
SKETCH OF BUSINESS
BEFORE THE
PROVINCIAL PARLIAMENT
OF LOWER-CANADA,
IN THE
SESSION TO COMMENCE 21st January 1826.

(Extracted from THE QUEBEC GAZETTE.)

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THE MEETING OF THE PROVINCIAL PARLIAMENT OF LOWER-CANADA.

The day appointed by Royal Proclamation for the opening of the Second Session of the Twelfth Parliament of this Province, is Saturday the 21st January next.

The business of a Colonial Parliament comparatively with that of an Independent State, is of little general interest; but in as far as the Inhabitants of the Colony are concerned, it is of primary importance.

It is in their Provincial Parliament that the Sovereign of the Great Empire to which they belong, by the Governor of the Province, meets the principal men of the Colony whom he has seen fit to select as his Legislative advisers, and the Representatives of the Inhabitants, freely chosen by them, and invested with their full powers, "to have the advice of the people of the Province in Provincial Parliament," according to the expression of the King's Writ of Summons, and "by and with their advice and consent" in the language of the Constitutional Act, "to make Laws for the peace, welfare and good government of the Province, not repugnant to the said Act."

It is only in British Colonies where this high privilege is enjoyed by the Colonists. British Subjects throughout the empire have always claimed it as matter of right, and it has generally been extended to them, as early as circumstances would permit. The Subject in the Colonies is thus placed on an equal footing in respect to free Government with the Subject in the United Kingdom; there is nothing degrading in his situation compared with that of his fellow-subjects in the mother country, nothing that need alienate his mind from them and his Sovereign; and in respect to foreigners, wherever he goes he is a BRITISH SUBJECT, and assuredly may stand on a footing with the strongest and the proudest.

The day of the meeting of our Provincial Parliament, under such circumstances, ought to be looked to with pride, with mutual confidence, with friendly feeling, as a day auspicious to the general welfare. Those who have duties to discharge in Parliament ought to be *all* present in their places, prepared and always ready to discharge these duties; their minds elevated to the dignity of the situation, soaring above the little selfish passions of private life, and considering themselves only as depositaries of the most important trust in society, responsible in their characters and consciences, and eventually to be justly judged according to their deeds.

It would be unreasonable to expect, that what ought to be done will always be fully done. It is useful however to keep the line of duty in view; every one, at least, *can try* to follow it, and he may do so, with some hope of success, if he pays more attention to his own steps than to those of his neighbours.

From some cause or another, it would seem that we are really backward in the proper business of the Legislature, and there can be little doubt but that the general prosperity of the Province has been retarded by the mismanagement of its public concerns. Although legislative enactments generally, have been found nearly as often to hinder as to promote that prosperity, yet the Legislature may effect the remedy of abuses, it may greatly promote equal justice and the greatest possible security to all, it may aid in the general dissemination of knowledge, and in giving additional freedom and facilities to the fair and honest efforts of the industrious classes in pursuit of their own welfare; the chief source of public prosperity. While it provides for the suitable support of the Government, out of the common funds of the country, it may give new energy to the Executive authority, and secure the able, faithful and impartial execution of the existing Laws.

It might perhaps be considered as invidious to point out in detail, the apparent causes which *formerly* prevented or retarded the right operation of the British system of government in this country: such a course might revive irritations, and not contribute to any beneficial result; but it may be proper to advert, to some disadvantages arising from our colonial condition and our local circumstances, which have no operation in the mother country, and which must have a material influence on our legislative proceedings. To these disadvantages, when unavoidable, we are bound to submit, as evils either altogether beyond our controul, or to be cured only with time, endeavoring to make them bear as lightly as possible, keeping in view our peculiar advantages and interests, without at all alienating our minds from the Constitution as by Law established, and which where it has so long prevailed, offering the *first* and *most durable* example of Free Government, has in reality, been found susceptible of adopting itself to *new* circumstances, without *essential* changes.

In the mother country the King, the hereditary head and permanent representative of the state, is always personally present in the midst of his people. Although he *can do no wrong*, that is, by an ingenious turn given to a maxim of despotism, he cannot act in the ordinary administration of the Government, but through *responsible* advisers, he is effectually an *essential directing power* of the Constitution. He is *legally* irresponsible; but his existence and happiness, the existence and happiness of his family, are inseparable from the existence and happiness of the nation. He can be of no party: he is *above* all. He has servants and advisers responsible to him and to Parliament: he retains them so long as they merit it, and preserve the confidence of *both*; unconcerned in the ordinary transactions of public business, he is still within reach of correct information, and can, and frequently has, given an entire new turn to public affairs, in favor of the general welfare. In a distant Colony like this, he can only act by delegation; he cannot invest his delegate in the Colony with his *legal* irresponsibility, his permanency, his personal and hereditary interest. In this respect then there is an important difference, between our Constitution and that of the mother country.

A difference somewhat similar exists with respect to the aristocratical branch of our local Legislature. The Legislative Coun-

ellors have not that hereditary and permanent interest in the Colony which the Peers have in England; they consequently have not that community of interests in the general welfare which the Peers have; yet they are equally absolute and irresponsible in their legislative capacity, and might, by leaving the country, without any very great sacrifice, withdraw themselves from the natural responsibility of their acts. Although they are appointed by the King for life, the appointment must be on information from the Colony, and this information may be erroneous; it might be such as not to enable him to make, as he is no doubt inclined to make, a fair and impartial selection of the *great and independent* proprietors throughout the Province, who must stand or fall with the country, and which alone could give us a *near approximation* to a House of Peers in England.

Although this Province has been sixty-five years under the British Government, during the greater part of which time that government has been in possession of nearly absolute power in the Colony, nothing, or perhaps worse than nothing, has been done, till very lately, to promote or even facilitate the general education of the people, who, during upwards of thirty years, have nevertheless been *legally* called upon to meet the King and give him *their advice* and consent regarding the public concerns of the Province. Much, however, has been done, and much is doing *by the people themselves* to promote education. Their natural good sense, and their honest intentions, have done a great deal in selecting the *fittest* representatives which they could procure. There is, indeed, hardly an instance of their sending to the Assembly from the country parts, otherwise than substantial and independent proprietors, men of fair private character; the assemblies upon the whole uniting, perhaps, as much independence, discernment, education, and talents, as are generally to be found in the representative assemblies of new countries. If any doubt were entertained on this head the *general consistency* of their conduct would prove it unfounded. It cannot, however, be denied, that a greater dissemination of knowledge throughout the country, by the common means of education, would give greater energy and latitude to the proceedings of the Assembly, a greater sense of security and confidence among the people, and a more stable and beneficial power to public opinion, which is the best spur and check to legislative proceedings under all descriptions of free governments.

None of the disadvantages which have been noticed are, however, of a nature to render the Constitution fruitless of the objects for which it is established, namely, the *peace, welfare, and good government* of the Province; they only require that these objects should be more steadily kept in view, and that time be allowed for obviating the irregularities which must be the result, by experience and prudence, and the gradual progress of constitutional knowledge, which has indeed spread more rapidly amongst us by all the attempts which have been made to arrest its course.

The matters which were before the Provincial Parliament, at the last Session, and will probably be renewed during the present, may be classed under the following heads:—

1st. Providing additional support, securities and facilities, for the proper operation of the established constitution of the Province, in promoting the general welfare.

2d. Greater facilities and securities for the Administration of Justice throughout the Province.

3d. Facilities to industry and trade.

4th. Relief to different portions of the subjects, and certain Religious Associations.

5th. Facilities to the inhabitants of local divisions of the Province, for the management of their common concerns.

6th. Temporary Laws expiring.

7th. Private Bills.

8th. Supply and Accounts.

Under the *first* head may be included the following :—

1st. Bill for appointing an agent to reside in the United Kingdom.

2d. Tribunal for adjudging in cases of Impeachments by the Assembly.

3d. Equalization and augmentation of the representation.

4th. Facilities and encouragements for the general dissemination of knowledge.

5th. Redress of grievances.

6th. Elections.

7th. Bill to subject Members accepting offices of profit, or becoming accountable for public monies, to vacate their seats.

Under the *second* head, viz : Greater facilities and securities for the Administration of Justice :

1st. Bill for holding Courts of Inferior Jurisdiction in numerous local divisions throughout the country ; and improvements in the general Judiciary System.

2d. The independence of the Judges, and providing for their holding their offices during good behaviour.

3d. Law Fees and Sheriff's Sales.

4th. Qualifying Justices of the Peace.

6th. New Gaol at Montreal.

Under the *third* head, viz. : Facilities to Trade and Industry :

1st. *Cessio Bonorum* or Insolvent Law.

2d. Enregistration of Deeds.

3d. Lumber Act, Pilots, and Port Charges.

4th. Improvement of the Navigation of the St. Lawrence.

5th. Intercourse with the United States.

6th. Prevention of Smuggling.

7th. Damages Bills of Exchange.

8th. Circulation of Sovereigns.

9th. Facilitating Grants and Concessions of Land, [and the Settlement of the Province.

10th. Agricultural Encouragements.

11th. Road Acts.

Under the *fourth* head : Relief to different portions of the subjects, &c.

1st. Recourse of the Subject against the Crown.

2d. Petitions of the Townships.

3d. Representation of the District of Gaspé.

4th. Clerks Markets.

- 5th. Hospitals and Charitable Institutions.
- 6th. Physicians and Surgeons.

Under the *fifth* head : Facilities to the Inhabitants of Local Divisions for the better management of their local concerns.

- 1st. Incorporations of the Towns.
- 2d. Gaspé Representations and Township Petitions.

Sixth head : Temporary Laws, expiring.

- 1st. Extension, Gaspé Judicature Act., exp. 1st May, 1826.
- 2d. Regulating Taverns' Licences, 2 acts, do.
- 3d. Erecting Inferior District of St. Francis, do.
- 4th. Establishing Fairs, do.
- 5th. Regulating Police, Burghs, Villages, do.
- 6th. Regulating Inland Trade with U. States, do.
- 7th. Weight of Coals, do.
- 8th. Agricultural Improvements, do.

Seventh head : Private Bills. One or two were before the Assembly and dropped.

Eighth head : Supply and Accounts.

- 1st. The Accounts of the Revenue and Expenditure.
- 2d. The late Receiver-General's defalcation.
- 3d. The monies advanced and unaccounted for.
- 4th. The annual supply for the expenses of the Civil Government.
- 5th. Separate special appropriations.

It is intended, briefly, to notice in the above order, the nature and progress of the several measures above referred to, and then to mention such *new* measures as are publicly reported to be in agitation for the ensuing Session.

MEASURES BEFORE THE LAST SESSION.

FIRST HEAD.

1. *Provincial Agent*.—This measure has been before the Legislature since 1807, and has, at different times since, passed the Assembly in various shapes, but always failed in the Legislative Council. The last attempts were in 1822-23, and in 1825, when Sir JAMES MACKINTOSH was proposed as the Agent by the Assembly, by bill, with a salary of £1000. Agents, appointed by acts of the Legislature of almost all the several colonies, reside in England. It seems, indeed, to be a natural consequence of the Legislative authority which the British Parliament has reserved to itself over the colonies, particularly for the regulation of trade—a power which may seriously affect the property and industry of the subject in the colonies. The experience of the last three or four years, and particularly that of the present year, has made the want of an agent more generally felt than ever. During the period above-mentioned, the Union Bill was on the point of passing without the inhabitants of the colony knowing anything about it. The Upper Canada Trade Act, was actually passed on the complaint of Upper Canada, without that complaint being communicated to the Legislature of Lower Canada, and without this colony having had any opportunity of being heard on a matter affecting the property of every person in it. The first of these measures, odious to the great majority of the inhabitants of both provinces, striking at the very existence of the established

constitution, contrary to natural justice and to free government, attacking the fundamental rights of British subjects, the peculiar rights of the inhabitants of this colony, solemnly guaranteed, and the religious privileges peaceably enjoyed by the Roman Catholics since the conquest of Canada, and even their language, it is now, almost universally acknowledged, would have thrown the Canadas into a state of alarm and confusion, in which there would have been no security but through the permanent presence of a large military force. As it is, that bill has given the first severe blow to the confidence in the British Government, which a long course of kindness had established, and the beneficial effects of which was so sensibly felt, and fully acknowledged during the last war. An agent on the spot would certainly have prevented His Majesty's Government from proposing to pass that Bill, without its being known in the colonies: he would also probably have enabled ministers and parliament to arrange the financial differences between the provinces with greater certainty of justice at least after a hearing of both parties. During the present year four acts have been passed in Parliament, all seriously affecting the interests of the Colonists, without their knowledge. One or two of them in particular, are acts of *internal Legislation*, for the purpose of which the Colonial Legislatures are established. They alone have the necessary *local knowledge* to foresee the effects of the operation of such laws. It is not necessary here to enter into details. There can hardly be any person in the colony acquainted with its laws and circumstances, or the wishes of its inhabitants, but that must be persuaded that had there been any person in England, authorised to watch over the interests of the colonies, some of the provisions of these laws would never have been carried through Parliament, far less passed without the knowledge of the inhabitants of the Colony. Much evil, it is conceived, has already resulted, both as it respects British interests in America, and the interests of this Colony, for want of an authorized agent residing in England, and it may justly be inferred from the experience of the past, that much more evil may be done, should one not be speedily appointed.

2. *Tribunal for adjudging in cases of impeachment.*—Instructions from His Majesty's Government acknowledging the Legislative Council to be a tribunal to adjudge in cases of Impeachment by the Assembly, were communicated to the Provincial Parliament in 1818, by Sir John C. Sherbrooke, then Governor in Chief. There was a part of the Message, however, which expressed *doubts* of the propriety of proceeding *immediately* on that communication, although such was clearly the intention of the British Government. The matter appears to have been referred back to England: and a Message was received the following year, pointing out another mode of proceeding in the case then before the Legislature, upon which the Assembly does not seem to have thought it expedient to act. A copy of Lord Bathurst's despatch, upon which the Message of 1818 was founded, was however obtained by the Assembly at its last Session, and it seems that the course pointed out in the subsequent Message, is only an exception to the general rule laid down in the despatch, viz. that the Legislative Council should adjudge "in all cases" of impeachment by the Assembly. Indeed the right

of impeaching in the Assembly, and judging by the Legislative Council, seem to be part of the necessary functions derived from the Constitution; all that was wanting was an acknowledgement to that effect from the Crown, without which the Governor must have found himself at a loss how to act. A judgment, in such case, by the Legislative Council, would virtually have the same authority as an Act of the Legislature, which in whatever form it may be couched, is merely the expression of the will of the Three Branches. No proceedings on Lord BATHURST's despatch, and the Message of 1818, were had in the last Session. It is obvious that a tribunal for adjudging on impeachments would at once establish a responsibility among all the great public functionaries in the Province, the want of which unavoidably carries along with it, want of confidence. It ought not to be forgotten, that the whole system of the British Government, turns upon *responsibility* in the highest functionaries, universal responsibility, the King being the sole exception: so likewise there is no Government which has so long and so well merited and beneficially enjoyed the confidence of its subjects.

3. *Equalization and augmentation of the representation.*—In the Session of 1817, a Bill for taking an Enumeration of the population, having this amongst other objects in view, was passed in the Assembly. It was renewed annually, but it only passed the Legislative Council and became a Law at the last Session. On the reiterated petitions of the Townships and other parts, whose local situation does not permit their inhabitants to attend at the places of election for the counties of which they form a part, a Bill, for a partial augmentation of the representation, was however introduced, and passed the Assembly in the Session of 1825. It was amended in the Council, to which amendments the Assembly disagreed. An *estimate* of the population having been obtained from the Surveyor General, the following year, a Bill for the general equalization and augmentation of the representation was introduced, founded on the basis of the population in that estimate; passed and sent up to the Council near the close of the Session. At the last Session, the Bill was again passed in the Assembly and sent up to the Council, where it failed. The representation in the two last Bills sent up by the Assembly, was encreased eighteen above the number fixed in 1792, since which time the population has probably nearly tripled. On the scale of the representation in Upper-Canada, Lower-Canada would have about 150 members instead of 68, the number proposed, and on the scale of Nova Scotia 190. In all the British Provinces, and in every part of each Province, excepting the towns, the number of qualified electors, bears about the same proportion to the population; the great majority of the inhabitants being possessors of freeholds. The proportion of talent in a representative body has generally been found to bear a relation to the number of which the body is composed. By facilitating the exercise of the elective franchise to the electors of every part of a country, the candidates are better known to the electors, and the fittest persons are chosen truly to represent the freeholders, upon which many of the advantages and the stability of representative government depend. The body ought to be sufficiently numerous not to be unwieldy. Individual influence and

views, and even faction and party, are far less likely to bias a numerous body than a small one. It is reason alone that can permanently influence a numerous body, and knowledge, talent and character are necessary to set it forth. As the representation stands at present in Lower-Canada, it is manifestly unjust to the Province and to individuals; the character of a country, and the good that may be done, will depend greatly on the knowledge, talents and character which may be united in its representative body; the public burthens bear about equally on any given number of electors, the interests which are to be secured and promoted in the Assembly, are about equal between any given number, yet such has been the alteration in the location of the inhabitants of the Province, that 1500 freeholders in some counties, send as many representatives as 6000 in other counties. Many of the freeholders are at so great a distance that they cannot attend at the elections. A new population of probably 30,000 souls in the Townships, have in reality no one chosen by themselves in the Assembly, to make known their sentiments and wants.

4. *Facilities and encouragements for the general dissemination of knowledge.*—The first proceedings in the Assembly having this object in view, were adopted on petition of the citizens of Quebec in 1794. The Jesuits in Canada, as was very generally the case in catholic countries, were entrusted with the education of youth. Incapable, by their institution, of holding property for their own use, all that they held was in trust, for the religious and civil instruction of the people; they had been early endowed with large estates for this purpose, in Canada, for which they erected the extensive College which is now known at Quebec as the Jesuits' barracks. At Quebec, and in other parts of the Province, they maintained elementary schools; at the Quebec College they had regular professors and classes of those sciences most likely to be useful in civil life, in a new country. The conquest put an end to their college for the higher branches of education; they however kept up their school at Quebec for some time afterwards, and there are persons still living who were educated there. But the Order was suppressed in Europe, and the British Government had claimed, and indeed possessed, in part, the property held by the Jesuits here. The school became extinct. Before this period the common elements of useful education seem to have been generally disseminated in Canada. In some parishes the arts of reading and writing, acquired before the conquest, have been transmitted in almost every family without any school. The citizens of Quebec, in their petition, claimed for the inhabitants of the country, the property which was held and applied for their uses by the Jesuits: and the Assembly addressed the King in conformity to this petition. The property had been promised to Lord AMHERST, who commanded the troops at the conquest; but finding obstacles to his title, a pension was finally granted by Parliament as a compensation. On the death of the last of the Jesuits in Canada, the property was fully taken possession of by the colonial authorities in the name of the King, who has remained in possession ever since, the estates being administered in his name, by Commissioners. Nothing has however been done by

the Government for the general education of the people, which has retrograded since the conquest. In 1801, the officers of the colonial administration in the House of Assembly, brought forward a Bill in favor of Education, holding forth endowments of schools by the Crown, and their establishment throughout the country. Several of the provisions of the Bill, particularly that providing for the formation of the Corporation by which these schools were to be managed, were strenuously opposed in the Assembly, as not likely to promote the professed object, the general dissemination of knowledge. Up to that time, and for several years after, the majority of the Assembly, generally voted with the colonial administration, and the Bill passed and became a Law. The difficulties which were foreseen probably retarded the execution of the Bill. In the mean time several other unsuccessful attempts were made by the Assembly in respect to the Jesuits' estates. In the Session of 1810, a Bill for establishing Parish Schools was prepared by a distinguished member of the Assembly, but the events of that Session prevented it from being brought forward. In 1814-15, a Bill was introduced for establishing schools throughout the Colony, on the plan of those of Scotland and the New-England States, but it was dropt in the House. It was renewed, somewhat in a different shape, in 1817, passed, and continued annually till 1823, always failing in the Council, or with the first branch of the Legislature. Some of the chief features of this Bill was to place all religious denominations upon an *equality*, with *admission* in each school to all children of the division for which it was established, however each religious denomination having the management of its own schools, and allowing for each school *established*, with a master and a certain number of scholars for a given time, as an aid to cover the first expenses, eight hundred dollars. In 1824, the Assembly consented to this Bill as amended by the Council, confining it to CATHOLICS only, allowing no public money for the encouragement of schools, but enabling the *Fabriques* to hold property to a small extent for schools, and to accept donations to a limited amount.

It was not till 1820, that the Corporation under the Act of 1801, was fully organized. A number of schoolmasters, with salaries of about £60 each, had however existed under the Act, some with a few scholars, and some without any. In 1817, Sir JOHN SHERBROOKE had offered to the late Roman Catholic Bishop, to make him a member of the Corporation, which he refused, it is understood, under a knowledge of some instructions to the Governors relating to religion and schools, and on the persuasion that the Corporation was to be so composed as to give it the influence of his name, without his having any power to influence its proceedings. When the list appeared, it contained no Protestants excepting of the Church of England, and only three or four Catholics out of twenty-four members. All the effective officers of the Corporation were Clergymen of the Church of England. The chief direction of the education of youth in the Province, under the Act of 1801, was thus given to *one* religious denomination, forming about the one-hundredth part of the population. No endowments of any of the schools now under this Corporation as was promised in the Act, has ever taken place; the number of children educated at these schools must be trifling and ever will remain trifling, comparatively with the

number of children requiring to be educated, notwithstanding the liberality of the regulations established for them : yet it appears that these schools have already cost the Province about *Thirty thousand pounds* of the monies raised on its inhabitants generally.

The only proceedings on the subject of education last Session, were the introduction of a Bill to put all religious denominations on an equal footing in regard to schools, an inquiry and report on the effects of the Act of 1801, by which it appears that the number of scholars in the schools of the Corporation was about eleven hundred, and an Address to the Crown to place the Jesuits' estates at the disposal of the Legislature, to be applied for the purposes of education generally. In the mean time, the country is suffering both in character and its general prosperity, for the want of the common means of education, which it is the duty of all Governments, and particularly those of new countries, to facilitate and encourage, as that source of *improvement*, without which other attempts will prove little better than deception, and the prosperity of the Province be retarded, languish and even decay.

5. Redress of Grievances.—The Assembly has appointed a Grand Committee of Grievances yearly, but has rarely proceeded under this head, whether owing to a consciousness of the inattention of the Executive to some representations heretofore made connected therewith, or from a happy absence of any great grievance, it can best determine. A strict enquiry into all grievances, should any such be found to exist, and attempts, at least, to obtain remedies, are however most important duties of the Assembly. It is obviously worse than useless to pass Laws, if the rights, liberties and interests of the Subject are injuriously affected without Law, or the existing Laws not executed, or so executed as to be injurious to the Subject and the common weal, contrary to their clear intentions—without there being a remedy in the ordinary course of Law.

6. Elections.—There were two cases of contested Elections at the last Session which stood over to the ensuing Session ; both on petition, either of unsuccessful candidates or electors, who thought themselves aggrieved. It will probably depend on the petitioners whether or no they are taken up at the ensuing Session. It is the duty of the House to take care that no one sits in it who is not really the representative of the people, freely chosen by them without any inducement whatsoever of private interest ; it is due to its character to afford every opportunity to those who assert the contrary to bring forward their proof ; but the presumption is in favor of the Member duly returned, till something more than mere assertion has been made to appear against him. It is only in extraordinary cases, that the House will take up an alleged violation of the freedom and purity of election as a breach of privilege, because in such cases it unavoidably places itself somewhat in the situation of accuser and judge, which, however necessary it may be in some cases, ought to be avoided as much as possible, being always *dangerous to the party exercising it*.

7. Members accepting offices, &c.—A resolution declaring it expedient to enact that any Member of the Assembly accepting

any office of *profit* in this Province, or becoming accountable for public money, should vacate his seat, was unanimously passed at the last Session. The resolution is conformable to the Law in England, and does not exclude such member from being re-elected, if his constituents should be so disposed. A Law of this kind is a consequence of the House being called upon to vote the necessary expenses of the Civil Government, and thereby checking the public expenditures. Those who are in the receipt of public money, or become accountable for any part of the public monies, do not seem to be best qualified to check the expenditure, or enforce a rigid accountability; and although members so circumstanced, could hardly ever form a very great portion of the House, yet there is danger of a certain feeling for them among their fellow members, a kind of *give and take* disposition, a sort of dishonesty to which there is a strong temptation when *other people's money* is concerned, injurious to the character of the House. It is besides but just that members who accept the trust of representing their fellow-citizens, should remain in the state in which they were when elected, with respect to other public engagements, or that their electors should have an opportunity of saying whether their confidence in their representative, continues unabated.

SECOND HEAD. ——— Administration of Justice.

10. *Judicature Bill.*—Justice has been administered in this Province under four different descriptions of Courts, within the last sixty-five years: five years under Courts Martial; ten years under English Laws by Courts constituted on English models with English rules and forms of proceeding; eighteen years under a mixture of French, English and Provincial Laws, with a mixed constitution of English and French Courts, rules and forms of proceeding and regulations of Provincial Ordinances; thirty-two years under the same intermixture of Laws, with Courts constituted in virtue of an Act of the Provincial Parliament, and its amendments, with English and French forms and rules of practice, established by the Courts of the different Districts.

During the whole time the administration of Justice, criminal as well as civil, has been very slenderly extended to the country parts where the mass of the inhabitants of the Province reside.

Every change is at least proof of the insufficiency of the then existing system in the opinion of those who make the change. The first manifestation of dissatisfaction with the present system in any of the branches of the Provincial Parliament, appeared in 1808, when a Bill was passed by the Assembly "To remedy the want of reports of decisions by the Courts of Justice in civil causes." This Bill did not however pass the Council, and the dissolutions of 1809 and 1810, and the war of 1812, probably occasioned the suspension of further proceedings relating to the judiciary system.

In 1814, came on the Impeachments, chiefly grounded on the *Rules of Practice*, and in 1815, the Courts as now constituted, civil as well as criminal, were declared by both Houses insufficient to afford despatch, uniformity and certainty in the administration of Justice, and an Address founded on these resolutions was forwarded by the Governor to H. R. H. the PRINCE REGENT.

In 1816, the decision of H. R. H. the Prince Regent in Council, on the impeachments, led to a dissolution, and the division in the Assembly, which followed the abandonment of further proceedings in 1817, probably prevented any further measure in respect to the constitution of the Courts.

In 1819, His Grace the Duke of RICHMOND recommended the subject to both Houses, and a Bill in conformity to the Message, increasing the number of Judges, forming a new Court of King's Bench for criminal causes and appeals, &c., was sent down from the Council. It was referred to a Committee of the Assembly, and finally a Bill reported and ordered to be printed.

In 1820, there was no Session. In 1821, the Judicature Act was recommended to both Houses in the Governor's Speech, and another Bill increasing the number of Judges to twenty-one, was sent down from the Council. This Bill was referred to a Special Committee of the Assembly, which engaged in collecting a mass of information and opinions, but the enquiry was not completed in time to be acted upon that Session.

In 1822, the Civil List for the Life of the King, was the chief matter urged on the Assembly, and soon after its decision was had the Parliament was prorogued.

In 1823, some amendments to the existing Judicature Acts were made and passed. In 1824, the Council sent down another Bill, which was referred, and much discussion took place in the Assembly on proposed amendments. In 1825, a Judicature Bill finally passed the Assembly. It however was chiefly confined to the administration of Justice in the country parts; the number of Judges was increased to twelve, numerous local divisions and terms, officers, and the introduction of jury trials throughout the Province were provided for, and facilities given for performing in the *country parts* various acts for which the inhabitants are now obliged to travel to the chief towns of their respective Districts. The parts of the Bill from the Council regarding the Superior Courts and Appeals, were reserved for a separate Bill. Some amendments to the Bill sent up by the Assembly were made in the Council, and among others, all the clauses relating to Juries were left out. No final decision was however had on the Bill.

Such is the brief account of long protracted attempts to reform the constitution of our Courts of Justice; a reform allowed by all the Branches of the Legislature to be very much wanted.

The complaints on the part of the Bench with the present judiciary system of the country, seem to be that the Judges are subjected to more labour than they can properly perform; that the Court of Appeals, consisting of the Executive Council and the Judges of Quebec and Montreal, (excepting on their own decisions) is inadequate, and that a sufficient uniformity of decision cannot be obtained. The Bar join heartily, in objecting the insufficiency of the Court of Appeals, and add delay and heavy expenses to their clients arising from that and other sources, and especially their distance from the seats of Justice. The inhabitants of the towns are loud against expenses, delay and uncertainty. The mass of the population throughout the country, pray devoutly that they may have nothing to do with the Courts of Justice, but unfortunately, the general ignorance of what is now the Law, and the hopes, which among litigious persons increase in proportion to the uncertainty of the Law, place the proprietor

In a situation to be easily brought into Court; perhaps called to a distance of a hundred miles from home, among strangers, not knowing in whom to confide, under a loss of time, so precious to the bulk even of proprietors in this country, heavy expenses of all kinds running on, his cause possibly put off, from term to term, he may be nearly a ruined man in property, and what is worse, perhaps in morals, before an *uncertain* decision can be had; and when it does come, even in his favor, he is probably little better off. The litigious man that has no tangible property, has altogether the advantage as things stand at present: as *immorality* increases, property will become more and more insecure, a motive for industry, frugality and care be weakened, and the happiness of individuals and families, and the public prosperity checked. Fortunately, although the number of Law suits is great, yet the proportion to the whole population is probably not yet greater than in other countries; certain parts of the Province, however, furnish an extraordinary proportion of suits, which shews that, destructive as it is to the agricultural proprietor to go to Law, it still may become very general among them. Of all things it is desirable that the Law be certain, placed within the reach of its being known by every one, that it may be observed by all, and thus *unnecessary* Law suits avoided. If misunderstandings of the Law do occur between parties, [and it is unavoidable,] the decision of the Judges ought to be had upon them, in justice to the parties and for the information and guidance of all others, within the least possible delay, with the least possible expenses, and with perfect uniformity throughout the Province. The expenses to the Province of a good Judiciary system, which is indispensable to a good administration of Justice, is nothing, compared with the important advantages and actual savings to the community which result therefrom. Every precaution ought however to be taken, to make it *good*; good and pure, as far as human imperfection will permit, like the justice of *HIM* from whom the authority of administering it on earth is originally derived.

20. *Independence of the Judges*—The Judges in England formerly held their commissions during pleasure. The evils which were the result, from their illegal leaning to the Court in questions where the rights, liberties and property of the Subject were concerned, brought several of them to the scaffold under Parliamentary Impeachment. Their commissions and consequently their salaries were afterwards secured to them during good behaviour, still subject to impeachment, and also to removal on Address of both Houses of Parliament. Their commissions, however, remained liable to the pleasure of the successor on the demise of the Crown, and this inferior degree of insecurity, was removed at the beneficent suggestion of His late Gracious Majesty Geo. III.

The old system has however been continued in the Colonies generally; it must be confessed, however, guarded against abuse, as far as the home Government is concerned, with great discretion. But when abuses became so notorious in England under the eye of a most enlightened and public spirited people, and subject to parliamentary Impeachment, it is not necessary to enter into a very minute examination of abuses which may exist in a *Colony*, from the want of independence of the Judges which

it was found necessary further to secure in England. In this Colony, in particular, that independence with a similar responsibility, is peculiarly necessary, to secure entire confidence, where the Judges are both Judge and Jury in civil causes, and where an intermixture of the Executive, Legislative and Judiciary functions exists to an extraordinary extent in the person of the Judges.

The securing of the independence of the Judges was one of the objects prayed for by the Assembly in its Address to H. R. H. the PRINCE REGENT in 1815, on the subject of the Judiciary. Proofs of uneasiness on account of the great intermixture of Executive, Legislative and Judiciary functions in the persons of the Judges, are to be found in Bills sent up by the Assembly to the Legislative Council, at various periods, with a view to a remedy. At the last Session it was unanimously resolved, to proceed upon this subject at the ensuing Session.

30. *Law Fees and Sheriffs' Sales.*—On the first of these very important subjects, as affects the cost to the parties applying for Justice, various resolutions were agreed to by the Assembly at the last Session, and a member of distinguished talents had leave to bring in a Bill in conformity thereto. The contemplated change seems to be to give salaries to the officers of Justice, in lieu of Fees. What mainly interests the public is to be relieved, from *heavy costs* generally, as far as a just compensation to those whom they are *compelled to employ* in order to obtain justice, will admit. With respect to the second, Sheriffs' sales, *the failure of the late Sheriff of the District of Quebec*, to the amount of upwards of Twenty-five thousand pounds, a great part of which amount was money put into his hands *by Judgments of Court*, in some cases nearly the whole dependance of widows and orphans, has probably suggested the idea of suffering the amount of sales by the Sheriff, to lie in the hands of the purchaser on security, till final distribution by the Court, which, it is understood, was one of the objects of the Bill relating to Sheriffs' sales, sent up by the Assembly, which failed in the Council last year. The immense quantity of property which undergoes the ordeal of Sheriffs' sales, renders them an important subject of Legislation, with a view to give the best security to all interested, guard against abuses and unnecessary expenses, which are generally paid by those who are already unfortunate.

40. *Qualifying Justices of the Peace.*—A Bill to this effect was sent up last year, and failed in the Council. Such a qualification seems however to be required to ensure that responsibility in actions of damages brought, in the event of illegal conduct by Justices of the Peace in the exercise of the extensive powers of their office. Without a qualification in real property, the Justice of the Peace has but a very limited responsibility, and the subject a similar security. In appointing Justices of the Peace, the Executive must always intend that the Subject, in case of the abuse of his powers by the Justice, should have that security for damages which the Law contemplates, but it may not always be easy for the Executive to avoid being led into error in this respect.

50. *Montreal Gaol.*—On the repeated presentments of the Grand Jury of Montreal of the insufficiency of the Gaol of that District, a resolution was adopted in the Assembly at the last Session, concurring in the opinion of that insufficiency, and a Bill passed which finally became a Law, granting £200 for a plan of

a new Gaol. It is not yet twenty years since new Gaols at Quebec and Montreal were built at a very great expense, out of the general funds of the Province, under the direction of Commissioners appointed by the Executive; frequent grants of money for repairs have also since been voted, and complaints have long been made of the insufficiency of both. Some idea may be formed of the way in which these things have been managed in this Province, when it is known that on the 21st March last, there was upwards of £16,000, "monies advanced on Letters of Credit" for Gaol building and repairs, in different parts, "which still remained unaccounted for," according to a statement laid before the Assembly on Address, signed, "by the Chairman of the Committee of the Executive Council for the Audit of Public Accounts." Several of the accounts, it is understood, have been rendered, but are judged defective in some respect or other, and some have never been rendered. Sir JOHN SHERBROOKE, who was an *Englishman*, and had the notions of a man brought up under an *English* Government, on some difficulties being made by a person entrusted with public money, who was required to account, could not comprehend him for a very long while; at length Sir JOHN thinking he had a glimpse of what the gentleman meant, said: "Well then, Sir, am I to understand that you think yourself too great a gentleman to render an account?"

THIRD HEAD.—Facilities to Trade and Industry.

1. *Cessio Bonorum*.—A Bill to remove all doubts respecting the cession of the property of Insolvents, according to the ancient laws of this country, understood to be similar to the Scotch Insolvent Laws, passed the Assembly in 1824, was again renewed and sent to the Legislative Council at the last session. The Assembly also passed a resolution at the last session, that it was expedient to abolish imprisonment for debt (*contrainte par corps*) in certain cases. The complaints of the mismanagement of the Estates of Bankrupts in this Province, are now nearly universal. Imprisonment of the Bankrupt, which exists in several cases, it is acknowledged, offers but little security. It is almost impossible to carry on any extensive commercial business without giving credit, which, in fact, by an advance of capital, gives profitable employment and new life to industry. When credit has been given, and the debtor is unable to fulfil his engagements, his property ought to pass into the hands of his creditors, in the simplest and least expensive manner possible: it is, in truth, theirs; and the debtor, unless there has been fraud, (always requiring punishment) ought to be permitted to follow such industrious course as will prevent himself and his family from becoming burthensome to the community, and render him useful to society.

2. *Enregistration of Deeds*.—A bill for this purpose was passed in the Legislative Council many years ago; and renewed in another shape in 1824. Great insecurity in the titles of land in the free and common soccage grants, and uncertainty in respect to the charges thereon, had long existed, from the improvident manner in which these grants were made, and losses and evils had also resulted throughout the province, from the ignorance of the laws by which real property is regulated, on the part of those who were concerned in transfers of land. The Bill has however hitherto failed in the Assembly. At the last Session it was resolved, [1st March,] yeas 15, nays 6, "that it is

expedient to provide that more ample publicity to certain *actes* passed before notaries bearing mortgage, be afforded in the subdivision of districts." This resolution is an acknowledgment of the necessity of Register Offices, on which the Assembly heretofore appears to have been about equally divided. That there should be some mode whereby a person wishing for credit, or to dispose of his real property, should be able to show to a certainty, and with little cost, the state of that property, cannot but be beneficial to the parties concerned, and to the public, as it prevents fraud, gives security for the investment of capital, and consequently activity to industry. The evil which it is intended to remedy, not having been *generally felt* throughout the country, there exists on this subject, among the proprietors, a certain dread of the creation of useless offices and expenses, which has been so frequently rather the result of legislative enactments than the good intended. The principle being admitted by both houses, it cannot be long before provisions to give it effect are embodied in a law. The principal difficulty seems to be in the entire want of the legal organization of the counties for local administration, which has not yet been established in this Province.

3. *Lumber Act, Pilot Dues and Port Charges.*—Many amendments to the Lumber Act were proposed at the last session, but contending claims between the shippers and the cullers, caused them to be laid aside, and the act merely continued. A bill amending the Trinity House Act, affecting pilot dues, harbour regulations, &c., introduced on a resolution of the House, failed for want of time. The complaints of a burthen on the trade, from the insufficiency of port regulations, charges, &c., are very general among the mercantile classes. When it is considered that our exports must enter into competition abroad, with the exports of other parts, that every burthen on the trade, in fact, tends to prevent it from maintaining that competition, thereby, destroying both the foreign market, and that part of the home market caused by the influx of shipping and strangers engaged in carrying on the trade, the importance of giving every facility and protection to those engaged in trade, and removing all *unnecessary* burthens therefrom, cannot fail to be generally felt. All charges, as well as losses, on account of inadequate regulations, must actually operate as a diminution of the price which the merchant is enabled by the state of the foreign market to pay to the producer or holder of the article here, and consequently diminishes their profit, comfort and prosperity. The merchant, to be enabled to carry on trade, must have a fair profit on his capital, and a compensation for his services. Competition will allow him nothing more.

4. *Improvement of the Navigation of the St. Lawrence.*—This subject was under the consideration of the Assembly at the last session, in the petition of the St. Lawrence Association, and on the report of a special committee. The water communications of the Canadas are unequalled in any other part of the world. The St. Lawrence, in its natural state, *now* affords a communication throughout both provinces, extending to the sea, "the highway of nations," through which an exchange of commodities may be carried on with ease, and with little comparative expenses. The population of both provinces is situated at short distances from the St. Lawrence, and its waters, with, frequently, the advantage of navigable rivers, falling into the St. Lawrence.

No canal could ever compete with the St. Lawrence, if it were rendered navigable throughout ; it would draw off the trade to the sea from every part of its waters, as naturally as it conveys these waters to the ocean, without effort, without heavy expenses, and cost of repairs. Whatever *art* and artificial regulations may do to the contrary, trade will eventually revert to this natural channel. The eye of genius, fortified by science, untrammelled by a spirit of servile imitation, is, however, necessary to point out the most suitable improvements, under circumstances altogether unlike those of any other country. The objects to be gained are time, and the avoiding the existing necessity of transhipment. If vessels of a sufficient capacity for a sea-voyage cannot be made to reach the highest points of the deep water of the St. Lawrence, the most suitable vessels for the navigation of the highest navigable parts of these waters, ought to be able to receive transhipments from the vessels arriving from sea, and carry them to their chief places of destination, without further transhipment. The labour, expenses, insecurity, loss of time, and injury sustained in repeated transhipments, is one of the greatest impediments to the exchange of commodities. The improvements ought to begin from the head of the present ship navigation, and be carried on at once, on a scale not to require any further transhipment for goods to be landed at any place on the shores of the St. Lawrence or lakes. Improvements of the St. Lawrence of the nature referred to, would actually render all the American canals tributary to the St. Lawrence, and enable the western parts of the States of New York, Pennsylvania, and the country on the Ohio, to send their produce to the ocean, and receive their supplies by the St. Lawrence, at a *cheaper* rate, than by any other communication. But are we ripe for an undertaking like that contemplated ? which would certainly cost less, however, without so much future repairs, than the New York canal. We have credit ; but can we secure a sufficiently able, responsible, permanent, and economical management ? Can we guard ourselves against the palsyng curse of favor and jobs ? If not, we ought to content ourselves with the *speediest and least expensive temporary* improvements, and the *safest* management which can be devised ; under a certainty, that the great and durable improvements cannot be far distant.

5 & 6. *Intercourse with the United States, and prevention of Smuggling.* On the first, there was a report of a committee of the House of Assembly, on the 11th March, recommending an *extension* of the existing intercourse, but it came too late to be effectually acted upon. The colonial act regulating the intercourse was, besides, to expire the ensuing year. The recent acts of the Imperial Parliament, however, seem to preclude any colonial interference with the commercial intercourse which they have established. The bill sent down by the Legislative Council for preventing smuggling, which was postponed by the Assembly, it is supposed, will not now be deemed necessary.

7 & 8. *Damages Bills of Exchange, and Circulation of Sovereigns.*—A Bill for giving, the damages, 10 per cent., clear, on the amount paid for the Bill, instead of on its nominal amount, was introduced in the Legislative Council, but did not, finally, pass that body. According to the common rate of exchange at present, the damages allowed are no damages at all, nor even interest for the money, and are an inducement to fraud, and cer-

tainly injurious to the trade and confidence. The committee of the Assembly, on the bill from the Legislative Council, for facilitating the circulation of sovereigns, did not report, the members probably concluding, from their own feelings on the subject, that there could be no difficulty to their effectual circulation, either by the single piece or in greater quantities.

9. *Facilitating Grants, and Concessions of Land, and the settlement of the Province.*—This subject was recommended to the Legislature by Lord DALHOUSIE, in his first speech at the opening of the Session in 1821. The matter was referred to a committee of the Assembly, and has been acted upon at each session, including 1824. The reports of the committee have been published, and throw much light on the subject: hardly any other good has, however, been as yet accomplished. The subject naturally divides itself into two heads:—1st. The settlement of the British grants and the waste lands of the Crown. 2d. The settlement of the grants made by the French Government. On the 1st, pursuant to a recommendation of the committee, a bill was passed tending to enforce the Royal Instructions with respect to these lands; but which did not pass the Council. On the 2d, a bill for enforcing the ancient laws, respecting the seigneurial grants, was twice passed, but met with the same fate in the Council. The Chairman of the Committee being absent, only the bill relating to seigneurial grants was renewed last session. It appears that the seigneurial grants were made, in the same spirit as the British grants, for the benefit of actual settlers, and that on refusal of the seigneur to grant at the usual rates of the seigneurie, the French King had provided, that the granting of the land to the intended settler, according to the original intention, should be resumed by him, and for the benefit of the Crown, and be made at the said rates by the Governor and Intendant. This power had been exercised previous to the conquest, and appears to have been effectual in keeping the seigneurs within the limits of the law; the usual rates must certainly be considered as having been established before the conquest; but since that time the law has not been enforced, and several seigneurs have acted as if they could exact, for wild lands in their possession, any rent they please; in fact, that they were at liberty to impose such conditions as would frustrate the object for which the land was granted to them, namely, the settlement of the country; that some of them have impeded its settlement and prosperity by these means, there is very little doubt. Every grant of waste land in Canada, to individuals, whether under the French or British Government, has been made for the purpose of settlement, and subject to that condition, the fulfilment of which never can be optional with the holder. The French grants were virtually in trust for the actual settler, excepting a domain which the seigneur was entitled to keep for his own use. The last bill sent up by the Assembly went only to authorise the Courts of King's Bench to adjudge on complaints reserved by the old laws to the Governor and intendant. It however failed in the Council.

It cannot be long allowed that it should be in the power of any individuals to hold extensive tracts of land in a state of wilderness—lands actually given for the purpose and on condition of regrant to actual settlers; that they should say, "I will hold them unless you consent to bind you and your heirs and assigns for ever to con-

ditions, which will give me and my assigns the fruit of your and their labour for ever, and make you actually my slaves, while you and your families are to provide yourself with food and necessaries. You may indeed go to another seigneur, far from your home, relations and friends, where only you can obtain that assistance and support which will enable you to clear a new land. The law is the same for him as for me, and if I am entitled to make my own conditions, so is he; you may go farther and fare worse." No government can long countenance such powers in individuals, over that class, whose hard labour, under a hard climate, has reclaimed this country from an entire wilderness, and given it its chief value, and particularly value to these waste and unoccupied lands, which, before they can be permitted to improve, the settlers must submit to *any conditions* which those who only possess them for the use of the settler, may now please to impose. Every one is at liberty to do what he pleases with his own property, but these lands are held by the seigneurs under an obligation to grant them to settlers, on the usual conditions. So far as the seigneur's property in these lands goes, he may indeed do what he pleases with them; but no one can be at liberty to do what he pleases with what does not belong to him. It is but justice, however to say, that such a pretension has been urged only by a portion of the seigneurs, but if it is maintained, it will be claimed by the greater number. The effect of the law lately passed in England, if the rights of the inhabitants of the province are not preserved by the Governor and Council, would really give to the seigneur what belongs to every man in the country desirous of settling upon new land. It would be an operation more unjust to the agricultural classes, (and equally injurious to the country,) than it would be for the Government to put the agents of Townships in full possession of all the waste land, within the reach of settlers, as proprietors, to do as they please with them, without any obligation to grant or settle. The Imperial Parliament never could have intended to sanction such an Act of injustice, for both in the provision for escheats and in the Act in favor of the Canada Land Company it has maintained the obligation of settlement, *on pain of confiscation*.

10°. *Agricultural Encouragements*.—An annual Grant has been made since 1818, for agricultural premiums. It was continued last year, and although the benefit derived seems to be less considerable than it ought to be, the frequent exhibitions preparatory to the awarding of these premiums, serve to bring the most approved stock and produce under the eye of practical farmers, and keeps the public attention alive to improvements in agriculture.

11°. *Road Acts*.—A long report on the alledged imperfections of these Acts was made last year, and a temporary Bill remedying some of the most pressing inconveniences passed. The general principles of these Laws are that every proprietor is subject to the making and repairs of the main road crossing his land, and to his share of other roads legally established in his neighborhood. It is rather singular that after an experience of thirty years of a different system, a Bill founded on the same principle as the Lower-Canada Road Laws, is now before the Assembly of Upper-Canada, introduced by the Attorney General. The Lower-Canada Road Laws are contained in two Acts, which ought

to be blended in one, with such alterations as experience, the best guide in these matters, may have clearly pointed out, particularly guarding against the frequent practice of ascribing to the Law the faulty execution of it. Well founded complaints exist on this head: the *Grand-Voyers*, the Justices of the Peace, and the Quarter Sessions, are to give activity to the whole system: but the Districts are become too extensive, for the most active *Grand-Voyers*; and there is no such thing as a Quarter Session, or hardly any Session of Justices out of Quebec, Montreal and Three-Rivers; to these the Road officers and others aggrieved have to come, and the expenses are such as to deter from prosecutions, and even render their efforts odious and unavailing. To travel perhaps a hundred miles to get a new Road opened or an alteration of the old, prevents improvements, and the expenses are such as new settlers dare not encounter. The *tournées* of the *Grand-Voyers* are however extremely useful: upon the whole, incomparably more for the opening and improvement of roads during the last ten years has been done by the *Grand-Voyers* and the inhabitants themselves, than by the appropriations of between two and three hundred thousand dollars by the Legislature for roads, of which hardly a trace is to be seen. Such however is the natural result of imitations of other countries, applied under circumstances essentially different.

FOURTH HEAD.—*Relief to different portions of the Subject.*

1°. *Recourse against the Crown.* The King cannot be sued in his Courts. It is understood that by decisions of our own Courts, public officers cannot be sued for engagements entered into by them in their public capacity: so that really the Subject may suffer without a remedy. In England there is the petition of right, which is decided upon in legal form. The Bill introduced at the last Session by a distinguished advocate, was intended to give a similar relief to the Subject here. It however failed in the Legislative Council.

2°. *Petition of the Townships.*—These Petitions have been frequent and pressing, complaining of various grievances. Indeed from the distance of these settlements from the St. Lawrence and other old settlements in the Province, the principal population of the Townships being along the American frontier, separated from the rest of the Province by many leagues of forest, they have been left, till within a few years, almost without government, and are still without representatives to make known their wants. The inhabitants being chiefly from the United States, were not well acquainted with the Laws under which they had come to live, and could not learn them by the administration of them, which could not be said to exist amongst them. Large sums of money voted at various times by the Legislature, have been employed to assist in opening roads to enable them to reach the other parts of the Province, dispose of their produce, and purchase their supplies, but they assert, to very little purpose; and now that their usual communications with their neighbours on the other side of the American line is threatened to be interrupted, their situation is more distressing. They must have suffered much, and must still suffer more, if nothing is done for their relief. They were invited into the country, under the authority of the British Government, lands were granted to them by the British Government, where they are now located; they have increased

to about 30,000 souls; and it is too late now to question the policy of laying the whole frontier open to the United States: it is done; the people there are entitled to *equal* rights, protection and facilities as those of other parts of the country, without any distinction whatsoever; and they ought to have the full benefit of this principle, which alone can secure peace, good feeling, and the interests of the British Government in North America.

3°. *Gaspé Petition*.—This is another District detached from the rest of the Province; which, till lately, had been greatly neglected. Much has recently been attempted for their advantage, the result of which is not yet sufficiently known. They forwarded additional representations last year, which were reported on; but for the most part, deferred till the next Session.

4°. *Clerk of the Markets*.—Complaints of extravagant charges for weighing country produce, and prejudicial regulations concerning articles brought to the Market at Quebec, were submitted by Petition in 1822, and it appeared, on the matter being brought before the House, that there were similar complaints at Montreal and Three-Rivers. People in some instances, are compelled to get their produce weighed and pay a fee, whether they sell it or no; buyers and sellers, when both agreed, are prevented from dealing without weighing and paying a fee. Produce to be allowed to be exhibited in open market is subjected to a fee. In some instances the fee for weighing is a great proportion of the usual price of the article. The rules of police under which these exactions are made, are sanctioned on being made, by the Judges of the Court of King's Bench, before whom the aggrieved must go for redress, and argue the illegality of the regulations. A Bill to establish greater freedom for the exposure and sale of produce, and for agreements between buyers and sellers, and allowing reasonable fees to the Clerks of the Markets, when either party requires weighing, has twice passed the House of Assembly.

5°. *Hospitals, &c. and Practitioners of Physic and Surgery*.—Annual votes for Hospitals, in addition to the charitable foundations instituted in the time of the French Government, have been made for some time past, as well with a view of relief to strangers and transient persons, as for the dissemination of medical and surgical knowledge. A Bill has been twice passed the Assembly requiring additional qualifications for Students of Physic and Surgery, providing additional securities that they are qualified, before receiving licenses to practice; and giving them, in the different Districts, a kind of corporate existence, with a view to ensure the greater respectability of the profession. The Bills however failed, from a difference of opinion between the two Houses, chiefly on the constitution of the Board of Examiners. When individuals are left free to follow any business for their own profit, there is no danger to the public. The general Laws against force and fraud are quite sufficient. The public employs them only if it seems advantageous, and competition soon sets every thing right; but when the public authority invests any individual or individuals with the exclusive privilege of being employed by the public, it weakens the check of competition. It then becomes the duty of the public authority to guard the community against abuse, by taking every precaution that those so invested with an exclusive privilege, shall be well qualified to serve

the public: it is bound to take care that its certificate of qualification is not a passport to impose on the community; and that this certificate is not degraded by being held by unworthy characters. The respectability of the professors of every science is of great importance to the community, as a means of bringing forward therein the best talents, and as the best security for their usefulness. The medical profession is become numerous in this country, and nothing ought to be left undone that can aid in placing it on the most respectable footing.

6°. *Dissenters*.—An Act to establish the form of Registers of Baptisms, Marriages and Burials, was passed by the Provincial Parliament in 1795. It extended to "each Parish Church of the Roman Catholic Communion," and also to "each of the Protestant Churches or Congregations within this Province;" and "the Rector, Curate, Vicar or other priest or minister doing the parochial or clerical duty thereof," were required to present Registers to be authenticated by a Judge, in which the Baptisms, Marriages and Burials were to be entered. A difference seems to have prevailed among the Judges, how far the Law comprehended ministers of different congregations of religious worshippers. On the refusal of Registers to certain description of Dissenters, it appears that the refusal was held to be good, in the Court of Appeals. The *Wesleyan Methodists*, who, it appears, had been refused Registers, petitioned the Legislature, and a Bill extending to them the privilege and duties of having these Registers was passed the Assembly, and returned amended from the Council, with such formalities and restrictions as those acting for the petitioners at Quebec, did not think corresponded with the interests, feelings and character of the *Wesleyan Methodists*. Baptisms, Marriages and Burials are in some respects differently viewed by different churches or religious communions; in all they are usually attended with religious acts and ceremonies, and as such, they ought doubtless to be performed by the minister of the religion of the parties. The requiring of these acts to be enregistered is for civil purposes; those who perform the religious act are the persons upon whom the duty is imposed. To require the interference of a clergyman of a different religious belief, seems to encroach upon that freedom in religious matters, which is correspondent with the prevailing opinions of the age. It may be thought a hardship, an humiliation, and may be an additional expense thrown on those of a particular religious belief; and an advantage, a superiority bestowed on others at their expense; others in whose religious belief they do not participate, and in whose religious ministry they have not confidence. There is certainly a spirit of charity in religious matters, generally prevalent in this country, beneficial to its quiet, and the harmony of society, which must ultimately prevail, in allowing to all religious denominations equal privileges; the want of which has proved so injurious to that christian spirit, in other countries and times.

FIFTH HEAD.—*Facilities to the Inhabitants of local Divisions.*

1°. *Incorporation of the Towns*.—Bills for incorporating the Inhabitants of Quebec and Montreal, have passed the Assembly annually, for several years past; but have failed in the Legislative Council. The present management of their municipal concerns is vested in the resident and acting Justices of the Peace,

with each a Chairman, to whom a salary is severally paid of £500 per annum. The money for the uses of the Towns is raised by assessments on real property, not exceeding six pence in the pound of the yearly value, and by other taxes of inferior consideration. Generally speaking, since a salary was allowed to the Chairman, the Justices have not been very regular in attending to their duties, which are gratuitous. They seem to have thought that every thing should be done by those who were paid. It can hardly be expected that all the Justices would be well qualified, as being materially interested in the prosperity of the Towns, and that those so qualified would continue for an unlimited time, to give their attendance to a troublesome and sometimes quite unpleasant duty. There has however been much improvement of late in both Towns: still they fall very short of Towns of equal magnitude which are managed by Corporations. The magistrates often meet with a spirit of opposition, arising sometimes from misconstruction of their acts, at others, from supposed partialities for different parts of the Town; and instead of the public spirit of the inhabitants being directed to improvements of the Town, it is frequently directed so as to arrest them. The majority of the corporate body would generally carry along with it the majority of the inhabitants, who in the end here, as well as in other Towns, would eventually pride themselves in promoting the common advantage, improvement and respectability of their Town, in all of which they have a real interest. The inhabitants with a power of making municipal regulations, of raising money *on themselves* for the use of the Town, if things went wrong would only have themselves to blame, which must end in their doing better. Our Towns cannot certainly be compared, as respects the state of those things that require to be managed in common, with Towns where they are managed by persons chosen for a term by the citizens, and where the latter have a voice in the management of their own common concerns.

2°. *Gaspé Representation*.—The affairs of this District, are so different from that of any other in the Province; their representations deferred to the present Session are so numerous, that it has been suggested whether they ought not to be entrusted with powers for the purpose of local management. The Townships are nearly in the same situation with regard to the difference of their local concerns from those of the rest of the Province. It is almost impossible to conceive how the common concerns of a Township, or settlement, of a mixed population, where almost every man is a cultivating proprietor, independent of his neighbor, is to be managed, unless it be by giving them a corporate capacity and powers. It seems in fact to be inseparable from the Tenure, and generally prevails wherever it has been introduced. It is certain, as far as our experience goes, that no Township will ever be in thriving condition without it: and with it all the world sees how they thrive elsewhere.

The following curious historical document on the subject of the earliest proceedings in the Provincial Parliament concerning the Townships, is copied from the Journal of the Assembly of 1808.

On a Bill being referred to a Special Committee, "to authorize the appointment of Commissioners to hear and report upon claims to lands in this Province, in certain cases"

"Mr. Bedard moved, seconded by Mr. Taschereau :

"That it be an instruction to the Committee, to take into consideration the alterations it may be expedient to establish concerning the nature and consequences of granting lands in free and common Socage in this Province, and the precautions necessary to be adopted in making such grants, for preventing the introduction of strangers, who may diffuse and spread principles contrary to those necessary for preserving this country to His Majesty's empire."

On the previons question ; that the question be now put ? the House divided—Yeas 5, Nays 9.

It was resolved in the same Session to consider the same proposition in Committee of the whole, which sat and obtained leave to sit again—Yeas 8, Nays 5. Finally the Committee rose without reporting.

On the 9th April, the House was in Committee on the Bill for appointing Commissioners, and rose without reporting. On the 14th the Legislature was prorogued.—12th Jany, 1826.

SIXTH HEAD.—*Temporary Laws.*

Nine of these expire on the 1st of May next ; viz. Extension of the Jurisdiction of the Court for civil causes for the District of Gaspé ; two Acts regulating the granting of Tavern Licenses ; the Act erecting the District of Saint Francis ; the Act for regulating the Police of Boroughs and Villages ; the Act for regulating the Inland Trade with the United States ; an Act for regulating the weighing of Coals ; an Act to remedy abuses prejudicial to Agricultural Improvement, &c.

The question of the continuance of these Acts, with or without amendments, must depend on the knowledge possessed by the Members throughout the country of their effects, and the representations of those particularly interested. Every Temporary Law is in its nature an experiment ; which is made with little danger, when the Law expires at a certain and not far distant period. The difficulty which has been experienced in the repeal of Laws, not answering the purposes intended, or under which abuses have existed, difficult to be checked, has probably induced the Legislature, to limit the duration of a great number of Acts.

SEVENTH HEAD.—*Private Bills.*

The revival of those which failed at the last Session, of course depends on the individuals and localities chiefly interested therein.

EIGHTH HEAD.—*Supply and Accounts.*

1°. *Accounts of the Revenue and Expenditure.*—These are laid before the Legislature annually. It is understood that Sir JOHN C. SHERBROOKE, shortly after his assuming the Government of the Province, represented to His Majesty's Principal Secretary of State for the Colonies, that the Provincial Accounts were in an unsatisfactory state. The Governors of Canada have always been particularly charged by their commissions and instructions, to watch over the receipts and expenditure of the Province, and transmit regular accounts thereof. The practice had been to have the accounts examined, checked and reported on by the Executive Council ; they were then sent home for the final Audit at the Treasury. So long as only the monies received under Imperial Acts and from the Military Chest were to be accounted for, the business was simple : but when money came in also from duties under Colonial Acts, and payments were made

under the authority of Colonial Laws, it became more complicated. A scale of civil expenditure was formerly established by the Treasury; but it was increased in the Colony, sometimes upon the authority of Letters from the Colonial Department, sometimes, by Colonial Acts, sometimes without Colonial Acts: so that the Auditors at the Treasury, could hardly know how to check the accounts transmitted by the Governors, as reported on by the Executive Council. The Receiver Generals, kept only one account with the Treasury, viz. of receipts and of expenditures, under the Governors' warrants. This he transmitted through the Governor and Council, with copies of the warrants; but it must have been difficult to judge of the legality of the payments; the 31st Geo. III. Chap. 31, Section 47, positively enjoining that certain monies should be applied for the public uses of the Colony, in such manner *only*, as directed by the Colonial Legislature. As deficiencies of revenue were long made up from the Military Chest, the Colonial Assembly appears to have been remiss in the exercise of its duty of closely attending to the revenue and expenditure. The last *quietus* given by the Treasury, to the late Receiver General, is to the 10th October 1814, when it is to be supposed that the accounts of the receipts and expenditure were finally audited. Lord BATHURST, in answer to Sir JOHN COAPE SHERBROOKE's representation, signified His Majesty's commands, that the expenditure should be voted by the Assembly, and the accounts settled *annually*. But as the objections taken in the Legislative Council, first to the *mode* of appropriation, and afterwards to the *duration* of the grant, was followed by the rejection of the Bills sent up by the Assembly, excepting those of 1825 and 1825; the accounts subsequently to the year 1818, still remain in an unsettled state. How the Receiver General can be *legally* quieted at the Treasury, in such a state of things, seems to be a matter of difficulty. Several attempts to facilitate the settlement of accounts of advances made under Executive authority, and for a general settlement of the past accounts, have been made. A Bill for the first purpose was passed by the Assembly in 1824, but failed in the Council; at the last and previous Session the appointment of Commissioners for stating the public accounts, was proposed and failed in the Assembly. Bills of indemnity passed the Assembly in 1823, for the years 1819, 1820, 1821 and 1822; but they failed in the Council. The mode pointed out by Lord BATHURST, would certainly keep the accounts of the revenue and expenditure in a state satisfactory to all concerned in the Colony, and render the business of the final audit of these accounts, and *quietus* of the Receiver General at the Treasury, as their officer, and according to Law, a matter of ease and certainty.

2°. *The late Receiver General's Defalcation.*—This defalcation was a consequence always to be apprehended, when public accountants are not brought to regular and strict settlement at short periods, under the check of those who furnish the money. In the accounts transmitted to the Assembly last year, by the Executive, the whole of this defalcation [£96,117 13 0½ stg.] stands against the part of the Revenue allowed to be at the disposal of the Legislature. It is well known, however, that the late Receiver General, did not keep separate chests or accounts of his receipts and expenditures. The defalcation of course was on the

whole of his receipts. As the Province had no hand in the appointment of the Receiver General, and in fact was prevented from exercising any controul over him, it addressed His Majesty to the end that the Imperial Government, should make good the amount deficient. If the Colonists were to lose this amount, by an officer over whom they had no controul, it ought not, at least, to fall on any particular portion of the receipts; it ought to be borne equally by the whole; Upper-Canada as well as Lower-Canada. If the latter were to bear the whole of it, it would indeed be in a singular situation: the Treasury would appoint such person as it thought proper, to receive and pay over the revenue in Lower-Canada; he would also perform the business of Upper-Canada; and Lower-Canada, besides paying and advancing the money, would run all the risk and bear all the losses which might occur; even any deficiency of money put into his hands from the Military Chest.

At the last Session, the Assembly addressed the Lieutenant Governor, to know if any answer had been received to its address to His Majesty on this subject, when it was informed, that orders had been received to proceed at Law against the late Receiver General.

3°. *Monies advanced and unaccounted for.*—The amount of these monies, according to a statement signed by the Chairman of the Committee of the Executive Council for the Audit of Public Accounts, laid before the Assembly in consequence of an address, was on the 21st March last, £99,460 2s. The advances were for the greatest part made by what has been called Letters of Credit, on account of appropriations made by the Colonial Legislature for local purposes, some of them as far back as 1805. The total amount of these appropriations since 1794 is £668,000 pounds. The practice has been, when the accounts of the expenditure were finally rendered and passed, to grant a warrant on the Receiver General, from which he deducted these advances, the warrant being his voucher. In the balance forming the amount of the deficit in the late Receiver General's accounts, he has credit for the amount of these advances, although they still, strictly speaking, stand against him, and would have to be added to the amount of the defalcation, till covered by warrant. Many of the accounts have been rendered, and of the £99,460 2s., in the statement, up to the 21st March last, by far the greatest part, it is understood, has been spent in accomplishment of the objects for which the advances were made. The practice of issuing Letters of Credit has been discontinued; but advances, on what are called accountable warrants, are still made. This renders the Receiver General more secure, but does not seem to add to the security of the public. Experience has pointed out the danger of these advances. The common description of *bad* paymasters, is applicable in this case, viz. 'those who pay in advance, and those who do not pay at all.' Still it may be indispensable, in some cases, to make advances. In all cases where contracts can be made, it seems unnecessary. No contractor of respectability and good credit, will find it difficult to procure funds on the faith of a Government contract, if the pecuniary affairs of the Government are managed with that regularity, punctuality and honour, which distinguish respectable individuals in private business. The work to be done, or articles furnish-

ed, may easily be so divided, as to suit the means of industrious contractors of good character and small capital. Advances in the manner heretofore practised in this Province, may be fatal to the speedy, economical and proper accomplishment of the work intended to be performed, and involve many persons in law suits and heavy losses, to the great injury of the community. Addresses to the Governor to cause prosecutions for the settlement of the advances already made, have been repeated since 1824.

In 1823, the amount was,	£111,890 17 2
1824, " "	116,659 15 4
1825, " "	95,460 2 0

4^o. and 5^o. *Supply for the support of Government, and special appropriations.*—The amount of the former, last year, including the Lieutenant Governor's salary, granted during his residence, and militia pensions permanently granted, was £64,000, of the latter about £47,000; forming in the whole £111,000.

The cash in the Receiver General's chest, and estimated current revenue of 1825, to meet this appropriated expenditure, was stated by the Inspector General of provincial accounts at £116,496 18s. 5½d., including £19,120 18 6, from bonds for duties, given in 1824,

The supply and special appropriations for 1826, and payments and interests on loans for the Lachine Canal, must of course be chiefly taken out of the revenue of the year 1826, of which an estimate only can be formed.

Hitherto the Province, under all its difficulties, has been so fortunate as to have been kept free from debt, excepting for the Lachine Canal: that is, the existing generation has at least had the virtue not to riot on the means of future generations, and expose them to the burthens, which, according to natural justice, each generation ought to bear for itself.

The Legislature being now assembled, it is not thought expedient to notice the *new* measures which are reported to be in agitation. They will develop themselves daily.

If devotion to the general interest of the Province, the repression of abuses prejudicial thereto, and the strengthening the security of the Free Government happily established therein by Law, the affording the utmost security and freedom to industry, with every possible facility, are objects sincerely and diligently followed by all the Branches of the Legislature, there can be no doubt but the result of the Session will be highly beneficial not only to the Province, but also to the interests of Great Britain in this quarter of the world.

Quebec, 23rd January 1826.