

Europe.

IMPERIAL PARLIAMENT.

HOUSE OF COMMONS—JULY 22.

Mr. FRANKLAND LEWIS reported from the Select Committee appointed to enquire into the state of the Civil Government of Canada, as established by the Act of 31, Geo. III., and to report their observations thereupon to the House, and to whom the several petitions for an alteration in the present Government were referred—have, pursuant to the order of the House, examined the matters to them referred, and agreed to the following Report:—

Your Committee began their investigation into the state of the Civil Government of Canada, by examining the several petitions from the inhabitants of the two Provinces which had been referred to them by the House. The petition from the townships of the lower province, signed by about 10,000 persons, complain of the want of Courts within their own limits, and of the administration of French law in the French language. That they are without representation in the House of Assembly in Lower Canada; and that Emigrants of British origin have been deterred from settling in the Province. And finally they pray that a Legislative union may take place between Upper and Lower Canada.

Your Committee then proceeded to examine the petition signed by about 87,000 inhabitants of Lower Canada, resident within the Seignories, who complain of arbitrary conduct on the part of the Governor of the Province—of his having applied public money without legal appropriation—of violent prorogation and dissolution of the Provincial Parliament—and of his having prevented the passing of many useful Acts, which they enumerate.

They complain also that a Receiver-General had been maintained in the exercise of his functions for some years after his insolvency was known to the Government. That similar abuses had prevailed with respect to the office of Sheriff. And it is further stated, that the rights of the petitioners had been injured by acts of the Imperial Parliament, particularly by the Canada Trade Act, and the Act passed in the sixth year of His Majesty's reign, c. 59, affecting the Tenures of Land.

For a further knowledge of the grievances complained of, your Committee beg leave to refer to the petitions, which will be found in the appendix.

Before your Committee proceed to explain or to discuss these important subjects, they think it their duty to state, that Petitions from the Province of Upper Canada were also referred to their consideration. The prayer of which petitions is, that the proceeds arising from the sale of certain lands set apart for a Protestant Clergy may not be applied solely to the use of the Clergy of the Church of England, (the adherents to which throughout the Province, they state, in contradiction to the representations of Archdeacon Strachan, to be comparatively few in number,) but that they may be applied to the maintenance of Protestant Clergymen of other denominations, and to the purposes of general education.

As these petitions appear to comprehend the most material subjects that have of late agitated the Provinces of Upper and Lower Canada, your committee thought it the best course they could pursue, was to examine witnesses as to each petition, in succession, and in communicating to the House, the information they have received, and the opinions they have been induced to form as to the Civil Government of Canada. They will treat of the different subjects as much as possible in the order in which they were investigated.

Your Committee proceeded to examine into the peculiar system of law established in Lower Canada, to which their attention was particularly drawn by the petition from the townships. Your Committee have examined in great detail on this subject, from which they collect that uncertainty has long existed on points of law relating to the tenure of real property in that portion of the Province. It appears that shortly after the Cession of the Province, the King of England, in a Proclamation dated the 7th October, 1763; (which will be found in the appendix,) declared amongst other things, "That all the inhabitants of the Province, and all others resorting to it, might confide in his Royal Protection for enjoying the benefit of the Laws of England," and he announced that he had given commands for the erection of Courts of Judicature, with an appeal to His Majesty in Council.

In the year 1774, the first Act of Parliament was passed, making provision for the better government of this part of the British dominions. By this Act, the English Criminal law was preserved. But it was enacted that in all matters of controversy relative to Property and Civil Rights, resort should be had to the laws of Canada, as the rule and decision of the same, and all causes that should thereafter be established in every Court of Justice, to be appointed within the Province, should, with respect to such Property and Rights, be determined agreeably to the said laws and customs of Canada. "There is, however, one marked expectation to this concession of the French law, namely, that it should not apply to lands which had been, or should be granted in free and common soccage."

After an interval of seven years this Act was followed by the Constitutional Act of 1791. The provisions of this important Act having no bearing upon the subject under our consideration, excepting that it provides with respect to Lower Canada, that lands shall be granted in free and common soccage if so desired. And further, that such grants are to be subject to such alteration, as to the nature and consequences of Soccage Tenure, as may be made by the Provincial Legislature and with His Majesty's approbation and assent, but no such alteration has been made.

On examining into the application of these provisions in the Province, it appears not only that doubts have existed as to the true interpretation of them—but that the general practice of the Colony has been to convey real property within the townships according to the Canadian forms. And that it has descended and been subject to the incidents of that law. In the year 1826, the British Parliament passed an Act which put its own interpretation to these statutes beyond the reach of further dispute. This Act, commonly called the Canadian Tenure Act, declared that the law of England was the rule by which real property within the Townships was to be hereafter regulated and administered. In offering any recommendations on points of so much difficulty and importance, your Committee are fully aware of the disadvantage under which they labour, and of their inability, from their want of sufficient technical and local information, to enter for any useful purpose into minute and intricate details. They do not, however, decline to offer as their opinion, that it would be advantageous that the declaratory enactments in the Tenures Act respecting Lands held in free or common soccage, should be retained.—That mortgages should be special, and that in proceedings for the conveyances of Land, the simplest and least expensive forms of conveyance should be adopted upon the principle of the Law of England, that form which prevails in Upper Canada, being probably, under all circumstances, the best which could be selected. That a registration of deeds relating to Soccage Lands should be established as in Upper Canada.

Your Committee are further of opinion that means should be found of bringing into effective operation the clause in the Tenures Act which provides for the mutation of tenure; and they entertain no doubt of the inexpediency of retaining the seigneurial rights of the crown, in the hope of deriving a profit from them. The sacrifice on the part of the crown would be trifling, and would bear no proportion to the benefit that would result to the Colony from such a concession.

In addition to these recommendations, it appears to be desirable that some competent jurisdiction should be established to try and decide causes arising out of this description of property; and that circuit courts should be instituted within the Townships for the same purposes.

The Committee cannot too strongly express their opinion that, the Canadians of French extraction should, in no degree, be disturbed in the peaceful enjoyment of their religion, laws, and privileges, as secured to them by the British Acts of Parliament; and so far from requiring them to hold lands on the British Tenure; they think that when the lands in the Seignories are fully occupied, if the descendants of the original settlers shall still retain their preference to the tenure of Fief et Seigneurie, they see no objections to other portions of unoccupied lands in that Province being granted to them on that tenure, provided that such lands are set apart from, and not intermixed with, the Townships.

Your Committee are now desirous of adverting to the representative system of Lower Canada, with respect to which all parties seem to agree that some change should take place in this branch of their en-

quiry. They are desirous of recalling to the recollection of the House, that under the provisions of the Act of 1791, the division of the Province for the purpose of exercising the elective franchise, was entrusted to the Governor; and it appears that Sir Alured Clark, apportioned the Representation according to the numerical amount of the population, as the sole basis on which his calculations were formed, and divided into Counties as much land as was found to contain a given number of inhabitants. On the thickly peopled banks of the St. Lawrence, a small District was found to suffice, while in the more distant parts, vast territories were comprehended in one County, in order to obtain the requisite amount of population. Thus it happens that the Counties of Kent, Surrey, Montreal, Leinster, and Warwick, do not, altogether, equal, in extent, the single County of Buckinghamshire. The small Counties, too, are composed wholly of lands holden as Seignories.

A Bill actually passed the Assembly, the object of which, was to increase the number of the Representative Assembly. This Bill did not become a Law, and it appears to have been founded upon the same principle, and to have involved the same error as the original arrangement by Sir Alured Clark. It has been stated by one of the witnesses, that under the proposed division, a disproportionate increase would have been given to the Representatives from the Seignories.

In providing a representative system for the inhabitants of a country which is gradually comprehending in its limits newly peopled and extensive districts, great imperfections must necessarily arise from proceeding, in the first instance, on the basis of population only. In Upper Canada, a representative system has been founded on the compound basis of Territory and Population—this principle, we think, might be advantageously adopted in Lower Canada.

One of the obstacles which is said greatly to impede the improvement of the Country is, the practice which had prevailed in making grants of land in large masses to individuals who had held official situations in the Colony, and who have evaded the conditions in the grant, by which they were bound to provide for its cultivation, and now wholly neglect it, although powers have been latterly acquired by the Government to treat these lands; and although we think that under certain modifications this power may be advantageously used, we are nevertheless of opinion that a system should be adopted similar to that in Upper Canada, by the levy of a small annual duty on lands unimproved and unoccupied, contrary to the conditions of the grant.

It now becomes the duty of your Committee to advert to the Petitions signed by the Inhabitants of the Seignories, on the important subjects contained in them. They thought it right to call for explanation from Mr. Neilson, Mr. Viger, and Mr. Cuvillier, members of the Assembly of Lower Canada, who had been deputed to this Country for the purpose of seeking redress for the injuries complained of by the Petitioners.

From the testimony of these Gentlemen, we have learned, with the deepest regret, that the disputes which have arisen between the Government and the House of Assembly, originated (as they appear to have done) in doubts as to the right of appropriating, and accounting for a considerable portion of public accounts, have led to a state of confusion and difficulty in the administration of public affairs in that Colony which calls for a decisive and early remedy.

With a view to understand accurately, the grounds of this dispute, the Committee have carefully examined into the different sources of revenue arising in Lower Canada, and they have examined also the public documents which have enabled them to trace the successive steps which had been taken by the contending parties in these disputes. Your Committee beg leave to refer to the evidence of Mr. Neilson, and of Mr. Wilmot Horton, for a detailed account of the origin and progress of these differences.

Upon this important subject, your Committee have felt that they should not do wisely in confining their views to a critical examination of the precise meaning of the words of the different statutes—they look rather to the circumstances of Lower Canada—to the spirit of the Constitution—to the position and character of the local Government—and the powers, privileges, and duties, of the two branches of the Legislature.

Although from the opinion given by the law offi-