

N U M B E R XXXIII.

An Account of the Duties that were paid in the Province of QUEBEC during the French Government thereof, on BRANDY, RUM, and WINE, imported into the said Province, and on DRY GOODS imported into, and exported out of, the same.

An account of the trial at Quebec in October, 1766, concerning the duty on British brandy demanded by the crown.

IN pursuance of the instructions above-mentioned in Number XXIV, Page 156, given by the commissioners of his Majesty's treasury to *Thomas Mills*, Esquire, his Majesty's receiver-general of the province of Quebec, in March, 1766, the merchants of the town of Quebec, who had then lately imported wine and brandy into the province, were required by the said receiver-general of the revenue to pay the king a duty upon the same according to the rates set forth in the said instructions, to wit, six pence, sterling, for every gallon of brandy, and ten shillings, sterling, for every hoghead of wine; which were declared to have been the rates established on the importation of the same liquors in the time of the French government. But the merchants refused to pay them. Upon this *George Suckling*, Esquire, the then attorney-general of that province, by the direction of the said *Thomas Mills*, Esquire, his Majesty's receiver-general, filed informations in the supreme court, or court of king's bench, in that province against some of the merchants, who had refused to pay these duties, for defrauding the king of the said duties; to which they pleaded the general plea of *Not guilty*; and upon this issue was joined. One of these informations, which was against Mr. *Dupré*, a French merchant of the town of Quebec, who had imported a large quantity of British brandy, was tried in the month of October, 1766, by a special jury consisting intirely of Englishmen (or such as had been his Majesty's subjects before the conquest of that province) before Mr. *Hey*, the new chief justice of the province, who had arrived in the province in the preceding month of September. The trial lasted several hours; and the evidence as to the facts in the cause

was strong and clear in favour of the crown, it being clearly proved, in the first place, that Mr. *Dupré* had imported the quantity of British brandy stated in the information; and, secondly, that he had refused to pay any duty upon it; and, thirdly (which was the main fact to be proved) that a certain duty, though somewhat less than that which was demanded in the information, had been constantly paid for a great many years past in the time of the French government, and univervally considered by the Canadians as legally due to the French king. Consequently the only doubt that remained upon the subject was concerning the question of law, whether, or no, by the conquest of the country by the British arms in 1759 and 1760, and the subsequent intire cession of it to the king of Great Britain by the definitive treaty of peace in February, 1763, the king of Great Britain became lawfully intitled to the same duties upon British brandy imported into the province, as had been legally due and paid to the French king upon French brandy imported into it immediately before the conquest. As this was a point of law of great novelty and difficulty, the chief justice exhorted the jury to find a special verdict, if they were satisfied with the evidence by which the facts of the cause had been supported, that he might himself have full time to consider and examine it before he pronounced his judgement upon it, and that it might afterwards undergo the more able discussion of his Majesty's principal judges in England upon a removal of the proceedings by writ of error, or appeal, before his Majesty in council. But the jury found a verdict for the defendant. The substance of the evidence produced and delivered on the part of the crown upon this trial was as follows:

The question of law upon this trial.

The chief justice exhorts the jury to find a special verdict.

But they find a verdict for the defendant. An account of the evidence produced and delivered on the part of the crown at this trial.

In the first place it plainly appeared that there had been established in this province for a great many years past the following duties on liquors imported into it from Old France and the other dominions of the French king; to wit,

The Old French duties upon wine, brandy, and rum.

First, Nine French livres, or 7s. 6d. sterling, upon every *barrique*, or hoghead of wine.

Secondly, Sixteen French sols and eight deniers, or eight pence and $\frac{1}{4}$ of a penny, sterling, upon every *vellet*, or measure containing two gallons, of brandy.

And thirdly, Fifteen French livres, or 12 s. 6 d. sterling, upon every *barrique*, or hoghead, of *guildive*, or rum.

These duties had been paid for at least fifty years, as some old witnesses testified; and no one pretended to know the beginning of them: so that there seems to be no reason to doubt that these were legal taxes subsisting in this province at the time of the conquest of it by the British army. Yet the original edict by which they were imposed could not be found; nor could the old witnesses give any account, even from hearsay, of the time and occasion of their being first laid on, nor of the edict, or other instrument, by which they were established. They only declared that they had always considered them as constant and permanent duties, levied for the support of the civil government in all its various branches; as the administration of justice, the supporting public schools, the maintaining foundling children, the furnishing and sending out parties of men to oppose the incursions of the Indians, who were then very troublesome to the colony; and the like. These duties it will be convenient to call the *old duties*, because they were latterly increased by an edict of the French king, of which we are now to give some account.

They were augmented by an edict of the French king in 1747.

This edict of augmentation was published in the year 1747, and ordains, that the duty of nine livres, or 7 s. 6 d. sterling, per hoghead, upon wine, shall be augmented to 12 livres, or 10 s. sterling, per hoghead; that of 16 sols, 8 deniers, or 8 pence, and $\frac{1}{2}$ of a penny, upon every two gallons of brandy, to 1 livre or 4 sols, or 1 s. and that of 15 livres, or 12 s. 6 d. upon every hoghead of rum, to 24 livres, or 20 s. And these increased duties are appointed to continue for three years. And the motive for making this augmentation of these duties is declared to be to re-imburse the treasury of the king of France for the expence of building the wall round the city of Quebec, and also to defray the expence, or part of it, of what still remained to be done to put the fortifications of Quebec in a proper state of defence. This edict was produced at the trial, and was dated the 23d of January, 1747.

Yet these augmented duties continued to be paid after the

These increased duties were accordingly paid: and they continued to be so beyond the three years appointed by the edict (which ended in 1751) even down to the time of the conquest of the country

country by the British arms in 1759. But this continuation of these duties was done without an order of the king of France to warrant it, and therefore was illegal, even according to the rules of that despotic government; because no intendant or governor of a province under the French king has the power of imposing taxes ever committed to him; but it is always exercised by the king himself by his royal edicts for that purpose: and even those edicts are not deemed valid, or ever carried into execution, until they have been registered in the parliament of the district to which the tax relates; as is well known. And accordingly some of the French witnesses at this trial said, that they had always conceived this continuation of the augmented duties beyond the time appointed by the edict to be an illegal measure, and an oppression committed upon the French subjects in Canada by the intendant; and that it had been represented as such to the French king, or his ministers, who had given them hopes that it should be redressed.

expiration of the three years, and till the conquest of the country in 1759; but illegally.

By this edict of augmentation, as well as by the testimony of the old witnesses examined at this trial, it may be collected that there were before 1747 the duties which I have above called the *old duties*, upon wine, brandy [*eau de vie*] and rum [*guildive*] imported into Canada from Old France, or the other dominions of the French king.

Another edict was produced at this trial, which, though it does not, as I apprehend, affect the duties upon liquors, is yet proper to be mentioned on this occasion. This edict was passed in February, 1748, which was one year after the former. By this edict the king of France imposed a duty of three per cent. upon all goods whatsoever imported into Canada, either from Old France, or the other French colonies, except the liquors mentioned in the edict before-mentioned of the 23d of February, 1747; and with respect to those liquors, he confirms the former edict, and directs the duties established by it to be paid. The edict then goes on, and imposes likewise a duty of three per cent upon all goods of the growth of Canada that shall be exported from thence either to Old France or to the other French colonies, excepting the skins of originals (or American elks) upon which it ordains that the same duties shall be paid as were paid before.

Edict of February 1748, imposing a duty of 3 per cent. upon dry goods.

Then there follows an exception of corn, meal, and certain other goods exported from Canada, which it declares to be free from this duty on exportation; and then follows another exception of some particular kinds of goods imported into the colony, which are freed from the duty on importation.

Then there follows in the last place a set of regulations and directions concerning the manner of collecting these duties.

This is the substance of this second edict; concerning which it is proper to observe, that the words made use of throughout the whole of it are, *All goods imported into Canada from old France or the French colonies, and not all goods imported into Canada from any part of the world.* And further it must be observed, that it appeared clearly upon the trial, from the testimony of all the witnesses to whom the question was put, that no *eau de vie*, or brandy, was brought into the province from any country but old France, and that all other brandy was contraband goods and would have been confiscated.

This second edict was made in February, 1748, to defray the expence that had been incurred in the war then on foot with Great Britain in defending Canada. But in the very next month, that is, in March 1748, the execution of it was suspended by another edict till the war should be at an end and the peace should be known in Canada. This suspension continued till the following year 1749, when the peace of Aix la Chapelle (which was concluded in 1748) was known in that country; and then it expired, and the Canadians paid the duty of three per cent. upon goods imported and exported imposed by the second edict above-mentioned, passed in February, 1748, and continued to pay them till the year 1759, when the country was conquered by the British arms.

In this third edict of the sixth of March, 1748, which suspends the execution of the edict of February in the same year, there is a clause expressly declaring that this suspension does not extend to the duties on wine, brandy, and rum, imposed by the edict of January, 1747, but that those duties shall continue to be paid according to the form and tenor of that edict. But there is nothing that makes that edict perpetual, or extends the payment of the duties imposed by it

beyond

beyond the three years mentioned in it. There is indeed in the second edict, of February, 1748, that imposes the duty of three per cent. upon dry goods, an expression by which there is some pretence for supposing that the augmented duties upon wine, brandy, and rum established in the foregoing year 1747, were meant to be made perpetual. This expression occurs immediately after the exception made of wine, brandy, and rum, from the commodities that are to pay the new duty of three per cent. imposed by that edict: for it is then said, *that these liquors shall continue to be charged with the duties imposed by the aforesaid edict of augmentation of January, 1747.* Now this expression "*shall continue to be charged,*" may be construed to mean either that the duties imposed by the edict of augmentation shall be continued beyond the three years appointed by that edict, and made perpetual, or that they shall continue to be paid only during that time agreeably to the directions of that edict. But the former of these seems a harsh construction of this clause, and the latter to be it's true meaning.

This is a pretty full account of the contents of these edicts of the French king, and of the evidence given at the trial of Quebec in October, 1769; from which we may draw the following conclusions; to wit,

Conclusions drawn from the foregoing trial.

First, That there were legally existing in the province of Quebec at the time of it's being conquered by the British arms, the following duties upon wine, brandy, and rum imported into it from Old France, and the other dominions of the French king; to wit,

First conclusion.

- 7s. 6d. sterling per hoghead, upon wine.
 $4\frac{1}{2}$ per gallon, upon brandy.
 12 6 per hoghead, upon rum.

Secondly, That by an edict of the king of France passed in January, 1747, were increased to the following quantities; to wit, to

Second conclusion.

- 10s. sterling per hoghead, upon wine.
 6d. per gallon, upon brandy.
 And 1l. per hoghead, upon rum.

And

Edict of March, 1748, suspending the execution of the last edict till the ensuing peace should be known in Canada.

And that this augmentation of these duties was made for a special and temporary purpose, namely to defray the expence of the fortifications of Quebec, and was appointed to continue only for three years, or till the year 1751.

Third conclusion.

Thirdly, That these augmented duties, notwithstanding this limitation of time appointed by the edict that augmented them, did yet continue to be levied and paid by the Canadians after the expiration of the said three years, and down to the time of the conquest of Quebec in 1759. But that there was no authority for this continuation of them by any edict of the king of France, except those doubtful expressions above-mentioned in the edict of February, 1748.

Fourth conclusion.

Fourthly, That therefore these augmented duties were raised illegally from 1751 to 1759; and that during that period the French officers of government in Canada ought only to have raised the old duties upon those commodities mentioned in the first of these conclusions.

These are the conclusions which may be drawn from the trial in October 1766, concerning the payment of these duties in the time of the French government. It is now proper to mention what had been done with respect to them since the conquest of the province by the British arms in 1759 and 1760, and before the demand of them above-mentioned, which was followed by the trial in October, 1766.

Duties on strong liquors imposed by major-general Murray in 1764 during his military government of Canada.

In the year 1761 major-general Murray, who was left in Canada in the chief command of the king's troops there, imposed, by his own authority arising from that military command, the following duties on strong liquors imported into that country; to wit,

First, Five shillings of current money of Halifax in Nova Scotia, or four shillings and six pence sterling, upon every hoghead of wine imported into that country.

Secondly, Six pence of the same money, or $\frac{2}{3}$ of six pence sterling, or something less than five pence half-penny sterling, upon every gallon of either rum or brandy imported into Quebec, except British brandy, or corn-spirits made in Great Britain, which, in favour of the trade with Great Britain, he exempted from this duty.

And thirdly, Four pence of the same money, or nearly three pence three farthings sterling, upon every gallon of shrub.

These duties were regularly paid for four years, to wit, from the year 1761 to the year 1765, when the military authority by which general Murray had imposed them was at an end, and the country was governed by the same person in the character of civil governor by virtue of his majesty's commission of captain-general and governor in chief of the said province (now called, by a new name, *The Province of Quebec*) which had been received and published in the said province in the month of August, 1764; and then they ceased to be collected. And the whole amount of them for these four years was 12,223 l. of Halifax currency, or $\frac{2}{3}$ of the same sum, that is, 11,000 l. 14 s. sterling; as I collect from an account of these duties drawn up by the direction of the said general Murray, and delivered by the commissioners of his Majesty's treasury in the year 1768 to the receiver-general of the province of Quebec.

These duties, it must be observed, were not precisely the same with those which had been paid in the time of the French government. The duty on wine, which was only 4 s. 6 d. sterling per hoghead, was much less than even the old French duty on wine before the augmentation in 1747; for that was 7 s. 6 d. sterling, per hoghead. The duty on brandy (other than British brandy, which was exempted from it) which was between 5 $\frac{1}{2}$ d. and 5 $\frac{1}{4}$ d. sterling, per gallon, was a little greater than the old French duty upon the same commodity before the augmentation in 1747, which was only 4 $\frac{1}{2}$ d. sterling per gallon; but it was somewhat less than the augmented duty on it, which was 6 d. sterling, per gallon. And the duty on rum, which was the same with that on brandy, or nearly 5 $\frac{1}{2}$ d. sterling, per gallon, was more than double the old French duty on the same commodity before the augmentation in 1747; for that was only 12 s. 6 d. sterling, or 150 pence, sterling, per hoghead, and consequently only the $\frac{63}{100}$ part of 150 pence, sterling, or less than 2 $\frac{1}{2}$ d. sterling, per gallon. And it was greater than even the augmented French duty upon that commodity (which was 1 l. or 20 s. or 240 pence, sterling, per hoghead, and consequently about 3 $\frac{1}{2}$ d. sterling, per gallon) in nearly the proportion of three to two.

Comparison of these duties with the French duties.

These duties, though paid by the merchants of Quebec, in obedience to the orders of general Murray (which during the continuance of the military government in that province could not easily be disputed) were thought by many of them to have been illegally imposed; more especially where they exceeded the duties that had been paid on the same commodities in the time of the French government. And in consequence of this opinion, when general Murray returned to England in the year 1766, five English merchants who had imported French brandy and New-England rum into Quebec during the continuance of these duties so imposed by the said general, and had paid the said duties to the general's collector at Quebec, resolved to bring actions against him to recover back these duties, of which they conceived themselves to have been illegally deprived. Accordingly in the month of January, 1768, they brought four different actions against the said general upon this account in the court of Common-Pleas in England, demanding by their declarations the whole of the sums they had thus paid, as duties upon the said commodities, to the said general's collector, as being money had and received by the said general to their use, and which he had therefore undertaken and promised to pay them, but then refused to do so: to all which actions the said general pleaded the general plea, that he did not undertake to pay them the said sums of money, being in no wise indebted to them.

Actions brought against general Murray in January, 1768, in the court of Common-Pleas in England for the money he had collected from the plaintiffs.

Opinion of the attorney and solicitor-general in favour of the French duties, given February 20, 1768.

On the 10th of February, 1768, two days before the end of Hilary term, his Majesty's attorney and * solicitor-general gave their opinion that the French duties might legally have been collected, but that the excess of the duties collected by general Murray above the French duties ought to be refunded, and that the plaintiffs would not be able to recover more than that surplus, or excess, in their actions. This opinion of the attorney and solicitor-general I have not seen; but I take this account of it from a paper containing an account of these duties, and of the proceedings had in the court of Common-Pleas in England relating to them, which was drawn up by the direction of the said general Murray, and delivered by the commissioners of his Majesty's treasury to the receiver-general of the province of Quebec.

* N. B. Mr. Dunning was at this time solicitor-general, having been appointed to that office on the 20th of the preceding month of January.

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The plaintiffs in these actions obtained an order for a special jury, and gave notice for the trial of them on the 24th day of February, 1768; and they came on accordingly to be tried on that day. The gentlemen, who were of counsel for the plaintiffs, insisted that the general, who was military governor of Canada during the time that these duties were collected, had no authority by his commission to levy any duties upon his Majesty's subjects in that province; and that it was inconsistent with the laws of England to collect them without the authority of either the British parliament, or an assembly of that province for so doing; and that consequently the whole sums so collected ought to be refunded. On the behalf of the defendant, general Murray, it was proved by means of the original French custom-house books (which the general had brought over with him from Quebec upon his late return to England, and which were now produced in court, and the signatures of the French officers thereto proved by witnesses) that the aforesaid French duties had really existed and been paid in the time of the French government according to the rates above stated. Upon seeing this so clearly proved, the plaintiffs in these actions consented to an offer which had before been made them by the defendant, but then refused, to let the jury give a verdict for the excess of the duty on rum imposed by the defendant above the duty upon the same commodity in the time of the French government; meaning, as I understand the account, the augmented duty of one pound, sterling per hoghead, or 3½ d. sterling, per gallon, which was imposed by the edict of 1747: for the paper above-mentioned makes no mention of any distinction between the said augmented duty and the old duty of 12 s. 6 d. per hoghead, that existed antecedently to that edict. And so these causes ended.

Trial of these actions on the 24th of February, 1768.

The jury, by the consent of both parties, give a verdict for the plaintiffs for the excess of the duty on rum imposed by general Murray above the French duty on it.

It is further added in the paper above-mentioned, that, as the counsel for the plaintiffs in these actions were convinced that the said duties had been legally collected, so far as they did not exceed the French duties that were payable at the time of the conquest of Canada by the British arms, and had therefore accepted the offer of the excess of the duty on rum imposed by general Murray above the French duty on it, as the whole of what their clients could legally insist on, it became unnecessary for the defendant's counsel to argue the legality of levying the French duties before the judge who tried these causes, who was the very able and learned Sir

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EARDLY WILMOT, at that time lord chief justice of the court of Common Pleas : but that his lordship seemed to entertain no doubt upon the question of law, and hinted that the plaintiffs counsel did wisely to accept the terms that had been offered them. And it is further added, that the jury who tried these causes, and who were some of the principal merchants of the city of London, were so fully satisfied of the justice of their verdict, as comprehending the full amount of the plaintiffs just demands, that, of their own accord, they deducted from the offer made on the behalf of the defendant, the difference of the exchange between London and Quebec, which was eight or nine per cent. and allowed the same in the damages found by them for the plaintiffs on account of the excess of the rum-duty.

The lords commissioners of his Majesty's treasury resolve to have a new suit instituted at Quebec for the recovery of the French duties on strong liquors imported into the province of Quebec.

In consequence of the event of these actions, by which it seemed to be generally admitted by the judge, and jury, and counsel concerned in the trial of them, that the king had a legal right to collect the French duties upon rum and other liquors imported into the province of Quebec, the lords commissioners of his Majesty's treasury (of whom the duke of Grafton was then the first) resolved to demand the payment of them once more of the merchants of Quebec, notwithstanding the ill success of the trial in October, 1766; imagining, that the authority of the chief justice of the Common Pleas, and of the special jury of London merchants who had tried these actions, and of the plaintiffs counsel in them, who had consented to the verdicts above-mentioned, might prevail upon them to accede to the same opinions, and acknowledge the king's right to these duties. And in this hope they directed Thomas Mills, Esquire, the receiver-general of the province of Quebec, who was then and is still in England, to proceed immediately to Quebec, and institute a new suit for the recovery of the duties above-mentioned, which were claimed by his Majesty as having heretofore belonged to the French king, and gave him some new additional instructions relating to them, which were as follows :

They thereupon give additional instructions to the receiver-general of that province relating to them.

Instructions

Instructions to THOMAS MILLS, Esquire, Receiver and Collector of the Revenues in the Province of QUEBEC.

UPON your arrival at Quebec, you are to act and conduct yourself in the following manner, until you receive further instructions from this board.

Tenor of the said additional instructions.

In case a verdict, or verdicts, shall be obtained in favour of the crown, you shall collect all the duties that appear to have been collected by the French government in 1757, except the following; that is to say,

To collect the French duties.

On all British brandies, and other spirits imported from Great Britain, and being the manufacture thereof, you shall collect no more than one half of the duty which was levied by the French government in 1757 on brandies and spirits of the like quality imported into Canada.

To collect only half the French duties on British spirits.

You shall forbear to collect any part of the duties which were levied by the French king in 1757 upon dry goods imported and exported, except the duties upon tobacco and snuff imported;

No duty to be collected on dry goods, except upon snuff and tobacco.

His Majesty being graciously pleased to remit one moiety of the duties on British brandies and spirits, and the whole of the duties on dry goods imported and exported, except as before excepted, as well in tenderness to his subjects in the province of Quebec, as in favour of the manufacturers of Great Britain.

Given under our hands at the treasury-chambers in Whitehall the 21st day of May, 1768.

(Signed) GRAFTON,
NORTH,
C. JENKINSON.

These instructions were sent by the said Thomas Mills, Esquire, receiver-general of the province of Quebec, to Hector Theophilus Cramahé, Esquire, who, upon Mr. Mills's departure from the province

These instructions are sent to Quebec in the summer, 1768.

province in 1767, had been appointed temporary receiver-general of the revenue in his stead and during his absence by a commission under the public seal of that province, there being no power in Mr. Mills's commission of receiver-general to appoint a deputy in that office. See above, pages 153, 154. And with these instructions were sent the paper above-mentioned concerning the duties that had been collected by general Murray's order from the year 1761 to the year 1765, and concerning the causes that had been tried in the court of Common Pleas in England in the preceding month of February, 1768, and a letter from Grey Cooper, Esquire, one of the secretaries of the treasury, to Guy Carleton, Esquire, at that time lieutenant-governour and commander in chief of the province of Quebec, desiring him, in the name of the lords commissioners of the treasury, to give all the aid and assistance in his power to the said Hector Theophilus Cramahé, Esquire, during Mr. Mills's absence, and to Mr. Mills himself upon his arrival in the province, towards carrying the said instructions into execution.

Public notice is given in the Quebec gazette in February, 1769, that the French duties will be demanded upon the strong liquors imported in the ensuing season.

These instructions were received at Quebec about the end of October, 1768: and, in consequence of them, Mr. Cramahé, the temporary receiver-general of the revenue, gave public notice in the Quebec gazette in the February following, that is, in February, 1769, that these duties on rum, brandy, and wine would be demanded and required of the importers of those liquors upon all the quantities they should import of them in the ensuing spring and summer, according to the rates appointed by the last instructions received from the commissioners of the treasury. And when the ships arrived with these strong liquors, he accordingly demanded these duties. But none of the importers would consent to pay them. Upon this an information was filed by the attorney-general of the said province by the direction of the said lieutenant-governour, and the said temporary receiver-general of the revenue, against the two principal importers of rum from the New-England Colonies, Mr. Isaac Werden and Mr. John Mercier, who were partners in trade and had imported sixty-two hogheads and a half of New-England rum. This information was as follows.

An information filed in the supreme court of the province of Quebec, before William Hey, Esquire, the chief justice of the said province, by Francis Maseres, Esquire, the attorney-general

of the same, in the session of the said court holden at the city of Quebec in July, 1769, against Isaac Werden and John Mercier, of the said city of Quebec in the said province, merchants, for refusing to pay to his Majesty's receiver-general of the revenue of the said province of Quebec the sum of sixty-two pounds, ten shillings, of lawful money of Great-Britain, as a duty due to his Majesty upon the importation of sixty-two hogheads and a half of rum imported by them into the said province of Quebec from certain others of his Majesty's dominions in North America.

PROVINCE AND }
DISTRICT OF }
QUEBEC.

Be it remembered that Francis Maseres, Esquire, attorney-general of our lord the King in the province of Quebec in America, who professeth for our said lord the King in the said province, being present here in court on the twentieth of July in the ninth year of the reign of our said lord the King, for and in behalf of our said lord the King, gave the court to understand and be informed that, whereas the said province of Quebec, which was formerly called and known by the name of Canada, was heretofore, that is to say, in the year of our Lord Jesus Christ one thousand, seven hundred, and fifty-eight, and long before, a part of the dominions of the French king, and subject to his authority; and that during many years of the subjection of the said province to the said French king, and at the time immediately preceding the conquest thereof by the arms of our late sovereign lord George the second, late King of Great-Britain, grandfather of our lord the now King, in the year of our Lord Jesus Christ one thousand, seven hundred, and fifty-nine, certain duties and imposts were lawfully levied by, and paid to, the said French king upon certain strong liquors then imported into the said province from Old France, and the other American colonies then subject to the said French king; which duties were as follows; to wit, first, a duty of twenty-four French livres upon every barrel containing somewhat less than sixty-four gallons of English measure of a strong liquor then called guildivie, made by distillation from malasses, imported into the said province from Old France, or the other colonies then subject to the said French king; and secondly, a duty of one French livre and four sols upon every measure called a veldt, being equal to two gallons

The tenor of the said information.

A state of the duties on strong liquors imported into the province in the time of the French government.

The duty on brandy, or rum. The duty on cas de vis, or brandy.

An information is brought for the duty upon rum against two partners that imported sixty-two hogheads and a half in May, 1769.

and three twenty-fifth parts of a gallon of English measure, of a strong liquor then called eau de vie, made by distillation from wine and divers kinds of fruits, imported into the said province from Old France, or the other colonies then subject to the said French king; and, thirdly, a duty of twelve French livres upon every barrel, containing somewhat less than sixty-four gallons of English measure, of wine imported into the said province from Old France, or the other colonies then subject to the said French king.

The duty on wine.

Transfer of the right to the said duties from the French king to the late King George the second by the conquest of the province.

Descent of the right to the said duties from King George the second to the present King. Confirmation of the present king's right to the said duties by the cession of Canada in the treaty of peace in February, 1763.

And whereas the said duties upon the said liquors did, immediately upon the conquest of the province by the arms of our said late sovereign lord King George the second, grandfather of our lord the now King, become, by right of war, lawfully vested in, and payable to, our said late lord King George the second, and his heirs and successors, Kings of Great-Britain, as parcel of the revenue of the crown of Great-Britain; and, upon the demise of our said late lord King George the second, the right to the said duties did descend to our sovereign lord the now King, as parcel of the revenue of his crown of Great-Britain; and were afterwards further confirmed to be the rightful and lawful property of our said lord the now King by the final and absolute cession of the said province, and of all the rights, dues, and revenues of the said French king arising in and from the said province, made to our said lord the now King by the said French king by the definitive treaty of peace concluded at Paris in the year of our Lord Jesus Christ one thousand, seven hundred, and sixty-three; and have ever since continued, and still do continue, to be lawfully due and payable to our said lord the now King, as parcel of the revenue of the crown of Great-Britain.

Notice given in February, 1769, in the Quebec Gazette, that the said duties would be demanded on the rum, wine, and brandy, that should be imported into Quebec in the following season.

And whereas Hector Theophilus Cramahé, Esquire, the temporary receiver-general of the revenue of our lord the now King in the said province of Quebec during the absence of Thomas Mills, Esquire, the receiver-general of the said province appointed by letters patent of our said lord the now King, from the said province, did, on the seventh day of February last in the ninth year of the reign of our said lord the now King, and on divers other days in the said month of February, and in the following months of March and April, give public notice to all the merchants and others whom it might concern in this province by an advertisement in the public news-paper of this province called the Quebec Gazette, that, in pursuance of orders lately received in that behalf from the lords commissioners of his Majesty's treasury, he the said temporary

receiver-

receiver-general did propose to demand and collect from all vessels that should arrive in the port of Quebec in the ensuing season, a duty of ten shillings of lawful money of Great-Britain (being equal in value to twelve French livres) upon every hoghead of wine that should be imported into the said province in the said vessels, and a duty of twenty shillings of like lawful money of Great-Britain (being equal in value to twenty-four French livres) upon every hoghead of rum that should be imported into the said province in the said vessels, and a duty of one shilling of like lawful money of Great-Britain (being equal to one French livre and four sols) upon every veldt, or measure of two gallons, of brandy, that should be imported into the said province in the said vessels, being respectively equal to the several duties above-mentioned that were lawfully levied and paid to the French king aforesaid, during his possession of the said province, upon wine, and upon the strong liquors above-mentioned, called guildive and eau de vie, imported into the said province from Old France and the other colonies then subject to the French king: yet Isaac Werden and John Mercier, of the town of Quebec in the said province, merchants, not ignorant of the premises, but wickedly and craftily intending to deprive and defraud his said Majesty the now King of the duties aforesaid, and to diminish and impoverish the revenue of his said Majesty, justly belonging to him in right of his crown of Great-Britain, did at some time after the twenty-fifth day of May, in the ninth year of the reign of our said lord the now King, and before the day of exhibiting this information, cause to be imported into the aforesaid port of Quebec in a certain sloop or vessel called The Polly, whereof Alexander Houston was the master, from certain of his said Majesty's colonies in North America, twelve large casks of rum, containing about one hundred and fifteen gallons each, and eighty smaller casks of the same liquor, containing about thirty-two gallons each, all which larger and smaller casks together contain upwards of three thousand nine hundred and forty gallons of the said liquor, or somewhat more than sixty-two hogheads and a half, of sixty-three gallons to each hoghead, upon which a duty of £1. 10s. sterling, was due to the King: and that they have caused the same to be landed without paying the said duty.

That Isaac Werden and John Mercier have imported into Quebec sixty-two gallons and a half of rum;

upon which a duty of £1. 10s. sterling, was due to the King:

and that they have caused the same to be landed without paying the said duty.

behalf

behalf and for the use of our said lord the now King, the said duty of sixty-two pounds, ten shillings, of lawful money of Great-Britain, so due as is aforesaid thereupon, or any part thereof; but that they the said Isaac and John, though they have been often required by the said Hector Theophilus Cramahé to pay the said sum of sixty-two pounds, ten shillings, of lawful money of Great-Britain, to him the said Hector Theophilus, on the behalf and for the use of our said lord the now King, have nevertheless always refused, and still do refuse, and each of them hath refused and still doth refuse, so to do; in contempt of our said lord the now King, and to the evil example of others who may hereafter offend herein, and to the impoverishment of the crown of our said lord the King of Great-Britain, and the damage of the revenue thereunto belonging, to the value of five hundred pounds of lawful money of Great-Britain. Whereupon the said attorney-general of our said lord the King for the said province of Quebec prays the advice of this honourable court in the premises, and that due process of law may be issued against them the said Isaac Werden and John Mercier, to cause them to appear in the said court and answer to our said lord the King touching and concerning the premises.

FRANCIS MASERES,
Attorney-general.

Plea of Not guilty.

Observations made to the jury by the counsel for the crown.

To this information the defendants pleaded the general plea of *Not guilty*; and upon this plea issue was joined, and in the same month of July the cause was tried at Quebec by a special jury before the chief justice of the province. On this occasion it was represented to the jury by those gentlemen who were of counsel for the crown, "That, whatever might have been asserted to the contrary, in order to inflame the passions of the people, and prejudice the minds of the jury against these duties, the King did not, in requiring the payment of them, mean to exert any prerogative of imposing taxes upon his subjects in this province by his own single authority, and without the consent of either a provincial assembly or, the general assembly of the whole British empire, the parliament of Great Britain, in derogation of the famous petition of right in the third year of king Charles the First and of other fundamental statutes of England; but that his Majesty only claimed

"these

"these duties, as being taxes that were legally subsisting in the province at the time of the conquest of it by the British arms, and which had consequently been transferred by the said conquest from the French king to the King of Great-Britain, together with the sovereignty of the province, and the other branches of the public revenue of it, or property that had belonged to the former sovereign; such as the castle of Saint Lewis, which had been the French governor's palace, the intendant's palace, the barracks for the soldiers, and other buildings that had belonged to the French king; and the quit-rents and fines upon alienation that were due to the French king from the owners and purchasers of all lands and houses that were holden immediately of him: all of which were almost universally acknowledged to have been transferred by the conquest from the French king to the King of Great-Britain: and that this was the manner in which the King's claim to these duties had been stated in the information itself, in order to shew that nothing more was aimed at.—That therefore this requisition of the duties did in no degree endanger the public liberty of the inhabitants of that province, and the privileges they claimed either as Englishmen in general, or under the King's proclamation of October, 1763, by which his Majesty had promised them the enjoyment of the benefit of the laws of England; and consequently that it ought not to be an object of their jealousy.—That if the subject was considered with a view to expedience and policy, it seemed to be agreed by most people that the payment of those moderate duties upon spirituous liquors was not only in itself just and reasonable, but was likely to prove beneficial to the province by checking the drunkenness and debauchery that the too common use of them gave rise to.—That whether, or no, these duties were legally due to the King upon the ground above stated, was a new and a nice point of law, that required a very ample discussion, and a mature consideration of all the arguments that might be alledged either for or against it, by judges of the greatest learning and ability: and that therefore, if the facts in the cause should be proved to their satisfaction, it would be proper for them to find a special verdict on this information, to the end that the said arduous matter of law might be properly considered and determined."

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rial.

After this address to the jury, the witnesses for the crown were called and examined, and all the facts in the cause were fully and clearly proved; to wit, first, that the said duties on rum, wine, and brandy had existed and been paid in the time of the French government in the manner that has been above stated in the account of the former trial in October, 1766; and secondly, that the defendants had lately imported into the province sixty-two hogshheads and a half of rum from New England, and landed them without paying the duty, or giving security to pay it; and thirdly, that they had been required by the temporary receiver-general of the revenue to pay the said duty, but had refused to pay it: so that the only remaining doubt in the cause was concerning the point of law above-mentioned, *whether, or no, in consequence of the conquest of the country, and the transfer of the sovereignty over it from the French king to the King of Great Britain, these duties were become legally due to the King of Great-Britain.*

The chief justice exhorts the jury to find a special verdict.

When the evidence was gone through on both sides, the chief justice summed it up to the jury with great judgement and perspicuity, and exhorted them (as he had done the former jury in October, 1766) to bring in a special verdict, that the matter of law, which he considered as very new and difficult, might be fully and maturely examined both by himself and the other higher tribunals to which it might, if the parties so thought fit, be removed by writ of error, and that, in consequence thereof, it might be at last rightly decided. But the jury (though they consisted of some of the most respectable inhabitants of Quebec, and of such as were most moderate in their principles and disposition) could not be persuaded either by this exhortation of the chief justice of the province, or by the example of the jury of London-merchants who tried the actions against general Murray in February, 1768, and the concurrent opinions of the chief justice of the Common Pleas in England and the counsel for the plaintiffs in those actions in favour of the King's right to the French duties, to find either a verdict for the crown, or a special verdict; but without much deliberation they gave a general verdict for the defendants, that they were not guilty of the charge.

But they find a general verdict for the defendants.

It will be highly expedient not to sue for these duties any more.

Such was the event of this second trial for these duties: after which, I presume, it may be concluded that they can never be recovered

covered

covered by suing for them in the courts of Quebec, and consequently that no English minister will ever hereafter endeavour to recover them in this way; since every attempt of this kind that is not attended with success, has a pernicious tendency to weaken the authority of government in the eyes of the Canadians, and lessen their reverence for the crown. If the King's ministers persevere in their resolution to have these duties collected, they had better at once get them imposed anew by an act of the British parliament.

As by this determined resolution of the inhabitants of Quebec to find verdicts against the crown whenever these duties shall be sued for, the question concerning the King's legal right to them is become a matter of mere curiosity and speculation, it can be of no prejudice, either to the crown or to the importers of rum and brandy into the province of Quebec, to inquire a little into the merits of it, and to mention some reasons that have sometimes inclined me to doubt whether this claim of the crown is justly founded.

An inquiry into the legal grounds of the King's claim to these duties.

I shall readily upon this occasion admit the proposition upon which I conceive this claim to be grounded, to be an undoubted maxim of law; to wit, that every tax that was lawfully due to the King of France under the French government in this province, as well as every seigneurial and territorial right that had belonged to him (such as the right to the cattle of Saint Lewis, the intendant's palace, the barracks for the soldiers, and all the ungranted lands in the province, and the quit-rents and mutation-fines arising from those that are granted) becomes, *ipso facto*, by the change of the sovereignty of the country, upon the conquest and subsequent final cession of it by the definitive treaty of peace in February, 1763, the legal due of the King of Great-Britain; unless some act of the King of Great-Britain himself, or his predecessors, done either before or after the cession of it, shall have abridged his rights in this respect: and consequently that any internal tax (such as a tax on horses, or windows, or houses) that should have existed legally under the French government at the time of the conquest, would clearly and certainly now belong to the King of Great-Britain, unless, as is above-mentioned, some act of his own, or his predecessors, had destroyed his right to it. This I admit as a fundamental maxim, by which this question is to be governed; but yet have a doubt

The fundamental proposition upon which this claim is grounded.

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whether

Reasons for doubting whether the King's claim of these duties is legal.

whether it can be applied to the duties on the importation of wine, rum, and brandy into the province of Quebec, so as to support the King's claim of them, for the reasons following.

First reason.

In the first place, the acts of parliament relating to trade and the customs to be paid in the American plantations, expressly comprehend, by words put in for that purpose, all his Majesty's territories in America either then belonging, at the several times of passing those acts, or that afterwards should belong to the crown of Great-Britain: so that here is a system of laws relating to the customs upon goods imported into, and exported out of, this and all the other colonies in America, that is ready made, and exists before-hand with respect to every new acquisition in that country, and therefore must take place and be carried into execution in every such new colony from the moment at which it becomes a part of the dominions of the crown of Great-Britain. Now this system of duties on goods imported and exported, thus imposed or appointed before the acquisition of every new colony, seems to be intended to supersede all the other duties that may be subsisting in it at the time of its becoming a part of the dominions of the crown of Great-Britain: and, if so, it will follow that these acts of parliament, which have been passed, or assented to, by the King, or his royal predecessors, ought to be considered as acts by which they have before-hand renounced, resigned, and given up, their future right to any custom on goods imported into, or exported out of, any new territory in America, that shall be found legally subsisting in such territory at the time of their acquisition of it, and which would otherwise have accrued to them by virtue of the above-mentioned maxim of law. And this renunciation of the said right is not made *gratis*, or without a valuable consideration, but in exchange for certain other duties, or customs, imposed by those plantation-acts of parliament in their stead.

Second reason.

Secondly, In a statute made since the conquest and cession of this province, namely, the stat. 4 Geo. III. c. 15. certain duties are imposed upon Madeira wine and Spanish wine, and upon foreign molasses and syrups, imported into the American colonies: but no mention is made of a duty upon British spirits. And as to French, and other foreign spirits, they are absolutely prohibited in it. Now

this statute seems to be intended to regulate the whole system of the customs to be paid in America. And therefore it seems reasonable to suppose that, if his Majesty had intended, at the time of passing this act, to levy the French duties upon strong liquors, he would have inserted in it a declaratory clause for that purpose; as thus; "and it is further enacted, by the authority aforesaid, that in the province of Quebec in America the following duties shall be levied upon wine, rum, and brandy, imported into the said province; to wit, a duty of ten shillings, of lawful money of Great-Britain, per hoghead, upon wine; a duty of six pence per gallon, upon brandy; and a duty of twenty shillings, per hoghead, upon rum; being the same duties as were levied upon the same liquors respectively, under the French government, immediately before the conquest of the said province by the British arms: and that the said duties shall be paid in the said province of Quebec over and above the other duties before imposed on the said province in common with the other colonies in North America." The want of such a clause as this in the aforesaid act of parliament, at a time when the parliament (of which the King is the head) were deliberating upon the duties that were fit to be imposed in America, seems to afford a ground for concluding that his Majesty at the time of passing this act had no intention that these duties should be levied in this province.

Thirdly, If no such act as the 4 Geo. III. cap. 15. had ever been passed, and if no general system of custom-house laws, relating equally to all the different provinces of North America, the new ones as well as the old, had been enacted before-hand, as is above-mentioned; yet, with respect to British brandy, which general Murray intirely exempted from all duty, it may be alledged that the King's having omitted to demand a duty upon that commodity for several years, to wit, from the conquest of the country till the year 1766, ought to be construed as a resignation, or relinquishment, of that duty, for the benefit of his new subjects in Canada, and in order to put them in as good a condition as their neighbours in the adjoining provinces of New England and New York with respect to their trade with Great-Britain for that commodity. The reviving a tax which had been dropt for a considerable time, is not very different from imposing a new tax. But this reason relates only

Third reason, relating chief-ly to British spirits.

only in a small degree to the duty on wine, which general Murray did not remit, but only lessened, and not at all to the duty on rum, which he augmented.

Fourth reason,
relating only to
British spirits.

Lastly, With respect to brandy it may be said that the commodity itself, which is the subject of the duty, is no longer the same as in the time of the French government. For then only French brandy, which is a liquor made from wine, was allowed to be imported into Quebec: now only British brandy, which is a liquor made from wheat, or other corn, is imported thither. Now these can hardly be considered as the same liquors, except in name; since they differ from each other at least as much as either of them differs from rum: and consequently the legal existence of a tax upon the former in the time of the French government cannot be a sufficient ground for demanding, as a legal due, a like tax upon the latter at present.

These are the reasons that have induced me to doubt whether the claim of the crown to these duties is justly founded: yet I dare not absolutely conclude that it is not so, out of regard to the opinion of a very learned and able lawyer of my acquaintance, who, notwithstanding the foregoing reasons (which he has seen and considered) and a well-known zeal for the liberties and privileges of his fellow-subjects in all parts of the British dominions, yet thinks that these duties are legally due to the crown. The person I mean, is Mr. DUNNING, who is mentioned above in page 296, as having been appointed his Majesty's solicitor-general on the 20th of January, 1768, and having given an opinion in conjunction with the then attorney-general in favour of the King's claim to these duties on the 10th of February, in the same year 1768; to whose judgement, upon every subject of law, I am always ready to pay the highest deference. But I will venture to observe that, in a claim of this kind made by the crown to an ancient duty, good policy requires that the justice and legality of it should not only be discernible to the acutest and most learned lawyers, but should be apparent and manifest to the understandings of common men, so that every body may immediately perceive and acknowledge it, and the crown take possession of the duty which is the object of the claim, with a general consent and approbation. Where
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this is not the case, as it evidently is not with respect to the duties above-mentioned, it is better to resort to the legislative authority of the nation for a new law either to revive the duties, which are the objects of such disputed claim, or to impose such other duties and taxes as the people, upon whom they are to be levied, are easily able to bear, and the exigencies of government make it necessary to levy upon them. And the only authority by which this can be done in the province of Quebec, where no assembly of the people has yet been established, seems to be that of the British parliament. The authority of this supreme legislature and general representative body of the whole British empire has not yet been disputed in this province: and from the loyal deportment of his Majesty's new Canadian subjects there is reason to hope that every act of government that shall be founded on that high authority, will meet with a ready obedience on their part.

The best way of
imposing either
duty or any
other duties, or
taxes, in the
province of
Quebec, is by
an act of the
British parliament.

F I N I S.



