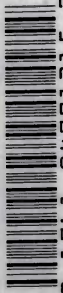
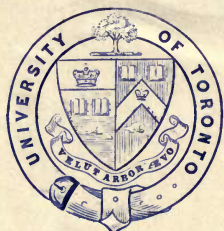


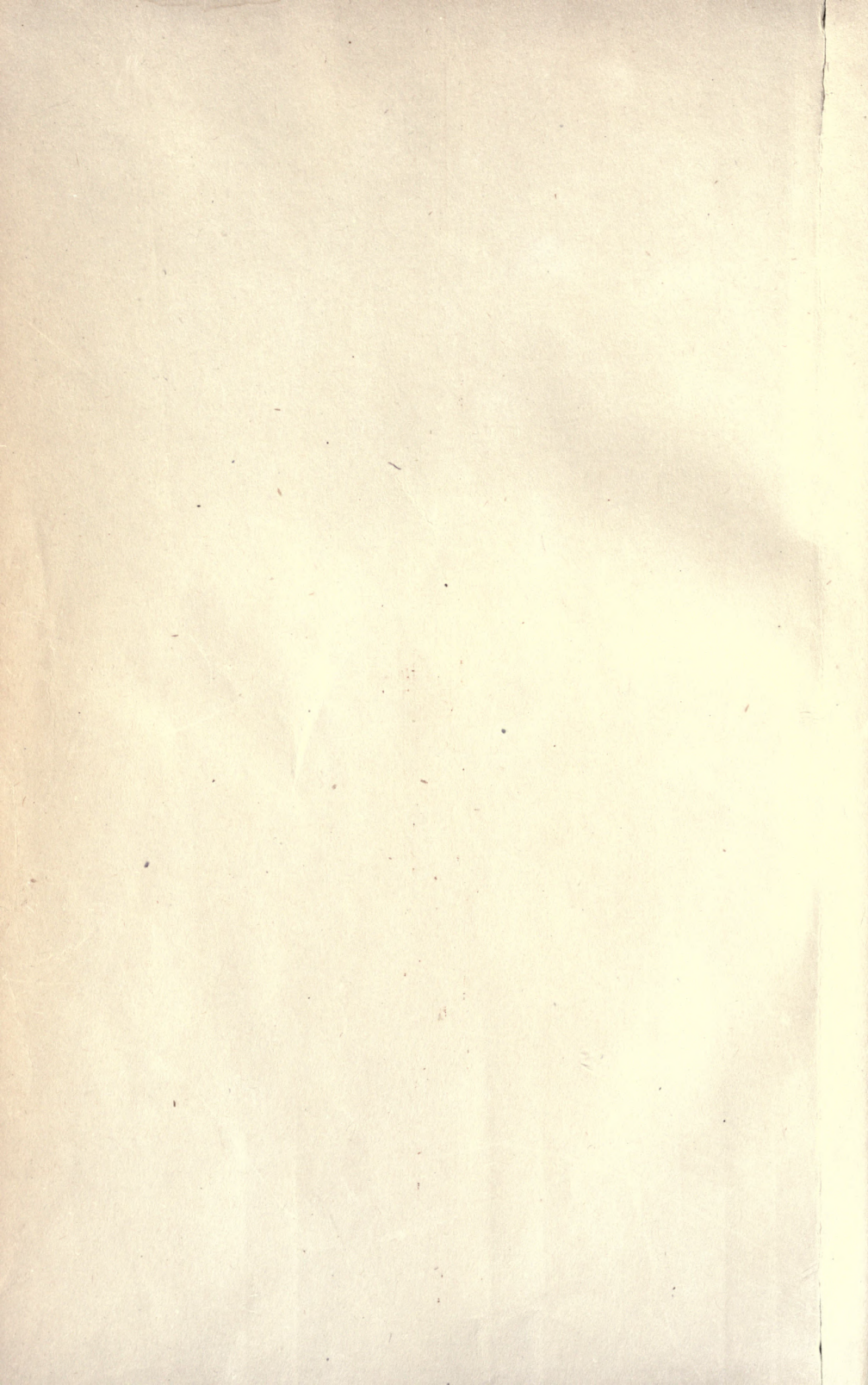
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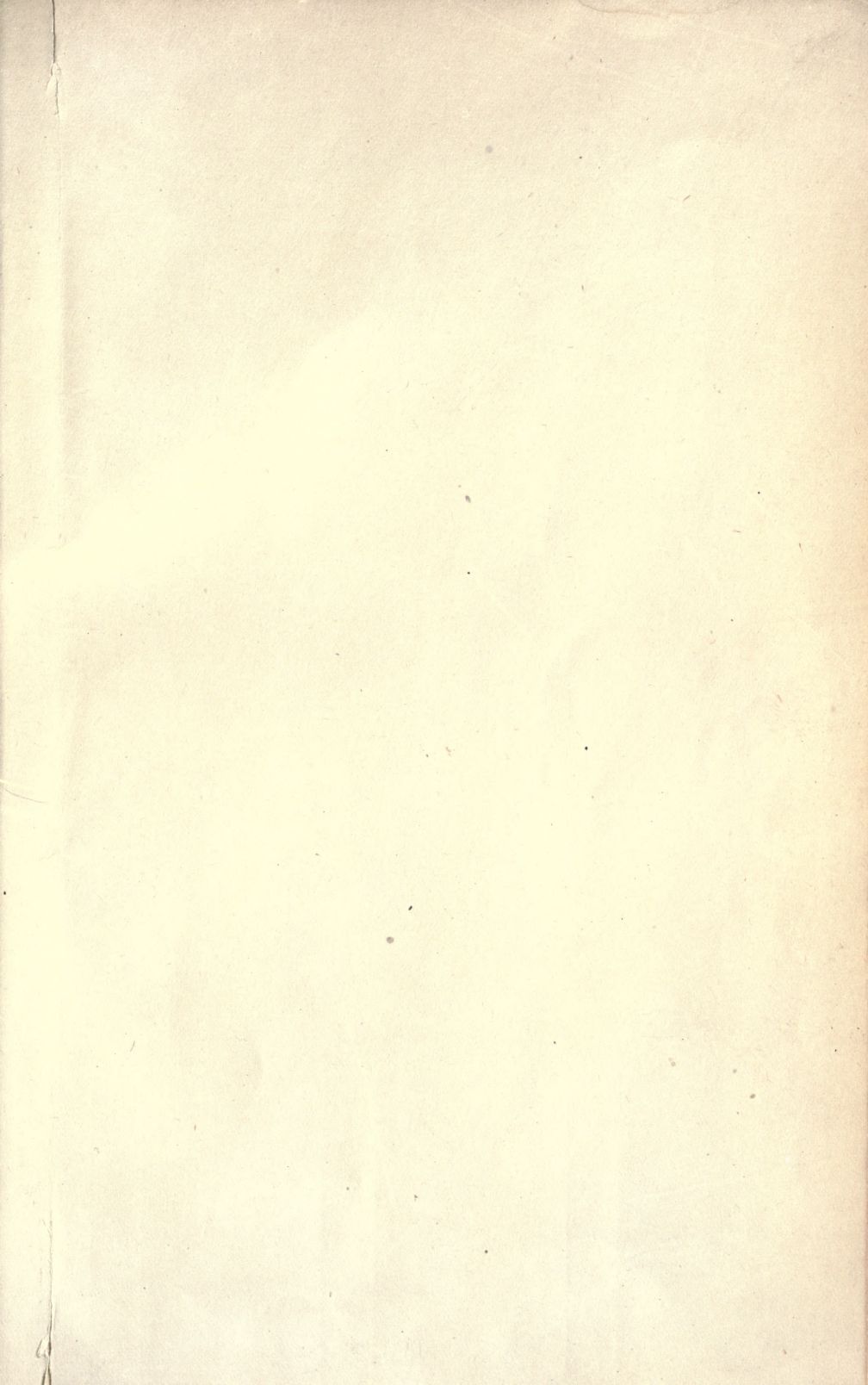




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ECONOMICS, POLITICAL SCIENCE, AND HISTORY SERIES, VOL. 1, NO. 3, PP. 275-562.

THE PROVINCE OF QUEBEC AND THE EARLY
AMERICAN REVOLUTION

A STUDY IN ENGLISH-AMERICAN COLONIAL HISTORY

BY

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PREFACE.

The present study was undertaken as one in English colonial history, and my first thought was closely to investigate governmental conditions in those parts of North America that did not join in the movement of revolt, not only just before and during the War of Independence, but also for such a period beyond that struggle as might show its more immediate effects on English colonial policy. The claims of other work have required the abandonment of the greater part of this undertaking, and the present publication deals only with the Province of Quebec, from its acquisition in 1760 down into the Revolution. As an institutional study the investigation ends with the Parliamentary settlement of the constitution of the province by the Quebec Act of 1774; but as a contribution to the history of the American revolution it has gone far enough into the first years of the war to show the main connections of Canada with that event. These connections seemed to offer an important and unexplored field of investigation, and have therefore been emphasized to a degree not originally intended. On both sides of my work — institutional and revolutionary,— the Quebec Act becomes the central point.

With regard to the institutional aspect I have kept in mind, not only the ordinary tasks of government, but also the rarer and more difficult problem of the grafting of English governmental ideas on an alien society. The effort to contribute to American revolutionary history has been guided in the first instance by the idea of tracing, through the critical years immediately preceding the outbreak, the bearing of the Imperial government in an obscure corner

where a freer hand was given to it than elsewhere; later there are encountered the obscure and important questions connected with the general colonial bearing of the Quebec Act, with its special influence on the early revolutionary struggle, and with the attitude of the Canadians toward that event. On these latter points I have been obliged, though entering upon the investigation without bias or controversial intent, to present my results in more or less of a controversial style and to go somewhat largely into the evidence. For in regard to them I am strongly at variance with the hitherto prevailing opinions; being forced to conclude both that the provisions of the Quebec Act were neither occasioned nor appreciably affected by conditions in the other colonies, and that, far from being effectual in keeping the mass of the Canadians loyal to the British connection, the measure had a strong influence in precisely the opposite direction. The Canadians were *not* kept loyal, and Canada was preserved at this crisis to the British Empire through the vigor and ability of its British defenders, and through the mismanagement of their cause on the part of the revolutionists. As to the hitherto accepted belief with regard to the origin and aims of the Act, I need direct attention only to the Declaration of Independence and other utterances of the Continental Congress, and to the almost unvarying statements of American historians ever since. The belief in its beneficial influence in Quebec has been nearly as uninterruptedly held; even by those who admit its disastrous influence on the course of events in the other colonies, it has been constantly regarded as a *chef-d'oeuvre* of political wisdom and humanity.¹ With this view I have no sym-

¹ Lecky, though laying stress upon its distastefulness to the other colonies, speaks of it as especially important in the history of religious liberty, and as the result of the government having resolved, "as the event showed very wisely, that they would not subvert the ancient laws of the Province, or introduce into them the democratic system which existed in New England." (*History of England in the Eighteenth Century*, III, 399). For modern Canadian expressions of similar views, as well as for asseverations con-

pathy, and I have steadily combated it in the conviction that the Quebec Act is really one of the most unwise and disastrous measures in English Colonial history. It will be shown below that it was founded on the misconceptions and false information of the Provincial officials; that though it secured the loyal support of those classes in Canada,—the clergy and the noblesse,—whose influence had been represented as all important, at the critical juncture this proved a matter of small moment. For the noblesse were found to have no influence, and that of the clergy was found in main measure paralyzed by the provision which had again laid on the people the burden of compulsory tithes. Without the Act the old ruling classes, there is every reason to believe, would have taken precisely the same attitude, and the people would not have been exposed to those influences which ranged them on the side of the invader. Apart from Canadian affairs, the disastrous effect of the measure on public feeling in the older provinces must be strongly considered in any estimate as to its expediency.

Judgment as to the general political wisdom, in distinction from the expediency, of this settlement of the constitution (and as it proved, largely of the history), of Quebec, will depend mainly on the view taken of certain general political facts and problems connected with the later history of British North America; aspects which I revert to more specially in my conclusion. A factor in the decision must, however, be the opinion held of the character and spirit of the administration to which that settlement was immediately due. An examination of the antecedents of the Act will indeed, I think, establish the conviction that the main desire of the authors of the measure was to further the security and

cerning the unshaken loyalty of the French Canadians, see Watson, *Constitutional History of Canada*; Lareau, *Hist. Droit Canadien*; Ashley, *Lectures on Canadian Constitutional History*; Bourinot, *Parliamentary Procedure and Practice in Canada*. Mr. Kingsford, the latest and best of Canadian historians, while admitting the disaffection of the Canadians at the beginning of the war, represents it as only momentary, and warmly defends the policy, expediency, and success of the Act.

prosperity of the Province and fulfill treaty obligations toward the French Canadians, and will show that there is practically no evidence of more insidious aims with regard to colonial affairs in general. But it will also appear that the step was accompanied by manifestations of an arbitrary policy, and that it was taken at a moment when its authors were exhibiting in other ways real evidences of hostility to the free spirit of American self-government. It would be surprising indeed to find a high degree of wisdom and enlightenment displayed in any colonial measure that emanated from the ministry of Lord North. The careful and candid student will on the whole, I think, come to the conclusion that though there are in the annals of that ministry many more discreditable achievements than the Quebec Act, no single step taken by it has been more politically disastrous than that which, beside increasing the colonial difficulties of the moment, is mainly responsible for the continued burdening of modern Canadian life with a steadily growing problem of national divergence.

My sources of information are stated in detail in Appendix II. The main study is based almost entirely on the manuscript copies of British State Papers in the Canadian Archives (the more important ones being also examined in the originals or original duplicates of the London Colonial and Record offices); though I have used with profit all the later material that was available, I am not conscious of any such obligations as would call for more special notice than has been given throughout in my notes. An exception however must be made in regard to Dr. William Kingsford's *History of Canada*, now in course of publication. The high value of Dr. Kingsford's book has been already fully recognized, and I very heartily concur in the recognition. My own main work on the period he has already covered has been done indeed in entire independence, and our conclusions frequently differ; but still my more intensive investigation owes a great deal to his more general and most

suggestive views. The material used for the general Western aspects of this study has been found mainly in the invaluable library of the State Historical Society of Wisconsin. With regard to personal assistance, I am heavily indebted to Dr. Douglas Brymner, the well-known Canadian Archivist, and to the late Professor Herbert Tuttle of Cornell University. Dr. Brymner has not only facilitated in every way my use of both the Canadian and the English Archives, but has supplemented this assistance by the steady help of that wide and accurate knowledge and keen judgment to which American historical scholarship already owes so much. In Professor Tuttle's seminary the study was begun in the ordinary course of post-graduate work; that early stage of it owes a great deal to his searching and suggestive criticism, as does its whole progress to the abiding inspiration of his own work and methods. I wish also to express my obligation to Professor Frederick J. Turner, the Editor of this series, for very helpful discussion on various points, and for careful and suggestive proof-reading throughout.

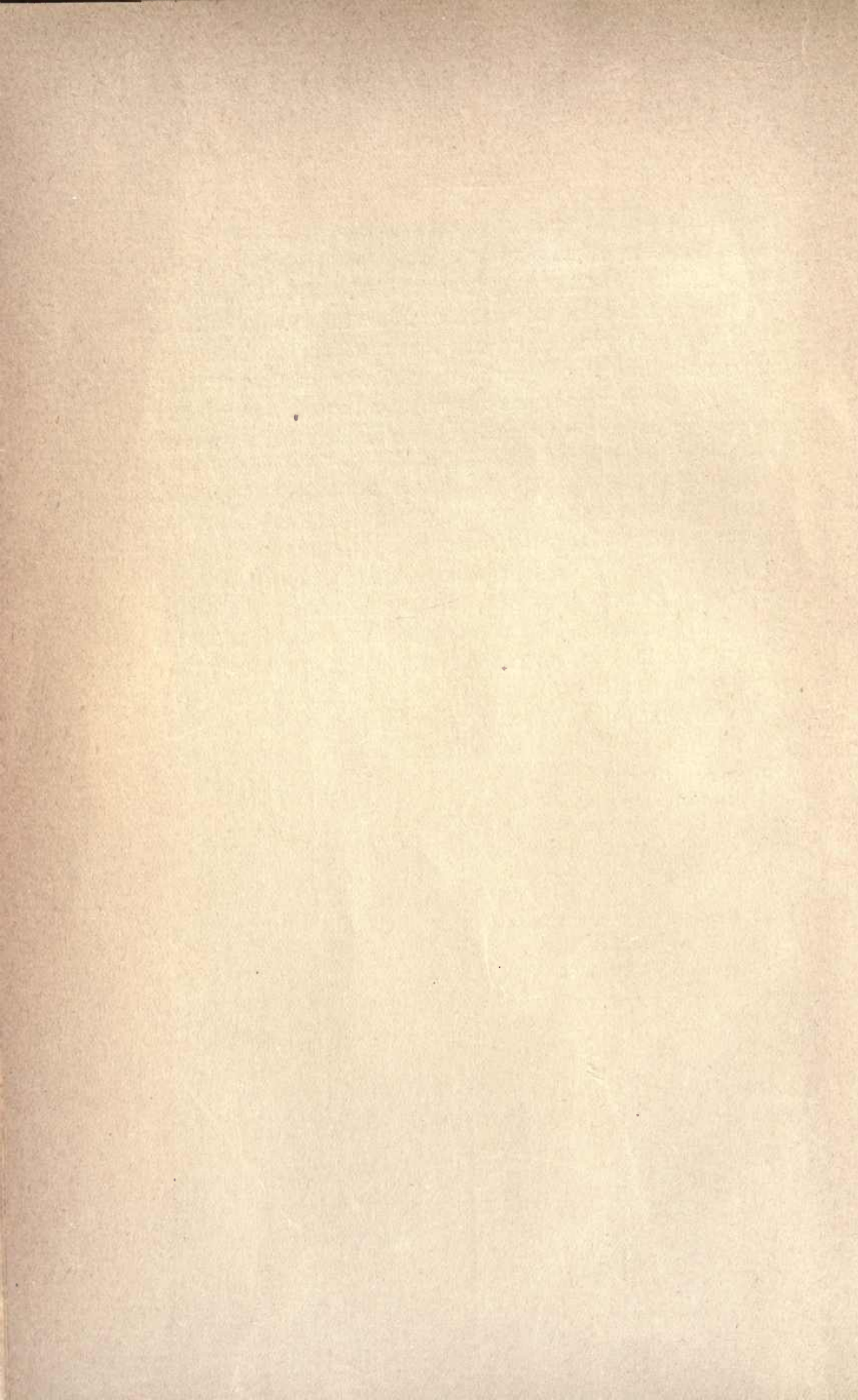


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THE PROVINCE OF QUEBEC AND THE EARLY AMERICAN REVOLUTION.

INTRODUCTION.

What was known under the French as Canada or New France came into English possession through the capitulation of Montreal, September 8, 1760, and was finally ceded to England by the Treaty of Paris, February 10, 1763, closing the Seven Years' War. As thus ceded, no definite limits were assigned to "Canada, with all its dependencies," the only boundary line mentioned in regard to it being the Mississippi river. The British government was thus given a free hand in defining its extent, subject to the fixed boundaries and well-established claims of the adjacent colonies, to the indefinite possessions of the Hudson's Bay Company, and, more or less, to the conceptions of the Canadians themselves. Many causes intervened to delay a final settlement of the matter of boundaries, and meanwhile, by the Royal Proclamation of October 7, 1763, the new Province was defined so as to embrace, for the time being, a rectangular district of not more than 100,000 square miles, extending along both sides of the St. Lawrence river from the mouth of the River St. John to the point where the St. Lawrence is intersected by the 45th degree of north latitude.

From the date of the capitulation till August 10, 1764, the new acquisition was governed by the commanders of the

English forces in occupation, and the period is therefore known as that of the Military Rule. The investigation of political conditions in the Province does not necessarily have much to do with this preliminary suspension of civil government; but a brief statement of the general character of the Military Rule is necessary for several reasons, especially to show what had been the earliest experience of the French Canadians under British government, and with what anticipations they were likely to view its permanent establishment. It may be safely asserted that the military character of the government, so far as felt by the people in ordinary affairs, was to a large extent merely nominal. The final authority of course resided in the military arm, and the courts established for the administration of justice were of a military form; but these courts were not governed by the principles of martial law, at least in matters where the old French law or custom could be discovered or applied. French Canadians had a share in their administration,¹ while such instruments of local government as existed under the French seem to have been largely retained.² All contemporary testimony from the French Canadians is unmistakable in its appreciation of the justice and humanity of the general proceedings of the military, and of the hopes the people had thus acquired for the future.³ The official statements throughout the period as to the very satisfactory conduct of the French Canadians must be admitted to show a large degree of at least external harmony. We may conclude therefore that the conduct of the British authorities during this difficult time

¹ See Lareau, *Hist. de droit Canadian*, II, 87. For evidence of the satisfaction of the French with these courts see reference to petitions for their retention. (Canadian Archives, Q. 2. p. 273).

² See as to continuance of the office and functions of the captains of militia, Ordinance concerning sale of fire wood, Nov. 27, 1765, Vol. of Ordinances in Can. Archives.

³ See *Report Canadian Arch.*, 1888, p. 19. See also *N. Y. Colonial Documents*, X., 1155, for a French memoir (1763) concerning the possibility of exciting a rebellion in Canada. It speaks of the people having been further drawn from their allegiance to France by the "mild régime of the English, the latter in their policy having neglected nothing to expedite the return of that comfort and liberty" formerly enjoyed.

had been such as to win in large degree the confidence of the conquered people, and that civil government was established in 1764 under favorable auspices. ✓

It was on the model of the other Crown Colonies in America that British civil government was introduced on August 10, 1764, in pursuance of the Proclamation of October 7, 1763, and under a commission appointing Gen. James Murray, one of the resident military officers, "Captain-General and Governor-in-Chief in and over our Province of Quebec." Under this official and his successor, Col. Guy Carleton, government was conducted throughout the whole period covered by my investigation. Until 1775 the Proclamation of 1763, a purely executive act, continued to form the basis of administration; for the Quebec Act, passed May, 1774, and going into force one year later, was the first interference of the Imperial Parliament in Canadian affairs. This remained the constitution of Canada from 1775 to 1791, at which latter date its provisions, so far as they affected the western part of the country, then being settled by the United Empire Loyalists and now known as the Province of Ontario, were repealed by the *Constitutional Act*. As affecting however the settled regions acquired from the French and distinctively known after 1791 as Lower Canada, the Quebec Act, in its main provisions, still continues in force. It has kept alive in British North America a French nation, never so united or self-conscious as at the present time. One of the main objects of this inquiry is to investigate closely the conditions which led to this Act, and the state of government which it was intended to amend, with reference to the general wisdom and expediency of the measure and to its special connections with the American Revolution.

As I must constantly anticipate in my references to the Quebec Act it will be well perhaps to introduce here a short statement of its main provisions.¹ With the accompanying Revenue Act it enacted:

¹ See App. I. for full reprint.

1. That the province of Quebec should be extended to include all the territory which the French had been supposed to lay claim to under the name of Canada, i. e., on the east to Labrador, on the west to the boundaries of Louisiana and the Hudson Bay Company's territory, and on the south to the boundaries of the other provinces and the Ohio; including therefore to the southwest and west the regions which now form the states of Ohio, Michigan, Indiana, Illinois, Wisconsin, and part of Minnesota.

2. That all previous governmental provisions in regard to Quebec as before constituted or to any part of the added territory should be annulled, and that the Provincial government should for the future consist of a governor and council, both appointed by the king, and together invested with a strictly limited legislative and money power. That a revenue should be provided for the province by customs duties imposed by the Imperial government, said revenue being entirely at the disposition of the Imperial authorities.

3. That full toleration of the Roman Catholic religion should exist in the province, including the removal of all disabilities by test oaths; and that the Church of Rome should "hold, receive and enjoy" its accustomed dues and rights with respect to its own adherents.

4. That though the English criminal law should continue to prevail, the inhabitants should "hold and enjoy their property and possessions, together with all customs and usages relating thereto, and all others their civil rights," according to the ancient laws and customs of Canada; these laws and customs to remain in exclusive possession until altered by provincial ordinances.

It may readily be imagined that Canada emerged from the final struggle of French and English in no very prosperous condition. Authorities agree in their doleful descriptions of the greatly weakened and almost destitute state of the colony in 1759, on the eve of the great contest; and the efforts of the two following years still further reduced it. During the first or military stage of the British occupation we meet with frequent official references to the danger of famine, and the dependence of the people on the government. But this state was not of long duration. When civil government is established, August, 1764, the crisis seems past, and the colony may be said to have again attained the position it had held on the eve of the

conquest. The new blood and capital that had been introduced, together with the unbroken peace of four years, had stimulated all branches of industry and had opened the way for the remarkable growth that is clearly traceable down to 1775. The inhabitants cultivated their lands and pursued the Indian trade and the fisheries in peace and with comparatively little molestation from the new state of things. Content to be left alone, they concerned themselves little about public affairs, and it is not till 1775 that we meet with any general political manifestations on their part. Harvests steadily increased; the fear of famine died away; the fanciful schemes for the commercial salvation of the province which we meet with in the early years gradually disappeared. Trade, at least in the wholesale and foreign branches, fell into the hands chiefly of the small but enterprising body of new English-speaking settlers who, attracted by the fur trade and the fisheries, had followed in the wake of the conqueror; and it soon received from them a very notable impulse. The cultivation of the soil, remaining almost entirely in the hands of the French Canadians, shared more slowly in the general improvement. The old French methods of culture had always been bad, and it was not till the latter part of the French régime that the country had produced enough for its own subsistence; but before the year 1770 a considerable quantity of grain was being exported.¹ In the opening up of new

¹ Striking evidence as to the comparatively prosperous condition of the people in the latter part of the period is furnished in scattered references of the more observing revolutionists who visited the province, 1775-6. Charles Carroll (*Journal*, Maryland Hist. Soc. Papers, 1876, p. 98), writes in May, 1776, that the country along the Sorel "is very populous, the villages are large and neat, and joined together with a continued range of single houses, chiefly farmers;" and after contrasting the prosperity of these farmers with the poverty of the seigneurs, adds: "It is conjectured that the farmers in Canada cannot be possessed of less than one million pounds sterling in specie; they hoard up their money to portion their children; they neither let it out at interest nor expend it in the purchase of lands." The writer of Henry's *Account of the Campaign* directed special attention to the *habitant*, and testifies to his economy and prosperity. "It seemed to me that the Canadians in the vicinage of Quebec lived as comfortably in general as the generality of the Pennsylvanians did at that time in the County of Lancaster." (Albany, 1877, p. 95.)

lands, however, very little progress was made in the early years; not indeed until the old French form of grant was reverted to.¹ Manufactures were primitive and unimportant. The policy of the government with regard to them does not seem to have differed in the main from that followed contemporaneously in the other colonies; though there are evidences of more enlightened conduct in the latter part of the period.²

The growth in population of the province during this period cannot be very accurately stated, but a comparison of the various conflicting estimates with general data leads to conclusions that are probably not much astray. A considerable decrease was occasioned by the removal to France, on the conquest, of most of the official and a large part of the noble and commercial classes;³ and in 1762 the official returns give a total of 65,633 for the settled parts of the province. Beyond this there was by 1775 a scattered population in the upper western country of about 1,000 families, as well as fishing colonies around the mouth of the St. Lawrence. The growth throughout the period was almost entirely a natural one. Cramahé writes in 1773 that "fourteen years' experiences have proved that the increase of the province must depend upon its own population." But the French Canadians then as now needed no outside assistance in this matter, and it is probably safe to estimate them at 90,000 in 1775. Higher estimates, (and the contemporary ones of Carleton and Masères are much higher),⁴ are manifestly inaccurate in view of the fact that the official census of 1784 asserts a total of only 113,012.

The population from the beginning was divided into two well defined sections of very unequal strength; (1) the French Canadians, who are constantly referred to in the official correspondence as the "new subjects," and (2) the

¹ See below.

² See Can. Arch., Q. 5-2, pp. 760, 839; Q. 6, p. 15.

³ Murray states July 17, 1761, that the population was then 10,000 less than in 1759.

⁴ Evidence before Commons in Quebec Act debate, Cavendish, *Report*.

small new English-speaking element, designated as regularly as the "old subjects." These sections, in their distinctive features and activities, will be later considered separately. Suffice it now to say that the British element was almost exclusively a trading one, and that but a very small part of it devoted itself to agricultural pursuits. It had been attracted to the province by the fur or Indian trade, and we shall find that the influence on the fortunes of the colony thus early exerted from this quarter was destined to be of the utmost importance throughout the period.

CHAPTER I.

THE FRENCH CANADIANS.

A. General.

It does not come within the possibilities of this investigation to present any close character study of the French Canadian, though it will be readily conceded that some such study is indispensable to the proper understanding of the conditions under which we must consider the new rule. For such a picture we can, however, go to Parkman, whose latest sketches bring the *habitant* and *gentilhomme* before us as the English conqueror found them; the former a loyal, ignorant, easily-led, but somewhat unstable peasantry of military extraction and training, with a decided taste for the wild, free life of the woods; the latter an entirely military semi-nobility, who from their first appearance had as the basis of existence the Court and the Camp, and who were almost as poor and ignorant and politically powerless as the *habitant*, whom up to this time they had found a docile follower, and of whose wild and hardy life they had been full sharers. In less romantic but not less pleasing colors is the *habitant* described by Governor Murray in 1762—"a strong, healthy race, plain in their dress, virtuous in their morals, and temperate in their living;" in general entirely ignorant and credulous, they had been prejudiced against the English, but nevertheless had lived with the troops "in a harmony unexampled even at home;" and needed only to be reassured on the subject of the preservation of their religion to become good subjects.¹ Two years later the same authority writes of the French Canadians generally as "perhaps the bravest and best race upon the globe, a race, who, could they be indulged with a

¹ *General Report, 1762, (Can. Arch., B. 7, p. 1).*

few privileges which the laws of England deny to Roman Catholics at home, would soon become the most faithful and useful set of men in the American empire."¹ And November, 1767, Carleton describes them as comprising 10,000 men who had served in the late war, "with as much valor, with more zeal, and more military knowledge for America than the regular troops of France that were joined with them." Indeed, this military origin and training of the people must be always kept in mind in estimating their attitude and the causes likely to influence them. Easily led, they were by no means timid or spiritless.

The clearly marked upper class sections of the French Canadian population — the noblesse and the clergy, — will be considered more particularly later; for though small in numbers their political weight was very great. Meanwhile, I shall have regard to general features, so far as they can be discerned. And here we are not always free of uncertainty; for when the new English observers speak of the "French Canadians," or the "new subjects," or the "people," in a general way, it is by no means always easy to determine how much worth the observation has as a general one, or to what extent the observer's vision is narrowed by special conditions. There can be little doubt that most of the representations of the officials as to the attitude and character of the "new subjects" are really applicable only to the small section of them that came more immediately and easily under view, — the noblesse. These were continually hanging about the governmental steps and obscuring the mass of the people; the latter, with no knowledge of their former leaders' designs, and steadily growing out of sympathy with their whole life, stolidly pursued the work that was nearest to their hands, content to be let alone, and troubling themselves very little about changes of government or law.

¹To Board of Trade, October 29th, 1764. Can. Arch., Q. 2, p. 233.

One of the first unmistakably general observations by the new rulers is an assertion by Murray in 1762 that the people are not ripe for the same form of government as in the other colonies. Their strong attachment to the church of their fathers and the great influence the clergy had exercised and could still exercise over them, are frequently spoken of and insisted upon; though as early as 1762 (after two years of peace and English government), we find Murray stating in his official report that "they do not submit as tamely to the yoke, and under sanction of the capitulation¹ they every day take an opportunity to dispute the tithes with their curés."² A year later (October 23, 1763),³ he urges on the home government the necessity of caution in dealing with religious matters; adding however, that the people would not stickle for the continuance of the hierarchy, but would be content with the preservation of the priesthood as a devotional and educational body. Several petitions in regard to religious matters accompany this letter, and these are undoubtedly the first general manifestations within our period of French Canadian opinion on any subject.⁴ They appear on the eve of civil government, being called forth probably by the news of the definite ceding of the country to England. Of their genuineness and representative character there can be little doubt, and making all allowance for the spirit of humility and modesty which the situation would be likely to engender, we cannot escape the conclusion that the body of the people had no desire for anything more in regard to religion than the measures necessary for the complete en-

¹In the 27th article of the capitulation (September 8, 1760), the French commander had demanded that the people should be obliged by the English to pay the customary dues to the Church—a demand which was referred by Amherst to the will of the king. The clause was undoubtedly instigated by the clergy, and may be interpreted as showing that the latter were not at all disposed to trust to voluntary contributions. The point should be kept in mind in considering the attitude of the Canadians towards the Quebec Act, which re-established compulsory payment.

²Can. Arch., B. 7, p. 1.

³Ib., Q. 1, p. 251.

⁴Ib., Q. 1, pp. 226-47.

joyment of its voluntary features, and that they were already distinctly opposed to its legal establishment with compulsory powers.

As to the relations between the *habitants* and their old secular leaders, the noblesse, we have few indications previous to the Quebec Act. Murray, in a general report¹ immediately after his recall, (while still governor, but under the shadow of disapproval and investigation), represents the state of things as perfectly satisfactory, in the sense of the *habitants* being still of a submissive and reverent spirit; saying that they are shocked at the insults offered the noblesse by other classes in the community. This must be taken very cautiously, for Murray's object was to represent the noblesse, with whom he had been very closely associated against those other classes, as thoroughly in sympathy with the great mass of the people. Nor of much greater weight, probably, is Carleton's representation, March 15th, 1769, as to the advisability of admitting some of the noblesse to the Council on account of their influence over the lower classes (and over the Indians).² For he too seems to have remained in error on this point until roughly awakened by the utter failure of the seigneurs in 1775 in their attempt to assert, for the first time since the conquest, the old influence. This will appear more fully later; at present we need only notice the statement by Chief Justice Hey, that Carleton "has taken an ill measure of the influence of the Seigneurs or clergy over the lower orders of the people, whose principle of conduct, founded in fear and the sharpness of authority over them now no longer exercised, is unrestrained, and breaks out in every shape of contempt and detestation of those whom they used to behold with terror, and who gave

¹ Can. Arch., B. 8, p. 1. (Aug. 20, 1766.)

² Can. Arch., Q. 6, p. 34. See also to Shelbourne, Jan. 20, 1768 (Q. 5-1, 370), and Nov. 5, 1767 (Q. 5-1, 260). The latter is printed in full in *Rep. Can. Arch.*, 1888, p. 41.

them, I believe, too many occasions to express it."¹ Our later investigation will show that there can be little doubt that the influence of the noblesse had steadily declined from the first hour of English domination, and that the *habitant* had come with remarkable rapidity to look upon the seigneur merely in the light of an obnoxious landlord.² The causes of this change are not obscure and include a clearer perception of the changed character of government than the Canadians are generally credited with. For the main reason, no doubt, was the greatly altered position of the noblesse under the new regime, and their utter deprivation of that real military and nominal judicial authority which they had formerly enjoyed.³ The contemporary social relations in old France will at once suggest themselves to the reader; and I need here only remark that this is not the only indication we have that social conditions in the New France were not so different as has usually been supposed.

Coming more particularly to the matter of general political attitude we are at once struck by the fact that the trouble shortly before experienced with the Acadians seems to have no parallel in Canada down to the American invasion. At the capitulation the Canadians acquiesced by the most complete submission in the new rule, and during the period that elapsed before the fate of the country was finally decided we have in the reports of the commanding officers only the strongest expressions of content with the manner in which they are conducting themselves. Murray's testimony (already quoted), is amply supported by that of others representing all sections of the country. Burton (commanding at Three Rivers), says that they "seem very happy in the change of their masters," and "begin to feel

¹ To the Lord Chancellor, Aug. 28, 1775. Can. Arch., Q. 12, p. 203.

² See Masères' *Account of the Proceedings, etc.*; also Cramahé to Hillsborough, July 25, 1772. (Can. Arch., Q. 8, p. 160.)

³ The influence of military position upon the *habitant* was early perceived by Murray, who in 1764 strongly urges on the home government the necessity on this account of the military and civil authority in the Province being united. (Can. Arch., Q. 2, p. 206.)

that they are no longer slaves."¹ Gage (at Montreal), writes that "the people in general seem well enough disposed towards their new masters."² The strongest assertions come from Haldimand, a French-speaking Swiss soldier, (Carleton's successor in 1778 as governor of the province), who may be supposed not only to have been best able to make himself acquainted with the real attitude of the people, but also to have been the least easily swayed in his conclusions. August 25th, 1762,³ he writes in the most emphatic manner in regard to the groundlessness of the fears that had been expressed lest the Canadians should be dangerously affected by a recent success of the French in Newfoundland, and later asserts that, with the exception of the noblesse and clergy they are not uneasy as to their fate, and will easily console themselves for the change of rulers.⁴ Allowance must probably be made in these representations for the natural desire of the military authorities to put their management of the country in the best light possible; but making all such we can still have no doubt that matters were in a perfectly pacific (perhaps, rather, lethargic), state, and that from the conquerors' standpoint the conduct of the *habitant* left little to be desired.

The people were indeed thoroughly exhausted from the recent struggle and all thought of further resistance had departed with their leaders, the most irreconcilable of whom had gone to France at the capitulation. They had been stimulated in their efforts against the English by representations of the tyranny the latter if successful would immediately institute,—representations which had been the more easily credited from their knowledge of the fate which had overtaken the Acadians.⁵ But that this fear was

¹ Official report, May, 1763. Can. Arch., B. 7, pp. 61-83.

² Official report, March 20, 1762. Ibid., B. 7, p. 84.

³ Ibid., B. 1, p. 216.

⁴ To Amherst, December 20, 1762, and February, 1763. Ibid., B. 1, pp. 262, 266.

⁵ Murray to Halifax, March 9, 1764. Can. Arch., Q. 2, p. 78.

rapidly dispelled is strongly indicated by the statistical statement with regard to the emigration to France, which had been provided for in the treaty, and which was open without restriction to all for eighteen months from its conclusion. As we have already seen the leading French of the official, military and commercial classes had left before the cession; it is safe to conclude that these for the most part had never been very strongly rooted in the country, and were first of all, Frenchmen. The later records show that those who had any landed interests in Canada joined but little in this movement, and that still fewer of the mass of the people went.¹ The term of facilitated emigration extended through the summer of 1764, and in August Murray, after collecting statistical statements from the different commanders, writes that only 270 are going from the whole province, most of whom "are officers, their wives, children and servants." The tone with which the people finally accepted the irrevocable handing over of the country to England is very plainly to be seen in the religious addresses which have already been referred to as the first movement in any sense common that we meet with on the part of the Canadians. The tone is a manly one, and without any hypocritical professions of pleasure at the state of affairs, indicates a readiness (recognizing "que toute autorité vient de Dieu") to make the best of a bad business.

In general, therefore, with regard to the lower classes, we do not find throughout the period preceding the Quebec Act any indication that might have made the rulers uneasy. And certainly if anybody had profited by the change of government it was the *habitant*. He had been relieved from very grievous burdens, and at least during the earlier years, does not seem to have felt much new pressure in their stead. His peace and security had formerly cost him con-

¹ Emigration on their part was of course a much more serious matter. And the Canadians were early remarkable for love of their native country. (See Cramahé to Hillsborough, July 25, 1772. Can. Arch., Q. 8, p. 160.)

stant and often most critical military service; now it cost him nothing. And that he was not slow in appreciating some aspects of the change in government is shown by a difficulty those in charge of the *batteaux* service met with in the autumn of 1765. This service (of transporting by water troops and supplies to the garrisons in the upper country), was a constantly necessary one, and had been performed during the military period (i. e., 1760-4) without any difficulty by means of impress warrants,—the people apparently regarding as a matter of course what they had been accustomed under the old régime to do as a part of their regular militia duty. On the separation of the civil from the military authority such demands upon the people in time of peace became illegal,¹ and the service had not been otherwise provided for. During the first year of civil government it seems to have been continued, however, in a moderate way without opposition that we hear of; but October, 1765 the officer in charge reports great difficulties. Governor Murray had refused to grant impress warrants, sending instead to the local authorities recommendations of a peremptory nature; but we find it stated that half of the parishes applied to had refused to send a man, and that in one place the people had threatened to beat the bailiff. The military officer reports that "the bailiffs disregarded the orders given and the people were adverse and corrupted," and again that "the Canadians are now poisoned in their minds and instructed that they cannot be forced on such services." And it was not until an impress warrant of full power had been issued by the governor (on the plea of unavoidable necessity), that the service could be performed.¹ But it would seem that it was only on its military side of relief from oppressive duty and the immediate control of the seigneur or captain of militia, that the change of government seems thus to have

¹ See opinion of Prov. Att.-Gen., October 5th, 1765. Can. Arch., Q. 3, p. 81.

² Lords of Trade to Colonial Secretary, May 16th, 1766, with enclosures. Can. Arch., Q. 3, pp. 53-120.

been appreciated. In a letter to Shelbourne of December 24th, 1767, Carleton, after discussing the fact that the French Canadians still continued to transact their minor legal affairs in ways which would be invalid in the higher courts, writes that he has met only one Canadian "who sees the great revolution¹ in its full influence," and that he anticipates general consternation as the situation comes to be known.

In January, 1768, we find Carleton declaring that the exclusion of the Canadians from office, though directly concerning but a few (as but few were eligible), indirectly affected the minds of all, being regarded as a national slight and prejudice. There is strong reason for doubting the accuracy of this statement and for believing that on the whole the body of the people did not trouble themselves about the matter. It is difficult to come to a decision as to how far a similar opinion may be justified in regard to the movement that undoubtedly gained ground, or at least more confident expression, every year, with reference to the full restoration of the ancient civil laws.² But we are safe in taking whatever general expression we find on this head in a much more representative light, for every presumption would lead in that direction, and the influence of the clergy was a constant factor therefor.³ As stated above, the earlier years do not show any very decided steps, and no doubt the more resolute stand of the later years is largely attributable to political education on the part of a few, and to the increasing pressure of the new system, which was daily augmenting the points of contact. It must from year to year have been found more difficult to follow the course with which the people have been

¹ He is referring more especially to the laws, supposedly *in toto* changed by the Proclamation of 1763.

² English criminal law was never objected to, and probably touched the people on few points. See evidence of Carleton before House of Commons, 1774, Cavendish's *Report*.

³ See in connection here the later discussion of the extent to which French and English law was actually used.

credited, of avoiding the courts (for the Canadians were naturally a litigious people).¹ Not many petitions or memorials on this subject have come down to us from these years, but there were undoubtedly more than we know of. It was Carleton's policy to discourage this or any other form of popular demonstration,—a policy which his known sympathy with the objects of the French and the hopes he held out of their being soon attained, enabled him to follow out pretty successfully. August 7th, 1769, he writes that when last at Montreal he had succeeded in suppressing "the rough draft of a memorial to the king for the ancient laws," which had been "communicated for my approval."² October 25th, of the same year, he says that the lack of petitions on this subject was due solely to himself, and that if there had been given any hint that such were thought requisite, "there is not a Canadian from one extremity of the province to the other that would not sign or set his mark to such a petition."³ He seems to have succeeded in inspiring the Canadians who were so minded with confidence in his advocacy of their wishes, and when he left the province in the autumn of 1770 (going expressly, as was well known, to give advice preparatory to a decisive settling of the government), he was presented by the French Canadians only with some addresses in regard to education, which they beg him to add to the points to be represented on their behalf.

In a word it may be safely asserted that there was nothing in the attitude of the people during this period to give the government serious disquietude. And we have evidence that the officials both at home and in the province were keeping a close watch for all symptoms of discontent, and were predisposed to see them if they existed. March 27th, 1767, Carleton writes to Sir William Johnson (in answer to

¹ Memorial of Pierre du Calvet, October, 1770. Can. Arch., Q. 7, p. 279.

² Can. Arch., Q. 6, p. 115.

³ Can. Arch., Q. 6, p. 151. Reasons for doubting this assertion will be presented later.

an opinion expressed by the latter that the Canadian traders were tampering with the Indians):—"Ever since my arrival I have observed the Canadians with an attention bordering upon suspicion, but hitherto have not discovered either actions or sentiments which do not belong to good subjects."¹ November 20, 1768,² he writes to Hillsborough (apparently in answer to some uneasiness at home), that his observation of the people has not revealed anything to cause him to give any credit to alarming reports; adding, however, (now evidently referring only to the noblesse), that he has not the least doubt of their secret attachment to France, and that the non-discovery of traces of a treasonable correspondence was not to him sufficient proof that it did not exist. Early in 1772 Hillsborough transmits to Quebec a copy of a treasonable letter to France, alleged to have been signed by members of the Canadian noblesse.³ In answer Cramahé declares his disbelief in its genuineness, but shows himself by no means satisfied of the trustworthiness of any class. However, the latest utterance we have previous to the Quebec Act is a statement by the same official, December 13th, 1773, that the people are tractable and submissive.⁴

It will be inferred from what has been said above that we are not to look for reflections of the public mind in the form of public meetings. Such demonstrations had been jealously prohibited by the French government for more than a century before the advent of the English, and while there is no indication throughout this period that the people generally expressed any wish for such a privilege,⁵ the attitude of the provincial government was

¹ Can. Arch., Q. 4, p. 122.

² Letter printed in full in *Report Canadian Arch.*, 1888, p. 48.

³ Can. Arch., Q. 8, p. 111.

⁴ Can. Arch., Q. 10, p. 22.

⁵ Carleton testified before the House of Commons in the debate on the Quebec Bill that he had never heard of petitions from the inhabitants to meet in bodies. The statement was supported by Chief-Justice Hey, who said that he knew of no conference among the Canadians regarding forms of government. That some popular movement,

evidently not much more liberal than during the old régime. All popular movements, not only by way of public meetings, but also through addresses, petitions, etc., were frowned upon by the authorities. Both Murray and Carleton were men of autocratic temper and of military training, and seem to have regarded all such attempts to influence governmental action as partaking of the nature of treason.

Very little need be said with regard to such administrative aspects of the new régime as might be considered factors, however slight, in the political education of the French Canadians. It will be remembered that under the old régime the highly centralized government had acted in local matters entirely by officials appointed from headquarters. The situation is but very slightly different in this first stage of English rule. The only trace of local self-government that is to be found is with regard to the parish bailiffs, (in large measure replacing the French captains of militia), who, beside their duties as administrative officers of the courts of justice, acted also in their several districts as overseers of highways and bridges, as fence viewers, and sometimes as coroners. These officials and their assistants were appointed by the government out of a list of six names annually furnished by the householders in each parish.¹ That the regulation was observed throughout the period and that the people seem on the whole to have complied with it, though not very eagerly,

however, early took place among the French of the town of Quebec is shown by a paper in the Haldimand collection. It is an answer by Murray to a charge that he occasioned discord among the old and new subjects by allowing some of the latter to meet in a deliberative way; his explanation being that this had been permitted only under careful restrictions, and with the desire of guarding the dependent French dealer against the influence of the English trader. That at least one such meeting took place is certain; but it is equally evident that there were very few, if any, more. It is most probable that the movement was due to a small group of professional men at Quebec, whom I shall have occasion to refer to later as very rapidly taking the place of the noblesse in the leadership of the people. The matter is of importance also with respect to the dreaded influence of the English trader.

¹ Ordinance of Sept. 17, 1764.

(probably, as in the case of juries, regarding it more as a burden than as a privilege), is shown by hints from the Council minutes.¹ Further than this we have no trace of participation by the people in their own government; such local affairs as were not managed by the bailiffs being in the hands of the justices of the peace or other direct appointees of the central government. Of direct representation of the people in regard to the central government there was of course none during the period, the Assembly which had been promised in the proclamation of 1763 never being established.² We need not delay over what might be regarded as forms of indirect representation,—as through the requirement that the council should consist only of residents, and through grand juries whose duty it was to report grievances, and whose report we find in one instance the direct occasion of new legislation; for these could contribute little or nothing to political education.

But yet that such political education was proceeding the following study will, I think, furnish considerable indirect and cumulative evidence. Just now I shall point only to some striking direct evidence as to the progress made up to the American invasion. It is the statement of a revolutionary officer stationed at Three Rivers, and entrusted

¹ Can. Arch., Q. 5-1, p. 295; Ib. 5-2, p. 876.

² In regard to the assembly we meet at the outset a curious uncertainty as to whether any measures were actually taken for the bringing of it together. The modern French Canadian historian, Garneau, asserts that it was actually convoked by Murray, and that its sitting was prevented by the refusal of the Canadians to take the oaths. Marriott, in his report to the Crown, 1774, says in regard to an assembly that "the fact is, though summoned and chose for all the parishes but Quebec by Gov. Murray, it has never sat." On the other hand Masères states in 1769 that "no assembly has hitherto been summoned." The probability of fact is with Masères, for it seems incredible that such an important step as the summoning in the much-debated matter of an assembly, not to say an actual election, could have taken place without any indication being given in an unbroken official correspondence which goes minutely into comparatively insignificant matters. Marriott, (who is probably Garneau's authority), was possibly misled by some notice of the election of bailiff-lists. It is certain that no assembly was ever constituted, and that whether the French Canadians were or were not given an opportunity to refuse to take the religious oaths required, these oaths were the main cause of the delay. That delay is dwelt upon elsewhere in connection with general imperial policy and the genesis of the Quebec Act.

through that district (containing seventeen parishes), with the task of replacing the militia officers appointed by Carleton by others in the interest of the revolutionary cause. Such was the public feeling in this district that this was done by popular election, the account of which shows the existence of a high degree of interest among the Canadians in the proceeding. "In some parishes there are three or four candidates for the captaincy, and I receive information that bribery and corruption is already beginning to creep into their elections. At some the disputes run so high that I am obliged to interfere."¹ July 5, 1776, Gen. Wooster writes to Congress that he had caused similar elections to be held in every parish (apparently of the District of Montreal).² The political advance of the French Canadians will best be appreciated through the examination later of their general attitude toward the Quebec Act and the American invasion. One of the conclusions of this study is that under the discouraging and unprogressive conditions which marked the few years of misgovernment between the conquest and the American revolution they had yet made such advance in the comprehension and appreciation of English government as to justify the strongest confidence in the possibility of a rapid and harmonious Anglicizing of the new province.

I had purposed treating of the *bourgeoisie* separately, but the material seems on the whole scarcely to warrant a sharp distinction between this class and the general body of the *habitants*. In the former term I include the great majority of the inhabitants of the towns,³ as well as the retail dealers throughout the country and out of it among the Indians; and the social conditions of old France at the time would lead us to look for almost as wide a chasm between

¹ Amer. Arch., IV. 5, 481. "Extract of a letter from an officer in the Continental Army, dated Trois Rivières, March 24, 1776."

² 5 Amer. Archives, I. 12.

³ The population of Quebec and Montreal is given in 1765 by Murray as 14,700.

the *bourgeois* and the *habitant* as between either and the *seigneur*. But this is a point in which we do not find the social conditions of old and new France corresponding; for in Canada the *bourgeois* attitude was in the main that of the peasantry from which it had largely sprung, and with which it had constant and close intercourse.¹ It is probable indeed that in the absence of manufactures and the great possession of trade by the English element, a large part of the urban population was directly connected with the land, having been attracted to the town by reasons of security and convenience.² Garneau asserts, indeed, that the merchant class went to France at the conclusion of peace; but the statement is probably true in regard only to the more considerable dealers. We are told by Murray in 1762 that the retail dealers are generally natives, and this evidently continued to be the case throughout the period. One of the natural results would be the bringing of the French commercial class largely under the influence of the English, the latter practically monopolizing the wholesale trade; and of such an influence we have many traces.³ It is to be expected, of course, that we should find the townsmen more active in public appearances. The addresses in 1763 on the subject of religion are evidently more especially from them; those from Montreal and Three Rivers expressly so represent themselves, though claiming also to act on behalf of the country regions. How correct the assumption of representation is we are left to determine for ourselves, but it is safe to assert that there exists no petition or memorial of any kind coming from the *habitants* in the first instance, nor any indication of any right of action being deputed by them to their so-called representa-

¹ See Haldimand's statement to Germaine, July 6, 1781, about the connection between the traders of the town and the country and the influence of the latter over the peasantry. (Can. Arch., Q. 4, p. 40.)

² An ordinance was issued by Bigot, toward the close of the French régime, against the country people moving to the towns.

³ Especially in connection with the Québec Act, 1774-5. See also Carleton to Shelburne, November 29, 1766. (Can. Arch., Q. 4, p. 40.) See above, p. 293, note.

tives. The peasant was too ignorant and too unaccustomed to such measures. But nevertheless we may conclude that, except on points manifestly only of urban application, the voice of the townsman is in the main expressive of general grievances and desires. At the beginning of the period Haldimand expressly classes the shopkeeper among the general body of the inhabitants in their apparent indifference to the fate of the country.

B. The Noblesse and the Clergy.

As said above, for full and vivid pictures of the different classes of the community we can go to Parkman. All that is attempted here is to set forth such indications during our period as may seem to have a bearing on the problems of government. And first in consideration must come the noblesse, the old secular leaders. The earliest general representations we meet with in regard to them are found in the reports of the military commanders in 1762. Murray's picture is not a pleasant one (and it should be remembered that Murray is generally their determined champion, and was so regarded by them); it represents them as in general poor, extremely vain, arrogant toward the trading community, (though very ready to reap profits in the same way when opportunity offered),¹ and tyrannical with their vassals.² The contemporary reports of Gage and Burton do not enter into characterizations, but agree with Murray's in stating that the English government will not be relished by the noblesse, and that any emigration will be from their ranks. The vast extent of the seigniories (five or six miles front by six or nine deep), is enlarged upon by Burton; but these estates produced very little to their holders, and we have an apparently trustworthy statement to the effect that 128 of the seigniories

¹ It will be remembered that on account of the poverty of the class its members were allowed by the French government to engage in trade without losing caste.

² See Hey to Lord Chancellor, August 28, 1775, for statement of the low opinion he had formed of the noblesse in council. *Can. Arch.*, Q. 12, p. 203.

yielded an average of only £60 per year.¹ Certainly the poverty of the seigniorial families is a matter there can be no doubt of; we meet with constant references thereto throughout the period, it being frequently assumed that their means of livelihood had been taken away by the deprivation of public employment.² For it will be remembered that this class was from first to last under the French a military and administrative one,³ though without any real influence on the government, which generally took the part of the *habitant* against them. They were not country gentlemen, most of them residing constantly in the towns and visiting their estates only for the purpose of receiving dues. Everything goes to show that their influence over the people was purely of military foundation, and that it fell to pieces when the military relation ceased.⁴

As shown by a report of Carleton⁵ the most important part of the order left Canada at the capitulation or the conclusion of peace; those who remained being of a lower rank, of less property, and of less close connection with France. These latter are reported as comprising 126 male adults, some of whom have families. The first political manifestation which purports to be exclusively from them is the memorial of the seigniors of Quebec to the king, 1766, in defense of Murray,⁶ signed by twenty-one names. The document is a strong expression of personal satisfaction with that official and his methods, beginning, however, with a comparison of the civil government with the military one they had first experienced in a manner very unfavorable to the

¹Marriott puts the value of the best at £80 a year. (*Code of Laws*.) See above, p. 279, note, for reference in Carroll's *Journal* to poverty of the seigneurs.

²Masères states that 120 had lost office by the conquest, and Carleton writes to Townsend, November 17th, 1766, that they had been wholly dependent on the French crown. See also same to Shelbourne, March 2d, 1768. (*Can. Arch.*, Q. 5-1, p. 382, and *Rep. Can. Arch.*, 1886, Note D.)

³Carleton to Townsend, Nov. 17, 1766. *Can. Arch.*, Q. 3, p. 411.

⁴See Haldimand to Germaine, July 25th, 1778. *Can. Arch.*, B. 42, p. 10.

⁵Nov., 1767. See *Rep. Can. Arch.*, 1888, p. 44.

⁶*Rep. Can. Arch.*, 1888, p. 19.

former. It denounces the "Cabal" which the old subjects and a few deluded new subjects had formed against the governor and supplicates his restoration. Of somewhat wider scope is the corresponding petition in the same year from the seigniors of Montreal, which, after asking for Murray's retention, goes on to complain of their own exclusion from office and of the expense of the required registration of land (with thirty-nine signatures). In November, 1767, Carleton writes¹ that as nothing had been done to attach the gentry to the British interest, and as they had lost all employment by the change, it could not be hoped that they would be very warm in its support. "Therefore, all circumstances considered, while matters remain in their present state, the most we may hope for from the gentlemen who remain in the province is a passive neutrality on all occasions, with respectful submission to government and deference for the king's commission in whatever hand it may be lodged; these they almost to a man have persevered in since my arrival, notwithstanding much pains have been taken to engage them in parties by a few whose duty and whose office should have taught them better."² One year later (November 20th, 1768), he speaks of their "decent and respectful obedience to the king's government hitherto," though frankly admitting that he has no doubt of their secret attachment to France, which "naturally has the affection of all the people."³

Of much greater importance than the noblesse, through their more deeply-seated influence over the people, were the Roman Catholic clergy. Readers of Parkman will recall the turgid rhetoric in which at the close of his "Old Régime" he sums up the vast share that had fallen to the Church from the very first in the founding and direction of the colony; and though during the period we are con-

¹ *Rep. Can. Arch.*, 1888, p. 41.

² See Carleton concerning the disapproval by the gentry of the verdict against the crown in the matter of duties, December 24th, 1767. (*Can. Arch.*, Q. 5-1, p. 316).

³ *Can. Arch.*, Q. 5-2, p. 890.

sidering that influence was undoubtedly on the wane, (how much so will be seen in regard to the American invasion), still it was a factor that cannot be neglected. It would seem that the military period had been favourable to the preservation of the personal influence of the clergy, notwithstanding the indication referred to above of the loss of tractability on the part of the *habitant* in the matter of tithes. For they (as well as such other local magnates as were accessible), took in large measure not only during the military period but even probably in some degree till the Quebec Act, the place of the French local judiciary. Garneau says that all disputes were settled by the intermediation of the clergy and other local leaders,¹ and though his picture is undoubtedly overdrawn, every presumption is in favour of a considerable movement in this direction. It was to the clergy and to the old militia officers rather than to the noblesse that the peasant would naturally betake himself, if only for the reason that with them he felt more in sympathy as being largely of the same class. For the lower clergy then as now was largely drawn from the ranks of the peasantry. Murray, in his report of 1762, expressly states that the most prominent were French, the rest Canadians of the lower class. This is a division we should expect, and it is not surprising also to find indications of some jealousy and difference of view between the two sections. The Canadian born element would be much more easily reconciled to the new rule, and it is very probable that the moderate representations spoken of above, which refrain from laying stress on the preservation of the hierarchy, were inspired solely by this element, well aware that the continuance of that hierarchy meant in all probability the continuance of the domination of the foreign born priest. Gage, in his report from Montreal in 1762, speaks of this division of interest and of the necessity of detaching the Canadian clergy entirely

¹ *Hist. du Can.*, II, 336. (Quebec, 1859.)

from France. The growth of a native priesthood with feelings not always in harmony with the old government of Church or State, had been a slow one, but that such an element was now firmly established there can be no doubt.¹ Up to the conquest the scale had been constantly turned in favour of the French-born element, which, according to Cramahé, regarded the Canadian clergy with contempt.² The policy of the new government may be seen from the statement in the same letter that the French clergy were then jealous of the Canadian as likely to get all the benefices, and that hence the French were in favour of a change which the Canadians were strongly interested to prevent.

Whichever element was uppermost however, and by whatever motives it may have been influenced, we have no indication of any but the most satisfactory behaviour throughout this period on the part of the Church in Canada. In June, on the conclusion of peace, a mandate was issued by the vicar general (the highest ecclesiastic remaining), recommending to the inhabitants submission and fidelity. In the autumn of the same year we meet the general addresses already spoken of,³ which seem to have been called forth by the depleted state of the priesthood and by fear lest the lack of a bishop should leave it to die out. They are all probably inspired. One of these addresses is from the chapter of Quebec, and we must conclude that the moderation of the demands had met with the approval of the prevailing portion of the clergy. It expresses no anxiety for a continuance of priests from Europe, expressly saying on the contrary that those educated in the native seminaries would be more patriotic, more united, and less exposed to new opinion;⁴ and that they

¹ See Haldimand to Germaine, September 14th, 1779. Can. Arch., B. 54, p. 177.

² Can. Arch., Q. 8, p. 160. To Hillsborough, July 5, 1772.

³ Above, p. 284.

⁴ The petition from Three Rivers dwells more fully on means of escaping French influence in preserving the clergy.

(the petitioners), would be satisfied with a merely titular bishop with full ecclesiastical jurisdiction, but without exterior dignity or compulsory means of support. It is fully evident that the petitioners are sincere, and that they aim only at the measures necessary to preserve their educational and spiritual position.

CHAPTER II.

THE BRITISH SETTLERS.

A. Numbers, Origin, Occupations, Character.

The term "old subjects" was applied during this period and for long after to those inhabitants of the province who had been subjects of Great Britain before the conquest,—i. e., to the new English-speaking element that accompanied or followed the conqueror. The numerical weight of this element would alone hardly entitle it to consideration, for at no time during the period did it in all probability embrace more than 500 or 600 male adults. As late as 1779 Haldimand refers roughly to the non-Canadian population as 2,000 in number. We know, however, that there was some exodus from the province in 1775-6, and it is probable that the maximum number of English-speaking inhabitants had been reached soon after the conclusion of peace. For Carleton writes, November, 1767, that they are diminishing, being discouraged by the severe climate and the poverty of the country.¹ But notwithstanding this insignificant numerical strength, the energy and the peculiar position of this element make it impossible to avoid reckoning with it.

Presumably these "old subjects" were subjects of Great Britain by birth. But to what extent they had previously been resident in other parts of America, or what proportion of them was American born, it is not easy to determine. And the settlement of the point is of considerable interest in view of their connection later with the American revolutionists. We are safe in concluding that the smaller portion only of them were in Canada previous to the conclusion of peace, and that this portion was the least

¹ *Report Canadian Archives*, 1888, p. 43.

respectable one, and composed mainly of those afterward spoken of with contempt by the provincial officials as sutlers and discharged soldiers¹—a class mainly no doubt of European birth. As to the remaining and larger portion, the scattered references that we have lead to the conclusion that they were mainly born in the British Islands. But some of them had doubtless, for shorter or longer periods, been resident in the other colonies before coming to Quebec, and a few were American-born. Whether it was that the portion with previous colonial experience was more enterprising and free-spoken than the others, we find that it comes to stand for the whole in the official mind. Knox, in his "Justice and Policy of the Quebec Act,"² evidently regards the British subjects in Canada as having all come from, or being all identified with, the other provinces; and this view may be regarded as the general one taken in England. We have, however, among the Haldimand papers a careful analysis of the British in the District of Montreal, 1765, in regard to birth and occupations,³ from which we learn that of the 136 adult males there at that time, 98 were born in the British Isles, 23 in other parts of Europe, and 12 in the American colonies; nothing being said as to residence immediately before coming to Canada. But there are many indications that whether this analysis can be considered as representative of the whole body or not, the more politically influential of the new settlers were conversant with the social and governmental conditions of the other colonies to a degree which forces us to the conclusion that the knowledge must in most cases have been acquired by periods of considerable residence. In the first public appearance of the new element in the province under civil government—the presentment of the grand jury of October, 1764,—we find frequent references to the judicial

¹ The census report of 1765 mentioned below gives 43 of the 136 in the Montreal district as of this character,

² London, 1774.

³ Can. Arch., B. 8, p. 96.

conditions of the other colonies such as would occur only to those who were recalling institutions (peculiar to the colonies), under which they had lived and to which they had become attached.¹ Similar evidence appears in their remonstrance against the judiciary ordinance of 1770,² and in some commercial representations concerning the English bankruptcy laws in 1767.³ Further we have particular information in regard to individuals who later became noteworthy for open sympathy with the revolutionary cause, and find that they are nearly all of American birth or of American political education. A list "of the principal persons settled in the province who very zealously served the rebels in the winter 1775-6"⁴ names 28 individuals, of whom only 7 are of non-American birth. In this list we find the names of many of the main leaders in the political movements just previous to the Quebec Act. It is evident in short that the most determined and outspoken section among the new settlers were American by birth or adoption, and it is probable that that portion was, in relation to the whole, a small one. This will be shown more fully later when I speak of political movements. That a distinction could be made, and was made by the provincial officials, is shown by a reference of Carleton to the scale of duties lately adopted as being approved by "both Canadian and English merchants, the colonists excepted."⁵

The new English-speaking population seems to have been practically all resident in the towns of Quebec and Montreal. Its main occupation was trade,—a trade which had the fur traffic for its backbone. Many of its members are asserted by their detractors to have come to Canada because they had failed everywhere else, but the fact that Canada offered exceptional advantages for the fur trade

¹ Can. Arch., Q. 2, pp. 233-63.

² Can. Arch., Q. 7, p. 95.

³ Can. Arch., Q. 5-1, p. 248.

⁴ Can. Arch., Q. 13, p. 106.

⁵ Dec. 24, 1767. (Can. Arch., Q. 5-1, p. 300.) See also to Dartmouth, November 11, 1774. (Can. Arch., Q. 11, p. 11.)

affords a more creditable explanation. Many were mere agents for English firms; some, especially of the discharged soldiers, became small retailers of liquor. So averse were they to land occupation, at least on the terms first offered, that the lands set apart for the discharged soldiery were in few cases taken up. But they took with considerable avidity to the acquiring of seigniories when that form of grant was re-established,¹ and Hillsborough, April 18, 1772, writes that he is pleased to find "that so great a spirit of cultivation of the waste lands in the colony has spread itself among His Majesty's natural born subjects." There can be little doubt that by the end of the period they had come into possession of a large proportion of the seigneurial estates of the province;² but there is no probability that they at this time settled down on these estates in any permanent manner. They undoubtedly continued to be identified with the towns, and it is sufficiently correct for all purposes to regard their connection with Canada as caused and continued either by commercial interests³ or by situations held under government.

As to the character of this new element we are unfortunately dependent almost entirely upon the testimony of its bitterest enemies. The causes of this enmity will be more fully apparent later; the fact is that throughout the whole period of civil government the provincial administrators and the "old subjects" were in direct and for the most part bitter antagonism. The latter claimed that they had come into the country in reliance on the Proclamation of 1763, which they considered contained a distinct promise of the establishment in Canada of the forms of government and the system of law that prevailed in the other colonies; consequently they maintained a hostile attitude to the system in operation, as purely provisional, and impatiently

¹ See elsewhere concerning land grants.

² See *Evidence*, Quebec Act Debates. Also Masères, especially with regard to English petitions and memorials for an Assembly, 1773.

³ See Carleton, *Rep. Can. Arch.*, 1890, p. 1.

demanded the fulfillment of the asserted pledges. The governors on the other hand had speedily arrived at the conclusion that such changes would be most disadvantageous to the country, and would imperil its possession; and they consequently regarded with no favourable eye the turbulent little body which seemed to be aiming at the same licentiousness as (in the official opinion), prevailed in the other colonies. It is the same antagonism that we see contemporaneously in these other colonies, increased tenfold by the peculiar circumstances of the province. Race and social prejudices, and collisions between the civil and military elements, complicated the situation and intensified the opposition of the British trading community to the old French military system and its favorers. And in view of these facts we must take with caution the assertions of the governors, who, just as they erroneously looked upon the noblesse as the true representatives of the Canadians, seem to have indiscriminately classed together the whole old subject body as turbulent and republican, and bent on nothing but the oppressing of the French population and the acquiring of gain. That there were individual instances to which they could point in support of this view cannot be denied; nor can we doubt that the British element throughout the most of the period might well present to the harassed official an intolerant and unconciliatory attitude. But a scrutiny of the evidence will show that the constant official censure was to a large degree unjust and undiscerning, and that the British party in the Province of Quebec deserved very much more consideration from the authorities than it received. The matter is of importance from other grounds than those of historical justice. For there can be little doubt that the incorrect ideas that swayed the official mind on this point were one of the main agencies in the genesis of the Quebec Act.

Murray's expressions of dislike for his fellow-countrymen seem to date from the grand jury presentment of 1764,

when he writes home of the "licentious fanatics trading here," whom nothing will satisfy except "the expulsion of the Canadians."¹ The following March 3, he says that the merchants "are chiefly adventurers of mean education, either young beginners, or, if old traders, such as had failed in other countries; all have their fortunes to make and are little solicitous about the means."² August 20, 1766, after he had left the province, he writes of the party which had procured his recall, that "most of them are followers of the army, of mean education, or soldiers disbanded at the reduction of the troops;" and adds, "I report them to be in general the most immoral collection of men I ever knew."³ This representation is evidently little to be regarded. Carleton, though no particular friend of Murray, seems, however, to have at once assumed the same attitude toward the old subject, and probably with more confidence, as knowing that the home government was not at all likely to gratify their wishes. As with Murray, his military training prejudiced him in favor of the old system and of the military noblesse, to both of which the English element was bitterly opposed. November 25, 1767,⁴ he describes the old subjects as having "been mostly left here by accident, and are either disbanded officers, soldiers, or followers of the army, who, not knowing how to dispose of themselves elsewhere, settled where they were left at the reduction; or else they are adventurers in trade, or such as could not remain at home, who set out to mend their fortunes at the opening of this new channel of commerce," and adds that they have for the most part not succeeded, and are abandoning the province. March 28, 1770,⁵ he writes in regard to the necessity he has been under of taking from the justices of

¹ *Can. Arch.*, Q. 2, p. 233.

² *Ib.*, p. 377.

³ *Can. Arch.*, B. 8, p. 1.

⁴ *Rep. Can. Arch.*, 1888, p. 42.

⁵ *Rep. Can. Arch.*, 1890, p. 1.

the peace their jurisdiction in civil cases, on account of the oppressive methods of many of them, and proceeds to explain what these methods were; saying that those who had failed in business sought the office in order to make it a means of extortion, and had therein very grievously taken advantage of the ignorance of the people. This oppression seems to have been for a short time a real grievance, and has been considered one of the principal proofs of the evil character of the English element; but a closer examination will show that in that view it has been exaggerated. For it was such as hardly could have been practiced by any but justices in the remoter parts of the province, or at least by those in the country districts, and I have shown above that very few of the English were settled outside of the towns. So that it must have been confined to about a dozen individuals,¹ and cannot possibly be taken as any indication of the general character of the English-speaking settlers. The matter is simply an instance of the careless grouping and indiscriminate judgments of the period, or possibly of intentional misrepresentation in order to prejudice the case of the old subject in the eyes of the home government. That this result was attained may be seen in the writings of the pamphleteers who defended the Quebec Act, as well as in the arguments of its supporters in the Commons.

B. Political Attitude.

What the political attitude of the English party was may be easily gathered from the foregoing. Whether or not accustomed to the greater self-government of the American colonies we find the whole body strongly imbued with a certain degree of the American spirit and determined to lose no opportunity of pressing their claims for the establishment of English law and an Assembly. They con-

¹ The list of justices of the peace for the whole province as first appointed, included only twenty-three names, of whom most were resident in the towns. See p. 312, note 1.

tended throughout that the promises of the Proclamation of 1763 on these points had been among the main inducements to the taking up of their residence in the province; and in season and out of season, without regard to the difficulties in the way either from the original constitution of the province or from the hazardous nature of the British hold on it, they pressed their demands on the home government and refused any tolerance to the existing provisional arrangements. So that at first sight it would appear (as has generally been represented), that in the pressing of these demands the party showed throughout a factious and intolerant spirit, and gave little evidence of political forethought, or of consideration either for the Canadians or for the difficult position of the administration. As to political forethought they must be judged mainly on a careful consideration of the later events, with regard to the question as to how far they were justified in their contention that the English system of law and government, so far as they claimed it, would not really be objectionable or injurious to the mass of the people. As to the intolerance and inconsiderateness of their attitude, we must guard as before against indiscriminate grouping; and it will be found moreover that the evidence on these heads is confined to the early years of the period. A comparison of the names appended to the various petitions and other public manifestations of the time with what appears later as to the individuals who espoused the revolutionary cause, shows that these manifestations were the voice really of that small section which, chiefly American-born, was most thoroughly permeated with American ideas, and which kept itself in touch with the movements on the other side of the border. The bulk of the party, English-born, slower of comprehension, and less used to American self-government, more or less acquiesced in the movements of the bolder spirits, partly on general principles of popular leadership, partly because they had a common ground in their desire

for, and anticipation of English laws and governmental forms.¹ Hence, it is not surprising that we cannot trace any definite dividing line² between the English-born and the colonists until the actual resort to arms drove the leaders into the arms of the revolutionists. In connection with this it is interesting to note that the first public manifestation of the British party was the most violent and outspoken, supporting therein the idea that it was representative of the views of the American element when that element had in freshest remembrance the forms they were attached to and had hoped to bring with them into Canada. These hopes had been disappointed by the passing of the judiciary ordinance of September 17, 1764, which, though afterwards condemned by those who supported the continuance of the old system as having aimed at the complete overturning thereof, seemed to the English party a very partial and unsatisfactory measure. Accordingly, at the general quarter sessions of the justices of the peace held at Quebec in the following month, the fourteen English who were summoned (together with seven French), as a grand jury, seized the occasion to express in no measured tones their deep disappointment and disapproval.³ The main presentment began (in direct contempt of court), by condemning the late ordinance in regard to the power

¹ It is not probable that the claim of general representative powers put forward in 1764 on behalf of the grand jury, (discussed below), was seriously entertained except by a few of the bolder spirits; but the attitude of protest and disappointment was evidently largely shared, even by those whose later actions were much more moderate. For in the evidence connected with an investigation in 1768 into the suspension by Murray of a public official, one of the charges against whom was that he had been prominent in this grand jury movement, we find a comparatively numerous signed letter of thanks to the jury from their English fellow-countrymen in Quebec, which states that the signers consider the jury "as yet the only body representative of this district," and that in regard to the digression from usual form in the proceedings, "the want of a General Assembly in the province sufficiently justifies your conduct to the public." (Can. Arch., Q. 5-2, pp. 629-69.)

² Though see Carleton's reference above to the difference of opinion in regard to customs duties. See also Carleton to Hillsborough, April 25, 1770, concerning the refusal of the majority of the old subjects to take the steps urged by the more violent concerning the judiciary ordinance of that year. (Can. Arch., Q. 7, p. 89.)

³ Can. Arch., Q. 2, p. 242.

given to the justices and to the number and incapacity of these officials,¹ and expressed a determination never again under the system complained of, to act as jurors. It then proceeded to make the very remarkable claim on behalf of the signers as grand jurors that they "must be considered at present as the only body representative of the colony," and therefore "as British subjects have a right to be consulted before any ordinance that may affect the body they represent be passed into law;" furthermore demanding that "the public accounts should be laid before the grand jurors at least twice a year, to be examined and checked by them, and that they may be regularly settled every six months before them." This claim² shows that while considering the existing government as only provisional, they could not grasp the fact that as British subjects they were even under it to be excluded from some form of the self-government they had been accustomed to. The fourteen

¹ It is noteworthy that this condemnation was later abundantly justified by the complaints as to the ill-working of this provision and the revoking of it by the ordinance of 1770. Here we find the representatives of the English party strongly condemning at its initiation a measure the ill-working of which was afterwards used as a weapon of reproach against that party.

² Which they do not attempt to fortify with any precedent from the other colonies, though frequently bringing such on other points. I have been unable to find any direct connection between this incident and contemporary events in the other colonies, but the conclusion is irresistible that some such must have existed. By June, 1764, it was known in America that Grenville had given notice of the Stamp Act, and that a bill had been passed increasing customs duties. Before the end of the month Otis and others had formed a committee for intercolonial correspondence and resistance. Popular attention throughout the summer had become more and more concentrated on the subject, and in September the New York Assembly had boldly claimed for the people "that great badge of English liberty, the being taxed only with their own consent." (Bancroft, III, 89.) Of course, the Quebec movement was as yet fully taken up with a stage beyond which the other colonies had long passed. And we shall see later that it was not likely to get beyond that stage with the bulk of the party. Though it is to be noted that Cramahé writes in July, 1774, (to Dartmouth, Can. Arch., Q. 10, p. 79), that "His Majesty's subjects in this province, tho' collected from all parts of his extensive dominions, have in general, at least such as intend remaining in the country, adopted American ideas in regard to taxation, and a report transmitted from one of their correspondents in Britain that a duty upon spirits was intended to be raised here by authority of Parliament, was a principal cause of setting them upon petitions for an assembly." It connection with this see following pages in regard to the revenue trials and the Stamp Act.

English jurors alone also presented an additional article protesting against the admitting of Roman Catholics on juries or to the professions as "an open violation of our most sacred laws and liberties," and tending to the insecurity of the province.

The next appearance of these remonstrants is in the petition of the Quebec British traders against Murray in 1765, signed by twenty-one names,¹ the signers claiming to act on behalf of their fellow-subjects. The friction between the party and Murray seems to have steadily increased in the intervening year and finally had resulted in this representation, which was later thought to have procured the governor's recall. It began² by stating that the connection of most of the petitioners with the country dated "from the surrender of the colony," goes on to represent the conduct of the governor and the measures of government as oppressive and injurious, threatens removal from the country in case of non-redress, and ends by requesting the establishment of a house of representatives "to be chosen in this as in other Your Majesty's provinces, there being a number more than sufficient of loyal and well-affected Protestants, exclusive of military officers;" the Canadians to be "allowed to elect Protestants," without the burden of test oaths. The demand for an assembly reappears with more or less distinctness all through the period; though while Carleton remained in the province his decidedly discouraging attitude seems to have prevented any very united movement. But resentment at the withholding of representative institutions appears to be the main moving cause in a very determined stand by the English mercantile class after 1766 against the collection of the old French customs duties. In accordance with legal opinion as to the reversion to the crown of all sources of revenue possessed by the French government, the imperial authorities had in

¹ Eight of these were among the fourteen English jurors in 1764.

² *Rep. Can. Arch.*, 1888, p. 14.

1765 ordered the above collection, and July 21, 1766, a provincial proclamation was issued setting forth the duties and the ground on which they were claimed.¹ A few days later it is reported officially that the merchants "will not pay their duties unless otherwise compelled." Some of them were accordingly prosecuted in the Court of King's Bench before a jury composed entirely of English, and which the Chief Justice charged to bring in only a special verdict as to the facts, leaving to a higher court the point of law² as to whether the English crown had become by the conquest and cession entitled to the old French duties. But the jury, thoroughly in sympathy with the recalcitrant merchants, refused to be restricted in this way, and brought in a general verdict of acquittal. Another suit shortly afterwards had the same result, and all efforts to collect the duties seem then to have been dropped for two years.³ In the fall of 1768, however, after an action in the British Common Pleas against Murray, in which the principle of the King's right to these duties was accepted without question, the commissioners of the treasury resolved to make another attempt, and instituted prosecutions anew. The issue was the same, however, though Masères (who was the prosecuting attorney), acknowledges that the jury "consisted of some of the most respectable inhabitants of Quebec, and of such as were most moderate in their principles and disposition." Writing in 1774 he says that it may be seen from these trials that these duties can never be collected in the Quebec courts; from which we may infer that no further attempt was made to collect them during the period.⁴

The ground of this determined resistance is nowhere clearly stated, but there can be little doubt that it was mainly inspired by some portion of the spirit then agitat-

¹ Can. Arch., Q. 2, p. 377.

² Called by him "very new and difficult."

³ Can. Arch., Q. 3, pp. 254, 400.

⁴ See Masères, *Commissions*, pp. 288-311.

ing the other colonies. In a letter shortly before the later trials Carleton states that the merchants based their opposition on the ground that the duties demanded were not quite the same as the French;¹ but that the real question was much broader is shown by the argument for the Crown of Masères, the attorney general, (reported by himself). In it he contends that "whatever might have been asserted to the contrary, in order to inflame the passions of the people and prejudice the minds of the jury against these duties, the king by them did not mean to exert any prerogative of imposing taxes by his own single authority and without the consent either of a provincial Assembly or of the General Assembly of the whole British Empire," and that therefore the requisition did not endanger the public liberty of the inhabitants and the privileges they claimed "either as English in general or under the proclamation of October, 1763, by which His Majesty had promised them the enjoyment of the benefit of the laws of England."² The attorney general is here attempting to remove the prejudice of a jury which was of the same class—the English trading class,—as the accused, and it is evident that he perceived that whatever the special plea put forward, the opposition was founded on the general claim of being English subjects, entitled to the operation of English laws and principles. It would seem also as if the spirit of opposition as expressed on the point had been steadily growing; for Carleton had written, December 24, 1767, that he was almost certain that a revenue would soon be raised from the customs sufficient to meet all expenses of government, and that "both Canadian and English merchants, the colonists excepted," were willing to pay much higher duties than those he was then proposing.³ Masères' description of the jury in the trials of 1769 shows that it

¹ Can. Arch., Q. 6, p. 65,—May 10, 1769.

² *Commissions*, pp. 304-5.

³ Can. Arch., Q. 5-1, p. 316.

could not have been composed of these "colonists," and therefore we must conclude that either Carleton had deceived himself in 1767, or that the "colonist" spirit had on this point taken possession even of the "Canadian and English merchants."

This phase of the subject is the more interesting taken in connection with the undeniable acquiescence of the province in the Stamp Act shortly before.¹ For leaving out a very small circle no opposition to this Act sufficiently strong to send its voice down to us seems to have been made in Quebec or in Nova Scotia.² That it had been put regularly into operation is shown by the proclamation announcing its repeal, which says that "whereas many persons in publick office and others may at present have stamp paper and parchment that has not been made use of" they will be reimbursed for the same.³ But no statement can be found of any revenue from the tax, and it is most probable that the "resistance passive" which Garneau attributes to the province⁴ went far enough to reduce the receipts to a very small sum. That the section of the English party known as "the colonists" had made their voice heard against the act is shown by a reference of Carleton's, October 25th, 1766,⁵ and by a statement of

¹ The Stamp Act was in force in Quebec apparently from November 1, 1765, to May 28, 1766.

² With regard to Nova Scotia some documents* from a later period may here be referred to. In 4 *American Archives* (III 619), we find a Whitehall memorandum dated September 1, 1775, that on that day His Majesty had graciously received an address from the House of Representatives of Nova Scotia, containing a declaration of entire submission to the supreme authority of the British Parliament and of readiness to pay taxes fixed by it, to be at its disposal. This loyal document, however, is followed (*Ib.* 780) by a letter from Halifax dated September 23, 1775, which says that the above address represents only about one-thousandth of the inhabitants of the province, and had been procured when most of the House of Representatives were absent; further, that owing to universal sympathy with the revolutionists no duties had been paid since August last, that some tons of tea arrived the day before had been thrown into the sea, and that the revolutionary forces at Boston had been continually supplied from Nova Scotia with fresh provisions.

³ *Can. Arch.*, Q. 5-2, p. 822.

⁴ *Hist. Can.*, II, 399.

⁵ *Can. Arch.*, Q. 3, p. 259.

Murray, August 20th, 1766, (in regard to the Canadians), that "tho' stimulated to dispute it by some of the licentious traders from New York they cheerfully obeyed the Stamp Act, in hopes that their good behaviour would recommend them to the favour and protection of their sovereign."¹ Previously (February 14, 1776, while the act was yet unrepealed), the governor had reported that "His Majesty's subjects in this province have not followed the example of the neighbouring colonies, but have cheerfully submitted to the authority of the British legislature."² On the arrival of Carleton in September, 1766, an address presented to him from the combined English and French inhabitants of the city and district of Quebec expresses "the most profound and submissive reverence to the legislative authority of the British parliament, of which we lately gave a public and signal proof by an immediate and universal obedience to the Stamp Act."³ Lastly, the argument which I have quoted from the attorney-general in the revenue trials of 1769 shows conclusively that the class he was trying to influence (i. e. the main, more moderate body of the English trading class), was not supposed to doubt, and therefore could not have made any fundamental objection to, the full legislative authority over the province of the British parliament.⁴ This class then we may suppose to have acquiesced grumbly in the Stamp Act, while the smaller section of American birth or training had no doubt vigorously protested against it. As to the Canadians, the compliant voice of the address to Carleton doubtless represents correctly the attitude of those affected; but there is no ground

¹ Can. Arch., B. 8, p. 1.

² *Ibid.*, Q. 3, p. 26.

³ *Ibid.*, p. 344.

⁴ Of course it must be remembered that as the province had no assembly the same objection could not be made to such a claim as in the other provinces (see p. 312, note 2). The matter therefore stands on a somewhat different footing. It seems, however, very probable that the Stamp Act agitation in the other colonies, and its success, had considerable influence in emboldening the Quebec merchants to the stout resistance later to the revenue duties.

to suppose that any attention was paid to the Act by the mass of the French Canadian people. But few of these could, in its brief life, have even become aware of its existence; for, as I have elsewhere shown, the *habitant* at this time very slightly availed himself of English legal forms or courts.

In the spring of 1770 the British element again appears in strong opposition to the government in regard to the ordinance of February 1, 1770, which on account of the oppressive conduct of some of the justices of the peace took away from the whole body all power in matters that affected private property, and instituted for the protection of creditors methods which were considered by the merchants as unsatisfactory and precarious and likely to affect the credit of the province. The memorial in which the objections of the merchant body were expressed is evidently what it purports to be, a document almost entirely dictated by commercial considerations; and though the action of the government was justifiable and the ordinance in question probably necessary, I cannot look upon this movement of its opponents as of the purely factious and oppressive origin attributed to it by Carleton. In the same year we have the outcome of a movement spoken of by Carleton in 1768,¹ in another petition for a general assembly, which they claim in part as promised in the proclamation of 1763, and in part because necessary to arrest the declining state of the province and make it really of benefit to the empire. The assembly is still contemplated as being composed only of Protestants, (nothing being said as to the qualifications of electors), the petitioners asserting as in 1765 that "there is now a sufficient number of your Majesty's Protestant subjects residing in and possessed of real property in this province, and who are otherwise qualified to be members of a general assembly;" which they pray shall therefore be

¹ He writes, January 20, that the agitation for an assembly which he thought had been dropped a year before, has been resumed, the leaders being "egged on by letters from home." (Q. 5-1, 370.)

called "in such manner as is used in those provinces in America under your Majesty's government." (signed by 31 names).¹ Carleton left for England about the same time, and this step was probably intended to counteract the effect of his presence at home. For the following three years quiet seems to have reigned in the province, the British element applying itself energetically to the acquirement of landed property. As the home government, however, came more unmistakeably nearer to the adoption of decisive measures in regard to Canadian affairs, the political energies of the party revived, and as a consequence we have the very united and vigorous petitions of 1773 (October-January) for an assembly.² According to Cramahé³ the leaders of the old subjects sedulously attempted to induce the French to co-operate, and Masères relates that the negotiations were broken off in consequence of a refusal of the English to insert in the joint petition a specific request that the assembly might be composed of Protestants and Catholics alike, with more or less of a preponderance secured to the latter.⁴ The English then proceeded alone, and petitions and memorials were forwarded to the home government about the beginning of 1774, signed there can be little doubt by almost every old subject of any standing (outside the official circles), in the province. The wording of these is in the main of the same tenor as in the previous representations, but a very noteworthy change appears in the reference to the nature of the assembly asked for. In all the previous petitions it had been requested to be called "in such manner as is used in those provinces in America under your Majesty's government," coupled with the statement that there were sufficient qualified Protestants in the province to constitute such a body. This evidently means the exclusion of

¹ Can. Arch., Q. 7, p. 359.

² *Ibid.*, Q. 10. See also Masères, *Account*.

³ *Ibid.*, Q. 10, p. 22.

⁴ See below, c. 5.

Catholics, who, however, were to be permitted to vote. But in the present petition the words are, "in such manner and of such constitution and form as shall seem best adapted to secure peace, welfare and good government." The explanation of this change is given by Masères,¹ agent for the party in London, who states that though the old subjects had formerly entertained hopes of an exclusively Protestant assembly, on hearing that Catholics had been admitted to that of Grenada,² and that the government contemplated the giving of the same privilege in Quebec, they had resolved to acquiesce in this indulgence, though unwilling to join with the French in asking for it. In other words, the party had become convinced that there was no hope of an exclusively Protestant assembly, and preferred a mixed one to none at all; probably relying on their influence over many sections of the French to secure a considerable if not the greater share of the power wielded by such a body. The petitioners make the statement that the granting of an assembly is the only sure means of conciliating the new subjects.³

In the matter of the laws to be established in the province we find that, as with regard to an assembly, the views of the British party became much more liberal toward the close of the period. The presentment of the grand jury quoted above shows that they were disposed at first to assume a most intolerant attitude, and (holding strictly to the wording of the treaty of cession), to enforce against the French Canadians the penal laws which were not enforced at home. But this we can consider the result of only a momentary access of irritation and disappointment, and as probably confined to a few individuals. For we find nothing of the kind later and have seen that all the petitions for an assembly contemplated the admission

¹ *Additional Proceedings, etc.*, p. 61.

² For conditions in Grenada see below, chapter V., B. b.

³ This petition was supplemented by a corresponding one from the London merchants who were commercially connected with Canada.

of the French Canadians to the franchise. It will also be shown later that the old subjects welcomed and eagerly availed themselves of the restoration of the French form of land tenure. Representations in November, 1767 prove that a large part of them were opposed to the introduction of the English bankruptcy laws. Masères, who had been an ardent British partisan throughout, and who became in 1774 the agent of the party in London, may be considered to represent pretty accurately their views on these points, and he expressly and frequently declares that the English inhabitants, aware of the uneasiness and confusion that an enforcement of the English laws of inheritance and landed property would have occasioned in the province, had always been willing that the French laws on these subjects should be continued.

I have thus brought my scrutiny of the "old subjects" down to the establishment of the new constitution and the bringing of the province within the range of the revolution. The consideration of the attitude of the party in this crisis is reserved for another place.² It will then be found that the division of feeling whose traces we have discovered beneath apparent unity, becomes at once very manifest, declaring itself in the same active opposition that was found in the other colonies between Tories and Revolutionists.

C. Relations with the French Canadians.

Of social relations, which it is not within my province to go fully into, we do not meet many traces. There are a few references to inter-marriage and other social connections between members of the noblesse on the one hand, and members of the English military or official circles on the other; but these could be in this brief time of but slight influence, politically speaking. Little or no communication took place between the noblesse and the main body of the English — the commercial class, — the prevailing sentiments

² See below, chapter VI.

being more or less intense degrees of contempt or hatred.¹ I have already referred to the fact that the bitter animosity between the English element and Murray was due largely to the latter's partiality for the noblesse; and there can be little doubt that the same state of things was prevalent to some degree under Carleton. But apart from the aristocracy,—a small class, with constantly declining influence,—we have considerable evidence of a very constant intercourse, daily increasing in influence on the attitude of both sections, between the main body of the English and the main body of the people. This was based in the first place on commercial relations, which gave the few vigorous and enterprising English merchants, in whose hands was the greatest part of the trade (probably the entire wholesale and foreign trade), and who in the later years also more directly affected the county districts by the large acquirement of seigniories, an influence out of all proportion to their numbers or weight with the government. This development was aided by the appearance of those new French leaders from the professional and educated class of whom I have spoken above as becoming rapidly imbued with English ideas of government. There can be no doubt that in the ten years during which civil government had been in operation a very considerable change had taken place in the social and political attitude of the body of the people; and we must consider the main factor therein to have been that part of the English element with which the people were brought into daily contact.

The first occasion on which we find representatives of these two sections of the population acting together,—on the grand jury of 1764,—is one in which the French part is exhibited in the light of a very easily hoodwinked or influenced section, which discovers the real nature of its action only through later outside inspiration. Early in 1766 we find in connection with some difficulties concerning the

¹ Murray to Shelbourne, August 20, 1763. Can. Arch., B. 8, p. 1.

quartering of troops at Montreal that the new attitude of the French in protesting against the billeting upon them seems to have been due to the instigation of the English civil element, which for some time past had been on extremely bad terms with the military. The affair unmistakably shows among the French Canadians in that town an access of intelligence, or at least of knowledge of the non-military spirit of the English laws.¹ The language of the memorial of the Quebec seigniors on behalf of Murray in 1766² proves that even then there was associated with the old subjects in their opposition to that governor a number of the new, who are said for the most part to be "slaves to their creditors."³ Of combined English and French movements we have, however, very few traces. We have seen above how the attempt at combined action failed in regard to an assembly in 1773, and it is probable that many other such fell through from similar causes. Shortly after Carleton's arrival he writes in connection with the Walker affair (an assault on an objectionable magistrate which was the outcome of friction at Montreal between the English civil and military elements), that the Canadians are being led by the English into the seditious practices of the other provinces in the belief that these are "agreeable to our laws and customs," and "are thereby induced to subscribe sentiments very different from their natural disposition."⁴ The degree of influence which the English element had acquired over the French in this short time is dwelt upon by Masères, who contends that in the event of an assembly being granted most of the French Canadian constituences would choose English representatives. And in the account he gives of an approach by some of the leading French of the town of Quebec (of the professional class), to the English for the

¹ Can. Arch., Q. 3, pp. 122-70.

² *Rep. Can. Arch.*, 1888, p. 21.

³ See above, p. 292, note 5, concerning meetings of French Canadians.

⁴ Can. Arch., Q. 4, p. 40.

purpose of joint action towards an assembly, the French delegation is represented as admitting that even if the greater share of the assembly be granted to the numerical superiority of the French, the English will more than make up by their superior knowledge and capacity for public business.¹

The vigor and modern character of the political methods resorted to by the British party may be seen by Carleton's reference to a memorial against the new judicial ordinance of 1770, in which he states that he was "really ashamed of the manner in which I was informed many of the king's old subjects had behaved, sending about handbills to invite the people to assemble in order to consult upon grievances, importuning, nay, insulting, many of the Canadians because they would not join them."² Similar methods are referred to with regard to the movement of protest against the Quebec Act, and the language used indicates a considerable degree of success. As early as November, 1774, (i. e., six months before the calling upon the people for armed service revealed their real attitude), Carleton writes of the upper classes of the Canadians that they "are not without fears, that some of their countrymen, under the awe of menacing creditors and others from ignorance, may have been induced" to join with the old subjects in their efforts against the "oppression and slavery imposed upon them [the Canadians; Carleton is quoting the representations made to the people], by those acts of parliament." These efforts will be discussed more fully in another place;³ their success proves, among other things, that in this crisis at least the leadership of the people had fallen in very large measure to the more advanced section of the English party. At present it will be sufficient to point out that on the whole, if we except the ineradicable hostility between the

¹ Masères, *Additional Papers, etc.*, p. 21.

² Can. Arch., Q. 7, p. 89.

³ Below, chapter VI.

noblesse and the commercial English element (an hostility which was not one of race), we certainly discover throughout the period no signs of irreconcilable discord and difference of view or interest between the main French and the main English population. It is true that the peculiar attitude of the government towards the English element imposed upon it the necessity of cultivating the body of the people more than otherwise perhaps would have been the case. But taking out the extremists on both sides we would probably find that the average opinions as to the disposition of government and the laws were by no means so wide apart as the makers of the Quebec Act supposed.

CHAPTER III.

THE PROVINCIAL GOVERNMENT.

A. *General Status.*

A full presentation of the conditions attendant on government in the province of Quebec throughout our period is essential to any accurate estimate of general policy then or later. It is therefore necessary to discuss some general problems that lay at the basis of authority, and to describe briefly the character and principles of administration previous to the Quebec Act.

The government of the province, not only during this period, but also under the Quebec Act down to 1791, may be described as that of a crown colony¹ without an assembly. As no other such government existed contemporaneously among the older continental colonies, or had existed since the first rude beginnings of government there, we cannot turn to these for illustration.² But a clear idea of the exact constitutional status of the province as it appeared to the highest legal authority of the time will be acquired from a study of Lord Mansfield's famous judgment of 1774 in regard to the island of Grenada.³ Grenada and Quebec (together with East and West Florida), had been on precisely the same footing with regard to the conditions of acquirement and the constitutional documents that had issued concerning them. Both had been long settled French colonies, conquered by England about the same

¹ Using the classification of colonial governments into *crown*, *proprietary* and *popular*, according to the method by which the governor was appointed.

² We might perhaps except Georgia, 1751-4, during which time the province was governed directly by the crown. But as there was then also neither governor nor council, and as when in 1754 these were appointed, an assembly came with them into existence, it does not seem worth while to refer more directly to conditions there.

³ Case of Campbell vs. Hall, 1774. Cowper's or Loft's Reports.

time, and surrendered on conditions of capitulation very nearly the same; they had been ceded permanently by the same treaty under explicit statement of being affected by the same stipulations;¹ and finally they had been grouped together and made subject to precisely the same regulations by the Proclamation of 1763. This proclamation had been followed in the case of each by commissions to governors, couched (so far as the present point is affected), in almost precisely the same terms. The Grenada case turned on the question whether the king, without the concurrence of parliament, had power to make a legislative enactment with regard to the Island subsequent to the date of the above mentioned Proclamation of October 7, 1763, which made known to all concerned, that as regarded the new acquirements therein mentioned, he had "given express power and direction to the governors of our said colonies respectively, that as soon as the state and circumstances of the said colony will admit thereof they shall with the advice and consent of our said Council call and summon general assemblies in such manner and form as is used in the other colonies under our immediate government," and that he had given power to the governors, with the consent of the councils and of the assemblies as so constituted, to legislate for the provinces concerned. This is the material instrument involved, though Lord Mansfield cites also another subordinate proclamation of the same tenor, and the commission to the governor by which he is given the power spoken of; but whatever added force would come from this last would also affect the province of Quebec to precisely the same degree. Lord Mansfield's conclusion is that, while previous to the publication of these documents (i. e., previous to October 7th, 1763), the king alone, through the legislative power over a conquered country given him by the royal prerogative, could make any legislation concerning the recent conquests consistent with the constitution,

¹ See Houston, *Canadian Documents*, p. 64.

he had by the publication of these instruments divested himself of this power, and had voluntarily and irrevocably granted to the new provinces a constitution under which the legislative power over them could be exercised only by a provincial assembly or by the British parliament. In other words, the Proclamation of 1763 was a charter of liberties granted to all who were or might become concerned with the regions in question, granted for the express purpose (as stated in it), of inducing them to become so concerned, and therefore, they having acted upon it, irrevocable without their own consent. The case in question had reference to taxation; but evidently nothing depends on this fact, for the decision of the chief justice is given in general terms; "we are of the opinion that the King . . . had precluded himself from an exercise of the legislative authority which he had before."

The conclusion from this is that the Proclamation of 1763 must be looked upon as the Constitution of Canada throughout the whole of this period, or up till the date at which the imperial parliament first took legislative action concerning the country;¹ and the result is therefore reached that government without an assembly (i. e., government as it existed down till the Quebec Act), was constitutionally invalid, all legislation by the governor and council alone being constitutionally void. This position cannot be affected by any quibbling as to the exact terms of the above mentioned instruments. It is true that the words of the Proclamation in regard to the calling of an assembly are, "as soon as the state and circumstances of the said colony will admit thereof," the governor and council being apparently left judges as to when that might be; but we do not find that any contention on this point was raised in the Grenada case, or that Lord Mansfield, (who, it will be remembered, was a strong assertor of royal prerogative and

¹The [Quebec Act (14 Geo. III, c. 83, Sec. 4.) practically recognizes this, in beginning with the express abrogation of the Proclamation and the subsequent commissions.

colonial subordination, and who therefore would undoubtedly have given full attention to any point which would have enabled him to save the king's authority from this decided check), took anything but a mere passing notice of these words. The words of the proclamation are "power and *direction* to our governors:"¹ and that no argument can be founded on the substitution, (probably unintentional and in pursuance of official forms), for these in Murray's commission of the phrase "power and *authority*," is shown by an examination of the case of Nova Scotia some few years previous,—an almost parallel case, the study of which will I think strengthen my argument in every point. The position of those settlers who in Nova Scotia claimed the fulfillment of the promise of the full enjoyment of English constitutional forms was, if anything, weaker than in Quebec, for the fundamental proclamation under which settlement had been invited, emanated not from the King-in-council, but from the Board of Trade.² It promised the prospective settlers that a civil government should be established, "as soon as possible after their arrival, whereby they will enjoy all the liberties, privileges and immunities enjoyed by His Majesty's subjects in any other of the colonies and plantations in America;" and the commission of the governor, issued two months later, grants to him "full power and authority, with the advice and consent of our said council from time to time as need shall require, to summon and call general assemblies . . . according to the usage of the rest of our colonies and plantations in America." In conjunction with such assemblies he and the council were to have full power of legislation, granted in precisely the same terms as are used in the commission given to Murray. And no provision is made, as none is made in Murray's commission, for legislative action without such an assembly. It will be noticed that the phrase

¹The italicising is mine.

²March 7, 1749. See Houston, *Can. Documents*, p. 7.

used in the proclamation above, "as soon as possible after their arrival," is fully as indefinite as that quoted from the other documents, and that the determining of the possibility is apparently left to the governor. In this light he and his successor chose to understand it, and without taking any step towards an assembly proceeded to legislate with the council alone for six years. Finally, in 1755, the attention of the Board of Trade was called to this state of affairs, and it immediately submitted the validity of the laws so enacted to the British crown lawyers, the attorney-general at that time being the William Murray who afterward as Lord Mansfield delivered the judgment of 1774. The answer was that, "the governor and council alone are not authorized by His Majesty to make laws till there can be an Assembly,"—an opinion which was not supported by any arguments other than a reference to the king's order that government should be in accordance with the commission and instructions.¹ The Board of Trade immediately proceeded to compel the governor (notwithstanding his assurances that the legislative authority of the governor and council was not questioned in the province, and that very great difficulties would attend the calling of an assembly), to comply with the original promise, enjoining him moreover to see that one of the first legislative measures of the assembly should be the passing of an act of indemnity for proceedings taken under the laws previously enforced.²

There is no reason to suppose that the conclusion I have thus drawn from the highest legal opinion of the time is affected by later instructions to the governors. To Murray there was issued what Masères calls a "private instruction," granting to him and the council, power "to make such rules and regulations as shall appear to be necessary for the peace, order and good government, taking care that nothing be passed or done that shall in any wise tend to

¹ Houston, *Can. Documents*, p. 18.

² *Ib.*, p. 17.

affect the life, limb or liberty of the subject, or to the imposing any duty or taxes." Carleton's commission in 1768 is accompanied by general instructions, of which the tenth article is to the effect that, whereas he has been directed by the commission "that so soon as the situation and circumstances of our said province will admit thereof, you shall, with the advice of our Council, summon and call a General Assembly," he is as soon as possible "to give all possible attention to the carrying of this important object into execution;" but that, "as it may be impossible for the present to form such an establishment," he is in the meantime to make with the council alone such rules and regulations as shall be necessary, under the same restrictions as were imposed on Murray. These instructions of course emanated only from the executive power, and it is hardly necessary to further contend that as such they were, according to Lord Mansfield, of no avail against the fundamental instruments discussed above. So long as the difficulties in the formation of an assembly were not so great as to occasion the entire suspension of civil government, the power of the Home executive to delegate legislative authority to the colonial one had no existence, for the simple reason that the former was not itself possessed of any such authority. Difficulties such as existed in Quebec had been pleaded by the government in Nova Scotia thirteen years before in an exactly parallel case; but no attention had been paid to the plea by the Crown lawyers or the Board of Trade.

It is manifest, therefore, that the provincial legislation throughout this period was *in toto* null and void. But this does not quite dispose of the problems involved in the matter; for, apart from the question of the legislative competence of the Provincial government, the most diverse opinions have been entertained with regard to the laws legally subsisting throughout the period. The difficulty is with the civil laws only, it being universally

acknowledged that the criminal code accompanied the conqueror without further enactment. But it was also contended learnedly in many quarters, and it was the main article of faith with the English-speaking party in the province, that the fundamental imperial documents by which civil government had been established were adequate to, and had resulted in, the introduction of the English civil law, if not *in toto* at least in the same degree as that in which these laws were operative in the other colonies.¹ It may perhaps be contended that this was the view, not only of the "old subjects," but also in the early official world, and that the legislation whose validity has been discussed above was mainly intended only to provide administrative machinery or applications for laws already established in bulk. The fundamental acts relied on for such an establishment were the capitulation of Montreal (and of the province), September 8th, 1760, the Treaty of Paris, February, 1763, and the Imperial Proclamation of October 7, 1763. It is necessary therefore to briefly consider these.²

The first of these documents is of a purely negative character, Amherst replying to the demand that the Canadians should continue to be governed according to the custom of Paris and the laws and usages of the colony, by the remark that they became subjects of the king. The

¹ The prevailing ideas in regard to the position of the colonies generally as to the introduction of English law, are probably expressed in Knox's *Justice and Policy of the Quebec Act, 1774*. He states that English colonists take with them such statute law only as, (of date previous to the starting of the colony), is applicable to their circumstances, or such of later date as expressly mentions the colonies. The result (he continues), is that the new colony is in most cases without laws, "and the magistrates usually adopt the usages of the neighbouring colonies, whose circumstances and situation bear a near resemblance to their own; and by the tacit consent of the people to their fitness they acquire the authority of laws; and things are conducted upon this (though somewhat arbitrary) footing, until a legislature is formed; and then the laws of the other colonies are taken as models; and with such alterations as circumstances render necessary, they are enacted the laws of the new colony." It is interesting to note that Knox adds that this was the procedure in Quebec, the old laws of the colony being adopted till the legislature could make new ones. If he refers to actual use this is practically correct; but by no means so with regard to the actual legislative steps taken in formal enactment. See below, chapter V, with regard to the province of Grenada.

² The pertinent parts are reprinted carefully in Houston, *Can. Documents*, pp. 32-74.

only bearing of the Treaty of Paris on the matter is an indirect one, Masères contending that the phrase with regard to the toleration of the Catholic religion, "as far as the laws of Great Britain permit," shows that it was the British intention that these laws should be the fundamental rule of government in the province. The *intentions* of the crown are to be considered presently; meanwhile it may be concluded that the Treaty of Paris, except with regard to the criminal law, does not affect the legal point; unless indeed it be considered necessary to combat the opinion that conquest and cession *ipso facto* make at once legal in the conquered territory all the laws of the conqueror. But it should be enough on this point simply to refer again to the opinion of Lord Mansfield (stated by him as a "maxim," the "justice and antiquity" of which were "incontrovertable"), that "the laws of a conquered country continue in force till they are altered by the conqueror."¹ The remaining question then is this. Assuming as Lord Mansfield does, that the king had up till the publication of the Proclamation of 1763 possessed general legislative power within the limits of the constitution, were the English civil laws introduced into Canada by that proclamation?

The proclamation declares that the king has by letters patent under the great seal (i. e., by the governor's commission), "given express power and direction" to the governor to summon an assembly as soon as possible, in the same manner as in the other royal provinces; that he has granted to the governor, council and assembly, when thus brought together, power, "to make constitute and ordain laws, statutes and ordinances . . . as near as may be agreeable to the Laws of England, and under such regula-

¹ In Grenada judgment. See also his letter to Grenville, December 24, 1764, *Grenville's Correspondence*, III, 476. Also reports of crown lawyers on Canada, 1766. There seems no need of further discussing this; the curious are referred further to *Blackstone*, I, 107; Clark, *Colonial Law*, p. 4; Bowyer, *Universal Public Law*, c. 16; Burge, *Commentaries on Colonial Laws*, I, 31; Halleck, *International Law*, p. 824; *Lower Canada Jurist*, II, App. 1. For these references I am indebted mainly to Lareau, *Hist. Droit. Can.*

tions and restrictions as are used in the other colonies;" and that in the meantime "all persons inhabiting in or resorting to our said colonies may confide in our Royal Protection for the enjoyment of the benefit of the laws of England." To which end power has been given to the governor and council to establish courts of justice "for the hearing and determining all causes as well criminal as civil, according to law and equity, and as near as may be agreeable to the laws of England." The first part of this gives a power the conditions of the exercise of which were never realized, and which thus has no bearing on the present question; but the second part, which claims to provide for the temporary non-realization of these conditions, and which directs the use of the laws of England "as near as may be" while at the same time giving no authority to the provincial government directly to enact these laws, would certainly seem to have been considered by its authors at least as in itself sufficient to some extent for their legalization or introduction. But even this would appear not to have been the case. In response to an inquiry from Carleton concerning the putting into force in Quebec of some English commercial law, the Earl of Hillsborough, then secretary of state, replies (March 6, 1768), that as one of those who had drawn up the Proclamation of 1763,¹ he could state "that it had never entered into our idea to overturn the laws and customs of Canada in regard to property, but that justice should be administered agreeably to them, according to the modes of administering justice . . . in this Kingdom;" adding on the point in question, that "it is impossible to conceive that it could ever be His Majesty's intention, signified either by the Proclamation or by the Ordinance for the establishment of Courts of Judicature, to extend laws of that particular and

¹ He was then President of the Board of Trade. Horace Walpole refers to him at an earlier period as "a young man of great honour and merit;" but his subsequent career shows that he possessed little judgment or moderation.

municipal nature to the colony, even if the intention had been to have overturned the customs of Canada."¹ A further official indication of the intent of the proclamation is found, nearer the time of issue, in the report of the crown lawyers, April, 1766, on the legal condition of the province. This, after strongly advising that the local usages be left undisturbed, states as one of the main sources of disorder in the province, the alarm taken at the proclamation of 1763, "as if it were the Royal intention, by the judges and officers in that country, at once to abolish all the usages and customs of Canada with the rough hand of a conqueror rather than in the true spirit of a lawful sovereign."² Whatever this may imply it certainly refers to the Proclamation, not as introductory of any law or legal principle, but as at the most merely indicating an intention, to be more or less gently and gradually carried out. Finally Attorney-General Thurlow, in the Quebec Act debates 1774, refers to the document as a crude production, which "certainly gave no order whatever with respect to the Constitution of Canada," and asserts that it is an unheard-of and absurd tyranny to regard it "as importing English laws into a country already settled and habitually governed by other laws." "This proclamation . . . was not addressed to the Canadians; . . . I would ask from what expression it is, that either the Canadians can discover or English lawyers advance, that the laws of Canada were all absolutely repealed and that a new system of justice, as well as a new system of constitution, was by that instrument introduced."³

Authoritative legal and official statements therefore support the lay judgment in the opinion that the general and vague expressions of the proclamation could not be taken as adequate to the overturning in whole or part of the

¹ Can. Arch., Q, 5-1, p. 344.

² Smith, *History of Canada*, II, 27.

³ Cavendish, *Report*, pp. 24-37.

ancient system of civil law, and the express introduction of English, either common or statute. The province could not be regarded in the light of a new colony, into which the settlers brought with them a certain part of the common law of the parent state; and hence it would seem that the introduction of common law could not be effected any more easily than that of statute. As to statute law, public promulgation has always been essential to validity; but no publication of any portion of that law was ever expressly made in the province.¹

This discussion belongs, however, rather to the realm of legal theory than to that of practical constitutional investigation. For the validity of the legislation in question remained unchallenged either in the province or at home, and no hint of an indemnity for the acts committed thereunder is to be found in any of the discussions connected with the Quebec Act. We have official references now and then to individual ordinances as overstepping the legislative authority, and a few are disallowed by the home government apparently on this ground; but no general objection seems to have been made then or at any time thereafter to the exercise of the legislative power. Nor, stranger still, have modern writers on this period, even those occupying a legal standpoint, taken adequate note of these fundamental considerations; a neglect which must be my excuse for the extent to which I have gone into them.

¹ It is to be noticed in this connection that the general supposition among the English in the province in the earlier years, as to the introduction of English law, was based, not on the proclamation alone, but mainly on the ordinance of September 17, 1764; the inference being that this ordinance was considered necessary to the completing or enforcing of the work of the proclamation. Carleton writes to Shelburne, December 24, 1767, that the whole French constitution and system of law and custom "in one hour we overturned by the Ordinance, . . . and laws ill-adapted to the genius of the Canadians . . . unknown and unpublished, were introduced in their stead." It has been shown above, however, that this enactment was necessarily null and void, as an overstepping of the power of the legislator. See Lareau, *Hist. Droit. Can.*, II, 39-53, for discussion of this matter.

B. General Administration.

It is of course not possible here to enter into any investigation of the constitutional functions at this period of colonial administrations in general, or of this one in particular. My object is simply to indicate generally the lines and limits of practical conduct, with special reference to the peculiar conditions of the province. Such a statement must be taken in close conjunction with the investigation of general policy to which the succeeding chapter is devoted, and especially with the analysis of Commissions and Instructions there attempted.

Murray's commission as governor (1764), invested him, apart from the Council, with the following powers and duties:

- a. Keeping and using the public seal.
- b. Administering required oaths to all other public functionaries.
- c. A negative voice in both council and assembly and the power of adjourning, proroguing or dissolving the latter.
- d. Appointment of ecclesiastical officers.
- e. Pardoning or relieving of legal offenders, so far as that power was delegated to colonial officials.
- f. Certain military powers in time of war.

These seem to be the usual powers, and we need not delay on them, except to notice that the military authority granted Murray was purely a militia one (that is to say, of the extent usually granted), notwithstanding the fact that he represented with some force¹ the necessity of a different regulation on account of the peculiar position of Quebec. The representation was of avail later, for the supreme military command in the province (i. e., over the regular troops on all occasions, as well as over emergency forces in time of war), was practically joined to the civil in 1766,

¹ To Halifax, October 15, 1764. (Can. Arch., Q. 2, p. 206.)

and formally so in 1770. Other changes were made later in the position of the governor, concerning which it is necessary to here make only the general statement that, with the military modification, the result was to place the English governor much more nearly in the place occupied by the old French one.

In regard to the council apart from the governor, and the relation between it and him, I find that during the most of the period, the conditions (defined in the governor's Instructions), were practically identical with the contemporary ones in the older crown colonies.¹ The phrase used constantly in regard to the relations between the council and the governor in the carrying on of joint duties, requires the governor to act with its "advice and consent." This position of the council is defined by Masères as one of "advice and control;" but how far the element of control really entered depended largely of course on circumstances and individuals. How far it could be eliminated under a strong hand may be conjectured from the fact that the governor was by his commission generally, if not always, invested with an unlimited veto power on all legislation, and that the carrying out of executive measures rested almost entirely with him. He had, moreover, on what he might choose to regard as emergencies, power of suspension from the council; besides being in the province the dispenser of general governmental favours, and in most cases the only effectual medium of access to the home administration.² An examination of the council

¹ See instructions to Sir H. Moore, governor of New York, issued November 27, 1765. Or for the Province of Georgia, about the same time. The latter province, in its late establishment as a crown colony, and the presence on its borders of far-reaching tribes of Indians, a source at once of danger and of profit, occupied in the southern system of colonies a position analagous to that of Quebec in the northern.

² How ineffective the "control" of the council practically proved in Quebec is tacitly acknowledged by Masères himself in his later recommendations of such changes in formation and maintenance as would protect it against the governor. In a close examination of the council records throughout the period, I have discovered only one instance where the official language (and I am not unmindful of the untrustworthiness in such

records leaves with us the impression on the whole of a body so docile as to present no obstacle to the will of such a man as Carleton. Abridged as the latter's power really was, he was able to rule more autocratically than even Murray. But that this was not the intention of the home authorities may be conjectured from the changes in his instructions; and we shall see later how after the Quebec Act a more decisive intervention was made in favour of the council.

The council had no stated times or conditions of meeting, the available members being apparently called together as occasion arose. The full list comprised twelve names, and the *personnel* was subject to constant change, only three of the original dozen remaining in the province at the close of the period. Temporary appointments had to be constantly made, and June 22, 1773, the lieutenant-governor writes that no meetings had been held for the last three months of 1772 for want of a quorum. During the administration of Murray we have no details of the council proceedings. This seems due to neglect on the part of the colonial office in not requiring reports;¹ for references elsewhere leave no doubt as to the fact of meetings or the keeping of minutes. The first full report is in 1766, and

connections of official wordings), supports the theory as to the power of the council; and in that instance, if control were really exercised, it can be shown to have been most probably caused by exceptional circumstances. Carleton's attitude toward his council may be judged from his assertion of practical independence soon after his arrival, in regard to an instance where he had expressly convened only a portion of it. And it is to be remarked that his conduct on that occasion was not censured by the home authorities. (See Can. Arch., Q. 3, pp. 259-70.) A few months later he dismissed two of the council on his sole authority. His representation of this matter also proved satisfactory to the home government, which paid no attention to the plea of the aggrieved members, that "the independence of His Majesty's council, not only of Quebec, but in every other province, seems interested in this event." (Can. Arch., Q. 4, p. 40; pp. 198-239, 247.) This is the only instance of the dismissal of councillors met with. Murray's relations with his advisors seem to have been amicable throughout.

¹ A neglect which I have frequently noted, and which I shall emphasize elsewhere as steadily marking the home administration with regard to Canada down almost to the Quebec Act.

from this time down we have regular accounts of proceedings.¹

In comparing the English council down to the Quebec Act with the council under the French régime, we find at first sight a close resemblance in composition. The French council in the last stage of its development, (i. e., from the beginning of the 18th century), consisted, beside the governor, intendant, and bishop, of the same number of ordinary councillors (12), appointed, and apparently removable, in the same way. If we regard the English governor as representing the bishop, and the English chief justice and governor as dividing between them most of the functions of the intendant, (not indeed a very accurate supposition), we may look upon the councils as practically identical in composition. But in considering the respective spheres of action, we discover very notable differences; differences which for the general purposes of government made the English council a very much more important body. In regard to legislative functions the French council had power only in cases not provided for by the established *Coutume de Paris*, the royal edicts, or the ordinances of the intendant (the last especially affecting all parts of the life of the people); while in ordinary executive work its powers were again much narrowed by the great range of the same official, whose prerogatives were always jealously defended and exercised. On the other hand, in judicial matters the French council seems to have had a much wider sphere than the English, and to have acted within it much more constantly and vigorously. So much so indeed that there can be little doubt that it was intended finally to be restricted, so far as the peculiar circumstances of the colony should render ad-

¹ No definite instructions are found as occasioning this change, and it would seem that none such are to be found contemporaneously in regard to the other colonies. Carleton had doubtless, however, received directions of some kind before entering on the government, and the 80th Article of his Instructions of 1768 require him, "upon all occasions to send unto us . . . a particular account of all your proceedings and of the conditions of affairs within your government." This direction does not appear in the instructions of 1775 or 1778, though full minutes continued to be sent.

visable, to much the same sphere of activity as that allowed to the old parliaments of France. Within these limits it seems to have been a much more vigorous, though much less harmonious body than the English council, either of Quebec or of the older colonies. It met weekly, worked with dispatch, and made its influence daily felt in every part of the province. It was by no means under the control of the governor, and was always split up into two, and not unfrequently into three, factions; a want of harmony, however, which does not seem to have seriously affected the satisfactory execution of its main work.

In considering the actual legislation of the period we find the more important ordinances to be about forty in number, of which more than one-half were passed under Murray's administration, or in the first two years. The main subjects treated are as follows: The judiciary (9 ordinances); the currency (3); regulation of retail trade, including markets (14); relations of debtors and creditors (3); police regulations (3); registering of lands, etc. (1); highways (1); protection against fire (3). Measures of an exceptional character provided for the ratifying of the decrees of the courts of justice during the preceding military period, prevented anyone leaving the province without a government pass, forbade the selling of liquor to the Indians, made temporary provision for billeting troops in private houses, and imposed a fine for being more than three months absent from public worship. Much of the commercial legislation is decidedly paternal in tone. The ordinances of the first part of the period are as might be expected somewhat carelessly drawn. One has an *ex post facto* clause; another mixes together in the same enactment two apparently utterly unrelated regulations; a third describes and prohibits a serious offence without stating any penalty. In most cases fines are the only punishment, but in three ordinances (which are not noticed as repealed, and were therefore evidently considered as law through the whole period), the

penalties include imprisonment up to one month, though the instructions debarred provincial legislation from affecting the liberty of the subject. In three others (two of which were disallowed, apparently on this ground), conviction could be secured by the oath of an informer, who got half the fine. It is evident, in short, that the apprentice work of the council was not guided by any particular directions from home. Such directions were, however, issued to Carleton in 1768, and the legislation we have subsequently is apparently devoid of such objectionable features. The minutes of council show the ordinances to have been framed with very considerable care and deliberation,¹ following the lines of English parliamentary practice. In most cases, however, the number of councillors present is merely a quorum or less than one-half the whole.² The ordinances seem from the beginning to have been published in both French and English, but it was not till 1768 that the prior submission of the French translation to the inspection of the council was made necessary before publication. As to the occasion and manner of the initiation of legislation we have few particulars; but in one instance (February 16, 1768), we find an ordinance called forth by the submission to the council through the chief justice (an *ex-officio* member of it), of a presentment of the grand jury in the supreme court; while in another case (April 24, 1769), it seems to have been occasioned simply by the representation of a Quebec magistrate.³ Petitions were no doubt very frequently the basis of action. The

¹ See (e. g.) the procedure in the case of the ordinance of February 1, 1770, for the reform of the judiciary. At a council meeting of August 18, 1769, a committee is appointed to report concerning complaints on the subject. The report appears September 14, and on being approved, the attorney general is ordered to prepare an ordinance embodying its recommendations. The draft of this is submitted at the next meeting (January 10, 1770), is referred to a committee, and returned by it February 1st, with an amendment. The amended ordinance is ordered to be translated into French, and on the translation being approved of at the next meeting, (February 14), the two versions are ordered to be immediately promulgated.

² The Quebec Act ordered that legislation should require a majority.

³ See Can. Arch., Q. Minutes of council of above dates.

manner of publishing ordinances was at first by public reading in the towns on beat of drum, followed by printing in the *Quebec Gazette*. A few months later this was supplemented by an order that all curés should read to their congregation after Sunday services all government measures so published.

The multifarious forms of the council's executive activity can be as easily imagined as they would be tedious to enumerate. Its main and regular functions were the granting of lands, the establishment and maintenance of means of communication, the regulation of trade and manufactures, the appointment and supervision of judicial and local officials, the examination of public accounts, and the consideration of complaints against public officers. It acted in important matters by means of committees and much of its time was expended in the examination of petitions. General measures, aside from ordinances, were known as Proclamations or Advertisements, and seem at times to encroach on the properly legislative sphere; at least it is difficult to see the distinction between matters provided for in some of them and other matters which were clothed with the dignity of an ordinance.¹

The judicial functions of the governor and council, (regulated by the governor's instructions), were the ordinary ones of the supreme colonial court of appeal, and do not require close discussion. I have spoken above of the corresponding powers of the French council as being very similarly exercised, but, through the greater range of appeal, as much more closely and constantly touching the people, even making allowance for the fact that the English council was not hampered by a parallel jurisdiction such as that of the intendant. The instances of judicial action on the part of the latter at any part of the

¹ None of these instruments appear after 1768. Many of them were simply the re-issue under the colonial seal, of general or special acts of the home executive.

period are few in number,¹ there being none under Murray's administration. Notwithstanding one dubious incident,² the council's judicial activity seems to have been beneficial. Its application of English constitutional principles, and the thoroughly English spirit of its procedure, are illustrated by a case in 1767 which seems at first sight a direct overstepping of its jurisdiction.³ But that it was not given to vexatious or illegal interference with the courts is shown not only by the rarity of such cases, but also by the record of a couple of instances in which appeals were dismissed as not cognizable. Nevertheless, a general oversight seems to have been kept on the judiciary, especially in its lower stages. As a striking illustration we may notice here the action taken on receipt of well founded complaints against many of the justices of the peace of the District of Montreal in 1769,—complaints which a few months later were more fully met by an ordinance greatly curtailing the power of the justices.⁴ In the meantime, and almost immediately on receipt of the complaints, a circular letter was addressed to the offending magistrates, in which the conduct complained of was censured in the strongest terms, and particular directions were given as to the method of amendment.

C. Judiciary. Civil Service.

The commission issued to Gov. Murray in 1763 granted him power, in conjunction with the council, "to erect,

¹ This is mainly due of course to the restriction of civil appeals to cases involving a high money value (£300).

² This was a case of the reversion by the council of a judgment of the court of common pleas. Appealed to the crown, (the only such appeal of the period), the Privy Council decided, (after a delay of four years), to uphold the original court. But to the consequent order the provincial council seems to have paid slight attention; for in 1774 we find an apparently well-founded complaint to Dartmouth from the original appellant in the case, to the effect that though the decision of the Privy Council had been transmitted to Quebec, the governor and council had taken advantage of a technical difficulty to refuse all reparation. The case seems from first to last a reversion and denial of justice. (See *Can. Arch.*, Q. 10, pp. 94-104).

³ See *Can. Arch.*, Q. 4, p. 230.

⁴ See full details in *Rep. Can. Arch.*, 1890, p. xvii, and following.

constitute and establish such and so many courts of judicature and public justice" as should be found necessary, these courts being declared by the previous proclamation of October, 1763, to be for the "hearing and determining all causes as well criminal as civil according to law and equity, and as near as may be agreeable to the laws of England." The institution of the judiciary in accordance with the powers then given was through the provincial ordinance of September 17, 1764, which remained for the most part the basis of the administration of justice throughout the whole of the period. Its main provisions were:

1st. Establishment of a superior court, or Court of King's Bench, presided over by a Chief Justice, "with power and authority to hear and determine all criminal and civil causes agreeable to the laws of England and to the Ordinances of the Province." To sit twice a year at Quebec, with the addition of a court of assize and general goal delivery once a year at Montreal and Three Rivers. Appeal could be made to governor and council.

2nd. Establishment of a Court of Common Pleas, to determine all cases concerning property above value of £10, with appeal to King's Bench concerning £20 or upwards, and to council directly for £300 or more. The judges "to determine agreeably to equity, having regard nevertheless to the laws of England, as far as the circumstances and present situation of things will admit, until such time as proper ordinances for the information of the people can be established by the government and council agreeable to the laws of England:" but "the French laws and customs to be allowed and admitted in all causes where the cause of action arose before October 1, 1764."

3rd. Establishment of justices of the peace in the different districts, with power to each in his own district "to hear and finally determine in all causes and matters of property" not exceeding £5, and to any two to do the same

up to £10. Three were to be a quorum, with power of holding quarter sessions and determining up to £30, with appeal to the King's Bench, while two of the body were to sit weekly in rotation in the towns of Quebec and Montreal.

I have elsewhere spoken of the marked English character of this ordinance and of the manner in which it was received in the province.¹ There are no traces of reference to the old French judiciary, and apparently the only indications that the legislators were aware that the community for which they were legislating was not an English one, are the concessions as to the use of French procedure and law in causes begun before October 1, 1764,² the admission of French Canadians to juries in the King's Bench, (apparently not in the Common Pleas), and the admission of Canadian lawyers to practice in the Common Pleas, (apparently not in the King's Bench). I shall elsewhere detail the extension of these privileges by instructions from home; instructions which it will be remembered did not come into effect during Murray's administration. The only other judiciary enactment of importance under Murray is an ordinance of March 9, 1765, by which all juries were directed to be in future summoned from the province at large without regard to the vicinage of the action or crime. This remarkable interference with one of the fundamental principles of the jury system seems to have been occasioned by temporary circumstances, and was remedied by Carleton very soon after his arrival in the province.³

¹To what a large extent the legislators believed that they were introducing English law by this ordinance is shown by the amending one of November 6 following. For later opinions as to it, see Carleton, December 24, 1767, (Can. Arch., Q. 5-1, p. 316), and Reports of the Board of Trade, 1765, 1766, (Can. Arch., Q. 3, pp. 53, 171.) See also above, p. 336 note.

²See also ordinance of November 6, 1764, for "quieting people in their possessions."

³Ordinance of January 27, 1766. This ordinance was approved. It should be considered in connection with that interference with the jury system in Massachusetts, which called forth the protest of the Massachusetts assembly July 8, 1769, against measures by which "the inestimable privilege of being tried by a jury from the vicinage . . . will be taken away from the party accused." (4 *Amer. Arch.*, I., 24.)

The instructions to Carleton of 1768 imply no change with reference to the judiciary, and taken literally would indeed intimate an intention of remaining closely by the English law and procedure. But that this was due simply to the careless following of old official forms is shown by later transactions. For not only was such an idea disregarded by the governor in his general policy, but the first important judiciary ordinance of his administration (February 1, 1770), is a direct abandoning of English institutions and a very considerable step toward the adoption of French. The ordinance was occasioned by that oppressive conduct on the part of justices of the peace in the district of Montreal which has been already mentioned, and had been prepared after an investigation by a committee of the council with the Chief Justice at its head, and an attempt to remedy matters by a letter of censure to the offending justices. There seems no reason to doubt the necessity and justice of the ordinance.¹ That of 1764 had given to the justices a power of final determination in matters of property far exceeding that ever exercised by similar magistrates in England (who, as the committee of council pointed out, were of a much more influential and disinterested class); and even this large power had been by some constantly overstepped and exercised in a most wantonly oppressive manner. Accordingly all jurisdiction (either singly or jointly), in matters of private property was now taken away and mainly transferred to the Common Pleas, the sittings of which were greatly extended and for which in such cases a definite line of procedure was laid down. The ordinance is also marked (as the old subjects complained), by the discretionary power granted to the judges. This, and the provision that the new jurisdiction given to the common pleas could be exercised by one judge (acting evidently in a summary manner), together with the prohibition of imprisonment and sale of lands in cases of debt,

¹ See *Rep. Can. Arch.*, 1890, pp. xvii-xx, 1-9.

are distinctly French features, and mark the measure as a considerable step towards the restoration of French procedure in civil matters. That this was intended is shown by Carleton's explanation when transmitting it home; he says plainly that its aims were the "reducing the justices of the peace to nearly the same power they have in England," and the "reviving part of the ancient mode of administering justice in the Province."¹ And that it was so regarded by the general public is evident from the vigorous and numerous signed memorials against it from the merchants of Quebec and Montreal; representations which cannot be disposed of, as Carleton tries to do, as merely the angry and hungry voice of the dispossessed justices.² For the objections raised are not against the depriving of these justices of their ill-used power, but against the unusual and inadequate character, (in the opinion of the memorialists), of the substituted procedure. The ordinance was approved by the home government without delay and without any remark on its inconsistency with the instructions of 1768. It was a fitting prelude to that article of the Quebec Act which enacted that "in all matters of controversy relative to property and civil right, resort shall be had to the laws of Canada as the rule for the decision of the same."³

I have discussed elsewhere the questions connected with the dispute regarding the validity in the province of French

¹ Can. Arch., Q. 7, pp. 7, 89. For ordinance see p. 12, and for British memorials, p. 95.

² It is to be repeated that the English party had protested strongly in 1764 against the great powers now taken from the justices.

³ It should be noted that the only complaints that appear throughout the period on the part of the French Canadians with regard to the administration of justice, (apart from the matter of fees), are those remedied by this Ordinance. And the justices whose acts are complained of had not only been entrusted with powers greater than English law granted in the mother country, but had abused even these. No argument, therefore, can be drawn from the matter to show that the Canadians here displayed hostility to English law or judicial methods. But it must of course be conceded that the incident could not have had a favorable effect upon them; the effect probably was to confirm and continue the avoidance of the courts. The abuse had been fully removed, it should be clearly noted however, four years before the Quebec Act.

and English law; and it is well to bring here the consideration of the more practical and even more obscure problem as to the laws actually *used* throughout the period. This is one of the most important of the questions connected with the introduction of English institutions; and it becomes of even more immediate interest from the standpoint of the policy and effects of the Quebec Act. One of the main bases of both the arguments for and the later oft-expressed approval of that measure, was the belief that the establishment thereby of the French civil law and procedure, as relieving the French Canadians from the grievous oppression of a foreign code, would be and was most effective in so inspiring them with gratitude as to keep them loyal to the British connection. We shall see later that they were not loyal; we have now to consider whether the Quebec Act could really be expected to have the effect attributed to it. And so far as the present matter is concerned, it will be found that the French Canadians were not suffering from legal oppression in any sense, and that therefore they could not and did not experience with the Quebec Act any sudden or marked relief. Gratitude, or an enlightened view of self-interest in connection with the measure influenced only classes and individuals who did not need the additional reason for preferring the imperial to the revolutionary connection; the mass of the people perceived no such change of conditions as to form an offset to other very clearly discerned and most unpopular parts of the enactment.

That this is a totally different enquiry from the previous one as to legal validity we very soon discover. For a slight investigation shows that neither the governmental nor the popular opinions (at least among the "old subjects"), as to the laws which were strictly valid, very much affected the action of the great body of litigants, and that throughout the period the administration of civil justice was in a state of compromise and (from the legal standpoint), hopeless con-

fusion. Even the governmental opinion and practice on the point were sadly at variance, especially in the latter part of the period. Neither Murray nor his advisers seem to have been troubled with any doubts as to the validity in the province of all English common and much English statute law, or of their own legislative competence, within certain limits as to penalties, to further apply that law to any extent that might seem desirable. Whether they considered themselves, in the various specific ordinances, to be making English law valid by express enactment of it, or to be merely regulating the machinery by which the law, already in force through the fundamental documents on which the civil government rested, was to be put in operation, is not a matter of importance; I need only refer again to the language of the ordinance of September 17, 1764, in regard to the legal principles which were to guide the courts.¹ These provisions remained in force throughout the whole period, legally affected only by the slight compromises shortly to be mentioned; for even the ordinance of 1770, which was intended radically to amend that of 1764, and which was passed by a governor and council fully convinced that French civil law was about to be re-established, and fully in sympathy with the movement, makes no attempt whatever to anticipate events. And it is also to be noticed that up to 1770 the justices of the peace had authority to exercise the very large civil power which it was the object of that ordinance to take from them, according to a form of commission unmistakably based on the English law, directing the recipient to act "according to the laws and customs of England, or form of the ordinances and statutes of England, and of our Province of Quebec."²

Even in these commissions, however, there are indications of that policy of compromise and withdrawal in regard to English law which was one of the guiding principles of

¹ See above, p. 345.

² See Masères, *Commissions*, pp. 135-8.

Carleton's executive administration; it is further manifest in many ways that Murray had also pursued this policy more or less from the very first. We find in the fundamental judiciary ordinance of 1764 provision made that in the court of Common Pleas the French laws and customs shall be admitted in all causes between French Canadians "where the cause of action arose before October 1, 1764;" and in an amending ordinance a few weeks later, entitled "An Ordinance for quieting people in their possessions," it is ordained that until August 10, 1765, the tenures of lands granted before the conquest and all rights of inheritance in the same, should remain as they had been under the French "unless they shall be altered by some declared and positive law." No such law was ever enacted, and thus it will be seen that even for those who maintained the validity of the provincial legislation, the legal side of the position assumed a very confusing and indefinite aspect.¹ Certainly the popular opinions as to the bounds of valid law were of the most diverse and clashing forms, and the indefiniteness and perplexity thus created was one of the chief grievances of the period. The confusion of opinion and practice on these points is referred to by Thurlow in the Quebec Act debates as beyond all description; another speaker asserts that this confusion had never been so great as at that time (1774).² Lord Lyttleton in his "Letter to the Earl of Chatham on the Quebec Bill," (1774), draws a striking picture of the almost anarchical state of things in the province,—a picture which is of interest mainly as showing how matters were presented to the English public.³ For that it must be a greatly exaggerated one is

¹ See Carleton's evidence, 1774, as to the confusion in laws of property. (*Cavendish, Report.*)

² Which is to be expected from the increasing divergence between the practice and policy of government and its constitutional and legal bases of action.

³ The letter is in defense of the Bill. It asserts that in Canada "the French laws prevailed alone till 1764, when the English laws got a footing. The governors and officers of justice [were] always doubtful which to take for their guide, sometimes preferring the English, sometimes the French laws, as each seemed applicable to the case before them.

shown by several reflections. It was in the first place the interest of the government party, as upholding the Quebec Act, to give a strong impression of the bad state of things in Canada; the opposition on the other hand denied the state of chaos represented. It will be remembered, moreover, that a state of things which to lawyers in England, acquainted only with the imperfect and contradictory documents on which government had been constituted, and with the complaints of partisans, might seem confused and dangerous to the last degree, in the peculiar state of Canada was not likely to prove so fatal. The condition of things here described would seem certain to paralyse all energy and prevent all progress in the province; but we do not find in fact these results. Industry and enterprise were undoubtedly much hampered; but yet the only department of commerce that did not largely increase was the fur trade, and this was injured and impeded not so much by the confusion of law that prevailed in Quebec as by the want of all law in the regions outside its jurisdiction.

How then was the province preserved from the natural consequences of the confusion and uncertainty that certainly did exist? Partly from the fact that on the basis of a compromise system initiated by the government itself, and more than connived at in the courts, litigation continued to be conducted chiefly according to the old laws; mainly perhaps because the mass of the people resorted but slightly to the established courts. I have shown above that during the military period the French law and customs seem to have been closely followed wherever they could be discovered. A close study of the later period leads to the conviction that, in at least all matters affecting private property (i. e., in almost all the matters in re-

One year a proclamation, another year an instruction to a governor, another year a local ordinance, changed the principle and varied the course of their judiciary proceedings. In this fluctuation no man knew by what right he could take or give, inherit or convey, property; or by what mode or rule he could bring his right to a trial." (Pamphlets, Can. Archives, Vol. 62.)

gard to which nine-tenths of the people would be likely to come into contact with the administration of civil justice), these laws and customs continued to be given validity even in the highest courts. Under the fundamental ordinances quoted above, such validity could not be denied in a large number of cases. In all cases, moreover, a large discretionary power could be used in the court of Common Pleas through a liberal interpretation of the clauses directing its action; and much scattered evidence could be brought forward to show that the law administered in this court was French law wherever the use of English would have seemed to work injustice. In regard to the court of King's Bench, which was supposed to be adhering to English law with special closeness and to be bound to reverse appealed judgments founded on any other, we have the direct evidence of Chief Justice Hey before the Commons in 1774, that in all suits respecting property Canadian law and customs had been fully admitted by him, and that juries in the court had always been in the habit of regarding these customs as fully as juries in England regarded English ones. Further, that in appeal cases, (to which the court was practically confined), he had always determined by the rules on which the case had been originally decided. In what seems without doubt to be his report on the judicature in 1769,¹ after stating the legal changes that had been worked by the supposed introduction of English law in 1764, he adds that "these things have not yet been practiced,"—a statement which would seem to refer to the whole judicial administration. Masères testifies in 1774 that no inconvenience has as yet been occasioned in the province by the English laws so far as they had been experienced through the decision of the courts; adding that if these had been enforced in regard to landed property great uneasiness and confusion would doubtless have re-

¹ Anonymous paper in Lower Canada Jurist, Vol. 1.

sulted. This statement is in support of the more explicit assertion in his report of 1769, that in the main with regard to landed property the Canadians had universally adhered to their former laws and customs. There is no reliable evidence to be set over against these statements, made by men who for years had been intimately connected with the administration of justice, and who had kept up their relations with the province during the whole period; we must conclude therefore that outside of strictly commercial matters even the litigious among the French Canadians were little if at all affected by English law. That law was used of course in all matters confined to the old subjects. With regard to suits between litigants of different nationalities it seems safe to assert that Canadian land law and customs were given full validity,—a course which would commend itself even to the English party after the reversion in 1770 to the French methods of tenure. In commercial matters on the other hand the English law seems to have obtained without much demur; but there is no reason to suppose that there was here any such divergence of principle as to introduce many disagreeable changes.

But, apart from the courts, it is evident that the question of codes was not a burning one among the people at large, for the reason that the main body had very little to do with the administration of justice, civil or criminal.¹ Carleton writes to Shelbourne December 24, 1767,² that "The people notwithstanding³ continue to regulate their transactions by the ancient laws, tho' unknown and unauthorized in the Supreme Courts, where most of their transactions would be declared invalid." He adds that he has met only

¹ Carleton testified before the House of Commons in 1774 that there were very few trials for offences on the part of the common people.

² Can. Arch., Q. 5-1, p. 316.

³ That is, of the use or establishment of English law in the courts. Carleton is writing at the end of the period during which the Anglo-legal movement had been freshest and strongest, and the last part of the statement is shown above to be incorrect.

one Canadian "who sees the great revolution [i. e., in law] in its full influence." This evidently means that the Canadians kept clear of the courts, making use of their former laws and customs through the aid of those persons who had in large measure arranged their difficulties during the military period.¹ Masères in 1774 says the greater part of the French Canadians remain ignorant of the extent of the changes and have proceeded in regard to their lands on the assumption that the ancient laws and usages were still in force. And as he goes on to say that no litigation has yet arisen to give occasion for decisions which would make them better informed, we must conclude that he means they had not in these matters resorted to the courts. In the Quebec Act debate Attorney-General Thurlow made the statement (uncontradicted), that "if any dispute arose there was no instance of the Canadians resorting to the English Courts of Justice, but they referred it among themselves."² These statements are supported by indirect evidence and justify us in concluding that the main body of French Canadian litigants had not resorted to the courts, but had used through private instrumentalities their old property laws and customs.

The main conclusion I have reached therefore is that, for the various reasons discussed above, the judicial conditions existing in Canada up to and at 1774 were not such as to cause the formal re-establishment of the old civil law by the Quebec Act to affect the mass of the people in any considerable degree. But nevertheless the situation was one of such confusion and uncertainty as made imperative some decided act of settlement. It may justly be urged that, even in the absence of material grievances, the very fact that the Canadians kept aloof from the courts showed

¹ See here also the evidence before Commons, 1774, to the effect that the noblesse kept out of the courts from pride, and resorted to arbitration.

² Cavendish, p. 31. Thurlow was speaking from a partizan standpoint, but he had gotten up Canadian affairs thoroughly, having prepared an elaborate report after examination of all the available material.

a degree of dissatisfaction or distrust, if not dread, that called for immediate action. Moreover, that much friction and complaint existed cannot be denied. But a close examination of the manifestations of this will show that it was in large degree really political in origin, or that it was inspired not so much by oppression in the every day operation of law as by uncertainty with regard to the future. It is rather the apprehension of the educated and intelligent non-litigant¹ than the specific cry of the actually aggrieved. Where it is really the latter it will be found again that it is the expression of dissatisfaction with, not new law, actual or supposed, but new procedure. For there can be no doubt that this latter contrasted very unfavorably with the old in regard to the essential features of expense and expedition. So far as English features were at all responsible it is probable that the peasantry were kept from the English courts by these more evident changes and not by legal differences of which they were wholly ignorant.² In the letter quoted above, Carleton, after his strong statement as to the ignorance of the people in regard to the great legal changes and their avoidance of the courts, adds, "The present great and universal complaint³ arises from the delay and heavy expense of justice," the courts having "introduced all the chicanery of Westminster into this impoverished Province." The judiciary under the old régime had been the most praiseworthy part of the administration, being effective, easy of access, and marked especially by expedition and inexpensive methods. It had been largely and beneficially inspired by the old French paternal attitude, the judges being always ready to interpose for settlement without the expense of a trial. In

¹ Neither noblesse nor clergy went into the courts.

² See especially on this point the evidence of the provincial officers before the Commons, 1774. (Cavendish, *Report*.)

³ A good instance of the carelessness and exaggeration of the official language of the time. His own previous statement would show that such complaint must have been confined practically to the upper or educated classes.

all these points the change was decidedly for the worse, and taken in connection with the unfamiliar appearance of even the better parts of the new procedure, make it unnecessary to look further for the full explanation of whatever specific complaint or general apprehension is to be met with. With regard to seigneurial jurisdiction, it is not probable that the new régime had made any very noticeable difference. For though Parkman seems to think that the lower forms of that jurisdiction continued to be exercised in Canada down to the conquest, Carleton asserts that at that time there were hardly three feudal judges in the whole province.¹ And at all times there had been an appeal from the seigneurial to the royal courts in all matters involving more than one-half a crown. With regard to the reception and use by the Canadians of the most important feature of the changed procedure,—the jury,—we have the most conflicting statements; but Burke's opinion² that they had expressed no dislike of the new institution, directly or indirectly, seems thoroughly well-grounded.

As to the general civil service, I need delay here only on those features which would affect the popular estimation of the new régime. The great abuses of the later French administration might be expected to insure a favorable reception even of the very imperfect English one; but nevertheless we meet with considerable complaint. The main cause of this was the fact that the more important positions, being filled by patent from the home government, were practically independent of the provincial administration, and were almost always executed by deputy, the appointees renting them out to the highest bidder. The abuse is succinctly and strongly put by Murray in March, 1765. He writes: "The places of the greatest business in the province have been granted by patent to men of interest in England, who have hired them

¹ The statement is supported by strong contemporary evidence.

² Cavendish, *Report*.

to the best bidder, without considering the talents or circumstances of their representatives. One man (e. g.) who cannot read a word of French, holds five such offices."¹ And in his defense at the close of his administration he attributes the difficulties of government largely to "the improper choice and the number of the civil officers sent over from England," not one of whom understood French, and the compensation of whom depended entirely on their fees. Power of supervision and suspension was indeed given to the governor, but that this was not sufficient for the remedying of the evil is shown by Carleton's letter to the treasury, January 12, 1775, just at the close of the old order of things. In this he speaks of the misfortunes hitherto attendant on the Provincial government, in that the inferior officers, "proud of the superior weight and influence of the Boards from whence their Commissions issue," and relying for protection on their patrons, "almost lose every idea of that subordination so essential to good order," and are in all measures of the colonial administration "for the most part cold and at best neutral."² This was written in the belief that the operation of the Quebec Act would remedy the evil; for though no direct mention is made of the matter in that Act or in the instructions that accompanied it, Carleton refers later to the clause in it "which vacated all commissions," as being "in consequence of complaints;" it being thereby intended "to put a stop to all deputations, and to compell all who had offices here to reside and do their duty in person." It is evident that there was here a very serious abuse, capable of paralyzing the best efforts of government.

Inseparably connected with the subject of the patent offices is the matter of fees in general. For as Murray said in 1766 the compensation to the deputies at least depended entirely on what could be wrung from the people and the

¹ Can. Arch., Q. 2, p. 377.

² Can. Arch., Q. 11, p. 122.

government in this form. It is not necessary to suppose that these fees were upon a scale of unheard of extortion; indeed Carleton, their most determined opponent, expressly states that they were not greater than in the other provinces,¹ and Murray declares that he was ordered by his instructions to establish them on that scale.² The hardship consisted in the fact that a system which had been adapted to the ability of the most prosperous of the other provinces was suddenly fastened upon one utterly impoverished, and with a people unused to such payments. The heaviness of the burden is apparent in every direction. May 14, 1767, Carleton writes, "Upon my arrival not a Canadian approached me that did not complain of the number of fees demanded, and particularly of the exorbitant expenses that attended the obtaining any redress by law;" adding that the fees on the registering of land alone (a requirement which ultimately was not enforced, probably from this reason), would have amounted to more than double the current coin of the province. He encloses a copy of the fees as fixed upon by Murray and the Council in 1765;— a document of about twenty closely written pages of large foolscap, the fees ranging all the way from £6 to 3d, and the total number of official acts so to be remunerated being about 350. The tendency of Murray's administration was not to restrain such expenses,³ but Carleton from the first resolutely set his face against them, and one of his earliest acts was to relinquish his own personal fees.⁴ His vigorous statements were not wholly disregarded by the home government, but no decided measures of alleviation were adopted at any time within our present view. The heedless injustice which had ordered the fees to be established on the same scale as in the other colonies seems indeed to have been early repented of, for in the instructions of the

¹To Shelbourne, May 14, 1767. (Can. Arch., Q. 4, p. 173.)

²Can. Arch., *Cal. Hald. Coll.*, p. 92.

³See *Advertisement* of the Council, Aug. 12, 1765. (Can. Arch., Q. 5-2, p. 812.)

⁴See *Rep. Can. Arch.*, 1890, p. xiii. Also Can. Arch., Q. 5-2, pp. 445-82.

Receiver General early in 1766 it is ordered that the salaries and profits of the inferior officials connected with the Provincial treasury shall be no greater than under the French government. In July, 1768, Hillsborough writes to Carleton in answer to his representations of abuses, that the king is determined to stop the evils connected both with the patent offices and with the fees in general; that the subject has been laid before the Board of Trade, and that in the meantime he is to make temporary regulations for the restraining of fees within bounds.¹ The new instructions of the same year contain, however, only the indefinite direction "to take especial care to regulate all salaries and fees belonging to places, or paid upon emergencies, that they be within the limits of moderation." It is most probably in pursuance of this recommendation that we find an entry in the public accounts for the first half of 1769, of a payment to the Chief Justice of £100 "in lieu of fees, at the rate of £200 per annum." In April, 1770, we hear of a committee which has "the fees of the public officers of this province under consideration;" but nothing seems to have been then effected, and for the remaining four years the matter, with all similar ones, awaited the expected radical change in constitution.

D. Finances.

It remains only to make a brief statement as to the finances of the provincial administration. It is in the consideration of the financial condition of Quebec as contrasted with that of the other Crown Provinces that we have brought home to us most vividly its peculiar and dependent position. In all the others, financial affairs were, through the Assemblies, in the hands of the people, and outside of the customs Great Britain had, normally, neither control nor expense. In Quebec on the other hand not only was the revenue (the word is here a misnomer), almost entirely fur-

¹ Can. Arch., Q. 5-2, p. 602.

nished and expended¹ by the home government directly, but the probability is that but a very small part of it had any connection with the province as a source. We have seen that the Quebec legislative authority was from the first expressly prohibited from "imposing any duty or tax;" and that the Council was more mindful of this injunction than of other such restraints is shown directly by entries in the Council minutes,² and by the fact that none of the ordinances disregard it. This restriction was to be in force only till an Assembly should form part of the legislature; but that it was intended even then to keep a large measure of control over the finances, and thus to prevent the growth of the obstacles which beset the royal path in the other provinces from this key to the situation having fallen entirely into colonial hands, is probably shown by the directions concerning legislation embodied in the instructions of 1768.³

It is evident that if my argument as to the legislative power subsequent to the Proclamation of 1763 be correct, revenue could be legally drawn from the province during the period only through the customs, or through such other special rights and prerogatives of the Crown as were attached to it under the French régime, and might be contended to have passed over unimpaired with the sovereignty of the country. I say *other* special rights, for it is clear from Lord Mansfield's judgment that the only customs duties that could be collected were those which had been found in force at the conquest,⁴ and it seems equally certain that there is no radical distinction between these and such other dues as lands (e. g.) had hitherto been subject to. All together would seem to have been simply transferred in the same manner as other public property,

¹ At least after 1766, when the Receiver General was appointed.

² Can. Arch., Q. 3, pp. 160-70; Q. 8, p. 126.

³ See below for general discussion, chapter V, section C.

⁴ See resolution of Imperial Privy Council, Nov. 22, 1765, concerning requiring of old duties. (Can. Arch., Q. 2, p. 472.) See also below for suits against Murray in 1768.

and it is only on the impossible supposition that all French law and custom had been by the conquest and cession immediately abrogated that the right of the crown to them could be disputed. But these principles seem not to have been clear to the authorities at the time. Action in regard to the old land dues was no doubt hindered further by the confusion and uncertainty that prevailed as to the laws in general, and it seems certain that no revenue was derived from this source at any part of the period. The new rents from soccage lands, and the profits from the judiciary, we may also regard as not worth consideration. The fur trade monopoly in the northeast had been a considerable source of profit to the French government, and had passed unquestioned to the English; but it was leased through the whole of this period for £400 per annum.

The only remaining source of revenue was the customs, and it is to this quarter that we must look for any appreciable lightening of the burden of the English taxpayer. Unfortunately, though the references to duties are frequent, and though they received the careful attention of government from the first, we have no conclusive reports as to the amounts actually collected. On the conquest duties had been imposed by the commanding officer and levied until the establishment of the civil government; the rates required being slightly in excess of the old French ones, and the whole amount thus collected being stated as £11,000 sterling. In 1768 actions for recovery were brought against the governor in the British Court of Common Pleas, on the ground that the military government had no authority to impose duties; but on it being shown that these were substantially the same as those fixed by the French, the plaintiffs agreed to accept a verdict only for the excess. In accordance with this verdict we meet with various entries in the Quebec Council minutes in 1770 of orders for repayments of this excess to various other complainants, the sum repaid amounting in all to £2,000. So that it re-

sults that the duties levied during the first four years of the occupation (when commerce was of course very much depressed), would yield about £2,000 per annum. This amount we should expect to be largely increased during the later years; but there is no probability that anything was collected under the civil government.¹ A Provincial proclamation of May, 1765, seems to be intended to apply the Imperial customs Act of the previous year; but as more than a month later Murray reports that he is and will be "entirely at a loss how to carry on the business of government without money,"² it seems to have effected no change in the situation. In July of the same year the home government took the finances of the province more directly under control by the appointment of a receiver-general, who was to be independent of the provincial administration, was to receive all moneys and warrant all expenditures, and was to report directly to the Treasury. His instructions³ direct him to collect the old French duties, and in doing so, "to strictly conform himself to the ancient customs and usages of the said country before it was conquered by His Majesty." Of the receipts the surplus, after "defraying the expenses of civil officers and contingencies of government in the Province," was to be remitted home. The only result apparently of the new official's efforts were the ineffectual actions against the English traders which have been discussed above.⁴

From this consideration of the various possible sources of provincial revenue, we may conclude that the amount derived therefrom was so slight as to make very little difference to the Imperial treasury. As to the total expenses

¹ Murray writes to the Board of Trade, March 3, 1765, that he has long expected in vain "the decision of the rum duties," and does not know "how government is to be carried on here without a shilling. I am little solicitous about my own salary, the amount of which is still unknown to me, but the indigence of the judge and other officers sent from England is equally alarming and hurtful to the public." (Can. Arch., Q. 2, p. 377.)

² Can. Arch., Q. 2, p. 424.

³ See Masères, *Commissions*, pp. 156-9.

⁴ Pp. 313-16.

of the civil establishment we have no definite statements, but from various references it may be concluded that they were about the same as under the last years of the French régime.¹ Masères states that the amount drawn yearly on this account from the Imperial treasury was about £10,000. In the "Returns on Public Income and Expenditure," (printed for House of Commons, 1869), Quebec is specially mentioned only for the year 1768, when an item of £6,722 is set down for its civil establishment. The "Annual Register" and "Parliamentary History," which apparently aim to give detailed financial statements from year to year, do not afford any further light, no direct mention being made of Quebec, although there are given regularly the estimates for the civil establishment, not only of Nova Scotia and Georgia, but also of East and West Florida, which had been granted civil constitutions at the same time and in the same manner as Quebec. The only explanation seems to be that (in accordance with the general neglect and mismanagement of Canadian affairs), owing to the prominence of the military service in Quebec, the accounts were included under military heads. The civil list established in 1775 (see Carleton's instructions), amounted to about £18,000, and of this about £8,000 can be directly attributed to additional expenses caused by the enlarged sphere of government under the Quebec Act. This then brings us back to Masères' estimate.

¹ Murray states (*Report*, 1762), that in 1757 the total civil expenses of the French administration amounted to £11,158. The revenue of the same year (apparently drawn mainly from the fur trade), was £13,961.

CHAPTER IV.

THE SPIRIT AND DEVELOPMENT OF ADMINISTRATION.

In the previous chapter I have attempted a description of the surface conditions of government in the Province of Quebec throughout our period,—such a description as might have been given by a contemporary, especially a contemporary official. My object in the present chapter is to go behind the scenes, and examine the animating spirit under the official forms, with special reference to development in the bases of action. In so doing regard will be had mainly and constantly to the Quebec Act as the centre of the inquiry, with the purpose of seeing what light, if any, may thus be thrown on its genesis and intent.

A. The Colonial Governors.

My investigation here has therefore to do almost entirely with the Home or Imperial Administration. But, as the chief of the influences brought to bear on that authority, it will be necessary first to consider the general spirit and policy of the heads of the colonial government.¹ It is evident that a large discretion was necessarily always left to the Provincial Governor; but the normal limits of this discretion were at this time in the case of Quebec much extended from the fact that during the early part of the period the home government had no decided or consistent

These were, (a) *Gen. James Murray* (1727-1794), younger son of a Scotch peer. Brigadier with Wolfe at capture of Quebec and left in charge of the conquered province during the Military Period, he was Governor-in-Chief from Aug. 10, 1764, to Oct. 26, 1768, but left the country finally in June, 1766.

(b) *Col. Guy Carleton* (1724-1808), of an Irish family, was at the siege of Louisbourg and Quebec, and came to the province as Lieutenant-Governor, September, 1768. He held that position until October, 1768, when he became governor-in-chief, so continuing till June, 1778, though absent from the province August 1st, 1770-September 18, 1774. Made Baron Dorchester and reappointed to Canadian Government, 1786.

policy, and that in the latter part the expectation of a speedy general constitutional settlement joined with other factors in causing a steady neglect of the immediate affairs of the province. It is therefore desirable to see in what ways and to what extent the actions of the Home Administration were based on the representations of the provincial authorities.

Gen. James Murray had been connected with Canada from the first hour of English rule there, and when put at the head of the new civil government had had almost five years' intimate knowledge of the country. If personal characteristics had prevented his fully profiting from his experience, there can be no doubt of his integrity, and of his strong desire to see justice done and the best interests of the country advanced. As has been shown above both he and the other military commanders seem from the first to have made every effort, consistently with the safety of the new possession, to reconcile the Canadians to the new rule. These same motives were no doubt as strongly present during his control of the civil government. That his success was not commensurate with his efforts, and that the two years of his civil administration were a period of constant turmoil, cannot, however, be denied; nor yet that the explanation must be largely found in his personal character, and in a want of tact and discernment which would have insured failure in a much less difficult situation. He was hasty in judgment and violent in temper, and his military training had prejudiced him in favour of the old Canadian military aristocracy, which he credited with more influence over the people than it had for a long time possessed. The same cause blinded him to the real character and importance of the new English-speaking commercial element. A light is thrown on Murray's character by some observations in his own defence just before the installment of civil government.¹ After refer-

¹ To Board of Trade, April 24, 1764. (Can. Arch., Q. 2, p. 107.)

ring to the difficulties that have attended the military rule owing to the character of the various sections of the population, and of the caution he has exercised in enforcing martial law, "knowing how jealous the people of England are of the military arm, upon all occasions, and how eagerly they would have laid hold of the least shadow of blame," he proceeds to speak of his mortification in being "too often obliged to substitute reprimands from my own mouth in place of fines and prisons, choosing to risk my own popularity rather than give a handle to the factious. Hence, I find I have been represented in England a man of a most violent, ungovernable temper." Unfortunately for the entire validity of this ingenuous defense, we find that the violent manifestations of temper continued under the civil government; and we cannot but conclude that there was too much ground for the complaint made in the English petitions in 1765 of his "rage and rudeness of language and demeanour."¹ In general, however, we find his attitude towards the French Canadians to be one of forbearance and magnanimity,² and the seigneurs came to look upon him as their special protector;³ but that even they were not always safe from his irritability may be seen in the memorial of the Chevalier de Lery.⁴ It must indeed be conceded that few positions could have been more trying than Murray's at this time.⁵ He was left without revenue or clear instructions to carry on government over a people who, rightly or wrongly, he thought had conceived a slighting idea of his position from the fact that he had been deprived of all military command in the province; feeling himself moreover under compulsion to introduce an order of things which he considered in the highest degree injurious and unjust. But making all allowances for his difficulties, we

¹ *Rep. Can. Arch.*, 1888, p. 15.

² See letter to Justices of Montreal, Oct. 9, 1765. (*Can. Arch.*, Q. 3, p. 90.)

³ *Rep. Can. Arch.*, 1888, p. 9.

⁴ *Ibid.*, p. 31.

⁵ See his defense, August 20th, 1766. (*Can. Arch.*, B. 8, p. 1.)

must conclude that he was peculiarly ill-fitted to cope with them, and that his career in Canada cannot be considered to have been marked by much discernment or administrative ability.

Murray's own judgment and inclination were from the first strongly opposed to any radical changes in the civil law and constitution of the province. His views on this matter were probably closely connected with his strongly expressed opinion that the civil governor in Quebec ought also to have the chief military command. One of his first enactments was the Judiciary Ordinance of September 17, 1764, which, though evidently intended to give effect to the supposed Imperial policy of introducing the general body of the English law, was thought by the English extremists of the time to have given undue privileges to the French Canadian Catholics. In writing home in defense of this measure¹ Murray strongly recommends granting the Canadians "a few privileges which the laws of England deny the Roman Catholics at home." In the various and complicated disputes with the military authorities which soon follow, the governor appears in a comparatively favourable light as the upholder of civil law and the protector of the people against the military; though it is impossible to keep from feeling that his attitude was to some extent influenced by the strained nature of the personal relations then existing between himself and the military officers. Interesting hints as to his policy can be got from his defense against some anonymous charges made in 1765 or thereabouts, chiefly with reference to the military government. In this he says that it was a maxim of his "to shun addresses from the traders," and to consult the men of property in the colony (by whom he means the seigneurs,—the possessors of landed property), and that he had displeased the Protestants in trying to conciliate the Canadians to British rule. That his partiality for the noblesse

¹ Oct. 29, 1764. Can. Arch., Q. 2, p. 233.

went beyond the limits of justice and good government may be conjectured from the reference in their memorial in his defense to "the politeness and deference of this governor for persons of good birth,"¹ and from his own acknowledgment that he did "recommend to the magistrates at Montreal not to billet any of the soldiers upon the noblesse, unless in cases of the utmost necessity,"—a tenderness which he adds they had a right to expect from the regard paid to people of family in all countries. And he somewhat naively inquires, "Can there be a greater instance of the turbulent, levelling spirit of my accusers than this very complaint?"

Though recalled in apparent disgrace² Murray succeeded in vindicating himself from all the charges brought against him, and retained the office for two years longer. His recollections of his Canadian stay may be seen by a reference in a letter to Haldimand from one of the East Indian ports in 1775, in which he speaks of spending his life tranquilly now, differently from what he did in Canada.³

Colonel Guy Carleton had also had early experience in Canada, but it does not appear to have afforded him much idea of the real state of the country. He and Murray were of the same profession; and the integrity and earnest endeavour after good government which characterized the former can even more unhesitatingly be ascribed to the latter. To him also must be conceded a larger share of statesmanlike qualities than is exhibited by any other official in the early history of the country. Carleton was indeed, like Murray, first a military man, and his most striking services to Canada were perhaps military ones; but he

¹ *Rep. Can. Arch.*, 1888, p. 19.

² See concerning his reception, *Can. Arch.*, B. 68, p. 157. He was recalled on the recommendation of the Board of Trade on account, as expressly stated, of the complaints of the merchants trading to and in the colony. The severe strictures of Hillsborough (quoted below. See also above, p. 344) may perhaps be explained by the fact that Hillsborough had been president of the Board when the Proclamation which he accused Murray of grossly misinterpreting had been drawn.

⁴ *Can. Arch.*, B. 6, p. 278.

was also a man of considerable civil experience, of wide statesmanlike views,¹ and of no small amount of discernment with regard to both men and events. He was for twenty years, intermittently, the chief figure in Canadian life; and his work here is consequently the main feature of what biographers agree in considering a somewhat distinguished career.

Personally he was a man of infinitely more dignity than Murray,—one who often left with his contemporaries the impression of a somewhat reserved and frigid nature. His self-control may be illustrated by the testimony of an eye witness to one of the most trying events of his life—the abandoning of Montreal to the Americans in 1776.² His attitude toward the revolution was a most unbending one, and is clearly shown in a letter to Dartmouth during the siege of Montreal,³ in which he refers to the threatening communication of Montgomery in regard to alleged ill-treatment of American prisoners, and adds, "I shall treat all their threats with a silent contempt, and in this persevere, were I certain of falling into their hands the following week, not thinking myself at liberty to treat otherwise those who are traitors to the King, without His Majesty's express commands." Yet after the remnant of the American force had retreated from the walls of Quebec in the spring of 1776, leaving behind them many sick and wounded ("dispersed in the adjacent woods and parishes"), we find him issuing a proclamation to the local officials to make diligent search for such persons and to afford them all possible relief, reassuring them by the promise that as soon as their health should be restored they would

¹ For some acute general remarks on the tendencies of American government, see letter to Shelbourne, Jan. 20, 1768. (Can. Arch., Q. 5-1, p. 370.)

² Lt. Gov. Hamilton to Dartmouth, Aug. 29, 1776. (Can. Arch., Q. 12, p. 212.) Has been "exceedingly struck by the unmoved temper and firmness of the general. Though deserted by the most ungrateful race under the sun, though a general without troops, and at the eve of quitting Montreal to give entrance to lawless rebels his mind appeared unshaken . . . though undoubtedly wrung to the soul."

³ Can. Arch., Q. 11, p. 267. (Oct. 28, 1775.)

be set at liberty.¹ In October, 1776, writing to Burgoyne in reference to a recent victory over the rebels, he says that inasmuch as it is over fellow subjects it is no ground for rejoicing. The attitude of Carleton in regard to Burgoyne's expedition throws further honorable light on his character. For though deeply mortified by the slight to himself in the transfer of the command on this occasion to Burgoyne, we have the latter's most emphatic testimony to his zealous and strenuous efforts to make the expedition a success.² The traits of Carleton's character which seem to have made most impression upon those who had to do with him in Canada were his justice and impartiality, testimony to these recurring from all quarters. Of a more even and balanced nature than Murray he made neither such bitter enemies nor such warm friends.

Carleton had the great advantage over Murray, so far as his relations with the home government were concerned, of coming to his government more fully and directly informed as to the trend of Imperial views in regard to Canada. The Board of Trade when advising Murray's recall had at length taken the state of the province into consideration, and had drawn up a paper of recommendations with which Carleton was of course conversant. Though nominally Murray's subordinate for the first two years, there was no official relation between the two, and apparently a strained personal one,—the natural consequence of the fact that Carleton really displaced Murray and was supposed to represent an opposite policy. The former has sometimes the air of censuring the conduct of his predecessor, and his first steps on arriving in the province were considered by some to have been dictated by hostility to Murray's friends in the Council. But however this may have been we find that Carleton did not escape the most

¹ A promise that was fulfilled, over 1,200 being sent home on parole. See Carleton to Germaine, Aug. 10, 1776. (Can. Arch., Q. 12, p. 135.) For the strongly favorable impression made on these troops by Carleton see *Journals of the invaders*.

² Burgoyne to Germaine, May 14, 1777. (Can. Arch., Q. 13, p. 107.)

disastrous part of his predecessor's policy,— the partiality for and dependence upon the noblesse. The men, from birth, character, and training, were essentially imbued with the same prejudices and ideas of government, and Carleton was moreover in a degree bound to even greater consideration of the leading French families, from the fact that he was likely to be entrusted with the carrying out of the policy of preserving the institutions of which they were supposed to be the main support. This supposition he brought with him from England, and I have already frequently referred to the fundamental error (as to the relations between noblesse and people), involved in it. It was an error to which can be traced the main defects and failures of his policy and of its outcome, the Quebec Act. I have above credited Carleton with considerable penetration and judicial ability in regard to men and events; but in this matter his prejudices seem to have lulled his judgment to sleep, and he remained contented with an estimate of the people derived from the small and unprogressive body which was nearest him, and which was now every day becoming more and more detached from the real life of the country. He was, moreover, scarcely more just to the English element or more alive to its growing influence over the Canadians than was Murray. His personal stiffness and aristocratic bearing doubtless stood constantly in his way; and as late as 1788, at the beginning of his second term of office, Mabane, one of the oldest and most experienced of the ex-councillors, writes concerning Carleton's ignorance of men and things in the province, his partiality and his unpopularity.¹ Hence perhaps it may well be doubted whether, though of much broader views than Murray and infinitely superior to him as an administrator, he was really very much better qualified for this particular period of government. His efforts were fatally marred by his misconceptions of the situation.

¹ Can. Arch., B. 77. Mabane, it should be said, had had personal difficulties with Carleton in the early days of the governorship.

Having, like Murray, from the first taken the Canadian noblesse under his protection, one of Carleton's first acts was to follow the example of the French government in providing for them to some extent from the public purse. He lost no time, moreover, in urging on the home government the advisability as a matter of policy of utilizing the services of the class in all departments of the public employ. The mistake as to their influence over the people he seems to have laboured under during the whole period, and it explains sufficiently, (without charging him with undue class or professional prejudice), the deference he always paid to their views and wishes. The first striking letter of Carleton on general policy that we meet with, is that of November 25, 1767,¹ in answer apparently to information as to a late important action of the Privy Council. In this he starts by saying that he takes it for granted "that the natural rights of men,² the British interests on this continent and the securing the King's dominion over this province must ever be the principal points in view in forming its civil constitution and body of laws;" proceeds to advise the attaching of the seigneurs to British interests, (as above), and finally, after a discussion of military requirements, expresses the opinion that all governmental steps should proceed on the assumption that the present predominance of the French-speaking population will not diminish, but increase and strengthen daily; so that, "barring a catastrophe shocking to think of, this country must to the end of time be peopled by the Canadian race," and any new stock transplanted will be sure to be "totally hid and imperceptible among them." Specific recommendations as to laws he does not enter into, but it is easy to see whither his premises will lead him. Hence we are not surprised to find him a month later recommending in the most definite and decided manner the almost entire reten-

¹ *Rep. Can. Arch.*, 1888, p. 41.

² The use of this phrase here is rather suggestive.

tion of French civil law and custom. In this very important letter (to Shelbourne, December 24, 1767,)¹ he reminds the minister that the Canadians "are not a migration of Britons, who brought with them the laws of England, but a populous and long-established colony," with its own laws and customs, forced to a conditional capitulation. "All this arrangement in one hour we overturned by the Ordinance of the 17th September, 1764, and laws ill-adapted to the genius of the Canadians, to the situation of the province, and to the interests of Great Britain, unknown and unpublished, were introduced in their stead; a sort of severity if I remember right, never before practiced by any conqueror even where the people without capitulation submitted to his will and discretion." Then, after implying that the above Ordinance is both contrary to the terms of the capitulation and beyond the provincial legislative power, and declaring that it "cannot long remain in force without a general confusion and discontent," he proceeds to advise its repeal and the gradual reinstating of the old Canadian laws almost in their entirety. In accordance with this advice he transmits a draft of an ordinance for doing this in regard to landed property. We see, therefore, that Carleton's mind was fully made up on this subject more than six years before the Quebec Act. His views seem if anything to have become only more firmly fixed during the following years. He frequently re-urges the attaching of the noblesse by employment or by other attentions, his confidence as to their influence over the people apparently remaining undisturbed. But the fact that he was absent from the province for the last four years of the period is to be especially noted; for these years were the most important part of it, being those in which political education would, (through the unavoidable influence of the events in the other colonies), be proceeding at the most rapid rate.

The conceptions and misconceptions of Carleton I have

¹ Can. Arch., Q. 5-1, p. 316.

considered especially noteworthy on account of the dependence the home administrations placed on him, and his great influence in the moulding of the Quebec Act. We have seen that he had the advantage of Murray in coming to the government *en rapport* with the home administration; and so far as appears this perfect agreement and confidence was maintained down till the last year of his rule (when personal difficulties arose between himself and the Secretary of State, Lord Germaine). The following of the course of events leaves with us the conviction that the colonial office depended on Carleton for practically all its instruction on Canadian matters, and that all its steps were guided by his recommendations. There have been more successful officials in English colonial history, but never one more thoroughly trusted. His military services in 1775 were confounded with his civil ones apparently, and he retired from Canada with the reputation of a master in all that concerned it. Accordingly we find that when in 1786 its affairs seemed to be again approaching a crisis which could not be neglected, he was sent out, invested with the new dignity of a peerage, to steer the ship of state through the troubled waters of another change of constitution.

B. *The Imperial Office.*

With regard to Imperial policy I shall first notice for a moment the general attitude of the successive home executives toward the political parties (or more accurately, the different races), in the province. This is an enquiry that will be resumed later in the attempt to determine how far the Quebec Act was in accordance with previous measures, and how far dictated by the supposed emergencies connected with the threatening stand of the other colonies. Just now I confine myself to general expressions of policy, contained in regular and confidential communications with the provincial administration; communications which as of a strictly private nature and made to the officials in the

full confidence of the home government, I can find no reason for taking at anything but their face value. At the outset it may be said that in small matters as in great the correspondence is of a nature to impress us strongly with the justice and humanity, if not with the far-sightedness, of the views entertained and advocated by one and all of the various secretaries in charge of the colonial department. The utmost attention is given to every symptom of discontent on the part of the people and the attachment of them by conciliatory and just treatment is constantly urged. Notwithstanding the energy of the English-speaking element in the colony in making themselves heard both there and at home, the authorities seem never to have lost sight of the fact that Canada was French and likely to remain French.¹ Early in the period the minister writes that dutiful behaviour will secure the French Canadians all the benefits of British government; and that these were not empty words is shewn by the instructions sent out in regard to the judiciary ordinance of September 17, 1764, as we gather them from the wording of the amending ordinance of July 1st, 1766.² The preamble of the latter states that his Majesty has signified by an additional instruction "that the welfare and happiness of his loving subjects in this province do require that the said ordinance should be altered and amended in several provisions of it which tend to restrain his Canadian subjects in the privileges they are entitled to enjoy in common with his natural-born subjects;" and it is accordingly enacted that Canadians shall be admitted equally with British-born on all juries and to the legal profession. In the following year the state of the provincial judiciary was taken up more seriously, and we get very important indications of the way in which the matter was viewed at

¹ See Carleton to Shelborne, Nov. 25, 1767, *Rep. Can. Arch.*, 1888, p. 42; also Cramahé to Dartmouth, December, 1773. (*Can. Arch.*, Q. 10, p. 22.) See also debate in Commons on Quebec Act, 1774, for position taken by both government and opposition that the French Canadians must be the first consideration.

² For Ordinances see *Can. Arch.*, Q. 5.

home, from the minutes of the Privy Council meeting of August 28, 1767.¹ It was resolved that the government officials in the province should be instructed to report on the existing defects, and "whether the Canadians in particular are, or think themselves aggrieved according to the present administration of justice, wherein and in what respect, together with their opinions of any alterations, additions, or amendments that they can propose for the general benefit of the said province." The proceedings here inaugurated were interrupted and delayed by ministerial changes, but the views of policy on which they were founded evidently remained the same. In the spring of the following year, Shelbourne was replaced in the secretaryship by Hillsborough, who retained it up till the eve of the Quebec Act. His first letter to Quebec, dated March 6th, 1768, conveys to Carleton, (who had been strongly advocating the retention of the French laws and customs), His Majesty's approval "of the humanity and tenderness you have shewn with regard to the peculiar circumstances and situation of His Majesty's new subjects;" and recommends him to take measures to reconcile the new subjects to unavoidable delays in regard to a general settlement.² In the following July he writes in the same strain, fully approving of all the governor's recommendations (in regard to re-establishment of French law), and regretting the unavoidable delay in the giving them force.³ January 4, 1769,⁴ he agrees with Carleton's recommendation of the employing in the public service of the French Canadians, but expresses the fear that popular prejudices at home might make it difficult to follow as regarded the military profession; in the following July⁵ he says that there can be no doubt of the justice and propriety of admitting Canadians to the Council. Jan-

¹ See below, chapter V for full report. (Can. Arch., Q. 4, p. 327.)

² Can. Arch., Q. 5-1, p. 344.

³ Ibid., Q. 5-2, p. 602.

⁴ Ibid., Q. 6, p. 3.

⁵ Ibid., p. 67.

uary 11, 1772,¹ he transmits to Cramahé the new instructions in regard to the granting of lands, which he hopes will "convince His Majesty's new subjects of the King's gracious intention to adopt and preserve, in every case where it can be legally done, the customs and usages that subsisted in the colony before the reduction of it, and which His Majesty observes they are very desirous to retain." This is more than two years before the Quebec Act.

The attitude of the Imperial administrations toward the new English-speaking element may be conjectured from the opinion generally entertained at home, that the main part of this was of American origin, and was inspired by the same ideas and aims as the turbulent populace in the other provinces. This idea, as is shown above, was probably mainly due to the intemperate attitude of the early spokesmen of the party, and was evidently fostered both by Murray and Carleton. The attitude of the Grand Jury in 1764² was of course severely condemned at home, the secretary transmitting His Majesty's highest disapprobation of their "assuming to themselves authority similar to that of a House of Representatives against the orders and regulations of His Majesty's government established there."³ There are indications that possibly show that at one time there was no desire on the part of the home government for any considerable increase in the number and influence of the old subjects in the province, and we at least have expressions which prove that none such was expected. The change in the land regulations was made to accommodate the French, and apparently without any idea that it would be welcome to the English settler. But yet Hillsborough writes, April 18, 1772, in tones of satisfaction at the apparent betaking of the English to the cultivation of the land.⁴

¹ Can. Arch., Q. 8, p. 97.

² See above, pp. 311-13.

³ Can. Arch., Q. 2, p. 464.

⁴ *Ibid.*, Q. 8, p. 124.

In regard to the movement in 1773 for an assembly the provincial government tried to adopt an amicable and neutral course in order to have the representations of the old subjects forwarded in a regular manner (i. e., through the authorities; which, however, seems not to have been done). Dartmouth writes, April 6th, 1774, approving of this course and stating his conviction "that the proposition has been stirred up to answer factious views; and the proceedings of the committee seem to have had no other object than to embarrass the measures now under consideration."¹ December 10th, 1774, he expresses the hope that the full operation of the Quebec Act, especially in regard to "the plan of judicature" intended, may satisfy all classes of subjects, and recommends to the governor to point out to the British "the attention that has been shown to their interests not only in the adopting of the English laws as far as was consistent with what was due to the just claims and moderate wishes of the Canadians, but in the opening to the British merchant by the extension of the province so many new channels of important commerce."²

On the whole we may sum up the policy of the government, Provincial and Imperial, towards the old subjects in the words of Haldimand, who writes in October, 1779, that he and the Council agree in considering the Canadians the people of the country, to the 60,000 of whom regard was to be paid, rather than to the 2,000 others.³ And the expressions of this disregard of the English-speaking element were the less unrestrained through the prejudices established mainly by the injurious misrepresentations of the Provincial officials.

In noting the Imperial policy in some of its special applications to Provincial affairs I shall leave out of sight for the moment those more important matters which when settled finally by the Quebec Act, became the centre of the

¹ Can. Arch., Q. 10, p. 42.

² Ibid., p. 125.

³ Ibid., B. 54, p. 354.

contention that raged round that measure. These had reference to the boundaries of the province, to the position and possessions of the Roman Catholic Church within it, to the Provincial legislature, and to the civil law; and it appears better to disregard the chronological order to some degree in their case, so that the consideration of them may be brought as a part of the Quebec Act generally. Here, therefore, I have reference to such other parts of the general course of the home administration as throw light upon general policy. And the first and chief impression that is made upon us by the examination of these, in connection with the other less important parts of the progress of events, is that ignorance, neglect, and inconsistency were the prevailing conditions in the colonial office throughout as regarded the province of Quebec. This I have already reverted to; in connection with the Quebec Act it will be necessary to make some short inquiry into the causes of it.

The general character of what may be called constitutional documents calls first for notice. The main early ones have been already noticed in other connections;¹ they certainly give us no reason to suppose that the long line of colonial precedent established in the English administrative mind was departed from in the case of Canada, except in so far as would seem unavoidable in providing for security and order amongst a people totally ignorant of British methods of government and incapacitated by British law from participation in them. We have seen indeed that even the difficulties which thus lay on the surface and which might be expected to attract the notice of the most incapable and harrassed of ministers, *do* seem in these first measures to have been entirely disregarded; for the Proclamation of 1763, which unmistakably contemplates the early establishment of an assembly, seems to have been drawn up in utter ignorance or disregard of the peculiar conditions of the countries to which it gave a constitution. Not only does it show no special mark of regard for the

¹ See especially chapter III, section A.

original inhabitants of these new acquisitions, but it seems oblivious to their existence. So far as it goes, these acquisitions are considered, not as old and settled colonies of another race, but as totally unoccupied regions to which it was the duty of His Majesty's government to draw the speedy attention of His Majesty's loyal emigrants. The preamble to the proclamation states the ground of the measures therein taken to be the desire "that all our loving subjects as well of our Kingdoms as of our colonies in America, may avail themselves with all convenient speed of the great benefits and advantages which must accrue therefrom to their commerce, manufactures, and navigation," and the conviction that these measures "will greatly contribute to the speedy settling our said new governments;" it being further promised that, (*italics are mine*), "all persons *inhabiting in* or resorting to our said *colonies* may confide in our Royal protection for the enjoyment of the benefit of the laws of our realm of England,"—a promise made apparently without a suspicion that there could be any parties concerned who were not pining after the "enjoyment" in question. In view of this document we have little right to look for any great care or discrimination in the applying to the new government of the ministerial instruments. Nor on the other hand do we discover any marks of influence exerted upon the Imperial administration by the contemporary difficulties which were attending government under similar instruments in the old colonies. The conviction is forced upon us as we study the history of the first few years (down say till 1768), that the various executives must have been too busy with other matters to have had time to do more with regard to Canada than order the making out for it of new copies of the established forms.

The commission to Gov. Murray under which civil government was established in Canada, August 10th, 1764, is dated November 21, 1763, or about six weeks after the

Proclamation above referred to. What relation it bears to the usual form of the document will best be discovered by direct comparison; and I have selected for this purpose the almost contemporary commissions to Governor Cornwallis of Nova Scotia in 1749, and to Sir Danvers Osborn of New York in 1755.¹ Nova Scotia had, it will be remembered, been ceded to Britain by the Treaty of Utrecht in 1713, and the commission in question was issued in connection with an attempt to hasten British settlement in the country and to bring the civil government more fully into accord with those of the older colonies. I have already quoted from it above in the argument as to the unconstitutionality of government in Quebec without an assembly,² showing that the commissions in that regard (and in regard to the nature of the laws to be passed), were identical. The most of the remainder is also practically identical, the only points of difference being as to land grants and the construction of the Council. In regard to lands the conditions are left to the discretion of Governor Cornwallis, acting with advice of the Council, while Governor Murray is enjoined to follow in such grants the annexed royal instructions. In regard to the control of the governor over the Council and general administration, Cornwallis is given full power of appointment and suspension, while nothing is said whatever on the subject in Murray's commission, the matter being left to his instructions, by which he is given practically the same power. On the whole we may conclude, therefore, that the divergences between these two commissions are not sufficient to weaken what I have said above; the difference in regard to land grants being easily explained by the necessity, (as dwelt upon in the Proclamation of 1763), of special care in regard to Quebec in this direction, owing to the danger of alienating the

¹ For first see Houston, *Can. Const. Doc.*, p. 9; for second, Masères, *Commissions*. All these commissions are signed in the same way and by the same person.

² See pp. 329-30.

Indians and of injuring the fur trade. No hint is given of any alertness on the part of the English government in regard to the internal conditions of Canada, or of any idea of treating it differently from the other English colonies. But as it may perhaps be contended that Nova Scotia and Quebec were in somewhat the same condition owing to the presence in both of a large body of long-settled French, I will continue the comparison further, and will take up what seems to be a typical commission in the older colonies, viz., that granted to Sir Danvers Osborn, 1754, as governor of New York. We find that this commission is practically identical with that of Governor Cornwallis six years earlier; hence differing from Murray's only in the insertion of the provisions in regard to the Council (relegated to Murray's instructions), and in regard to land grants, where the same motive for divergence may be supposed to exist as in the other case.

To sum up, the commission to Murray in 1765 recognizes the peculiar position of Canada to the extent indicated by the following divergences from previous forms:

a. *In regard to the construction of the Assembly.* This in the earlier commissions is expressly directed to conform to the usages already prevalent in the colonies, but in Murray's is left to his discretion or to future instructions.

b. *In regard to the Governor's control over the Council.* This is provided for in the earlier cases by the commission, while in the case of Canada it is relegated to the instructions. The significance, (if there be any), would seem to be that Canada was intended to remain for the time more directly under the control and development of the English executive, a new instruction being a more easily wielded instrument than a new commission.

c. *In regard to Land Grants.* Here the divergence was manifestly suggested by features which were supposed not to exist to any extent worth considering in the case of the other provinces. In the case of Quebec the arrangement

was made entirely provisional, for an elaborate plan in regard to Indian government and land grants which might affect the Indians, was intended at the time, and was actually sent out with the instructions under the Quebec Act.

These divergences are by no means unimportant, but it will be readily conceded that, for the most part merely negative, they would seem entirely inadequate, and by no means in proportion to the changed conditions. They are an indication not of settled policy, but of deferred action. Hence I cannot agree with Masères, who points to the similarity of the commissions to Sir Danvers Osborn and to Murray as *in itself* proving that it had been from the first His Majesty's intention to introduce English laws and methods of government into Quebec, and thus to assimilate it to the other colonies in North America. The only conclusion we have a right to draw in connection with other incomplete and contradictory testimony, is that the attitude of the home government toward Canada at the beginning of the civil rule was a wholly uninformed and undecided one, and that the measures taken then were wholly provisional.

No noteworthy changes are found in either of Carleton's commissions (1766 and 1768); but this is not the case with his instructions. By these the relation between the governor and the Council continued to be (theoretically) regulated; and we find that, instead of being left to nominate his own Council subject to Imperial ratification, as had been the case with Murray and Cornwallis, the names of the councillors are inserted in the new instructions of 1768. Moreover, the home administration now expressly reserves to itself the making of additions, the governor being given power only of temporary appointment in emergency. In regard to general civil service appointments Carleton's power seems further restricted;¹ while as to suspension or

¹ It is worthy of notice that there is to be found in these instructions and commissions a steady decrease of the appointing power of the colonial governor. While Gov. Corn-

removal, though the matter is vaguely worded, he is in all cases obliged to immediately submit the matter to the judgment of the home Administration. These changes are to be considered in connection with the restoration to Carleton, (practically in 1766, and formally in 1771), of that supreme military authority which had been exercised by the governor during the military period, and which I have referred to above as a very material part of the approximation of the position of the English executive to that of the French. The restriction of the governor's civil power may perhaps be considered in the same light. This process of check upon the governor will be seen more plainly in the Quebec Act and its development; it is sufficient now to have drawn attention to what, if we are to credit the Imperial course in these early years with any definite intentions, may reasonably be considered an entering upon the path of later development. The changes in question can

wallis in 1749 is given full power of appointment not only in regard to councillors, but also for "all such other officers and ministers as you shall judge proper and necessary," the powers given to Osborn in New York (1755) and Murray in Quebec (1764), though apparently as full with regard to the Council and to ecclesiastical officers, are less as to the inferior officials. And as between them, we may perhaps see a first stage of restriction in the fact that the whole matter of the Council was relegated to Murray's instructions, and that in these two or three officers are named as *ex-officio* members of it. The next stage is as noted above, the case of Carleton (1768) when, beside the great restriction concerning the Council, it is evident that the main posts in the civil service have become patent offices in regard to which the governor has at most only temporary and provisional powers. Of much interest in this connection are some remarks by Gov. Pownall in the debate on the bill for regulating the government of Massachusetts Bay, 1774. (Parl. Hist., XVII, 1282-6.) He states that even in Massachusetts Bay, where by the charter "the governor is obliged to take with him not simply the advice, but the consent of the Council in the nomination of judges and other civil officers," the ultimate source of authority for all officers is the governor's commission; while "in those governments which are established by the King's patent commissions the whole act of appointment is in the governor. . . . He is the sole efficient; he may advise with the Council, but he is not bound to take their consent; . . . he is not incompetent to the act without their consent. His commission gives him full power to act, . . . ; if he acts without the advice of his Council, he does indeed break through his instructions and may incur His Majesty's displeasure; but yet the appointment is good to all intents and purposes. The first is the act of legal power derived from the commission; the second is a matter prudential with which the mode of the act is properly and wisely accompanied." I am not concerned now with the precise constitutional value of these statements; for my present inquiry is into Imperial *policy* — manifestly to be gathered as well from an instruction as from a commission.

hardly be explained indeed in any other way. Nor does the explanation clash with my general conclusion as to Imperial neglect and inconsistency; such instances of intermittent activity, unassociated with any harmonizing of the various conflicting elements, tend as yet only to make confusion more confounded.

We are not aided very much out of the maze by an examination of the few instances of special interposition on the part of the Imperial government in the conduct of affairs in the Province. These interferences, generally in the nature of disapproval or prohibition, are such as either mark the appearance in the colonial office of new brooms, (and the broom was very frequently changed),¹ or are

¹ It seems desirable to introduce here a statement (necessarily incomplete) as to the official relations of the Home and Provincial authorities. These we find to be somewhat complicated, the colonial governor being at all times obliged to keep up two and frequently three different lines of communication,— with the Secretary of State, the Board of Trade, and the Treasury. The first was the most regular and imperative channel, though partly so it would appear, only because a single and active official, not a Board, had to be dealt with; and on this correspondence, which it is safe to assume omits nothing of importance, this study is mainly based. Readers of Bancroft, however, know that the Board of Trade at this period was no effete institution, but that it had for some time been exerting itself in colonial affairs with unusual activity, and had drawn within its reach all departments of colonial business. (See Fitzmaurice, *Shelbourne*, I, 240-3.) It was apparently in full vigor at the opening of our period, (see its share in regard to the Proclamation of 1763), as Murray shortly discovered; for he writes privately to Halifax, Oct. 29, 1764, with reference to a severe check he had received from the Board for not communicating to it what he had written to the secretary. Murray's instructions of 1763 had rather obscurely directed him "upon all occasions to send to the Board only, a particular account of all your proceedings;" though in any matter requiring the King's immediate direction, he was to correspond with the Secretary of State only. But this vigor of the former seems to have suddenly and mysteriously declined, for Feb. 3, 1766, (*Can. Arch.*, Q. 3, p. 122), Murray (who had since been careful to keep it fully supplied with information), complains of "the total silence to every remonstrance, reasoning and report, which hitherto I have had the honour to make to your Board, (from which I have had no letter that was not circular since the establishment of civil government here)." Shortly after a still more striking proof of the seeming decline of the Board of Trade is given by a letter to it from Shelbourne, Aug. 26, 1766, enclosing "an Order-in-Council of the 8th inst. revoking an order of 11th March, 1752, concerning the correspondence to be carried on between the Commissioners for Trade and Plantations and the governors of His Majesty's colonies, who are to correspond with the Secretary of State, sending duplicates to their Lordships. For the future also all measures relative to commerce and the colonies shall originate and be taken up in the ministerial executive offices of government, their Lordships acting as a Board of Advice upon such points only as shall be referred from His Majesty by Order-in-Council, or from the Lords of the Council, or a Committee of the Council, or from His Majesty by one of the principal

drawn forth by complaints which had the good fortune to be backed by special interest. I include here all actions with reference to provincial legislation; for though these would seem to form a part of the regular and necessary supervision, their rare occurrence throughout the period and the utter neglect of Ordinances which were direct oversteppings of the (supposed) Provincial legislative power preclude the idea of system or regularity.

We have seen above that the number of Provincial Ordinances was over 40; of these only six are noticed as repealed, four by an Order-in-Council of November 22, 1765, and two by a similar order of June 26, 1767. No direct statement of the grounds of repeal are to be found in any case, but in some we can discover them by an examination of the measures. We find one in regard to the retail liquor trade vetoed evidently on account of a very objectionable clause, which however, occurs also in another unrepealed

Secretaries of State; and the estimates for colonial service, and the direction and application of money granted thereupon (a business of late years transacted by your Lordships), is to be resumed into its proper channel." (*Calendar Home Office Papers*, 1766-9, No. 256.) This certainly seems to betoken a complete eclipse; an explanation is furnished in a letter from the Earl of Hillsborough to Mr. Geo. Grenville, Aug. 6, 1766, (*Grenville Correspondence*, III, 294.) Hillsborough had been president of the Board under the Grenville ministry, from Sept. 10, 1763, till the accession of Rockingham, July, 1765; he now informs Grenville that had he not been dismissed in 1765 he "could not have continued at the Board of Trade upon the footing I held it;" that he is now invited by Pitt to return to it, and has deliberated, "not whether I should come to the Board as it was constituted while you was minister, for I know I could not carry on the business in that manner; nor whether I should propose, what is certainly most desirable for the public, that it should be made an independent Department upon an extended plan, for I know the disposition of some too well to suppose that would be complied with, by parting with any power or patronage; but whether I could not contract the place so as that I might do the business in an easy manner to myself, and free from that very unpleasant and in some measure unbecoming attendance upon others which is the consequence of unexplained connections of departments in business, and always very disagreeable to that which is considered the inferior situation." Has finally decided to accept, "provided the Board should be altered from a Board of Representation to a Board of Report upon reference only; that the order to the governors in America to correspond with the Board of Trade only be rescinded; and that every executive business that has by degrees crept into the Board should revert to the proper offices, particularly all Treasury business; and that I should not be of the Cabinet (which was also offered to me)." (In corroboration of this see Fitzmaurice, *Shelbourne*, II, 1-3. Also for the earlier position and aspirations of the Board, *Ibid.*, I, 240.) Hillsborough

Ordinance of the same date. One, (on the currency), had been prepared in accordance with direct orders from home. Two others of the six related to the quartering of troops in the province and were repealed in consequence of a general Act of Parliament on the subject. The remaining one was in regard to the better observance of the Lord's day, and was evidently defective in neglecting to provide a penalty for one class of offences. On the whole no general conclusions as to principle or system can be drawn from the examination of the Imperial supervision of the Provincial legislation.

Nor do we get much more light from the examination of special executive interference, though here of course, we are not warranted in drawing the same inference of neglect. The general conduct of the Provincial government was constantly and largely influenced by the regular correspondence of the Secretary of State; but that correspondence was chiefly of a general and non-committal character, and a resolute governor like Carleton had no difficulty (especially in the frequent changes of the secretariat), in securing

resumed the position of president, and in 1768 becoming also Secretary of State for the colonies (now for the first time made a separate department), the two offices were filled by him till 1772. During this period therefore the range of the activity of the Board was a matter of choice with the Secretary and there seems to be only a personal significance in the communication to Carleton, (June 11, 1768), "that the examination of all laws and ordinances enacted in the colonies appertains to the Department of the Board of Trade," and (Sept. 2, 1772), that "the consideration of persons proper to be of His Majesty's Councils in the Plantations is more particularly within" the same Department. (Can. Arch., Q. 5-1, p. 419.) The Instructions to Carleton of 1768 and 1775 direct him to transmit to the Board, "for their information," duplicates of all reports; except (as it is worded in the 80th Article of the Instructions of 1768; in those of 1775 the sending of such reports is referred to only in general words), "in cases of a secret nature."

The third quarter to which the governor was responsible was the Treasury. The new regulations of 1766 referred to above shows that for some time the Board of Trade had had the control of all colonial finances; the proper channel to which they were now to return was the Treasury. In the Minutes of the Quebec Council of Jan. 22, 1767, we find a reference to a letter to Murray from the Secretary of the Treasury, dated Sept. 30, 1766, requiring him to forward the most minute account of the finances of the Province. In accordance with which from this time on regular financial reports seem to have been sent to that department; which had also in the Province thereafter an independent official,—the Receiver-General,—directly responsible to it alone.

I am indebted for valuable assistance in this matter of official conditions to the late article on *Hillsborough* in the *Dictionary of Nat. Biography*.

his position. We have a couple of instances of interference in behalf of officials who had incurred the displeasure of Murray, but only one instance of the direct overturning of Carleton's action.¹ A case of some constitutional interest occurred in 1768, when Conway, the secretary, writes to the governor directing him, in the case of a trial for murder then pending, to grant the accused, if condemned, a free pardon.² The accused was acquitted, and thus there was no occasion for the carrying out of the injunction; but it is of much interest in connection with a query addressed by Hillsborough, March 2d, 1772,³ to the crown lawyers⁴ as to whether there was any legal objection to the passing such a pardon with the seal of the colony on a warrant to the governor under His Majesty's signet and sign manual, The reply (by Thurlow and Wedderburn), was that as the commission of the governor expressly restrained him in the pardoning of murder they could not recommend it to His Majesty to command that official, by warrant under the signet and sign manual, to do that which by the constitution of his office under the great seal he had no legal power to do.

A very significant interference finally is that of Hillsborough with Lieutenant Governor Cramahé in 1771 in regard to the proposition of New York for a consultation with Quebec and Pennsylvania on Indian trade affairs. Cramahé seems to have returned at first a favorable answer,⁵ but on his reporting the proposal home, he was informed that His Majesty did not approve of Indian congresses, "and the sending commissioners from the different colonies for that purpose," and that therefore Quebec was

¹ In regard to the Indian trade.

² Murray's commission, like all colonial ones, especially excepted from his pardoning power the crimes of treason and murder.

³ It is probable that the greater scrupulosity of the later date is due to the character of the then minister.

⁴ *Calendar of Home Office Papers, 1770-72.* No. 1146.

⁵ He writes Oct. 31st, however, that Hillsborough's disapproval had arrived in time to prevent his sending commissioners. (Can. Arch., Q. 8, p. 82.)

to take no further steps in the matter. Not satisfied with this Hillsborough wrote further a few months later that "it is His Majesty's pleasure that you do not for the future consent to any propositions for appointing commissioners to attend a congress on any occasion, unless such congress be authorized by particular directions from His Majesty, and His Majesty's pleasure first signified to you for that purpose." Here again, however, the matter is mainly perhaps of personal interest; for the action of Hillsborough is in perfect accord with his general attitude on American affairs.

CHAPTER VI.

THE QUEBEC ACT,¹—ITS ORIGINS AND AIMS.

The Quebec Act of 1774 is the central point of my inquiry. It was the first intervention of the Imperial parliament in the affairs of the new province and constituted the definite settlement of government there that had been anxiously looked for during a whole decade. That settlement is of exceeding interest from almost every point of view; to the observer of religious development, whether or no he concurs in Lecky's opinion that it "marks an epoch in the history of religious liberty;"² to the investigator of political institutions, as an attempt to reconcile alien principles of government; or to the more practical student of politics, attracted by the effect of the measure both on the American Revolutionary crisis and on the later development of the vast regions which after the Revolution remained to the British crown. It is not necessary therefore to apologize for the somewhat extended discussion that I enter upon here; a discussion in which I shall have regard especially to the third of the above mentioned points of view,—the Act in its relations to the American Revolution.

Let us glance first at the ministerial steps leading up to the enactment, with a word as to the general causes of the delay of the settlement so long and urgently needed. I have throughout endeavored to show that the attitude of the home government towards Canadian affairs was for the earlier years one of the grossest neglect; and that when attention at last began to be given to the subject, and the

¹ See Appendix A for full reprint.

² *History of England*, IV, 299 (ed. 1892).

colonial officials had at length succeeded in impressing the home official mind with the fact that Canada could not be disposed of by the mere making out for it of copies of the forms which had done duty so long in the other colonies, definite action was yet delayed in a manner that must have been inexplicable in the province.¹ The main explanation is no doubt to be found in the shifting state of English politics at the time, and in the instability of administrations. Into these I cannot go as fully as would perhaps be useful. It will be remembered that the downfall of Whig ascendancy at the accession of George III in 1760, was followed by what Lecky calls "ten years of weak governments and party anarchy."² Half a dozen different ministries were formed and fell to pieces. From 1763 to 1772 no less than twelve changes took place in the office of Secretary of State, six different individuals,— the Earls of Egremont, Halifax, Shelbourne, Hillsborough, and Dartmouth, and the Hon. Henry Conway,— being in succession at the head of colonial affairs. At length on the final downfall of the Pitt-Grafton ministry early in 1770, Lord North succeeded in forming a Tory one which every day increased in strength, and which laid the foundation for a Tory ascendancy of fifty years. It was not till this ministry had been firmly established that decided action in Canadian affairs became probable or perhaps possible.³

A glance through the political Memoirs, etc., which exist in such abundance for this troubled period, does not

¹ As early as Feb. 21, 1764, Haldimand writes to Burton that party spirit in England prevents definite arrangements being made for Canada. (Can. Arch., B. 9, p. 43.)

² *Hist. of Eng.*, I. 1.

³ Knox, in his "Justice and Policy of the Quebec Act," (1774), says that from the conquest "the establishment of a proper mode of civil government therein was considered by the then and by every subsequent administration as a matter of so great importance and of so much difficulty that it became the object of almost constant deliberation." (p. 10.) The anti-colonial tract in support of the Act, attributed to Sir John Dalrymple, ("The Rights of Great Britain Asserted Against the Claims of America," 1776), correctly says that the enquiry preliminary to the Act was begun under the Chatham Administration, and adds that in consequence a measure "was considered by the Board of Trade; it was certainly debated, if not adopted by the Cabinet as far back as the year 1767." See below.

reveal many references to Canadian affairs. Almon¹ is authority for the statement that the final blow to the long-tottering Rockingham ministry was administered by the violent opposition of the Chancellor, Lord Northington, to a proposed bill for the settlement of Canada. This was in July, 1766, and that the measure had been under serious contemplation at least six months before is probable from a letter to Burke, (then the Prime Minister's secretary), of the January 9 previous.² On June 2, 1767, we find what is apparently the result of the only interposition of either House of Parliament in Canadian affairs previous to the Quebec Act.³ The order of the day on that date in the House of Lords was the taking into consideration the papers laid before the House⁴ on the previous Wednesday relating to the state of Quebec; and the House having gone into committee, reported the following resolutions: "That it appears to the committee that the Province of Quebec for a considerable time past has wanted, and does now stand in need of, further regulations and provisions relating to its civil government and religious establishment." This looks promising, but we hear nothing further of it, though on the 20th of the same month Shelbourne writes to Carleton that "the improvement of its [Quebec's] civil constitution, is under the most serious and deliberate consideration of His Majesty's servants, and principally of His Majesty's Privy Council."⁵ The following January (1768) one Marsh writes to Haldimand of the impossibility of getting the Ministry to attend to American affairs.⁶ November 4, 1769, Hillsborough informs Carleton that the

¹ *Anecdotes of Chatham*, II, 76. See also *Chatham Correspondence*, II, 434, and Albemarle's *Rockingham*, I, 350. Lecky accepts Almon's statement without question, III, 64.

² Dr. Thos. Leland to Burke. (*Burke's Correspondence*, Vol. 1.) It is not impossible that the reference may be merely to the negotiations, not then completed, concerning the making good by France of the old paper money of the province.

³ *Parliamentary History*, Vol. 16.

⁴ At its own request of the previous May 20. (*Cal. Home Office Papers, 1766-9*, No. 492.)

⁵ *Can. Arch.*, Q. 4, p. 129.

⁶ *Can. Arch.*, B. 63, p. 263.

consideration of the affairs of Canada has been delayed by the recess of Parliament, but that he has been assured that it will be immediately taken up again;¹ January 2, 1771, he writes again that a bill for the temporary giving of legislative power to the Council in Canada will be presented on the opening of Parliament,² and the following July 3,³ that Quebec affairs have been submitted to the Privy Council. But December 4, he informs him that the measures are not yet ready, and that the matter being a delicate one will probably be submitted to Parliament.⁴ Lord North's government was firmly established by this time, and the delay for eighteen months longer is probably due to the lingering of the final reports from the Crown lawyers. Finally, ✓ May 4, 1774, Dartmouth writes to Lieutenant-Governor Cramahé that on the previous Monday (May 2) he had presented the Quebec Bill to the House of Lords.

This session of Parliament it will be remembered was mainly occupied with the three coercive measures in regard to the Province of Massachusetts Bay. These had been introduced in the Commons almost simultaneously, ✓ had met with a vigorous resistance, but had been pushed through by the government with large majorities. It was after they had been disposed of, and after most of the members of both houses, fatigued by their close attendance, had left for the country that the Quebec Bill quietly appeared in the House of Lords.⁵ It was not introduced as

¹ Can. Arch., Q. 6, p. 121.

² Ibid., Q. 8, p. 1. The exact character of the contemplated measure seems also at this time to have been known to the provincial officials; for April 30, Cramahé replies that the prospect of a firm settlement was satisfactory to "all His Majesty's new subjects and the manner of doing it seems perfectly agreeable to their manner of thinking." (Ibid., Q. 8, p. 45.)

³ Ibid., Q. 8, p. 26.

⁴ Ibid., p. 79. This seems to show that for a short time the ministry thought of settling Canadian affairs by executive act merely. According to Lord Mansfield's judgment of 1774 this was not, however, within the competence of the executive; and it was probably from some misgiving on the point that it was decided to submit the matter to Parliament. The Mansfield judgment was not delivered till November 28, six months after the Quebec Bill had become law.

⁵ See *Ann. Reg.*, 1774, p. 74. Also note in *4 American Archives*, I, p. 214.

in any way connected with the previous American measures, and the government evidently anticipated no serious opposition. With very slight notice it passed the Lords on the 17th of May, (apparently without a division), and on the 18th was brought to the Commons. But here it met with an unexpectedly vigorous opposition, its opponents, though few in numbers, stubbornly fighting every clause. Sir Thomas Mills, Receiver-General of the Province of Quebec, writes to Haldimand, June 14, 1774,¹ that "we have had as hard fighting and many more battles to establish government for Canada as there were to conquer it. You would be astonished at the opposition made to the bill; ten nights the House of Commons was kept till one o'clock in the morning successively. Every inch of the ground was argued and every word disputed."

We are fortunate in possessing of the debate on this occasion a fuller report than of any other part of this Parliament.² This is from the shorthand notes of Sir Henry Cavendish, member of Lostwithiel, a supporter, (but not a slavish one), of the government. It will not be necessary to go fully into the discussion, however, as it may easily be imagined what line of battle would be assumed against such a measure by an opposition with Burke and Fox at its head. Though the battle was spirited the opposition seems soon to have become hopeless of effecting anything; and its efforts were more remarkable for fighting every inch than for serious or prolonged struggle at any one point.³ Lord North was on the whole conciliatory, showing no special love for or interest in the measure, but yet evidently determined to push its main provisions through. Very little indication is given that the bill was considered

¹ Can. Arch., B. 27, p. 374.

² Long known as the Unreported Parliament. The earlier part is now supplied to us from the same source as that for the debate on the Quebec Bill. During this session the order for the exclusion of strangers was enforced with unusual vigour.

³ The chief contest was in the latter part of the discussion, on the matter of the jury system.

to have any connection with the direct steps taken to repress America, the ministry taking no notice of the few and obscure hints dropped to that effect. A peculiar feature is the repetition by the Opposition of questions as to the authorship of the measure, the Crown lawyers being persistently taunted, (without drawing from them any vigorous disclaimer), with not being willing to father it, if not at heart opposed to it. In this connection the letter of Mills quoted from already is of great interest.¹ The writer proceeds (from the point quoted above); "Much pain and trouble it has cost me. The Bill was first put in my hands containing ten sheets in folio, in my mind the shorter it was the better. The limits, the religion, the French law, and the Council,² they owe to me. My conscience, however, tells me that I was not only serving justice and country, but also doing justice to the conquered." Of equal interest are his continuing words as to the curious attitude of the ministry. "In the House of Lords I had not much trouble, but great difficulty in keeping Lord North and the Ministry steady and firm in the House of Commons. You would, however, have pitied them, for they were teased and harrassed to death. They were very negligent in studying the subject,³ which of course gave the others the best of the argument, and then they had to combat against all the popular topics, viz., the Popish religion, no juries, no assemblies, etc. Masères

¹ It is noticeable that June 8, 1769, the Secretary of the Board of Trade (Pownall) writes to the Treasury requesting that Receiver-General Mills be allowed to remain some time in England, as he can give useful information to the Lords of Trade respecting Quebec.

² The main points, it will be noticed, over which controversy raged then and after. It will be seen later, however, that the origin of these was by no means so Minerva-like as it appeared to Mr. Mills.

³ Wedderburne, the Solicitor-General, who had prepared a special report on Canadian affairs and claimed to have thoroughly studied the subject, brought forward in the argument as to the non granting of juries, the conduct of the juries of Quebec in the revenue trials of 1766 and 1769, as proof that the Canadians were not fit for the institution. Whereas the juries on both occasions are expressly stated by Masères to have been entirely English.

and Murray behaved infamously, Carleton and Hey exceedingly proper, steady and well." What degree of credit is to be given to any part of this self-inflated epistle it is impossible to enquire very closely. The animated character of the debate was kept till the close; the final word according to Cavendish being the vigorously expressed opinion of a thoroughly disgusted opponent that the speaker "should throw the Bill over the table, and somebody else should kick it out at the door."

Of considerable importance is it to observe the attenuated character of the House on this occasion. The total number of members at the time was 558, and the main divisions on this Bill were as follows: second reading, 105 to 29, final vote, 50 to 20. These numbers are undoubtedly much higher than during the actual debate, Cavendish noting on two occasions that only about 40 members were in the House. It is to be remembered that under these conditions the government support would belong to the most dependent, corrupt and unrepresentative part of this most corrupt and unrepresentative of Parliaments.¹ We need not follow the fortunes of the Bill through the slight opposition it met with, (from seven peers), on its return to the Lords, nor through the vigorous but unsuccessful attempt to repeal it in the following year. (Division in Commons, 174 to 86.) After a long labor and painful birth it had appeared for good or ill; it will now be necessary to examine its provisions more carefully, with a view to determining the ideas that inspired them and estimating their more immediate results.

B. History of Main Provisions.

The phrase used by Mills above,—“The limits, the religion, the French law, and the Council,”—is a succinct statement of the main subject matters of the new enact-

¹ See statements of Lecky (Vol. III, pp. 171, 173) that in 1770 192 members of the Commons held places under government, and that it was computed in 1774 that fully half of the members for England and Wales represented a total of only 11,500 voters.

ment; and in discussing them I shall adopt the same order both as logical and as the order of the Act itself.

a. *Boundaries.* First, therefore, as to the limits or boundaries of the newly defined Province. This part of the Act, though the most short lived,¹ might probably be contended to be the most noticeable and important with regard to the influence of the measure on the course of the American Revolution. The inclusion of the Western country within the limits of Canada, in connection with other provisions, was taken as indicative of a settled and long-meditated design on the part of the English government to hinder the extension of the self-governing colonies by attaching the vast unsettled regions West and Southwest to the arbitrary government which that Act seemed to establish.² There was the more likelihood of suspicion or irritation upon this point because of the fact that the final disposition of the western country had been in suspense since the peace, and because the first step of the imperial authorities with regard to it, in the Proclamation of 1763, had been by no means satisfactory to the older colonies. Modern writers have contended that the settled purpose of hindering the extension of these colonies by new and arbitrary measures, is clearly shown in that proclamation, and shown thus for the first time; that in

¹ Repealed for the most part by the provisions of the Treaty of Versailles, 1783, the Province of Quebec being then deprived of those parts which now form the states of Ohio, Indiana, Michigan, Illinois, Wisconsin and part of Minnesota.

² The tenacity and attractiveness, (through its inherent probability), of this idea from the colonial standpoint is easily understood. Its general vitality, moreover, is illustrated in the latest and best history of Canada from the native and Imperial standpoint (Kingsford's). The author, while vigorously defending the Quebec Act in the main, and asserting that he can "discover no admissible ground for the acceptance" of the belief that its main measures were due to the condition of things in the other colonies, yet says of the extension to the west (for which otherwise he can find no explanation): "It is possible that the spirit of revolt dominant in the colonies may have led to the desire of preventing the exercise of any pretension over the territory of the Western provinces of Virginia and Pennsylvania [!]; and of opposing by legislation all extension beyond their admitted frontier." (V. 244.) The failure of this writer to find other reasons may probably be explained from his accompanying assertion that west of Montreal "at the period of conquest there was scarcely a white man established," and from his disregard in this connection of the fur trade.

this light it was the first step in a new policy of tyrannical restriction of which the culmination was the Act of Parliament which in 1774 finally annexed the West to the un-free Province of Quebec.¹

This contention is of course incompatible with the more ordinary view that the Quebec Act, in this as in its other provisions, was called out by the critical state of things in the older provinces in or about the years 1773-4; and before I go on to deal with the latter opinion it will be necessary to consider the variation.

It is manifest that if British colonial policy underwent such a decided change in the period 1760-3, we are justified in expecting to find evidence of that change in the confidential communications between the Imperial and the colonial authorities, or in the semi-official utterances of that

¹ The chief expression of this view will be found in Hinsdale, *Old Northwest*, c. 8. The writer considers that with the treaty of Paris, England, abandoning the old sea-to-sea colonial claims, made a decided change in her land policy; that while the Ohio grant of 1748 showed that "she had then no thought of preventing over-mountain settlements, or of limiting the expansion of the colonies in that direction," (p. 120), now, alarmed at their rapid growth, she took measures to permanently sever them from the western lands. This it is intimated was one of the main motives of the Proclamation of 1763. The writer, however, does not seem very decided upon the point, and concludes with the admission that on the whole, "in the years following the French war the Western policy of the British was not steady or consistent, but fitful and capricious; prompted by a solicitude for the Indian that was partly feigned and partly by a growing jealousy of the shore colonies." (p. 141.) Yet immediately after the half-abandoned position is resumed in the statement that "this policy of restriction culminated in 1774 in the Quebec Act," one of the main objects of which was "permanently to sever the West from the shore colonies and put it in train for being cut up, when the time should come, into independent governments that should have affiliations with the St. Lawrence basin rather than with the Atlantic slope." The irritated colonies, we are told, looked upon the new boundaries given to Quebec by the Act "as a final effort to wrest the West from them forever." Roosevelt (*Winning of the West*, I, c. 2), expresses the same ideas in a somewhat different form. Far-reaching as are the above views they do not attain that breadth of assertion which we find in an even more recent opinion, that from its conquest in 1760 Canada was regarded by the British government as a *point d'appui* "for the support of the ministerial policy in asserting British parliamentary supremacy over the colonies." (Review of *Life of John Patterson*, N. Y. Nation, July 19, 1894.) These opinions are illustrative of the latest phase of revolutionary study, that which centers round the comparatively fresh field of Western interests and advance. They are the result of hasty generalization from one-sided investigation, stimulated by the suspicions that contemporary events and the heated assertions of the revolutionary age itself tend naturally to engender. It is all the more necessary that they should be promptly confronted with the facts; which must be my justification for the detail with which I have considered the subject.

time or of the years intervening between it and the Revolution. It is to be presumed that the exponents of the idea of change have made search for such evidence, and fair to assume that they have brought forward all the evidence found. But what is presented as such practically amounts only to Hillsborough's representation in 1772 with regard to the intentions of those who drew up the Proclamation of 1763. It is not shown, or attempted to be shown, that Hillsborough's apparent interpretation of that document as containing a declaration of new policy, has more than the weight of his individual opinion; it is not shown that even Hillsborough ascribes any peculiar influence to the acquisition of Canada. Yet herein is the whole matter. For it will be found on closer examination that the aim of the Board of Trade in that measure was precisely the same as had actuated it for years before; that the only change produced by the acquisition of Canada was the new and extensive field in which the old policy was to be applied.

It is assumed that the acquisition of Canada was the starting point or confirmation of the new policy. If this were so some trace of that view of the acquisition must surely appear in the state papers or political discussions with regard to it. Before going into the State correspondence let us glance for a moment at the circumstances attendant on the treaty of peace in 1763. From the day of the conquest of Canada in 1760 to that of its final cession, the question as to whether or not it should be retained by Great Britain, and what place, in the event of retention, it should occupy in the American system, was before the public, and keenly and thoroughly debated in the pamphlet and periodical literature. In this, if anywhere, we should expect to find traces of any new aspect that the possession of Canada might be supposed to give to American affairs; it is hardly possible that a new line of action based on that possession could be contemplated without foreshadowing or reflection of it in this quarter. An exhaustive ex-

amination of this material has not been possible; but the close scrutiny of a very considerable portion¹ has failed to furnish any evidence that Canada at any part of this period appeared to the English public mind in the slightest degree in the light of a weapon or base of hostile action against the other colonies; nothing has been discovered to support the belief that either the terms of peace or the following dispositions concerning the new Province, were influenced by any but friendly and comparatively generous feelings toward those colonies. The only evidences of illiberal feeling that can be produced are in the writings of those who argue against the retention of Canada.² The main points of the very energetic argument for West Indian in preference to Canadian acquisition, were the alleged greater commercial value of the former, and the danger that if the older colonies were relieved of the menace of the French, they would speedily become independent, troublesome, and perhaps rebellious. This was answered almost wholly by the statement that the war had been undertaken and carried on for the relief of the colonies through the expulsion or crippling of the French; that the colonists had helped materially toward success, and that England therefore must in justice or generosity see that the French should never again be a danger and hindrance. It need not be supposed of course that there was any losing sight of the more domestic interests of Great Britain in this matter; still less, however, can it be assumed that the in-

¹ That afforded by the Sparks Collection of Colonial Tracts in the Cornell University Library, and by the similar collections in the Wisconsin State Historical Library, and in the Canadian Archives.

² See especially, "Remarks on the Letter addressed to two Great Men. In a Letter to the Author of that Piece." (London, 1760. Attributed to Edmund or William Burke.) The vigorous reply to this: "The Interest of Great Britain considered, with regard to her Colonies, and the acquisition of Canada and Guadaloupe,"—(London, 1760),—is attributed to Franklin, and was one of the most influential of the pamphlets; the Ministry which took the course it contends for can scarcely be charged with hostile views. A later pamphlet, ("An Examination of the Commercial Principles of the late Negotiation," etc., 1762), attributed to Edmund Burke, refers to the author of the foregoing one as the chief advocate of the system which was proceeded upon in the negotiations for peace, negotiations which had for their main object the possession of Canada.

terests of the colonies were neglected, or that underneath an apparent solicitude lay sinister designs. A striking feature of the contention is the readiness with which nearly all admit the greater commercial value of the West Indies, and the comparative worthlessness and lack of promise of Canada. The notable pamphlet entitled, "A Letter addressed to Two Great Men,"¹ declares that though "The possession of Canada is no view of Ambition," yet the ministry should make it "the *sine qua non* of the Peace, as the only method of guarding our invaluable possessions there from usurpations and encroachments" by the French. In a pamphlet presumably by Edmund Burke² it is shown with seeming conclusiveness that West Indian trade was far more important than North American. The writer complains further that the argument, (considered by him futile), for the retention of Canada on account of being necessary to the safety and prosperity of the colonies, had been so enforced upon the public mind "that Canada came at last to take an entire Possession of our Hearts and Understandings; and we were taught to believe that no cession was too great to purchase this inestimable security, this immoveable Barrier of all our Colonies." A pamphlet of 1762 in defence of the proposed treaty which bears strong marks of being inspired, rests the defence of the acquisition of Canada instead of Gaudaloupe wholly on the security of the old colonies; which, even if the defence be not an authorized one, shows that this was known to be the argument which would appeal most strongly to the constituency addressed.³ Three years later a more elaborate

¹ "A Letter addressed to Two Great Men, on the prospects of Peace; and on the terms necessary to be insisted upon in the Negotiation," (London, 1760, 2nd edition. Jared Sparks collection. Attributed by Sparks to the Earl of Bath). Said by Lecky to have had "a very wide influence and circulation." (III, 291.)

² "An Examination of the Commercial Principles," etc.

³ "A letter to the Earl of Bute on the Preliminaries of Peace. From neither a noble Lord; a candid member of Parliament; an impartial Briton, but an Englishman." (London, 1762.)

writer,¹ summing up in a judicial way the war and the peace, appeals to all parties to support him in the assertion that the chief sentiment of the nation throughout the period was, "That our colonies in North America merited the first and chief attention and care of their mother country," and that as they were in great danger from French encroachment, it was considered that "nothing too great, nothing too expensive, nothing too hazardous could be undertaken for their relief."

This brief survey of the public expressions of the party writers with regard to the acquisition and use of Canada shows at least that whatever may have been the private motives of the Administration, the general political mind had at this time become impressed mainly with considerations as to the safety and advance of the colonies. An examination of the Parliamentary Debates on the preliminary Treaty in 1762 brings us a step further. No full report is to be found, but the abstract of the Parliamentary History gives the following resumé of "the principle arguments which were offered in favor of the Treaty in the Commons." "That the original object of the war was the security of our colonies upon the continent," and that therefore danger to them must once for all be guarded against; that such danger being afforded by the continued presence of France, to remove or contract her power was "the most capital advantage we can obtain, and is worth purchasing by almost any concessions;" that this moreover would have the advantage of "permitting our colonies on the continent to extend themselves without danger or molestation," thus increasing the range of British trade; that, however, such a colonial extension ought not to be regarded on commercial principles alone, for "extent of territory and a number of subjects are matters of as much

¹"A full and free Inquiry into the Merits of the Peace; with some Strictures on the Spirit of Party." (London, 1765.)

consideration to a State attentive to the sources of real grandeur, as the mere advantage of traffic."¹ These were the motives and objects of the peace as set forth in a House which could not to any degree have been influenced in its expression by the fear or desire of the publicity given by the reporter; and they were endorsed by a vote in favor of the Treaty of 319 to 65. In the whole series of Parliamentary debates from 1760 to 1774 I have met nothing any more fitted to support the idea that the retention of Canada should or could be regarded as an occasion or basis for an illiberal and restrictive policy toward the older colonies. Finally on this point of the general public spirit with regard to the retention of French Canada it should be noticed that this part of the British policy has escaped the suspicion of earlier prominent American writers, even of those of a marked bias.² Bancroft has traced carefully the genesis of the new applications of the colonial system, and has shown that they were evident some time before the conquest of Canada. With regard, however, to the retention of that country, he says that England "proudly accepted the counsels of magnanimity. . . . Promising herself wealth from colonial trade, she was occupied by the thought of filling the wilderness, instructing it with the products of her intelligence, and blessing it with free institutions."³ Yet, he adds, at this very time the Board of Trade was intent on applying those new measures which for many years it had looked forward to.

¹ *Parliamentary History*, XV, 1271.

² The most candid and impressive of recent English historians of this period is doubtless Mr. Lecky. His conclusion on this matter is that, "The nation had learned to look with pride and sympathy upon the greater England which was growing up beyond the Atlantic, and there was a desire which was not ungenerous or ignoble to remove at any rate the one obstacle to its future happiness;" that it was felt "that the expulsion of the French from Canada was essential, not only to the political and commercial prosperity of the Northern colonies, but also to the security of their homes." (III, 294.) Nowhere in his lengthy discussion of the whole colonial difficulty does this historian give any indication of such a connection between the acquisition of Canada and the West and general colonial affairs as might be expressed in the idea that designs against the liberties of the colonies were in any degree based on the possession of these regions.

³ *History of the United States*, Epoch I, c. 16.

Such is the degree of light thrown upon change of policy or the probability of it, by an examination of the circumstances attendant on the securing of the new acquisition to which the asserted change has been attributed. Let us now examine the early measures taken with regard to that acquisition. These are embraced in the Royal Proclamation of 1763, over which so much controversy has raged, and which, as before shown, was considered by many at the time, and has been held up since, as due, not to the motives which it expresses, but to those special anti-colonial ends to which the new policy was supposed to be addressing itself. In this document the preliminary, "Whereas we have taken into our Royal Consideration the extensive and valuable acquisitions in America; . . . and being desirous that all our loving subjects, as well of our Kingdoms, as of our colonies in America, may avail themselves with all convenient speed of the great benefits and advantages which must accrue therefrom to their commerce, manufactures and navigation," is followed by provisions for the establishment and delimitation of the four new governments of Quebec, East Florida, West Florida and Grenada, the general direction of their civil government, the bestowal of free lands upon those who had served in the war, and the disposition of the vast regions between the Mississippi and the bounds of the old colonies. It is decreed that, "whereas it is just and reasonable, and essential to our interests and the security of our colonies, that the several nations or tribes of Indians with which we are connected, and who live under our protection, should not be molested or disturbed in the possession of such parts of our dominions or territories, as, not having been ceded to us, are reserved to them, or any of them, as their hunting-grounds," these regions are to be kept, "for the present and until our further pleasure be known," free from white encroachments of any kind, all persons already settled therein being enjoined to remove themselves. Further, "whereas

great frauds and abuses have been committed in the purchasing lands of the Indians, to the great prejudice of our interests and the great dissatisfaction of the said Indians; in order therefore to prevent such irregularities for the future, and to the end that the Indians may be convinced of our justice and determined resolution to remove all reasonable causes of discontent," all future purchases from the Indians are to be made through the Colonial governments alone. Trade with the savages is, under colonial license, to be free "to all our subjects whatever."¹ It will be noticed that if this document is to be regarded as specially hostile to the other colonies, it must be concluded that not only are its real reasons not avowed, but that the asserted motives of advantage to "all our loving subjects, as well of our Kingdoms as of our colonies in America," and of "the security of our colonies," as necessitating more consideration for the Indian, are directly and intentionally misleading. Even the most confirmed supporter of this view, however, would hardly expect to have the pretence kept up behind the scenes, and would probably be ready to maintain that the preliminary and accompanying secret discussions and correspondence would reveal evidence of the duplicity. It will be striking at the root of the matter to proceed to the application of this test.

But first a word with regard to that professed solicitude for the Indian which has seemed so absurdly inadequate a reason that it could be considered only the cloak of sinister design. Without attempting to go into the history of British treatment of the savages, (an honorable one, it is usually admitted), it will be well to note the general attitude of the immediately preceding years and the relations with the Indians which existed at the moment. It is not necessary to rest the British case here wholly or mainly on

¹This Proclamation has been several times printed. See Houston, *Canadian Constitutional Documents*, pp. 67-73; Franklin, *Works*, V. 75 (Bigelow ed.); Kingsford, *Hist. of Can.*, V, 142-5; *Wis. Hist. Coll.*, XI, 46.

philanthropic grounds; the student of the period knows well that with the word "Indian" must be read the additional term "Indian trade," and that with this addition the Indian question assumed an important place in the general colonial trade system. The fur trade had long been one of the chief bones of contention between the English and the French; it had been the mainstay of the French government in Canada, and it was natural that now, when French rivalry had just been removed and Canada had become a British province, it should assume a much greater and indeed disproportionate place in the official and public mind. It should be noticed that this trade was regarded as peculiarly a British one, (in contradistinction to colonial), and as one of the most important elements in the manufacturing monopoly of the mother country.¹ No attempt is being made here to defend the general commercial or colonial system of Great Britain at this time; I simply wish to show that the action of the British government in regard to the Indians and the West was only, in the main, an application of that system, and does not require the assumption of any special change of policy or any new lines of hostility with regard to the colonies. The slightest examination will show the vast importance attached to this matter throughout the period by the Imperial authorities, and the amount of care that was given to its regulation.² But

¹ See Sir William Johnson to Lords of Trade, May 17, 1759, (N. Y. Col. Documents, VII, 375); he lays emphasis on the importance of the trade and on the fact that it was carried on wholly by the manufactures of Great Britain, all the produce being exported there. In 1766 Franklin pointed out that the trade was wholly British, not colonial. (*Works*, III, 429, Bigelow ed.)

² When in 1766 Shelbourne, Secretary of State, issued general directions as to the policy of the Imperial government in American affairs and the points to which American officials were to give special attention, the first of the three divisions laid down was the management of the Indians and of the commerce with them. (*Cal. Home Office Papers* 1766-9, No. 348.) And in 1775 the same statesman used in the House of Lords the following language: "The peltry or skin trade is a matter which I presume to affirm is of the last importance to the trade and commerce of the colonies and this country. The regulation of this business has cost His Majesty's ministers more time and trouble than any one matter I know of." (*Parl. Hist.*, XVIII, 671). For important aspects of the trade see also, Turner, *Indian Trade in Wisconsin*, and Moore, in *Mag. Am. History*, Sept., 1892.

apart from this there was another side to the matter, of special colonial importance,—the necessity in regard to the security of the colonies of the maintenance of general amicable relations with the Indians. The two aspects are indeed not to be separated in actual fact; for it will be readily seen that the general relations with the Indians were closely and inextricably bound up with the trade, and that anything which affected either one was likely to have the most essential bearing on the other.

The rivalry between English and French for the alliance of the Indians was not over with the peace; throughout the whole period down to the Revolution the home government was justly apprehensive of tampering with the Indians on the part of the French and Spanish traders from Louisiana.¹ To considerations as to dangers to the older colonies from this quarter was added the natural apprehension that French intrigues among the savages would be directed toward the recovery of Canada. Those best acquainted with the tribes had given warning even before the end of the war of the deep dissatisfaction and unrest even among the allied ones; the warning was justified and all the fears of the government confirmed by the great Pontiac outbreak in the spring of 1763. This was at its height in June of that year, exposing the colonies to ravage and danger such as they had never before experienced; it is evident that it might well have had a decided influence with regard to the Proclamation of the following October. All the professions of concern for the interests and contentment of the Indians which that document contains have therefore every probability of sincerity; there is no reasonable ground for surprise at the stress laid on this matter.

But that the measures of the Proclamation with regard to the Western country had long been in contemplation,

¹ See Hillsborough to Carleton, Nov. 4, 1769. (Can. Arch., Q. 6, p. 121.) This danger would of course increase with any lessening of or impediment to the trade from the British side.

and that the treatment of the Indian and his alleged grievances in it can be ascribed neither to the Pontiac outbreak nor to any general change of policy in connection with the acquisition of Canada, is conclusively shown by the fact that steps of this kind had been contemplated, or seriously debated, from at least the very beginning of the war. March 15, 1756, the Board of Trade had enjoined on the New York government to take measures for granting full satisfaction to the Indians for the white encroachment of which they complained, and which was one of the principal causes of the decline of British interest among them.¹ During the war the French made effectual use of these encroachments in arousing the fears of the Indians, and the British government was obliged to strain every nerve to pacify them. Such efforts were, however, largely thwarted through the interested action of the Colonial authorities, and there seems every reason to believe that the alleged land sales by the Indians were frequently obtained by fraud. This certainly was the firm conviction both of the home government and its colonial representatives, and it was this conviction that led to the measure of 1763 for making such sales a public and not private matter. In 1759 Sir William Johnson strongly represents to the Board the discontent of the Indians, and the damage thereby done to the Indian trade; declaring that "The Indians ought to be redressed and satisfied in all their reasonable and well-founded complaints of enormous and unrighteously obtained patents of their lands."² In 1761 the legislature of New York undertook to make new grants in the neighbourhood of Lake George; the Board of Trade, having considered the matter, reported adversely thereon to the gov-

¹ N. Y. Col. Documents, VII. 77. For this and most of the other references down to 1761 I am indebted to Mr. Kingsford, who has clearly represented the conditions of this matter during these years. (*History of Canada*, V., 135-8.) It is to be noted that the letter of the Board to Chief-Justice DeLancy of N. Y., in 1756, refers to the policy the Board was then urging as one that had been put in action in 1699.

² N. Y. Col. Documents, VII., 375.

ernment (Nov. 11, 1761). This report represented that the proposed grants were dangerous to the security of the colonies, the chief cause of the former hostility of the Indians having been "the cruelty and injustice with which they had been treated with respect to their hunting-grounds, in open violation of those solemn compacts by which they had yielded to us the Dominion but not the property of those Lands;" that as they had since been made allies by partial relief, and now, having acted faithfully, "impatiently wait for full redress and reformation," "under these circumstances and in this situation the granting of lands hitherto unsettled and establishing colonies upon the Frontiers before the claims of the Indians are ascertained appears to be a measure of the most dangerous tendency." It was accordingly recommended that an immediate stop should be made to the proposed settlements "until the event of the war is determined and such measures taken thereupon with respect to our Indian allies as shall be thought expedient."¹ This report was approved by the King-in-Council (Nov. 23, 1761), and instructions for colonial officers in accordance therewith were ordered to be prepared. These, drawn up by the Board of Trade, appear the following Dec. 2.² On the ground that the "peace and security of Our Colonies and Plantations upon the Continent of North America does greatly depend upon the amity and alliance" with the contiguous Indians, and that this amity and alliance are endangered through the alleged unjust treatment of the Indians in regard to their lands, the Imperial government, resolved to protect the Indians in "their just Rights and Possessions and to keep inviolable the Treaties and Compacts which have been entered into with them," ordains practically the same measures as were taken two years later in the Proclamation of 1763.

¹N. Y. Col. Documents, VII. 472.

²Ibid., VII. 477. "Draft of an Instruction for the Governors of Nova Scotia, New Hampshire, Virginia, New York, North Carolina, South Carolina, and Georgia, forbidding them to grant lands or make settlements which may interfere with the Indians bordering on those Colonies." Apparently sent out at once.

We see therefore that the action in 1763 with regard to the Western lands, instead of being indicative of a change of policy occasioned by the acquisition of Canada, was merely the re-enunciation in a more general and important form of the principles which had been acted upon at a time when it was still hotly debated whether Canada should be retained at all or not; that it was indeed merely the logical following up of opinions which are evidently the controlling ones at least as early as 1756. Instead of their being evidence, or ground for reasonable suspicion, that the solicitude with regard to the Indians was in whole or part assumed and the cloak of other motives, we find that this solicitude, (the selfish commercial meaning of which is shown above), had been a predominant motive from the beginning of the war, and that it is unmixed, in the most secret and confidential transactions of the government, with any indication of ulterior designs.

The above inquiry has been into the origins of that part of the Proclamation which deals generally with the disposition of the West. With regard to the limits of Canada a somewhat different question is presented. For in this respect the Proclamation differed essentially from the Quebec Act; the former confining the Province to a very narrow area, and the latter including within it the whole sweep of the West between the Ohio and the Mississippi. The idea of a continuity of policy between the two measures, on the part of those who regard both as parts of the same new hostility which had been acted on since the conquest of Canada, rests on the assumption that the prohibition of settlement and the confirmation of Indian possession were only preliminary either to the erection of new governments exclusive of the other colonies, or to that incorporation with Quebec which was accomplished in 1774. I take the same view as to continuity of policy; with the difference that I regard both measures simply as parts of the old colonial system that had been applied practically

throughout the century. It will be necessary therefore to trace carefully this side of the matter, with the purpose of opposing both the view noted above, and that older one which sees no connection on this point between the measures, but regards the Quebec Act as especially called forth by the difficulties with the older colonies at and just before the time of its appearance.

And first it should be noted that Canada, as ceded to England by France in 1763, was assigned no definite limits. The term used in the treaty of Paris¹ is "Canada with all its dependencies," and the boundary fixed between British and French territory in North America was, so far as Canada could be affected, simply the Mississippi River. Nor does any further indication of limits seem to have been given in any way by the French; for in a letter published shortly after the conquest² the Marquis de Vaudreuil, (the French governor who had signed the capitulation), states that he had "traced out no limits whatever" for the surrendered territory. General Murray in his official report of 1762, says that it is "impossible to ascertain exactly what part of North America the French styled Canada, no chart or map whatever having fallen into our hands, or public record of any kind to show what they understood by it." Hence the British Government might consider itself to have a comparatively free hand in the defining of the new Province, having regard to the fixed boundaries and well-established claims of the adjacent Colonies,³ to the Mississippi

¹ Articles IV, V, VII. (Chalmer's *Treaties*, London, 1790).

² Annual Register, 1761, p. 267.

³ The degree to which these latter were likely to be considered as restrictive may be inferred from the following statement of a recent American text-book with regard to early charter claims in the West. "Those charters had all lapsed, and the only colonies in 1750 of which the charter limits reached beyond the Appalachian mountains were Connecticut and Pennsylvania." (Hart, *Formation of the Union*, p. 3.) Roosevelt (*Winning of the West*, I, 37), after stating that the claims of the colonies in the West were heeded by the British no more than by the French, adds in regards to these claims, "The mere statement of the facts is enough to show the intrinsic worthlessness of the titles." Winsor (*The Mississippi Basin*, p. 447), has pointed out that the drawing by the treaty of 1763 of the Mississippi as a line of demarcation between the English and the

as the Eastern boundary of Louisiana, and to the somewhat indefinite regions granted to the Hudson Bay Company.¹ But how this freedom might be affected by popular opinion as to the legitimate limits of the new Province, will be seen from the fact that Canada had always been claimed by the French to extend over almost the whole extent of the vast territory through which her traders had carried on the fur-trade,² and that the non-inclusion of these regions down till the Quebec Act was a prominent subject of complaint among all classes of the inhabitants.³

Very soon after the treaty the British Government proceeded to consider the difficult question of the disposition of the outlying regions in America. The Board of Trade having recommended (in a renewal of the considerations of 1761, pointed out above), that the Western territory outside

French, meant "a distinct abandonment upon the part of the British government of the old sea-to-sea claims of the early English charters." Yet these had been the only basis of the Western claims of the colonies; it could hardly be expected that Great Britain would feel bound to pay any further attention to them. And not with any more reason can it be contended that the disregard of them in later measures showed any special hostility or injustice. I am concerned here however only with the degree to which the home government might consider its action in the settlement of the new acquisitions to be impeded by the old grants. That the view as to the entire lapse of the charter rights was consistently maintained by the Imperial authorities, will be seen from an examination of the negotiations for the treaty of peace in 1783. (*Dip. Corr. of the Revolution*; Hinsdale, *Old Northwest*, pp. 178-9). There is no record apparently of any objection made by Virginia to the proposed Walpole or Vandalia cession (1768-75) on the ground of her charter claims. (Monograph by Mr. Alden, elsewhere referred to).

¹ These latter were not definitely ascertained till the Imperial Act of 1889, which settled the northern boundary of the Province of Ontario.—Houston, *Canadian Constitutional Documents*, p. 6.

² The address of thanks for the Quebec Act from the French Canadians of Montreal, 1774, refers to it as having restored the Province to "ses anciennes limites."

³ See especially French and English petitions and memorials of 1773 and 1774. (Can. Arch., Q. 9, 10.) Also in *Masères*. Also Carleton to Shelbourne January 3, 1767, (Can. Arch., Q. 4, p. 50) and Dartmouth to Carleton December 10, 1774. (Ibid., Q. 10, p. 125). Garnau echoes these complaints in the assertion that "D'abord l'Angleterre voulut repudier tout ce qui était Francais et enlever meme aux habitants les avantages naturels qu'ouffrait à leurs enfants l'etendue du pays." (*Hist. Can.*, II, 289.) With regard to the narrowing of the Province in 1763, it may perhaps be supposed that the Government was influenced by some idea of consistency in regard to its own past attitude in the disputes with the French over boundaries in North America. When the great extension of the Quebec Act was under debate the Opposition taunted the administration with the change of base on this point, asking what would be the result should the French ever be in a position to reclaim Canada.

of Canada (a term they use in a restricted but indefinite sense), and the other colonies should not be subject to grants of land or to settlement, the King communicates his approbation of this suggestion, but adds that it would be necessary to put the region under some civil government, in order that it might not seem to be abandoned or become a refuge for malefactors ;¹ and that it would probably be best to attach it to the Government of Quebec. In reply August 5, 1763,² the Board agrees that a government is necessary, but objects to its being that of any one existing province, especially of Quebec, for three reasons:—(1) that if included within the limits of Canada the Indians might thereby conclude that the English title to the country came only from the late French cession, (2) that the annexing of it to any one province would give that province an undue advantage in the Indian trade, and (3) that as government in that region could probably be carried on only with the aid of the greater part of the military forces in America, its annexation to Quebec would require, to prevent constant disputes between the civil and military authorities, that the Governor of Canada should be virtually Commander-in-Chief.³ Accordingly the Board suggests instead that the region should be governed by the Commander-in-Chief under his military commission, and that pending the receipt of information necessary to the drawing up of his instructions, a Proclamation should be issued declaring the territory reserved for trade and the Indians. These recommendations were adopted, and with the others noted above formed the basis of the Proclamation of Oct. 7, following. This, so far as it relates to Quebec under this head, begins by clearly defining the limits of the new

¹ See last clause of the Proclamation.

² Can. Arch., Q. 1, p. 110.

³ This last objection should perhaps be especially noted, in considering whether aims hostile to the civil rights of the other colonies were being entertained on the basis of the acquisition of Canada. If so, it could hardly seem objectionable that the Governor of Canada should be Commander-in-Chief.

"Government of Quebec," reducing it to a rectangular district of not more than 100,000 square miles extending along both sides of the middle St. Lawrence from the mouth of the river St. John to the point where the St. Lawrence was intersected by the 45th degree of N. Latitude. As thus fixed the boundaries remained till the Quebec Act, the Province so constituted forming but a small part of the region over which the French Government in Canada had claimed sovereignty. The eastern portion cut off was placed under the Government of Newfoundland.

There seems to be no reason for doubting that on this point as on the others the Proclamation is what it appears to be, and that the motives which dictated it are to be fully gathered from the foregoing representations of the Board of Trade. That the measures referring directly to Quebec can scarcely be regarded as unfriendly to the colonies is shown by the fact that they arose partly from a desire to prevent Quebec from having an undue advantage in the Indian fur-trade. It was not regarded as a complete settlement, and was intended to be supplemented by steps which should properly provide for the temporary government of the region. But as it proved, neither time nor energy was available till 1774 for further arrangement, and even the instructions to the Commander-in-Chief, spoken of by the Board of Trade, seem never to have been issued.¹ On the eve of the passing of the Quebec Act, (long after its main features had been decided upon), Dartmouth, then Secretary of State, writes to Lt. Gov. Cramahé that "there is no longer any hope of perfecting that plan of policy in respect to the interior country which was in contemplation when the Proclamation of 1763

¹ Knox (*Justice & Policy of the Quebec Act*, Lond. 1774), states in an authoritative manner that it had been intended to defray the expense of the system contemplated by a tax on the Indian trade, and that the plan was abandoned because it was not judged expedient to lay this tax, while the American budget was already sufficiently burdened. See also Franklin, *Works*, V. 38.

was issued."¹ The details of the plan, (referred to as drawn up by the Board of Trade in 1764), we learn from the instructions to Carleton of 1775,² it being incorporated therein as some guide in his future dealings with the Indian trade. The main feature is the institution of a semi-military government, (i. e. by civil officials relying on the military for constant support), administered in a summary manner by a superintendent and deputies; government having almost for its sole object the regulation of the fur-trade, and no consciousness being shown of the existence in the region of any permanent white settlers. The Superintendent was indeed appointed; but being left without sufficient power the result was unsatisfactory, and he was superseded by 1768, each province then having authority to frame regulations for its own traders.³ The fur-trade, subject from the want of effective government to a variety of injurious impediments, became every year more and more disorganized and unproductive, and complaints as to the insecurity of life and property throughout the trading grounds increased every day in volume and vehemence. It was soon seen that some more effective measures must be taken for the control of the region. Dartmouth in the letter just quoted, after speaking of the difficulty of carrying out the plan of policy at first intended, proceeds:—"Many circumstances with regard to the inhabitancy of parts of that country were then unknown, and there are a variety of other considerations that do, at least in my judgment, induce a doubt both of the justice and propriety of restraining the colony to the narrow limits prescribed in that Proclamation."⁴ The main "circumstance" here spoken of was probably the discovery that white settlers had spread themselves too widely and fixed

¹ Can. Arch., Q. 9, p. 157.

² Can. Arch., *Instructions, 1763-67.*

³ Hillsborough to Carleton, June 11, 1768 (Can. Arch., Q. 5-1, p. 419). Franklin's letters show the expense of the system as one of the chief reasons for change.

⁴ See also same to Carleton Dec. 10, 1774. (Can. Arch., Q. 10, p. 125.)

themselves too firmly throughout the region to make it possible to eject them (as was ordered by the Proclamation of 1763), or to prevent their further increase.¹ Every year only multiplied the evidence that the Western country was fast and irretrievably losing its character as a mere Indian hunting-ground, and that settled civil government could not long be delayed.²

As to the dangerous and almost anarchial state of things throughout the West during the whole of this period we have abundant evidence. The official reports are full of complaints of the unsettled and inadequate state of government and of the impossibility of carrying on the fur-trade without constant friction and disorder.³ I cannot better state the situation than by quoting from the well-expressed report of a committee of the Quebec Council, April 24, 1769,⁴ drawn up as the result of an investigation called forth by complaints of the traders.⁵ This was after all pretence of control through a general superintendent had been withdrawn and each Province had been given power to frame regulations for its own traders. It begins by representing the great inconvenience and injury of the "situation and present condition of the places where this trade is carried on, and in which all regulations, whether made by this or any other Province, must of consequence have their operative influence. They are at present, as we understand, the subject of no civil jurisdiction whatever, without any internal principles of government within them-

¹ See Murray to Halifax March 9, 1764, where he speaks of these settlements as "certainly noble ones." (Can. Arch., Q. 2, p. 78.) See also Houston, *Can. Const. Doc.*, p. 108, note 2.

² See petition for such a government, from inhabitants of the Illinois, June 27, 1773. *Cal. Hald. Coll.*, p. 203. Also Dartmouth to Gage concerning same. *Ibid.*, p. 232. This was an old French settlement; it was not to be expected that English settlers would be less forward in opposition to military government.

³ Advocate-General Marriott asserted in 1774 that for want of a good government since the Conquest, the trade was then only one-third of what it had been under the French. *Code of Laws*.

⁴ Can. Arch., Q. 6, p. 83.

⁵ For these complains see *Minutes of the Quebec Council*, Jan. 15 and March 2, 1768. They were directed mainly against the Provincial regulations then in being.

selves, nor annexed for the purposes of civil government to any Province which has; so that we are at a loss to conceive how any province in particular or all the separate jurisdictions in America combined, can form a system. . . . and give it binding effect upon persons casually residing in a country not liable to receive a law from them, or enforce obedience to it when formed." The inevitable result of the situation here outlined is briefly referred to by Dartmouth in a letter to Gen. Gage, of March 3, 1773, in which the latter is ordered to bring to England every thing required to explain "as well the causes as the effects of those abuses and disorders which in some of your former dispatches you say had prevailed to a great degree of enormity in that country."¹ The report of the Quebec Council proceeds to maintain that matters could not be remedied without Imperial action in the annexing of the whole of the trade region to some one of the existing civil governments, and contends that no plan of concerted colonial action, (such as New York shortly after proposed), could be satisfactory. There were the usual difficulties of the time in regard to such co-operation; but over and above these, it was made almost impossible by the fact that Quebec, the province most concerned, was in a radically different governmental and industrial position from its neighbors. In 1771 New York proposed a scheme of joint action by Pennsylvania, Quebec, and itself, which Quebec refused to accede to; Lt. Gov. Cramahé writing home on the subject, Oct. 31, 1771, that "the interest of the two Provinces [Quebec and New York] differ too widely to expect they will ever perfectly agree upon regulations."²

¹ *Cal. Hald. Coll.*, p. 232.

² *Can. Arch.*, Q. 8, p. 82. This is the occasion of the significant interference of Hillsborough against American Congresses which have I spoken of above (p. 389.) Cramahé, though recognizing earlier the peculiar interests of Quebec, seems to have been willing at first, through despair of other remedies, to join in discussing common measures. January, 1772, we find the Quebec Council in receipt of a more definite proposal for joint action from New York, and rejecting the same on the grounds, (1), that the Quebec government had no authority to take the financial measures involved, and (2), that the steps

It will then be seen that it might well appear to the home administration that no other step was open than the annexing of the territory to some existing civil government. To have kept it separate would have meant merely the continuance of a military or semi-military control, sure to be productive of even greater friction with the other Provinces and their traders, of increasing damage to the trade, and of more serious discontent on the part of the various small settled communities. And having reached this conclusion it was almost inevitable that the Imperial authorities should choose for this purpose the Province with which the region had been earliest and most closely associated, and to which it was believed by so many to belong,—that of Quebec.¹ The report of the Quebec Council quoted above, had been transmitted home; its main conclusion was the setting forth with considerable force the pre-eminent claims of Quebec to this acquisition. Whatever influence the state of affairs in the other Provinces exerted in this regard, we meet no trace of such influence in the confidential communications between the British and Canadian authorities. We have no reason to suspect the candour of Dartmouth in the letter above quoted, addressed as it was in the regular course of private correspondence

proposed would be detrimental to the Provincial trade. We have here mainly no doubt jealousy of the more powerful neighbor and apprehension at the inroads she was making in a branch of trade which had so long been Quebec's chief stay. Apart from the prohibition of the Minister, (which it is noteworthy, is not referred to), the Quebec Government had probably confidence that the old advantages would soon be restored to the Province by Imperial action. No further intercourse with the other colonies appears in the subject before the Quebec Act. How far the bearing on this matter of the provisions of the Quebec Act was instrumental in affecting the Revolutionary attitude of New York and Pennsylvania, as rousing their commercial anger and jealousy, would probably be worth a closer investigation. At least we have here no inconsiderable element in the general and profound dislike of the measure among the older Northern colonies. See the commercial aspect of the *Remonstrance* of the N. Y. Legislature, March 25, 1775. (Parl. Hist., XVIII, 650.)

¹To attach it to any one other Province would be objectionable (we may reasonably assume the authorities to have felt), because of the various conflicting colonial claims in the West, sure to be aroused to the greatest activity by such a measure. Whereas the Government could, consistently with the Treaty, disregard all, and put the matter on another basis by giving it to Quebec. This would be at least a plausible line of argument.

to an official of long standing and known discretion. If other matters had been of weight in the Imperial councils there would seem to have been no reason for the careful concealment, and no possibility of the unintentional neglect, of them in this quarter.

On the other hand, although it is true that before the actual appearance of the Quebec Act we have no indication that the extension of the Province made by it had any connection whatever with the contemporary difficulties of government in the other colonies, and although it must be conceded that apart from such reference the Imperial authorities seem to have ample justification for that extension, yet it is undeniable that the considerations which excited the fears of the Continental Congress were put forward by supporters (as well as by opponents), of the measure, both in Parliament and outside. But this was not prominently done, at least at first; so incidentally indeed that in the whole of the spirited debates in both the Commons and Lords on the Quebec Bill in May and June, 1774, such references appear in the mouths of only two supporters of the Bill, and their utterances are apparently not specifically noticed by the opposition. One of these more candid or incautious speakers was Solicitor-General Wedderburne, who stated in the Commons that one of the objects of the measure was to deter Englishmen from settling in Canada, and that one of the great advantages of the extension of territory would be that the other inhabitants of North America "will have little temptation to stretch themselves northwards."¹ He added moreover, "I think this limitation of the boundary (i. e. of the older colonies) will be a better mode than any restriction laid upon govern-

¹ Cavendish, *Report*, p. 58. Wedderburne was at this time one of the pillars of the Government in the Commons. But he was not responsible for the present Bill, and though in his official capacity supporting it as a whole, he plainly intimated that it had not his entire approval. The statement had been immediately preceded by the remark that he did not think that any temptation should be held out to natives of England to emigrate.

ment. In the grant of lands we ought to confine the inhabitants to keep them according to the ancient policy of the country along the line of the sea and river."

This statement as I have said seems to have excited no comment from either side of the House;¹ an oversight on the part of the opposition which is the more remarkable from the fact that several of their speakers hint darkly at "the secret designs" of the Bill, and taunt the Ministry with concealing their real motives,²—hints and taunts which elicited no reply. Lord North, the leader of the House, upheld the extension as made simply in the interests of the fisheries in the East and of security to life and trade in the West; though it will be seen that the preamble of the Act refers only for the Western territory to the need of civil government for the "several colonies and settlements." The enacting clause pays special attention to the northern and western boundaries of Pennsylvania as "granted by the Charter," beside making the provision "that nothing herein contained . . . shall in any wise affect the boundaries of any other colony;" but there is no reference to the Western claims of any of the Provinces. As first introduced the clause read very differently,— "all the said territories, islands and countries, extending southward to the banks of the river Ohio, Westward to the banks of the Mississippi . . . not within the limits of any other British colony, as allowed and confirmed by the Crown." A petition against this indefiniteness was presented by the Pennsylvania proprietaries, and Burke also objected in behalf of New York. Lord North professed every readiness to pay regard to both settled and unsettled boundaries, while declaring that the original intent had been to leave the fixing of more precise southern bounds to later local agreement; and on Burke's motion, representing that otherwise

¹ The chance reporters from whom the Parliamentary History of the period was compiled, seem also not to have heard it or to have not thought it worth while noting.

² *Cavendish*, pp. 1, 37, 85, 214—pagings which refer to the beginnings of the speeches in which the references occur.

the Colonies would in this matter be left at the mercy of the executive, the established clause was substituted for the above.

When with this and other Amendments the bill went back to the Lords it was received by a small but spirited opposition, headed by Chatham. Its principal defender was Lord Lyttleton, who referred to the idea put forward by Chatham that Canada would at a future day be used as a proper instrument to quell British America, with the remark that he was not apprehensive of this, but that if the Americans were determined to persist in their rebellious course he saw no reason why Canada, with the rest of the Empire, should not be so employed; and that in such an event he regarded it as happy that the local situation of the Canadians was such that they might form some check to the "fierce fanatic spirits" of the other Provinces.¹ This however illiberal, does not apparently refer to this situation as one resulting from the provisions of the Quebec Act. Whatever the inference, this and the statement of Wedderburne quoted above are the strongest suggestions of hidden motives on this point, that, so far as I have discovered, appear at this time in the mouths of supporters of the Government. In the close tracing of the preliminary steps through the ten years preceding the Act I have met with no other evidence fitted in any degree to support the belief that the extension by it of the boundaries of Quebec was dictated by hostility to the growth and liberties of the other colonies other than that which may perhaps be said to mark every part of the colonial system. And whether these statements are fitted to support that belief will appear very doubtful to those who have entered into the spirit of that colonial system. Even if it should be established that they were not merely private and incidental utterances, but were really expressive of definite ideas and motives on the part of the originators of the Quebec Act, it will yet remain to be

¹ *Parliamentary History*. Vol. 17, p. 1402 *et seq.*

shown that they betoken a different standpoint than that occupied by the Board of Trade for some time back. Closely connected with that view of the interests of Great Britain which for a long time had inspired the hostility to colonial manufactures, for example, was a strongly rooted preference of shore to inland colonies; a preference based on the belief that the farther the colonists removed themselves from the ocean and the mother country, the more inevitably would they be led to manufacturing enterprises and the less easy would it be for Great Britain to restrain this activity. It was simply another aspect of the trade considerations which led to such emphasis being placed upon the conciliation of the savages; it cannot be shown to imply any new development of anti-colonial policy, or any insidious scheme of building up in the West new communities of alien social and governmental constitution, with the aim of being later used as instruments against the growth and liberties of the older colonies. By the ordinary colonial views of the older illiberal school the attitude of Wedderburne and Lyttelton can I think be sufficiently explained.

And not their views alone; but also such parts of the Imperial policy in regard to the West as cannot be attributed to real solicitude for the Indian and for the safety of the colonies. For if I have been successful in presenting my point of view in the above, it will be already evident what position I take with regard to continuity of policy throughout this period in respect to the Western lands. I see no reason to agree with Hinsdale even in the more moderate assertion that "the Western policy of the British was not steady or consistent, but fitful and capricious;"¹ it seems to me that no inconsistency is to be detected between the policy that dictated the Proclamation of 1763,—a policy that was manifest as early at least as 1756,—and that which was expressed in the Quebec Act of 1774. It has been one

¹ *Old Northwest*, p. 141.

of my objects throughout this investigation to show the long course of weakness, ignorance, and procrastination that stretches between the acquisition of Canada and the final settlement of its constitution. These qualities are not entirely absent in the treatment of the matter under discussion; but that treatment nevertheless presents more consistency and firmness than we find in almost any other part of the dealing with the situation. The frequent changes of Ministry and Secretary seem to have affected the peculiar sphere of the Board of Trade less than any other part of the administration; simply, it is to be contended, because that Board was now acting on long established principles, applied to the new conditions as a matter of course, and only slowly giving way to the inevitable western changes. These are the principles of the old colonial-commercial policy; and no better expression of them can perhaps be found than in the words of the Board of Trade itself in 1768, in its adverse report with regard to the proposed new settlements at Detroit and in the Illinois country.¹ The significant part of this is as follows:

"The proposition of forming inland colonies in America is, we humbly conceive, entirely new. It adopts principles in respect to American settlements different from what has hitherto been the policy of this kingdom, and leads to a system which, if pursued through all its consequences, is, in the present state of that country, of the greatest importance.

The great object of colonizing upon the continent of

¹ Franklin's answer to Hillsborough, 1772 (*Works*, V. 55, Bigelow edition, 1887). For the report itself see its quotation by Hillsborough (*Ibid.* V. 5-12). For very interesting record of the progress of the scheme to which this was the death-blow, see letters of Franklin to his son, Sept. 27, 1766—March 13, 1768 (*Ibid.*, 138-45). This reference I owe to the unpublished monograph on western settlements of Mr. G. H. Alden of the University of Wisconsin. It exhibits Shelbourne, Secretary of State for the Southern Department when the scheme was first advanced (by Franklin and others), as decidedly favorable to it, together perhaps with some other officials. But Shelbourne was evidently in this as in some other matters, in advance of his time (see Fitzmaurice, *Shelbourne*, II, 31); the Board of Trade seems not to have wavered in its position, and Shelbourne's retirement in January 1768 in favor of Hillsborough, the chief representative of the opposite view, may perhaps not unreasonably be regarded as helped on by his heterodox liberalism. It is apparently the first vigorous shaking of the older policy; but that policy is still triumphant.

North America has been to improve and extend the commerce, navigation, and manufactures of this kingdom, upon which its strength and security depend.

1. By promoting the advantageous fishery carried on upon the northern coast.

2. By encouraging the growth and culture of naval stores and of raw materials, to be transported hither in exchange for perfect manufactures and other merchandise.

3. By securing a supply of lumber, provisions, and other necessaries, for the support of our establishments in the American islands.

In order to answer these salutary purposes, it has been the policy of this kingdom to confine her settlements as much as possible to the sea-coast, and not to extend them to places inaccessible to shipping, and consequently more out of the reach of commerce; a plan which at the same time that it secured the attainment of these commercial objects, had the further political advantage of guarding against all interfering of foreign powers, and of enabling this kingdom to keep up a superior naval force in those seas, by the actual possession of such rivers and harbours as were proper stations for fleets in time of war.

Such, may it please your Majesty, have been the considerations inducing that plan of policy hitherto pursued in the settlement of your Majesty's American colonies, with which the private interest and sagacity of the settlers coöperated from the first establishments formed upon that continent. It was upon these principles, and with these views, that government undertook the settlement of Nova Scotia in 1749; and it was from a view of the advantages represented to arise from it in these different articles that it was so liberally supported by the aid of Parliament.

The same motives, though operating in a less degree, and applying to fewer subjects, did as we humbly conceive, induce the forming the colonies of Georgia, East Florida, and West Florida, to the south, and the making those provincial arrangements in the proclamation of 1763, by which the interior country was left to the possession of the Indians."

Here we have, it will be seen, not only the constant reference throughout to a policy which is considered as of long standing, but the definite statement that this policy was directly acted upon by the government on an important occasion as early as 1749, and that it was operative in the arrangements of 1763. It is true that Hillsborough,

while quoting this statement with the fullest approbation, has just before spoken of "that principle which was adopted by this Board and approved and confirmed by his Majesty, immediately after the treaty of Paris, viz.: the confining the western extent of settlements to such a distance from the sea-coast as that, etc.;" but it is evident either that this is due to a confusion and heedlessness quite characteristic of the writer, or that it is a mere misuse of language, by the "principle" affirmed there being really meant only the new application of an old principle to conditions which had now for the first time fully presented themselves. In Franklin's reply to Hillsborough he accepts without question the definition of policy, and in proceeding to refer to the grant on the Ohio which had been approved in 1748, brings this forward, not to show that that policy was not then in operation, but on the contrary, going on the assumption that it *was* then in force, to show that the region in question did not come within its operation, because not in fact and not considered "without the reach of the trade and commerce of this kingdom."¹ It is clear that Franklin's argument on this matter is entirely without point unless it proceeds on such a basis. If the Board of Trade were not to be supposed to be animated by the principle in question as a general one, their action could show nothing with regard to the application of it to the region included within the grant of 1748.

But we have, it is said, evidence of inconsistency or different policy in the treatment of the more southern portion of the West in 1772 through the approval of the establishment of a new colony south of the Ohio, to be known as Vandalia. The inner history of this matter will show, however, that it cannot properly be so regarded. For whether or not this region was, as Franklin contends in the argument noted above, regarded as on a different basis

¹ *Works*, V. 32.

as early as 1748, it is very clear that it had so established itself by 1772. As early as 1764, Franklin tells us,¹ government contemplated the placing of it in a different position, as a part of the plan then under consideration for the regulation of the Indian trade; aiming by its purchase from the Indians to "establish with their consent, a respectable boundary line, beyond which his Majesty's subjects should not be permitted to settle." The negotiations then entered upon with the Indians were however delayed, and meanwhile, between 1765 and 1768 large numbers of settlers came into the region and brought about a critical state of things with the Indians. This hastened the action of the authorities, and the purchase was finally completed by the treaty of Fort Stanwix in November, 1768. That the home government had reconciled itself fully to settlement here and had made the purchase with such settlement in view, is shown (as was pointed out by Franklin),² by the reference in the Board of Trade Report quoted above to "the liberty that the inhabitants of the middle colonies will have (in consequence of the proposed boundary line with the Indians) of gradually establishing themselves backwards."³ And yet it is this same Report, it will be remembered, which is drawn up for the purpose of making that strong re-statement of general colonial policy which has been quoted from above. So that for the Fort Stanwix region there would seem to be no question that Franklin is correct in stating⁴ that "the true reason for purchasing the lands comprised within that boundary were to avoid an Indian rupture, and give an opportunity to the king's subjects quietly and lawfully to settle thereon." Or, as he strongly puts it, that the proclamation which had reserved lands for the use of the Indians had lost its force with re-

¹ *Works*, V. 38.

² *Ibid.*, V. 55-6.

³ *Ibid.*, V. 10.

⁴ *Ibid.*, p. 43.

gard to that portion of these lands which the Indians by selling had shown they had no use for.¹

In 1768 therefore, government, while strongly re-enunciating the general Western policy, had just as clearly acknowledged that this policy was not to be applied to the region south of the Ohio.² This latter territory was now definitely deprived of that character which, in the ministerial mind, still remained attached to the more northern country, viz.: appropriation to the Indian as a hunting ground. Between 1768 and 1772 settlement continued to pour into the Ohio country to such an extent as to show beyond doubt that this character had departed for all time.³ So that in 1772, when the Walpole matter came up for final determination, it was not difficult for Franklin to make a triumphant case against the belated views of Hillsborough. The commercial policy had here yielded finally to the force

¹A hasty reading of this part of Franklin's paper might possibly give the impression that he minimizes or loses sight of the general principles of policy which inspired the Proclamation of 1763, and that he regards it as mainly intended to pacify and protect the Indians. Such a view I should regard either as an error, or as the misleading emphasis of a partizan brief. But I do not think Franklin is chargeable in either respect; for in a previous part of his paper (V. 32) he plainly declares that the definition of the policy of the Board in 1763 as laid down by Hillsborough, he will not "presume to controvert." And as I have shown above, his later argument is evidently based on the acceptance of the principles of the Report of 1768. In what he says as to the cessation of the force of the Proclamation through purchase from the Indians he has reference of course only to the lands south of the Ohio,—a region to which, he labors throughout to show, the principles of the established policy did not properly extend. Franklin was too good a debater to prejudice his case by going out of his way unnecessarily. And hence the reference to Mr. Grenville (V. 37) as having, with regard to the Proclamation, "always admitted that the design of it was totally accomplished as soon as the country was purchased from the natives," I can regard as quoted purely with reference to the country that had been purchased in 1768, and as not giving, or purporting to give, Grenville's views with regard to the policy or intent of the Proclamation as a whole. When the "admission" was made does not appear; the language would seem to show that it was subsequent to the purchase. But it will be remembered that the Grenville government had entered into negotiations for such a purchase (with regard only to the region south of the Ohio), as early as 1764. (*Franklin*, V. 33).

²It is probable that the unimportance of this latter territory with regard to the fur trade was of strong influence in bringing about this attitude. Franklin says that the Indians were willing to sell because they had no use for the lands "either for residence or hunting." (V. 37).

³Franklin asserted in 1772 that it was certain that at least 30,000 settlers were then there. (*Works*, V. 74.)

of circumstances, and the words in which the grant (Vandalia) was finally recommended by the Committee of Council must be looked upon as intended to show the reasons for this departure from what was still however the established policy. As stated by Franklin¹ these reasons were as follows:

"1. That the lands in question had been for some time past and were then in an actual state of settling, numbers of families to a very considerable amount removing thither from his said Majesty's other colonies.

"2. That the lands in question did not lie beyond all advantageous intercourse with the kingdom of Great Britain."

It is evident therefore that the grant of 1772 is neither a mark of inconsistency nor a sign of the overthrow of the old commercial-colonial policy with regard to the West. If circumstances had forced this step south of the Ohio, the Quebec Act two years later showed that there had been no such change with regard to the rest of the country. Though even this latter it would seem could not be regarded as purely as before as a mere fur region; it has been shown above that the modifying of the first ideas with regard to its disposition was doubtless partly due to the discovery that a degree of settlement had gone on even within it which could not be entirely disregarded.² It was not disregarded, but it was regarded as slightly as possible by the attachment of the whole region to Quebec.

A very notable pamphleteer of the year 1774³ forcibly sums up this matter. After stating that the Proclamation of 1763 was intended to be followed up a general plan of regulation for the Indian trade, he affirms, (as noted above),

¹ *Works*, X. 355.

² The preamble of the Quebec Act speaks of the several French colonies and settlements which by the Proclamation were left without civil government; (a petition for it had been received from at least one of them). Nothing is said of new settlement; but Dartmouth's letters show that it must have been known that it had steadily proceeded.

³ "The Justice and Policy of the late Act of Parliament for making some effectual provision for the Government of the Province of Quebec asserted and proved; and the conduct of Administration respecting that Province stated and vindicated." By Wm. Knox. Lond. 1774. Though unable to prove it, I believe this to have been inspired.

that the events of the year following proved fatal to the doing of this, as it was not thought expedient to lay that tax upon the trade by which the expense was to be deferred. "This was the reason that so large a part of the ceded territory in America was left without government, and that the new province of Quebec contained so small a portion of ancient Canada." The small French settlements in the region, he continues, were left under the military government of the posts, "as most likely to prevent an increase of inhabitants." But in the parts contiguous to the old colonies immigrants flocked in and forced the Indians to fall back; and as these new settlements were without civil jurisdiction and were every day increasing, "the case was judged to be without other remedy than that of following the emigrants with government and erecting a new Province between the Alleghany mountains and the river Ohio for that purpose." But to prevent a recurrence of the necessity it was resolved, (and done by the Quebec Act), to put the whole remaining region under the jurisdiction of the Government of Quebec, "with the avowed purpose of excluding all further settlement therein, and for the establishment of uniform regulation for the Indian trade." The Province of Quebec was preferred, "because the access by water is much easier from Quebec to such parts of this country as are the most likely to be intruded upon than from any other colony." Only under one uniform government could the Indian be protected, and thus be prevented "the quarrels and murders which are every day happening and which are the certain consequence of a fraudulent commerce." There seems no reason to doubt the substantial correctness of these assertions; especially when we find the Government despatching to Carleton with his new commission in 1775, as a guide in his dealings with the Indians and the Western trade, the identical regulations which had been drawn up by the Board of Trade in 1764.¹

¹ Can. Arch., *Instructions to Governors*. Appendix to Carleton's Instructions, 1775.

The writer is evidently speaking from the standpoint of the illiberal commercial-colonial policy; but it will be seen that he is apparently ignorant of any but trade motives for this part of the recent measure, and that he regards it as dictated by precisely the same policy as that which had produced the Proclamation of 1763. And this policy, I repeat in conclusion, was caused neither by the acquisition of Canada nor by the colonial troubles of the seventies. It was only a new application of that principle of commercial monopoly which, as Burke says, runs through twenty-nine Acts "from the year 1660 to the unfortunate period of 1764;" there is no ground whatever for connecting it, in origin or maintenance, with the special troubles in the other colonies, or with any sinister designs against these latter. A connection which, I need scarcely again observe, certainly cannot be made if the continuity of policy as between 1763 and 1774 be conceded.

But while defending the originators of the Quebec Act from the heavier reproach brought against them on this point, I do not wish to be understood as in the least defending the Western policy of the measure in itself. Disastrous as the Quebec Act proved, no part of it I think was more shortsighted or more disastrous than this treatment of the Western lands. Following up the Proclamation of 1763, it seemed an attempt to indefinitely maintain in the great heart of the continent, when apparently thrown open for Anglo-American expansion, the policy of monopoly and restriction against which the colonies on the coast were chafing so sorely. It was natural that the latter should imagine themselves threatened and impeded more malignly and seriously than could have proven to be the case; it was on this side, I have little doubt, that the Quebec Act figured most prominently amongst the colonial grievances. Great Britain might well seem to have become "the most active foe of the English race in Amer-

¹ Roosevelt, *Winning of the West*, I. 36. Though I have quoted this expression, I by no means agree fully with the way in which it is used by this writer. He attributes to

ica."¹ In this light I am inclined to emphasize strongly the importance of the Act in alarming and embittering the colonists.¹ They were not likely to stop and reflect that though the policy of the mother country apparently remained the same, that policy had already broken down in one important section of the new territory before the inrush of the pioneers, and that there was no probability that it would be any more permanent with regard to the remaining portions.

b. *Religion.* The second important provision of the Quebec Act was that noted one by which it was enacted that the professors of the Catholic faith within the Province "may have, hold, and enjoy the free exercise of the religion of the Church of Rome, subject to the King's supremacy, . . . and that the clergy of the established Church may hold, receive, and enjoy their accustomed dues and rights," in regard to such professors. At the same time the adherents of that Church were relieved from the oath of Supremacy established by Elizabeth on condition of taking a simple oath of allegiance. These are the provisions which move Lecky to describe the Act as marking an "epoch in the history of religious liberty," and which at the time moved the Continental Congress to express its astonishment that a British Parliament "should ever consent to establish in that country a religion that has deluged your island in blood, and dispersed impiety, bigotry, persecution, murder, and rebellion through every part of the world." We must examine these provisions in the light of the attitude of the Home and Provincial governments to the church throughout the period;

England a too conscious and special hostility, and dates it from the close of the war. His error seems mainly due to the apparent deficiency in grasp of the subject and consistency of view which is shown in the assertion elsewhere that the interests of Quebec, "did not conflict with those of our people or touch them in any way, and she had little to do with our national history and nothing whatever to do with the history of the West." (I. 28.)

¹See in regard to this the *Remonstrance* of the N. Y. Legislature, Mar. 25, 1775, to the British Parliament on the subject of the Quebec Act. It is taken up almost wholly with this side of the measure. (*Parl. Hist.* XVIII, 650.)

and we shall find that on the one hand the framers of the Act had no purpose of "establishing" the Roman Catholic Church, and that on the other, the measure is by no means so notable from the standpoint of religious liberty as it has appeared.

The prominence of the religious element in Canada, and the position the Roman Catholic Church had so long occupied in secular matters as well, made the treatment of that church, and its future position, one of the most important and pressing of the problems that confronted the new Government. The conquerors were pledged by the Capitulation to full toleration of the Roman Catholic worship; though that instrument, promising to all religious communities the continued enjoyment of their property, had distinctly refused to assure the tithes or other dues of the secular clergy.¹ The pledge of toleration was incorporated in the IV. Art. of the treaty of Paris in 1763 by the following clause: "His Britannic Majesty on his side agrees to grant the liberty of the Catholic religion to the inhabitants of Canada; he will consequently give the most precise and effectual orders, that his new Roman Catholic subjects may profess the worship of their religion, according to the rites of the Roman Catholic Church, as far as the laws of Great Britain permit." This is identically the same stipulation, (in slightly different words), as that in the Treaty of Utrecht fifty years before;² but it will be noticed that strictly interpreted it does not seem at first sight to be the same concession as that made in the Articles of Capitulation. It is impossible to delay on the questions as to how far the strict interpretation of the then existing laws would have interfered with "the liberty of the Catholic religion," or how far those laws were at that time enforced at home or were

¹ Capitulation of Montreal, Art. 27, 34. Houston, *Can. Const. Documents*, pp. 45, 47.

² See Lecky, *History of England in the 18th Century*, I, as to the general resemblance of these treaties. See also Marriot, *Code of Laws*. It is rather curious that, though directly comparing the treaties, Mr. Lecky fails to see that the earlier one contains precisely the provision which he refers to as marking, fifty years later, an epoch of religious liberty.

valid in America.¹ Of rigid construction there was no real question in the case of Canada, and it will appear later that there is no evidence of the slightest attempt on the part of the British government throughout the period to interfere with full religious liberty, or with the establishments necessary for its effective maintenance. But that the above phrase, "as far as the laws of Great Britain permit," was by no means an unconsidered one, but was intended at least at first to have a very definite significance, is clearly shown by a very important communication from the Earl of Egremont, Secretary of State, to Murray, on the occasion of the latter's appointment to the new civil Government in Quebec (Aug. 13th, 1763).² The new governor is instructed in this that information has been received which causes a suspicion that the French have hopes of using the religious liberty promised the Canadians for the retaining through the clergy of their hold upon the people, and that he is therefore to be on his guard against any such attempts. The King, (the Minister continues), has no intention of restraining the Canadians in the free exercise of their religion, but the condition *as far as the laws of Great Britain permit* must always be remembered; these laws prohibiting absolutely "all Popish Hierarchy in any of the dominions belonging to the Crown of Great Britain." "This matter was clearly understood in the negotiations of the Definitive Treaty. The French Minister proposed to insert the words *comme ci devant*, in order that the Romish religion should continue to be exercised in the same manner as under their Government; and they did not give up the point until they were plainly told that it would only be deceiving them to admit these words, for the King had no power to tolerate

¹ It is perhaps worth noting that among the list of convicted criminals in Great Britain in 1771 is found the name of one John Baptist Maloney, who was sentenced to perpetual imprisonment for the crime of exercising the office of a Popish priest. He was afterwards pardoned on condition of leaving the country. *Calendar of Home Office Papers* 1770-2, No. 376.

² Can. Arch., Q. I. p. 117.

that religion in any other manner than *as far as the laws of Great Britain permit*. These laws must be your guide in any disputes that may arise on the subject." It is clear from this that the French Government desired the words *comme ci devant* to be inserted instead of the phrase in question, and that the object of that phrase was merely to deprive the Catholic religion of any legal status or hierarchy in the Province. Taken in this connection it will be seen that the Treaty was really intended to grant all that had been promised in the Capitulation.¹ And the principles thus clearly stated at the start, we find adhered to throughout the period with more vigor and consistency than can be discovered in any other part of the Canadian policy.

In the above letter Egremont goes on to advise Murray to give public notice that no new foreign priests would be allowed to remain in the country without Governmental permission, and also to require all ecclesiastics to take the oath of allegiance. The following October 25, Murray writes as to the general subject of religious policy, on the occasion of the transmission home of religious petitions,² which he reports as due to anxiety on the part of the Canadians as to the continuance of the priesthood. If this, he says, be provided for, they would part with the hierarchy without much reluctance; and he suggests a plan for having priests educated in Provincial seminaries as heretofore, and ordained abroad at the public expense,—a plan which

¹ As to the opinion that the laws did not prohibit the free exercise of the Roman Catholic religion, and that it was at the discretion of the crown whether Catholics in the newly acquired colonies should be admitted to office and honors, see Att.-General Yorke's opinion concerning the position in regard to office of the Catholics in Grenada. (*Cal. Home Office Papers, 1776-9, No. 403.*) This opinion is further of great interest in view of the question as to the formation of an Assembly in Canada, and the admission of Roman Catholics to it. It states clearly that the statute requiring the transubstantiation test oath does not apply to the new possessions, and that his Majesty is the only judge in regard to the use of such. This should be considered in connection with the opinion of Lecky as to the importance of the Quebec Act in religious history. On the general question as to the position of Catholics see further, opinion of Thurlow and Wedderburne, (*Cal. Home Office Papers, 1770-2, Nos. 659, 713*); Report of Wedderburne, 1772 (Christie, *History of Lower Canada, I. c. 2*); Marriott, *Code of Laws*.

² See above, p. 234.

he thinks "the most feasible means of procuring a national clergy, without continuing a Bishop," and likely to give "universal satisfaction and make the Canadians in time forget their former connexions."¹ To these suggestions Halifax (Jan. 14, 1764)² makes the guarded reply that he hopes soon to transmit definite directions on "that very important and difficult matter." We meet nothing further directly on this point, but that Murray's suggestions were not taken is shown by the fact that a Bishop for the province was allowed to be ordained in France in 1766, (the permission seems to have been given as early as 1764), and to proceed to Quebec in the same year; continuing there at the head of the church for the remainder of the period. There is some mystery about this transaction, and Masères asserts that the Bishop had only a verbal permission to assume authority, and that he was supposed to have promised to confine himself to the necessary and inoffensive duties of the office, (which promise, he adds, was not kept). The English government, according to Masères, was brought thus to "connive" at this evasion of the laws under the opinion that the step was necessary to secure to the Canadians the enjoyment of their religion without giving loopholes for the creeping in of foreign influences. But that this was regarded as only a temporary step is shown by a Board of Trade report on the state of Quebec, May 16, 1766, in which the "unsettled state of ecclesiastical affairs" is designated as the first of the matters requiring attention.³ In Oct., 1767, Carleton recommends the appointment of a coadjutor in order to obviate the necessity of having the Bishop consecrated abroad; a recommendation which the Secretary approved (March 6, 1768),⁴ but which was referred with others to the shortly expected regulations about religious matters in general. In 1772 however, the matter came

¹ Can. Arch., Q. 1, p. 251.

² Ibid., Q. 2, p. 5.

³ Ibid., Q. 3, p. 53.

⁴ Ibid., Q. 5-1, p. 344.

up again in the absence of Carleton, and, like the appointment of the Bishop, seems to have been temporarily settled by another connivance, (in this case only of the Provincial government), at an evasion of the laws; the Lt. Governor writing (July 25, 1772), that as the Bishop had lately obtained "the requisite power for consecrating the coadjutor whom Gov. Carleton had pitched upon, I agreed to his performing the ceremony, but in a private way, because it was not the act of government, and to avoid giving a handle to busy and troublesome people."¹ To which Hillsborough replied, Sept. 2, 1772: "Your having permitted the person styling himself Bishop of Quebec to consecrate a coadjutor in consequence of power which you say he had received for that purpose, and which I presume must therefore mean from some foreign ecclesiastical authority, appears to me to be a matter of the highest importance, and the more so as I do not find upon the fullest examination that any authority whatever has at any time been given by His Majesty for the exercise within the colony of any powers of Episcopacy in matters relative to the religion of the Church of Rome."² Hillsborough was shortly after replaced by Dartmouth, and the latter writes Dec. 9, 1772 in a similar strain, declining to give any countenance to the late consecration of the coadjutor, and making the matter depend on the deliberations of the Privy Council then pending; though he adds that he will not undertake to say that the exercise of some Episcopal authority may not be necessary to *the toleration* granted.³

During the whole of the period the power of appointment to benefices resided in the Governor alone, having been first granted to Murray, in 1763. The instructions to Carleton in 1768 direct him "not to admit of any ecclesiastical jurisdiction of the See of Rome or any other ecclesias-

¹ Can. Arch., Q. 8, p. 160.

² Ibid., Q. 8, p. 166.

³ Ibid., p. 220.

tical jurisdiction whatever,"—an instruction which would seem to be in direct opposition to the continuance of the functions of a French ordained Bishop. Another article ordered him to provide for the gradual settlement of Protestant clergymen; and it was no doubt as a following up of this that in July 1768 a mandate was issued to him to appoint under commission two such to the parishes of Quebec and Three Rivers, to enjoy the same during life, "with all rights, dues, profits and privileges thereunto belonging in as full and ample manner as the ministers of churches in any of our colonies in America."¹ But Carleton, viewing this as a "stile of office" due to carelessness, remonstrated against it as extending, in the opinion of the Provincial lawyers, "to dispossess the people of their private churches and their clergy of their tithes and all parochial dues," and gave the clergymen simply licenses to preach, with a right to such dues only as should arise from Protestants under the laws relating to the Church of England.² This action was apparently approved of by the home Government, the Secretary writing that there had been no intention of authorizing the general demand of tithes,³ as had been shown by the attachment of a stipend out of the general revenue.

On the verge of the Quebec Act, Dec. 1st, 1773, Dartmouth writes that the coming settlement will give all satisfaction to the new subjects on the head of religion, but on such a basis that all foreign jurisdiction shall be abolished and the Province itself made equal to the supplying of all the essentials to free worship in the true spirit of the treaty.⁴ The settlement thus foreshadowed—that of the Quebec Act,—viewed in the light of the policy thus clearly maintained down to its enactment, cannot be said to depart from it, the Article (5th) which provides for "the free

¹ Masères, *Commissions*, p. 148-52.

² Can. Arch., Q. 5-2, p. 726-730.

³ *Ibid.*, Q. 5-2, p. 756.

⁴ *Ibid.*, Q. 9, p., 157.

exercise of the religion of the Church of Rome," expressly adding, "subject to the King's supremacy declared and established by an Act made in the first year of the reign of Queen Elizabeth." Nor can it be regarded as "establishing" the Roman Catholic Church in any sense in which the Church of England was not also established. For the only new privilege bestowed on the Roman Catholic clergy is comprised in the phrase, "the clergy of the said Church may hold, receive, and enjoy their accustomed dues and rights in respect to such persons only as shall profess the said religion,"—a phrase which has always been interpreted as implying the re-establishment of compulsory tithes; while the next article goes on to make provision for the applying "of the rest of the said accustomed dues and rights" (i. e. the tithes of Protestants), to the support and encouragement of the Protestant religion. And that the intent of the framers of the Act did not reach even to thus equalizing the two Churches is clearly shown by the ensuing instructions to Carleton 1775. The 20th Article enjoins him to remember "that it is a toleration of the free exercise of the religion of the Church of Rome only to which they [the new subjects] are entitled, but not to the powers and privileges of it as an established Church, which belongs only to the Protestant Church of England." The 21st Article further forbids all appeals to or correspondence with any foreign ecclesiastical jurisdiction, makes government license essential in every case to the exercise of Episcopal or parochial functions, and conditions the holding of all benefices on good behavior. I cannot here enter fully into the legal question of the peculiar relative positions thus apparently granted the two churches; it must be left with the remark that it is the very evident intention of the Administration, as shown in the Governor's instructions and elsewhere, to make the Church of England *theoretically* the Established Church for the whole Province, and effectually so wherever the field was not already in

possession of or could be gradually secured from, the Church of Rome. Thus provision is made that a Protestant minister should be appointed to any parish in which the majority of the inhabitants should solicit it, and that the appointee should receive "all tithes payable in such parish;" as also that all rents and profits of vacant benefices should be applied to the support of a Protestant clergy.¹ Any introduction of, or correspondence with, foreign ecclesiastical jurisdictions, was strictly prohibited, no Episcopal or Vicarial powers being allowed to be exercised by Roman Catholics except such as were indispensably necessary to the free exercise of religion. And even these were to be exercised only by Governmental license "during our will and pleasure," in correspondence with "the spirit and provisions of the Quebec Act;" such license being made essential to all ordination or holding of benefices. Benefices were to be conferred only on Canadians born, and the Governor and Council had power of suspension in case of criminal offenses or of treason.

These provisions show in brief that the determination to allow none but strictly *religious* privileges to the Church of Rome in the Province, which had been insisted upon in the Treaty of Paris, was not less strongly incorporated in the Quebec Act and its accompaniments; and therefore, that instead of that Act being the complete surrender to the Church of Rome it appeared to Protestant contemporaries and has often been represented since, that Church was granted no new privileges beyond the *securing* to it of support *from its own adherents*. It was a change that affected only these adherents, changing for them a voluntary into a compulsory burden; a change the political results of which will be elsewhere discussed.² Briefly it seems prac-

¹ It will be seen that both of these provisions discriminate in favor of the Church of England against the Church of Rome; the latter not being allowed under any circumstances to take tithes from Protestants or to receive anything from vacant benefices, which remained wholly at the disposal of the Protestant executive.

² See below, Chapter VI. A.

tically accurate to put the matter thus: The tithe was by the Act attached to all land as a state exaction, that portion of it paid by adherents of the Roman Catholic Church being applied to the support of the Roman Catholic clergy, the remainder, at the discretion of the Government, to the support of a Protestant clergy. But the ensuing instructions to the Governor, (apparently without authorization in the Act),¹ further divert to the benefit of the Protestant Church *all* the profits of vacant benefices, and *all* the tithes of parishes where the majority of the inhabitants were or should become Protestant.

What light do the debates on the Act throw on these arrangements? On the whole they lead to no conclusion opposed to those drawn from the examination of the earlier policy. But they do not increase our estimation of the care or the clear-sightedness of the framers of the bill. As first introduced the religious enactment embraced only the 5th Art. of the final Act, no mention thus being made of the Protestant Church, and no limitation being placed on the clause "subject to the King's supremacy." Considerable battle raged around the question as to whether or no the Roman Catholic Church was really established. Lord North maintained that no more was done than was required by the Treaty with regard to the free exercise of the faith, and that Papal authority in the Province would certainly not be permitted;² the Solicitor General stated that he could see no more in the bill than a toleration, with the clergy made dependent on the State rather than on the people.³ In answer to the charge that nothing had been done for the Protestant Church Lord North brought into the committee the amendment in favor of that Church which forms Art. VI of the Act, characterizing this as an establishment. Some further debate took place as to the

¹ It would seem as if Wedderbourne the Solicitor General was responsible for at least the latter clause. See Cavendish, *Report*, p. 218.

² *Cavendish*, p. 10.

³ *Ibid.*, p. 54.

royal supremacy¹ and at the next sitting the Government brought in the amendment which forms Art. VII, and which apparently goes far to nullify the "supremacy" clause of Art. V. This however was undoubtedly considered as necessary to full toleration and as not diminishing the hold of government over the Church,² and was agreed to without a division.³ It is probable that the conciliatory and hazy attitude of the Government on this part of the bill was due to a consciousness of the strong position of the opposition from a popular standpoint. This aspect of the situation was wittily referred to by Barré in a passing reference⁴ to the rumored impending dissolution of Parliament. "People may say" he remarked, "upon its dissolution as they did after the death of King Charles, that by some papers found after its decease, there is great reason to suspect that it died in the profession of the Roman Catholic religion." A privy councillor retorted that the parallel at least held good in the circumstance that the dying Parliament, like the dying Catholic, was "attended by a number of troublesome people, disposed to put many troublesome questions."

The above examination will cause it to appear very doubtful if the position of the Church was really much improved by the enactment, supposing the latter to be rigidly applied. Apart from the effects with regard to the attitude of the people referred to above, there were new elements indeed of positive disadvantage. The

¹ In which occurred one of the most violent attacks on the "secret designs" of the bill that we meet with. The assailant was Barré, who pointed to the indulgences given the Roman Catholics as confirming his suspicions, and warned the Government that "if you are about to raise a Popish army to serve in the colonies,—from this time all hope of peace in America will be destroyed. . . . I smelt out this business from the beginning." Thurlow, who followed the irate Colonel, took no notice whatever of the insinuation. *Cavendish*, p. 228.

² As shown above by the later instructions to the Governor.

³ *Cavendish*, pp. 250-1. When the Bill went back to the Lords this last amendment however received the especially hostile notice of Lord Chatham, who declared it offensive as an attack on the Great Charter or the Bill of Rights. Lord Lyttleton replied forcibly that full toleration could not exist without the clause.

⁴ *Ibid.*, p. 239.

clergy were now legally assured of support; but that support, we are frequently told,¹ had been, since the conquest, quite as assured by the voluntary contributions of a pious people, over the recalcitrant of whom might still be exercised, in the generally hazy state of the ecclesiastical powers, a great share of the many-sided authority so abundantly wielded under the old régime. Now however the Quebec Act had strictly and narrowly defined the real position and power of the Church; it had stripped it of nearly every vestige of its old temporal prestige, and of every right of pretension to any but a strictly religious status. Further, this Act had in all probability actually diminished the revenues of the Church; for it had deprived it entirely not only of all right to dues from benefices unfilled, (and the filling of vacancies was in the hands of a Government ordered to lose no opportunity of securing the advancement of the Protestant religion,² to whose benefit the receipts from such vacancies were to be appropriated), but also of all right to dues from any parish in which a majority of Protestants might become settled. It must therefore appear that the apprehensions of the Continental Congress as to the establishment of the Popish worship were unfounded; that the position and prospects of the Church through the new legislation, especially when viewed in that connection with the previous policy and the accompanying instructions which shows its intent and the spirit in which it would be administered, were not such as to give evidence of an exceptional liberality which could be explained only by sinister designs against the other colonies.³

¹ Expressly and frequently asserted in Quebec Act debate. These statements must be considered very cautiously it is true; but yet there seems no reason to believe that the Church had not been sufficiently supported through the period.

² For the intent of the Government on this point see *Cavendish*, p. 219.

³ The above examination of the intentions and early measures of the British Government with regard to the Roman Catholic Church in Canada should be considered in connection with the later position assumed by that Church. This later position has no sufficient support in the Quebec Act, but has been acquired since, in direct opposition to some of its most important provisions, as a very important part of that long course of

Further light will be thrown on this matter by considering the parallel course of the Imperial authorities in the Island of Granada. This, with some neighboring islands, conquered in 1762, had been ceded to Great Britain in 1763 "in full right . . . with the same stipulations in favor of the inhabitants . . . inserted in the IV. Art. for those of Canada."¹ The Royal Proclamation of October, 1763, had named the Government of Granada as the fourth of the new Governments to which that Proclamation was intended to apply; and civil commissions were made out for it similar to those in the case of Quebec. But its later fortunes had diverged markedly from those of the latter Province, in that the Assembly promised by the proclamation and directed by the commissions was actually called together and constituted in 1765, at which time "none of the French Roman Catholic inhabitants claimed a right or even expressed a desire of becoming members, either of the Council or Assembly."² This body, evidently entirely English-speaking in composition, acting on the same assumptions as to the introduction of English law as the same party in Quebec,³ proceeded at once to pass "an Act for regulating

revived French development of which the Quebec Act was the basis. In other words the assumptions from which that measure proceeded, and the position in which it placed the Province with reference to the new English element, were made by the Church the starting-point of a brilliant course of aggrandizement; that Church becoming therein identified with the revived national feelings and forces whose growth bore it in turn triumphantly forward. A full comment on this is of course impossible; but it will be instructive to notice the words of the most authoritative of modern French Canadian constitutional writers. "La réserve de la suprématie spirituelle du roi d'Angleterre semble avoir été mise dans le statut de 1774 et les instructions royales qui suivirent pour la forme. Elle resta lettre morte. Les représentants du pouvoir comprirent que toute tentative pour l'imposer à la colonie resterait sans succès. L'acte constitutionnel [in 1791], n'en parle pas." (Lareau, *Hist. Droit Canadien*, II. 140). It was at the period of the war of 1812 that the preponderating position of the Church was finally and firmly secured. By that time it had again in reality taken possession of the once almost emancipated French Canadian, and could make its own terms with the government which seemed so dependent upon his loyalty.

¹ Treaty of Paris, Art. IX.

² Edwards, *History of the British Colonies in the West Indies*, I, p. 62 (Phila., 1806).

³ See the almost contemporary action of the Grand Jury in Quebec, especially with regard to the protest against the privileges granted to Roman Catholics. The "old subject" element in the Provinces is identical in spirit and aims, with the difference

the elections of the general Assembly of Grenada and the Grenadines, and for the better ascertaining of the electors and elected," which required all members of the Assembly to subscribe the Declaration against Transubstantiation,¹ (no such restriction being placed on the franchise evidently). On the protest of the French inhabitants,² the Board of Trade intervened against this and other Acts of the same body, by a Report made March 4, 1768, in which they condemn the above Act as tending "to give disgust and dissatisfaction to your Majesty's new subjects," and state that the test there required "is not (as we conceive) extended to the colonies by any Act of Parliament, and is a qualification the enforcing of which is entirely left to your Majesty's discretion." This recommendation is evidently based on the opinion of Attorney-General Yorke, to whom the case had been referred,³ and as the result the following year the Governor of the Island received royal instructions to admit Roman Catholics into both Council and Assembly as well as into the commission of the peace, without the taking of the test oath against transubstantiation.⁴ This, through the unbending attitude of the Protestant party, gave rise to such bitter political contests that

that in Grenada it proved more uncompromising and intolerant. This distinction is doubtless due to the facts, (1) that representative Government had been put in force in Grenada and thereby the direct control of the executive greatly lessened, (2) that in Grenada the British were relatively a much stronger element. In 1771 the white population of the Island was about 1,600, (the slave population being nearly 40,000), of which, considering the analogy of Quebec, a very considerable section must in 1775 have been English speaking. (*Edwards*, I. 74).

¹ See an anonymous Pamphlet entitled "Observations upon the Report made by the Board of Trade against the Grenada Laws." (W. Flexney, London, 1770). This is ably written, from the standpoint of the British party in the Province, and contains the Board of Trade Report almost in full apparently. I have not been able to find it elsewhere.

² *Cal. Home Office Papers*, 1766-9, No. 403.

³ *Ibid.* It is uncertain from this entry whether the date assigned, (Jan. 12, 1767), is that of the reference or that of the advice. The form of the statement of the case would seem to show that the referrers were decidedly leaning to the opinions maintained in Mr. Yorke's answer. The reference is endorsed, "your opinion on this case is much wanted." See note above on this opinion, p. 435.

⁴ *Edwards*, *West Indies*, I. 62. Southey, *West Indies*, II. 395.

representative government remained practically suspended throughout the rest of the century. Yet the Crown persistently refused to revoke the objectionable instructions, notwithstanding the strong constitutional arguments brought against them.¹ As to the general treatment of the Roman Catholic Church in Grenada, we find as in Canada, that the treaty engagement of full toleration was liberally carried out; and it would seem moreover that it was not till 1783 that any step was taken to interfere with the established interests of the Church of Rome or to further those of the Church of England, the act of that date still providing "some allowance . . . for the benefit of the tolerated Romish clergy."² It is thus evident that the liberal attitude of the Imperial government with regard to the Roman Catholic Church was not peculiar to Quebec, but that it had been initiated earlier and extended further in a non-continental Province,—one which could not be supposed as ever likely to be in a position to affect political conditions among the older colonies,—than in that one where the policy was regarded as inspired by deep hostility to those English-American political institutions with which the Protestant church was supposed to be especially identified.

The only conclusion we can draw therefore on this point, is the one to which we have been led by our examination of the earlier policy; namely that in the measures of 1774 with regard to the Roman Catholic Church in Canada the home government was influenced mainly or solely by the

¹ For these see the pamphlet of 1770 referred to above. There would seem to be no doubt, notwithstanding the opinion of Mr. Yorke, that the action of the Crown in this matter was, constitutionally, altogether indefensible, and indirectly so declared by the Mansfield judgment of 1774. And it is well to note here what I shall probably refer to again, that the consciousness of this may in all likelihood be discerned behind the refusal to take similar action, even through Parliament, in the case of Quebec before or at the time of the Quebec Act. It is rather curious that no pertinent reference to the Granada case is found in the Quebec Act debates; though that the action of the Government was carefully observed in Quebec itself is to be seen from the petition of the English-speaking party there in 1773.

² Edwards, *West Indies*, I. 72.

necessity of maintaining its treaty obligations, and by the desire to protect a conquered and docile people from the intolerance of a political party which it believed to be identified in spirit and aim with the objectionable elements in the older colonies. That this latter was a subsidiary and minor motive, and that, on the other hand, there was no general spirit of religious liberality in action, is shown by the fact that the general liberal attitude and the particular measures alike, were confined to those provinces with regard to which treaty obligations existed. The "case" submitted to Yorke in 1767 begins with a distinct statement that "in the Leeward Island, Barbadoes and Jamaicas, they do not admit a person to be of the Council, Assembly, or a justice of the Peace" except on subscription to the declaration against transubstantiation; yet nothing in the way of alleviation was done or hinted at in regard to these cases. I can therefore see no sufficient ground for Lecky's reference to the Quebec Act as marking "an epoch in the history of religious liberty." It is true that by that Act, as in the Grenada instructions, more was given than was called for by the Treaty obligations; but these additional privileges were far more political than religious in their origin and intent. In the case of Quebec, full political privileges were denied expressly on religious grounds.

As to the measure of toleration accorded throughout the period to the Roman Catholic worship, there can be no doubt that it was complete. The faithful and even generous observance of the Treaty on this point is frequently acknowledged in the native petitions and calls forth the censure of the Protestant element. Further, whatever may have been the suggestions of individuals, no encroachments were made on the property or privileges of the Church during the period. Masères expressly asserts that the churches and chapels were left entirely in the hands of the Catholics (town Protestants borrowing them on

Sunday for an hour), their priests in possession of the glebe lands and parsonages, and all old ceremonies and even processions continued without molestation.¹ And though the assertions of the same writer as to the pomp and importance gradually assumed by the Bishop and the use by him of excommunication, etc., seem² undoubtedly an exaggeration, it is evident that the confidence of the clergy and people in the good faith of the conquerors and in their liberal interpretation of the privileges promised, steadily increased. The genuineness of religious toleration is sufficiently proved by the fact that the only complaints in regard to the matter that we meet with are the protests of the noblesse against their own exclusion from public employments through the oaths required of all officials. The requirement of these subsisted unaltered through the whole period, they being given a prominent place in Carleton's instructions of 1768. But considerable latitude must have been allowed with regard to them in the case of minor officials, for we find several of the smaller offices in the possession of French Canadian Catholics. We have also seen above that Catholics were admitted throughout the period on juries and to the practise of the law,— an indulgence violently condemned by the English grand jurors of 1764, as contrary to the constitution. Outside of these few exceptions however, the religious oaths excluded the French Canadians from all civil and military employments, including the Council and the possible Assembly. The real importance of this exclusion is with regard to its influence (elsewhere discussed), upon the establishment of representative institutions.

¹ Carleton distinctly confirms this by saying that the Bishop had of his own will lessened the number. (Can. Arch., Q. 6, p. 54). Some interesting testimony on this matter will be found in the introductory memor to the *Life of John Carroll*, (Md. Hist. Soc., 1876, pp. 30-34). It is there asserted that Carroll's mission in 1776 to the Canadian clergy failed because of their entire satisfaction with the treatment of the Church by the British authorities; a conspicuous instance of the latter's attitude being afforded by the statement of the Canadian clergy that the "government actually furnished a military escort to accompany the grand procession on the festival of Corpus Christi."

² See letter of Carleton just referred to.

Though not of much interest to us now, a prominent part of the problem connected with the treatment of the Church of Rome in the Province had reference to the communities of regular clergy, and especially the Jesuits. These communities however were not an essential part of the religious organization, and had not the hold upon the people which would make their fate a matter of national concern.¹ Nor was Great Britain's attitude toward the Jesuits different than that of contemporary powers, Catholic and Protestant. Their great power under the old régime has been graphically described by Parkman; but it had been declining for some time previous to the conquest, and at this time the vigor and possessions of the Society were much inferior to those of the Sulpitians or Recollets at Montreal,—an order which was much more favourably looked upon by the government from the first. The 34th Art. of the capitulation of Montreal would seem indeed (unless it is to be construed in connection with the preceding one), to promise the possession of their property to all the communities; but, though the Order was not suppressed till 1773, it is evident that the home Government from the first looked upon the possessions of the Jesuits as its own. At the beginning of the civil government Murray was directed to prevent further additions to it or to the other orders,—a direction which was repeated more positively later and strictly followed through the whole period. In the instructions to the Receiver-General in 1766 he is ordered, "whereas the lands of several religious societies in the said Province, particularly those of the Society of Jesus, are, or will become, part of His Majesty's revenue," to endeavour by peaceful agreement to get these into his present charge in order to prevent any losses thereto. In 1767 Shelbourne writes² that the property of the Jesuits, (which has been represented as producing £4,000 per annum), "must become on their demise a very considerable

¹ See Murray's Report, 1762.

² To Carleton, November 14. (Can. Arch., Q. 4, p. 298.)

revenue to the Province, in case His Majesty should be pleased to cede it for that purpose." To which Carleton replies¹ that the order he is convinced is in reality poor, their lands yielding very little and their total income being given by themselves as 22,658 livres, from which they have 19 persons to support. All the legal opinions of the time supported the view that the property held by the Jesuits had become legally vested in the Crown; and in the instructions to Carleton of 1775 it is declared that the Society is "suppressed and dissolved and no longer continued as a body corporate and politic, and all their rights, possessions and property shall be vested in us for such purposes as we may hereafter think fit to direct and appoint." But the remaining members of the order in Canada were to be supported out of this property for the rest of their lives, and it was not till the death of the last one in 1800, that the lands actually came into full use as part of the state revenue.

c. *Civil Law.* The third feature of the Quebec Act which requires our consideration is that one which is described in the Declaration of Independence as the "abolishing the free system of English law." It is expressed in that clause of Art. VIII which directs that "in all matters of controversy relative to property and civil rights resort shall be had to the laws [and customs] of Canada as the rule for the decision of the same, . . . until they shall be varied or altered by any Ordinance that shall from time to time be passed in the said Province." This provision was modified by Art. IX, directing that all royal land grants, past or future, in free and common soccage, should be exempt from its operation, and by the provision of Art. X, that the execution and administration of wills should proceed, at discretion, according to either English or French law

A reference to the former discussion as to the adminis-

¹ Can. Arch., Q. 5-2, p. 590; Q. 6, p. 109.

tration of justice in the Province throughout the period¹ will be sufficient to show the inaccuracy of the word "abolishing" in regard to the effect of this clause; further on I shall examine the above modifying provisions in the light of later instructions and enactments, with a view to determining how far English law was now abandoned or excluded. My object at present is to scrutinize this provision in the light of previous policy, with regard especially to that origin in and reference to the momentary relations with the other colonies so freely asserted by the revolutionary leaders. It is evident that these leaders held the same views concerning the intent and legal effect of the Proclamation of 1763 and the accompanying documents as did the English-speaking party in Canada. In the general treatment of the matter above there was quoted that remarkable statement from Hillsborough of the absence of any intention of the overturning of French law on the part of the framers of these documents. This emphatic testimony is supported from other sources, and must be taken at least to show that, even at the beginning, there was no deliberate, intelligent purpose of suddenly substituting English for French law. The acts of omission or commission from which such an inference was drawn may be much more reasonably explained as evidences only of ignorance, neglect, and indecision. But this state of affairs cannot be held to have continued longer than the first two years of civil government (1764-6). The administration in the province had soon become convinced that any violent assimilation of the laws and customs of Canada to those of the other provinces was radically unjust and impolitic, if not also impossible. This conviction we find expressed in protests to the home government, and in increasingly liberal interpretations of the documents by which the Provincial officials felt themselves trammelled. Murray writes March 3, 1765, to the Board of Trade concerning the great

¹ See above, Chapter III, Section C.

difficulties which occur "in establishing the English laws in this colony," and proceeds to a general description of the state of the colony "where the English laws are to be established," in which he displays a marked sympathy with the French and a strong distaste for the task which he thinks has been laid upon him.¹ This representation does not seem to have been effectual in eliciting any definite or different explanation of the Proclamation of 1763, or any general statement of policy which would have let the provincial government feel at liberty to change its aims; but it was probably taken into account in the new instruction in the spring of 1766 by which the slight indulgences granted the Canadians in the Judiciary Ordinance of Sept., 1764, were approved and extended. Doubtless also it had a strong influence in stirring up the home authorities to the beginning of the first serious investigation into the problems of civil government in Canada,—an investigation which as I have elsewhere shown came to a definite head in 1767, but which did not bear full fruit till 1774. For the present, however, the provincial government seems to have been still left in the dark, and it is evident indeed that down to the new administration in September, 1766, there had been received in the Province no definite intimation of any radical change in the views and aims of the home executive.²

But that before this date such a change had to a large extent occurred we learn from other sources. Or rather we should say that the home authorities had before this time, whether by the representations of the Colonial officials, by the introduction of new blood, or by other causes, been awakened out of the ignorance and neglect which had allowed the main documents relating to the Province to be couched in the most vague and misleading language, and the mi-

¹ Can. Arch., Q. 2, p. 377.

² See Can. Arch., Q. 3, p. 249. Also the Commission of Chief-Justice Hey, Sept., 1766. (Masères, *Commissions*, pp. 124-8). The failure to fully inform the Provincial Government is probably to be explained in part by the fact that it had been resolved to recall Murray.

nor documents to be made out mainly on the lines of official routine established through dealings with the other colonies. The letter from Murray which I have quoted above is dated March 3, 1765, and on the September 2 following we find the first indication of attention to the subjects there suggested in the shape of a Board of Trade report to the Privy Council, signed by four names, the first being that of the Lord Dartmouth who as Colonial Secretary engineered the Quebec Bill nine years later. Unfortunately we have not any full copy or satisfactory abstract of this, and are obliged to depend for our somewhat vague information as to its recommendations on a supplementary Report of the Crown lawyers (Yorke and De Gray), of April 14, 1766. This latter¹ states as one of the main sources of disorder in the Province, the alarm taken at the construction put upon the Proclamation of 1763, "as if it were the Royal intention, by the judges and officers in that country, at once to abolish all the usages and customs of Canada with the rough hand of a conqueror rather than in the true spirit of a lawful sovereign,"² and refers to the Report of the Board as ably applying itself to the remedying of this grievance. Then, after discussing the subject of the constitution of the courts, they proceed to consider the proposal in the report, "that in all cases where rights or claims are founded on events prior to the conquest of Canada, the several courts shall be governed in their proceedings by the French usages and customs which have hitherto prevailed in respect to such property;" approving of it as far as it goes, but proceeding to maintain that in *all* matters affecting the possession or transfer of real property, "it would be oppressive to disturb, without much and wise deliberation, and the aid of laws hereafter to be enacted in the Province, the local customs and usages now prevailing

¹ Smith, *History of Canada*, II., 27-38 (Quebec, 1815).

² A reference which it will be noticed does not go so far as to deny that abolition in some degree or manner was intended by the Proclamation, or that the terms of it would not admit of such an interpretation.

there.¹" This it will be seen, is a very decided advance on the Board of Trade's first plan, which, though of a very indefinite scope, manifestly had still lingering behind it the idea which lay at the base of the earlier documents, viz.: that Canada was eventually to become thoroughly an English province ruled by English law. That the advance was not unfavorably received by the Board may be inferred from a communication from it to the Privy Council June 24, 1766, transmitting a "draught of particular instructions for the Governor of His Majesty's Province of Quebec, for the establishing of courts of judicature in that Province," which they state to be drawn up according to their previous report, *supplemented by the suggestion of the Crown lawyers.*² These instructions do not immediately appear, nor do we find anything further as to the Quebec judicature or laws till June 20, 1767, when Shelbourne writes to Carleton that the improvement of the Quebec civil constitution "is under the most serious and deliberate consideration," especially of the Privy Council; the main problem being, "how far it is practicable and convenient to blend the English with the French laws in order to form such a system as shall at once be equitable and convenient both for His Majesty's old and new subjects, in order to the whole being confirmed and finally established by authority of Parliament."³ The *deliberate* character at least of the course taken is fully established by the next document we meet. This is a Privy Council resolution of August 28, 1767, adopting the report of the Committee appointed to consider the draught of instructions submitted by the Board of Trade June 24th, 1766.⁴ The report was to the effect that the doc-

¹ It will be remembered that in their use of the term "customs and usages" the English lawyers have no doubt in mind in great part what occupied a position corresponding to that of the common law of England. The word *now* should be noticed here also, in connection with the argument above as to the practical maintenance of the French law. This was in 1766, and certainly no disturbance of that law occurred later.

² Can. Arch., Q. 3, p. 171.

³ Can. Arch., Q. 4, p. 129.

⁴ Can. Arch., Q. 4, p. 327.

ument submitted by the Board of Trade was too general and too unsupported by specific proofs of grievances to be approved without further information; especially as no explicit complaint had of late been received from the Colonial officials; and that therefore full reports and recommendations as to the alleged judicial defects should first be obtained from these officials, "it being unwise and dangerous to the Province to frame or reform laws in the dark." In accordance with these proceedings Shelburne in the following December directed Carleton to institute a specific investigation, and an Under-Secretary was at the same time commissioned to go out and join in the same.¹ And having thus decently shelved the subject, the Home Government, busy with other matters, awaited with great equanimity the appearance of the reports.

But before the news of this step had been received by Carleton, he had with characteristic energy and decision made up his mind as to the solution of the matter, and December 24, 1767 had sent to Shelburne an abridgement of the civil laws of Canada in use at the conquest, with recommendation that for the present they should be continued almost entire, to be altered by future Ordinances as might seem fit. As a beginning or model he submitted for approval a draft of a proposed Ordinance, for "continuing and confirming the laws and customs that prevailed in the Province in the time of the French Judicature, concerning the tenure, inheritance, and alienation of land."² The answer to this was the letter from Hillsborough of March 6, 1768, quoted from above,³ which states that the proposed Ordinance has been approved by the King, though it is to be held in reserve pending a general settlement, and which therefore shows conclusively that more than six years before the Quebec Act, the Home Government, uninfluenced,

¹ For his instructions, see Can. Arch., Q 4, p. 331.

² Can. Arch., Q. 5-1, pp. 316-313.

³ P. 387.

so far as we can discover, by anything except the representations made as to the state of the Province, had resolved to go at least as far as that Act went. But there were still the reports ordered to wait for,¹ and meanwhile the stationary condition of affairs² is shown in the Instructions of Carleton, August, 1768, which, though going into minute directions as to forms of legislation, make no reference to the all-important question as to how far that legislation should be based on English or on French codes.

The investigation ordered was entered upon vigorously by the provincial Government. It is significant to note the anticipation of that government as to the result, (even before the receipt of the letter of March 6th from Hillsborough), as shown by a Minute of Council of March 28, 1768, to the effect that a committee was appointed on that day to take from the old French laws such extracts "as may appear to them necessary to make a part of the future regulations of the Province."³ The reports were transmitted in September, 1769, the main one embodying Carleton's views, and minor ones giving the dissenting opinions of the Chief-Justice and Attorney General. Though the original documents are not to be found, we have other means⁴ of arriving pretty accurately at the contents. Carleton recommended that the whole body of the French civil law as it had existed before the Conquest should be restored, to be changed explicitly by fresh Ordinances as might seem necessary; consequently that no English civil law should be in force except such as might later be expressly introduced in this manner. Masères and Hey on the contrary thought that the Cana-

¹ Thought the more necessary probably in order to be able to make a good case for a measure which was likely to be vigorously opposed.

² Possibly, however, only the old neglect.

³ Can. Arch., Q. 5-1, p. 435.

⁴ Evidence before Commons in the Quebec Act Debate; Correspondence of Carleton; writings of Masères. There is very strong reason for believing that the paper in the *Lower Canada Jurist*, Vol. I., attributed to Chief-Justice Hey, is his report on this occasion. His views are, however, very clearly stated by him in the evidence referred to above. See especially *Cavendish*, pp 156-7.

dians would be contented and the best interests of the Province secured, by the continuance or adoption of the English law and procedure as a general basis, and the special revival of the French law in regard to landed property and inheritance; the general aim being the gradual assimilation of the Province to the other English possessions in America.¹

The home authorities did not allow themselves to be hurried. The next step, almost two years later, is an Order-in-Council of June 14, 1771, transmitting the Provincial reports and all other papers concerning Quebec to the crown lawyers,² and ordering them to return separate and detailed reports as a basis for legislation. Meanwhile, however, as if to palliate the delay of the full settlement, there was issued (July 2d, 1771), a new instruction in regard to land grants, by which a very noteworthy step was taken toward the return to French law. The Proclamation of October, 1763, had conferred on the governor and Council "full power and authority" to grant lands, "upon such terms . . . as have been appointed and settled in other colonies," and in accordance with such special instructions as might thereafter be given. These special instructions were issued to Murray when appointed Governor in 1764, and directed the grants to be made in free and common soccage, according to English forms, to be held by an oath of fealty and a quit-rent of two shillings sterling per 100 acres; the grants to be in restricted quantities and on the usual conditions of cultivation, and a special caution being added against following the example of some of the other colonies in making excessive allotments to individuals unable to fully cultivate. Under these regulations the amount actually granted was very small, not exceeding 14,000 acres

¹Special attention is directed to these recommendations by Masères and Hey, which will be found in detail in their evidence in 1774 before the Commons. They represent, in my opinion, by far the better settlement.

²Attorney-General Thurlow, Solicitor-General Wedderbourne, and Advocate-General Marriott.

in all, according to the statements of Carleton and Masères;¹ which is apparently accounted for by the fact that the terms were deemed severe and unprofitable, especially in comparison with those of the French grants.² The Minutes of Council show that the lands which had been awarded on much easier terms to discharged soldiers, had been but little availed of.³ The expense of the necessary registration was a considerable obstacle, and in the later years the government seems to have delayed completing grants from the anticipation of new instructions.⁴ Such a change had been urged by Carleton two years before, in a communication in which he had described the old French form of grant, and had strongly presented the advisability of reverting to it thereafter except at the eastern extremity of the province, where he considered it advisable that old subjects only should be encouraged to settle.⁵ His reasons for this advice are not very clearly given, and would seem to have been largely military (in the advantage of renewing in some way the obligation of military service as a condition of tenure), but we are safe in concluding that among them was a conviction that the English forms were not conducive to the settlement of the country. The action is on a line with the constant tendency shown by Carleton to revert wherever possible, to the French forms. Though the proposal was looked upon favorably by the home government,⁶ no effective action was taken thereon till July 2d, 1771, on which date the "additional instruction" spoken of above was issued, by which it was ordered that for the future lands should be granted "in fief or seigneurie, as hath been practiced heretofore, antecedent to the Conquest," according to the old French forms, but with the omission of the judi-

¹ The former in official correspondence April 15, 1767 (Can. Arch., Q. 4, p. 152); the latter in *Quebec Commissions*, p. 182.

² See Cramahé to Hillsborough, Can. Arch., Q. 8, p. 142.

³ *Ibid.*, Q. 4, p. 230; Q. 8, p. 116.

⁴ Minutes of Council, April 18, 1770. *Ibid.*, Q. 7, p. 129.

⁵ To Shelbourne, April 12, 1768. Can. Arch., Q. 5-2, p. 477.

⁶ Hillsborough to Carleton July 9, 1768. Can. Arch., Q. 5-2, p. 602.

cial powers thereto anciently belonging. The ground of the change is stated in the preamble to be representations that the former terms "have been found to be inconvenient and inadequate; and that it is more for our advantage and for the benefit of our subjects . . . if the ancient mode of granting lands . . . was to be adopted." This radical and deliberate change of policy bears very striking testimony to the genuineness of the decision as to the full restoration in the Province of French law and custom. In this light it was regarded in Quebec, Cramahé informing Hillsborough¹ that the French Canadians looked on the change "as a fresh proof of his Majesty's gracious intention to continue to them, so far as it can be done, their ancient usages and customs."²

But though such a decisive step had been taken, nothing further was attempted until the reception of the final reports from the Crown lawyers. These need not be considered in detail, their main provisions, following the rec-

¹ May 5, 1772. Can. Arch., Q. 8, p. 142.

² He continues: "His old subjects are no less pleased with this method of granting lands, for upon the terms at first required, they could never have settled them to advantage." The effects of the change on land occupation were certainly immediate and striking. Before the end of 1771 we find before the Quebec Council petitions for land under the new forms amounting to an aggregate of 60,000 acres (Can. Arch., Q. 8, p. 116), and in little more than a year from the publication of the new instructions no less than 56 petitions had been received for immense tracts (averaging probably not less than 100 square miles in extent), most of which are expressly asked for *en seigneurie* and all of which are undoubtedly so meant. Most of the petitioners, it is to be noted, were of the English speaking element. Apart from the questions of the intrinsic merit and suitability of the English and French tenures it will be seen that two reasons must have existed for this preference of the English investors for the French form. The first was the fact that the aristocracy of the Province was founded on the feudal possession of the land; the second, that it must have been at this time very clear that, whatever should be the ultimate form of government, the French laws and customs were bound to prevail in regard to landed property. It will be seen on the other hand, that this great success of the first step in the return to French institutions must have largely tended to confirm the intentions of the Home Government in that regard. Though it is to be noted that the Quebec Act of 1774 seems to attempt to regain in this matter some of the ground lost in 1771; for while the instruction of the latter date make no provision whatever for the further use of the English form of grant or tenure, the IXth Art. of the Act is especially inserted for the legalization and protection of "free and common soccage." In connection with the later history of this matter of feudal tenures see Houston, *Can. Const. Doc.*, p. 109, note 12.

ommendations of Carleton, being embodied in the Quebec Act. They were elaborate and able documents, marked by an enlightened spirit of justice and generosity toward the French Canadians. That the Act of which they were the basis was not the best settlement of the question is to be attributed rather to the misleading prejudices and shortsightedness of those to whom the Crown lawyers looked for information than to the integrity and ability of the latter.

Having now reached the Act itself, it is necessary to note briefly what light is thrown upon this part of our enquiry by the circumstances attending its passage. We find on the general point so little discussion that it is evident the opposition felt that the fundamental position of the government was too strong to be assailed. But later, after letting the provisions through the Committee with only an incoherent protest, their energies revived on the favorable subject of trial by jury, and an amendment providing for optional juries formed the rallying point for the most vigorous effort of the whole debate. The position of the government seems on the whole even here the stronger and more consistent; though it is difficult to escape a suspicion, (not upheld however by any specific evidence), that it was animated somewhat by the remembrance of the obstacle the jury system had proved to government in the revenue cases of 1766 and 1769.¹ It was contended that the system was incompatible with the French law and custom now granted;² that the bill as only fixing the laws and customs, did not exclude juries, the whole constitution of the judiciary and the procedure being reserved to His Majesty;³ and that the

¹ See above, p. 396, note 3, for the misconception on this point.

² To which the fiery and significant retort was made: "In God's name, what can be the views and what the operations of that bill with which juries are incompatible? What can be the purposes and designs to be answered by this bill? I have no pleasure in thinking of them; I have too much decency to name them." (*Cavendish*, p. 26.)

³ In which connection it is very noteworthy that the words *as the rule* in the clause, "in all matter of controversy relative to property and civil rights, resort shall be had to the laws of Canada, as the rule for the decision of the same," are asserted by one speaker, (*Cavendish*, p. 282. The statement or the inference from it, was not contro-

present arrangement was intended only as a basis or starting point for future Provincial legislation, it being unwise for the Imperial legislature to attempt such particular changes as could properly be made only as they were called for and by those upon the spot. This is evidently a strong position, and if at all upheld by later actions should go far toward freeing the government even from the suspicion I have referred to above.¹

That the profession of an intent of bringing in English law through Provincial enactment was sincere was shown by the action supplementary to the Quebec Act. In the Instructions to Carleton in 1775 for his guidance, especially

verted), not to have formed a part of the original bill, but to have been inserted after its presentation to the Commons. This change was characterized by him as a "concession," which, as not binding procedure to the French forms, left the way open for the later institution of the jury system. As a curious and somewhat perplexing offset to this however, it is to be noticed that the original bill is asserted by another opposition speaker, (*Cavendish*, p. 19), not to have said whether the laws of Canada or of England were to be resorted to. This must mean that the clause in question had been entirely omitted, which would be incompatible with the above statement as to the absence of a part of it. In the lack of the original draft no light can be thrown on this. It will be remembered that the clause in question must have been considered by many what it can reasonably be contended to be, in large degree superfluous, so far as the establishment of the French civil law was concerned. That is, the revoking in the previous clause of all the acts of government by which the English law was contended to have been introduced, would alone, under the operation of the Capitulation and Treaty, leave the field in most respects fully in possession of the former code.

¹ It seems worth while to note here more fully a rather remarkable incident in the history of the jury system in the Province during the previous period. March 9, 1765, a Provincial ordinance was passed directing that for the future all juries should be summoned from the Province at large without regard to the vicinage of the action or crime. This remarkable abrogation of one of the fundamental principles of the system seems to have been occasioned by temporary circumstances; and that it was sanctioned by the Home administration is shown by the fact that in the following November a Royal order was issued providing for an exception to it. No later direct reference to it can be found; but that some instruction must have been sent in connection with the excepting Ordinance is shown by the appearance on Jan. 27, 1766, of a Provincial ordinance repealing that of 1765. This is stated in the Council Minutes to be in accordance with the precedent of the exception taken. The repealing ordinance takes occasion to speak expressly of the general advisability of the facts being ascertained "by the oaths of good and lawful men of the neighborhood of the places where they had happened, according to the ancient and wholesome rules of the common law of England." The dates here should be compared with those of the English administrations and the whole matter considered in connection with the latter more flagrant overriding of the same principle in the case of the other colonies.

in future legislation, he is enjoined by the 12th Art. that while, in accordance with the spirit and intention of the Quebec Act, the Canadians "should have the benefit and use of their own laws, usages, and customs, in all controversies respecting titles of land and the tenure, descent, alienation, incumbrance, and settlement of real estate, and the distribution of the personal property of persons dying intestate," on the other hand the council should consider, in adopting regulations to this end, "whether the laws of England may not be, if not altogether, at least in part, the rule for the decision in all cases of personal actions grounded upon debts, promises, contracts, and agreements, whether of a mercantile or other nature, and also of wrongs proper to be compensated in damages," especially where old subjects are concerned. Viewed in connection with the 13th Art., which recommends the taking of measures to secure to the Province the benefits of the principle of Habeas Corpus,¹ this shows that the administration cannot be justly accused of being willing that the Government should revert entirely to the old principles and forms. It is apparently intended rather that only so much of the old law should be retained as could in any way be contended for as essentially bound up with the securing to the French Canadians that full enjoyment of their property which had been promised in the Capitulation and Treaty. That this limit was not adhered to was due in part to a necessary development of what was now done; in part to the confirming and extending of the main policy of the Quebec Act during and after the revolutionary war.

d. *Legislative Assembly.* We have now reached the last

¹ The address of Congress to the people of England, Sept. 5, 1775, especially complains that the English in Canada were "deprived of trial by jury and when imprisoned cannot claim the benefit of the habeas corpus act." The recommendation made by the Home government as to the Habeas Corpus was acted on in 1785 by a Provincial Ordinance modelled on the Act of Charles II. The jury system had been extended to civil cases to some extent by an ordinance of the previous year (Smith, *Hist. Can.* II, 169, 176). The delay in the case of both was owing probably in main part to the intervening American war.

important feature of the Quebec Act,—that withholding of a representative legislative assembly which was evidently considered by the revolutionary fathers as the main feature of the "arbitrary government" they viewed with such apprehension. That such an apprehension on this ground was most natural and reasonable cannot be denied; on the other hand it will appear from our examination that the skirts of the legislators can on this point be even more effectually cleared of guilt than on the others. I have already shown that the fundamental proclamation of 1763 and the later documents by which the civil government was established, promise and presuppose the early institution of a representative body, no notice being taken of the religious difficulties that lay in the way. The whole of the matter at this early stage is one of the strongest proofs of the unconsidered and hasty character of the first steps taken with regard to Canada. In considering the latter phases of it our chief interest lies in the gradual development of English governmental opinion on the point, and in the tracing of the causes which led to the determination of 1774 against representative institutions.

The matter seems to have been first seriously taken up by the Board of Trade in that report of September 2, 1765,¹ which I have noticed above as recommending a faint degree of return to the old laws. In regard to an assembly we find in it, as is to be expected,² a decidedly favorable tone. It states that "the situation and circumstances of the colony have not hitherto been thought to admit of a House of Representatives," but that the only objection they can find is the difficulty in regard to admitting Catholics as members; a difficulty however which they think might be obviated by such a division of electoral districts as would enable the Catholic electors to choose resident Protestants, there be-

¹ Can. Arch., B. 8, p. 12.

² For it is to be remarked that the more the English system was abandoned and the French reverted to, the more remote and unfitted would the idea of an Assembly become.

ing no law denying the franchise to Roman Catholics.¹ Such a settlement they think would "give great satisfaction to your Majesty's new, as well as natural-born subjects; every object of civil government which the limited powers of the governor and Council cannot extend would be fully answered, and above all that essential and important one of establishing by an equal taxation a permanent and constitutional revenue." This does not seem to us a very liberal provision, but probably in the then state of the laws and of public feeling in England and the colonies, it was thought the extreme limit that could be granted. The statement as to revenue brings to our notice a strong and constant ground for the establishment of representative institutions,—the relief that could thereby be most easily afforded to the English taxpayer.

The general course of events subsequent to this report I have considered elsewhere, and it would seem that the recommendations concerning an Assembly were regarded as of subordinate interest, no reference whatever being apparently made to them. The language of the later instructions to Murray and Carleton, and the narrow legislative power to which the Government and Council continued to be restricted, show however that the idea of settled Government without an Assembly had not yet seriously entered the mind of the home authorities. Indeed the careful directions concerning legislation with an Assembly at a time when it was recognized that the future constitution of the Province must be settled soon by Parliamentary enactment would indicate that the calling of an Assembly before that settlement was considered not improbable. The instructions issued to Carleton in 1768 give minute directions for the framing of legislation "when an Assembly shall be summoned and met in such manner as you in your discretion shall think most proper, or as shall be hereafter di-

¹ Note that this is the idea finally adopted by the British party in Canada.

rected and appointed." They go on however to make more general provisions of such a character as to show that, while there was apparently no thought of withholding an Assembly, the relations with such bodies in the other colonies had inspired the determination to take special precautions in regard to new establishments. A significant article directs that in all enactments, "for the levying of money or imposing fines, forfeiture or penalties, express mention be made that the same is granted or reserved to us . . . for the public uses of the Province and the support of the Government thereof, . . . and that a clause be inserted declaring that the money arising by the operation of the said law or Ordinances shall be accounted for unto us in this Kingdom and to our Commission of the Treasury or our High Treasurer for the time being, and audited by our Auditor General."⁴ The 11th Article puts restrictions on legislation of an unusual nature or affecting British commerce, such laws not to go into operation till approved by the Home Government. The 12th, stated in the preamble to be occasioned by the practices of some of the other Provinces, makes provision against the evading, through temporary laws, etc., of the control of the home authorities. The 14th is concerned with the prevention of the assumption of too great privileges by members of the Assembly or Council, (said also to be occasioned by experiences with the other Provinces), and the prevention of self-adjournment of the Assembly, together with a very noticeable clause granting the Council "the like power of framing money bills as the Assembly."

The special import of these provisions will be noticed later. Following up the main inquiry, we find in the Canada Report of Solicitor-General Wedderburn, December, 1772, the next important reference to the subject, and the one which

⁴ It is to be noted that a clause of the same tenor as this though not in quite the same language is in the instructions of 1765 to Sir H. Moore, of New York (Colonial Office Records, London).

sets forth most clearly the main ostensible grounds on which the Assembly was finally withheld. His conclusion is that it is at present wholly inexpedient to establish the institution in Quebec; for, although admitting that legislation could be properly attended to only by such a body, he considers the difficulties in its formation too great to be overcome. Into such an Assembly the Roman Catholic French Canadians, in the capacity both of electors and of members, must or must not be admitted. To admit them as members would be a dangerous and unconstitutional experiment, and would lead to inexhaustible dissensions between them and the old subjects;¹ while to exclude them would cause a feeling of inequality, and a fear of being exposed to injustice. On the other hand the question of the franchise was involved in equal difficulties; for the denial of it to the Canadians would leave the Assembly no more representative than a Council, while to extend it to them indiscriminately as landholders would be offensive to the upper class among them, and not beneficial to the lower.²

¹ It will of course at once occur to the reader that in Granada, seven years before, the experiment had been tried. But, as is shown above (pp. 444-7), the results had not been of a kind to encourage a repetition of it; for government there had been from that date involved thereby in the greatest difficulties, through just such "inexhaustible dissensions" as Wedderbourne must now have had in mind. The conditions further of Canada and Grenada were very different, the difference being of a kind to cause even greater difficulties to be apprehended in the former. The temper of the English party had already been shown. They were however but a very small factor as compared with the mass of the French Canadians; and the British government had therefore to bear in mind not only inevitable dissensions between the two races, but also the imperilling of the safety of the new Province with a discontented English element and a popular House almost entirely French. In Grenada there could be very little danger, and if trouble did arise it would be confined to the Island and could scarcely have dangerous connections outside. The use of the word *unconstitutional* by Wedderbourne shows also perhaps that he had in mind the vigorous attacks made, (it is true on somewhat different grounds), on the Administration for the step in Grenada.

² In this latter sentence we see the weak point of an otherwise cogent statement. But it is to be remembered that Wedderbourne was preparing his report on information furnished by Carleton, one of the main features of whose policy was to represent the great importance of attaching the noblesse and maintaining them in their imagined influence over the lower classes. The idea as to the privilege of the suffrage not benefiting the people was based on representations as to the ignorance and political incapacity of the latter, and the probability that under representative institutions they would only fall into the hands of demagogues or of English creditors.

On these grounds Wedderbourne advises that instead of an assembly, the legislative power should be granted with important restraints to a Council considerably enlarged and made more independent of the Governor.

For these opinions the provincial officials were no doubt mainly responsible. Carleton was strongly set against an Assembly, as not adapted to the province and as not desired by the Canadians. Masères also seems to consider a very liberally framed Council the best plan, (a purely Protestant Assembly being manifestly impossible), for some years to come. The latter's advice on this matter to the British party in Quebec is of much interest. Just before the Quebec Bill was introduced he writes to the representatives of the party, (whose agent he was), that he is not yet sure of the sentiments of the Ministry on the point, but conjectures that they are of opinion that the province is not yet ripe for an assembly and are therefore inclined to establish instead a nominated Council with larger powers; that his own opinion is that such a Council would be better for the Province for several years to come than an assembly into which "Papists" should be admitted; that the only objection he sees to a Protestant Assembly is the danger of offending the more numerous Catholics; but that if this difficulty be got over by some compromise, (as by granting the suffrage to the French Canadians), he would be very glad to see an assembly granted, "as indeed I suppose it would in that case be." He proceeds then to advise, as in his opinion likely to be more helpful in the procuring of their object than any other step, that the petitioners should declare that they "conceive the British Parliament to have a complete legislative authority over the Province of Quebec, and that such authority will continue after the establishment of an assembly," and that they are willing "that every member of such future assemblies should be required to recognize the said supreme authority in every article whatsoever both of legislation

and taxation in the plainest and strongest terms before he is permitted to take his seat." Such a declaration he thinks, " would greatly tend to remove the prejudices now subsisting in the minds of many people in England against the erection of new houses of assembly in America, arising from the conduct of the assembly in Boston and in other of the American Provinces in totally denying the supreme authority of Parliament."¹ Masères it will be remembered was at this time on the English Exchequer Bench, and probably in a position to know as accurately as any outsider could the attitude of the authorities on a subject in which he was so much interested. His was by all odds the keenest intellect prominently concerned in Canadian affairs at the time, and though occasionally his writings show signs of haste and want of balance as well as some intolerance and narrow legal habits of thought, a close study of the period will I think lead to the conclusion that he possessed a more accurate knowledge of Canadian conditions, and clearer and more far-sighted views as to the policy that should be adopted in regard to them, than any of his contemporaries. Though, as we see above, upholding the supreme authority of the British Parliament, (his legal training made any other view almost impossible to him), he belonged in many respects to the more liberal and advanced school of thinkers on colonial Government.² Certainly his writings prove that he would have been one of the last to have countenanced any plan of aiming to restrict colonial liberty through the instrumentality of a despotism in Canada. The advice here given to the Quebec leaders shows indeed that he was of opinion that the Ministry was strongly prejudiced against Colonial legislatures. That this was correct there can be no thought of denying. But it is further shown here, as by many other references, that the Ministry was also of opinion that the unquestioned suprem-

¹ *Proceedings, etc.*, pp. 35-8.

² See his *Freeholder*.

acy of the British Parliament could be secured in the Act of settlement. In this advice Masères, as the counsel of a political party, is merely recommending the further reassuring of the Ministry by docile professions. In none of his writings, even in those of much later date than the Quebec Act, is there any reference to the possibility of that Act, (of which he was one of the most determined opponents), being dictated as regarded the withholding of an assembly, by the motives which had been attributed by the colonists. On the very eve of the new settlement we find him of the opinion that the only serious objections to such a body in the mind of the authorities, were on the one hand the danger of allowing full weight to the overwhelming French Catholic majority, and on the other the difficulty of making a Protestant Assembly palatable to that majority.

Our most important source of information on this point, however, outside the Ministerial correspondence, is the debate on the Act itself in the House of Commons. And the main impression which its study leaves with us is that the opposition was very careful *not* to press for an immediate Assembly, and that the Ministry was very careful to base the withholding of it purely on the ground, (1) that it would be unjust to exclude the French Roman Catholics from it, and (2) that it would be unsafe to admit them. Att. Gen. Thurlow asserted without contradiction that no one had claimed that it was at present fit to give an Assembly to Canada; and later in the debate, Fox admitted that he would not explicitly assert that it was expedient at that time to call one. Lord Beauchamp, a Government supporter, affirmed that no member had advocated the appointment of a Council because of the conduct of the popular assemblies in America, or had ventured to say that it would always be inexpedient to give the latter. Almost the last word on the subject was the following from Lord North: "That it is desirable to give the Canadians a con-

stitution in every respect like the constitution of Great Britain, I will not say; but I earnestly hope that they will, in the course of time, enjoy as much of our laws and as much of our constitution, as may be beneficial for that country, and safe for this. But that time is not yet come." It is evident on the whole that the opposition could not offer a solution of the difficulties that seemed to lie in the road, and that the Government, whatever secret motives may have influenced it, was quite able to defend its position by pointing to these difficulties. The hints of the opposition as to the Bill giving evidence of secret hostility to liberty, were rather in reference to other features than to the more complicated and less assailable point of the withholding of representative institutions.

It would be more correct to say that the Quebec Act *deferred* than that it *denied* an Assembly; for the wording used is, "whereas it is at present inexpedient;" as Lord North stated it, "That this establishment is not to be considered perpetual, is admitted in the bill itself." There was not at any time any serious question of the permanent refusal to the Canadians of representative institutions; and the references to the period of tutelage and probation that should elapse before the granting of such institutions seem to presuppose a short one. It is indeed impossible to conceive that any administration could have expected that the country would long be satisfactorily governed by a Legislature which had no money powers whatever, beyond levying and applying of municipal rates, and which was expressly prohibited from making effective, even for a day, any enactment which imposed a greater punishment than fine or imprisonment for three months. In fact the action taken in this particular must simply be looked upon as the shelving of a difficult subject,—as a continuation of the policy of delay and compromise which had marked all previous dealings with Canada. The Government had the positive assurances of Carleton, to whom it looked mainly for information, that

the Canadians did not want an Assembly, would indeed prefer not to have it; and the small English party was thought as yet to have a weight in the country too small to require much attention. The period during which an Assembly was to be delayed was of course not clear to the mind of anyone; but it is possible that the Ministry wished first to have settled the difficulties to which the Assemblies in the other provinces were giving rise. In so far then it is probably true that the framers of the new constitution were affected as to this point by the general situation of things in America; but there seems to be no ground for going any further. The Ministry was encouraged to delay representative institutions because it had assured itself that the great body of the French Canadian people had no desire for these institutions, and could be safely and perhaps beneficially left without them for a few years to come; but there is no reason to suppose that this delay was intended as the first step of a system of oppression which was ultimately to extend to the other colonies through the instrumentality of the docile slaves that had been secured in Canada. It is undeniable indeed that as early as 1768 the Imperial authorities, while of the opinion that an Assembly should be constituted as soon as possible, had resolved to take stringent measures for the restricting of the money power of the same, and the keeping of it in unquestioned subordination to the British Parliament. But this is a phase of the subject which does not concern us here. It was simply the application to Canada, in a strictly constitutional way, of the general claims which gave rise to the American Revolution. I am not interested here to enquire whether the Imperial government went as far in Canada as it attempted to go elsewhere; the question is rather, did it go farther? Did it attempt to take advantage of the political ignorance and docility of a long enslaved people for the purpose of upholding, in direct opposition to all the free principles of English govern-

ment, a set of conditions which might continue to be or might become, a menace and check to the other colonies?

With regard then to the origins of the Quebec Act it need only be added that the above examination must at least show that if that Act were in any important degree due to the causes assigned it by colonial suspicion, the government which originated and pushed it through must have taken unusual pains to keep its reasons and its purposes hidden. But why should such concealment have been thought necessary with regard to the whole or any part of the enactment? This same government had just carried through three Bills³ of the most stringent and repressive nature, striking, to the popular view, heavier blows at American freedom and growth than anything contained in the Quebec Act, and had found itself in these measures backed by a consistent and overwhelming support, both in Parliament and throughout the country. Why should it now have scrupled to say that it was also taking measures of precaution in Canada? The government of that day was not an enlightened one, and would have been content to secure popular support, without looking to the future; it might well have concluded, for example, that the preserving of the vast regions of the West from the encroachments of the rebellious colonies would prove a popular measure. Rather than concealed indeed, we might expect to see this motive, if occupying a prominent position in the Government mind, put forward with prominence. We might expect to find it used to explain and defend the more doubtful parts of the measure, and especially that apparent establishing of the Roman Catholic Church which so aroused the horror of the Continental Congress, and which was almost as unpopular in England as in America. On the other hand, if the *secret* design hinted at by the opposition and believed in by the colonists

³ With regard to Massachusetts.

had existed, it is not to be supposed that it would have been alluded to by such able and prominent members of the party as Wedderbourne and Lyttleton. As to the more decided utterances in the Debates for the repeal of the act in 1775, both of the Opposition and of the Government,¹ they must be regarded as after thoughts. The Opposition was undoubtedly inspired by the objections with which the Act had been met in America, and the Government was alarmed and exasperated by the increasing menaces there to Imperial control, and ready to use or threaten to use, any instrument that lay ready to its hand.

C. *Application of the Act.*

In connection with the Act should be noted the instructions that accompanied the new commissions under it, and some later official developments. The new instructions with regard to legislation had now a more definite basis in the elimination of the confusing element of a possible Assembly, and we find the following changes: (1) A restriction of the legislative period to the months of January, February, March and April; apparently for reasons connected with the climate and the communication with England. (2) Suspension till royal approval of some classes of ordinances, with a prohibition of any commercial ordinance by which the inhabitants should be put on a more advantageous footing than any other of His Majesty's subjects, "either of this Kingdom or of the Plantations."² Prohibition of all religious legislation.

A clause with regard to the procedure of the new Council³ had consequences of some interest which lead us a little beyond our period. It was the first part of the 2nd Article of the above instructions, and read: "It is further our will

¹ Lord North here openly avowed his intention of arming the Canadians if necessary, for the purpose of reducing the refractory colonies to obedience.—*Parliamentary History*, Vol. 18, p. 680.

² This is perhaps worth noticing with regard to the question of the hostility of the measure toward the other colonies.

³ This consisted of 23 members, 8 being French Canadians.

and pleasure that any five of the said Council shall constitute a board of Council for transacting all business in which their advice and consent may be requisite, Acts of Legislation only excepted, (in which case you are not to act without a majority of the whole)." No clear statement is made anywhere as to a quorum.¹ This very indefinite provision Carleton promptly availed himself of as might have been expected from his action in 1766,² and June 27, 1778, he sends home the Minutes of the Board of Council³ for the preceding eight months. These minutes do not appear in the State Papers, but we have the similar ones from Haldimand, October 24, 1779, for the period from November 1, 1778, to September 25, 1779.⁴ An examination of these latter shows that this "Board of Council" consisted of five members beside the Governor and Lieut.-Governor, all of whom were also members of the Legislative Council; that it refers to itself as a "Board," and holds meetings in 1778 on the 7th, 9th, and 30th November, and in 1779 on the 10th, 11th, and 17th May, the 7th and 12th June, and the 15th July,⁵ the Governor being present at all but two meetings.

We have here evidently a *quasi* Cabinet, without Parliamentary responsibility, invested apparently with all the executive powers of the Council though meeting so infrequently as to be but a slight check on the Governor.⁶ But though the wording of the instruction under which it

¹ In the debate in the Commons the Quebec Bill had been attacked for the absence of any such provision; which was replied to by Lord North by an assertion (*Cavendish*, p. 241), that it was intended, as shown by the words "the major part," that the quorum should be a majority of the smallest number (17) of which the Council should consist. But this clause had reference only to legislation, and the answer looks like an astute evasion of the point at issue.

² In regard to his then treatment of the Council, see p. 338, note 2.

³ Referred to by the Council Clerk as the "Privy Council."

⁴ These are referred to simply as the "Minutes of His Majesty's Council," the "Journal of the Legislative Council" for the corresponding session being sent at the same time.

⁵ The corresponding "Journal of the Legislative Council" is for the session 11th-16th January, 1779.

⁶ Who had the choice of the members. It looks as if, under Haldimand at least, this "Board" was used only as a pretense of complying with the constitutional requirements as to the "advice and consent" of the Council.

was instituted would seem fully to admit of this interpretation, (indeed it is difficult to avoid the conclusion that it was so intended, and had been procured to that end by the direct efforts of Carleton), it did not go unquestioned in the Colony. Early in the spring of 1778 we find Chief Justice Livius, (a somewhat hot-headed personage, who persisted in raising other disagreeable questions and was a couple of months later suspended from his office by Carleton), disputing the constitutionality of the new institution, and demanding, (April 12, 1778), definite written information as to Carleton's order "selecting and appointing five members of His Majesty's Council to act as a Council to the exclusion of every other member." The information desired was refused, as was also permission to read the minutes of the Privy Council. Nothing further on the head appears in the Colonial correspondence; but that Livius successfully presented his point to the home authorities is shown by an additional and very definite instruction issued to Haldimand, (who had without new instructions succeeded Carleton in the Chief Governorship), on the 29th of the following March. This, after citing the portion of the 2nd Art. of Carleton's instructions above quoted, proceeds as follows:—"And whereas it is highly fitting and expedient that no misrepresentation of our Royal will and pleasure in this instance should continue or obtain, we do hereby direct and require that this article shall not be understood to delegate authority to you our Governor to select or appoint any such persons by name as you shall think fit to make such Quorum, terming the same a Privy Council, or to excuse you from summoning to Council all such thereunto belonging as are within a convenient distance. On the contrary that you do take especial care to preserve the constitution of your said Province free from innovation in this respect;" to which end the Governor is to communicate this additional instruction to the said Council. And by a second

additional direction of the same date, evidently intended to reinforce the effect of the first, he is commanded not to fail' in promptly communicating to the Council, "to the end that they may jointly with you . . . carry our intentions effectually into execution," all instructions on subjects concerning which their advice and consent were made requisite. The tone and import of these orders are unmistakable; but the inner history is by no means clear, nor can the home administration escape from some suspicion of inconsistency or at least obscurity of policy. The representation of the original instruction as intended only to give directions concerning a quorum seems a hardly tenable position; as said already the entirely new forms and terms used, taken in connection with previous events, might well lead to the conviction that the new terms and forms were intentional and intended to provide for new things. Though on the other hand it is hardly conceivable that there was a fully formed intention of allowing an institution to become established which would practically have the effect of taking away all executive voice from the Council and reducing it to a purely legislative capacity. Whatever the inner history, the effect is clear; the Council as a whole was restored to its old executive sphere with effective intimation that that sphere was not to be monopolized (at least openly), by the governor. And it must be acknowledged that this final action of the home executive does not support the charge that it was aiming to assimilate the Provincial government as much as possible to the old French absolute form. Members of Council had to be residents of the colony,—a provision which seems a distinct intervention in the interests of self-government. The same conclusion seems fairly to be drawn from the repetition in the Governor's instruction of 1775

¹ A less emphatic injunction to the same effect had always been a part of the instructions, but Haldimand had disregarded it.

of the 35th Article of those of 1768, ordering that "every orthodox minister within your government be one of the vestry in his respective parish;" a direction which must be construed in connection with a consideration of the contemporaneous position of vestries in England.

The immediate results of the Quebec Act with regard to the official abuses which had been so complained of, were not very gratifying. The vacating of all commissions by it was intended, Carleton says, "to put a stop to all deputations, and to compel all who had offices here to reside and do their duty in person;" but August 10th, 1776, he complains that the same abuse had been introduced again in a great measure by royal mandamuses, (one person being thus granted five offices), and that into these "still slide . . . a string of terms, authorities, fees, perquisites and all that dirty train."¹ And in regard to the accompanying and still greater evil of excessive fees he writes later, (June, 1778), that although "the King had been pleased bountifully to augment the salaries of his servants in this Province that they might live comfortably in their respective stations without oppressing his people," yet the matter has become worse than ever, there existing in the Province "no rule or regulation for fees of offices, but each man for himself as guided by his own desire of gain, which of late has broken out with greater keenness than ever before."² These minor developments are possibly worth more attention than I can here give to them. For they bear strongly on the general conclusion as to the Quebec Act to which my investigation has led me, viz.: that the return to the old institutions in the degree thus accomplished, was a step neither warranted by the necessities of the moment nor by any principles of sound policy; but that the French Canadians would have been satisfied with a part of what the Act gave, accompanied with a full

¹ Can. Arch., Q. 12, p. 119.

² *Ibid.*, B. 37, p. 192.

remedy of the really pressing evils in the uncertainty of the law and the abuses of its administration. The remedy for these abuses did not depend on the return to the old institutions; on the contrary we have seen that that return was not accompanied by it. Still less do we find it followed by the expected improvement with regard to the confusion and uncertainty of the law. The immediate and continued result was in accordance with the mixture of aim and motive. To show this it is necessary only to refer to any respectable history of the period. It was not till 1777 that the civil courts were re-established in Quebec; we are informed by a writer who is almost contemporary, and who had had exceptional means of knowing the exact legal conditions, that an official investigation in 1787 disclosed "such a scene of anarchy and confusion in the laws and in the administration of them by the courts as no English province ever before laboured under; English judges followed English law; French judges followed French law; some of them followed no particular law, but decided according to what appeared to be the equity of the case."¹ Christie writes of the year 1790, that it was complained that although the Quebec Act had been sixteen years in force, "the courts had not yet decided whether the whole of the French laws or what part of them composed the custom of Canada, as they sometimes admitted and sometimes rejected whole codes of French law."² Garneau³ groups together the whole period from 1760 to 1786 as marked by the same "excès de tyrannie et de désordres," and states that the investigation into the judiciary by Dorchester in 1786 showed the utmost uncertainty and confusion. More modern writers⁴ accept this condition of affairs

¹ Smith, *History of Canada*, II, 175.

² *History of Lower Canada*, I, 67.

³ *Hist. du Canada*, III, 57. The statement is apparently endorsed by Lareau, *Hist. Droit Canadian*, II., 168.

⁴ See for example Kingsford and Bourinot.

without dispute. It is only intended here to point out that the Quebec Act has thus no defence, in at least this first stage of its life, from the standpoint of good government in the Province. This should be kept in mind as we pass to the special consideration of some of its more immediate disastrous effects, and as we reflect more generally upon its remoter results in the history of British North America.

CHAPTER VI.

THE QUEBEC ACT AND THE AMERICAN REVOLUTION.

A. The Revolution in the Province of Quebec.

In the frequent extolling by British and Canadian writers of the *policy* of the Quebec Act, the reference is of course to the supposed effect of that Act in confirming the loyalty of the French Canadians at the revolutionary crisis, and thus in preserving the newly-acquired territories from the grasp of the revolutionary movement. If the conclusions of the last chapter be well taken, it will be seen that, whatever the outcome of the measure, the inference as to policy is largely mistaken; that in other words, if the results were as stated, it would seem a rare and happy instance of immediate temporal reward for disinterested well-doing. It is not meant to deny that in the generally threatening conditions in America the firm attachment of the new subjects must have appeared to the home government as a very desirable thing; nor that the conviction of this desirability was probably a considerable factor in confirming the final conclusions as to their treatment. Such a motive would be of necessity strongly present in the case of such an unknown quantity as the new acquisition of a segment of another nationality; I have simply tried to show that it was not accentuated by the contemporary existence of other colonial problems to the extent of appreciably affecting the policy adopted toward the new subjects.

But further, I am obliged to take exception to the position of the upholders of the Act for other and stronger reasons. The credit for political sagacity assigned to the authors of that measure must be impugned not only on the ground that their work had little if any reference to the circumstances on which the credit is given, but also for the conclusive reason that the immediate results of the Act were

precisely the opposite of what had been anticipated and have ever since been assumed. It is the object of this chapter to show that not only was the Quebec Act not effectual in keeping the mass of the Canadians loyal, but that what effect it did have was in exactly the opposite direction. And before proceeding to this it should be noticed that in anticipating or extolling the results of the new settlement on the French Canadians there is curiously left out of sight by the upholders of the Act, any consideration of its effects either on the British in Canada or on the older colonies. Yet it is evident that for the true estimate of its policy, wisdom, or results there must be an accurate balancing. In view of the accompanying measures of the Government of the day in regard to the other colonies directly it is not surprising to find any thought of this entirely absent at the time. We however have no excuse for now neglecting it.

The question of the influence, direct or indirect, in general or in particular parts of the country, of the new settlement of Quebec affairs on revolutionary development in the other colonies, is one of an interest so great and so closely connected with my work that I can only express my regret at being unable at present to investigate it thoroughly. It must be left with a reference to the general classing of the Act with those of the same session in regard to Massachusetts Bay,² and to the emphasis so placed upon the measure in the early steps of the Continental Congress. One remarkable bit of private testimony in connection therewith might also be mentioned. In the Dartmouth Papers we find a letter from one Joseph Reed to the Earl of Dartmouth, Secretary of State, dated Philadelphia, Sept. 25, 1774, and giving an account of the alarming proceedings of the Congress then sitting there. The writer proceeds:—"But what shall I say to your

² This has been universal among American writers. See Roosevelt, *Winning of the West*, I., for a more emphatic and recent position; and in connection the treatment above of Quebec boundaries, Chapter V, section B, a.

Lordship of the appearances in this country; what seemed a little time since to be a spark which with prudence and wisdom might have been extinguished, is now a flame that threatens ruin both to parent and child. The spirit of the people gradually rose when it might have been expected to decline, till the Quebec Act added fuel to the fire; then all those deliberate measures of petitioning previous to any opposition was laid aside as inadequate to the apprehended danger and mischief, and now the people are generally ripe for the execution of any plan the Congress advises, should it be war itself."¹ Without delaying further on the direct influence in the revolting colonies of the general feeling with regard to the Quebec settlement, it may be pointed out that the attitude of that section of the British party in the Province itself which I have above distinguished as closely in sympathy with what became the revolutionary element, is a fairly correct index to the general feeling. That element in Quebec had, in the circumstances of the province, no legitimate or immediate share in the general colonial quarrel; its grievance was the Quebec Act purely; yet we find this a grievance of strength sufficient to drive it almost immediately into secret and as soon as possible into open revolt.

In noting these consequences of the new settlement with regard to the English-speaking party in Quebec, we have first to observe its efficacy in openly separating the more advanced and more moderate section.² The first step of

¹ Hist. MSS. Commission, Report XI. Appendix, V. p. 362. I am indebted for the reference to the *Report* for 1890 of the Canadian Archivist, p. XXI. It will be noticed that the writer selects from the various obnoxious measures of the late Parliamentary session, the Act in regard to Quebec, without any mention apparently of the more directly threatening ones concerning Massachusetts Bay. His thought may probably be more distinctly seen in a later horrified reference to "The idea of bringing down the Canadians and savages upon the English Colonies." Of the writer I know nothing surely; but he is possibly the same person to whom the Congressional *Diary* of Richard Smith makes reference March 1, 1776, as the "Secretary to Gen. Washington," and as having his salary then raised by Congress on account of important naval duties. (See *Amer. Hist. Review*, April, 1896, p. 507.)

² See above c. 3, for analysis of the English party.

the party was the drawing up of protests against the Act; in which mild proceeding however all apparently did not take part. For Carleton writes Nov. 11, 1774 to Dartmouth, that the more respectable part of the English at Quebec, "notwithstanding many letters received from home advising them to pursue a different course," had presented a dutiful and submissive address; but that in Montreal, "whether the minds of the latter are of a more turbulent turn, or that they caught the fire from some colonists settled among them, or in reality letters were received from the General Congress, as reported, I know not, certain it is however that shortly after the said Congress had published in all the American papers their approbation of the Suffolk Co. resolves in the Massachusetts, a report was spread at Montreal that letters of importance had been received from the General Congress," and public meetings were held by the British there for the consideration of grievances. Thence the infection had spread to Quebec where the same course was pursued, though "several discrete persons" at both places had declined taking part. Since then there had been several "town-meetings as they are pleased to style them;" though he speaks doubtfully, "as they have taken uncommon pains to keep their whole proceedings from my knowledge." He describes these town-meetings and reports as all "breathing that same spirit, so plentifully gone forth through the neighbouring Provinces," and speaks of the necessity of government guarding zealously "against the consequences of an infection, imported daily, warmly recommended, and spread abroad by the Colonists here, and indeed by some from Europe, not less violent than the Americans." ¹

The immediate outcome of these proceedings were numerous signed petitions against the Act, addressed to the King and to both Houses of Parliament. There can be no

¹ Can. Arch., Q. 11, p. 11.

doubt that the leaders here and from this time on were constantly in more or less direct communication with the American Revolutionists and were aiming to keep as closely in touch with their efforts as possible. The letters spoken of above by Carleton undoubtedly did represent some such connection, and a few days later (Nov. 18, 1774)¹ Carleton transmits a copy of one which had fallen into his hands, and which probably was the communication referred to. And as it speaks of itself as being "our first public correspondence with the town of Quebec,"² it will be worth while to refer more fully to it. It is dated Boston, Oct. 10, 1774, and is a moderate and dignified letter of thanks by one David Jeffries, on behalf of the "Committee of Donations" of Boston, for a contribution (apparently of wheat)³ "to relieve the distressed poor of this oppressed town," and is addressed to "the Gentlemen of Quebec" through a trading firm named Minot, originally from Massachusetts. It speaks of the necessity of the union of all parts of the continent against oppression, and of the satisfaction afforded by the sympathy of the town of Quebec; refers to the policy of Great Britain in "creating divisions amongst them and using them as engines to beat down and destroy the liberties of each other, that so all may be an easy prey to tyranny and despotic power,"—a policy to which "the eyes of the colonists are opened;" and expresses the hope of the continued support of "our friends in Canada," with whom the writers will think themselves "happy in keeping up a brotherly correspondence." This letter is anterior to any action of Congress in regard to Canada, and the communication now opened was constantly kept up.⁴ The Amer-

¹ Can. Arch., Q. 11, p. 103.

² Ibid., Q. 11, p. 105. This expression does not by any means exclude, (rather indeed implies) previous correspondence with individuals.

³ Sent the previous 6th September. Congress had met for the first time at Philadelphia the day before.

⁴ In the following November we find the Massachusetts Provincial Congress appointing a committee (of which John Hancock and Samuel Adams are members), for the devising of means of keeping up a correspondence with Montreal and Quebec. John Brown was later appointed the agent of this committee.

ican portion of the party together with a few of European birth, (nearly all apparently at Montreal), undoubtedly from this time became active partizans of the Revolutionary cause, which they publicly embraced on the appearance of the American invading force. January 12, 1775, Carleton writes that the British subjects are "still exerting their utmost endeavors to kindle in the Canadians the spirit that reigns in the Province of the Massachusetts,"¹ and the following March 13,² that some of them "continue suggesting into the minds of the Canadians an abhorrence for the form of government intended by the Act of last session," and that they have translated the letter of Congress and actually imported 200 or 300 copies of it.

I need not go into details of the intrigues carried on and of the various methods of communication employed. The point of main interest here is that the final split in the party becomes now very evident. An attempt was made at Montreal to have delegates elected to the Congress of 1775, and notwithstanding Mr. John Brown's explanation of the cause of its failure,³ there can be no doubt that the great body of the English were decidedly opposed to the step on general grounds, and that the leading American element found itself at this point finally separated from its former constituency. We find in short that the main body of the "old subjects" remained, in spite of the Quebec Act, heartily loyal to English rule during this crisis; that their attitude was the same as that of the Tories, (the later United Empire Loyalists), in the other Provinces. They were probably willing to go farther in opposition to the government than their brethren in some of the other Prov-

¹ Can. Arch., Q. 11, p. 110. See also anonymous letter from Montreal, Jan. 18, 1775. [4 *Amer. Arch.*, I, 1164].

² Can. Arch., Q. 11, p. 129.

³ This was to the effect that the English in Quebec could not join the non-importation agreement, as in that case the French would immediately monopolize the Indian trade. (John Brown to Boston Com. of Correspondence, March 29, 1775, 4 *Amer. Arch.*, II. 243.)

inces, for they were under more irritating conditions;¹ but they were not willing to go to the length of taking up arms.² As to Quebec city we have very decisive evidence. I have above estimated the total male adult British population as hardly 600 in number and it will be a liberal allowance to grant the town of Quebec at this juncture half of these.³ But the official returns of the number of the defending force includes, November 16, 1775, "200 British militia,"⁴ and May 1st, 1776, "277 British militia."⁵ And that the efforts of these were not luke-warm is abundantly shown by letters of the officers engaged.⁶ Carleton himself testifies that their conduct was such as could hardly have been expected from men unused to arms.⁷ It is, on the whole, safe to say that after the Spring of 1776 the British party in Canada was seemingly united in upholding the British cause. Almost the entire American element had departed with their retreating countrymen,⁸ and the remainder of the party had apparently become reconciled to government and had been taken for a time into its full confidence. We find

¹ And hence did go to the verge of sedition, and at first probably were somewhat luke-warm in the defense of the Province.

² Their attitude at Montreal is probably accurately represented by a paper in the *Hald. Coll.*, (*Rep. Can. Arch.*, 1888, p. 918,) which purports to be a proposal of terms of capitulation to Montgomery, and which is signed by English and French names. It stipulates for the free possession and enjoyment of rights and religion, non-interference of soldiers with the inhabitants, and *that they should not be obliged to take up arms against the mother country.* Accompanying this is another document, unsigned, which protests against the terms of the capitulation as a treaty between two enemies, (whereas it ought to be a fraternal union), and expresses a desire for such a union with the other colonies. There can be no doubt that this latter is the voice of the few revolutionary sympathizers. Carleton writes Oct. 25, 1775, that on the attack on Montreal by the rebels a few of the inhabitants, "mostly colonists," had refused to take part in the defence. From which we are justified in concluding that the most of the English element had taken part.

³ Montreal was the chief trading centre.

⁴ *Can. Arch.*, Q. 1, p. 344.

⁵ *Ibid.*, Q. 12, p. 25.

⁶ See of Col. Caldwell in *Transactions Lit. and Hist. Soc. of Quebec. New Series*, Part 8; and of Col. McLean, in *Can. Arch.*, Q. 12, p. 39.

⁷ *Can. Arch.*, Q. 12, p. 7. To Germaine May 14, 1776.

⁸ The list of revolutionists sent home by Carleton May, 1777, contains 27 names and is apparently intended as a full one. *Ibid.*, Q. 13, p. 106.

intrigues it is true carried on through the whole war; but these were conducted in the main through the re-visits of those who had departed with the Americans, and were directed solely toward securing a hold upon the French Canadians. November 20, 1776, Carleton transmits loyal addresses from the British subjects of Quebec, and expresses himself as so well satisfied of the sincerity of the signers that there is "reason to hope that this part of His Majesty's Dominions may with proper arrangements be made the firm support of the British interests on this continent."¹ But although they had refused to go the full length desired by their more violent early leaders, the English-speaking party continued unanimously opposed to the Quebec Act, and maintained a more or less vigorous agitation against it down to its partial repeal in 1791. We hear of hostile petitions presented in 1778, and again in 1784, and an examination of the language of these shows that the position of the main body continued to be pretty much as represented by Masères. With the introduction of the Loyalist element at the close of the war the party gained immensely in weight, and attention to its representations could no longer be delayed.

But my main purpose in this chapter is to enquire into the results of the Quebec Act on the French Canadians. The generally accepted view that they were fully satisfied with the Act and thereby strongly attached to the British connection, is one which, without examination of evidence, proceeds naturally from the belief that the measure was based wholly or mainly upon their expressed desires. I have shown above that this was not the case, for the reason that the self-constituted interpreters of these desires had drawn their conclusions from very narrow and mistaken observation and very one-sided information. It is not surprising therefore to find that the results did not at all correspond with the expectations of the promoters of the measure.

¹ Can. Arch., Q. 12, p. 238.

Overwhelming evidence shows that the French Canadians were not faithful to British rule at this crisis, and that they were least faithful at the time when the Quebec Act might be supposed to have had most influence. Further evidence, equally strong, if not so great in quantity, shows that the effect of the Act on the mass of the people was one of alienation rather than conciliation.¹

It will be well to enquire first if there is any ground to expect these results, rather than those which have been so long assumed with such apparent reason. What do we know or what can we reasonably conclude as to the opinions of the mass of the people on the points which formed the main subject-matter of the Quebec Act? Of the four main provisions which I have discussed above, two,—the extension of the boundaries of the province and the decision against

¹As to the first of these statements—the hostility to British connection as shown by support of the invading revolutionists,—I do not assume any attitude of discovery. The evidence when really looked at is too overwhelming to have altogether escaped the observer. The latest and strongest expression of the truth I find in Kingsford's *History of Canada*, (V. 439,—published since my investigation was made), who says in regard to Montgomery's appearance:—"It was a rare case when the Canadians showed disfavor to the invaders; many joined their ranks." As will be seen later Mr. Kingsford however is mistaken in representing this attitude of the Canadians as only temporary. And that some more detailed and circumstantial statement is necessary to affect the general error, is shown by the wide extent of its assertion and its constant repetition. Lecky says in regard to the American invasion: "The Canadians remained loyal to England... The contagion of New England republicanism had not penetrated to Canada;" the people "were especially indignant at the invasion." (IV, 215). In a text book of the University of Toronto it is asserted that, "While the American War of Independence was in progress the French Canadian people remained faithful to their allegiance and resisted all the efforts of the Americans to induce them to revolt against the English." (Bourinot, *The Constitutional Hist. of Canada*. The statement is repeated with emphasis in the same writer's *Parliamentary Procedure and Practice*, Revised ed. 1892, p. 13.) It is needless to say that French Canadian writers have loudly and un-animously maintained the same position. A good example of the assertions of even the more enlightened and impartial of these is the following from Lareau (*Hist. Droit Can.* II, 148): "Cette concession [i. e. the Quebec Act] de la part de l'Angleterre eut sa récompense; pendant que les colonies anglaises brisaient le lien colonial, le Canada, comptant sur la justice du vainqueur resta fidèle au drapeau britannique." It seems therefore the function of such a special study as this to do what the general historian of course cannot, viz., so circumstantially to present the truth as to place it forever beyond cavil.

The second of the above statements,—as to the alienating effect of the Act,—has not I think been heretofore made, much less enforced.

an Assembly,— we may conclude to have been practically matter of indifference to the average *habitant*. The previous complaints as to the narrowing of the province had sprung from the greed of the trader or the historical pride of the educated; it was expressly testified by the most trustworthy of the witnesses before the Commons in 1774, that the mass of the Canadians neither knew nor cared anything about an Assembly, and that the few who did dreaded its establishment as likely to bring the Province into difficulties with the mother country. With regard to the third provision,—the reputed establishment of the Roman Catholic Church,—there is every ground for believing that the French Canadian would see in it only a dreaded and objectionable feature,—the re-establishment of the compulsory tithe. As early as 1762 Murray asserts that the people "under sanction of the capitulation every day take an opportunity to dispute the tithes with their curés;"¹ and in the following year (as already pointed out), general petitions support his assertion that the people are not anxious for the continuance of the hierarchy, but will be content with the preservation of the priesthood as a devotional and educational body. Every year of British rule, there can be little doubt, increased this attitude of independence in regard to the once all-powerful church. It will be well in this connection to recall De Tocqueville's remarks in discussing the isolation of the peasant in Old France at this time. He points out² that the clergy were the only members of the superior classes left in the country, and that the curé would thus have become the master of the rural population "s'il n'avait été rattaché lui-même d'une façon si étroite et si visible à la hiérarchie politique; en possédant plusieurs des privilèges de celle-ci il avait inspiré en partie la haine qu'elle faisait naître;" a position which he emphasizes in a note which points out an ex-

¹ Can. Arch., B. 7, p. 1. See above, chapter 2.

² *Ancien Régime*, B. II, c. 12, with note.

ample from the year 1767 "de la manière dont les droits pécuniaires de clergé lui aliénaient les coeurs de ceux que leur isolement aurait du rapprocher de lui." As I have elsewhere pointed out, there is no good reason for regarding the Canadian *habitant* as so far removed from the state of mind of the peasant in Old France as has been generally assumed. With regard to the civil code provisions of the Act (in connection with which must be considered the previous reversion to the old forms of land tenure), it must be concluded that at the most the re-establishment of the old French civil law, in view of the fact that the peasant had never discontinued its use,¹ could have had very little effect on the average French Canadian. And when he considered that the tithe had been made compulsory, and that the seigneurial method of land grant was again in full operation, it would be strange if he should not feel some apprehension with regard to the reappearance of other old oppressive relations connected with the land. I have shown above that there is every reason to believe that the relations between the seigneur and the *habitant*, even early in the English period, were practically identical with those in old France, and that no part of the changed conditions had been so early and fully appreciated by the latter as their release from their former military and judicial subjection. In their ignorance of the real scope of the new measure they would naturally be apprehensive of the reviving of this old burden; and it is evident that before as after its enactment its English opponents took full advantage of their fears and ignorance.

Very little direct evidence has been found on this point, and still less that is free from suspicion. The British party, of course, before and after the Act, represented it as undesired and resented by the mass of the people. This contention is not to be regarded as weakened by the fact that a memorial and petition in favor of its main provis-

¹ See above, pp. 352-7.

ions were presented in their name to Parliament while deliberating on the measure.¹ For Masères' statement that these are not really representative may be easily conceded in view of the fact that of the fifteen signatures, most are those of members of the noblesse.² A movement of more importance and interest has been already referred to in the account of the English proceedings prior to the Act; it culminated in an offer from some French leaders in Quebec to join in the English petition for an Assembly provided that this should contain a request for the admission of Catholics to the House.³ On the rejection by the English of this condition the matter dropped. As indicating the attitude of a section probably larger in number and certainly more nearly in accord with popular feeling than the noblesse, this incident is of great interest;⁴ but it is still of little value in the determination of the question as to the views of the mass of the people on the points at issue. The very contradictory evidence given before the Commons in 1774 by the Provincial officials is no more helpful; it being evident that Masères and Lotbinière represent a small advanced portion of the traders and professional men, (perhaps also of the noblesse), and that Hey and Carleton speak for the clergy and the bulk of the noblesse. With regard to the first reception of the Act by the people we have equally

¹ For these see Masères, *Account of the Proceedings*, pp. 111-31.

² See on this point, Carleton's evidence before Commons, 1774. Also English petitions for an Assembly, Dec., 1773 (Can. Arch., Q. 10, p. 26). A curious letter in 1776 from one M. Pelissier to the President of Congress describes the signers of the French petition as "quelques adulateurs [i. e. of Carleton] et quelques ignorans fanatiques des anciennes coutumes." (4 *Amer. Arch.*, IV., 596.)

³ See Masères, *Account of the Proceedings*, pp. 3-40.

⁴ It is noteworthy also as indicative of the rise of a new set of native leaders (distinct from noblesse and clergy). The lawyers and others of the lay educated class who had rapidly acquired some insight into English political ideas are evidently taking the place that had been opened up to them by the substitution for the feudal régime of the freer spirit of the English institutions. The new attitude is probably represented by the evidence of M. Lotbinière before the Commons in 1774; and the desire for forms of English self-government was undoubtedly inspired by the hope of thus giving effect to the great numerical preponderance of the French.

conflicting statements. It was not to go into force till May, 1775, and it is doubtful whether it was published in the province during 1774; so that statements as to public opinion during the latter year probably can have reference only to the few who beforehand would become intelligently acquainted with its provisions. September 20, 1774, Carleton writes to Gage of the "joy and gratitude and fidelity" of the Canadians in consequence of the late Act,¹ and three days later he reports to Dartmouth the great satisfaction of all classes of the French Canadians.² Nov. 11th³ he again speaks of their gratitude and represents their uneasiness at the measures which the old subjects are taking against the Act. But it is noticeable that he here refers to the noblesse and clergy as being apprehensive that some of the Canadians through ignorance and from their trade relations with the English, may be enticed to join the latter in their movements; especially as they are being told that the late Acts will reduce them to a state of slavery and oppression. At the same time he sends addresses, (three, from Montreal, Quebec, and Three Rivers),⁴ expressing the gratitude of French Canadians; addresses which beyond much doubt are from precisely the same quarter as the petitions immediately preceding the Act. The one from Quebec speaks apologetically of fellow-countrymen who "par des circonstances malheureuses" may have been drawn into common action with the English discontents. February 4, 1775,⁵ Carleton writes further to Gage that "all that have spoke or wrote to me upon the subject express the most grateful sense of what has been done for them;" but at the same time uses language in regard to the *habitants* which seems to show that he is beginning to perceive that the satisfaction and gratitude does not extend to them. And the indi-

¹ Can. Arch., Q. 10, p. 123.

² Ibid., Q. 10, p. 120.

³ Ibid., Q. 11, p. 11.

⁴ Ibid., pp. 17-23.

⁵ Ibid., p. 290.

cations of this soon became so unmistakable that even his obstinate prepossessions could no longer resist.

Of the suspicious attitude which in all probability the average French Canadian had maintained in regard to the re-establishment of old oppressive institutions the English discontents had been quick to take advantage, magnifying the provisions which might seem likely to operate for the revival of old burdens. We find Carleton writing November 11th, 1774,¹ that the people are being told the most extravagant stories of the arbitrary power put into the hands of the Governor and noblesse; and the French addresses of thanks of the same month (quoted from above), evidently imply that these representations were already perceived to have had effect. The most emphatic testimony on this matter comes from Masères.² Though prejudiced, and dependent for information on those who were more so, still his assertions here are so amply supported by other evidence and by later events that we cannot neglect them. He gives a letter to him from some of the English in the province³ which asserts in the most positive terms that "great numbers throughout the Province have offered to join us in petitioning for the continuance of English laws, and disavowing their consent and knowledge of the petition which was sent home last year in their names, though signed only by a few persons in the province;" but that they have been prevented from so joining by the intervention of their superiors, who told them that if they did so they would be deprived of their religion. More reliable proof of the attitude of the *habitant* is furnished in the fears entertained by those who best knew them. These are shown in a letter which was circulated among them by the clergy in December, 1774, and January, 1775, attempting to reas-

¹ Can. Arch., Q. 11, p. 11.

² See *Additional Papers*.

³ For letters of this tenor and probably from the same source, see Almon's *Remembrancer*, II (1776), pp. 130-44.

sure them on those provisions of the Act which were supposed to have alarmed them.¹

✓ The new constitution went into force in the Spring of 1775 and the hostility of the people to it seems to have steadily increased. Two curiously roundabout and disconnected pieces of evidence deserve perhaps especial notice. One is an official intimation from St. John's Island, of October 13, 1775, to the effect that private letters have been received there from Quebec with the information that "the Canadians have absolutely refused to join us, assigning for reason that the English law is taken away from them, and that as the King has broken his word, they have a right ✓ to do the same."² The other is a letter of June 20, 1775, from two New Hampshire agents to Revolutionary leaders in that Province, reporting the information as to the disposition of the Canadians that has been gathered by Indian scouts. This is to the effect that the Canadians are waiting anxiously for the appearance of the Colonial forces; "they determine not to take their old law again, if we will but joyn with them, they will joyn with us."³ In August, 1775 Chief-Justice Hey writes from Quebec to the Lord Chancellor that His Lordship would be astonished to learn "that an Act passed for the express purpose of gratifying the Canadians and which was supposed to comprehend all ✓ that they either wished or wanted, is become the first object of their discontent and dislike;" the general wish being for English laws in peace and English officers in war.⁴ Thomas Gamble of the provincial commissariat department writes from Quebec September 6, 1775, to the Deputy Quartermaster General in emphatic language concerning

¹ Anonymous, but said by Masères to be supposed to have been written by one of the Quebec Clergy. See Masères, *Account of the Proceedings*, pp. 264-75.

² Gov. Legge to Gen. Howe, *Hist. Mss. Comm. 11th Report*, App. V., p. 388.

³ *N. H. Prov. Papers*, VII, 525.

⁴ *Can. Arch.*, Q. 12, p. 203. Evidence stronger than this it would be difficult to imagine. For it will be remembered that Hey, who now laments the failure of the Act, had in large measure supported Carleton in the representations on which it was founded.

the ill-disposition of the people. "In short, the Quebec Bill is of no use; on the contrary the Canadians talk of that damned absurd word liberty."¹

It is only however when we come to the test of Canadian feeling which was afforded by the revolutionary invasion of 1775-76 that we reach firm ground in this matter. Previous to that event we have no definite references to French Canadian opinion in regard to the troubles in the other colonies. About the quarrel on its merits the average Canadian knew nothing² and cared little if anything. On the other hand the revolutionists had from the beginning seen the importance of Canada, and begun to guard against danger from that quarter.³ I have already narrated the earliest trace that appears of connection between the revolutionists and the English party in Quebec. A few days later, (October 26, 1774), the first Continental Congress, having drawn up those Addresses to the people of Great Britain and to the individual colonies in which the Quebec Act figured prominently as a grievance, adopted one also "to the inhabitants of the 'Province of Quebec.'" This is a skillfully drawn paper, largely occupied with an explanation of those principles of English constitutional liberty of which the Canadians had been defrauded by the Quebec Act; adjuring them to disregard religious differences, (for "the transcendent nature of freedom elevates above all such low-minded infirmities,")⁴ and by choosing delegates to the ensuing Congress to join in heartily with the other colon-

¹ *Amer. Arch.*, III, 963.

² See Masères' *Freeholder*, written for their instruction on this assumption.

³ I have not found anywhere any connected statement of the early steps of Congress and other revolutionary authorities in regard to Canada, and have therefore attempted briefly to supply it.

⁴ The address to the people of Great Britain, which had referred to the Roman Catholic religion as having "deluged your island in blood, and dispersed impiety, bigotry, persecution, murder, and rebellion throughout every part of the world," had been adopted five days before. It is probable that the elevating nature of freedom has rarely operated with greater celerity. The good work went on apparently; for the Instructions of Congress to the Commissioners sent to Canada in 1776 ordered them to assure the clergy of "the full, perfect, and peaceable possession and enjoyment of all their estates." (*Amer. Arch.*, V, p. 411.)

ies, who had determined to "consider the violation of your rights by the act for altering the government of your Province, as a violation of our own."¹ Of this diplomatic document a translation was ordered to be made, and 2,000 copies to be struck off for distribution in Quebec by means of the delegates from the bordering Provinces. That it had been disseminated in Canada at least as early as March of the following year is shown by Carleton's correspondence;² and that a revolutionary agent had already by that time met with much success is shown by the letters of John Brown.³ Definite information of the results first appears from the official side in a letter of secret intelligence to Carleton from Montreal of May 6, 1775, stating that on May 4th most of the English residents of the town had assembled and been "harangued" by a "New Englander," the object of the meeting being supposed to be, "to choose two deputies to send to the Congress to be held at Philadelphia on the 10th of next May." On the following day the same agent reports that the attempt had failed, through the backing out of the most of the English.⁴ August 14, 1775, Carleton writes to Dartmouth of the continued efforts of the Congress to corrupt the Canadians, and encloses a copy of new letters from it and from the New York Legislature.

But before this, Congress had resolved to make a military demonstration against Canada for the double purpose of seizing the important points, and of establishing connections between the revolutionary forces and the disaffected Canadians. The first movement was one by Arnold by way of Lake Champlain in May, 1775, and on news of it Carleton called on the noblesse for assistance in raising the militia. The result was a sudden and complete shattering

¹ *Journals of Congress*, I, 40-5.

² *Can. Arch.*, Q. 11, p. 129.

³ See especially *Amer. Arch.*, II. 243, where Brown speaks of the peasantry having been worked upon, "chiefly in *terrorem*;" by which must be meant misrepresentation as to the Quebec Act.

See above, p. 435.

of the expectations based on the Quebec Act. Carleton had wished to see revived the old feudal military conditions, and seems to have believed that under the new settlement they did again exist; and his attitude, in connection with the consequent efforts of the noblesse, at once confirmed the fears of the people as to the meditated re-establishment of all the obnoxious powers and privileges of their old masters. This conviction the latter seem to have done their best to foster; for Chief Justice Hey writes to the Lord Chancellor in August, 1775, of the just offense given to the people by the elation of the noblesse over the supposed restoration of their old privileges.¹ After speaking further of the misrepresentations which had been made to the Canadians by the English as to the results of the Act, Hey remarks that as the restraint of the sharp authority by which they had once been controlled was now removed, they break out "in every shape of contempt and detestation of those whom they used to behold with terror, and who gave them, I believe, too many occasions to express it."

Nothing is more certain than that the *habitants* universally resisted from the first every means of influence that the seigneurs brought to bear upon them, maintaining firmly that the latter had no military authority and that all they could demand of their tenantry was the payment of seigneurial dues. In some cases the noblesse did not escape physical violence.² As early as June 7, Carleton writes to Dartmouth of the utter failure of the noblesse to induce either the Canadians or the Indians to take up arms. The minds of the people he says, are poisoned with lies,

¹ Can. Arch., Q. 12, p. 203. See also Burgoyne to Germaine, May 14, 1777. (*Ibid.*, Q. 13, 107) for opinion that the attitude of the Canadians is largely due to the unpopularity of the seigneurs. We find it further asserted in a private letter of the time from Montreal, that though the people were in general averse to being commanded by the noblesse, they say they will go anywhere under British officers. (July 10, 1775. 4 *Amer. Arch.*, II, 1623.)

² For circumstantial accounts of several of these occurrences see letters from Quebec to Masères, *Additional Papers*, pp. 71-83. Also on the general attitude of the Canadians. *Ibid.*, pp. 91-111, 147-52. These letters of course (as well as Masères' comments on them) are partisan, and for that reason I have not brought them forward more prominently; but in view of other evidence, I have no doubt as to their practical truth and accuracy.

and the clergy and noblesse have lost much of their old influence.¹ The 20th of the following month one of the military officers at Quebec writes to a brother officer that not a single Canadian had yet been raised and that there was no hope of forming a militia.² August 14 Carleton informs Dartmouth that though the militia has been organized in some of the parishes, "the difficulty I have found in proceeding so far convinces me until their minds change, it will be inadvisable to attempt assembling any number of them, except it become absolutely necessary to try that measure for the defence of the Province, and that there is no other resource whatever."³

The Americans had now temporarily retired, leaving it fully understood that they would return shortly in greater force; and from this time on Carleton strained every nerve, with the aid of martial law, to organize a defence. His official correspondence furnishes us with the best information we can look for of the actual conduct of the people in this emergency. And we cannot hesitate to accept this evidence at its full import, when we consider that it is the disappointed confession of a man who had constantly represented that people in another light, and who was mainly responsible for the measures which were now proving so ineffectual. As of precisely the same nature we give with his also the reports of Cramahé, who commanded at Quebec while Carleton was defending Montreal. September 21, 1775, the former writes from Quebec that "no means have been left untried to bring the Canadian peasantry to a sense of their duty and engage them to take up arms in defence of the Province, but all to no purpose," though the better classes had done their utmost, "to reclaim their infatuated countrymen;" and that Canadians are actually serving with

¹ Can. Arch., Q. 11, p. 164. This is apparently Carleton's first perception or at least confession of the latter fact. It is significant that two days later he proclaimed martial law throughout the Province.

² *Rep. Can. Arch.*, 1885, p. 177.

³ Can. Arch., Q. 11, p. 222.

the Americans in every quarter.¹ On the same day Carleton writes from Montreal to the same effect, adding that "the rebels have been more successful with them [the *habitants*] and have assembled them in great numbers, . . . and with the assistance of the Canadians have invested the forts."² October 25, 1775, he reports that an attack made on the town by the rebels, of whom two-thirds were Canadians, had been repulsed, and that the success had had for a moment a good effect on the minds of the inhabitants of the surrounding country, who on the eve of the assault had resisted the orders to have all ladders in the suburbs brought in. Taking advantage of this effect, he says he had assembled some 900 militia (various other detachments coming in had been attacked and forced to disperse by other parishes, the seigneurs who had raised them being taken prisoners), but that these are now disappearing thirty and forty a night.³ November 5, 1775, he complains that his efforts have been frustrated by "the corruption and I may add by the stupid baseness of the Canadian peasantry, who have not only deserted their duty, but numbers of them have taken arms against the Crown."⁴ A few days later Cramahé sends news from Quebec, (then invested by Montgomery), of the inadequacy of the defending forces, the militia he has having with difficulty been brought to mount guard; adding that the rebels have on their side the Canadian peasantry.⁵ Not long after he says that the enemy without is not so formidable as that within, and that even if the town be kept 20 battalions will be needed to re-capture the country.⁶ On the 22nd November Carleton, (who had returned to Quebec on the fall of Montreal), writes of the "blind perverseness" and "unprecedented defection" of the people, "without even pretending the least cause of complaint." However with the defeat of

¹ Can. Arch., Q. 11, p. 249.

² *Ibid.*, p. 261.

³ *Ibid.*, p. 267.

⁴ *Ibid.*, p. 324.

⁵ *Ibid.*, p. 274.

⁶ *Ibid.*, p. 285.

Montgomery and the retreat of Arnold the Canadians assumed a less menacing attitude (a change largely due no doubt to the cantonment among them by Carleton of troops), and the Governor writes in September, 1776, that "there is nothing to fear from them in prosperity and nothing to hope for in distress, the multitude being influenced by hope of gain or fear of punishment."¹

Such is a small portion of the testimony of the main officers as to the conduct of the Canadians in the hour of greatest danger; it is abundantly supported from the side of the defenders by the scattered statements of inferior officials, civil and military, which my space will not allow me to dwell upon. I cannot, however, refrain from again reverting to the testimony of Chief-Justice Hey, who all this time had been quietly and judicially watching the progress of events from Quebec; as well as adding that of a French Canadian witness. August 28, 1775, Hey writes (to the Lord Chancellor)² that the behavior of the Canadians had greatly changed the views he had formerly entertained of them and that he is now convinced their former good conduct was due only to fear, and that no dependence can be placed on them, for they are either terrified or corrupted. The 11th September following he adds that hardly a Canadian will take up arms; on the 17th that "not one hundred except in the towns of Montreal and Quebec are with us." The French Canadian to whom I have referred is M. Badeau, a notary of Three Rivers, who from that very favorable point of observation watched with royalist sympathies the progress of the invasion, and who has left the result for us in a "Journal des operations de l'armée americaine."³ From this I take the following entries:—September 7th, 1775,—Carleton "partit pour Montreal et eut la douleur de voir que plus il s'avancait par en haut, plus il trou-

¹ Can. Arch., Q. 12, p. 188.

² His letters are in journal form.

³ *Collections* Quebec Hist. Society, 3d series, Montreal, 1871.

vait les habitants opposés à ses dessins."—Sept. 8th: A draft being ordered from St. John, the "paroisses de Chambly s'étant mis du coté des Bostonnais firent annoncer dans toutes les autres paroisses de ne point prendre les armes contre les Bostonnais, que ces gens là venaient pour nous tirer d'oppression, le peuple canadien crédule quand il ne faut point, donna dans le sentiment des paroisses de Chambly et presque toute le gouvernement des Trois-Rivières refusa de marcher à l'exception de quelques volontaires" from three parishes.—Sept. 12: News has been received that a detachment of 67 recruits which had set out for Montreal under two seigneurs has been stopped by "les habitants de la paroisse de Chicout," and the seigneurs made prisoners.¹—February 29, 1776: The American detachment in the town of Trois-Rivières having ordered a new election of militia officers, one part of the inhabitants objected to the captain nominated on the ground that "il a le coeur Anglais et qu'il a recu de commission du Gen. Carleton."—April 30: A list of 16 names has been given to the Americans as comprising all the royalists in the town.—May 4: The passing of some American troops. "Il n'est pas possible exprimer combien la canaille triomphe de la passée de ces gens là; il semble que chaque brigade leur apporte une fortune."

If any corroboration of testimony such as the above is needed it will be found in the reports which come to us from the continental forces,—in the letters of commanding officers and the journals of less prominent persons. August 14, 1775, John Brown had written that the Canadians, "wish and long for nothing more than to see us with an army penetrate their country. They engage to supply us with everything in their power."² The following September 6, Ethan Allen reports the conclusion of an Indian alliance

¹ Full accounts of this (most probably) and other similar occurrences will be found in *Masères*, and in Almon's *Remembrancer* for 1775.

² To Gov. Trumbull, 4 *Amer. Arch.*, II, 138.

in presence "of a large auditory of Canadians who approved of the league, and manifested friendship to the colonies, and testified their good-will on account of the advance of the army into Canada."¹ Schuyler informs the New York Congress September 29, that "The Canadians were friendly to us and join us in great numbers."² November 3rd an anonymous report comes from the River Sorel that the Canadians there have armed and been embodied in favor of the Americans to the number of more than 1000,³ About the same time Arnold reports to Washington his most kindly and hospitable reception by the people.⁴ That the American observers were not deceived through their too sanguine expectations may be inferred from letters of Schuyler to Washington in which the belief is expressed that the Canadians would join Carleton if reverses overtook the invaders;⁵ as also by a caution from Montgomery about the same time.⁶ But the latter reports again from Montreal November 24, that "I can have as many Canadians as I know how to maintain; at least I think so, while affairs wear so promising a prospect."⁷ The expedition of Montgomery went on to its disastrous culmination, and on the following January 11, Arnold still asserts that "The disposition of the Canadians is very favorable," though they "are timorous and want encouragement."⁸ Gen. Wooster's report is however that "there is but little confidence to be placed in the Canadians;—they are fond of being of the strongest party."⁹ February 27 Arnold in-

¹ To Gen. Schuyler. 4 *Amer. Arch.*, III, 742.

² *Ibid.*, III, 841.

³ *Ibid.*, p. 1343. This seems confirmed by a letter of the same date from Montgomery to Schuyler. *Ibid.* III, 1392.

⁴ All the *Journals* of the Arnold expedition speak in the same tone. Though it is to be noticed that several of them speak also of the exceedingly high prices charged by the Canadians for provisions. See especially those of Wild, Dearborne, and Thayer.

⁵ 4 *Amer. Arch.*, III, 1373.

⁶ To Schuyler, December 5. *Ibid.*, IV, 1392.

⁷ *Ibid.*, p. 1695.

⁸ To Congress. *Ibid.*, IV, 627.

⁹ *Ibid.*, p. 668. On the previous January 2, Arnold had reported his force as including 400 Canadians. *Ibid.*, p. 670.

forms Washington, (apparently referring to the Canadians, though there is obscurity,) that he has received a reinforcement of 400 men, and that many are daily coming in.¹ An officer posted at Trois Rivières writes March 24, 1766, that he has been placed in charge of the business of replacing in that District, (comprising 17 parishes,) the militia officers appointed by Carleton with others in the Continental interest, and that he finds that though the Canadians are sometimes shy, "in general they seem to be fond of holding commissions under Congress;" that about thirty such officers have been elected in the District and that late Canadian recruits number 500.² In March the Commissioners of Congress, (Franklin, Chase, and Carroll), set out for Canada. On their arrival they found a surprising change in the attitude of the Canadians; but while dwelling on the fact and its causes they still think it possible "to regain the affections of the people, to attach them firmly to our cause."³ Gen. Thomas informs Congress May 7, that the French had become so much disaffected that it was now very difficult to get supplies from them; and a few days later Arnold writes from Sorel that he is "convinced they are in general our bitter enemies."⁴ But still on the following June 1, the more sanguine Sullivan reports "the lower and some of the higher class of French people in our favor," and that he had that day been offered 600 men from three parishes.⁵ June 5th he writes to Washington of the despair of the people at the leaving of the Americans and

¹ *Amer. Arch.*, IV, p. 674.

² *Ibid.*, V. 481. The new officers were chosen by popular election, and it is reported that in some parishes there have been several candidates and high party feeling. "I receive information that bribery and corruption is already beginning to creep into their elections. At some the disputes run so high that I am obliged to interfere." That similar elections took place in the District of Montreal is shown by a letter of Gen. Wooster. 5 *Amer. Arch.*, I. 12.

³ See letters of the Commissioners of Congress, May 1 and 8, 1776. Lossing, *Schuyler* II. 48-50. See also an important letter from Col. Hazen to Schuyler. *Ibid.*, pp. 46-7.

⁴ *Amer. Arch.*, VI. 451.

⁵ *Ibid.*, p. 530.

⁶ *Ibid.*, p. 679.

of their joy at his arrival. "It really was affecting to see the banks of the Sorel lined with men, women and children, leaping and clapping their hands from joy to see me arrive. . . . Our affairs have taken a strange turn, . . . The Canadians are flocking by hundreds to take a part with us. . . . I really find by the present behaviour . . . that the only reason of their disaffection was because our exertions were so feeble that they doubted much of our success, and even of our ability to protect them . . . ; a vast majority will be for us, and perhaps as many, according to their numbers, are really in our favor as in some other colonies upon the Continent; many of them are with Gen. Thompson in this expedition and great numbers are here, ready equipped, waiting my orders."¹ And even after the final break-up had come Sullivan reports that "the Canadians were in general very kind to them upon their retreat, and gave them every assistance in their power."² That Canadians remained enrolled in considerable numbers till the end is shown by the General Orders of July 21, 1776, directing the march to Albany of "the Regiment of Canadians with all the Canadian families, now at Ticonderoga."³

From the above testimony it is very evident not only that the Canadians had overwhelmingly declared in favor of the invaders from the first down till the disaster at Quebec, but that even after that event a considerable number clung to the colonial cause and were still ready at any moment to attach themselves to any enterprise of vigor sufficient to give any promise of success. The ordinary judgment with regard to their conduct both from the British who saw in their neutrality even only the basest ingratitude, and from the Americans who experienced a very considerable change in the later months of disaster, is not sufficient or satisfactory. According to this the people

¹⁴ *Amer. Arch.*, VI. 921. These extravagant assertions are answered by Washington with a caution against fickleness and treachery. (*Ibid.*, p. 927.)

² *Ibid.*, VI. 1037.

³⁵ *Amer. Arch.*, I. 656.

were moved mainly by fear and the desire of being on the stronger side; they embraced or acquiesced in that cause which was for the moment locally predominant.¹ But to say that the Canadians were a timid race is to disregard wholly the facts of their military origin and training, and especially the strong testimony from both sides to their valor and conduct under the most disheartening circumstances in the last war. Nor is it sufficient to say that they had no interest in, as no knowledge of, the present colonial quarrel; that they had been growing prosperous, had devoted themselves wholly to the repairing of the ravages of the old struggle, and were now anxious only to be left in peace. The inevitable result of such a temper would have been the offering to the invader of their peace, if not active opposition, at least a stolid and hostile indifference; from which, as we have seen, their real conduct could not have been further removed. And this furthermore, takes no account of the strong influences that were brought to bear on the people from the British side. The chief of these were the strenuous measures resorted to by the clergy. Admitting all I have said as to the decreasing command of the popular mind by the church, it must still be admitted that for an *indifferent* community, the extreme step of refusing absolution to any one who had joined the invaders, might be supposed to have been a most powerful deterrent. Yet we are told that every priest in the country except one had taken this course.² That the step was en-

¹ Frequent assertions of this kind are to be found, especially from the British side. As early as September 6, 1775, Ethan Allen reports that the Canadians "keep under arms throughout most of their parishes, and are now anxiously watching the scale of power." (*Amer. Arch.*, III. 742).

² See Col. Hazen to Antill, April 20, 1776. *Can. Arch.*, B. 27, p. 398. See also letter of Col. Caldwell (British), in *Transactions Quebec Lit. and Hist. Society*, New Series, Pt. 8 (1871). Also Jones, *Expedition to Canada*, p. 33. For the general attitude of the clergy see *Journal of Chas. Carroll*, (Md. Hist. Society, 1876), *Introd. Mem.*, pp. 30-4. This shows that their faithfulness was based not only on the general British treatment and the Quebec Act, but also on strong and well founded suspicion of the tolerance of the colonists. Later however, after the conclusion of the French alliance, there are indications in Gov. Haldimand's correspondence of disaffection even here.

tirely without efficacy can not be supposed; no doubt it did much to prevent a more open and general rising.¹ That *any* defection occurred in the face of it must be taken as the strongest proof that the Canadians were neither timid nor indifferent, but that they conceived themselves to have strong ground for discontent and apprehension. Their national feeling was not yet involved, for there was as yet no open connection between the revolution and France. In the entire absence of evidence of the existence before the Quebec Act of such discontent or apprehension as would now explain their conduct, we are driven for that explanation to the Act itself. It seems not too much to say that, supplemented as it was by the misrepresentation of its opponents, and still more by the most ill-advised attempt to establish through it the old military position of the noblesse, it drove the people into the arms of the revolutionists.

But it is further necessary to show that the defection of the Canadians at this crisis was not the momentary effect of sudden panic or of a passing wave of popular feeling.² Active misrepresentation might go far to explain such; though only on the hypothesis that the English agitators and the colonial emissaries had suddenly acquired an influence very much greater than the natural leaders of the people. The Quebec Act went into force May 1, 1775, and was superseded on the following June 9 by a condition of

¹ See "Journal of the Principal Occurrences during the Siege of Quebec . . . ; collected from some old MSS originally written by an officer during the Period of the gallant Defense made by Sir Guy Carleton." (London, 1824.) This refers to the action of the clergy in refusing the sacraments, especially extreme unction, as "a most potent spell," and therein finds the cause for the fact asserted [incorrect] that only about 300 Canadians joined the invaders.

² This seems to be the position taken by Mr. Kingsford, who has stated clearly the first defection, but who later (V. 486), says: "It is simply a duty to record that this feeling passed rapidly away, and never again obtained activity. During the period of the whole struggle, the French Canadians remained attached to the British government, and no encouragement was given for a second invasion of the Province." This positive assertion however is not to be reconciled with facts which are stated in a later volume (VII. pp. 11-14; 30).

martial law that continued about eighteen months; consequently before 1777 the people were not in a position to judge of or be influenced by it except as a matter of speculation. But misrepresentation as to it ought certainly to have been dispelled long before that time¹; from the spring of 1775 the government was in a position to do the worst that could have been apprehended. Nevertheless we find still in existence throughout the war a strong popular leaning toward the continental cause. There was of course no occasion or opportunity for open demonstrations; we must judge by the reports of the provincial officials. The value of these is emphasized by the fact that the conclusions arrived at were not hastily formed or insufficiently grounded, but were the result of the most careful examination by the best methods available into the real sentiments of the *body of the people*, not as before of the few who had thrust themselves forward as their spokesmen. A vigorous investigation was set on foot by Carleton and continued by his successor Haldimand, and in the autumn months of 1776 we meet with frequent examinations by the judicial authorities of suspected persons and of intercepted emissaries from the revolted colonies. These were continued all through the period down to the conclusion of peace (and therefore long after the civil government had been re-established). It will be impossible to go into them fully, but the calendaring of the Haldimand Collection by the Canadian Archivist² will afford an easy and accurate index to their contents. Further, we find that after the retreat of the

¹ It will be remembered however that this point is not material to my main inquiry. That is directed, not toward the practical working and effect of the Act, but with reference to the question as to whether the measures it embodied were as necessary and politic at this juncture as they have always been represented by its upholders. The matter may be summed up in the questions: Were the French Canadians laboring under such grievances as to make welcome the measures adopted for their relief, and to cause these measures to have over them the expected influence? In view of the acknowledged effect of the Quebec Act on the minds of the American revolutionists, was it nevertheless justified as a matter of policy by its effect on the French Canadians?

² See *Rep. Can. Arch.*, 1888, pp. 892-942, and *ibid.*, 1890, p. 130.

Americans, Carleton had caused troops to be cantoned through the parishes, and had thus kept himself informed of the state of public feeling. Riedesel, who was in command of the German auxiliaries, writes to Haldimand November 29, 1787, that Carleton had given him a commission to learn the sentiments and conduct of the *habitants* in the districts in which the German troops were quartered in 1776; that he (Riedesel) had procured the information from the captains of militia, the curés, and the commanders of the troops, had sent the same to Carleton, and had received his thanks therefor. He adds that he has still duplicates and will send them to Haldimand if desired.¹ And that the latter availed himself of this means, is shown by a second letter to him of Riedesel in the following April, stating that as desired he has traversed the parishes of his own district several times, and has compared information got from the militia captains, from the curés, and from the German commanders, and that he sends as a result the adjoined lists of names. In the Canadian Archives we find further a collection of papers marked "Instructions to Captain Breckenridge, sent to find out the people that harboured the rebel spies, with the report of his proceedings in 1780."²

These facts mark the care exercised by the Government in at least their later reports. The various depositions show that emissaries from Congress and disaffected persons within the province were constant in their activity among the people through the whole period; and the frequent bitter references of Haldimand to the impossibility he finds in catching or tracing these firebrands³ is sufficient proof in itself of the more than passive sympathy of the people. The salient points of the official reports will

¹ Calendar Hald. Coll., p. 390. See here also for the letters of the following April, spoken of below. It will be seen that Riedesel uses the words "lists," showing how minute the enquiry and information was.

² Report Can. Arch. for 1888, p. 906.

³ Cal. Hald. Coll., pp. 272, 236. (Early in the period Carleton complains that the emissaries of Congress can travel with more ease and safety than the King's messengers.)

be best noted in brief extracts chronologically arranged.¹ May 9th, 1776, Carleton sends home the Ordinances that had just been passed in the first legislative meeting in the Province under the new constitution, and adds that these "have been framed upon the principle of securing the dependence of this Province upon Great Britain, of suppressing that spirit of licentiousness and independence that has pervaded all the British Colonies upon this continent, and was making, through the endeavors of a turbulent faction here, a most amazing progress in this country." In the same month he writes to Burgoyne that "these people have been governed with too loose a rein for many years, and have imbibed too much of the American spirit of licentiousness and independence to be suddenly restored to a proper and desirable subordination." This letter was in answer to complaints from Burgoyne concerning the difficulty he found in procuring enough Canadians to perform the necessary batteaux service for his expedition;—a difficulty to the serious nature of which we have various further references, the Canadians even when started deserting at every opportunity and frequently refusing obedience. In the spring of 1778 Carleton was replaced in the Governorship by Haldimand, and the first official communication of the latter (July 25, 1778), is to the effect that beyond the upper classes and clergy "the Canadians are not to be depended upon especially if a French War breaks out."² In October of the same year he writes of the caution he is exercising, "not to make demands that from exciting murmurs might lead to a declaration of sentiments which the French Alliance with the rebels has undoubtedly raised in numbers of them, who in regard of the rebellion were unquestionably attached to Government, and renewed in the others;— the symptoms of which change in

¹ For exact references see the *Reports Can. Arch.*, as above.

² This and the immediately following letters are from the Haldimand Collection. See *Calendar*, in *Reports Can. Arch.*, under dates.

the Canadians is everywhere manifest." June 7th, 1779, he states that "the Canadian inhabitants both above and below" had "become adherent to the united cause of France and the Americans." By "above" he seems to mean in the Western region, for the letter is written in connection with the failure in that quarter of an important expedition under Hamilton against Vincennes and other posts; writing to Germaine in the following year¹ Hamilton speaks bitterly of the unlooked for treachery and unexampled ingratitude of the Canadians. The testimony shows therefore the widespread nature of the dissafection.² June 18, 1779, Haldimand writes further in regard to the French alliance and the proclamation to the Canadians of d'Estaing, commander of the French fleet, that "any considerable misfortune happening to me just now would raise the whole country in arms against us; and this opinion is not founded upon distant and precarious information, but upon a precise information of the general disposition of the inhabitants."³ October 25, 1779, he says that he believes the appearance of the enemy "would be followed by the revolt of a great part of the province."⁴

¹ Can. Arch., Q. 18, p. 9.

² There seems to be no question that the French Canadians scattered through the northwestern regions favored the revolutionary cause more or less actively throughout the war. See on this Roosevelt, *Winning of the West*, I, and Hinsdale, *Old Northwest*, pp. 150-9. In regard to the expedition of George Rogers Clark the latter says, "It is perfectly clear that had they [the French, Canadians] taken the side of the British, Clark could never have done his work." (p. 159.)

³ This latter statement is to be carefully noted. For the sources of information see above.

⁴ As part of the investigation of this matter from another standpoint it may be worth seeing how much help the government actually received from the French Canadians in the defense of the Province. The material we have is sufficient to show that, the statement of Hey above was almost literally true; that outside the noblesse, not more than 100 actually bore arms in any sort of fashion at any time during the period. Nov. 16, 1775 the number of Canadian militia at Quebec is officially given as 300, May 1, 1766, as 508; there is no likelihood that it ever exceeded this latter figure. Outside of the town of Quebec there were practically none in arms. May 6, 1779, Haldimand writes to an officer (apparently in answer to an offer of service), that the raising of 200 or 300 Canadians at that time would be a much more difficult operation than he (the officer) imagined; from which and other indications we may conclude that very few if

The above examination has been directed solely to the conduct of the mass of the people, *bourgeois*¹ and *habitant*. The clergy and the noblesse remained faithful, though unmistakable indications of wavering were to be perceived even amongst them after the conclusion of the French all-

any Canadians of the class we refer to were then in arms. Among the military papers we have complete commissariat returns giving the description and number, monthly, of the different classes to whom rations were issued, and from these I have extracted the numbers set down as "Canadians" from Nov., 1778, to the end of 1780. This most probably includes those upon *corvée* service, which was performed during the summer months. In these months the average amounts to from 500 to 600; outside of them to not more than 50. This is for the whole Province and apparently for all classes of Canadians. It shows that even fewer were under service in the later years than in those I have more fully considered, and warrants the conclusion that outside of the actual service given by about 150 noblesse and by about the same number of the better class of bourgeois, the people (embracing 15,000 able bodied men), contributed practically nothing toward the defense of the Province.

¹I have referred above to the *bourgeoisie* generally as apparently not sufficiently differentiated from the *habitants* to justify a close separate examination. In the main this may also be concluded of their conduct at this crisis; but an exception must be made with regard to a few of the better situated. The approving notices of the government class with the noblesse and clergy the better sort of the "bourgeoisie" or "citizens." But that these references are really applicable only to a very small number,—the government vision here, as in the representations previous to the Quebec Act, being cognizant only of those whose position brought them into prominence,—is abundantly proved by the exact statements given of the number of French Canadians who took part in the defence of Montreal and Quebec. The population of the towns together must have been about 20,000 (in 1765 was 14,700), of which eight-tenths would come under the class we are considering. Yet we find that not more than 500 Canadians of all classes took part in the defence of Quebec, and Carleton writes from Montreal (then closely invested by Montgomery), Oct. 28, 1775, that the walls are defenceless, and it is doubtful if a guard for the gates could be procured from the militia. Later he writes from Quebec that though it could hold out if the townsmen could be depended upon, there are so many traitors within that a successful defence is very doubtful. Jan. 11, 1776, Arnold reports from before Quebec that he has been assured that more than one-half of the inhabitants would willingly open the gates. July 25, 1778, Haldimand classes "some part of; the bourgeoisie in the towns" with the noblesse and clergy as not included in his statement that the Canadians were not to be depended upon. But in September of the following year he complains of the unlooked for ingratitude of even the better sort. On the whole there seems to be no ground for supposing that in this crisis any more than in their general attitude, the body of the inhabitants of the towns differed essentially in sentiment from those of the country; though it is evident that in the narrow compass of the towns, directly under the official eye, it would be impossible for disaffection to be so openly shown as in the open unrestraint of the widespread country settlements. It is safe to conclude that the section of the bourgeoisie which showed decided attachment to the cause of Government was made up mainly of those closely connected in various ways with the official or higher classes, or of those who were more or less directly influenced by English commercial relations.

iance. This was to be expected however; and it will be remembered that the same national instinct would be operative with the mass of the people also after that event. I have spoken above of the strenuous efforts of the clergy in the early years in behalf of the established government. The noblesse seem at the same time to have enlisted for the defence of the Province almost to a man. As late as October, 1780, Haldimand writes that "the Quebec Act alone has prevented or can in any degree prevent the emissaries of France and the rebellious colonies from succeeding in their efforts to withdraw the Canadian clergy and noblesse from their allegiance to the crown of Great Britain."¹ This may be correct for the time at which it was written (after the French alliance), but there is no reason to suppose it so for the earlier more critical years. The hereditary feeling of hostility to the British colonies was very vivid among the noblesse, the leaders of the old border wars. They were also naturally prejudiced against the forms of government and the constitution of society prevailing throughout these colonies; institutions which had now become all the more distasteful from their supposed influence in the lately-developed independent attitude of the Canadian peasantry. The noblesse had been well treated by the English authorities in Quebec; the aristocratic governors had deferred constantly to them in all matters, and had steadily held out hopes of employment and the restoration of old privileges; in no particular whatever could they look for the same degree of favor or influence from a connection with the doubtful cause of the rebellious colonies. Previous to the French alliance, no influence whatever can be discovered which was likely to incline them in the least toward the continental cause; all the material conditions and every instinct of caste and education operated to range them on the imperial side. After the French alliance, the British hold was too firmly established

¹ Can. Arch., B. 54, p. 354.

in the Province for their defection to have made any difference. At no time as I have shown, could they have thrown into the scale the weight of more than their own small number. Indeed there is strong reason to believe that if they had embraced the colonial cause, that fact alone would have done much to place the mass of the people on the opposing side.

As to the clergy the same course of argument applies, with the addition of the fact that the church in Canada was convinced of the intolerant temper of the colonists in regard to their religion, and was well aware that at the most it could not hope in that connection for as much as it had enjoyed in Quebec from the conquest. There is no reason whatever to believe that in any event would the clergy in those earlier years have refrained from active opposition to the continental cause.

It must therefore be concluded that the Quebec Act had added no element of strength to the British cause in the Province; that on the contrary, while it had confirmed the allegiance of those whose allegiance needed no confirmation, it had been the main cause of the disaffection of those who otherwise would have been at least quiescent.

B. The Failure of the American Expeditions.

If the conclusion reached above be correct, we are confronted with a difficulty in the utter failure of the expedition. It might not unreasonably be concluded that such a failure bears strongly against the position I have taken; that if the Canadians were thus so favorably disposed toward the invaders, the utmost vigor and ability on the part of the few British defenders would have been wholly inadequate to the prevention of the definite attachment of the Province to the Revolutionary cause. To answer this objection it will be necessary to view the enterprise from the American side to see if any other factors enter into the situation. Such I think will be found to be the case; it

will be found that not only did the revolutionists fail to make any effective use of the Canadian alliance, but that by the mismanagement and misconduct of both officers and men, the Canadians were from the first impressed with the incapacity of their would-be emancipators, and were gradually driven by actual ill-treatment to neutrality if not to hostility. The favorable moment was let slip and did not return. With the spring of 1776 not only was the British force strengthened to a degree which enforced caution upon the most hostile of the peasantry, but by that time that peasantry had had its revolutionary fervour cooled by treatment as arbitrary and injurious as anything that could be expected from the dreaded revival of the conditions of the old régime. The evidence on this point leaves us wondering, not at the cooling off of the Canadians, but at the retention by them of any degree of respect for or sympathy with the revolutionary cause. That a very considerable degree was retained is shown above, and the fact testifies to the strength of the original feeling; but until the Franco-American alliance it did not again in all probability reach sufficient vigor to afford any likelihood of active manifestation.

It is not my intention to enter upon any full consideration of the invasion of Canada by the Revolutionary forces in 1775-6; full accounts already exist for all parts of this enterprise except for that Canadian side which it is here attempted to supply. The general causes assigned for the failure of the movement are well-known, and it is assumed that sufficient explanation thereof is given under the heads of such apparently unavoidable drawbacks as disease among the troops, short terms of enlistment, lack of ready money. Even if these difficulties had existed in the degree usually stated, it would be rash to assume that the responsibility of the authorities for the disaster is thereby much reduced. But the extent of these obstacles can be shown to have been greatly exaggerated. The degree of disease among

the troops would have been found a comparatively small factor if disease alone had interfered with their efficiency; the lack of specie was at no time a fatal defect. It seems very evident that Congress never made efforts adequate to the degree of importance attached to the enterprise by leading military authorities.¹ What that degree was is shown by many emphatic utterances. Washington, in his Instructions to Arnold, September 14, 1775, especially impresses upon him that the command is "of the utmost importance to the interest and liberties of America," and that upon it the safety of the whole continent may depend; further adjuring him solemnly to pay every regard to the attitude of the Canadians, "bearing in mind that if they are averse to it, [i. e., the expedition], and will not coöperate, or at least willingly acquiesce, it must fail of success. In this case you are by no means to prosecute the attempt. The expense of the expedition and the disappointment are not to be put in competition with the dangerous consequences which may ensue from irritating them against us, and detaching them from that neutrality which they have adopted."² "In the following October, R. H. Lee writes to Washington of the expedition: "The ministerial dependence on Canada is so great that no object can be of greater importance to North America than to defeat them there. It appears to me that we must have that country with us this winter, cost what it may."³

¹ It has been impossible for me to enter on a close examination of the responsibility of Congress with regard to its earlier insufficient support of the expedition. A severe view will be found expressed in very pointed terms in Lossing's *Schuyler* (II. 55-7). Congress is there charged with general ignorance as to the military operations, and especially with a failure to apprehend the great importance of the Canadian ones. Its efforts were spasmodic and its promises rarely fulfilled; it replied to reports of the desperate condition of things with indefinite resolutions which sounded like mockery. In the dread of a standing army it had adopted the ruinous policy of short enlistments; persisting in this even when the evil effects had been fully felt. While appreciating the difficulties of the situation, it seems to me that there are very strong grounds for these reproaches. With regard to enlistment, Richard Smith makes the following diary entry of proceedings in Congress January 19, 1776: "A motion that the new troops be enlisted for 3 years or as long as the war shall continue was opposed by the Northern Colonies and carried in the negative." (*Amer. Hist. Rev.*, April, 1896, p. 494.)

² *Amer. Arch.*, III., 765.

³ *Amer. Arch.*, III., 1137.

And four days later¹ Washington impresses upon Schuyler, who was about to lead the western part of the force, that "The more I reflect upon the importance of your expedition, the greater is my concern lest it should sink under insuperable difficulties. I look upon the interests and salvation of our bleeding country, in a great degree to depend upon your success." To Arnold in the following January he states that "To whomsoever it [i. e., Quebec and in consequence Canada], belongs, in their favour probably will the balance turn. If it is in ours, success, I think, will most certainly crown our virtuous struggles; if it is in theirs, the contest at least will be doubtful, hazardous, and bloody."² That Congress shared in this opinion at a later stage at least is shown by a letter from the President to Gen. Thomas, May 24, 1776, in which it is stated that Canada is "an object of the last importance to the welfare of the United Colonies. Should our troops retire before the Enemy and entirely evacuate that Province, it is not in human wisdom to foretell the consequences."³ On the same day Congress forwarded to the Commissioners in Canada all the hard money it had been able to procure;⁴ sending in addition about three weeks later \$20,000 in specie and \$190,000 in paper. These funds might earlier have had an important effect that now was impossible; that the main obstacle was not now at least of a financial character may be seen from the statement to Congress by the Commissioners at Montreal, in May, that though there was plenty wheat and flour in the country, "it was with difficulty that either could be procured a few days ago, for ready money."⁵ It cannot be questioned of course that the money problem was present from the first, and that it had an important bearing. The journals of the Arnold expedi-

¹ *Amer. Arch.* p. 1196 (Oct. 26, 1776).

² *Ibid.*, IV. 874.

³ *Ibid.*, VI. 558.

⁴ *Ibid.*, p. 580.

⁵ *Ibid.*, p. 587.

tion show that however friendly the Canadians had been at the first contact, they were even then thriftily endeavoring to turn an honest penny from the necessities of the troops;¹ insisting in some cases on the immediate payment of hard cash. But this dislike of paper money is easy to understand quite apart from any special distrust of the Americans, if we remember the ruinous experiences of the Province with it under the French régime, and the losses thus experienced since the war in spite of all the efforts of the English Government.² However friendly in feeling, the Canadians were not anxious to run much risk either of person or property. But that they did risk something, and that the failure of ready money alone would not have seemed to them a fatal drawback, is very evident. The American force could not have existed in amity a month if the Canadians had not accepted promises, written and spoken, in lieu of hard cash; it was not until even these promises had failed and past ones had been disgracefully repudiated, that in combination with other matters, the financial element became serious. February 21, 1776, Wooster informs the President of Congress that he should soon, in the absence of specie, be forced to "lay the country under contribution; there is no other alternative. We have not by us one half money enough to answer the pressing demands of the country people to whom we are indebted."³ About a week later (March 4), Arnold issued a Proclamation giving paper money currency, "declaring those enemies who refuse it." "Many (he says), received it willingly, but the greater part were averse to taking it."⁴ The supply even of paper was however apparently soon exhausted, and we hear of the inhabitants being forced to accept receipts for services or supplies in the

¹ See especially Wild's *Journal* (Nov. 5, 1775), Dearborne's (Nov. 6), Thayer's (Nov. 5).

² See on this subject the paper by Mr. Breckenridge in the *Chicago Journal of Political Economy* June, 1893, pp. 406-31.

³ *Amer. Arch.*, IV. 1470.

⁴ Arnold to Deane, *Ibid.*, V. 549.

form of "certificates not legible, with only one half a signature, and of consequence rejected by the Quarter-Master General."¹ The situation is probably accurately enough described by the Commissioners to Canada in their statement May 1st, that, "The general apprehension that we shall be driven out of the Province as soon as the King's troops can arrive concurs with the frequent breaches of promises the inhabitants had experienced, in determining them to trust our people no further."² A week later they report that £14,000 is owed in the colony, and that with the payment of this and some ready money, together with a change in the ill-conduct of the expedition in other respects, "it may be possible to regain the affections of the people, . . . in which case the currency of our paper money will, we think, follow as a certain consequence."³ It is evident, therefore, that, in the opinion of those best qualified to judge, the absence of ready money was but a comparatively minor difficulty; that if the Canadians were otherwise well treated it would present no more difficulties than in the other Provinces.

✓ To what ill treatment then had the Canadians otherwise been subjected? What misfortunes had they experienced from the American occupation, other than the lack of prompt payment for supplies voluntarily furnished? The evidence for the answer of this question is entirely sufficient, and undoubtedly shows that at least in the latter part of the expedition, they had been treated, not with the forbearance and tact so strongly recommended by Washington, not even as neutrals from whom nothing was to be expected, but rather, in spite of their abundant evidence of good will, as irreconcilable enemies.

✓ One of the earliest explicit statements on this point that I find is contained in a letter from Col. Moses Hazen to Gen.

¹ Hazen to Schuyler, April 1st, 1776. Lossing, *Schuyler*, II. 467.

² To Congress, May 1st, 1776. *Amer. Arch.*, V. 1166. It is to be noted that it is here clearly shown that up to this time the inhabitants had trusted the invaders.

³ May 8, 1776. *Ibid.*, p. 1237.

Schuyler, April 1, 1776.¹ After making some strong statements about the changed attitude of the Canadians, he proceeds to give reasons therefor: "Their clergy have been neglected and sometimes ill-used; . . . the peasantry in general have been ill-used; they have in some instances been dragooned, with the point of the bayonet, to furnish wood for the garrison at a lower rate than the current price;" half of the imperfect certificates given in payment being moreover later dishonored by the Quarter-Master General. Hazen encloses as evidence of his representations a letter from one Captain Goforth of the Continental force, commanding at Three Rivers, detailing outrages committed by the troops on their march to Quebec.² "A priest's house (Goforth writes), has been entered with great violence, and his watch plundered from him. At another house they ran in debt about 20sh. and because the man wanted to be paid, run him through the neck with a bayonet. Women and children have been terrified, and forced, with the point of the bayonet, to furnish horses for private soldiers without any prospect of pay." That these complaints are accepted as just by Schuyler, or that he had abundant other evidence, is shown by his statement to Washington shortly after, that "The licentiousness of our troops, both in Canada and in this quarter, is not easily to be described; nor have all my efforts been able to put a stop to those scandalous excesses."³ He had previously expressed to Congress his apprehension "that the imprudent conduct of our troops would create a disgust to our cause in Canada; it even hurts it in this colony."⁴ These representations are thoroughly supported by the investigations of the Commissioners of Congress, whose statements as to the non-

¹ *Amer. Arch.*, V. 869. Reprinted in Lossing's *Schuyler*, II. 46-7.

² *Ibid.*, V. 871. The letter is undated but cannot be later than March. It will be noticed that from the reference to the march to Quebec, this seems to show a high degree of lawlessness and violence in the troops early in the expedition, when there was little or no excuse through the pressure of want.

³ *Amer. Arch.*, V. 1098. (From Fort George, April 27, 1776.)

⁴ To President, April 12. (*Ibid.*, p. 868.) The colony referred to is New York.

fulfillment of pecuniary obligations to the inhabitants have been already referred to. May 8th they write from Montreal that the Canadians "have been provoked by the violences of our military, in exacting provisions and services from them without pay,—a conduct towards a people who suffered us to enter their country as friends that the most urgent necessity can scarce excuse, since it has contributed much to the changing their good dispositions toward us into enmity, and makes them wish our departure."¹ Congress did not need this report to be convinced of the truth of the charge, for we find it on April 23 resolving, "That the Commissioners of Congress to Canada be desired to publish an address to the people of Canada, signifying that Congress has been informed of injuries offered by our people to some of them, expressing our resentment at such misconduct." Matters, however, evidently did not improve; for May 10, 1776, Gen. Sullivan writes to Washington that "the licentiousness of some of the troops that are gone on has been such that few of the inhabitants have escaped abuse either in their persons or property. . . . Court-martials are vain where officers connive at the depredations of the men."² In the following June Washington expresses his conviction that "many of our misfortunes [in Canada] are to be attributed to a want of discipline and a proper regard to the conduct of the soldiery."³ A few days later (June 21, 1776), an investigation was ordered by Congress. The report of the investigating committee on the following July 30, placed as the first of the causes of the failure the short terms of enlistment, which had made the men

¹ *Amer. Arch.*, V. 1237.

² *Ibid.*, VI, 413. Sullivan writes from Albany on his way to Canada, and evidently is inspired by the traces of depredations he has come across. This is in New York therefore; but it may well be imagined that conduct would not improve in the enemy's country. The statement of Sullivan probably throws light on an entry in the Diary of Richard Smith (*Amer. Hist. Rev.*, April, 1896, pp. 510). Under date March 8, 1776 it is here noted that "Accounts transmitted from Canada by Col. Hazen of the damages done to him by our soldiers who had destroyed or damaged his house at St. Johns and killed his cattle &c. were referred to a committee."

³ To Sullivan. *Ibid.*, p. 927.

"disorderly and disobedient to their officers," and had precipitated the commanders "into measures which their prudence might have postponed, could they have relied on a longer continuance of their troops in service."¹

There would seem therefore abundant ground for the conclusion that the colonial forces had conducted themselves in such a manner as to expose to serious maltreatment even the most friendly portion of the Canadian people. The conviction will be strengthened by a glance at some evidence with regard to the general character and conduct of the rank and file of the troops; evidence which shows clearly that the invading force as a whole was, throughout the latter part of the expedition at least, afflicted with a degree of disorganization and disaffection fitted to deprive it of all claim to respect on the part of the Canadians, and to make misconduct inevitable. Very much allowance is of course to be made for the unavoidable defects that attach to a militia, and that were bound to be magnified in troops enlisted and serving under the conditions of the early part of the war. The fatal use of the short enlistment plan was something for which Congress was responsible; the lack of harmony and union as between troops of different colonies was certainly to be looked for.²

¹ *Journal of Congress*, v. 289. I have thought it necessary for my purpose to detail some of the more striking evidence on this point. But that the conduct in question has not been without recognition even from partial writers, is shown by Bancroft's statement that, "The Canadian peasantry had been forced to furnish wood and other articles at less than the market price, or for certificates, and felt themselves outraged by the arbitrariness of the military occupation." (IV, 376.)

² An indication of the existence and nature of this difficulty in the matter I am treating is afforded by the following Resolution of the General Assembly of Connecticut, Oct., 1775. (*Col. Records of Conn.*, XV, 136.) "This Assembly being informed that certain questions and disputes had arose amongst the troops lately raised by this colony . . . and now employed against the ministerial forces in Canada, which disputes, unless prevented, may be attended with unhappy consequences. Therefore it is hereby resolved by this Assembly that all the Troops . . . lately raised by this Colony . . . are and shall be subject to the rules, orders, regulations and discipline of the Congress of the Twelve United Colonies during the time of their inlistment." See also as to Montgomery's difficulties, Lossing, *Schuyler*, I. 426-7. Under date Dec. 18, 1775, a British officer in Québec writes that news has just been received that "the besiegers were greatly dis-

These features are found in all the early operations of the Continental troops, and the special difficulties and disasters of the Canadian expedition were sure to make them more manifest and injurious. But that in this expedition there was also displayed other and more serious and fundamental defects in the character and bearing of the men is hardly to be denied. The impartial observer is forced to the conclusion that the word mercenary would not on the whole be an unjust appellation. It will be remembered that the word occurs in the exceedingly strong language used by Washington himself at this time about the force under his command. He writes to Congress in the latter part of 1775 that "Such a dearth of public spirit and such a want of virtue I never saw before; such a mercenary spirit pervades the whole [force] that I should not be at all surprised at any disaster that may happen."¹ And if this could be said of the troops assembling for defence in the heart of the country, we cannot be surprised to discover the same unsatisfactory condition in offensive operations of such magnitude and difficulty as those in Canada.

That the spirit in the Canadian expedition was unsatisfactory in the extreme from the beginning is shown clearly in Montgomery's statements. October 31, 1775, he writes: "The New England troops are the worst stuff imaginable for soldiers. They are homesick; their regiments have melted away, and yet not a man dead of any distemper. There is such an equality among them, that the officers have no authority, and there are very few among them in whose spirit I have confidence. The privates are all gen-

satisfied with their General's proceedings, and that their body of men appears backwood in doing the duty required of them." ("Journal of principal occurrences during the siege of Quebec." Edited by Shortt, London, 1824.) Col. Trumbull (as quoted below), in describing the remains of the expedition as he encountered it on the retreat, says that there was "neither order, subordination, or harmony; the officers as well as men of one colony, insulting and quarrelling with those of another." (*Reminiscences*, p. 302.)

¹ Sparks, *Washington*, III, 178.

erals, but not soldiers; and so jealous that it is impossible, though a man risk his person, to escape the imputation of jealousy."¹ The most strenuous efforts were found necessary to induce the troops to enter at all upon the enterprise; it seems most probable that, but for the general belief in the weakness of the enemy and the warm support of the French-Canadians, it would have been found impossible. The force steadily diminished; on the 20th of November, Schuyler writes to Congress that "The most scandalous inattention to the public stores prevails in every part of the army. . . . The only attention that engrosses the minds of the soldiery is how to get home the soonest possible."² With this temper it was to be expected that the force would diminish even more rapidly under disaster. On the receipt of the news of the failure of Montgomery's attack on Quebec, Gen. Wooster writes to Schuyler from Montreal: "Many of the troops insist upon going home, the times of enlistment being out. Some indeed have run away without a pass or Dismissal, expressly against orders. I have just been informed that a Capt. Pratt of the 2nd Battalion of Yorkers has led off his Company for St. Johns."³

There is some direct testimony as to the behaviour of the troops at Quebec in the journals of survivors. In that of Henry we have under date December 12 an account of the sacking by the troops of the house of a prominent Canadian near the town, and the evil results on the soldiery. "Though our Company was composed of freeholders, or the sons of such, bred at home under the strictures of re-

¹To Schuyler, from St. Johns. See Lossing, *Schuyler*, I, 427. The justice of these and similar complaints, Lossing says, "impartial history, enlightened by facts, fully concedes."

²Lossing's *Schuyler*, I, 466. It is but fair to say that a more favourable impression is given by other statements in this letter, which however in their isolation do not seem on the whole to effect my general conclusion. In the *Diary of Richard Smith* (*Amer. Hist. Rev.*, Jan., 1896, p. 296) we have the following entry of Dec. 18, 1775: "Montgomery's soldiers very disobedient and many of them come Home without Leave."

³Jan. 5, 1776. (*New Hampshire Prov. Papers*, VII. 720.)

ligion and morality, yet when the reins of decorum were loosed, and the honourable feeling weakened, it became impossible to administer restraint. The person of a tory, or his property, became fair game, and this at the denunciation of a base domestic villain."¹ This writer indeed takes pains to assert expressly that only Tories were plundered, and that the peasantry were especially protected and respected; but the mass of adverse evidence forbids us to consider the statement of weight further than with regard to his own company. In Caleb Haskell's *Journal*² we have a glimpse of the attitude of the time-expired troops. Under date Jan. 30-1, he tells how the writer's Company, "looking upon ourselves as free men," in that their time of enlistment had expired, were tried and punished by Court-Martial for disobedience to orders, and how, "finding that arbitrary rule prevailed," they had finally concluded to remain and serve (which they did until the beginning of May, decamping then at a critical moment). Some interesting particulars are further found in these journals of the conduct of those who were taken prisoners on the occasion of the assault. Ebenezer Wild tells us under date January 3-4, (i. e., on the third and fourth days of captivity), that Carleton having sent for a list of the names of the prisoners, especially of those who were old countrymen, "they, [i. e., presumably, the old countrymen; in all probability meaning thereby those born in the British Islands], chiefly enlisted in the King's service."³ More particular information is given by Capt. Simeon Thayer⁴ who says that the old countrymen were threatened by Carleton with being sent to England and tried as traitors. In the lists given by Thayer with regard to the American losses in the assault on Quebec, we find the following figures for all ranks:—killed, 35; wounded, 33; prisoners, 372; enlisted, 94.

¹ *Account of the Campaign against Quebec* (Albany, 1877), p. 93.

² Newburyport, 1881. (Pamphlet.)

³ *Proceedings Mass. Hist. Society*, April, 1836.

⁴ *Collections R. I. Hist. Society*, VI (Providence, 1867). App. to *Journal*.

We see therefore that fully 25 per cent. of the prisoners at Quebec took service with their late enemies, apparently without much delay. If these comprised only "old countrymen," it is an interesting fact with regard to the composition of the troops. But we have little ground for confidence as to the firmness even of the acknowledged colonists. Col. J. Trumbull, (Acting Adjutant General with Gage), writes to his father, Governor Trumbull of Connecticut, on July 12, 1776,¹ of encountering the remnants of the Canadian expedition "ruined by sickness, fatigue, and desertion, and void of every idea of discipline or subordination." Of the 10,000 men of the previous spring, 6,000 are left; of the other 4,000, "the enemy has cost us perhaps one, sickness another thousand, and the others God alone knows in what manner they are disposed of. Among the few we have remaining, there is neither order, subordination, or harmony; the officers as well as men of one colony, insulting and quarreling with those of another." About the same time Lt. Ebenezer Elmer says of the same troops, "The whole of their conduct at Canada since the death of the gallant Montgomery seems nothing but a scene of confusion, cowardice, negligence and bad conduct."² In an account of the naval operations on Lake George in October, 1776, Trumbull further describes the dangerous influence exerted by Carleton over the prisoners then taken by him. These had all been allowed to return home on condition of not bearing arms again till they were exchanged; when encountered by Trumbull on the homeward march "all (he says) were warm in their acknowledgment of the kindness with which they had been treated and which appeared to me to have made a very dangerous impression." He therefore "placed the boats containing the prisoners under the guns of a battery and gave orders that no one

¹ Trumbull, *Reminiscences*, p. 302. (Appendix.).

² *Proceedings New Jersey Hist. Society*, II, 132. This is written at the Mohawk river, in the relief expedition of Gen. Sullivan. It is a significant fact that this very detailed journal is very largely taken up with Court-martial proceedings.

should be permitted to land, and no intercourse take place with the troops on shore until orders should be received from Gen. Gage."¹ When the situation had been presented to Gage the latter ordered that the troops should return home immediately without being allowed to land. This seems to show not only the ease with which the prisoners had been shaken in their patriotism, but also a very great lack of confidence in the main force. A glimpse of the genesis of these forces in the spring of 1776 is to be obtained from a letter of one Capt. James Osgood to the Chairman of the New Hampshire Committee of Safety. He informs him that he has enlisted for Canada about 60 good men; adding "I have had a great number Deserted after paying them the Bounty and part of advance pay to support their families."²

I shall add but little on this general point. An account by an officer of the American force of the final withdrawal from Quebec seems to show that this closing act was by no means creditable; the writer describes it as a "disgraceful retreat," marked by the "utmost precipitation;" he himself "meeting the roads full of people, shamefully flying from an enemy that appeared by no means superior to our strength."³ The commissioners to Canada write to Congress May 17, 1776: "We want words to describe the confusion which prevails through every department relating to the army," and point out "the unfeeling flight and return at this juncture of all the soldiers and the greater part of the officers who were entitled to be discharged."⁴ On May 27, after dwelling on the distressed condition of the army, they tell of the plundering of the baggage "by those whose times were out, and have since left Canada. We are informed by Capt. Allen *that the men who, from pretended indisposition, had been exempted from do-*

¹ *Reminiscences*, p. 34.

² *New Hampshire State Papers* VIII, 164.

³ *Amer. Arch.*, VI, 398.

⁴ *Ibid.*, p. 587.

ing duty, were the foremost in the flight, and carried off such burdens on their backs as hearty and stout men would labour under."¹

In view of these facts we must at least concur in the words of Washington, already quoted, "I am convinced many of our misfortunes are to be attributed to a want of discipline and a proper regard to the conduct of the soldiery." Nor can we demur from the belief expressed by the President of Congress that "there has been very gross misconduct in the management of our affairs in Canada."² I am not interested here to point out that this misconduct on the part of the troops was supplemented by gross mismanagement on the part of the leaders, from Congress down; as stated before it is not my purpose to write a history of the expedition, or seek the full explanation of its failure. That purpose is rather to show that the revolutionary cause, as expressed in this movement, could in no sense attract the French-Canadians; that on the contrary, this contact with that cause must in every respect have acted strongly to repress the zeal of the ardent among them, to bring doubt to the most sanguine, to anger and antagonize not only the indifferent but even the amicably inclined. Herein is the explanation of the failure to secure for the movement that effective aid from the strong predilections of the Canadian people which had been confidently and justly expected. It is an explanation which is consistent with the existence of such a predilection in a high degree; in it I am confident, is comprised in the main the explanation of the non-inclusion of the Province of Quebec (and of consequence all Canada), in the regions destined to form the United States. It is, I think, not to be doubted that had the favorable attitude of the Canadians been carefully cultivated, had the *personnel* of the invading force been of

¹ Introductory Memoir to Carroll's *Journal*, p. 38. (Maryland Hist. Soc., 1876.) The italics seem to be the commissioners'.

² To Washington, June 21, 1776. (4 *Amer. Arch.*, VI, 1009.)

higher grade, had the means been furnished, both to enable that army to avoid all arbitrary conduct, and to avail itself more thoroughly of the French Canadian assistance, the campaign would have ended in an altogether different manner. Even if the disaster at Quebec had still been experienced, it would not have had the demoralizing effect it did have; the invaders would have been still strongly sustained by a friendly people until adequate reinforcements had arrived. It is useless to contend that the French Canadians were a timid race, and of little help to whatever cause they might embrace; students of the previous war find them in it, as throughout their whole history, displaying under the most discouraging circumstances, in very high degree the qualities of regular troops.¹ It is inconceivable that in fifteen years they could have so degenerated. They embraced about 15,000 able-bodied men, practically all trained to arms; here was certainly a factor that, well managed, might indeed prove the decisive one. At the very least we are justified in concluding that with this aid organized and kept effective, the American force could have maintained itself in the country until the French alliance had formed a basis for more decisive operations. That alliance alone, when it did come, was sufficient to stir again to the depths the whole Canadian people, including even the classes which before had immovably supported the British cause; it is surely not too much to say that if the total withdrawal of the Continental forces had not enabled the British to get a firm control of the country, and to take all possible measures of precaution against new attacks or uprisings, the province would have presented a most favorable field of effort; a field the French would have been only too eager to occupy.

¹ See above, p. 283, for Carleton's testimony (that of an antagonist), as to their conduct.

CONCLUSION.

The latter part of the foregoing study has had for its central point the relations of the Province of Quebec with the American Revolution, as gathered about the Quebec Act of 1774 and the revolutionary invasion of the Province in 1775-6. I have attempted to examine the Quebec Act in the light of its origins and environment, and thus to show, at this great crisis for America and for English colonial empire, the nature and degree of the connections, conscious and unconscious, existing in the British administrative mind between the new fortunes of Canada and the West and the conditions and problems of the older colonies. And from the side of the Revolution especially I have followed up that crisis until the parting of the ways has (as we see it now), fully declared itself; until the British North America of the future has been clearly differentiated from the British North America of the past. How unnecessary and indeed surprising that differentiation was, and how it came about, the last chapter has been intended to show.

In addition to these two important aspects of the Revolutionary connections of the Quebec Act, reference has also been briefly made to the effect of the Act in the hastening or aggravating of the difficulties with the other colonies. This however I have not been able to fully enquire into. Closer investigation will, I feel sure, show that the disastrous influence of the measure upon the colonial temper was as great as that of the more direct attacks upon colonial institutions. It would seem as if this most unfortunate of enactments had been specially under the patronage of some malign genius; for the unfortunate nature of its provisions is equalled by the unhappy moment of its appearance. We cannot wonder at its evil influence on the colonial troubles, nor at the misconceptions of the irri-

tated colonists. It was most natural to suppose that it had a vital connection with the coercive measures in whose company it appeared; it needed but a slight degree of suspicion to invest it with the most sinister aspect. Rather than being surprised at the ideas of the Revolutionary fathers in regard to it, I have been surprised instead at finding that their suspicions are so utterly without foundation. The reasonableness of these suspicions and the impress that they have left on later historical writing, though not the only reasons for the care with which I have traced the origins of the Act, seem to me alone sufficient to justify that care. I have attempted to show that it had a natural and altogether explainable genesis apart altogether from the special difficulties in the other colonies; that practically no evidence seems to exist that any one of its objectionable provisions was, in origin or development, appreciably affected by these difficulties. The matter has been treated not merely negatively; it has been shown also that these provisions had been fully determined upon years before the events occurred to which their origin has been supposed to be due, and upon grounds, entirely apart from them, which might well seem amply sufficient to justify such action.

I may possibly be accused of viewing this matter with too particular an eye for the exact date; it may be said that colonial difficulties had existed and been steadily growing from 1764 down. It should perhaps be sufficient to reply that these difficulties previous to the close of 1773 had not called forth or seemed likely to call forth, any seriously repressive measures on the part of the home government; that still less is it to be supposed that they could possibly have evoked such deeply laid and carefully concealed plans of hostile far-reaching action as the Canadian and Western measures have been ascribed to. It is indeed I think undeniable that the belief in such plans, at that day or since, has been held or at least advanced only in

connection with the idea that the provisions of the Quebec Bill were subsequent in origin to the more serious and aggravated phase of colonial difficulties that may be said to date from the latter part of 1773.¹ But a more conclusive line of answer to this objection will probably be furnished in a reference to the lack of continuity in the Imperial executive as between 1764 and 1774, in connection with a real continuity in Canadian policy, so far as can be discerned, from the very beginning of serious attention to Canadian matters. I have shown above that all the important provisions of the Act, except that in regard to an Assembly, had been fully discussed and to all appearances practically decided upon, not only before the formal establishment of the Tory Ministry of 1770, but also before the termination of the Chatham influence in 1768. That is, if the Quebec Act had been passed in 1768 or even in 1767, it would, so far as we can judge, have been mainly identical with the measure of 1774. It was in July 1766 that the Chatham ministry was formed, and Shelbourne placed in charge of the Colonial Office; yet in September, 1766, we find Carleton the new Quebec governor, fresh from conference with the home executive, entering upon a strong pro-French administration in the Province, and evidently fully confident from the first of the support of the home government along lines of action which ended logically in the Quebec Act of 1774. A reference to the pages in which I have described above the origins of the Act will show the Chatham administration to all appearance fully committed to three of the four important provisions which make up its substance.² The extension of the bounds of the province was, I have contended, simply the following out of the long-established

¹As bearing on this as well as on the estimation as to the effect of the Act, it may be worth while to note a curious British opinion of a few years later. In the debate in the House of Lords on the Quebec Government Bill of 1791, Lord Abingdon referred to the Quebec Act as one of the most unfortunate in the statute book, in that it "laid the foundation-stone of division between the North American colonies and this country." (*Parl. Hist.* XXIX, p. 659.)

² See pp. 411-31; 432-36; 450-56.

colonial-commercial policy; the action in regard to the Church of Rome was merely the attempt to fulfill (with a certain degree of political liberality), the engagements of the treaty of 1763, and was not in excess of the previous steady attitude of the government toward that Church; the advisability of reversion to French law at least in part had been officially recommended by the crown lawyers and by the Board of Trade as early as the spring of 1766, and its likelihood had been officially intimated by Shelbourne to Carleton in June 1767; in regard to an Assembly we find even Fox admitting in 1774 that he would not assert that it was expedient that one should be then granted. It is thus clear that the party (so far as we can hold by party lines in this chaotic period), which in the main stood for the more liberal and advanced colonial policy, was practically committed to the same Canadian policy as their opponents. But neither the most distrustful colonist of the revolutionary period nor the most pronounced Anglophobist of our later historical literature, would be likely to ascribe to Fox or Burke or Shelbourne that line of far-reaching and insidious hostility to colonial freedom and growth which has been ascribed to the authors of the Quebec Bill. The fact that party lines were more closely drawn when the bill actually came before Parliament must be ascribed mainly to the irresponsible position of an opposition,—an opposition too which was acting more as individuals than as a unit;¹ especially as the debates show that that opposition, instead of fighting specific provisions or pointing out better ones, confined its efforts mainly to generalities, or to such favorable points of popular agitation as Popish establishment and the absence of trial by jury. And in these debates the position that the French Canadians alone were to be considered and the neglect or disregard of the English element and prospects, was almost as marked on the opposition as on the governmental side. The whole consideration of

¹ See Fitzmaurice, *Shelbourne*, II., 310.

this phase of the matter must therefore I think support my conclusion as to the lack of connection between the Canadian measures and the strained relations with the older colonies.

But it is not only in this light that my study centres about the Quebec Act. That measure has two aspects with regard to which we must consider it:—(1) the temporary and long-past one, now of purely historical interest, of its various connections with the American Revolutionary crisis; and (2) the permanent living one, of strong interest to every student of institutions, and of vital interest to every modern Canadian, of its effects on the after history of British North America,—of its place in the development of that great commonwealth which the Dominion of Canada seems destined to become. If it does become such, it will only be after surmounting, mayhap at great cost, those most serious obstacles which, placed in its path by that Imperial policy of which the Quebec Act of 1774 was the controlling basis, have grown steadily with its growth. They are the obstacles presented to Anglo-Saxon domination and to political unity in modern Canada through the continued and magnified existence there of an alien and hostile nationality, rooted in and bound up with an alien and hostile ecclesiastical domination.¹

This opinion is my apology for the care with which I have dwelt upon the more purely institutional aspects of the period. I have tried to present a full statement of the social and political conditions of the province during the early years of the British occupation, in the belief that it is only by their study that we can claim to pass judgment upon their treatment. The misfortune for the country of the non-assimilation of French and English through these 130 years of common political existence in British North America has of course been frequently dwelt upon; but it has usually been in a tone of resignation to those mysterious dispensations of Providence which made the Quebec

¹ See Goldwin Smith, *Canada and the Canadian Question*. Chapter 2.

Act an unavoidable necessity, and would have made any other course then, or any counter course since, disastrous and impossible. What else could have been done, we are asked,—usually with extravagant laudation of the humanity and generosity of the British government in thus pursuing the only path open to it. It has been one of my objects to try and show that something else, something very different, *could* have been done; that the policy that was adopted with such far-reaching and disastrous consequences, was precisely also the one that was the most dangerous with regard to the conditions of the moment. It is no part of the historian's (and certainly not of the special investigator's) task to enter upon constructive work, to replace everything that he has pulled down; and therefore I do not feel called upon to go into particulars with regard to the possible legislation of 1774. But I do not wish to evade the problem; it should be manifest from the above examination that the alternative course was simply to set the new English Province firmly and definitively upon an *English* instead of a *French* path of development. As shown above, the way was clearly pointed out by other advisers as well qualified to speak as those whose advice was taken in 1774. I know that in this our age of highly-defined and all-pervading nationality, this apparently light hearted and reckless treading upon the holy ground of national development may bring down upon me the severest censures. But my critics will remember that we are dealing with another age, one in which nationality was not the breath of the political nostril; one in which new and alien acquisitions were absorbed and assimilated as an every day process.¹ And I hope I shall

¹ The contemporary history of the French colony of Louisiana is a case in point, and will I think support my argument in every respect. Ceded to Spain in 1762, the new rule began in 1766 with infinitely worse prospects than that of the English in Canada; for the Spanish were driven away by a revolt of the colonists in 1768, and after re-establishing themselves by overwhelming force in the following year, began their régime anew by taking summary vengeance upon the colonial leaders. It had moreover been under-

not be further reproached with a slavish respect for legal enactment, in attaching the importance I do to the measures, actual and possible of 1774. An enactment which determines the ecclesiastical conditions and the whole civil code of a people is surely not to be spoken of lightly; but I regard it only as the first step in a progress which under its pressure became the inevitable one; as the opening of an easy and secure path and the providing of encouraging and helpful guides in a journey for which no other route or guide was available.

It may seem that it is to place too much emphasis on the effect of the Quebec Act even to represent it as the first step in a development which it made inevitable. The matter is one which I do not feel at liberty to stop and discuss fully here; but some considerations must be briefly referred to. The main one has regard to the probably different history of early English colonization in the Province if the British government in 1774 had not so avowedly and definitely handed it over to a French future. In the discussions in

stood at the time of cession that in deference to the express wish of Louis XV., the colony would be allowed to retain its old laws and usages; but after the insurrection the Spanish government proceeded to thoroughly assimilate it in law and governmental forms to the other Spanish colonies in America. The degree of success attained in the face of circumstances so much more discouraging than those which existed in Canada, is shown in the statement by Gayarré, (*Louisiana under Spanish Domination*, p. 310), that when in 1791 the fourth Spanish governor ended his administration, "He left Louisiana entirely reconciled to the Spanish domination, which had been gradually endeared to the inhabitants by the enlightened and wise deportment of almost every officer who had ruled over them." Yet the colony had remained thoroughly French in stock; for in 1800 a distinguished Louisianian official states in a memoir intended for Napoleon I, that "Almost all the Louisianians are born French or are of French origin." Napoleon in that year re-acquired the colony for France; and when in 1803 the United States were negotiating for its purchase, he was informed by M. Barbé Marbois (later the author of a *History of Louisiana*), that "These colonists have lost the recollection of France." When in the same year the French officials took possession of the province they were received with suspicion rather than enthusiasm. M. Marbois reports: "Every one will be astonished to learn that a people of French descent have received without emotion and without any apparent interest a French magistrate. . . . Nothing has been able to diminish the alarm which his mission causes. His proclamations have been heard with sadness, and by the greater part of the inhabitants with the same indifference as the beat of the drum is listened to when it announces the escape of a slave or a sale at auction." (*Gayarré*, p. 582.) There was here of course an additional element in the apprehensions as to the French attitude with regard to slavery; but in view of the evi-

Parliament and out with regard to that measure, both before and after its enactment, we find that its advocates insist with strong self-righteousness that in Canada it is the French Canadian only who is to be considered; that the small English section there has scarcely a right to be heard; that Canada (as Carleton had urged), was French and destined to remain French; that it was probably for the interest of Great Britain to discountenance any large English admixture. This view I have shown above was no doubt largely due to the incorrect ideas which Murray and Carleton had fostered with regard to the origin and character of the English already in the Province. Whatever its full explanation the tone is unmistakable. It may be considered a part of the striking inadequacy of the prevailing British mind at that time to the Imperial position that had so wonderfully come to the nation; an inadequacy which was being most generally shown in the petty legality and short-sighted selfishness which were marking all the rela-

dence as to the temper of the colony before that question could have arisen, it does not seem that it can be assumed to have much to do with the point at issue.

Lack of space prevents my following the development of the colony in its more complex history as a part of the United States. What the nature of that development has been however may I think be correctly inferred from the fact that even by 1823 we are told of "the adoption of that people into the great American family having now super-added many features of the English jurisprudence to those already stamped upon the institutions of Louisiana by the French and Spanish." (North American Review, XVII, 244.) When in 1820 Edward Livingstone was appointed by the General Assembly of Louisiana to draw up a report on a new criminal code, one of the objects of the same was laid down as being, "To abrogate the reference which now exists to a foreign law for the definition of offences and the mode of prosecuting them." (Ibid.) Before 1839 we find that the success achieved in the Americanizing of the territory is such as to attract the envious attention of the English element which in Quebec was at that moment struggling with the culmination of the long period of increasingly bitter hostility there between the French and English. Lord Durham tells us (*Report on Canada*, 1839) that they [the English] "talk frequently and loudly of what has occurred in Louisiana, where . . . the end . . . of securing an English predominance over a French population has undoubtedly been attained;" and in his final recommendations as to remedying the Canadian troubles he points out that "The influence of perfectly equal and popular institutions in the effacing distinctions of race without disorder or oppression and with little more than the ordinary animosities of party in a free country, is memorably exemplified in the history of the State of Louisiana, the laws and population of which were French at the time of its cession to the American Union."

tions with the older colonies. What I wish especially to call attention to here is the effect that this attitude and its results already in Quebec, must have had at the close of the war upon those who were compelled to seek refuge from the victorious colonists in other parts of the British dominions. These United Empire Loyalists were of the same temper, I have shown above, as the English already resident in Quebec; even if the Quebec Act did not fill them with the same lively apprehension of tyranny that it aroused in these and in the revolting colonists, it must yet have been in a high degree obnoxious. The immediate effect is doubtless to a very considerable degree expressed in the fact that of the 50,000 Loyalists (approximately), who settled in the remaining British Provinces during and within a few years after the war, only about one-quarter chose the oldest and presumably much the most attractive part of the country. And of those who did choose the Province of Quebec, practically none it would seem, elected to settle amongst the French Canadians (where previous to the new constitution a large amount of land had been eagerly taken possession of by their compatriots), but went instead into the untrodden wilderness. It is true that by so doing they did not escape the dominion of the new order of things, for they remained subject to the Quebec Act till 1791; but they could hope thereby to reduce the necessary evil to a minimum (as proved the case), and to build up with greater prospects of success the active opposition to it that they at once entered upon.

What would have been the consequences at the time of this migration of the existence in Quebec of a constitution, not indeed wholly English either in fact or promise, but with an English admixture sufficient to afford a working basis and a guarantee with regard to the line of development? It can scarcely be doubted that the English immigration into the Province would have been so largely increased that the balance of population would thereby have been at

once in considerable degree redressed. As a result a security would have been thereby provided that all the English conditions that had already obtained would have been upheld with accelerating influence, and that development would have proceeded mainly along that line. The large degree of influence that had been so rapidly gained by the few English over the French Canadian masses in the period 1763-1774, would probably have steadily increased; the new French Canadian native leaders, who had already shown a very considerable degree of knowledge of and aptitude for English conditions, would have coalesced more and more with the English element; the whole history of Quebec and Canada would in short have run a different course. As it was, we find that the Quebec Act bestows on the Province, even from the French standpoint, only misfortune; that under it the law is uncertain and its administration almost anarchy;¹ that the English and French elements enter with the addition to the numbers of the former after the war, on a period of bitter political strife; that finally in 1791 the British government, while pacifying the main body of the English discontents by forming them into a new Province, at the same time continues and confirms thereby the policy of 1774, with apparently a more conscious purpose of such a use of the French nationality as might perhaps be justly expressed in the maxim *divide et impera*. It was a development of the Quebec Act policy that was largely due to the intervening revolutionary war; but such a development was possible only on the basis of that Act and the results of its seventeen years' operation. It denotes the unaccountable persistence in the British mind of the idea as to the efficacy of the measure in preserving the Province from the grasp of the revolutionists, and a determination to guard against similar danger in the future by keeping to and developing this line of action. As Lord Durham ex-

¹ See above, pp. 477-9.

pressed it in 1839, "the system of Government pursued in Lower Canada has been based on the policy of perpetuating that very separation of the races, and encouraging these very notions of conflicting nationalities which it ought to have been the first and chief care of Government to check and extinguish. From the period of the conquest to the present time the conduct of the Government has aggravated the evil, and the origin of the present extreme disorder may be found in the institutions by which the character of the colony was determined."¹ The "extreme disorder" referred to was the result of the fact that by the act of 1791 the way was left clear within the province of Quebec for that period of embittered resistance on the part of the small English minority which was to end in civil war, and in the vain attempt of 1840 to undo the work of the previous sixty-six years by stifling the French majority in a reunion with the English mass of Upper Canada. What degree of responsibility for this crisis of race hostility rested on the policy definitely inaugurated in 1774 and confirmed in 1791, is forcibly shown above in the words of the special Imperial Commissioner who was sent out in 1839 to deal with that crisis. His report further points out how from the Conquest "the continued negligence of the British Government left the mass of the people without any of the institutions which would have elevated them in freedom and civilization. It has left them without the education and without the institutions of local self-government, that would have assimilated their character and habits, in the easiest and best way, to those of the empire of which they became a part."² The evil policy of 1774 was, he adds, adhered to in 1791, when "instead of availing itself of the means which the extent and nature of the province afforded for the gradual introduction of such an English population into

¹ *Report*, p. 27.

² *Ibid.*, p. 12.

the various parts as might have easily placed the French in a minority, the Government deliberately constituted the French into a majority, and recognized and strengthened their distinct national character. Had the sounder policy of making the province English in all its institutions been adopted from the first and steadily persevered in, the French would probably have been speedily outnumbered, and the beneficial operation of the free institutions of England would never have been impeded by the animosities of origin."¹ And as noticed above he points to the history of Louisiana as an example of what might and should have been done.

It therefore does not seem an extreme view to regard the great difficulties that have beset English rule in Canada, as well as the grave problems that still confront the Dominion, as a natural and logical development from the policy of the Quebec Act. And if I am mistaken in my opinion of the comparative ease and completeness with which these difficulties and problems could have been avoided, and with which from the time of the conquest the province could have been started on the path of assimilation to English conditions, it must be admitted that I err in good company, both of that time and of this. In the tract reputedly Franklin's, entitled, "The Interest of Great Britain considered, with regard to her colonies, and the acquisition of Canada and Gaudaloupe," the following opinion is expressed of the future of the new province: "Those who are Protestant among the French will probably choose to remain under the British government,² many will choose to remove if they can be allowed to sell their lands, improvements and effects; the rest in that thinly settled country will in less than one-half a century, from the crowds of English settling round and among them, be blended and incorporated with our people both in language and manners." Lord

¹ *Report*, p. 29.

² See p. 288 above for the facts as to emigration.

Durham's opinion of the policy that should have been followed, and of the degree of success that might have been attained from the first, has already been quoted. So convinced was he of its necessity and practicability that he strongly urged the adoption of that policy even at the late date at which he wrote. "Without effecting the change so rapidly or so roughly as to shock the feelings and trample on the welfare of the existing generation, it must henceforth" he declared, "be the first and steady purpose of the British Government to establish an English population with English laws and language in this Province, and to trust its government to none but a decidedly English Legislature."¹ In his view this apparently harsh policy was the truest mercy to the French Canadians, "isolated in the midst of an Anglo-Saxon world." For, "it is but to determine whether the small number of French who now inhabit Lower Canada shall be made English under a Government which can protect them, or whether the process shall be delayed until a much larger number shall have to undergo, at the rude hands of its uncontrolled rivals the extinction of a nationality strengthened and embittered by continuance."² Finally on this point I will quote the words of the most prominent of modern students of Canadian history and prospects, —Goldwin Smith. To Anglicize Quebec at the Conquest he declares "would not have been hard. Her French inhabitants of the upper class had, for the most part, quitted her after the conquest and sailed with their property for France. There remained only 70,000 peasants, to whom their language was not so dear as it was to a member of the Institute, who knew not the difference between codes so long as they got justice, and among whom, harsh and abrupt change being avoided, the British tongue and law might have been gradually and painlessly introduced."³

¹ *Report*, p. 128.

² *Ibid.*, p. 130.

³ *Canada and the Canadian Question*, p. 81.

Apart from speculation or the consideration of national or natural rights, my judgment of the Quebec Act and my opinion as to alternative measures must rest upon the facts which I have brought forward. I have tried to show that in ten years of British civil rule, the French Canadian had advanced steadily in the comprehension of English principles of society and government, and had lived in prosperity and fair contentment;¹ that by 1774 he was ready for a compromise civil code which might have left him the principles of the regulation of landed property to which he was most wedded, and yet have proclaimed itself as an *English* code, the starting point of English accumulation. This would have established a system which with regard to land would not from the very beginning have been without analogy in England itself at that period, and which on all other important sides, including procedure, would have been exclusively English in spirit, substance and development. With this aspect the Province could not have presented to English-speaking immigrants at the close of the American war the forbidding features that it did present under French law. This does not seem a visionary outcome with regard to the most difficult of the matters involved, the Civil Code. The grant of representative institutions and the fostering of local self-government would naturally accompany the English legal aspect. Connected with settlement there might have been, and would almost necessarily have been, an avoidance of those other features of the Quebec Act settlement which I have shown above were objectionable to the mass of the people, and the only discoverable causes of their disloyalty in the American invasion. With a system distinctly and avowedly English in spirit and main substance there would have

¹ How speedily the Quebec Act had operated for the undoing of this work may be judged from Pitt's declaration in 1791 in regard to the separation into two Provinces by the Constitutional Act, that "he had made the division of the province essential, because he could not otherwise reconcile their clashing interests" [i. e. of the English and French elements]. *Parl. Hist.* XXIX, 404.

been no room for those fears as to reversion to the old feudal order which so aroused the peasantry, and consequently no field of labor for the revolutionary agitator; in the absence of the so-called establishing of the Church there would have been lacking that most distasteful re-fastening upon them of compulsory tithes. In other words, without any conceivable antagonizing on other grounds of the ordinary French Canadian, there would have been avoided all those aspects of the Act by which alone can be explained the hostile attitude of the *habitant* during the war; while the greatest of all steps would have been taken for the preserving of the future from the perils of racial hostility and alien institutions. The various lines along which Anglicising might for the future have proceeded can be as easily imagined as described; the way of every one was effectually barred by the Quebec Act.

APPENDIX I.

THE QUEBEC ACT, 1774.¹

An act for making more effectual Provision for the Government of the Province of Quebec in North America.

Whereas his Majesty, by his Royal Proclamation, bearing date the seventh Day of *October*, in the third Year of his Reign, thought fit to declare the Provisions which had been made in respect to certain Countries, Territories and Islands in *America*, ceded to his Majesty by the definitive Treaty of Peace, concluded at *Paris* on the tenth Day of *February*, one thousand seven hundred and sixty-three: And whereas, by the Arrangements made by the said Royal Proclamation, a very large Extent of Country, within which there were several Colonies and Settlements of the Subjects of *France*, who claimed to remain therein under the Faith of the said Treaty, was left without any Provision being made for the Administration of Civil Government therein; and certain Parts of the Territory of *Canada*, where sedentary Fisheries had been established and carried on by the Subjects of *France*, Inhabitants of the said Province of *Canada*, under Grants and Concessions from the Government thereof, were annexed to the Government of *Newfoundland*, and thereby subjected to regulations inconsistent with the Nature of such Fisheries: May it therefore please your most Excellent Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by

¹ 14 Geo. III., Cap. 83. In full from *British Statutes at Large* (London, 1776), xii., pp. 184-187.

and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That all the Territories, Islands and Countries in *North America*, belonging to the Crown of *Great Britain*, bounded on the South by a Line from the Bay of *Chaleurs*, along the High Lands which divide the Rivers that empty themselves into the River *Saint Lawrence* from those which fall into the Sea, to a point in forty-five Degrees of Northern Latitude, on the Eastern bank of the River *Connecticut*, keeping the same Latitude directly West, through the Lake *Champlain*, until, in the same Latitude, it meets the River *Saint Lawrence*; from thence up the Eastern Bank of the said River to the Lake *Ontario*; thence through the Lake *Ontario*, and the River commonly called *Niagara*; and thence along by the Eastern and the South-eastern Bank of Lake *Erie*, following the said Bank, until the same shall be intersected by the Northern Boundary, granted by the Charter of the Province of *Pennsylvania*, in case the same shall be so intersected; and from thence along the said Northern and Western Boundaries of the said Province, until the said Western Boundary strike the *Ohio*: But in case the said Bank of the said Lake shall not be found to be so intersected, then following the said Bank until it shall arrive at that Point of the said Bank which shall be nearest to the North-western Angle of the said Province of *Pennsylvania*, and thence by a right line, to the said North-western Angle of the said Province; and thence along the Western Boundary of the said Province, until it strike the River *Ohio*; and along the Bank of the said River, Westward, to the Banks of the *Mississippi*, and Northward to the Southern Boundary of the Territory granted to the Merchants Adventurers of *England*, trading to *Hudson's Bay*; and also all such Territories, Islands, and Countries, which have, since the tenth of February, one thousand seven hundred and sixty-three, been made Part of the Government of *Newfoundland*, be, and they are hereby,

during his Majesty's Pleasure, annexed to, and made Part and Parcel of, the Province of *Quebec*, as created and established by the said Royal Proclamation of the seventh of *October*, one thousand seven hundred and sixty-three.

II. Provided always, That nothing herein contained, relative to the Boundary of the Province of *Quebec*, shall in anywise affect the Boundaries of any other Colony.

III. Provided always, and be it enacted, That nothing in this Act contained shall extend, or be construed to extend, to make void, or to vary or alter any Right, Title, or Possession, derived under any Grant, Conveyance, or otherwise howsoever, of or to any Lands within the said Province, or the Provinces thereto adjoining; but that the same shall remain and be in Force, and have Effect, as if this Act had never been made.

IV. And whereas the Provisions, made by the said Proclamation, in respect to the Civil Government of the said Province of *Quebec*, and the Powers and Authorities given to the Governor and other Civil Officers of the said Province, by the Grants and Commissions issued in consequence thereof, have been found, upon Experience, to be inapplicable to the State and Circumstances of the said Province, the Inhabitants whereof amounted, at the Conquest, to above sixty-five thousand Persons professing the Religion of the Church of *Rome*, and enjoying an established Form of Constitution and System of Laws, by which their Persons and Property had been protected, governed, and ordered, for a long Series of Years, from the first Establishment of the said Province of *Canada*; be it therefore further enacted by the Authority aforesaid, That the said Proclamation, so far as the same relates to the said Province of *Quebec*, and the Commission under the Authority whereof the Government of the said Province is at present administered, and

all and every the Ordinance and Ordinances made by the Governor and Council of Quebec for the time being, relative to the Civil Government and Administration of Justice in the said Province, and all Commissions to Judges and other Officers thereof, be, and the same are hereby revoked, annulled, and made void, from and after the first Day of *May*, one thousand seven hundred and seventy-five.

V. And, for the more perfect Security and Ease of the Minds of the Inhabitants of the said Province, it is hereby declared, That his Majesty's Subjects, professing the Religion of the Church of *Rome* of and in the said Province of *Quebec*, may have, hold, and enjoy, the free Exercise of the Religion of the Church of *Rome*, subject to the King's Supremacy, declared and established by an Act, made in the first year of the Reign of Queen *Elizabeth*, over all the Dominions and Countries which then did, or thereafter should belong, to the Imperial Crown of this Realm; and that the Clergy of the said Church may hold, receive, and enjoy, their accustomed Dues and Rights, with respect to such Persons only as shall profess the said Religion.

VI. Provided nevertheless, That it shall be lawful for his Majesty, his Heirs or Successors, to make such Provision out of the rest of the said accustomed Dues and Rights, for the Encouragement of the Protestant Religion, and for the Maintenance and Support of a Protestant Clergy within the said Province, as he or they shall, from Time to Time, think necessary and expedient.

VII. Provided always, and be it enacted, That no Person, professing the Religion of the Church of *Rome*, and residing in the said Province, shall be obliged to take the Oath required by the said Statute passed in the first Year of the Reign of Queen *Elizabeth*, or any other Oaths substituted by any other Act in the place thereof; but that every such

Person who, by the said Statute, is required to take the Oath therein mentioned, shall be obliged, and is hereby required, to take and subscribe the following Oath before the Governor, or such other Person in such Court of Record as his Majesty shall appoint, who are hereby authorized to administer the same; *videlicet*,

I A. B. do sincerely promise and swear, That I will be faithful, and bear true Allegiance to his Majesty King George, and him will defend to the utmost of my Power, against all traitorous Conspiracies, and Attempts whatsoever, which shall be made against his Person, Crown, and Dignity; and I will do my utmost Endeavour to disclose and make known to his Majesty, his Heirs and Successors, all Treasons, and traitorous Conspiracies, and Attempts, which I shall know to be against him, or any of them; and all this I do swear without any Equivocation, mental Evasion, or secret Reservation, and renouncing all Pardons and Dispensations from any Power or Person whomsoever to the contrary.

So help me God.

And every such person, who shall neglect or refuse to take the said Oath before mentioned, shall incur and be liable to the same Penalties, Forfeitures, Disabilities, and Incapacities, as he would have incurred and been liable to for neglecting or refusing to take the Oath required by the said Statute passed in the first Year of the Reign of Queen Elizabeth.

VIII. And be it further enacted by the Authority aforesaid, That all his Majesty's *Canadian* Subjects within the Province of *Quebec*, the Religious Orders and Communities only excepted, may also hold and enjoy their Property and Possessions, together with all Customs and Usages relative thereto, and all other their Civil Rights, in as large, ample, and beneficial Manner, as if the said Proclamation, Commissions, Ordinances, and other Acts and Instruments, had not been made, and as may consist with their Allegiance to his Majesty, and Subjection to the Crown and Parliament of *Great Britain*; and that in all Matters of Controversy, relative to Property and Civil Rights, Resort shall be had to the Laws of *Canada*, as the Rule for the Decision of the same; and all Causes that shall hereafter be instituted in any of the Courts of Justice, to be appointed

within and for the said Province by his Majesty, his Heirs and Successors, shall, with respect to such Property and Rights, be determined agreeably to the said Laws and Customs of *Canada*, until they shall be varied or altered by any Ordinances that shall, from Time to Time, be passed in the said Province by the Governor, Lieutenant Governor, or Commander in Chief, for the time being, by and with the Advice and Consent of the Legislative Council of the same, to be appointed in Manner herein-after mentioned.

IX. Provided always, That nothing in this Act contained shall extend, or be construed to extend, to any Lands that have been granted by his Majesty, or shall hereafter be granted by his Majesty, his Heirs and Successors, to be holden in free and common Soccage.

X. Provided also, That it shall and may be lawful to and for every Person that is owner of any Lands, Goods, or Credits, in the said Province, and that has a right to alienate the said Lands, Goods, or Credits, in his or her Lifetime, by Deed of Sale, Gift, or otherwise, to devise or bequeath the same at his or her Death, by his or her last Will and Testament; any Law, Usage, or Custom, heretofore or now prevailing in the Province, to the contrary hereof in any-wise notwithstanding; such will being executed either according to the Laws of *Canada*, or according to the Forms prescribed by the Laws of *England*.

XI. And whereas the Certainty and Lenity of the Criminal Law of *England*, and the Benefits and Advantages resulting from the Use of it, have been sensibly felt by the Inhabitants, from an Experience of more than nine years, during which it has been uniformly administered; be it therefore further enacted by the Authority aforesaid, that the same shall continue to be administered, and shall be observed as Law in the Province of *Quebec*, as well in the Description and Quality of the Offence as in the Method of

Prosecution and Trial; and the Punishments and Forfeitures thereby inflicted to the Exclusion of every other Rule of Criminal Law, or Mode of Proceeding thereon, which did or might prevail in the said Province before the Year of our Lord one thousand seven hundred and sixty-four; any Thing in this Act to the contrary thereof in any respect notwithstanding; subject nevertheless to such Alterations and Amendments as the Governor, Lieutenant-governor, or Commander-in-Chief for the Time being, by and with the Advice and Consent of the legislative Council of the said Province, hereafter to be appointed, shall, from Time to Time, cause to be made therein, in Manner herein-after directed.

XII. And whereas it may be necessary to ordain many Regulations for the future Welfare and good Government of the Province of *Quebec*, the Occasions of which cannot now be foreseen, nor, without much Delay and Inconvenience, be provided for, without intrusting that Authority, for a certain time, and under proper restrictions, to Persons resident there: And whereas it is at present inexpedient to call an Assembly; be it therefore enacted by the Authority aforesaid, that it shall and may be lawful for his Majesty, his Heirs and Successors, by Warrant under his or their Signet or Sign Manual, and with the Advice of the Privy Council, to constitute and appoint a Council for the Affairs of the Province of *Quebec*, to consist of such Persons resident there, not exceeding twenty-three, nor less than seventeen, as his Majesty, his Heirs and Successors, shall be pleased to appoint; and, upon the Death, Removal, or Absence of any of the Members of the said Council, in like Manner to constitute and appoint such and so many other Person or Persons as shall be necessary to supply the Vacancy or Vacancies; which Council, so appointed and nominated, or the Major Part thereof, shall have Power and Authority to make Ordinances for the Peace, Welfare, and

good Government, of the said Province, with the Consent of his Majesty's Governor, or, in his Absence, of the Lieutenant-governor, or Commander-in-Chief for the time being.

XIII. Provided always, That nothing in this Act contained shall extend to authorize or empower the said legislative Council to lay any Taxes or Duties within the said Province, such Rates and Taxes only excepted as the Inhabitants of any Town or District within the said Province may be authorized by the said Council to assess, levy, and apply, within the said Town or District, for the purpose of making Roads, erecting and repairing publick Buildings, or for any other Purpose respecting the local Convenience and Oeconomy of such Town or District.

XIV. Provided also, and be it enacted by the Authority aforesaid, That every Ordinance so to be made, shall, within six months, be transmitted by the Governor, or, in his absence, by the Lieutenant-governor, or Commander-in-Chief for the time being, and laid before his Majesty for his Royal Approbation; and if his Majesty shall think fit to disallow thereof, the same shall cease and be void from the Time that his Majesty's Order in Council thereupon shall be promulgated at *Quebec*.

XV. Provided also, that no Ordinance touching Religion, or by which any Punishment may be inflicted greater than Fine or Imprisonment for three Months, shall be of any Force or Effect, until the same shall have received his Majesty's Approbation.

XVI. Provided also, That no Ordinance shall be passed at any Meeting of the Council where less than a Majority of the whole Council is present, or at any Time except between the first Day of *January* and the first day of *May*, unless upon some urgent Occasion, and in such Case every Member thereof resident at *Quebec*, or within fifty miles

thereof, shall be personally summoned by the Governor, or, in his Absence, by the Lieutenant-governor, or Commander in Chief for the Time being, to attend the same.

XVII. And be it further enacted by the Authority aforesaid, That nothing herein contained shall extend, or be construed to extend, to prevent or hinder his Majesty, his Heirs or Successors, by his or their Letters Patent under the Great Seal of *Great Britain*, from erecting, constituting, and appointing, such Courts of Criminal, Civil, and Ecclesiastical Jurisdiction within and for the said Province of Quebec, and appointing, from Time to Time, the Judges and Officers thereof, as his Majesty, his Heirs and Successors, shall think necessary and proper for the Circumstances of the said Province.

XVIII. Provided always, and it is hereby enacted, that nothing in this Act contained shall extend, or be construed to extend, to repeal or make void, within the said Province of Quebec, any Act or Acts of the Parliament of *Great Britain* heretofore made, for prohibiting, restraining, or regulating, the Trade or Commerce of his Majesty's Colonies and Plantations in *America*; but that all and every the said Acts, and also all Acts of Parliament heretofore made concerning or respecting the said Colonies and Plantations, shall be, and are hereby declared to be, in Force, within the said Province of *Quebec*, and every Part thereof.

THE QUEBEC REVENUE ACT, 1774.¹

An Act to establish a fund towards further defraying the charges of the Administration of Justice, and support of the Civil Government within the Province of Quebec in America.

Whereas certain duties were imposed by the Authority of his Most Christian Majesty upon Wine, Rum, Brandy, *eau*

¹ 14 Geo. III., Cap. 88. In full from *British Statutes at Large*, London, 1776.

de vie de liqueur, imported into the Province of *Canada*, now called the Province of *Quebec*, and also a duty of three pounds *per centum ad valorem* upon all dry Goods imported into and exported from the said Province, which Duties subsisted at the Time of the Surrender of the said Province to your Majesty's Forces in the late War: And whereas it is expedient that the said Duties should cease and be discontinued, and that in Lieu and in Stead thereof other Duties should be raised by the authority of Parliament for making a more adequate Provision for defraying the Charge of the Administration of Justice and the Support of Civil Government in the said Province: We, your Majesty's most dutiful and loyal Subjects, the Commons of *Great Britain* in Parliament assembled, do most humbly beseech your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the Authority of the same: That from and after the fifth Day of *April*, one thousand seven hundred and seventy-five, all the duties which were imposed upon Rum, Brandy, *eau de vie de liqueur*, within the said Province, and also of three pounds *per centum ad valorem* on dried goods imported into or exported from the said Province under the Authority of his most Christian Majesty, shall be and are hereby discontinued; and that in Lieu and in Stead thereof there shall from and after the said fifth Day of April, one thousand seven hundred and seventy-five be raised, levied, collected, and paid unto his Majesty, his Heirs and Successors, for and upon the respective Goods hereinafter mentioned, which shall be imported or brought into any Part of the said Province, over and above all other Duties now payable in the said Province, by any Act or Acts of Parliament, the several Rates and Duties following: that is to say,

For every Gallon of Brandy, or other Spirits, of the Manufacture of *Great Britain*, Three-pence.

For every Gallon of Rum, or other Spirits, which shall be imported or brought from any of his Majesty's Sugar Colonies in the *West Indies*, Six-pence.

For every Gallon of Rum, or other Spirits which shall be imported or brought from any other of his Majesty's Colonies or Dominions in *America*, Nine-pence.

For every Gallon of Foreign Brandy, or other Spirits of Foreign Manufacture imported or brought from *Great Britain*, one Shilling.

For every Gallon of Rum or Spirits of the Produce or Manufacture of any of the Colonies or Plantations in *America*, not in the Possession or under the Dominion of his Majesty imported from any other Place except *Great Britain*, one Shilling.

For every Gallon of Molasses and Syrups which shall be imported or brought into the said Province in Ships or Vessels belonging to his Majesty's subjects in *Great Britain* or *Ireland*, or to his Majesty's subjects in the said Province, Three-pence.

For every Gallon of Molasses and Syrups, which shall be imported or brought into the said Province in any other Ships or Vessels in which the same may be legally imported, Six-pence; and after those Rates for any greater or less Quantity of such Goods respectively.

II. And it is hereby further enacted by the Authority aforesaid, That the said Rates and Duties charged by this Act shall be deemed, and are hereby declared, to be Sterling Money of *Great Britain*, and shall be collected, recovered, and paid, to the Amount of the Value of which such nominal Sums bear in *Great Britain*; and that such Monies may be received and taken according to the Proportion and Value of five Shillings and Sixpence the Ounce in Silver; and that the said Duties hereinbefore granted shall be raised, levied, collected, paid, and recovered, in the same Manner and Form, and by such Rules, Ways and Means, and under such Penalties and Forfeitures, except in such Cases where any Alteration is made by this Act, as any other Duties payable to his Majesty upon Goods imported into any *British* Colony or Plantation in *America* are or shall be raised, levied, collected, paid, and recovered, by any Act or Acts of Parliament, as fully and effectually, to all Intents and Purposes, as if the several Clauses, Powers, Directions, Penalties, and Forfeitures relating thereto, were particularly repeated and again enacted in the Body of this present Act: and that all the Monies that shall arise by the said Duties (except the necessary Charges of raising, col-

lecting, levying, recovering, answering, paying, and accounting for the same) shall be paid by the Collector of his Majesty's Customs, into the hands of his Majesty's Receiver-General in the said Province for the Time being, and shall be applied in the first place in making a more certain and adequate Provision towards defraying the Expenses of the Administration of Justice and of the Support of Civil Government in the said Province; and that the Lord High Treasurer, or Commissioners of his Majesty's Treasury, or any three or more of them for the Time being, shall be, and is, or are hereby impowered, from Time to Time, by any Warrant or Warrants under his or their Hand or Hands, to cause such Money to be applied out of the said Produce of the said Duties, towards defraying the said Expenses; and that the Residue of the said Duties shall remain and be reserved in the hands of the said Receiver-General, for the future Disposition of Parliament.

III. And it is hereby further enacted by the Authority aforesaid that if any Goods chargeable with any of the said Duties herein-before mentioned shall be brought into the said Province by Land Carriage, the same shall pass and be carried through the Port of *Saint John's*, near the River *Sorrel*, or if such Goods shall be brought into the said Province by any inland Navigation other than upon the River *Saint Lawrence*, the same shall pass and be carried upon the said River *Sorrel* by the said Port, and shall be there entered with, and the said respective Rates and Duties paid for the same, to such Officer or Officers of his Majesty's Customs as shall be there appointed for that Purpose; and if any such Goods coming by Land Carriage or inland Navigation, as aforesaid, shall pass by or beyond the said place before named, without Entry or Payment of the said Rates and Duties, or shall be brought into any Part of the said Province by or through any other Place whatsoever, the said Goods shall be forfeited; and every Person who shall

be assisting, or otherwise concerned in the bringing or removing such Goods, or to whose Hands the same shall come, knowing that they were brought or removed contrary to this Act, shall forfeit treble the Value of such Goods, to be estimated and computed according to the best Price that each respective Commodity bears in the Town of *Quebec*, at the Time such Offence shall be committed; and all the Horses, Cattle, Boats, Vessels, and other Carriages whatsoever, made use of in the Removal, Carriage, or Conveyance of such Goods, shall also be forfeited and lost, and shall and may be seized by any Officer of his Majesty's Customs, and prosecuted as hereinafter mentioned.

IV. And it is hereby further enacted by the Authority aforesaid, That the said Penalties and Forfeitures by this Act inflicted, shall be sued for and prosecuted in any Court of Admiralty, or Vice-Admiralty, having jurisdiction within the said Province, and the same shall and may be recovered and divided in the same Manner and Form, and by the same Rules and Regulations in all Respects as other Penalties and Forfeitures for Offences against the Laws relating to the Customs and Trade of his Majesty's Colonies in *America* shall or may, by any Act or Acts of Parliament be sued for, prosecuted, recovered and divided.

V. And be it further enacted by the Authority aforesaid, That there shall from and after the fifth Day of *April*, one thousand seven hundred and seventy-five, be raised, levied, collected and paid unto his Majesty's Receiver-General of the said Province for the Use of his Majesty, his Heirs and Successors, a Duty of one Pound sixteen Shillings, Sterling Money of *Great Britain*, for every License that shall be granted by the Governor, Lieutenant-Governor, or Commander-in-Chief of the said Province to any Person or Persons for keeping a House or any other place of publick Entertainment, or for the retailing Wine, Brandy, Rum, or

any other Spirituous Liquors within the said Province; and any Person keeping any such House or place of Entertainment, or retailing any such Liquors without such License shall forfeit and pay the Sum of ten Pounds for every such Offence, upon Conviction thereof; one Moiety to such Person as shall inform or prosecute for the same, and the other Moiety shall be paid into the Hands of the Receiver-General of the Province for the Use of his Majesty.

VI. Provided always, That nothing herein contained shall extend or be construed to extend to discontinue, determine, or make void any Part of the territorial or casual Revenues, Fines, Rents, or Profits whatsoever, which were reserved to, and belonged to his Most Christian Majesty, before and at the Time of the Conquest and Surrender thereof to his Majesty, the King of Great Britain; but that the same and every one of them, shall remain and be continued to be levied, collected, and paid in the same Manner as if this Act had never been made; anything therein contained to the contrary notwithstanding.

VII. And be it further enacted by the Authority aforesaid, That if any Action or Suit shall be commenced against any Person or Persons for any thing done in pursuance of this Act, and if it shall appear to the Court or Judge where or before whom the same shall be tried, that such Action or Suit is brought for any thing that was done in pursuance of, and by the Authority of this Act, the Defendant or Defendants shall be indemnified and acquitted for the same; and if such Defendant or Defendants shall be so acquitted; or if the Plaintiff shall discontinue such Action or Suit, such Court or Judge shall award to the Defendant or Defendants Treble Costs.

APPENDIX II.

AUTHORITIES.

No attempt is made here to furnish a complete bibliography. I have tried to make use of all the material that might bear on the subject; to give a full catalogue of the books consulted would scarcely be possible, and would certainly appear pedantic. In the following list I include in the main therefore, only titles to which reference has actually been made. The arrangement is alphabetical:

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- a. *State Papers and Correspondence concerning the Province of*

Quebec, 1760-80. [The MS. copies of the more important documents have been compared with the originals or original duplicates in the Record and Colonial Offices, London. The series is calendared as Q in the Reports of the Canadian Archivist, beginning with that for 1890. It includes the complete official correspondence between the Secretaries of State for the Southern Department and the Colonies, the Board of Trade, and the Colonial officials, together with copies of the more important papers belonging more properly to the Privy Council and the Treasury. With all documents concerned.]

- [b. *The Haldimand Papers.* [A copy in 232 MS. volumes of the collection (deposited in the British Museum) of official and other matter accumulated by General Haldimand, long and prominently connected with Quebec, and Governor-in-Chief 1778-83. This series has been calendared as B in the Reports of the Canadian Archivist (1884-9), and has been used mainly through that guidance.]

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