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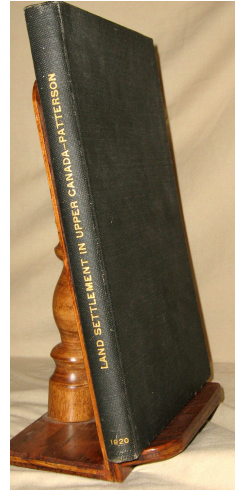
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Land Settlement in Upper Canada

George Patterson : published 1921

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ABOUT THIS CD.

The author of this book, George Patterson, scoured the Ontario Archives to put together this report, initially presented to the Lieutenant Governor of Ontario and the Provincial Treasurer, but which now provides us with an unbiased, factual, account of the planning and allocation of settlement land in Upper Canada, today called Ontario.

This is the book which all serious genealogical researchers in Ontario need in order to make sense of the layout of the counties, townships, towns and villages and to understand how their ancestors land allocations were determined. This, in fact, is the key to so many of the otherwise baffling facts we find on the maps and in the records of Ontario.

The report does not hide that there were many shortfalls in the land allocation processes used by the newly created Upper Canada parliament, that there were many special interests involved, that in some cases land allocations were fraudulently granted and that, on a larger scale, political "dealing" was the cause of a significant amount of civil unrest. Three specific areas singled out in this last category are overgenerous grants to U.E. Loyalists, the granting of free land to military retirees and the allocation of "clergy reserves." Many other instances are cited but they mostly gave rise to local or individual disfavor. On the other hand, it also points out that efforts were made to make and control an ever increasing number of requests for settlement land over an enormous area.

It would, of course, be impossible to report on this subject without reference to the various agreements and arrangements made with the areas indigenous peoples and significant space is given to recording the facts of these negotiations.

For all the inequity and errors revealed in the process, nevertheless the report does provide a valuable picture of the development of the politico-social structure of Ontario, both in the early settling of the Loyalists and in the latter settling of the various national groups as they arrived from areas such as Scotland, Ireland and the other recognized areas of persecution in Europe.

The book is clearly written and comes with an extensive index. Nevertheless we have made it searchable and enabled our FastFind technology to speed you to the facts. It also contains fold out maps and reproductions of many of the original granting documents and announcements as well as samples of signatures of many of the key individuals whose names may appear on historic records. The various facts are well "cited" as they are divulged and the extensive bibliography provides the key to further research and reading.

ONTARIO ARCHIVES 1920

LAND SETTLEMENT
IN
UPPER CANADA
1783-1840

BY
GEORGE PATTERSON, M.A.

INTRODUCTION BY
ALEXANDER FRASER
Ontario Archivist



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1921

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INTRODUCTION

“We have built on what they have wrought.”—W. D. LIGHTHALL.

The beginnings of political institutions and of stable government in Upper Canada necessarily came into existence only with the systematic settlement of the land; and, as a more or less definite knowledge of the details of that settlement is requisite to an adequate study of our history, this volume is designed to aid the increasingly large number of students whose patriotic love imbues them with a desire to learn more and more of Canada's pioneer life and people.

The history of the territory, now the Province of Ontario, ante-dates the first British settlement of its lands by a period of more than a century and a half. In the interval lie the romantic episodes around which tradition is already winding its spell; the journeys of Champlain and of his intrepid successors; the explorations of Nicolet, Chouart and Radisson; Albnel, Joliet and Marquette; LaSalle, Hennepin, Henri de Tonti and others; the sublime heroism of the Jesuit Missionaries; the adventures, enterprises, and vicissitudes of the fur traders, in which *coureur-du-bois* and primitive Indian became brothers of the wild; and the re-echoing of the Seven Years' War of the American revolution; forming a rich heritage of intertwining fact and fancy on the canvass of our far past. A knowledge of and an interest in those pre-settlement days ought to be constantly encouraged, for as W. S. Herrington so well expresses it in his “Martyrs of New France,” with which every boy and girl in Canada ought to be familiar—“That the great mass of English-speaking Canadians are deplorably lacking in even a superficial knowledge of the history of their own country while under the French regime, cannot be successfully denied. . . . One would think that the history of Canada was still wrapped in mystery, or was quite barren of noteworthy personages. . . . There is no need to appeal to the histories of other lands for examples of romantic episodes, startling adventures, and superior types of manhood, so long as we have access to the records of the first settlers upon the banks of the St. Lawrence.”

This passage is quoted both because of its aptness, and as an acknowledgement of the service to the history of our Province rendered, in many ways, by Mr. Herrington during the past twenty years.

The study presented in this volume involves a brief sketch of the political machinery by which the administration of public affairs was carried on, and of the organization of the Government. The author assumes the responsibility for the views he expresses. On debatable questions it will be found

that he is transparently fair-minded, and that he rarely enters into political controversy.

With the appearance of the immigrants from the revolted American Colonies regular settlement may be said to have begun in Upper Canada, bringing with it large economic and political problems, some of which remained unsolved and contentious until after the legislative union of 1840. The British Government dealt generously with the new-comers from the young Republic and the Imperial wishes were given effect to, whole-heartedly, by the zealous Haldimand. The lands granted as compensation for losses in the war were meted by no niggardly hand; the public domain was lavishly bestowed. Not only were the original settlers requited, but children then unborn became beneficiaries as time passed on, so that nearly sixty years after the close of the war claims still came in, adjustments and re-adjustments were demanded, and a commission appointed by His Excellency the Lieutenant-Governor, to investigate claims and alleged grievances, reported that: "From an attentive consideration of the present state of the claims of the U.E. Loyalists—the time that has elapsed since the issuing of the Royal Proclamation promising lands to that meritorious class of subjects—the exceeding difficulty, under the present system of equitably dealing with the descendants of the original settlers—the committee is induced to recommend the adoption of some plan calculated to bring to a close all granting or transferring of land to any claimants of the Royal Bounty to U.E. Loyalists. . . . The increasing population and number of persons in each district of names similar to those in the U.E. lists, it is to be feared, opened a door to much attempted deception."

This experience, however, was only what might have been expected in the nature of things, and its recurrence has not been unknown. The steps taken to purge the list, as well as the lists of names removed after investigation, suggest a field of research too important to be abandoned to the exploration of interested genealogists. More serious consequences to the development of the province than those referred to are noted in the text.

Constant trouble also arose over the free grants of land made to soldiers of the Imperial and militia forces for service within and outwith Canada. The policy governing military grants and their administration form an interesting subject in the history of Upper Canada which will repay careful perusal, but to which brief references only are possible in this volume.

A third subject seriously affecting Upper Canadian settlement is that commonly known as the Clergy Reserves. When, by the Treaty of Paris, the exercise of the Catholic religion was assured to the French Canadians of that faith the British Government was not unmindful of the religious needs which would arise with the growth of a Protestant population in the new and extensive province. By the Royal Instructions, dated the 7th of December, 1763, General Murray, the Governor-in-Chief, was directed to give all possible encouragement to the erecting of Protestant schools, to the allotting of lands for glebes, to the maintaining of Protestant ministers and school masters; and to use all suitable means by which the Protestant religion might be promoted and established. This was further confirmed by the Quebec Act of 1774, and

CHAPTER I.

HISTORICAL SKETCH—CONSTITUTIONAL.

Ten years after the British conquest of Canada, the limits of the Province of Quebec were extended to include all that territory west of Acadia to which the French had laid claim, as far as the Mississippi and the Ohio. The population was small, for settlement extended scarcely beyond the Lower St. Lawrence Valley. Of the district between Lakes Huron and Ontario little was known. To reach it necessitated an expensive, toilsome, and often dangerous journey.

By 1776 British settlers had begun to filter slowly into this district. Following the American War of Independence their numbers were swelled by the migration of the Loyalists, seeking new homes under the old flag. It is estimated that some ten thousand of the latter had settled in the country west of the Ottawa by 1784. Already versed in the experiences of frontier life, they were to constitute a powerful factor in its later development.

The government of the province, as defined by the Quebec Act, was regarded with disfavour by the new arrivals. All legislative and executive power was in the hands of a Governor and Council. The administration of the law was unfamiliar; British criminal law, indeed, prevailed; but in civil cases the French system had been retained. To Loyalists who were promised lands as compensation for upholding the authority of the British Crown, a French land tenure was especially objectionable. The Canada Act of 1791 was an attempt to introduce more representative institutions and to modify the anomaly of foreign laws in a British colony.

Under this Act the former Province of Quebec was divided into two provinces, known respectively as Upper and Lower Canada. Upper Canada embodied the area west of the Ottawa, excepting the seigniories of Longueuil and Vaudreuil, situated at the junction of that river with the St. Lawrence. A Governor General appointed from London represented the Crown in military and foreign affairs for all the British provinces in North America. To each province was assigned an executive head in the person of a Lieutenant Governor. Upper and Lower Canada each had a Legislative Council and a Legislative Assembly. The Council members were nominated by the Crown, and held office for life; the Assembly was elective. Appointments to the Council were made through the Governor or the Lieutenant Governor, a minimum of seven "discreet and proper persons" being specified for Upper Canada, and fifteen for the lower province. Hereditary titles of honour might be bestowed upon these chosen ones, at the pleasure of His Majesty's Government. In preparation for the election of members for an Assembly, the Governor or Lieutenant Governor in each province was authorized to create "districts, or circles, and towns and townships," and to declare the number of representatives to be chosen by each. Franchise qualifications were set at forty-shilling freeholds in the districts or counties, and five-pound houses and

Counties, also in the English style, and these officers appointed the Justices. In 1807, the appointment of Lieutenants was disapproved by the Home Government, and thereafter the appointment of Justices reverted directly to the Governor. The extent of the services, in a pioneer community, of these officials is well exemplified by their duties in connection with the Crown lands. Indeed, local magistrates and the members of local land boards constituted the germ of municipal administration in Upper Canada.

HISTORICAL SKETCH—POLITICAL.

The system of government here outlined was formally inaugurated in 1792 by Colonel John Graves Simcoe, first Lieutenant Governor of Upper Canada. Accompanied by his young secretary, a person destined to play an unique part in the history of the Crown lands, he landed at Kingston on the first day of July, and there took the oaths of office. Simcoe had served through the Revolutionary War, in due course being placed in command of the Queen's Rangers. A reason for the selection of a military man lay in the existing relations between Britain and the United States. Both countries had violated the terms of the 1783 Treaty of Peace, the one by ill-treatment of the Loyalists, the other through failure to relinquish the western frontier posts. Although Britain made the American lapse a pretext for her action, the reason was commercial; the fur-trading interests feared loss of business should the Indians at these posts come under American influence. The negotiations which eventually culminated in the Jay Treaty of 1794, as yet had not assumed definite form, and the situation was decidedly uneasy. Lord Dorchester, the Governor General, was fully aware of the fact, and urged the Home Government to exercise discretion in the choice of governor for Upper Canada, situated as that province was in the region of the disputed posts. The Home officials, however, appear to have been satisfied as to Simcoe's fitness, and he was sent out.¹

His work in Upper Canada exhibits a curious mixture of enterprise and conservatism. His plans for the development of the province were on a scale proportionate to its great resources. "I consider this country to be of immense value, whether it be regarded in respect of its immediate advantages, the future prospect of advantage, or the probable grounds for supposing that it will remain the most permanent foreign possession of Great Britain."² He wished to build up in this new and fertile region a vigorous agricultural class strongly British in sympathy, which might form a bulwark of defence against possible future aggression on the part of the United States; at the same time, its agricultural, mineral and forest resources would so develop as to add very considerably to the wealth of

¹"I am perfectly aware of the force of your Lordship's reasoning on the necessity of having a person of judgment and discretion in the neighborhood of those posts, which are situated so distant from Quebec. . . . and I have the strongest reason to believe from the character of Colonel Simcoe, that he will answer that description. His present ideas are to fix his place of residence in a place which seems likely to afford him a convenient access to Detroit, the spot where that discretion appears now most necessary to be exercised."—Colonial Office to Lord Dorchester, September 16, 1791. Q 52, pages 209-210, or the Henry Adams transcripts of British Colonial correspondence, "Canada, 1789-1798." Can. Arch.

²To Dundas, June 2, 1791. Q 278, page 228. Can. Arch.

CHAPTER II.

PRIOR TO 1791.

The system of land tenure which prevailed throughout Canada prior to British occupation was the seigniorial tenure of Old France. In Canada it was adapted to relatively the same conditions as those which influenced its growth in the country of its origin—the need of defence against savage invaders. The seignior in this new land became once more a military leader, on guard against a very real enemy, the Iroquois Indian. It was with the object of checking Iroquois raids on settlements farther down the St. Lawrence that the first European settlement, in what is now the Province of Ontario, was founded. At Kateracoui or Cataracoui, at the north-eastern extremity of Lake Ontario, where the city of Kingston now stands, Count Frontenac, Governor of New France, built a fort in 1673. A few years later, the land on which the fort stood was granted in seigniorie to the Sieur de la Salle, who built a stronger fort and used it as a base from which to explore the western country.

Exploration brought but little result in the way of settlement. La Salle established a post above Niagara, but it was abandoned and not permanently rebuilt until 1725. A third settlement was that of Detroit, on the site of the present city, where a trading post was built in 1701. The importance of these stations was commercial; they lay at successive intervals along the great water route by which the Indians brought down their treasures of fur to the French traders. But of settlement in the sense of permanent economic development there was none during the French régime.

When in 1763 the British acquired New France, the proclamation which set forth its future form of government gave full notice of an intention to encourage emigration from Britain and from older colonies also. The Governor in Council was empowered to bestow Crown lands on residents, especially "such reduced officers as have served in North America during the late war, and such private soldiers as have been or shall be disbanded in America," the motive being "to testify our Royal sense and approbation of the conduct and bravery of the officers and soldiers of our armies, and to reward the same."¹ Grants were to be proportioned to rank. Naval officers and seamen might share these privileges.

The Instructions to Governor Murray² give in detail the methods by which land grants were to be effected. A survey of Quebec Province was to be made as soon as possible, and information on every point of probable value in settlement was to be gathered. Townships were to be laid out: ". . . it has been found by experience that the settling planters in townships hath very much redounded to their advantage." They were to contain about 20,000 acres each, having, as far as possible, natural boundaries extending up into the country, and "comprehending a necessary part of the River St. Lawrence." In the most convenient part of each township

¹Q 62A, Part I, page 114. Can. Arch.

²Ontario Archives, 1905, lvi, s. 45.



N^o CERTIFICATE of the Board appointed by His Excellency the Lieutenant Governor for the District of _____ in the Province of Upper Canada, under the Rules and Regulations for the Conduct of the Land Office Department, dated Council-Chamber, Quebec, 17th. February, 1789.

THE Bearer _____ having on the _____ day of _____ preferred to this Board a petition addressed to His Excellency the Lieutenant Governor in Council for a grant of _____ in the Township of _____ in the District of _____

We have examined into his loyalty and character, and find him duly qualified, we hereby assign to him the Town Lot N^o _____

which he is hereby authorized to occupy and improve. And having improved the same according to the Ninth Article of the Additional Rules and Regulations hereunto subjoined, he shall receive a grant of the said _____

to him, and his heirs or devisees in due form, on such terms and conditions, as it shall please his Majesty to ordain. And all persons are desired to take notice, that this assignment, and all others of a similar nature are NOT TRANSFERABLE by purchase, donation, or otherwise, on any pretence whatever, except by an act under the signature of the Board for the District in which the lands are situated, which is to be endorsed upon this certificate.

Given at _____ this _____ day of _____
one thousand seven hundred and _____

EXTRACT from the Additional Rules and Regulations for the Conduct of the Land-Office Department, dated Council-Chamber, Quebec, 25th August, 1789.

IX. **T**HE Boards shall not issue any Certificate for more than one Town lot of one Acre, or one Town Lot and one Town Park of Twenty-four Acres together, to the same person (being the head of a family) and this only upon condition of his building a dwelling house on such town lot, and occupying the same, within the space of one year from the date of the Certificate. And in cases of Competition the Boards are to give the preference to such applicants, for whose trades and occupations, the respective lots, on account of their situation near the water, or otherwise, may be best calculated; and to such sober and industrious mechanics, whose trades are most necessary to the convenience of the Township in general. And the boards are to be particularly careful to discountenance frivolous applications, & not to authorize any transfers of unimproved town lots and Town Parks, which only tend to create a mischievous Monopoly of the ground. Nor shall any Town parks be granted separately from Town Lots, the former being intended for the convenience of the settlers upon the latter; and a failure in the condition, upon which the Town lots are granted, shall operate the forfeiture of both.

CHAPTER III.

THE PERIOD OF ASSOCIATED COMPANIES.

The authority of the Land Boards was to expire on May 1, 1791. As that day approached, it became necessary to make provision for the continuance of their work, until such time as the Home Government should issue further instructions. Accordingly, on March 3, a circular letter, issued by the Governor in Council, announced the appointment of new Boards, to be governed by the same rules as their predecessors. Their authority was to continue to June 1, 1793.¹

A little later the Constitutional Act came into force, and on August 24 a royal Order in Council divided the province of Quebec into the provinces of Upper and Lower Canada. Sections 43 to 45 of the Act dealt with the matter of lands.² The one important change from the old Quebec system, so far as Upper Canada was concerned, was embodied in these words: "All lands which shall be hereafter granted within the said province of Upper Canada shall be granted in free and common soccage, in like manner as . . . in that part of Great Britain called England." The same privilege was to be extended to individual land holders in Lower Canada if so desired, otherwise the French tenure would remain in force. Eventually a very large number of holdings were changed to freehold, so that the two provinces in succeeding years had many land problems in common.

In Upper Canada, persons holding lands by virtue of certificate of occupation obtained under authority of the former Quebec government were to surrender the same to the person administering the government of Upper Canada, and receive a fresh grant in free soccage, such transfer and grant not to affect any interest in the land already acquired by persons other than the certificate holder. The Instructions to Lord Dorchester as Governor in Chief of Upper Canada, issued September 16, 1791, added the necessary details of procedure.³ All persons applying for grants were to give evidence of their ability to cultivate and improve them. If the Governor in Council considered it advisable to pass the application on this count, a warrant was to be issued to the Surveyor-General, empowering him to make a survey of the lands wanted, the return to be made by him within six months at most, with a description of the lands appended. Then the grant was to be made out in due form, and registered in the Register's and Auditor's offices within a maximum period of six months from issuance. The lands so granted were to be laid out in townships in the usual way, and subdivided "in such manner as may be found most advisable for the accommodation of the settler," reserves for a Protestant clergy being distinctly specified.

¹Q 252, page 166.

²Ontario Archives, 1905, page civ.

³Q 425D, page 21.

CHAPTER IV.

THE PERIOD OF EXECUTIVE FREEDOM.

By 1797 Upper Canada was acquiring a more settled appearance. The stream of Loyalist immigration had almost ceased, but a regular influx of American and British settlers was taking its place. The Government was firmly fixed at York; two concession lines had been run on either side of Yonge street, and the province bid fair soon to support a prosperous trade in lands.

The procedure in acquiring a grant also had become more regular and systematic, and fairly typical of the methods used while the system of free grants remained in vogue. Each petition for land was referred to a committee of the Executive Council, and upon its recommendation usually was acceded to by the Lieutenant Governor or person administering the government. The quantity ordered was endorsed on the back of the petition under his signature. Then the order was entered in the Minute Book of Council, and upon application by the petitioner a warrant of survey was made out by the Clerk of Council. This was presented to the Surveyor-General, who thereupon located the grant as nearly consonant with the applicant's wish as possible. A description of the location was entered in the office record book in presence of the applicant, but only a memorandum of it was given him at the time, lest he try to sell it before the patent issued.

The description was taken in its due turn with others already in the office and sent, with an authenticated copy of the Order in Council, to the Attorney-General. That officer then proceeded to draw up the deed, which, upon completion, he transmitted with his fiat for its issuance, to the Secretary of the province, who affixed the Great Seal. After being signed by the Lieutenant Governor the deed was docketed in the office of the Auditor-General, and was sent from thence to the Registry Office to be registered. The Secretary, in due course, announced in *The Gazette* that certain deeds lay in his office ready to be delivered to the owners or their attorneys upon application. The fees charged by the various offices concerned in passing a deed were according to an authorized table, and were paid in by the applicant to the Secretary of the province upon receipt of the deed. The Secretary, in turn, transmitted them to the Receiver-General, afterwards distributing to the officers concerned their respective shares by warrant on the Receiver-General. The half fees allowed on privileged grants likewise were distributed, after having passed an audit of the Executive Council, but were paid directly to each officer by the Receiver-General instead of passing through the Secretary's hands.

There were three varieties of stipendiary payment to land officers—salary, salary and fees, or fees alone. Of course, both salaries and fees varied from time to time, but a few typical examples will serve to illustrate their application. The Lieutenant Governor at first received only fees on land grants, on the precedent set by Simcoe, but this arrange-

CHAPTER V.

THE PERIOD OF POPULAR CRITICISM.

Early in the year 1807 Surveyor-General Wyatt was suspended from office. The trouble originated partly in a difference of opinion respecting the official fees. In 1804, Hunter had rescinded the Surveyor-General's percentage on survey monies because that percentage had not been sanctioned by the Home Government. In September of 1806, at Wyatt's request, the decision was reconsidered, but only to be reaffirmed.¹ A few days later Lieutenant Governor Gore asked the Council to report on the fees of one shilling, four and a half-pence for search, and one shilling per hundred words for official reports, both of which also had been cut down by Hunter, though he had made exception in the case of reports "wherein the judgment and discretion of the Surveyor-General are required." The Council reported that there was no good reason for reversing the order, and if it were judged proper to give the Surveyor-General any remuneration for written reports it would be much better to have it in the form of a regular allowance. Moreover, it would be difficult to differentiate between ordinary reports and those specified by Hunter.² Gore held up this recommendation for an allowance, to Wyatt's annoyance. The immediate cause of the suspension was his indiscretion in administering certain affairs of his office. A quarrel with Ridout, his chief clerk, led to a request on the part of the latter for permission to resign. Gore, being informed by reliable persons that Ridout had afforded satisfaction to the public, while Wyatt was "very young, without experience," told Ridout to remain in office, whereupon Wyatt requested Gore to permit the resignation. Gore asked the Executive Council for advice and that body confirmed his action, pointing out that there was no suitable person at hand to succeed Ridout, and a loss to the public business would ensue. Gore thereupon refused Wyatt's request, but the latter, already exasperated by the loss of his fees, foolishly dismissed Ridout on his own authority.

Again Gore applied to the Council; that body was of the opinion that removals could be effected by no authority inferior to the Crown, because the Crown made appointments and paid salaries. Encouraged by this decision, Gore demanded of the Surveyor-General "under what authority and for what cause" he had removed Ridout, but Wyatt merely cited his commission as authority and refused to specify the charges. Gore then ordered him to deliver the charges in writing, but he again refused. The Attorney-General was asked concerning the extent of the Surveyor-General's commission, and replied that it did not cover patronage. The Council then advised Gore to exert the power which the constitution had placed in his hands, and on this advice he suspended Wyatt pending a decision from the Home Authorities. Chewett and Ridout were appointed to carry on the business of the office in the meantime. Secretary Castle-

¹Minutes of Council, State D, page 284.

²Ibid, page 285.

CHAPTER VI.

THE NEW SOUTH WALES SYSTEM.

Proposals for the disposition of the Crown lands by sale had been discussed at an early date in the history of Upper Canada. Prescott's plan of an additional fee (1798) in his opinion was secondary to one of sale; the former was added only "in case the disposal by sale should not be consistent with the dignity of His Majesty's Government."¹ Already means of evading the true spirit of the Royal Instructions concerning free grants had been found, to such an extent that Prescott believed persons desirous of acquiring land for actual settlement would succeed much better under a system of public sale. At that time he proposed that the land be sold in allotments of from 5,000 to 12,000 acres, whereby a company of from four to ten respectable and industrious farmers might be able to make the purchase without inconvenience. He thought the union of four or five farmers necessary to ensure the vigorous commencement of a new settlement. The surveys for the settlement were to be made at the expense of the purchasers. All sales were to be made subject to conditions of cultivation in the proportion of five acres out of each hundred of fit land, to be actually cleared and cultivated within seven years from the date of patent. In case of neglect to comply with this condition, a percentage of the land was to revert to the Crown at the end of the seven years, the percentage to vary with the degree of neglect. He was of the opinion that such a course would have much better effect than one entailing total forfeiture of the land, as it would obviate the chance of injustice to the settler and would not tend to defeat the Governmental purpose of developing settlement.

Sales were to be held only in January and February, when the farmer could best spare time from his ordinary business. Public notice of the sales was to be given from six to nine months beforehand as a means of ensuring sufficient publicity. Since most farmers, even of the wealthier sort, would require time to dispose of their property in the United States or elsewhere preparatory to coming into the province, Prescott proposed that only a small part of the purchase money be required at the time of sale, the remainder to be paid upon delivery of the patent; of course, within a limited period from the time of purchase. Should it not be paid within that period, the sale was to be revoked and the purchaser's deposit forfeited. Out of the purchase money the land officers would receive the same fees as were allowed on free grants. To prevent depression of land values, only a limited amount was to be sold in any one year, and in all cases a minimum price was to be fixed, below which no offer might be accepted. Commissioners to superintend the sales were to be appointed; they could be paid by a percentage on the amount sold. To prevent collusion between these commissioners and speculators, they were

¹Prescott to Russell, April 21, 1798. Q 284, page 224. The plan of sale is given on page 233.

CHAPTER VII.

CASH SALES AND PROVINCIAL CONTROL

Early in the year 1837 a circular despatch from the Secretary for the Colonies was laid before the Executive Council of Upper Canada.¹ It drew attention to certain serious defects in the regulations governing the purchase of land by instalments. The collection of these instalments was expensive, and the recovery of interest on the unpaid portion was virtually impossible. Although forfeiture was entailed for neglect of the established conditions of sale, "the nature of the case necessarily precluded a resort to so extreme a remedy." Hence the tendency of the system was to lead settlers to buy more land than they required, and consequently to disperse them over a wider extent of country than they could beneficially occupy. The effect on timber land was still more injurious; persons bought land by paying the first instalment, then stripped it of timber and later abandoned it, leaving merely wild land as a result of their occupation.

The despatch proposed as the most direct remedy for these evils a system of ready-money payments. Head was instructed to issue in Upper Canada a notice to the effect that from and after June 1, of that year, all purchasers of Crown lands would be required to lay down at the time of sale ten per cent. on the whole value of the purchase, and the balance within fourteen days from that date. Until the whole price was paid, the purchaser would not be put in possession of the land, and in the event of payment not being made within the prescribed period the sale would be considered void and the deposit forfeited. Similar rules would apply throughout all the North American Colonies. The operation of this new regulation had been deferred until June in order that settlers who already had proceeded to North America on the faith of the existing regulations might be able to obtain lands on the terms they had been led to anticipate. But in order meanwhile to repress purchases by speculators not intending to settle, it was further ordered that the Lieutenant Governor give notice of the Government's intention strictly to enforce the conditions annexed to the sale of lands under the existing regulations.

In the determined agitation for control of the purse, which at this time characterized the political activity of the province, the Crown lands played an important part, for from them was derived a considerable portion of the provincial income. The Assembly argued that by *reserving* the Crown and clergy sevenths the British Government tacitly gave up control of all other lands. In this connection the Provincial Executive opposed all demands of the Assembly, but the Home Government was wiser, and in May of 1838 the Royal assent was given to an Act, passed in the Assembly in 1837, by which control of the public lands of Upper Canada virtually passed into the hands of the people's representatives. This Act, entitled "An Act to Provide for the Disposal of the Public

¹G 33 (Lower Canada), page 348. February 24.

CHAPTER VIII.

CORPORATE AND INDIVIDUAL EXPERIMENTS.

In 1794 an enterprising German named William Berczy saw Simcoe's proclamation offering free lands in Upper Canada. He had at his command some sixty families of German colonists newly come from Hamburg, whom he had settled in the Genesee valley in New York State. On May 17th he petitioned Simcoe in Council for 1,000,000 acres for a colonization scheme, proposing eventually to settle two thousand families. His associates were Dederic Conrad Brauer and Charles Lewis Brauer, both of New York City.

Hammond, the British ambassador in New York, had recommended Berczy by letter to Simcoe and Chief Justice Osgoode. But the Executive Councillors were unwilling to grant so large an area to any one person or company, so the associates received only 64,000 acres, with a promise of more to follow when they should have proved their ability to support the settlers first brought in.¹ In June the first sixty families reached Niagara, where they remained for six weeks while their leader considered in what part of the province he should choose the lands assigned for their settlement. With Simcoe's consent, he bargained with the Six Nations Indians for a part of their lands on the Grand river. But the price did not suit him, and a free-grant area some forty-five miles north-east of York, in Markham township, was taken instead.

The settlement of which this was the nucleus was destined in course of time to become one of the most prosperous in the province. But from the viewpoint of its promoters it was scarcely a success. The condition attached to Berczy's own portion of the grant was that he should open out that part of Yonge street which ran past his lots, in the same way as Dundas street had been constructed, by September 15 of 1795. With this condition he failed to comply, and the grant was rescinded in April of 1796. But since he had been at some expense in trying to carry it into execution until obliged to stop by reason of sickness among his labourers, it was recommended that he be granted such a portion of land elsewhere as Simcoe might deem a proper remuneration.² In October, Simcoe having left the province, Russell bestowed this compensatory grant. But Berczy was dissatisfied. According to his own account, he asked Russell for the usual patents for himself and his settlers, whereupon he was informed for the first time that, being aliens, no patents could issue prior to seven years' residence in the province.³ Then came the regulation rescinding all grants to associated companies unless settlement had been made. Berczy was one of the chief sufferers.

He brought the matter to the attention of the Home Government. In 1801 the petition was referred back to the Executive Council for a report

¹Minutes of Council, Land and State A, page 127.

²Minutes of Council, Land and State A, page 374.

³M 137, Berczy Papers, vol. I, page 18.

CHAPTER IX.

THE CLERGY RESERVES.

The difficulties created by the system of reserved lands were common to both provinces but were especially prominent in Upper Canada, where Lord Durham considered them to be "the most mischievous practical cause of dissension" existing. The history of the clergy reserves in that province sustains his verdict. The established Church of England attempted to monopolize them, other Protestant denominations contested the claim, and there ensued a most undignified struggle, extending over a period of twenty years. The motive was not confined merely to a desire for possession of the income which might be derived from their rental or sale, but included the supposed proof of ecclesiastical superiority implied in their control. Because the provincial administration was strongly Anglican and supported the claims of that church, while the ranks of the opposition were recruited largely from other churches, the question took a political turn and in time came to constitute a specific point of difference between the two parties.

The trouble originated in the vagueness of a phrase in the Canada Act. Sections 35 to 42 allotted for the support and maintenance of "a Protestant Clergy" an area equal to one-seventh of all lands which might thereafter be granted by the King for settlement, and gave authority for the erection of "parsonages or rectories according to the establishment of the Church of England," to be endowed out of the lands so allotted. As stated in Simcoe's proclamation, the reserves were not to be massed together but were to be intermingled with the unreserved land. In this arrangement lay the economic and chief source of trouble. Had they been grouped, even to the extent of the old Crown reserves under the regulations of 1789, their ill-effects might have been mitigated. It was because they presented an obstacle to agricultural and communal progress that the question became so engrossing to the public generally; it was a difficulty added by the Crown to the already great difficulties of the settler. On its religious side the quarrel was noisy but of lesser importance.

The prize, from a material standpoint, was worth contesting. Mention has been made of the error whereby one-sixth instead of one-seventh of the whole was reserved. The total amount involved was estimated at 2,395,687 acres, and at the time of Lord Durham's report the excess due to the error in survey was about 300,000 acres. In addition, reserves had been made with respect to lands granted prior to 1791, a proceeding not called for by the Act.

A minor religious difficulty cropped up almost immediately. One of the first statutes which the Provincial Parliament had to pass was a Marriage Act for the purpose of solemnizing marriages which, through lack of such provision in earlier years, really were illegal. Unfortunately the Act legalized only marriages performed by the Anglican clergy. Accordingly a petition was made against it, much to Simcoe's annoyance. "I have long foreseen this event It is obvious that the next claim of

CHAPTER X

INDIAN LANDS.

The British Government always has recognized the title of the Indian tribes of Canada to the lands which they occupied. Hence the history of the Crown lands of Upper Canada properly begins with the transfer of the Indian lands to British ownership. But detailed records of the various treaties and surrenders by which the transfer took place are not always available, for the Crown Lands Officials had little to do with Indian lands in the beginning. That business was carried on by a military "Indian Department;" scarcely a record or account book was used, the Deputy Paymaster was the only public accountant for monies, and there was not even a permanent clerk for correspondence.

When Canada became British almost all of what is now Ontario still was in Indian hands, La Salle's grant of land at Cataraqui being a notable exception. In the proclamation of 1763 which followed the Treaty of Paris, defining boundaries and government, considerable space was given to the policy with respect to Indian possessions:

And whereas it is just and reasonable, and essential to our Interest, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of our Dominions and Territories as, not having been ceded to or purchased by Us, are reserves to them, or any of them, as their Hunting Grounds.—We do, therefore, with the Advice of our Privy Council, declare it to be our Royal Will and Pleasure, that no Governor or Commander in Chief in any of our Colonies of Quebec, East Florida, or West Florida, do presume, upon any Pretense whatever, to grant Warrants of Survey, or pass any Patents for lands beyond the Bounds of their respective Governments, as described in their Commissions; as also that no Governor or Commander in Chief in any of our other Colonies or Plantations in America do presume for the present, and until our further pleasure be known, to grant Warrants of Survey, or pass Patents for any Lands beyond the Heads or Sources of any of the Rivers which fall into the Atlantic Ocean from the West and North West, or upon any Lands whatever, which, not having been ceded to or purchased by Us as aforesaid, I reserve to the said Indians, or any of them.

And We do further declare it to be Our Royal Will and Pleasure, for the present as aforesaid, to reserve under our Sovereignty, Protection, and Dominion, for the use of the said Indians, all the Lands and Territories not included within the Limits of Our said Three new Governments, or within the Limits of the Territory granted to the Hudson's Bay Company, as also all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West as aforesaid;

And We do hereby strictly forbid on Pain of our Displeasure, all our loving Subjects from making any Purchases or Settlements whatever, or taking Possession of any of the Lands above reserved, without our special leave and License for that Purpose first obtained.

And, We do further strictly enjoin and require all Persons whatever who have either wilfully or inadvertently seated themselves upon any Lands within the Countries above described, or upon any other Lands which, not having been ceded to or purchased by Us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such Settlements.

And whereas great Frauds and Abuses have been committed in purchasing Lands of the Indians, to the great Prejudice of our Interests, and to 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

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