they shall not be subject to any other imposts than those which were established under the French dominion.

Continuance of the French laws.

Answered by the preceding articles, and particularly by the last.

Article XLIII. The papers of the government shall remain without exception in the power of the Marquis de Vaudreuil, and shall go to France with him. These papers shall not be examined on any pretence whatsoever.

Papers of the Government.

Granted, with the reserve already made.

Article XLIV. The papers of the intendency, of the office of comptroller of the marine, of the ancient and new treasurers of the King's magazines, of the office of the revenues and forges of St. Maurice, shall remain in the power of M. Bigot, the intendant, and they shall be embarked for France in the same vessel with him. These papers shall not be examined.

Papers of the intendant's office, and other public papers.

The same as to this article.

Article XLV. The registers and other papers of the supreme council of Quebec; of the provost, and admiralty of the said city; those of the royal jurisdictions of Trois Rivières and of Montreal; those of the seigneurial jurisdictions of the colony; the minutes of the acts of the notaries of the towns and of the countries; and, in general, the acts and other papers that may serve to prove the estates and fortunes of the citizens, shall remain in the colony, in the rolls of the jurisdictions on which these papers depend.

The registers of the supreme council of Quebec, and of the other courts of justice in the province.

Granted.

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

Article XLVI. The inhabitants and merchants shall enjoy all the privileges of trade, under the same favours and conditions granted to the subjects of his Britannic Majesty, as well in the countries above as in the interior of the colony.

Granted.

Negroes and
Panis slaves.

Article XLVII. The negroes and Panis of both sexes shall remain, in their quality of slaves, in the possession of the French and Canadians to whom they belong: they shall be at liberty to keep them in their service in the colony, or to sell them; and they may also continue to bring them up in the Roman religion.

Granted, except those who shall have been made prisoners.

Liberty to all
persons to ap-
point attorneys
to take care of
their affairs;

Article XLVIII. The Marquis de Vaudreuil, the general and staff officers of the land forces, the governors and staff officers of the different places of the colony, the military and civil officers, and all other persons who shall leave the colony, or who are already absent, shall have leave to name and appoint attorneys to act for them, and in their name, in the administration of their effects, moveable and immoveable, until the peace. And if, by the treaty between the two crowns, Canada does not return under the French dominion, these officers or other persons, or attorneys for them, shall have leave to sell their manors, houses, and other estates, their moveables and effects, &c. to carry away or send to France the produce, either in bills of exchange, specie, furs, or other returns, as is mentioned in the 37th article.

Granted.

Those, whose
goods have been
damaged con-
trary to the ca-
pitulation of the
city of Quebec,
shall have justice
done them for
such injuries.

Article XLIX. The inhabitants and other persons who shall have suffered any damage in their goods, moveable or immoveable, which remained at Quebec, under the faith of the capitulation of that city, may make their representation to the British government, who shall render them due justice against the person to whom it shall belong.

Granted.

Article L. and last. The present capitulation shall be inviolably executed in all its articles, and *bonâ fide* on both sides, notwithstanding any infraction, and any other pretence with regard to the preceding capitulations, and without making use of reprisals.

Granted.

N U M B E R VII.

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

C O N C L U D E D

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

C O N T A I N I N G

The Cession of Canada to the Crown of Great Britain.

Cession of Nova
Scotia, or Acca-
dia.

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

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

Moreover, his most Christian Majesty cedes and guarantees to his said Britannic Majesty, in full right, Canada, with all it's dependencies, as well as the island of Cape Breton, and all the other islands and coasts in the Gulf and River of Saint Lawrence, and, in general, every thing that depends on the said countries, lands, islands, and coasts, with the sovereignty, property, possession, and all rights acquired by treaty or otherwise, which the most Christian King and the crown of France have had, till now, over the said countries, islands, lands, places, coasts, and their inhabitants, so that the most Christian King cedes and makes over the whole to the said King, and to the crown of Great Britain, and that in the most ample manner and form, without restriction, and without any liberty to depart from the said guaranty, under any pretence, or to disturb Great Britain in the possessions above-mentioned.

Liberty of the
Catholic re-
ligion to the
Canadians.

His Britannic Majesty, on his side, agrees to grant the liberty of the Catholic religion to the inhabitants of Canada: he will consequently give the most effectual orders, that his new Roman Catholic subjects may profess the worship of their religion, according

to

to the rites of the Romish church, as far as the laws of Great Britain permit.

His Britannic Majesty further agrees, that the French inhabitants, or others, who had been the subjects of the most Christian King in Canada, may retire with all safety and freedom wherever they shall think proper, and may sell their estates, provided it be to subjects of his Britannic Majesty, and bring away their effects, as well as their persons, without being restrained in their emigration, under any pretence whatsoever, except that of debts, or of criminal prosecutions; the term limited for this emigration shall be fixed to the space of eighteen months, to be computed from the day of the exchange of the ratification of the present treaty.

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

NUMBER VIII.
BY THE KING.
A PROCLAMATION.

GEORGE R.

WHEREAS we have taken into our royal consideration the extensive and valuable acquisitions in America, secured to our crown by the late definitive treaty of peace concluded at Paris the tenth day of February last; and being desirous that all our loving subjects, as well of our kingdoms as of our colonies in America, may avail themselves, with all convenient speed, of the great benefits and advantages which must accrue therefrom to their commerce, manufactures, and navigation, we have thought fit, with the advice of our privy council, to issue this our royal proclamation, hereby to publish and declare to all our loving subjects, that we have, with the advice of our said privy council, granted our letters patent under our great seal of Great Britain, to erect within the countries and islands ceded and confirmed to us by the said treaty, four distinct and separate governments, styled and called by the names of Quebec, East Florida, West Florida, and Grenada, and limited and bounded as follows, viz.

Government of
Quebec.

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

Secondly,

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

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

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

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

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

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

And

And whereas it will greatly contribute to the speedy settling our said new governments, that our loving subjects should be informed of our paternal care for the security of the liberty and properties of those who are and shall become inhabitants thereof; we have thought fit to publish and declare, by this our proclamation, that we have, in the letters patent under our great seal of Great Britain, by which the said governments are constituted, given express power and direction to our governors of our said colonies respectively, that so soon as the state and circumstance of the said colonies will admit thereof, they shall, with the advice and consent of the members of our council, summon and call general assemblies within the said governments respectively, in such manner and form as is used and directed in those colonies and provinces in America which are under our immediate government; and we have also given power to the said governors, with the consent of our said council, and the representatives of the people, so to be summoned as aforesaid, to make, constitute, and ordain laws, statutes, and ordinances for the public peace, welfare, and good government of our said colonies, and of the people and inhabitants thereof, as near as may be, agreeable to the laws of England, and under such regulations and restrictions as are used in other colonies; and in the mean time, and until such assemblies can be called as aforesaid, all persons inhabiting in, or resorting to, our said colonies, may confide in our royal protection for the enjoyment of the benefit of the laws of our realm of England; for which purpose we have given power under our great seal to the governors of our said colonies respectively, to erect and constitute, with the advice of our said councils respectively, courts of judicature and public justice within our said colonies, for the bearing and determining all causes, as well criminal as civil, according to law and equity, and, as near as may be, agreeable to the laws of England, with liberty to all persons who may think themselves aggrieved by the sentence of such courts, in all civil cases, to appeal, under the usual limitations and restrictions, to us in our privy council.

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

Power to make laws with the consent of such assemblies.

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

Power to grant lands.

We have also thought fit, with the advice of our privy council as aforesaid, to give unto the governors and councils of our said three new colonies upon the continent full power and authority to settle and agree with the inhabitants of our said new colonies, or any other person who shall resort thereto, for such lands, tenements, and hereditaments as are now, or hereafter shall be, in our power

power to dispose of, and them to grant to any such person or persons, upon such terms and under such moderate quit-rents, services, and acknowledgements as have been appointed and settled in other colonies, and under such other conditions as shall appear to us to be necessary and expedient for the advantage of the grantees, and the improvement and settlement of our said colonies.

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

- To every person having the rank of a field officer, 5000 acres.
- To every captain, 3000 acres.
- To every subaltern or staff officer, 2000 acres.
- To every non-commissioned officer, 200 acres.
- To every private man, 50 acres.

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

Lands to be granted to reduced officers and soldiers.

And likewise to reduced officers of the navy.

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

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

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

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

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

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

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

to

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

No private person shall purchase any lands of the Indians.

The trade with the Indians shall be free to all the King's subjects.

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

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

M 2

shall

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

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

G O D Save the K I N G.

N U M B E R IX.

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

G. R.

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

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

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

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

And we do hereby require and command you to do and execute all things in due manner that shall belong to your said command and the trust we have reposed in you, according to the several powers and directions granted or appointed you by this present commission

The governour is to act according to the powers and directions of this commission, and according to the King's instructions.

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

Oaths to be taken by the governour.

Those appointed by 1 Geo. I.

Declaration against transubstantiation, Stat. 25 Car. II.

Oath of office.

Oath to observe the laws relating to trade and plantations.

Oaths to be taken by the councillors and lieutenant-governours of Montreal and Trois Rivières.

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

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

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

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

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

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

And our will and pleasure is, that the person thereupon duly elected by the major part of the freeholders of the respective parishes or precincts, and so returned, shall, before their sitting, take the oaths mentioned in the said act, intituled, "An Act for the

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

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

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

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

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

And

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

These grants must be made conformable to the King's instructions.

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

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

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

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

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

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

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

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

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

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

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

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

(Signed) T. TOMKYNs.

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

(Signed) J. GOLDFRAP, D. Regr.

NUMBER X.

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

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

I. The OATH of ALLEGIANCE.

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

So help me G O D.

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

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

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

So help me G O D.

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

I A. B. do truly and sincerely acknowledge, profess, testify, and declare in my conscience, before God and the world, that our Sovereign Great Britain.

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

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

Declaration against the pretender's title to the crown :

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

and renunciation of all allegiance or obedience to him.

Promise to defend the King against all traitorous conspiracies :

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

and to disclose to him all such conspiracies.

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

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

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

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

So help me GOD.

The

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

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

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

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

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

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

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

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

Promise to defend the King against all traitorous conspiracies :

and to disclose to him all such conspiracies.