

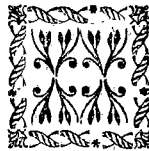


# EXTRACT

FROM THE

## MINUTES OF COUNCIL.

Containing His Majesty's late regulations relative to the waste lands of the Crown, with His Excellency, the Governor General's order of reference respecting the same, to a Committee of the whole Council, of the Province of *Lower-Canada*, the said Committee's report thereon, and His Excellency's speech in reply.



Q U E B E C :

PRINTED AT THE NEW-PRINTING OFFICE,  
PALACE STREET, 1798.

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THE here published Extracts from the Minutes of the Executive Council have been obtained in conformity to the following injunction and authority.

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38th. Article of His Majesty's Instructions to LORD DORCHESTER, Governor General, &c &c. &c. bearing date at St, James, 16th. September, 1791.

“ And it is our further will & pleasure, that all the foregoing instructions to you, as well as any which you may hereafter receive relative to the passing grants of land, in conformity to the said Act, passed in the present year of our reign, be entered upon record for the information and satisfaction of all parties whatever that may be concerned therein.

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Extract from the Minutes of Council, of the 21st January, 1793.

Ordered by His Excellency, with the advice of the Council, that the following Advertisement be inserted in the Quebec Gazette, for three weeks successively.

Council-Office, Lower-Canada, }  
21st January, 1793.

Final orders remaining to be taken by His Excellency the Governor and the Executive Council (for reasons inserted in the Minutes of the Board) upon certain Petitions for grants of parcels of the waste lands of the Crown. All Petitioners for Lands in this Province are hereby notified that the Minutes are open for daily inspection between the hours of 10 and 3.

By order.

(Signed) J. WILLIAMS.

C. Ex C.

True Extracts. T. CARY,  
A. C. Ex. C.

## INTRODUCTION.

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*IT is generally known to the Public, that in February 1792 a Proclamation was issued by the Governor, in both the Provinces of Upper and Lower Canada, by which, under the authority of His Majesty's Royal Instructions, the waste-lands of the Crown were proffer'd to all persons capable of cultivating the same on their becoming British subjects in either of the Canadas. It is also of public notoriety that, upon the great number of petitions for land, preferred in consequence of the said Proclamation, upwards of one hundred and fifty warrants of survey for townships, under the Governor's hand and seal, were issued in the same and the following year, by the Executive Government of this Province, on the terms expressed in the said instructions of which the principal and most essential condition was the actual settlement of the lands so to be granted.*

*Besides the general invitation given by the aforesaid Proclamation, and the encouragement held out to applicants for townships, by the said warrants of survey, various other incitements were employed to accelerate the settlement of the lands so promised and engaged to them by the Proceedings of Council.*

*After*

*After thus encouraging and authorising the immediate settlement of the waste-lands, the Provincial Executive Government of Lower Canada adopted a conduct which hitherto has remained a mystery to the inquisitive Public, in protracting, from year to year, the issuing of the promised Patents.*

*After a lapse of five years, Viz: in the month of May 1797, it was declared by a Committee of the Executive Council, to whom it was referred to consider & report upon the cases in which the faith of Government had been pledged to the applicants, to the intent that regular grants might be accordingly passed to them; that the faith of Government had not been pledged to any of the applicants for townships except in two instances only; although the same encouragement had been given by government in respect to all & the very same conduct pursued by the applicants in respect to many of the townships thus applied for. This report of the Council could not fail to excite general astonishment in the mind of the Public, and consternation in the minds of many of those who had engaged in the business; & this astonishment and consternation were still further encreased, by a Proclamation issued in the month of August following, stating that " divers persons had, " without any sufficient authority, possessed themselves of several " tracts and parcels of His Majesty's ungranted lands " and commanding all such persons " to remove & depart from the " same forthwith."*

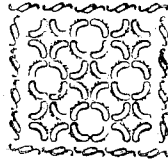
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*Such a measure, as it stood in contradiction to the original intention acknowledged at the outset of the business and recorded on the Council-books, gave room to various conjectures. Persons of disaffected principles, and inclined to depreciate the British Government, imputed it to its fault, and seized with eagerness the opportunity, under these plausible reasons, to defame it; whilst others, impressed with more respectful and loyal sentiments towards their Sovereign, conceived the mistake to originate with the Provincial Administration, probably misled, either through inadvertancy and misapprehension, or by the artful schemes of designing individuals; and they continued in the reliance that, as soon as the interest of the Crown and the Subjects should be aptly combined together, and thoroughly understood, the Provincial Government itself would be readily disposed to rectify the error.*

*Such were the different conjectures of the Public on this occasion. It is not of my competence to discriminate the grounds on which they are founded; nor is it my intention to hazard an opinion of my own on the subject. My views will be fulfilled if, by the publication of the following documents I succeed to lay open the falsehood of any calumnious insinuations made in respect to the distribution of the Royal waste lands in Lower Canada, against the Supreme Executive Power of Great Britain; and in promulgating the unshaken uprightness and honor with which His Majesty's Representative has endeavoured*

*endeavoured to carry the Royal commands into immediate effect. These documents will moreover afford, to those concerned, the consoling reflexion, that eventually the Royal orders must be obeyed, and that, at some period or other, which cannot be far off, their grievances will be redressed with that justice and liberality which characterize the King's last Regulations on this subject and which reign so conspicuously in his Majesty's Royal Breast and in the Breast of his upright and faithful Representative.*

WILLIAM BERCZY.





Order of Reference to a Com-  
mittee of the whole Council  
respecting Townships.

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*Extract from the Minutes of Council,  
of the 11th. June, 1798.*

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**H**IS Excellency reminded the Board of what he had mentioned on the 17th. April, 1797, respecting the waste Lands, to wit.

“ That on his coming to the administration of the  
“ Government of this Province, he found that an alte-  
“ ration in the terms of disposing of the waste lands of  
“ the Crown was in contemplation by His Majesty’s  
“ Ministers.”

The



The intent of the alteration then in contemplation was, to raise, by the disposal of the waste lands in future, (excepting in those cases where the faith of Government might be already pledged to the Applicants) a fund to be applied towards defraying the expences of the Provincial Government.

HIS Excellency laid before the Board an Instruction which he had since received under His Majesty's Royal Sign Manual, which, being read, was ordered to be entered, *Viz.*

GEORGE R.



Instruction to our trusty and well beloved ROBERT PRESCOTT, Esq. Lieutenant General of our Forces, Captain General and Governor in Chief of our Province of Lower-Canada, in America, or in his absence to the Lieutenant Governor or Commander in Chief of our said Province, for the time being. Given at our Court at *St. James*, the fifteenth day of August, 1797, in the thirty-seventh year of our reign.

“ Whereas

“ WHEREAS, by Our general instructions to Our  
 “ Captain General or Governor commanding in Chief,  
 “ in and over our Province of Lower-Canada, bea-  
 “ ring date at *St. James*, the 16th. day of September,  
 “ 1791, it is declared amongst other things to be Our  
 “ will and pleasure, that the townships therein men-  
 “ tioned, and the respective allotments within the same,  
 “ together with the lands to be reserved as therein a-  
 “ foresaid, shall be run and laid out by Our Surveyor  
 “ General of lands, for the said Province, or some  
 “ skilful person authorized by him for that purpose,  
 “ which Surveys, together with the warrants and grants  
 “ for the respective allotments shall be made out for,  
 “ and delivered to the several grantees free of any ex-  
 “ pence or fees whatsoever, other than such as may  
 “ be payable to the different Officers according to the  
 “ table of fees already established upon grants of lands  
 “ made in the said Province. NOW OUR WILL & PLEA-  
 “ SURE IS, that the said townships therein mentioned,  
 “ and the respective allotments within the same, toge-  
 “ ther with the lands to be reserved as therein afore-  
 “ said, shall be run and laid out by Our Surveyor Ge-  
 “ neral of lands for the said Province, or some skilful  
 “ person authorized by him for that purpose, which  
 “ surveys, together with the warrants and grants for  
 B “ the

“ the respective allotments shall be made out for and  
 “ delivered to the several grantees on payment of such  
 “ fees as shall, from time to time, be established by  
 “ Us, under Our Signet and Sign manual or by Our  
 “ order in that behalf, signified by one of Our principal  
 “ Secretaries of State.

G. R.

And his Excellency informed the Board, that the directions he had received from His Majesty's Secretary of State, in conformity to the above instruction were :

*1<sup>st</sup>.* That in those cases where the faith of Government has been pledged to the applicants (according to the report of the Committee of the whole Council of the 24<sup>th</sup>. May, 1797) for specific quantities of land, the grants thereof should be passed, on the same fees that have been paid upon those grants that have already passed the seal.

*2<sup>d</sup>.* That, although the faith of Government is not considered to have been specifically pledged in the cases where persons petitioned for townships on behalf of themselves and their associates yet, in as much as some of those associated applicants have fully evinced the  
 sincerity

sincerity of their intentions of carrying the settlement of the lands, they so petitioned for, into effect, and have, upon the faith of the encouragement heretofore given them by His Majesty's Government in Canada, embarked their labor and property in surveying and allotting the townships they so petitioned for, and in making effectual settlements therein; it is His Majesty's pleasure, that a preference should be shewn to persons of this Class " by making them grants (upon the Old Fees) " to the full extent mentioned in His Majesty's instructions, *Viz. twelve hundred acres to each associated grantee.*" But this is not to extend to the granting of the *whole township*, except in those cases where the number of associated applicants, who are *actually settled thereon*, shall be sufficient at the rate of *twelve hundred acres each* to comprehend the whole of the grantable lands in such township—And in cases where the number so actually settled in any township shall not be sufficient, allowing at the rate of 1200 acres each, to comprehend the whole of the grantable lands in such township, the remaining part thereof, if granted to the associated applicants, " must be granted on condition of immediate " settlement and of its being subject to the additional " fees for the public service." It is also his Majesty's pleasure, that such of the settlers as may happen to be seated on lots reserved for the support of a Protestant

clergy or for the future disposition of the Crown, should hold the same, upon the same terms and conditions as shall hereafter be granted to other cultivators of reserved lots of a similar quality,

3d. That such of the applicants as have been at the expence of surveying the townships they petitioned for, and laying the same out into lots, preparatory to the settlement, but have not proceeded effectually to the actual settlement thereof, should have grants (upon the old fees) for the *one half* of the townships they so petitioned for, in the same quantities (to wit 1200 acres) to each of the associated grantees, as in the former case, on condition of the immediate settlement thereof; but this is not allowed to be extended in *any* of the cases falling under this description to *more than one half* of the Township; so that if in any of these cases, it should be thought proper, in the wisdom of the Council (on account of the intended settlers being actually waiting to go on) to advise the granting of *the whole township* to the associated applicants, the *latter half* thereof must, of course, be subject to the additional fees for the public service.

4th. Those of the applicants who have only put themselves to the trouble and expence of *soliciting and exploring*

*exploring* the townships they desired, are not considered to have done much towards evincing any very serious intention, with respect to carrying the settlement thereof into effect, which *alone* could entitle them to any favorable consideration. In as much however as the *exploring* of the townships they petitioned for, may have been attended with some expence, His Majesty is pleased to allow, that applicants of this description may have grants of the *one fourth part* of the townships they respectively petitioned for, upon condition of the immediate settlement thereof. This however is meant to extend only to those cases where the applicants did actually put themselves to the trouble and expence of exploring the townships they applied for; and if these should desire to have the grants at the rate of *twelve hundred acres* to each associated grantee, such grants are to be subject to the additional fees for the public service.

5th. Such persons or associations of persons, who, from a desire of making actual settlement on the lands, purchased the pretensions of those applicants that had become discouraged by the delays which took place in the passing of the grants, are to be considered as standing in the place and stead of the applicants whose pretensions they so purchased, and to receive the grants accordingly, in the same proportions and on the same conditions

conditions as those applicants themselves would have been entitled to under the above regulations.

6th. The remainder of the lands, (except where Government may consider it proper to grant certain quantities to particular persons by way of favour, as rewards for services or the like; and excepting the reservations for the support of a Protestant clergy and for the future disposition of the Crown) are to be disposed of at public sale, at certain times and places, to be notified; in such quantities, and subject to such conditions of settlement and cultivation as shall afford the best chance for the purchasers becoming themselves the permanent settlers on the lands, and for raising out of the price thereof an efficient fund towards defraying the public expences of the Province.

7th. The amount of the *new fees*, to be taken under the Royal instruction now communicated to the Board (including, as well the part payable to the officers concerned in passing the grants as the part to be appropriated towards the support of Government) is fixed at *twenty five pounds* currency per *thousand acres*, and so in proportion; being at the rate of *six pence* an *acre*; but it is directed, that the grants to be made in obedience

to

to orders from His Majesty, in consideration of services, shall be subject only to the payment of *half fees or three pence per acre.*

8th. In the grants subject to these additional fees and those of the lands that shall be disposed of by sale, the grantees are to have *all Mines and Minerals*, excepting only those of *Gold and Silver*; which latter are to be reserved to His Majesty, his Heirs and Successors as formerly.

His Excellency submitted to the consideration of the Board to report whether it might not be advisable to give public notice of these regulations, and to fix a reasonable time for the persons comprehended under the 1st. 2d. 3d. 4th. & 5th. Articles, to come forward and take out their grants; to the end that His Majesty's gracious intentions, respecting the raising of a fund towards defraying the public expences of the Province, by the disposal of the waste lands in future, may be carried into effect with all convenient expedition.

His Excellency likewise informed the Board that several of the dispatches which he had received from His Majesty's Ministers, recommended that such measures should



should be devised, respecting the lands directed to be reserved for the support of a protestant clergy, and for the future disposition of the Crown, as might best secure them from depredations, and render them early productive for the purposes for which they were graciously designed.

It was, His Excellency observed, the opinion of His Majesty's Ministers (in which His Excellency most perfectly concurred) that the best mode of securing the reserved lots from depredations would be to grant them to occupants on such beneficial leases as will create an immediate interest in each lessee, to preserve them against all encroachment.

His Excellency did not indeed expect that, while the price of land shall remain low, any very considerable rent can be obtained; but it nevertheless appeared to His Excellency, that the reserved lots, situated in the immediate neighbourhood of actual settlements (and it was there only that depredations could be apprehended) might be readily disposed of at a rent that should be very low for a term of years at the commencement, and be afterwards encreased in certain stipulated degrees, from period to period, at the expiration of certain given terms of years.

His

His Excellency expressed his hopes, that, by the wisdom of His Majesty's Council, a plan of this kind might be devised, that would meet His Majesty's gracious approbation; and produce those beneficial effects which His Majesty so graciously designed.

Ordered by His Excellency, with the advice of the Board, that it be referred to a Committee of the whole Council to report, with all convenient expedition, on the means that shall appear to be the most likely to secure the reserved lots against encroachments, and render them productive, for the purposes for which they were graciously intended by His Majesty.

*A true extract.*

(Signed)

TH. CARY,  
A. C. Ex. C.



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*Report of the Committee of the whole Council,  
of the 20th. June, 1798.*

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To HIS EXCELLENCY ROBERT PRESCOTT,  
*Esquire, Captain General and Governor in  
Chief of the Province of Lower-Canada, &c.  
&c. &c.*

Report of a Committee of the whole Council,  
[*present the CHIEF JUSTICE, and five members of  
the Executive Council*] on your Excellency's or-  
der of reference of the 11th instant, respecting  
the waste lands of the Crown.

*May it please your Excellency,*

The Committee having, in obedience to your Excel-  
lency's order of reference, duly considered the question  
referred to them by your Excellency, "whether it might  
" not be advisable to give public notice of the regu-  
" lations contained in the order of reference, &c." and  
after the maturest deliberation on the tendency of feve-  
ral essential parts of the directions thereby communica-  
ted, they find themselves compelled to form a conjecture  
which

which they hazard with the greatest deference, which is, either that some accidental omission has taken place in the state of facts, relative to the granting of the waste lands of the Crown, which may have been laid before His Majesty's Secretary of State, or on the other hand, that the Executive Government of this Province have hitherto misconceived His Majesty's instructions on the subject. For, it is manifest, that the directions now communicated to the Board, are framed upon the principle of giving encouragement to a procedure which the Executive Council have ever thought it their duty to inhibit and repel to the utmost.

By the second direction it appears that a preference is to be shewn to those associated applicants who are actually settled on the lands: in which terms the Committee are necessarily led to include unauthorised settlers, as well from the notoriety of the fact, that almost all settlements hitherto made have been entered upon without title, as from the express tenor of the said direction, whereby an indulgence is extended to such of the settlers, "as may happen to be seated on lots reserved for the support of a protestant clergy or the future disposition of the Crown" who must evidently be of that description. And this unauthorised settle-

ment, is the procedure which the Executive Council have hitherto endeavoured to refrain.

To prohibit and repel every attempt to acquire lands by the *robust title* of occupancy is so congenial to the ideas of civilized Government, and is in itself so reasonable, that it forms, as it were, a common law principle, of the system of land-granting. The civil commotions and open rebellion that prevailed in the neighbouring States, from a violation of these principles, are still related with horror. But the Executive Government of this Province have not rested on the bare principle, but have, from time to time, interposed positive restraints by prescribing certain formalities as indispensably necessary before the applicants could be qualified to receive a title or be allowed to enter into possession. These restraints being found ineffectual, they were followed up by a Proclamation issued in the month of August last, strictly forbidding such intrusion, under the penalties thereby announced. Should the Government be found to have acted improvidently in framing these precautions, the Executive Council most sincerely regret their error in having suggested them; but should such authoritative precautions be deemed salutary, after stating that these actual settlers have set them at open defiance, the Committee, from motives  
of

of respect, will abstain from any observations on the subject.

In regard to the third direction we think it our duty, in all submission, to represent that, when it comes to be applied to the cases of a great number of his Majesty's subjects of approved loyalty, it assumes a very serious aspect: not on account of the limitation of His Majesty's bounty in their behalf, which the Committee, if they may presume to exercise an opinion on the subject, humbly conceive to be sufficiently liberal, but from the comparison which must be made between the conduct of the classes mentioned in the 2d. and 3d. directions respectively, and of the consequences resulting therefrom, the conduct of the description of persons included under the third direction has been directly the converse of the conduct of those who are to benefit by the second direction, they having abstained from seizing upon His Majesty's lands, in disobedience of a solemn Proclamation, by which means they now are, and for a considerable time have been precisely in the predicament stated in the third direction, waiting to go on, in dutiful submission to the Law, and therefore will not fail to complain that, while others triumph in their transgression they have not received an equal benefit from their obedience.

In regard to the 5th. direction, whereby persons therein described, having purchased the pretensions of others, are to be considered as standing in their place and stead, the Committee most respectfully implore, that some consideration may be had of the labyrinth of deception fraud, and, if they are to judge of the future by the past, of forgery which they will have to wade through, whose duty it may be to report on the validity of such pretensions and such purchases, which will encrease in a proportion not to be calculated, when this direction comes to be made public. Pretensions tho' an unsubstantial commodity in all countries, are in America particularly so, and are first formed by Signatures to a petition consisting of names, sometimes written by the parties, and sometimes written without their knowledge, sometimes of persons having existence, and sometimes of persons not having existence. Pretensions never seriously brought forward, or long since relinquished will be resumed, and personages found to represent every signature; deeds of contracts executed in such form and manner and under such circumstances as to cast a ridicule upon the idea of a serious transaction will be multiplied and antedated, and frauds without number practised, which no vigilance can detect. How far therefore it may be prac-

ticable

ticable to give effect to this direction, is most respectfully submitted to superior wisdom.

Hitherto the Committee have confined their report to what they apprehend will be the immediate consequence of making these directions public, namely a spirit of dissatisfaction among His Majesty's loyal and dutiful subjects, issuing from plausible grounds of complaint and the encrease of collusion and fraud beyond computation. But when they extend their views to the remainder of the lands yet unapplied for, the Committee cannot but represent and deprecate the fearful consequences that will infallibly ensue, when it shall become known to that lawless and obtrusive race, who dwell upon the borders of this Province, that any relaxation of the system of repelling encroachments has been directed by authority; and though it should be thought advisable to confirm the orders given in the second direction, the Committee fully apprised of the almost ungovernable propensity of this description of persons, to take possession of, or to use their own idiom, to make their pitch on the most advantageous spots, seriously request permission to repeat their apprehension of the evil effects that will arise from publishing the reason assigned for the preference, lest, the disposition for actual settlement should be indulged



to such an extent and by such numbers, that the whole of the Crown lands become occupied without producing a sentiment of loyalty or gratitude, and Government be reduced to the expedient of substituting connivance for authority.

For these reasons the Committee of the whole Council are unanimously of opinion that it is not advisable, for the present, to give public notice of these regulations.

The Committee, considering that their report on the subsequent matter, contained in the order of reference, will much depend on the ultimate directions to be expected upon this report, propose to defer the consideration thereof, until such final directions shall be received. All which is humbly submitted to Your Excellency's wisdom.

*Council Chamber, Bishop's palace, } By order,  
Quebec, 20th. June, 1798.*

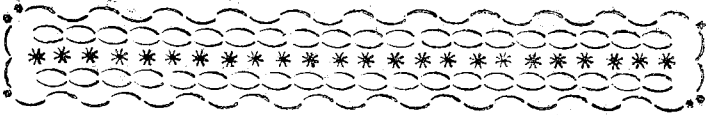
(Signed) W. OSGOODE, *Chairman.*

*A true Copy.*

(Signed)

TH. CARY,  
A. C. Ex. C.

Order



*Extract from the Minutes of Council, of the 9th.  
July, 1798.*

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**H**IS Excellency laid before the Board a Report of a Committee of the whole Council, dated the 20th June last, upon the Reference of the 11th. of the same month, respecting the waste-lands of the Crown, which was read and ordered to be entered.

HIS Excellency then observed that nothing would afford him greater satisfaction, than a coincidence of opinion between himself and the Members of the Executive Council, wherever such coincidence would be consistent with what he conceived to be his duty towards His gracious Sovereign and towards the Province over which His Majesty had been graciously pleased to appoint him to preside. To the fulfilment of these duties, with uprightnefs, impartiality and integrity of heart, so far at least as his abilities might enable him, he should

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certainly,

certainly, if necessary, sacrifice every other consideration, either of pleasure or of ease. And he was exceedingly sorry that in the fulfilment of them, he felt himself compelled in the present instance to support a Doctrine, materially different from that contained in the report that had just been read to the Board.

HIS Excellency informed the Board that the Regulations which he had communicated on the 11th. ultimo, and to which the Report related, were founded on, what he conceived to be, A VERY MATURE CONSIDERATION of the Proceedings of the Executive Government of this Province, under His Majesty's Royal Instructions, of the 16th. of September, 1791, as contained in the books now upon the table; copies of which proceedings, together with a true and faithful statement of the positions and arguments that had been urged both for and against the applicants, were transmitted to His Majesty's Ministers for that purpose.

ALTHOUGH indeed all men might be at times liable to error; yet, His Excellency observed, a determination made by such high authority, possessing such ample materials whereon to form a proper Judgement, was certainly entitled to so much respect that if the propriety

thereof

thereof should not, at first sight, appear so clear and satisfactory to any person or persons as might be wished; the grounds, both of the determination and of any objection that might be opposed to it, ought to be well and truly examined, before any censure should be passed thereon. So far His Excellency said, he was persuaded the Board would agree with him and he could not but entertain hopes that before they rose they should agree much further. He was the more induced to entertain these hopes, from his having observed that the greater part of the Members, who were present at the Committee that made the Report, happened not to be Members of the Board during the early stages of the business, and might therefore perhaps have been unacquainted with some of the proceedings that had then taken place: those also of the older Members of the Board, who were present at the Committee, might, His Excellency readily conceived, have lost the remembrance of those Proceedings. His Excellency would therefore, in the course of his observations on the report which had just been read, take the liberty of explaining to the Board, the grounds of the several articles of the regulations, where any explanation shall appear to be necessary, in order to shew them in their just and true light.

THE *first* article, being no other than the essence, as it

were, of the report of the Committee of the whole Council, of the 24th. of May, 1797, respecting persons who had heretofore obtained Orders of the Governor in Council for specific quantities of land; did not, His Excellency said, require any explanation.

THE Foundation upon which the Committee build the objections that are contained in the Report, in regard to the *second* and *subsequent* articles is, ‘ That they  
 ‘ are framed upon the principle of giving encourage-  
 ‘ ment to a procedure which the Executive Council  
 ‘ have ever thought it their duty to inhibit and repel  
 ‘ to the utmost ’ which procedure is afterwards explained to be the entry upon land and making Settlement thereon without Title.

THE Committee, His Excellency observed, had, he believed, fallen into a mistake with respect to a very important matter of fact in the very Foundation upon which their objections are built. The regulations, His Excellency said, were by no means framed upon a principle of giving encouragement to that procedure they were, on the contrary, framed upon the principle of preventing those evils which must otherwise arise from the encouragement that had been heretofore given to that procedure by the Executive Council, and upon the principle of administering (through His Majesty’s  
 gracious

gracious benevolence) a rational degree of distributive justice towards those who had embarked their labour and property therein, in consequence of that encouragement.

THAT the applicants at large received advice and encouragement from the Members of His Majesty's Council, to come in and settle on the Townships they had petitioned for, without waiting for the forms prescribed for issuing regular grants, and that they were actually expected by the Provincial Government so to do, are points, His Excellency observed, that could not require greater proofs than are contained and repeated in divers pages of the Books now upon the table, in which the proceedings of the Executive Council stand recorded.

HIS Excellency then directed the Clerk to read part of the Minutes of Council of the 11th October, 1792, which was read accordingly and ordered to be entered.



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*Extract from the Minutes of Council of 11th.*  
*October, 1722.*

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“ READ a Report of a Committee of the whole Coun-  
“ cil, on the representation from the Land Committee,  
“ respecting the want of Deputy Surveyors.

*THE REPRESENTATION.*

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“ *To HIS EXCELLENCY ALURED CLARKE,*  
“ *Esquire, Lieutenant Governor and Comman-*  
“ *der in Chief of the Province of Quebec, &c.*  
“ *Major General commanding His Majesty's*  
“ *Forces in America, &c. &c. &c.*

“ REPRESENTATION from the Land Committee,  
“ concerning the inconveniencies likely to arise  
“ from a want of a sufficient number of Land  
“ Surveyors, to lay out the townships already  
“ applied for, by persons ready to take up and  
“ enter upon the immediate cultivation of  
“ tracts of the Waste Lands, appertaining to  
“ the Crown.

“ *May*

“ *May it please your Excellency,*

“ THE number of Surveyors employed is ten, eight  
 “ of which are in the field, the remaining two will be  
 “ sent out in a few days.”

“ There is at present above three Millions of acres  
 “ under Warrant of Survey and to be laid out in  
 “ townships.

“ Supposing the Surveyors were all at this moment at  
 “ work, and allowing a month (many of them confi-  
 “ der fifty days to be necessary) to complete the Sur-  
 “ vey of a township, the business could not be finished  
 “ in less than six months, and the Summer is now far  
 “ advanced and not one return, as yet, made of a single  
 “ township.”

“ The Committee beg leave to observe, that the ap-  
 “ plicants for Lands from the late Colonies (now the  
 “ States of Vermont, Newhampshire, Massachusetts  
 “ and Connecticut) after having obtained the desired  
 “ assurance of grants of the waste-lands of the Crown  
 “ in terms of Your Excellency's Proclamation of the  
 “ 7th. of last February, have gone back to those coun-  
 “ tries, and their return may be soon expected with  
 “ many hundreds of industrious men, who, as they

“ for



“ say, anxiously wish to be admitted as British Sub-  
 “ jects, nothing doubting but they may immediately  
 “ take possession of the lots they have been made to  
 “ expect ; should they be disappointed from a want of  
 “ Surveyors (or otherwise) to lay out the Tracts in-  
 “ tended for them, they must remain idle in the woods  
 “ or return from whence they came. In the humble  
 “ opinion of this Committee every possible means  
 “ should be used to prevent this threatened evil. A  
 “ check of this nature, given to the present spirit of  
 “ emigration into the Canadas, would deprive this  
 “ Province of an opportunity of encreasing the popu-  
 “ lation of the country, and of adding to its wealth by  
 “ the ingress of skilful industrious farmers in great  
 “ numbers: it is therefore submitted, whether the Sur-  
 “ veyor General may not be required to set to Work a  
 “ greater number of Surveyors without loss of time.”

“ The Committee are aware of an objection that  
 “ may probably be started by the Surveyor General’s  
 “ Office, against proceeding to the Survey of a new  
 “ township that is not bounded by a tract already sur-  
 “ veyed: for example AMOS LAY, PROPRIETOR of the  
 “ township of *Ely* applies for the tract ordered for him  
 “ and his associates, not yet surveyed. The Surveyor  
 “ finds that it is a township in the fourth range, North of  
 “ the line which separates this Province from Vermont,  
 upon

“ upon which line there is no known point from when-  
 “ ce to depart but the Eastern boundary of Mr. DUNN’S  
 “ Seigneurie; from thence he must measure the base of  
 “ the township of *Sutton* and one of its side-lines con-  
 “ tinuing North along the side-lines of the townships of  
 “ *Bolton* and *Stukely*, to reach the South-West corner  
 “ of *Ely* where he is to begin his operations on M. LAY’S  
 “ account; but before he will proceed he will ask, who  
 “ is to pay for running these lines to find Mr. LAY’S  
 “ corner” ?

“ To obviate all difficulties in similar cases the Com-  
 “ mittee humbly submit, whether (seeing the Crown  
 “ will sooner or later be at half of the expence of run-  
 “ ning all the lines of those townships) Government  
 “ might not in the meantime satisfy the Surveyor:  
 “ This mode of proceeding would prevent delay.”

“ ALL which is nevertheless most humbly submitted  
 “ to Your Excellency’s great wisdom.

“ Signed by order of the Committee, Council  
 “ Chamber, Bishop’s Palace, Quebec, 13th July,  
 “ 1792.

(Signed) HUGH FINLAY, *Chairman*.

## THE REPORT,

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“ TO HIS EXCELLENCY ALURED CLARKE,  
 “ Esquire, Lieutenant Governor of the Pro-  
 “ vince of Lower Canada, & Major General  
 “ commanding HIS MAJESTY’S Forces in  
 “ North America, &c. &c. &c.

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“ REPORT from the Committee of the whole  
 “ Council, on the representation from the  
 “ Land Committee, respecting the want of  
 “ Deputy Surveyors, the Members assembled  
 “ being the CHIEF JUSTICE and Messrs FIN-  
 “ LAY, BABY and DUNN.

“ *May it please Your Excellency,*

“ IN obedience to Your Order in Council of the  
 “ 4th of August last, the Committee humbly report  
 “ that they concur with the Land Committee in their  
 “ apprehensions of great detriment to the Public, un-  
 “ less means shall be found to give a speedy execution  
 “ of the Warrants issued to the Surveyor General’s  
 “ Office, respecting the waste lands of the Crown.

“ THAT it is well worthy of the Government to  
 “ provide

“ provide for the probable contingency of the actual  
 “ arrival of new settlers, destined to a tract or town-  
 “ ship *not* at that time surveyed.

“ THAT it is for this end expedient to require a  
 “ report from the Surveyor General’s Office, stating  
 “ the number of the present Deputies in employment,  
 “ and what hopes may be entertained of acquiring  
 “ additional strength, for the immense work to be  
 “ performed; with liberty to suggest, whether any  
 “ and what aid, can be afforded, by the energy of  
 “ the Government, and in what manner.

“ Respecting the remedy in part, recommended by  
 “ the Land Committee, no solid objection to it oc-  
 “ curs, if due care is taken by the Surveyor General,  
 “ under the restrictive proviso in the Governor’s war-  
 “ rants of Survey, to confine the work to a moiety of  
 “ the expence on the outlines of a tract or township  
 “ or where it exceeds it to apprise the Government of  
 “ that excess, that the Crown may be indemnified for  
 “ the advancement, *before the issuing of the Patent*. But  
 “ for the greater security against the rescinding the  
 “ proviso unnecessarily, the Surveyor General ought  
 “ to go into no departure from it without a special  
 “ order of the Governor and Council to authorize it;

“ to be obtained by an application from his office to  
 “ the Governor, stating the reasons upon which the  
 “ measure is founded: and as, after all, it may so hap-  
 “ pen, through a want of Surveyors in the field, that  
 “ the intended occupants or grantees of a Township  
 “ may arrive at the spot before the return of the Sur-  
 “ vey, the Committee recommend as a means to  
 “ anticipate the best course on such an event, that it  
 “ be made a subject for the *deliberation and report* of  
 “ the Surveyor and Deputy Surveyor General, and  
 “ that an order issue that they do, from time to time,  
 “ give the earliest possible information as to which tract  
 “ or township it shall have happened or is like to hap-  
 “ pen; such an event affecting the Royal interest and  
 “ the common tranquillity, and being in the highest  
 “ degree interesting to all that come to settle, in a re-  
 “ liance upon the public faith and invitation.

“ All which is nevertheless most humbly submitted  
 “ to your Excellency's great wisdom.

Signed by order, 10th October, 1792.

(Signed) WILLIAM SMITH, *Chairman.*

“ ORDERED that the Clerk of the Board cause a  
 “ Copy thereof to be served upon the Surveyor  
 “ and

“ and Deputy Surveyor General for the guidance of that Office.

THE Minutes, His Excellency observed, which the Clerk had just read, even were there nothing else, would convince the board, that the procedure of settling on the lands, previous to the issuing of the legal title, instead of being INHIBITED had been actually ENCOURAGED by the Executive Government of this Province; nor had his Excellency hitherto discovered any thing in the books upon the table, whereby that procedure had been inhibited, until the month of August last past.

THE Proclamation that was issued in August last, ordering those who had gone on the lands without any sufficient authority, to depart; was intended (as His Excellency conceived and understood at that time) to apply to such persons only as might have come in mere stragglers, without being connected with any association of settlers, and without having obtained any order for a grant in favor of themselves individually.

COULD His Excellency have thought that any person would have considered it as an order for those persons to depart, who had originally embarked their la-

hour and property, upon the encouragement formerly held out to them under His Majesty's authority, no consideration would have induced him to sign an instrument, to be interpreted in a manner so derogatory to the honor, the dignity and the good faith, which has ever so conspicuously reigned in the breast of His Royal Master; and it afforded him much satisfaction to learn that the proclamation had been generally (though perhaps not universally) understood, by the bettermost sort of people in the country, in the same light as he himself understood it at the time he signed it.

His Excellency was as averse to any attempts of acquiring lands by the *robust title of occupancy* as any Member of the Committee could have been when the report, now on the table, was drawing up; but he could by no means conceive that people, who had originally embarked their labour and property, in settling lands in consequence of such encouragement as had been given in this Province, and who had been year after year humbly petitioning for the grants which they had been originally taught by Government to expect; he could, he said, by no means conceive that people of this sort could be considered as having attempted to acquire the lands by the *robust title of occupancy*.

The

The principal danger, His Excellency said, to which the carrying on a settlement upon such encouragement as was given in this Province may be liable, is, that it may happen through some accident or other, that the *Legal Title* may finally be granted to different persons from those who had made the settlement, and who, together with the occupancy, may be said to possess a *Pretention of Right* under the encouragement that had been so given. His Excellency used the terms *Pretention of Right*, in contradistinction to *legal title*. Wherever a Government shall have given such encouragement, it certainly behoves it to take especial care in forming such regulations for the issuing of the grants as shall concentrate the *Legal Titles* with the above mentioned *Pretentions of Right*, and vest them both in one and the same person. - Were the *legal titles* and the *Pretentions of right* to be in *different* persons, there would undoubtedly be great danger that such a clashing of the one with the other would produce civil commotions; but if they are vested in one and the same person the danger is entirely avoided.

It would be tedious, His Excellency said, to discuss the causes which produced those civil commotions, alluded to in the report, that had heretofore taken place in the neighbouring States. It would be sufficient to observe,



observe, that they arose entirely from the *legal titles* being vested in one sett of persons, while *pretensions of Right* existed in another. But although it was not now necessary to discuss that subject, yet, His Excellency nevertheless thought it right to inform the board, that those commotions, together with the causes from which they flowed, and the effects that resulted from them; were duly weighed and considered when the foundation was laid on which the regulations, communicated to the board on the 11th ultimo, were built. And the regulations were, in His Excellency's opinion, so framed as to preclude (if faithfully carried into execution) those dangers of similar commotions, to which this Province might otherwise be exposed.

With respect to the indulgence extended by the regulations "to such of the settlers as may happen to be seated on lots reserved for the support of a Protestant clergy and for the future disposition of the Crown," whom the Committee appear to consider as Intruders, His Excellency thought it right to explain to the Board, the reasons on which that indulgence was founded.

When the settlements were commenced, in the year 1792, it was intended by the Provincial Government, that

that the reservations for the Church and for the Crown should be located in the *Four Corners* of the several inland townships and in the rear part of the several townships that were situated on Rivers or Lakes: this determination is contained in the Minutes of Council of the 11th October, 1792, and the first settlers made their arrangements accordingly. Afterwards, in the summer of the year 1793, the mode of locating these Reservations was altered, and it was determined in Council, on the 12th of August, 1793, that the applicants for five townships (three of which had been then already begun to be settled, although only one of them has been yet granted) should have it in their option whether to have the reservations in those townships located in four parallelograms, running through the townships, from front to rear, or to have them located in detached Lots: they chose the mode of the parallelograms, and made their arrangements accordingly. The settlers, on some other Townships also, taking it for granted that one general system would prevail through the whole, made their arrangements in the same manner. On the 10th of October, 1794 the former orders respecting the allocation of the reservations were virtually rescinded, and it was determined in Council that the reservations, in all the townships, should be located in detached lots,

conformably to certain Diagrams contained respectively at pages 362 and 374 of the book C upon the table. In consequence of these alterations the reservations fell in sundry instances upon lots that had been settled on; and His Excellency could not but flatter himself that the Board would from hence readily perceive the propriety and justice upon which that part of the regulations, was founded.

As the objections contained in the report of the Committee, respecting the *Third Article* of the regulations, and the comparison between the conduct of the applicants referred to in the *Second* and *Third* articles (namely those who had actually proceeded to the settlements and those who had not) are built altogether upon the supposition that those of the applicants who proceeded to the settlement of the land, they petitioned for, had, in so doing, acted in disobedience to the directions of the Executive Government: And His Excellency had already shewn that that supposition was founded on a mistake, and that they had in fact been thereunto encouraged by the Executive Government, and were expected by the Executive Government so to do, the whole of the objections here stated by the Committee would, His Excellency conceived, fall of course.

No remark having been made by the Committee, respecting the *Fourth* article of the regulations (by which His Majesty's benevolence is extended in a certain degree to those of the applicants who may have put themselves to the Expence of exploring the Townships they petitioned for) His Excellency had of course nothing to observe to the Board thereon.

IN regard to the *Fifth* article of the Regulations (by which persons therein described, having purchased the pretensions of others, are to be considered as standing in their place and stead) in the execution of which the Committee apprehend much difficulty, His Excellency observed to the Board, that the determinations and counter determinations herein before mentioned, respecting the allocation of the lands so to be reserved, the delays year after year, in regard to the passing of the grants, and in a word the *general uncertainty* with which the business appeared to be conducted, disheartened a great number of faithful applicants, who had intended to settle in this Province, and who had for that purpose incurred expences, some to a greater and others to a less amount; fundry of these, disposed of their pretensions to others, who possessing more confidence in His Majesty's Government, retained an idea

that things would eventually come right; and paid to the former a consideration, by way of reimbursement for the trouble and expences they had been at. On this account it was thought perfectly reasonable and right that those of the purchasers, who actually meant to come in and settle on the land, should stand in the place of those from whom they had so purchased. This was the principle upon which the *Fifth Regulation* was founded; and His Excellency could not but consider it as a most just and equitable one. Neither could His Excellency conceive that there can be any material difficulty in carrying it into effect. In those cases where there shall be no caveats, there can certainly be no difficulty, and where there shall happen to be caveats, nothing more can be necessary than to hear and determine them before the Governor in Council, in the same manner as caveats amongst applicants for grants of land were heretofore heard and determined in His Majesty's other Colonies, now the American States. There were seldom, His Excellency observed, any very great difficulties in ascertaining even those truths that were required to guide the conscience in the solemn and awful duties of giving judgement upon cases of life and death: and His Excellency could not conceive it to be possible that there could be any great difficulty in ascertaining such truths

truths as would guide the judgement in the disposal of a few thousand acres of wild land to settlers, in a country which His Majesty had so long directed to be settled.

In regard to the *sixth article* of the regulations (which intimates that the disposal of the waste lands, in future, except in certain cases, will be by public sale) His Excellency observed, that the Expences with which the mother Country was burthened for the support of the Civil Government of this Province, had long been considered by very respectable People, both at home and here, as being, at least in a great measure, unreasonable and unnecessary; and the more so as the waste lands of the Crown in this Province afforded so important a resource without any burthen to the inhabitants. It had also, His Excellency said, been long represented by numbers of respectable people, that the disposal of the waste lands by public sale, under proper conditions of settlement and cultivation, would be in every point of view, infinitely preferable to the granting of them to persons petitioning; not only with respect to the sums that might be thereby raised for the support of Government, but likewise with respect to the more speedy settlement and cultivation of the country by able and industrious farmers,

and

and the consequent population and prosperity of the Province. It was truly natural, His Excellency said, when one considers the slow progress that has hitherto been made in the granting and settling of the lands, that such representations should be attended to by His Majesty's and Ministers.

With respect to obtrusive settlers coming in to make their Pitches, as they term it, and as noticed by the Committee in this part of their report; His Excellency observed, that from the operation of certain causes, which (although they might be traced to an earlier period) first began to make their appearance in the newly settled parts of the country, about the latter end of the year 1795, or the beginning of the year 1796, there had been more reason to apprehend influences of that sort of late than formerly: and much more than there ever would have been, had those causes not existed. Were those causes to be laid fully open, His Excellency said, many of the people whom there was reason to expect might undertake long journies upon that errand would be found to merit commiseration, not reproach. His Excellency hoped he might never find it necessary to enter into an explanation of those causes; he certainly never would explain them unless it should become necessary; and he had the fullest reason to hope,  
and

and to believe, that by faithfully carrying into execution the directions he had received through His Majesty's Secretary of State, as communicated to the Board; and by disposing of the waste lands in future (except in certain cases) at open and public sale, every possible evil, that might otherwise be apprehended, would be effectually avoided.

His Excellency observed to the Board, that, although the position on which the report of the Committee is built (to wit, that the applicants, who have proceeded to the settlement of the lands without having obtained legal titles, ought to be considered as intruders) appears to have been taken as an *axiom*, in its nature so evident as to be entitled to universal assent; yet, it had appeared to him, from the moment he arrived in this Government, and was informed of the manner in which the land business had been conducted;—To wit, that since the conclusion of the American war (which was then thirteen years) many public invitations had been given for people to settle in this Province; that several hundred families had embraced those invitations, and that many thousands would gladly have followed their steps; but that, during that whole length of time, only one Grant had passed the seal;—It appeared to him, His

Excellency



Excellency said, from the moment he arrived, and learnt this to be the case, that no position could with safety be taken, without first examining with great care and attention all the parts with which it might be connected, as well with respect to circumstances *consequent*, as those *present* and those *antecedent*.

On his making still further & further enquiries, His Excellency said, he found that the opinions entertained by different people were so extremely wide, and oftentimes so diametrically contrary to each other, that the subject appeared to him to be of infinitely too great magnitude to be decided upon in this country. He therefore thought it his duty to lay before His Majesty's Ministers a brief historical narrative of the proceedings, in the order of time in which they took place; and as they stand recorded in the books now upon table. This he accompanied with a true and faithful (though brief) statement of the positions and arguments that had been set up, both *for* and *against* the applicants; and submitted the issue, so joined, to the decision of His Majesty's Ministers.

The evidence upon which the issue was determined was copied from the books now upon the Table; it consisted not of partial extracts from any recorded document

current, but of the full copy, although certain parts thereof might not immediately relate to the points in question. The decision is contained in the regulations communicated to the Board on the 11th ultimo.

HIS Excellency likewise observed that in the framing of those regulations, the report of the Committee of the whole Council of 24th May, 1797, which stated that the faith of Government had not been pledged, except in the cases therein described, was taken as a *Datum*. In as much however as a number of applicants, who did not come within the benefit of that report, had, upon the encouragement that had been held out to them by His Majesty's Government in Canada, embarked their labour and property in carrying on the settlement, and others in preparations for carrying on the settlement of the lands they had petitioned for, agreeably to what they had understood and believed to be His Majesty's gracious intentions; His Majesty's servants judged, and in his Excellency's opinion they had judged with equal wisdom and goodness of heart, that, although the faith of Government had not been considered to be literally pledged to them, yet, it would be utterly inconsistent with His Majesty's Honor and Dignity, that people, who had so embarked their labour and property, upon the encouragement held out to them under His Majes-

ty's authority should fail of sharing in His Royal benevolence: and the regulations were so framed, as to proportion His Majesty's benevolence (as nearly as general rules could well admit) according to the different degrees in which the different classes of applicants had exerted themselves, under the encouragement that had been so held out to them; than which, His Excellency conceived, nothing could be more truly honorable or more religiously just,

His Excellency could not but flatter himself that the explanations he had now made would induce the board to entertain a very different opinion of the regulations from that contained in the report of the Committee: His Excellency likewise flattered himself with hopes, that the Board would coincide with him in opinion (especially when it was considered that the applicants, who were the objects of His Majesty's Royal benevolence, had already laboured in suspense during six long years) that it would be proper that His Majesty's gracious intentions should be, in some way or other, made known to them without delay, to the end that their long and painful anxieties might cease; and that they might come forward with gratitude and cheerfulness of Heart, to take out their grants, according to the proportions prescribed by the regulations; preparatory to the carrying

rying into execution His Majesty's further Gracious intentions, of raising by future disposals of the waste lands, a fund to be appropriated, by His Majesty, towards defraying the civil expences of the Province.

Ordered by His Excellency, that it be referred to a Committee of the whole Council, to consider of the most proper means of communicating, to the parties concerned, His Majesty's gracious intentions contained in the regulations laid before the Board on the 11th ultimo, and to report the same to His Excellency with all convenient dispatch.

*A true Extract.*

(Signed)

THOMAS CARY,

A. C. Ex. C.

