

N U M B E R XXX.

A Remark on the ill Consequences arising from the too great Subdivision of the Lots of Land belonging to the Freeholders of CANADA, by repeated Partitions of them upon Inheritances.

THE importance of these ill consequences in the judgement of the Canadians, who best understand the condition of the province, will appear from the following passage of a short preface prefixed to an abstract of the laws of police that prevailed in the province of Quebec in the time of the French government, made by a set of Canadian gentlemen of great knowledge and abilities at the desire of his excellency governour Carleton, and brought over by the said governour for the perusal of his majesty's ministers.

L' inobservation de quelques unes des loix de police depuis neuf ou dix ans a déjà fait des torts considérables au défrichement des terres : et, sans vouloir entrer dans aucun détail, on pourroit assurer que l' inexécution seule de l' arrêt du conseil d' état du 28 Avril 1745, est une des principales causes de la disette que nous éprouvons depuis quelque temps. Cet arrêt défend aux habitans de s' établir sur moins de terre qu'un arpent et demi de front sur trente ou quarante de profondeur. Il a été rendu sur ce que les enfans, en partageant les biens de leurs pères, s' établissent chacun sur une portion de la même terre insuffisante pour les faire subsister : ce qui nuit également à la subsistence des villes et au défrichement des terres. Le gouvernement précédent avoit jugé ce point si important qu'il faisoit démolir les maisons construites contre la disposition de cet arrêt. Cependant aujourd'hui rien de si commun que ces sortes d' établissemens.

This passage is inserted as a confirmation of the remark made upon this subject in the above draught of an intended report, No. 1. Page 22, and in the opinion of the attorney-general concerning the governour's report, No. II. Page 55, where it is suggested that a

change

change in the laws of inheritance in that province may probably become expedient in some time hence, in order to avoid the inconveniences therein alluded to and complained of in the foregoing French passage.

The law of inheritance, which the said attorney-general conceives would be most beneficial to the province, may be expressed as follows :

“ If there be only one piece, or lot, of land, that is holden by only one original deed of grant from the lord of whom it is holden, (whether the said piece of land be holden of the king, or of any other lord, and whether it be holden by fealty and homage, as the feignories and fiefs in the said province, or by rent-serveice, or any other tenure whatsoever); and the person so dying intestate, leaves either one son, and one or more daughters, or several sons, and several daughters, the said piece, or lot of land, shall descend to such only, or eldest, son alone, to the exclusion of all the other sons and daughters, agreeably to the law of England.

The law of inheritance, when there is only one lot of land, holden by one original deed of grant, shall be by primogeniture.

And if there be no sons, but only daughters, the said piece or lot of land shall descend to the eldest daughter alone, to the exclusion of all the other daughters, notwithstanding that in this case the law of England would direct an equal partition to be made thereof amongst all the daughters. And the reason hereof is, that great inconveniences have been already found, and more are likely to arise in the said province, from the too great subdivision of these original lots of land, by repeated partitions thereof amongst the coheirs and coheiresses of their last owners; the said lots of land being for the most part, in their first establishment by the grants of the lords of whom they are holden, made only of such a moderate extent and magnitude, as is best adapted to the convenient maintenance of the inhabitants of the said province, and the increase of it's cultivation.

But if there be two or more pieces or lots of land, holden by two or more separate original deeds of grant, whether they are holden of the same, or of different lords, and there be several children of the person so dying intestate, they shall not in this case all go to the eldest son, or daughter, to the exclusion of all the others,

Law of inheritance when there are two or more lots of land holden by different original deeds of grant.

as in the former case, but shall be distributed in separate original lots to all, or several of the said children, according to the following rules.

If the number of the several distinct original lots of land, holden by different original deeds of grant, is equal to the number of children of the intestate, each child shall have one lot, the eldest son chusing the first lot, then the second son chusing another, then the third a third, and so on, till all the sons shall have chosen their several lots; and then the daughters shall chuse the remaining lots in the same manner, every elder daughter chusing before the younger.

If the number of lots of land is smaller than that of the children, the eldest son shall chuse one lot, then the second son another, and so on, through the several sons in order of their seniority, and afterwards through the elders of the daughters, till all the lots are exhausted; and the remaining sons or daughters, after all the said lots of land shall be thus exhausted, shall have no share or interest whatsoever in the said lands.

If the number of lots of land is greater than that of the children, the remaining lots, after each of the sons and daughters shall have chosen one, shall be distributed among the said children a second time in the same manner as before, the sons chusing before the daughters, and the elders of each sex before the younger of the same sex; and so for a third and fourth time, or oftener, until all the said lots shall be exhausted.

And if there are both children and grand-children of the person so dying intestate, the grand-children shall represent their respective parents, and succeed to the lands of such intestate in their stead; each set of grand-children taking that part of the said lands which their deceased father or mother would have taken if they had been living at the death of such intestate. And the said part of the said lands shall descend among the said grand-children in the same manner and order of succession and distribution as if their father or mother had first out-lived the said intestate, and succeeded to the said part, and then died immediately after him. And the same rule of representation

Grand-children shall succeed to the shares of their deceased parents by right of representation.

shall take place with respect to great grand-children, and other more remote descendants of the person so dying intestate.

And if there are no children, or grand-children, or other more remote descendants of the person so dying intestate, but his father is alive, his father shall inherit all his lands; and if the father be dead, but the mother be living at the death of such intestate, his mother shall inherit them; any custom or law of England to the contrary hereof in any-wise notwithstanding.

In default of descendants of the person dying intestate, his parents shall inherit his lands.

And if there be no children, or grand-children, or other more remote descendants of the person so dying intestate, living at the time of his death, and his father and mother are likewise dead before the said time, the brothers and sisters of the said intestate shall succeed to his said lands in the same manner and order of succession and distribution as his sons and daughters would have succeeded to the same, if he had left any. And if some of the brothers and sisters of the said intestate shall be dead, and have left children, or grand-children, or other more remote descendants who shall be living at the time of the death of the said intestate, these children, or grand-children, or other more remote descendants, shall succeed to their ancestor's share of the lands of the said intestate by right of representation, in the same manner as the grand-children, or other descendants of the intestate himself are appointed to succeed to their ancestor's share of the lands of such intestate in the case of a direct lineal descent.

In the next place, the brothers and sisters of the intestate, and their descendants, shall succeed to them.

And if there are no children, nor grand-children, nor other more remote descendants of the person so dying intestate, and his father and mother are both dead at the time of his decease, and there are no brothers or sisters, or children, grand-children, or other more remote descendants of any brothers or sisters of the said intestate living at the time of his decease, his father's father shall succeed to his lands; and in default of his father's father, his father's mother shall succeed to them; and in default of her also, the children and grand-children, and other more remote descendants of the intestate's father's father shall succeed to them in the same manner and order of succession and distribution as the intestate's own children and their descendants would have succeeded to them, if he had happened to leave any.

Then the father's father.

Then the father's mother. Then the children and other descendants of the father's father.

And

Then the father and mother of the intestate's paternal grand-father.

Then the children and other descendants of the said father of the intestate's paternal grand-father.

And in default of all the relations before-mentioned, the father of the father of the intestate's father shall succeed to his said lands; and in default of him, the mother of the father of the intestate's father shall succeed to them; and in default of her also, the children and grand-children, and other more remote descendants of the said father of the father of the intestate's father, shall succeed to them in the same manner and order of succession and distribution as the intestate's own children and their descendants would have succeeded to them, if he had happened to leave any.

Then the father of the intestate's mother.

Then the mother of his mother.

Then the children and other descendants of the said father of the intestate's mother.

And in default of all these relations by the father's side, recourse shall be had to the relations on the intestate's mother's side; and the father of the intestate's mother shall succeed to his said lands; and in default of him, the mother of the said intestate's mother shall succeed to them; and in default of her also, the children and grand-children, and other more remote descendants of the father of the said intestate's mother shall succeed to them in the same manner and order of succession and distribution as the intestate's own children and other descendants would have succeeded to them, if he had happened to leave any.

Then the father and mother of the intestate's maternal grand-father.

Then the children and other descendants of the said father of the intestate's maternal grand-father.

And in default of these also, the father of the father of the intestate's mother shall succeed to his said lands; and in default of him, the mother of the father of the intestate's mother shall succeed to them; and in default of her also, the children and grand-children, and other more remote descendants of the father of the father of the said intestate's mother, shall succeed to them in the same manner and order of succession and distribution as the intestate's own children and their descendants would have succeeded to them, if he had happened to leave any.

In default of all the foregoing relations, the lands of the intestate shall escheat to the lords of whom they are holden.

And if all the relations before-mentioned are wanting to the intestate, his lands shall escheat or revert to the several lords of whom they are holden respectively.

N U M B E R XXXI.

IT is said in the foregoing opinion of the attorney-general of the province of Quebec concerning the report of the governour of the said province (see Number II. Page 50) *That he conceives it to have been his majesty's design in the plan of conduct he has hitherto thought fit to pursue with respect to the province of Quebec, ever since the conquest of it in 1760, to endeavour to introduce into it the English laws, and the English manner of government, and thereby to assimilate and associate it to his 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.* Now that this has been his majesty's intention will appear by comparing the commission of captain-general and governour in chief of the province of Quebec, which his Majesty was pleased to grant to general Murray (and of which that since granted to governour Carleton is but a copy) with a commission of the like kind for the neighbouring province of New York. For it will be seen that the powers contained in these two commissions are almost entirely the same. To enable the readers of these papers to make this comparison with the greater ease, I shall here insert a copy of the commission granted by the late king to Sir Danvers Osborn, in the year 1754, to be captain-general and governour in chief of the said province of New York, which I have taken from Mr. Smith's excellent history of New York, page 229, *et seq.* The commission to general Murray may be seen above, in page 93, *et seq.*

A Commission of his late Majesty King GEORGE the Second to Sir DANVERS OSBORN, Baronet, to be Captain-General and Governour in Chief in and over the Province of NEW YORK in AMERICA, in the Year 1754.

GEORGE the SECOND, 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 Sir Danvers Osborn, Baronet, Greeting:

WHEREAS we did by our letters patent under our great seal of Great Britain, bearing date at Westminster the third day of July in the fifteenth year of our reign, constitute and appoint the honourable George Clinton, Esq; captain-general and governour in chief in and over our province of New York and the territories depending thereon in America for and during our Will and Pleasure, as by the said recited letters patent (relation being thereunto had) may more fully and at large appear: Now know you that we have revoked and determined, and by these presents do revoke and determine, the said recited letters patent and every clause, article, and thing therein contained.

Revocation of the patent of the said governour.

Appointment of the new governour.

And further know you that we, reposing especial trust and confidence in the prudence, courage, and loyalty of you, the said Sir Danvers Osborn, of our especial grace, certain knowledge, and meer motion, have thought fit to constitute and appoint you, the said Sir Danvers Osborn, to be our captain-general and governour in chief in and over our province of New York and the territories depending thereon in America: and we do hereby require and command you to do and execute all things in due manner that shall belong unto 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 and instructions herewith given you,

or

or by such further powers*, instructions, and authorities, as shall at any time hereafter be granted or appointed you under our Signet and Sign manual, or by our order in our privy council, and according to such reasonable laws and statutes as now are in force or hereafter shall be made and agreed upon by you, with the advice and consent of our council and the assembly of our said province under your government, in such manner and form as is herein after expressed.

And our will and pleasure is, that you the said Sir Danvers Osborn, after the publication of these our letters patent, do in the first place take the oaths appointed to be taken by an act passed in the first year of our late royal father's reign, 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 recusants;*" and likewise that you take the usual oath for the due execution of the office and trust of our captain-general and governour in chief in and over our said province of New York and the territories depending thereon, for the due and impartial administration of justice; and further that you take the oath required to be taken by governours of plantations to do their utmost that the several laws relating to trade and the plantations be observed: which said oaths and declaration our council in our said province, or any three of the members thereof, have hereby full power and authority, and are required, to tender and administer unto you, and in your absence to our lieutenant-governour, if there be any upon the place; all which being duly performed you shall administer unto each of the members of our said council, as also to our lieutenant-governour, if there be any upon the place, 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;*" as also

Oaths to be taken by the governour.

Those appointed by stat. 1 Geo. I.

The declaration against transubstantiation, mentioned in stat. 25 Car. II.

Oath of office.

Oath concerning the law of trade.

Oaths to be taken by the members of the council. Those appointed by stat. 1. Geo. I.

* Quere, Whether such powers would be legally delegated by an instrument under the king's signet and sign manual.

Declaration
above-mentio-
ned.
Oath of office.

to cause them to make and subscribe the afore-mentioned declaration, and to administer to them the oath for the due execution of their places and trusts.

Power of sus-
pending the
members of the
council.

And we do hereby give and grant unto you full power and authority to suspend any of the members of our said council from sitting, voting, or assisting therein, if you shall find just cause for so doing; and, if there shall be any lieutenant-governour, him likewise to suspend from the execution of his command, and to appoint another in his stead until our pleasure be known. And if it shall at any time happen that by the death, departure out of our said province, or suspension of any of our said councillors, or otherwise, there shall be a vacancy in our said council (any three whereof we do hereby appoint to be a quorum) our will and pleasure is, that you signify the same unto us by the first opportunity, that we may under our signet and sign manual constitute and appoint others in their stead. But, that our affairs may not suffer at that distance for want of a due number of councillors, if ever it should happen that there be less than seven of them residing in our said province, we do hereby give and grant unto you, the said Sir Danvers Osborn, full power and authority to chuse as many persons out of the principal freeholders, inhabitants thereof, as will make up the full number of our said council to be seven, and no more; which persons so chosen and appointed by you shall be to all intents and purposes councillors in our said province, until either they shall be confirmed by us, or that, by the nomination of others by us under our sign manual and signet, our said council shall have seven or more persons in it.

Power with the
consent of the
council, to call
an assembly.

And we do hereby give and grant unto you full power and authority, with the advice and consent of our said council, from time to time as need shall require, to summon and call general assemblies of the said freeholders and planters within your government according to the usage of our province of New York. And our will and pleasure is, that the persons thereupon duly elected by the major part of the freeholders of the respective counties and places 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*;" as also

Oaths to be
taken by the
members
thereof.

also make and subscribe the afore-mentioned declaration (which oaths and declaration you shall commissionate fit persons under our seal of New York 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.

The declaration
afore-mentio-
ned is to be sub-
scribed by them.

And we do hereby declare that the persons so elected and qualified shall be called and deemed *The general assembly* of that our province and the territories depending thereon.

Name of the
members so
elected and qual-
ified.

And you, the said Sir Danvers Osborn, by and with the consent of our said council and assembly, or the major part of them respectively, 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 thereto, 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.

Power to make
laws;

which shall not
be repugnant to
the laws of
Great Britain.

Provided that all such laws, statutes, and ordinances, of what nature or duration soever, be, within three months or sooner after the making thereof, transmitted unto us under our seal of New York for our approbation or disallowance of the same; as also duplicates thereof by the next conveyance.

The laws so
made shall be
transmitted to
England within
three months.

And in case any or all of the said laws, statutes, and ordinances, being not before confirmed by us, shall at any time be disallowed or not approved, and so signified by us, our heirs, or successors, unto our, or their, sign manual and signet, or by order of our, or their, privy council unto you, the said Sir Danvers Osborn, or to the commandant 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 be void, and become utterly void and of none effect; any thing to the contrary thereof notwithstanding.

If they are at
any time after
disallowed by
the king, they
shall thence-
forth become
void.

And we do hereby declare that nothing may be passed or done by our said assembly, to the prejudice of us, our heirs, or successors,

The governour
shall have a
negative voice as

gainst both
council and
assembly.

Power of ad-
journing, pro-
roguing, and
dissolving the
assembly.

Power to keep
and seal the pub-
lic seal.

Power to admi-
nister, or to au-
thorize others to
administer, to
any person in
the province
the oaths ap-
pointed by stat.
1 Geo. 1.

Power, with the
consent of the
council, to erect
courts of judicature.

Power to commis-
sionate fit per-
sons to adminis-
ter the oaths ap-
pointed by stat.
1 Geo. 1. and
the declaration
against troubles-
somization, to
persons belong-
ing to such
courts.

Power to ap-
point judges,
commissioners
of the peace,
and
Justices, ju-
dicial

cessors, we will and ordain that you, the said Sir Danvers Osborn, shall have and enjoy a negative voice in the making and passing of all laws, statutes, and ordinances as aforesaid: and you shall and may likewise from time to time, as you shall judge it necessary, adjourn, prorogue, and dissolve all general assemblies as aforesaid.

And our further will and pleasure is, that you shall and may use and keep the public seal of our said province of New York for sealing all things whatsoever that pass the great seal of our said province under your government.

And we do further give and grant unto you, the said Sir Danvers Osborn, 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 that behalf, to administer and give the afore-mentioned oaths to all and every such person and 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 further by these presents give and grant unto you, the said Sir Danvers Osborn, 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 thereunto: as also to appoint and commissionate fit persons in the several parts of your government to administer the oaths mentioned in the aforesaid act, intitled, "*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 pretended prince of Wales and his open and secret abettors;*" tender and administer the aforesaid declaration, unto such persons as shall be obliged to take the same, and to receive and deliver the same to such persons as shall be obliged to take the same, and to receive and deliver the same to such persons as shall be obliged to take the same.

And we do hereby authorize and empower you to appoint judges, and in cases requisite commissioners of the peace, and other Justices, justices of the peace, and other

and
and
Justices

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 the clearing of truth in judicial causes.

Power to the
peace, and other
officers of jus-
tice.

And we do hereby give and grant unto you full power and authority, where 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 to 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 to par-
don crimes.

And we do by these presents authorize and empower you to collate any person or persons to any churches, chapels, or other ecclesiastical benefices within our said province and territories aforesaid, as often as any of them shall happen to be void.

Power to collate
ecclesiastical
benefices.

And we do hereby give and grant unto you, the said Sir Danvers Osborn, 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 of New York and other the territories under your government, and, as occasion shall serve, to march them from one place to another, or to embark them, for the resisting and withstanding of all enemies, pirates, and rebels both at sea and land; and to transport such forces to any of our plantations in America, if necessity shall require, for the defence of the same against the invasions or attempts of any of our enemies; and such enemies, pirates, and rebels, if there shall be occasion, to pursue and prosecute in or out of the limits of our said province and plantations, or any of them, and, if it shall so please God, them to vanquish, apprehend, and, being taken, either according to law to put to death or keep and preserve alive at your discretion: and to execute martial law in time of invasion, 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 ought of right to, belong.

Power to levy
troops, and em-
ploy them a-
gainst enemies,
pirates, and re-
bels.

And to execute
martial law in
time of war.

And

Power, with the consent of the council, to build forts and castles;

and to fortify and furnish them with arms, &c.

and to demolish or dismantle them.

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 of New York and the territories depending thereon, such and so many forts and 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 forts 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.

Power to appoint captains and other officers of ships, and to grant them commissions to execute the law-martial according to the stat. 13 Car. II. and 18 Geo. II.

And so farasmuch 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 time of war may be better governed and ordered, we do hereby give and grant unto you, the said Sir Danvers Osborn, 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 two acts, the one passed in the thirteenth year of the reign of king Charles the Second, intituled, "*An act for the establishing articles and orders for the regulating and better government of his Majesty's navies, ships of war, and forces by sea*;" and the other passed in the eighteenth year of our reign, intituled, "*An act for the further regulating and better government of his Majesty's navies, ships of war, and forces by sea, and for regulating proceedings upon courts martial in the sea service*;" and to use such proceedings, authorities, punishments, corrections, and executions upon any 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 of our said province and territories, as the case shall be found to require, according to the martial law and the said directions during the time of war as aforesaid.

This shall not affect any officers, seamen, or others persons on board ships

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 offences, cause, matter, or thing, committed or done

done upon the high sea or within any of the havens, rivers, or creeks of our said province and territories under your government, by any captain, commander, lieutenant, master, officer, seaman, soldier, or other person whatsoever, who shall be in our actual service and pay in, or on board, any of our ships of war, or other vessels, acting by immediate commission or warrant from our commissioners for executing the office of our high admiral, 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, 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 Great Britain as the statute of the twenty-eighth of Henry the Eighth directs, or by commission from our said commissioners for executing the office of our high admiral, or from our high admiral of Great Britain for the time being, according to the afore-mentioned acts.

commissioned by the admiral, when they commit offences either on the high sea, or in any river, creek, or haven.

But these persons shall be tried for such offences either by commissions under the great seal of Great Britain according to the stat. 28 Hen. VIII. or by commission from the admiralty according to the afore-mentioned acts. 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 misdemeanours 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 said commissioners for executing the office of our high admiral, 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 disorder, offence, and misdemeanor shall be committed on shore, notwithstanding such offenders be in our actual service and born in our pay on board any such our ships of war, or other vessels acting by immediate commission or warrant from our said commissioners for executing the office of our high admiral, 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.

And our further will and pleasure is, that all public monies raised or which shall be raised by any act to be hereafter made within our said province and other the territories depending thereon, be issued out by warrant from you, by and with the advice and

Power, with the consent of the council, to dispose of all public monies raised in the province for the support of the governments.

consent of our council, and disposed of by you for the support of the government, and not otherwise.

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

And we do hereby 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 province and territories aforesaid 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 acknowledgments, to be thereupon reserved unto us, as you, by and with the advice aforesaid, shall think fit: which said grants are to pass and be sealed by our seal of New York, and, being entered upon record by such officer or officers as are or shall be appointed thereunto, shall be good and effectual in law against us, our heirs, and successors.

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

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

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

All officers, civil and military, and all other inhabitants of the province, are to be aiding and assisting, to the governor in the execution of this commission;

And we do hereby require and command all officers and ministers civil and military, and all other inhabitants of our said province and territories depending thereon, to be obedient, aiding, and assisting unto you, the said Sir Danvers Osborn, in the execution of this our commission and the powers and authorities herein contained; and, in case of your death or absence out of our said province and territories depending thereon, to be obedient, aiding, and assisting unto such person as shall be appointed by us to be our lieutenant-governour or commander in chief of our said province; 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 and territories.

and, in case of the death, or absence, of the governor, to the lieutenant-governour or commander in chief for the time being.

In case of the death or absence of the go-

And if, upon your death or absence out of our said province and territories depending thereon, there be no person upon the place commissioned

commissioned or appointed by us to be our lieutenant-governour or commander in chief of our said province, our will and pleasure is, that the eldest counsellor, whose name is first placed in our said instructions to you, and who shall at the time of your death or absence be residing within our said province of New York, 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 and to all intents and purposes as other our governor and commander in chief of our said province should or ought to do in case of your absence until your return, or in all cases until our further pleasure be known therein.

governour, and if there be no lieutenant-governour in the province, the command of the province shall devolve upon the eldest counsellor.

And we do hereby declare, ordain, and appoint that you, the said Sir Danvers Osborn, shall and may hold, execute, and enjoy the office and place of our captain-general and governor in chief in and over our province of New York and the territories depending thereon, together with all and singular the powers and authorities hereby granted unto you, for and during our will and pleasure.

This office of captain-general and governor in chief of the said province shall be held only during the King's pleasure.

And whereas there are divers colonies adjoining to our province of New York, for the defence and security whereof it is requisite that due care be taken in time of war; we have therefore thought it necessary for our service and for the better protection and security of our subjects inhabiting those parts, to constitute and appoint, and we do by these presents constitute and appoint, you, the said Sir Danvers Osborn, to be our captain-general and commander in chief of the militia and of all the forces by sea and land within our colony of Connecticut and of all our forts and places of strength within the same; and for the better ordering, governing, and ruling our said militia and all our forces, forts, and places of strength within our said colony of Connecticut, we do hereby give and grant unto you, the said Sir Danvers Osborn, and, in your absence, to our commander in chief of our province of New York, all and every the like powers as in these presents are before granted and recited for the ruling, governing, and ordering our militia and all our forces, forts, and places of strength within our province of New York, to be exercised by you, the said Sir Danvers Osborn, and in your absence from our territories and dominion of New York, by our

Grant of the office of captain-general and commander in chief of the militia and other forces both by sea and land of the colony of Connecticut.

commander in chief of our province of New York, within our said colony of Connecticut, for and during our pleasure.

In Witness whereof we have caused these our letters to be made patent.

Witness ourself at Westminster the first Day of August in the twenty-seventh year of our reign.

By writ of privy seal,

YORKE and YORKE.

With the same view of shewing the resemblance of the civil constitutions given to the two provinces of Quebec and New York by his Majesty's commissions and instructions to his governors of them, I shall likewise insert the following copy of a grant of lands in the province of New York made in pursuance of his Majesty's instructions for that province, which will be found to be but little different from the grants of land in the province of Quebec that have been herein above recited.

D R A F T

DRAFT of Letters Patent for a Tract of Land in the Province of NEW YORK, erecting the same into a Township.

GEORGE the THIRD, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth; To all to whom these Presents shall come, Greeting:

WHEREAS our loving subjects A, B, C, D, &c. by their humble petition presented unto our trusty and well-beloved Sir Henry Moore, baronet, our captain-general and governor in chief of our province of New York and the territories depending thereon in America, chancellor and vice-admiral of the same, and read in our council for our said province on the twenty-first day of June now last past, did set forth that the petitioners had discovered a vacant tract of land *[here recite to the end of the Petition]*.

Which petition having been then and there referred to a committee of our council of our said province, our said council did afterwards on the same day, in pursuance of the report of the same committee, humbly advise and consent that our said captain-general and governor in chief should by our letters patent grant to each of the said petitioners, and their respective heirs, the quantity of one thousand acres of the tract of land aforesaid under the quit-rent, provisos, limitations, and restrictions prescribed by our royal instructions.

Wherefore, in obedience to our said royal instructions, our commissioners appointed for the setting out all lands to be granted within our said province have set out for them the said A, B, C, D, &c. all that certain tract or parcel of land within our province of New York, situate, lying, and being in the county of Albany, on the east side of Schohary, adjoining to the patent of Schohary and other

patented lands there; which said tract or parcel of land is part of a tract of land purchased by the said A, B, and others, of the native Indian proprietors thereof, as appears by the Indian deed filed in the secretary's office bearing date the sixth day of June one thousand seven hundred and sixty-four; which said tract or parcel of land begins at the north-east corner of the northernmost of two tracts of land formerly granted to *Lambertus Starnbergber* and *Adam Starnbergber*; and runs from thence north, twenty-seven degrees east, ninety-two chains; then south, sixty-six degrees east, one hundred and fifty-five chains; then south, thirty-one degrees east, two hundred and ten chains; then south, thirty-two degrees west, two hundred and eighty-four chains; then north, fifty degrees west, two hundred and eighty chains; then south, twenty-seven degrees west, one hundred and fifty-four chains; then north, fifty-nine degrees west, one hundred and thirty-seven chains; then north, twenty-five degrees east, twenty-eight chains, to the southernmost of the said two tracts of land granted to the said *Lambertus* and *Adam Starnbergber*; and then, along the southerly and easterly bounds of the said southernmost tract, to a tract of land granted to *Johannes Lavoyer* and *Philip Bergh*; and then, along the southerly, easterly, and northerly bounds of this last-mentioned tract, as they run, to the first mentioned tract granted to the said *Lambertus* and *Adam Starnbergber*; and then, along the east bounds of this last-mentioned tract, north, twenty-five degrees east, one hundred and forty chains, to the place where this tract of land first began; containing eight thousand acres of land and the usual allowance for highways.

And in setting out the said tract, or parcel, of land, our said commissioners have had regard to the profitable and unprofitable acres, and have taken care that the length thereof doth not extend along the banks of any river otherwise than is conformable to our said royal instructions, as by a certificate thereof under their hands, bearing date the eighth day of this instant month of July, and entered on record in our secretary's office for our said province, may more fully appear.

Which said tract of land, set out as aforesaid, according to our said royal instructions, we being willing to grant to the said petitioners,

tioners, their heirs, and assigns for ever, with the several privileges and powers herein after-mentioned:

KNOW YE that, of our special grace, certain knowledge, and meer motion, we have given, granted, ratified, and confirmed, and do by these presents for us, our heirs and successors, give, grant, ratify, and confirm, unto them the said A, B, C, D, &c. their heirs and assigns for ever, all that the tract, or parcel of land aforesaid, set out, abutted, bounded, and described in manner and form as above-mentioned, together with all and singular the tenements, hereditaments, emoluments, and appurtenances thereunto belonging, or appertaining: and also all our estate, right, title, interest, possession, claim, and demand whatsoever, of, in, and to, the same lands and premises and every part and parcel thereof; except and always reserved out of this our present grant unto us, our heirs and successors for ever*, all mines of gold and silver, and all white or other sorts of pine trees fit for masts, of the growth of twenty-four inches diameter and upwards at twelve inches from the earth, for masts for the royal navy of us, our heirs and successors.

Grant of the tract of land above described.

Reservation of all mines of gold and silver: and of all pine trees of a certain size.

To have and to hold one full and equal eighth part (the whole into eight equal parts to be divided) of the said tract or parcel of land, tenements, hereditaments, and premises by these presents granted, ratified, and confirmed, and every part and parcel thereof, with their and every of their appurtenances (except as is herein before excepted) unto each of them our grantees above-mentioned, their heirs and assigns respectively, to their only proper and separate use and behoof respectively for ever, as tenants in common and not as joint tenants.

Habendum.

To be holden of us, our heirs and successors, in free and common socage, as of our manor of *East Greenwich* in our county of

Tenure.

It stood thus in the draft, but the council altered it as above to the very words of the king's instructions.

* All mines of gold and silver and all royal mines whatsoever, and also all white pine trees, and all other sorts and species of pine trees whatsoever fit for masts of the diameter of twenty-four inches and upwards at twelve inches from the ground for masts, &c.

Kent,

Quit-rent.

Kent, within our kingdom of Great Britain; yielding, rendering, and paying therefore, yearly and every year for ever, unto us, our heirs and successors, at our custom-house in our city of New York, unto our, or their, collector or receiver-general there for the time being, on the Feast of the Annunciation of the blessed Virgin Mary, commonly called Lady-Day, the yearly rent of two shillings and six pence sterling * for each and every hundred acres of the above granted lands, and so in proportion for any lesser quantity thereof (saving and except for such part of the said lands allowed for highways as above-mentioned) in lieu and stead of all other rents, services, dues, duties, and demands whatsoever for the hereby granted lands and premises, or any part thereof. And we do, of our especial grace, certain knowledge, and meer motion, create, erect, and constitute the tract, or parcel, of land herein granted, and every part and parcel thereof, a township for ever hereafter to be, continue, and remain, and by the name of _____ for ever hereafter to be called and known.

Erection of the tract of land hereby granted into a township.

Grant, to the inhabitants of the said township, of all the powers and privileges legally belonging to the inhabitants of any other township in the said province.

And, for the better and more easily carrying on and managing the public affairs and business of the said township, our royal pleasure is, and we do hereby for us, our heirs and successors, give and grant to the inhabitants of the said township all the powers, authorities, privileges, and advantages heretofore given and granted to, or legally enjoyed by, all, any, or either, our other townships within our said province.

Establishment of officers to be chosen annually by the inhabitants of the said township.

Day of election.

Place of election.

And we also ordain and establish, that there shall be for ever hereafter in the said township one supervisor, two assessors, one treasurer, two overseers of the highways, two overseers of the poor, one collector, and four constables, elected and chosen out of the inhabitants of the said township yearly and every year, on the first Tuesday in May, at the most public place in the said township by the majority of the freeholders thereof then and there met and assembled for that purpose; hereby declaring that wheresoever the first election in the said township shall be held, the future elections

The council would confine themselves to the very words of the king's instructions.

* Of good and lawful money of Great Britain.

shall

shall for ever thereafter be held in the same place, as near as may be; and giving and granting to the said officers so chosen power and authority to exercise their said several and respective offices during one whole year from such election and until others are legally chosen and elected in their room and stead, as fully and amply as any the like officers have, or legally may use or exercise their offices in our said province.

And in case any or either of the said officers of the said township should die, or remove from the said township, before the time of their annual service shall be expired, or refuse to act in the offices for which they shall respectively be chosen, then our royal will and pleasure further is, and we do hereby direct, ordain, and require the freeholders of the said township to meet at the place where the annual election shall be held for the said township, and chuse other, or others of the said inhabitants of the said township in the place and stead of him, or them, so dying, removing, or refusing to act, within forty days next after such contingency.

Accidental vacancies in the said offices by the death, or removal of the persons who held them, or their refusal to act in them, shall be filled up by new elections within forty days after they have happened.

And to prevent any undue election in this case, we do hereby ordain and require, that upon every vacancy in the office of supervisor, the assessors, and in either of the other offices, the supervisor of the said township, shall, within ten days next after any such vacancy first happens, appoint the day for such election, and give public notice thereof in writing under his, or their hands, by affixing such notice on the church door, or other most public place, in the said township, at the least ten days before the day appointed for such election: and in default thereof, we do hereby require the officer, or officers, of the said township, or the survivor of them, who, in the order they are herein before-mentioned, shall next succeed him, or them, so making default, within ten days next after such default, to appoint the day for such election, and give notice thereof as aforesaid; hereby giving and granting, that such person or persons as shall be so chosen by the majority of such of the freeholders of the said township as shall meet in manner hereby directed, shall have, hold, exercise, and enjoy, the office, or offices, to which he, or they, shall be so elected and chosen, from the time of such election, until the first Tuesday in May then next following, and until other, or others, be legally chosen in his, or their place and stead,

Method of proceeding in the occasional elections.

stead, as fully as the person, or persons, in whose place he, or they, shall be chosen, might, or could, have done by virtue of these presents. And we do hereby will and direct that this method shall for ever hereafter be used for the filling up all vacancies that shall happen in any or either of the said offices between the annual elections above directed.

Condition that the grantees shall within the space of three years settle at least one family for every thousand acres upon the premises. Condition that they shall within the space of three years cultivate at least three acres for every fifty of the premises. Condition, not to destroy the pine trees reserved in this grant to the crown, without the king's leave.

Provided always, and upon condition nevertheless, that, if our said grantees, their heirs, or assigns, or some, or one, of them, shall not, within three years next after the date of this our present grant, settle on the said tract of land hereby granted so many families as shall amount to one family for every thousand * acres of the same tract; or, if they our said grantees, or one of them, their, or one of their, heirs, or assigns, shall not also, within three years to be computed as aforesaid, plant and effectually cultivate at the least three acres for every fifty acres of such of the hereby granted lands as are capable of cultivation; or if they our said grantees, or any of them, their, or any of their, heirs, or assigns, or any other person, or persons, by their, or any of their, privity, consent, or procurement, shall fell, cut down, or otherwise destroy any of the pine trees by these presents reserved to us, our heirs and successors, or hereby intended so to be, without the royal licence of us, our heirs or successors for so doing first had and obtained, that then, and in any of these cases, this our present grant and every thing therein contained shall cease and be absolutely void, and the lands and premises hereby granted shall revert to, and vest in, us, our heirs and successors, as if this our present grant had not been made; any thing herein before contained to the contrary in any-wise notwithstanding †.

Provided

* The clause requiring one family to be settled on every thousand acres, stands on an order of the governour and council.

The following clause was here inserted in the original draft; but was struck out by the council as improper, it being considered as a construction or explanation of the king's instructions, which they thought should be left to the construction of law.

† Declaring nevertheless that neither this reservation or exception herein contained of all white pine-trees and of all other sorts and species of pine-trees whatsoever fit for masts, of

Provided further, and upon condition also nevertheless, and we do hereby, for us, our heirs and successors, direct and appoint that this our present grant shall be registered and entered on record within six months from the date thereof in our secretary's office in our city of New York, in our said province, in one of the books of patents there remaining, and that a docket thereof shall be also entered in our auditor's office there for our said province; and that in default thereof this our present grant shall be void and of none effect; any thing before in these presents contained to the contrary thereof in any-wise notwithstanding.

This grant shall be registered in the secretary's office, and a docket thereof entered in the auditor's office.

And we do moreover, of our especial grace, certain knowledge, and meer motion, consent and agree, that this our present grant, being registered, recorded, and a docket thereof made, as before directed and appointed, shall be good and effectual in the law to all intents, constructions, and purposes whatsoever, against us, our heirs and successors, notwithstanding any mis-reciting, mis-bounding, mis-naming, or other imperfection or omission, of, in, or in any-wise concerning, the above granted, or hereby mentioned, or intended to be granted, lands, tenements, hereditaments, and premises, or any part thereof.

When duly registered and entered, this grant shall be good and valid in law against the king, notwithstanding any mistakes or imperfections in it.

In testimony whereof we have caused these our letters to be made patent, and the great seal of our said province to be hereunto affixed.

of the diameter of twenty-four inches and upwards at twelve inches from the ground, for masts for the royal navy of us, our heirs and successors, nor the restriction, or proviso, afore-mentioned to prevent the felling, cutting down, or otherwise destroying the same, nor any other reservation, exception, matter, or thing herein before contained, shall extend, or be construed to extend, to prohibit, or in any-wise hinder, the said A, B, C, D, &c. or either of them, their, or either of their, heirs, or assigns, from such felling, or cutting down, of any of the said trees on the hereby granted lands, as shall be necessary and conducive to the clearing and effectually cultivating the same or any part thereof, or to or for their, or any of their, own necessary use or uses, on the same lands; but to prevent their, or any, or either, of their, cutting down, felling, or otherwise destroying, any of the said pine-trees on any part of the hereby granted lands, when not clearing to be cultivated and necessary for the cultivation thereof; and to preserve all such trees on every part of the same lands, when out of cultivation, for the use of us, our heirs and successors, as aforesaid.

K k

Witness

Witness our said trusty and well-beloved Sir Henry Moore, baronet, our said captain-general and governour in chief in and over our said province of New York and the territories depending thereon in America, chancellor and vice-admiral of the same, at our fort in our city of New York the twentieth Day of July in the year of our Lord one thousand, seven hundred, and sixty-nine, and of our reign the ninth.

C L A R K E,
H. M O O R E.

N U M B E R

N U M B E R XXXII.

IN the foregoing paper, Number II. intitled, *The opinion of the attorney-general of the province of Quebec concerning the report of the governour of the said province on the state of the laws and administration of justice in the same*, Page 53, it is recommended as a practicable and useful measure to make a code of all the laws that his Majesty shall think fit to be observed in the said province, to the exclusion of all other laws, whether French or English, that are not contained in the said code. As a proof of the practicability of this measure, and as a specimen of such a code with respect to one head of law, which had been the subject of several regulations in the time of the French government, I shall here insert the draught of an ordinance for repairing and amending the public high-ways and bridges in the province of Quebec, which was prepared by the said attorney-general, by the order of the governour and council of the said province in the year 1769, but has not yet been passed. It is a collection of the most useful provisions contained in several French ordinances that had been passed at different times upon the subject, with some additions to them, and very particular directions about the manner of recovering the pecuniary penalties appointed for neglects and breaches of it, in order to render the execution of it easy and certain; which directions are in a great measure the causes of it's length.

K k 2

A D R A U G H T

A DRAUGHT of an ORDINANCE for repairing
and amending the public Highways and Bridges in the
Province of QUÉBEC.

Recamble.

WHEREAS it has been found by the experience of more than three years, that the several provisions made by an ordinance of the governour and council of this province, and dated on the twenty-seventh day of March in the year of our Lord one thousand, seven hundred, and sixty-six, and intitled, “*An Ordinance for repairing and amending the highways in this province,*” have not had the desired effect of causing the said highways to be duly repaired and amended; but that, notwithstanding the said ordinance, the said highways continue to be in a condition that is not only inconvenient, but even dangerous, to travellers: and it is now the opinion of his excellency the governour of this province and the council of the same, that a set of provisions and regulations for this purpose, nearly resembling those which were observed in this province in the time of the French government thereof, and which the inhabitants of the said province were for many years accustomed to follow, would be more likely to be carried into due execution, and to answer the beneficial ends so much to be desired: it is therefore ordained and enacted by his excellency the captain-general and governor in chief of this province, by the advice and with the consent of the council of the same, that,

SECTION I.

Repeal of the
ordinance of the
27th of March,
1766:

and likewise of
all other laws
relating to the
public highways
and bridges.

The aforesaid ordinance dated on the twenty-seventh day of March in the year of our Lord one thousand, seven hundred, and sixty-six, intitled, “*An Ordinance for repairing and amending the highways in this province,*” shall be from the day of the publication of this ordinance utterly void and of no effect; and that all other laws, statutes, ordinances, and customs whatsoever, whether they be laws of England or any other laws whatsoever, concerning the manner of repairing and amending public highways, and the building and repairing public bridges in this province, which may either

either have been in force, or have been supposed to be in force in this province before the present time, shall in like manner be, from the day of the publication of this ordinance, utterly void and of no effect: and that from that day forwards the following rules and directions for the repairing and amending the public highways and bridges in this province shall be observed in their stead.

SECTION II.

Whereas there are three sorts of public highways in this province, There are three sorts of public highways in this province: 1st. Royal highways. to wit, first, those called in the time of the French government of this province *Chemins Royaux*, or *Chemins du Roy*, that is, royal highways, or king's highways, the soil of which belonged formerly to the French king, and now belongs to his most excellent Majesty our sovereign lord the king of Great Britain; which royal highways are usually carried along the fronts of the several seigniories, or large tracts of land granted by the crown, and holden of the same by the several grantees thereof, by the tenure of fealty and homage, between the said seigniories and the river Saint Lawrence, or other rivers near which the said seigniories lie; and, secondly, those 3^d. Seigneurial highways. called in the time of the French Government *Chemins de Ceinture et de Traverse*, the soil of which for the most part belongs to the owners of the seigniories, and which may therefore with propriety be nominated *seigneurial highways*; which run either at the back of the said seigniories, so as to inclose or surround them from behind, or through the said seigniories at the end of one, or two, or three, or more rows of the small lots of land granted by the seigniors to their tenants, to be holden of them by rent-serveice, and which are nearly parallel to the former highways called the king's or royal highways; and, thirdly, those public highways which, during the time of the French government, were called *Chemins de Sortie et de Communication*, and which run across the two former sets of roads called the *Chemins du Roy*, or royal highways, and the *Chemins de Ceinture et de Traverse*, or seigneurial highways, nearly at right angles, and in directions parallel, or nearly parallel, to the sides, or depths, of the several seigniories through which, or between which, they pass, and which were made principally for the convenience and benefit of the several peasants, or tenants by rent-serveice, that inhabit the said seigniories, as outlets for them to pass from the 3^d. Peasants roads, or bye-roads. said

faid feignories into the royal and feigneurial highways before-mentioned, and, for the most part, passed through and upon the soil of some of the said peasants, and which may therefore with propriety be denominated *Peasants Roads*, or *Bye-roads*, and will be so denominated in the subsequent part of this ordinance: it is hereby ordained and declared by the authority aforesaid, with respect to all public highways of the two first kinds above-mentioned, to wit, royal highways and feigneurial highways, or the *Chevins de Ceinture et de Traversé*, in this province, that every person who occupies any land adjoining to any royal or king's highway, or to any feigneurial highway in this province, shall keep in good repair so much of the said highway as is contiguous to the land occupied by him throughout one half of the breadth of the said highway.

And where any lands adjoining to any such highway happen to be unoccupied, the owner of the said lands shall be obliged to keep the said highway in good repair for the distance through which the said lands are contiguous to the said highway in the same manner as the occupiers thereof would have been, if the said lands had happened to be occupied. And the owners of such lands shall be bound to this duty in all cases, as well when the said lands are in their natural state, and covered with wood, as when they have been cleared.

And all owners of such lands whatsoever, as well those who hold them in a joint capacity, such as the religious societies of monks and nuns that still subsist in this province, as those who hold them in a separate and private capacity; and likewise all persons who hold lands for the use of others, such as the managers and directors of hospitals; and likewise those who hold lands in the right of others, such as the guardians of children not yet come to years of discretion, and of lunatic persons, shall be bound to perform this duty of repairing and keeping in good repair the aforesaid royal and feigneurial highways adjoining to the lands in their possession in the manner above directed. And those who hold such lands for the use of, or in the right of, others, may deduct in their several accounts with the persons to whom they are accountable, such reasonable expences as they shall have incurred in performing, or causing to be performed, this necessary duty.

S E C T.

S E C T. III.

And whereas the lots of land granted to the several peasants, or tenants by rent-service, in this province, are for the most part of a great depth in comparison of their breadth or front (being oftentimes of the depth of thirty, and sometimes of forty, French arpents, and of the breadth of only three of the said arpents); and the several public highways in this province of the third class above-mentioned, which are called in this ordinance bye-roads, or peasants roads, run through the said lots of land in the directions of their depths or longer dimensions; by means whereof it would be unreasonably burthensome to the owners and occupiers of the lands adjoining to such bye-roads to be obliged to repair the said bye-roads throughout the whole space or length in which they are contiguous to their said lands: it is therefore ordained and declared by the authority aforesaid, that the occupiers and owners of the lands adjoining to such bye-roads, or peasants roads, shall not be obliged to repair such parts of the said bye-roads as are contiguous to their said lands; but that the said roads shall be repaired and kept in good repair by a much greater number of the occupiers and owners of land in the respective parishes in which the said bye-roads lie, to wit, by such of the occupiers and owners of land in the said parishes, whether they live near the said bye-roads or at a distance from them, as shall be commanded to repair them by the surveyor-general of the highways for the district in which they lie, who shall appoint them thereunto in the following manner.

The surveyor-general of the highways of each district of the province shall visit and examine every such bye-road in his district, in company with the bailiff and sub-bailiffs of the parish in which it lies, and of at least six more of the most honest and discreet occupiers of land in the said parish, in order to know the length and breadth of the said bye-road, and the nature of it's soil, and the degree of difficulty of keeping it in good repair, and it's distance from each extremity of the said parish, and to discover to which of the inhabitants it will be most especially useful. And after having made such view thereof, the said surveyor-general of the highways shall draw up a written order for repairing the said bye-road, in

which

Every occupier or owner of land adjoining to any royal or feigneurial highway, shall keep the said highway in repair before his own land.

All owners of such lands without exception shall be bound to perform this duty.

Of bye-roads, or peasants roads.

Bye-roads, or peasants roads, are not to be repaired by the occupiers and owners of the adjoining lands; but by a much greater number of the occupiers and owners of land in the parishes in which the said bye-roads lie, appointed thereunto by the surveyor-general of the highways.

Manner of their apportioning a bye-road, or peasants road, among the several persons who are to repair it.

which he shall direct that the occupiers or owners of certain lots of land in the said parish (which lots of land he shall particularly describe in the said order, and mention therein the names of the present owners and occupiers of them) being in his judgement those who reap the most considerable benefit from the said bye-road, shall thenceforwards be bound to keep the said bye-road in repair: and, if he is of opinion that the said bye-road is highly beneficial to all the occupiers and owners of land in the said parish, he shall in such case direct in the said order that all the said occupiers and owners of land, that is to say, all the occupiers of occupied land, and owners of unoccupied land, in the said parish, shall thenceforwards be so bound: excepting only in both cases the occupiers or owners of those lots of land out of which the soil of the said bye-road was taken, who, in consideration that they, or their predecessors in the possession of the said lots of land, whose estate therein they have, did heretofore furnish the soil of the said bye-road out of their said lands for the use of the public, shall be exempted from the labour of keeping the same in repair. And further the said surveyor-general of the highways shall, in his said written order for repairing the said bye-road, assign, or allot, to each of the said occupiers and owners of land that shall be so bound by the said order to keep the said bye-road in repair, a particular portion of the said bye-road, to be kept by him in good repair. And each of the said persons shall keep the said portion of the said bye-road so allotted to him in constant good repair throughout the whole breadth of the said bye-road.

Those persons who furnished the soil of any bye-road shall be exempted from the burthen of repairing it.

Bye-roads shall be kept in the same kind of repair by the persons amongst whom they are apportioned, as royal and feignourial highways by the occupiers and owners of the lands adjoining to them.

And all the rules hereafter-mentioned concerning the kind of repair in which the royal and feignourial highways above-mentioned are to be kept by the occupiers and owners of the lands adjoining to them, shall extend equally to these bye-roads, or peasants roads: and the several persons, to whom the several portions of these bye-roads should be allotted by the surveyors-general of the highways in the manner here mentioned, shall be under the same obligations with respect to those portions of the said bye-roads, and liable to the same penalties for any neglect of their duty concerning them, as the owners of land adjoining to the said royal and feignourial highways are with respect to those parts of the said highways which are contiguous to their respective lands.

And

And when the said surveyor-general of the highways shall have made such a written order as aforesaid for repairing any bye-road and apportioning it among the several persons who are to repair it, he shall cause two copies of the said order to be made upon parchment, either in print or in a very fair character of hand-writing, and shall subscribe his name to them; and then shall deliver one of these copies of the said order to the high bailiff of the parish in which such bye-road lies, to be by him carefully kept during his continuance in his office, and then delivered over to the next high bailiff of the said parish, and so on to the following high bailiffs in succession; and shall deliver the other copy of the said order to the governour and council of the said province to be kept among the records of the said council.

Two copies of the surveyor-general's said order for repairing and apportioning such a bye-road shall be made upon parchment, and subscribed by the said surveyor-general: and one of them shall be delivered to the high bailiff of the parish in which the said bye-road lies, and be kept by him and his successors; and the other shall be delivered to the governour and council of the province, to be kept among the records of the council. Persons aggrieved by the surveyor-general's apportionment of a bye-road may be relieved by an application to the governour and council of the province.

And if any of the said occupiers or owners of land in any parish in this province, to whom the charge and burthen of repairing certain portions of a bye-road in the said parish shall have been thus assigned by the surveyor-general of the highways for the district in which it lies, shall think themselves aggrieved by such apportionment, they may complain thereof in a memorial to the governour and council of the said province, who will thereupon duly consider the grounds and merits of the said complaint, and either quash, amend, or confirm the said order of the surveyor-general of the highways for repairing and apportioning the said bye-road, as they shall find occasion.

And in like manner where it shall happen in process of time, by the increase of the number of the occupiers and owners of land in any parish, that a former apportionment of a bye-road in the said parish, though made at first with equity and discretion, becomes inconvenient to the inhabitants of the said parish, and a new apportionment thereof becomes necessary, the inhabitants of the said parish shall apply to the governour and council of the province by a memorial, setting forth the inconveniences they labour under from the apportionment then in force, and desiring the said governour and council to cause the surveyor-general of the highways of the district in which such bye-road lies, to take a view of the said parish and bye-road, and to make a new order for repairing and apportioning the said bye-road more suitable to the then circumstances of the

The like method must be taken when by length of time and the increase of the number of inhabitants in the parish, a new apportionment of a bye-road is become necessary.

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said parish; and the said governour and council shall take such order therein as shall be fitting.

S E C T. IV.

Ditches shall be made on both sides of every public highway, and kept open and clean during the summer season.

And it shall be deemed a necessary part of the duty of repairing and keeping in good repair any public highway, to make a ditch on each side of it, and to keep the same open and clean during the whole summer season. And these ditches shall be at least two feet in depth, and two feet in breadth at their tops and one foot in breadth at their bottoms; and in some places they shall be made of a greater depth and breadth, according to such directions as shall be given for that purpose by the high bailiffs of the several parishes in which they lie, agreeably to the powers that are given to the said high bailiffs in this behalf in the subsequent part of this ordinance.

S E C T. V.

The surface of every public highway shall be made even, by digging down heaps and filling up holes; and loose stones and other nuisances shall be removed.

And it shall be deemed another necessary part of the said duty of repairing and keeping in good repair the said public highways, to keep the surface thereof as even as may be; and, for that purpose, to fill up all the holes that shall be found therein, and to dig down all the rising heaps of snow or earth that may be formed thereon, and to spread the materials thereof upon the lower parts of the said highways; and to remove all obstacles that may happen to be on the said highways, such as loose pieces of wood, broken carriages, dead horses, or dogs, or other animals, and loose stones of more than three inches in length, and, in general, every thing that may be any hindrance or inconvenience to persons that shall travel on the same.

S E C T. VI.

Small bridges over streams of water not more than four feet wide shall be built and kept in repair by the persons who are

And where a little stream, or rivulet, not more than four feet wide, runs across any public highway, it shall be the duty of the person or persons who is or are obliged by the second or third section of this ordinance to keep in repair that portion of the said highway in which such rivulet runs across it, to make and keep up in constant

constant good repair a strong and safe bridge over such stream, or rivulet, of the same breadth with the said highway, so as to reach from the ditch on one side of such highway to the ditch on the other side thereof. But bridges over rivers, or streams of water, that are more than four feet wide, and that run across public highways, shall be made and kept in repair by the joint labour and at the joint expence of all the inhabitants of the parishes in which they are situated, who shall follow and execute the directions that shall be given them for that purpose by the high bailiffs of the said parishes respectively, in pursuance of the powers given to the said bailiffs by the subsequent clauses of this ordinance.

bound to repair those parts of the public highways in which they are situated. But bridges over larger streams of water shall be built and repaired by the joint labour of all the inhabitants of the parishes in which they are situated.

S E C T. VII.

And to the end that the public highways of this province may receive the full benefit of the sun-shine and wind in summer, and be thereby kept as dry as may be, and that the snow may not be gathered upon them in great and dangerous heaps in winter, all occupiers and owners of land adjoining to any public highways in the said province are hereby required to cut down, and grub up by the roots, and carry away all the wood, both trees and shrubs and other underwoods that may be growing on their said lands for the space of thirty feet on each side of such highway (excepting fruit trees, and all such trees and plants as may be growing in any gardens or orchards, or before any houses on the said highway); under pain of forfeiting the sum of two Spanish dollars in case any wood be found growing on their said lands within the said space of thirty feet from either side of any of the said highways, on or after the first day of June next, and other two Spanish dollars for every subsequent six months during which the said wood shall be left upon the said lands within the said distance of thirty feet from such highway.

The ground shall be cleared of trees and shrubs for the space of thirty feet on each side of every public highway.

S E C T. VIII.

And it shall be the duty of the owners and occupiers of the lands adjoining to any royal or seigneurial highway, and of those persons to whom the duty of repairing any bye-road shall belong by virtue of any such order of apportionment as is described in the third section

The persons whose duty it is to repair the public highways shall beat down the snow on the said

highways with
spades and
shovels after
every new fall
of snow.

section of this ordinance, after every new fall of snow in the winter season, to beat down the snow on the said several public highways with spades and shovels, or other implements proper for that purpose, and to drive their flays, or sleds, or other carriages, over them, for the space of one half hour; to the end that the snow on the said highways may be thereby made close and hard, so as to be fit to bear the carriages of such persons as may have occasion to travel on the said highways. And this they shall do for the breadth of ten feet, to wit, five feet on one side of the road, and five feet on the other, leaving between the paths so beaten and pressed down a middle space of at least two feet in breadth, in which the snow shall either be left in its natural state without being beaten and pressed down at all, or at least shall be less beaten and pressed down than the snow in the other two tracks above-mentioned of the breadth of five feet each; so that the said two tracks may make two different and distinct roads manifestly separated from each other by the said middle space of looser snow; to the end that persons who are travelling in contrary directions on the said highways may travel on different parts thereof, to wit, in the said two separate tracks, and may by that means be enabled to pass by each other without any inconvenience. And, in order thereunto, all persons who shall travel on any public highway in this province are hereby enjoined and commanded to keep themselves, as much as possible, on that side of the said highway which lies upon their right hands as they are travelling; by means whereof those who are travelling on the same highway in contrary directions will always be on different sides thereof. And this rule shall be observed by all travellers on the said public highways in all parts of the year, the summer as well as the winter.

All travellers
on the public
highways shall
keep on those
sides thereof
which lie on
their right-
hands as they
are travelling.

And if any person that is travelling on any of the said public highways in this province, either on horseback, or in a flay or sled, or calash, or cart, or any other carriage, shall happen, contrary to the rule here laid down, to be on that side of the said highway which lies upon his left-hand as he is travelling, and shall meet another person coming the contrary way, either on horseback, or in a flay, or sled, or calash, or cart, or any other carriage, on the same side of the said highway, so that they cannot safely and conveniently pass by each other, without turning aside from the track in which they are going, it shall be the duty of the first of the
said

said persons, who is on the left-hand side of the road, to yield the way to the other, and to go without delay to the right-hand side of the said highway: and if he shall refuse so to do, he shall forfeit the sum of one Spanish dollar for such his refusal, and shall likewise be answerable in an action at law to the other person aforesaid for all the damage which shall accrue to such other person, or to the horses of such other person, or to his carriage or carriages, or to any of the things contained in them, in consequence of such refusal. And the said forfeiture of one Spanish dollar may be sued for and recovered by any person whatsoever before any one justice of the peace of the district in which such refusal shall be made, by an information made before such justice, who is hereby authorized and required to hear and determine such information in a summary manner, and upon the oath of one credible witness (being some other than the informer himself who sues for the said penalty) and to levy the said sum, together with the costs of suing for the same, upon the goods and chattels of such offender. And half the said sum of one Spanish dollar shall belong to the said informer who shall have sued for the same, and the other to the king's majesty. But no prosecution of this kind shall be brought after the space of two weeks from the time of committing the said offence.

S E C T. IX.

And further, to the end that the snow may be always kept hard and well pressed down in the two tracks above-mentioned on the several royal and seigneurial highways in this province throughout the winter season, it shall be the duty of every occupier and owner of land adjoining to any of the said royal and seigneurial highways (over and above the before-mentioned duty of beating down the snow on the two tracks in the said highways above described, with spades or shovels, or other proper implements, immediately after every new fall of snow in the manner prescribed in the last section) to come out, or to send out some person for him, with a horse and a flay, or sled, every day in the winter season during the continuance of the snow upon the ground, at some time in the forenoon; or if he has no horse and carriage at home, to come out in like manner, or send some person for him, with his cows or oxen, and to drive, or cause to be driven, the said horse and flay, or sled, or the said cows and oxen, at least six times over that part of the said
highway.

Sleds, or flays,
or horned cattle,
shall be driven
over the several
royal and seigneurial
highways in this
province at least
six times every
day in the winter,
to keep the
snow down.

under pain of
forfeiting one
fourth part of a
Spanish dollar.

highway which he is obliged to keep in good repair, to wit, three times in one direction, and as often in the contrary direction; unless he be hindered from so doing by the continual falling of snow, or rain, during the whole forenoon, or by sickness, or by some other cause that may reasonably excuse him therefrom. And whosoever shall neglect so to do without a reasonable excuse for such neglect, shall forfeit the fourth part of one Spanish dollar for every such neglect, which sum may be sued for and recovered by the high bailiff, or either of the sub-bailiffs of the parish in which such offence shall have been committed, at any time within one month after the commission thereof, by information before any one justice of the peace of the district in which it shall have been committed, who is hereby authorized and required to hear and determine such information in a summary manner, and upon the oath of one credible witness, and in case of a conviction, to levy the said sum of the fourth part of one Spanish dollar, together with the costs of the suing for the same, by a warrant in writing under his hand, upon the moveable goods and chattels of such offender.

S E C T. X.

Sleds and other
carriages going
to market with
firewood shall be
furnished with
hoes or shovels.

And in order to diminish, as much as possible, the great number of heaps and hollows in the public highways in this province, which are formed by the drifting and irregular settling of the snow upon the said highways in the winter season, and which are found to be very inconvenient to travellers, it shall be the duty of every person that brings a load of firewood to market in any sled or other carriage to either of the towns of Quebec, Three Rivers, or Montreal, during the continuance of the snow upon the ground, to carry with him an hoe or a shovel, to the end that he may be able to remove the heaps of snow, and fill up the corresponding hollows that he shall happen to meet with in his journey to such market-town. And if any such person shall neglect to carry with him an hoe or a shovel on any such occasion, he shall forfeit for every such neglect the sum of one half of a Spanish dollar; which may be sued for and recovered, within one month after such neglect, by the clerk of the market of the town to which such load of firewood shall have been carried, or his sufficient deputy, or, where it happens that there is no clerk of the market, by the high bailiff of the parish

parish to which such town belongs, by information before any one justice of the peace of the district in which such town is situated, who is hereby authorized and required to hear and determine such information in a summary manner upon the oaths of two credible witnesses, and, in case of a conviction, to cause the said sum of one half of a Spanish dollar, together with the costs of suing for the same, to be levied, by a warrant or order in writing under his hand, upon the goods and chattels of such offender.

S E C T. XI.

And it shall be the duty of the several owners and occupiers of land adjoining to any of the royal or seigneurial highways in this province, and of the several persons who shall be bound to keep any bye-road in the same in repair by virtue of any such order of apportionment as is described in the third section of this ordinance, during the winter season in every year, reckoning the same from the first day of November to the first day of May, to fix in the ground, and keep up during the said winter season, long poles, or thin branches, or slips of trees, of the height of eight feet, on both sides, and likewise in the middle, of the said highways between the two tracks before-mentioned of the breadth of five feet each, at the distance of thirty feet one from the other, in order to mark out the road to travellers when the ground is covered with snow. In the royal and seigneurial highways each person shall fix and keep up these poles and branches on that side of every such highway which is nearest to the lands he owns or occupies throughout that part of the said highway which is contiguous to his said land; and shall likewise fix and keep up one half of the poles, or branches that are to be set up in the middle of the said highway between the two tracks above-mentioned, to wit, every other pole, or branch, in the said middle row of poles, beginning from that which lies farthest on the right-hand of such owner or occupier of land as he stands on his own ground with his face towards such highway. And in the peasants roads, or bye-roads, each of the persons amongst whom any bye-road is apportioned, shall fix and keep up all the said three rows of poles, or branches, throughout that portion of the said bye-road which he is bound to repair.

Long poles or
branches of
trees, shall be
set up on both
sides, and in
the middle, of
all public high-
ways in this
province.

And

And when any of these poles, or branches of trees on any of the said public highways happen to be blown down by the wind, or to be thrown down by any other accident, or to be carried away, the persons who are bound to fix them and keep them up as aforesaid, shall, as soon as possible, and, at farthest, within the space of seven days after such accident, set the said poles, or branches, up again, or set others in their room; under pain of forfeiting one Spanish dollar, if for the space of seven days together one or more of these poles shall be wanting in the places where they are bound to fix them and keep them up.

No person whatsoever shall be exempted from this duty.

And all owners and occupiers whatsoever of lands adjoining to any of the said royal or seigniorial highways, and likewise all those persons amongst whom any bye-road shall have been apportioned in the manner above described, as well those described in the latter part of the second section of this ordinance as others, shall be obliged to perform, or cause to be performed, this duty of fixing in the ground and keeping up these poles and branches, as aforesaid.

S E C T. XII.

The bailiffs and sub-bailiffs of the parishes shall be way-wardens, or overseers of the public highways, in their respective parishes.

And to the end that the above-mentioned regulations, and all others that shall hereafter be made concerning the public highways in this province, may be duly observed and carried into execution, it is hereby ordained and declared, that all the high bailiffs and sub-bailiffs of the several parishes in this province shall be way-wardens, or overseers of the public highways, in their respective parishes, and shall examine the state and condition of all the said highways, as well those called bye-roads, or peasants roads, as the royal and seigniorial highways, as often as they can; and shall exhort and admonish the several inhabitants and owners of land in the said parishes to do their several duties relating to the said public highways; and shall use their utmost endeavours to cause the regulations herein above-mentioned, and the directions herein after-mentioned concerning the said public highways, and all such directions as shall be given by any future ordinance concerning the same, to be carried fully into execution.

There shall likewise be one or more way-wardens

And over these bailiffs and sub-bailiffs, who are hereby appointed way-wardens of their respective parishes, there shall be one or more

general

general overseers, or surveyors of the public highways in the province, to whom these bailiffs of the parishes shall from time to time make reports of the state and condition of the said highways in their respective parishes, and from whom they shall receive orders and directions relating thereunto.

general of highways province.

S E C T. XIII.

And it shall be the duty of the high bailiff of every parish in the said province to assign to each of the sub-bailiffs of the same parish a certain portion, or division, of the same parish, in which the overseeing the several public highways and the repairs thereof shall be the object of the particular care and attention of such sub-bailiff. And it shall be the duty of each of these sub-bailiffs to go through and inspect all the public highways in the said division of the parish, so assigned to him by the high bailiff thereof, once in every fortnight, and to make a report to the high bailiff of the said parish, immediately after, or, at farthest, within one week after, such inspection, concerning the state and condition of the said highways. And if any sub-bailiff of a parish shall neglect thus to visit and inspect the several highways committed to his care once in every fortnight, or to make the said report concerning the condition of them to the high bailiff within the space of one week after such inspection, he shall forfeit the sum of four Spanish dollars for every such neglect; which sum shall be sued for and recovered by the said high bailiff of the parish within the space of one month after the time when such report ought to have been made to him, by information before any one justice of the peace of the district within which such parish is situated, who is hereby authorized and required to hear and determine the said information in a summary manner, and, in case of a conviction, to levy the said sum of four Spanish dollars, together with the costs of suing for the same, by an order in writing under his hand to seize and sell so much of the said offender's moveable goods and chattels as shall be sufficient for that purpose. And as this offence consists in the omission of a duty enjoined by this ordinance, and not in the commission of any positive act, it shall lie upon the sub-bailiff, in every information brought against him for such omission, to prove by the oaths of two credible witnesses, that he did perform the said duty by visiting and inspecting all the

Each sub-bailiff shall have a certain division of the parish allotted to him, in which it shall be his more especial duty to oversee the public highways. He shall visit and inspect all the public highways in his division once in every fortnight, and make a report of their condition to the high bailiff. Penalty of a neglect hereof, four Spanish dollars.

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public

public highways in the division of the parish allotted to his care by the high bailiff, and afterwards making a report of their state and condition to the said high bailiff within the space of one week after such inspection: and if he fails to prove either of these facts before the said justice of the peace by the oaths of two credible witnesses, he shall be deemed not to have done it, and shall be convicted accordingly. And if the said high bailiff of the parish shall neglect to bring such information within the aforesaid space of one month after the time that such report concerning the state of the said highways ought to have been made to him, it shall be lawful for any other person whatsoever to bring it within the space of two months next ensuing the said month allowed to the high bailiff, but not afterwards: and the said information brought by the said common informer shall be heard and determined in exactly the same manner, and upon the same evidence, as when it is brought by the high bailiff. And half the said sum of four dollars so forfeited by the sub-bailiff upon such conviction shall belong to the high bailiff, or other informer who shall have sued for the same; and the other half shall belong to the king's majesty, and shall be paid by the said justice of peace, by whose warrant it shall have been levied, to the receiver-general of his majesty's revenue in this province.

S E C T. XIV.

The high bailiff shall visit all the public highways in his parish once in every four weeks; and shall make a report of their state and condition to the surveyor-general of the highways once in every three months.

And it shall be the duty of the high bailiff of every parish in the said province to go in like manner over all the public highways in the whole parish, and examine the state and condition thereof, once in every four weeks, and to make a report to the surveyor-general of the highway for the district in which such parish is situated once in every three months concerning their state and condition, and the repairs and amendments that may be necessary to be made in them. And if any high bailiff of a parish shall fail to make such perambulation over, and inspection of, the several public highways of the parish of which he is high bailiff, once in every four weeks; or, having made the said perambulation, shall fail to make such report of the state and condition of the said highways to the surveyor-general of the highways for the district in which such parish is situated, during the space of more than three months, he shall forfeit the sum of eight Spanish dollars for every such failure, or offence; which

Penalty of a neglect hereof, eight spanish dollars.

which sum of eight Spanish dollars may be sued for and recovered by information before any one justice of the peace of the district in which such parish is situated, by the said surveyor-general of the highways, within one month after the offence shall have been committed (that is, within one month after the failure to make such perambulation and inspection of the said highways, or within one month after the failure to make such report concerning the state and condition of the said highways to the said surveyor-general, according as the said high bailiff shall have been guilty of making the one or the other failure) or, if the said surveyor-general shall neglect to prosecute for the same within the said space of one month, by any other person within the space of two months then next ensuing, to be computed from the expiration of the month allowed to the said surveyor-general: which information the said justice of the peace is hereby authorized and required to hear and determine in a summary manner, and in case of a conviction, to levy the said sum of eight Spanish dollars, together with the costs of suing for the same, by a warrant, or order in writing, under his hand to seize and sell so much of the moveable goods and chattels of such offender as shall be sufficient for that purpose. And, as this offence consists in an omission of a duty, and not in the commission of a positive act, it shall lie upon the said high bailiff, in every information brought against him for such omission, to prove by the oaths of two credible witnesses that he did perform the said duty, which he is accused of having neglected; and, upon his failing in such proof of his performance of the said duty, he shall be deemed to have neglected it, and shall be convicted accordingly. And half the said sum of eight Spanish dollars so forfeited by such high bailiff shall belong to the surveyor-general of the highways, or other informer who shall have sued for the same; and the other shall belong to the king's majesty, and be paid to the said justice of the peace by whose warrant it shall have been levied, and by him to the receiver-general of his majesty's revenue in this province.

S E C T. XV.

And the surveyors-general of the highways in the several districts of this province shall visit the several public highways of the districts respectively committed to their care twice in every year, to wit,

The surveyors-general of the highways shall visit all the highways in once their respective

districts twice
in every year.

And shall make
reports concern-
ing the condi-
tion thereof
to the govern-
our and coun-
cil.

Penalty for a
neglect hereof
one hundred
Spanish dollars.

once in the month of January, and a second time in the month of June; and after each of these journies, or visitings, they shall make reports in writing to the governour and council of the province concerning the state and condition of the said highways, and shall deliver in the said reports to the governour and council before the ends of the months of March and August. And if the surveyor-general of the highways in either of the districts of this province shall neglect either to make such journey through his district in the said months of January and June, in order to inspect the highways thereof, or to make such reports in writing to the governour and council of the province concerning the condition of the said highways before the ends of the said months of March and August, he shall forfeit the sum of one hundred Spanish dollars for every such neglect: which may be sued for and recovered by information before the chief justice of this province by the clerk of the council of the said province, or, in case of his absence from the said province, by his deputy, within the space of two months after the said neglect shall have been committed: and in case the said clerk of the council, or his deputy, shall neglect to sue for the same within the said space of two months, by any other person whatsoever within the space of four months then next ensuing, to be computed from the expiration of the said two months allowed to the said clerk of the council, or his deputy. And the said chief justice of the province is hereby authorized and required to hear and determine the said information in a summary manner at any time whatsoever (whether in or out of the usual times of the sessions of the supreme court of judicature of this province holden before the said chief justice) whensoever application is made to him in that behalf, and to levy the said sum of one hundred Spanish dollars, together with the costs of suing for the same, by a warrant in writing under his hand to seize and sell so much of the goods and chattels of such offender as shall be sufficient for that purpose. And one half of the said sum of one hundred Spanish dollars shall belong to the said clerk of the council, or his deputy, or to such other informer as shall have sued for the same; and the other half to the king's majesty, and shall be paid by the said chief justice to the receiver-general of his majesty's revenue in this province.

S E C T. XVI.

And it shall be the duty of the sub-bailiffs of the several parishes in this province, whenever they observe any of the public highways, in the divisions of the said parishes committed to their care and inspection, to be out of repair, and to stand in need of being mended, to admonish the persons whose duty it is to keep them in good condition, to repair and amend the same without delay, according to the directions given in this behalf in the foregoing part of this ordinance. And if any such person, being so admonished, shall refuse to repair such highway in the part so mentioned to him by the sub-bailiff (being in that part of the said highway which he is bound to repair) or shall neglect to do so for the space of seven days after such admonition, he shall forfeit the sum of one Spanish dollar, which may be sued for and recovered by such sub-bailiff, at any time within one month after such refusal or neglect, by information before any one justice of the peace of the district in which such part of the said highway so neglected to be repaired is situated; who is hereby authorized and required to hear and determine such information in a summary manner, and to levy the said sum of one Spanish dollar, together with the costs of suing for the same, by a warrant in writing under his hand to seize and sell the goods and chattels of such offender. And if the said sub-bailiff shall neglect to bring such information within the said space of one month after such refusal or neglect, it shall be lawful for the high bailiff of the said parish to bring it at any time within the space of two months then next ensuing; and in case of his omission to bring it within the said two months, it shall be lawful for the surveyor-general of the highways of the district in which such highway is situated, to bring it at any time within the space of three months next ensuing after the expiration of the said two months allowed to the said high bailiff. And one half of the said forfeiture of one Spanish dollar shall belong to such sub-bailiff of the parish, high bailiff of the same, or surveyor-general of the highways, as shall have sued for the same; and the other half thereof shall belong to the king's majesty, and shall be paid into the hands of the justice of the peace by whose warrant it shall have been levied, and by him to the receiver-general of his majesty's revenue in this province.

Wherever any
sub-bailiff of a
parish shall
observe that any
public highway
in his division
of the parish
stands in need
of being mend-
ed, he shall ad-
monish the per-
son who is
bound to keep
it in good re-
pair, immedi-
ately to repair
it; and if any per-
son shall neglect
to do so for the
space of seven
days after such
admonition, he
shall forfeit the
sum of one
Spanish dollar.

And further, the sub-bailiff shall cause the said highway to be mended by some other person, who shall be paid for his labour by him who shall have been guilty of such neglect.

And further, the said sub-bailiff of the parish, after the neglect of the person, so admonished as aforesaid, to repair the said highway for seven days together after such admonition, shall without further delay cause the said highway to be repaired in a proper and convenient manner by some other person whom he shall hire at a reasonable price for that purpose. And the said person so employed by the said sub-bailiff shall have a right to demand payment of the price of his labour in making such repair of the said highway from the former person whose duty it was to have repaired it in pursuance of the sub-bailiff's admonition.

Every absent person, who, by reason of his ownership of lands, shall be bound to keep a part of a public highway in repair, shall depute a person that resides in the parish to repair such highway in his stead.

And where it shall happen that any person, whose duty it is to keep some part of a public highway in good repair in consequence of the second and third sections of this ordinance, shall not live in the parish in which that part of the said public highway which he is bound to repair is situated, it shall be the duty of such absent person to appoint some other person who shall reside in the said parish to be his representative, or deputy, to do his duty in relation to the repairing of the said highway in his stead: and he shall notify such his appointment to the high bailiff of the said parish at some time in the months of October and November in every year. And the person so appointed by him to be his deputy in this behalf shall be considered in the same light as the principal himself, who appoints him, would be considered in if he were resident in the parish; and shall be liable to be admonished by the sub-bailiff of the parish to repair the said public highway in the part thereof that falls to the share of his principal, and to pay the forfeiture of one Spanish dollar, and the charges of causing the said part of the said highway to be repaired by some other person that the sub-bailiff shall employ for that purpose, in case he shall refuse or neglect to repair the same for the space of seven days after an admonition of the sub-bailiff, in the same manner as his principal would be if he were resident in the said parish.

And if he neglects to appoint such a deputy, he shall forfeit twenty Spanish dollars for such neglect.

And if any such absent person as is above-mentioned shall neglect to make such appointment of a representative, or deputy, to do his duty with respect to the highways in the said parish in his stead, or to notify such appointment to the high-bailiff in the months of October and November, as is aforesaid, he shall forfeit the sum of twenty Spanish dollars for such his neglect; which may be sued for

for and recovered by the high bailiff of the said parish at any time within the space of two months after such neglect shall have been committed, or, in case the said high bailiff shall neglect to sue for the same during the said two months, by the surveyor-general of the highways for the district in which such parish is situated at any time within the space of four months then next ensuing after the expiration of the said two months allowed to the said high bailiff, by information before any one justice of the peace of the district in which such parish is situated; who is hereby authorized and required to hear and determine the same in a summary manner, and to levy the said sum of twenty Spanish dollars, together with the costs of suing for the same, by a warrant in writing under his hand to seize and sell the goods and chattels of such offender. And of these twenty dollars so forfeited, four dollars shall belong to the said high bailiff of the parish, or surveyor-general of the said highways who shall have sued for the same, and the other sixteen dollars shall be delivered to the said high bailiff of the parish, and shall be employed by him in repairing and amending the several highways of the said parish, and more especially those parts of them which it was the duty of such offender to keep in repair, and shall be accounted for by such high bailiff to the surveyor-general of the highways of the district in which such parish is situated in the next report which such high bailiff shall make to such surveyor-general in pursuance of the fourteenth section of this ordinance.

S E C T. XVII.

And whereas it will be of great and general convenience to the inhabitants of this province that the several public highways thereof should be of a sufficient width for several carriages to pass by each other easily on the same, without danger of running either against each other, or into the ditches which shall have been made on each side of the said highways, in endeavouring so to do: it is therefore ordained and declared by the authority aforesaid, that the surveyors-general of the highways in this province shall have full power and authority to cause any of the public highways in this province to be widened to the extent of forty English feet, exclusive of the breadth of the ditches on each side thereof; and to cause the ditches that are already made on the sides of such highways to be filled up and

The surveyors general of the highways in this province may cause any public highway to be widened to the breadth of forty English feet, if he shall judge it necessary to the public convenience.

levelled,

levelled, and other ditches to be made in their stead at the said distance of forty English feet from each other, or at such lesser distances from each other as the said surveyors-general shall think fit. And these new ditches shall be of such depths and breadths as the said surveyors-general shall appoint, being not less than the depth of two English feet, and the breadth of one foot at the bottoms of the said ditches, and two feet at their tops. But these changes and improvements are not hereby absolutely enjoined to be made in all the highways in this province: but it is left to the judgement and discretion of the said surveyors-general of the highways to cause, or not to cause, them to be made, as they shall think them to be necessary, or not necessary, to the public convenience.

These changes shall be made by the joint labour of all the inhabitants of the parishes through which the highways to be widened pass, under the direction of the high bailiffs of the said parishes.

And whenever the said surveyors-general of the highways in this province shall think it necessary to widen any of the said highways to a greater extent than it had before, and to cause the old ditches to be filled up and levelled, and new ditches to be made in their stead, the manner of proceeding in order thereunto shall be as follows. The surveyors-general of the highways for the district in which such highway, so intended to be widened, is situated, shall give directions in writing to the high bailiff of the parish in which it is situated concerning the extent to which it's width is to be increased, the length of that part of the said highway which is to be so widened, the situation, depth, and breadth of the new ditches that are to be made, and the other particulars of the intended improvement, and shall likewise appoint the time at which the said changes shall be begun to be made. And thereupon the said high bailiff shall communicate these directions to the inhabitants of the said parish, and shall cause all the men in the said parishes between the ages of eighteen and sixty, who are not hindered therefrom by sickness or some other reasonable cause, to come, at the time appointed by the said surveyor-general, with spades, shovels, pickaxes, hatchets and other necessary implements, and by their joint labour make the said changes and improvements in the said highways. And the said high bailiff may either cause all the said inhabitants of such parish to come together and undertake this work at one and the same time, or to come and undertake the same in different parties by turns one after another, as the said high bailiff shall judge to be most expedient for the performance of the intended work.

work. And if any such inhabitant of such parish, being duly required by the high bailiff thereof to come and perform his share of such joint labour, shall refuse or neglect to do so, and shall likewise neglect to send an able man to do the said work in his stead, (which he is hereby permitted to do, if he does not find it convenient to attend the said duty in his own person;) he shall forfeit the sum of one Spanish dollar for every day during which he shall have neglected to attend such parish labour: which forfeitures may be sued for and recovered by the said high bailiff of the said parish at any time within two months after such refusal or neglect, or, if the said high bailiff shall forbear to sue for the same within the said two months, by the surveyor-general of the highways for the district in which such parish is situated, at any time within the next four months after the expiration of the said two months allowed to the said high bailiff, by information before any one justice of the peace of the same district, who is hereby authorized and required to hear and determine the said informations in a summary manner, and to levy the said forfeitures by warrants in writing under his hand to seize and sell the goods and chattels of such offenders. And one half of every such forfeiture shall belong to the said high bailiff, or surveyor of the highways, who shall have sued for the same, and the other half to the king's majesty.

These inhabitants who refuse or neglect to perform their share of such joint labour, shall forfeit one Spanish dollar for every day during which they shall have been guilty of such neglect.

S E C T. XVIII.

And whereas the highways on the sides of divers high hills in this province are not only much too narrow for the safety and convenience of travellers, but are likewise highly dangerous to them by means of the great steepness of the precipices on the lower sides of the said highways and the want of any hedge, or paling, or bank, or other fence, to preserve the said travellers from falling down the said precipices by their horses taking any sudden fright, or by some other accident: it is therefore hereby ordained and declared that the surveyor-general of the highways of the district in which any public highway passes over any hill in this province, shall have full power and authority not only to cause the said highway to be widened to any extent that he shall think proper, not exceeding the breadth of forty English feet, exclusive of the breadth of the ditches on each side,

Roads over hills shall be dug down to the depth of four feet, leaving a bank of earth of the breadth of six feet on the side next to the precipice.

agreeably to the last foregoing section of this ordinance, but likewise to cause the said highway where it passes over such hill, to be lowered, or dug down to the depth of four feet, leaving a bank of earth of the breadth of six, or more, feet, and of the said height of four feet on the side towards the precipice. And the said surveyor-general of the highways shall give the necessary directions for this purpose to the high bailiffs of the several parishes in which the said hills are situated, who shall thereupon cause the inhabitants of the said parishes to assemble and do the said necessary work by their joint labour in the manner described in the last section, and under the same penalties of forfeiting one Spanish dollar for every day during which any of the said inhabitants, being duly summoned thereunto by the said high bailiff, shall neglect to do his said duty either by himself in his own person, or by some able substitute in his stead. And the said forfeitures shall be sued for and recovered in the same manner, and by the same persons, and within the same times, and shall be applied to the same uses, as those mentioned in the said last foregoing section. And the said highways over the said hills may be widened to any extent that the said surveyor-general shall think proper, not exceeding the said breadth of forty English feet, exclusive of the breadths of the said banks of earth on the sides of the roads that are next to the precipices, and of the breadths of the ditches on both sides of the said highways.

S E C T. XIX.

The surveyor-general of the highways shall have power to cause the whole surface of any public highway to be dug up and new-laid more evenly than before, by the joint labour of the inhabitants of the parish in which it is situated.

And whereas it may sometimes be necessary to dig up the whole surface of a public highway, in order to new-lay it more evenly than before, and to raise the middle of it to a convenient height above the sides thereof, so as to form a gentle slope towards the ditches on each side of such highway, by means whereof the water that shall fall on the said highway may speedily run off from it into the said ditches: it shall be lawful for the surveyor-general of the highways in this province to cause this to be done, wherever they judge it to be necessary in their respective districts, by the joint labour of all the inhabitants of the parishes through which such highways pass. And for this purpose they shall communicate their directions in writing to the high bailiffs of the said parishes, who shall thereupon cause the said directions to be carried into execution

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by the inhabitants of the said several parishes respectively in the manner and under the penalties prescribed in the seventeenth section of this ordinance.

And if no particular mention is made in the said directions of the proportion which the height of the middle of any such highway that is to be new-laid above the sides or edges thereof adjoining to the ditches, ought to bear to the breadth of the said highway, the said height of the middle of such highway above its sides shall be one-twelfth part of the breadth of the said highway contained between the two ditches.

S E C T. XX.

And where any bridge built in any public highway over any river, or stream of water, that is more than four feet wide, shall stand in need of being repaired, it shall be the duty of the several inhabitants of the parish in which such bridge is situated to repair the same by their joint labour, at such times and in such manner as the surveyor-general of the highways of the district in which such bridge is situated shall direct, and under the inspection of the high bailiff of the said parish, to whom the said surveyor-general shall communicate his said directions in writing: and they shall be liable to the same penalties for any neglects herein as are mentioned in the seventeenth section of this ordinance: and the said penalties shall be sued for, recovered, and levied by the same persons, and in the same manner, and within the same times, and shall be applied to the same uses as those mentioned in the said seventeenth section.

And it shall be lawful for the said surveyor-general of the highways, in giving his directions, as aforesaid, for repairing such public bridge, to require such of the inhabitants of the parish in which such bridge is situated as he thinks proper, to furnish each a reasonable quantity of timber and other materials for carrying on the said repairs without any pecuniary compensation for the same, provided that the said timber or other materials are to be found upon the lands of the said inhabitants from whom the surveyor-

general

and in consideration thereof shall exempt them from a part of the labour which they shall otherwise have contributed towards them.

general shall so require them in the said parish. And the said surveyor-general of the highways, and the high bailiff of the parish in executing his orders, shall thereupon exempt such inhabitants from the labour, or a part of the labour, which they would otherwise be bound to contribute towards the repairing of the said bridge, in consideration of the timber and other materials which they shall have furnished thereunto, and in proportion to the value of such timber and other materials, reckoning a quantity of materials that is worth one-fourth part of a Spanish dollar to be equivalent to one day's labour. But these exemptions from labour shall only be temporary, or relate to those particular occasions on which they have furnished such materials, and not to future occasions of repairing the same bridges.

S E C T. XXI.

But such bridges shall not be either built or rebuilt by the single authority of the surveyor-general of the highways;

But wherever the surveyor-general of the highways of any district of this province shall be of opinion that a public bridge over any river, or stream of water, in his district, that is more than four feet wide, is in so ruinous a condition that it cannot easily be repaired, and that it therefore ought to be taken intirely down, and a new bridge built in its stead; or where such surveyor-general shall be of opinion that it would be highly expedient and advantageous to the public that a bridge should be built over any river, or stream of water, that is more than four feet wide, in any public highway in his district, in a place where there was no bridge before: in either of these cases it shall not be lawful for the said surveyor-general of the highways, by his own authority only, to cause such bridge to be built; but he shall refer the matter to the governor and council of the province, for them to take such order therein as shall be fitting: and the manner of his proceeding herein shall be as follows. He shall draw up and present to the said governor and council a memorial containing his reasons for thinking such a work to be expedient to the public convenience, together with an estimate of the labour, the quantity of materials, and the expence that will be requisite to complete it, and an account of the parishes that are nearest to it, and that will reap the greatest benefit from it, and of the number of men between the ages of

sixteen

and sixty in the said several parishes respectively, and of the time and manner in which he would propose to carry the said design into execution: upon the receipt of which memorial from the said surveyor-general of the highways, the said governor and council of the province shall send proper notice of it to the inhabitants of the parish or parishes, by whose labour and expence the said surveyor-general shall have proposed to have the said work done, to the end that, if they do not approve it, they may remonstrate against the execution of it before the said governor and council. And three months shall be allowed them to make such remonstrances against such proposal, before it is finally ordered to be carried into execution; at the expiration of which time the said governor and council shall take such order therein as they shall think fitting, and, if they shall judge it to be expedient that such a bridge should be built, shall make a particular ordinance for that purpose, directing the time and manner in which such work shall be performed, and by whose labour and at whose expence it shall be done.

S E C T. XXII.

And whereas it may in many places be necessary to the preferment and amendment of the public highways of this province to change the courses of small rivers and streams of water; it is hereby ordained and declared, that this likewise shall be done by particular ordinances of the governor and council of this province made expressly for such purpose, and not by the single authority of the surveyor-general of the highways. But wherever the surveyor-general of the highways of any district in this province shall judge it to be necessary for the public convenience that the course of any river, or stream of water, in his district should be changed, he shall represent the matter to the governor and council of the province in a memorial which he shall deliver in to them concerning it; and in this memorial he shall set forth his reasons for thinking such change to be expedient, and a plan of the new channel into which he proposes to turn the water of the said stream, or river, and an estimate of the expence and labour of making such new channel, and an account of the parish, or parishes, to the inhabitants of which such change will be most especially beneficial, and the number

but by the particular order of the governor and council of the province.

The courses of rivers and streams of water shall not be changed by the single authority of the surveyor-general of the highways, but by particular ordinances of the governor and council of the province.

number of inhabitants in the said parishes, and all the other circumstances that will attend such change. And upon the receipt of this memorial the said governour and council of the province shall send proper notice of it to the inhabitants of the parish, or parishes, by whose labour, and at whose expence the said surveyor-general shall have proposed to have the said change made; to the end that, if the said inhabitants do not approve it, they may remonstrate against the execution of it before the said governour and council. And three months shall be allowed them to make these remonstrances before the said proposal of the said surveyor-general of the highways is finally ordered to be carried into execution; at the expiration of which time the said governour and council of the province shall take such order concerning the said proposal as they think fitting; and, if they shall judge it to be expedient that such change of the course of the said stream, or river, should be made, shall make a particular ordinance for that purpose, directing the time and manner in which such work shall be performed, and the persons by whose labour and at whose expence it shall be done.

S E C T. XXIII.

New public highways shall not be made by the single authority of the surveyors-general of the highways, but by particular ordinances of the governour and council of the province.

And wherever it shall be necessary to make a new public highway either in the stead of one already subsisting, or in a place where none has yet been made, whether the said new public highway be a royal or seigneurial highway, or a peasant's road or bye-road; it is hereby ordained and declared, that this likewise shall be done by a particular ordinance of the governour and council of this province made expressly for such purpose, and not by the single authority of the surveyors-general of the highways. This shall be done either upon an application of the inhabitants of any parish in the said province to the said governour and council, by a memorial setting forth their desire that such new highway should be made, and their readines to contribute towards the labour and expence of making it; or upon a representation made to the said governour and council by the surveyor-general of the highways of one of the districts of this province of the advantages that will accrue to the public from a new highway that should pass through such and such places: upon either of which applications
the

the said governour and council of the province shall take such order concerning such new, or proposed, highway as shall be fitting, and, if they shall judge it to be expedient that such new highway should be made, shall make a particular ordinance for that purpose, appointing the time and manner of making such new highway, and the persons by whose labour and at whose expence it shall be made. And when such new highway is made, it shall ever after be kept in repair in the manner directed by the second and third sections of this ordinance.