



JOHN GRAVES SIMCOE AS A YOUNG MAN

(From an Oil Painting)

The Life *of*  
John Graves Simcoe

First Lieutenant-Governor *of* the Province  
of Upper Canada

1792-96

*By*

The Honourable William Renwick Riddell  
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Justice of the Supreme Court of Ontario

*Fortunatus et ille deos qui novit indigenas*

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TO THE MEMORY OF  
JOHN ROSS ROBERTSON  
OF TORONTO

A Canadian who loved his country, a Journalist who loved his  
profession, a Mason who loved his order, a Man  
who loved his fellowmen,

This Life of John Graves Simcoe  
Is Dedicated  
by his friend for many years  
The Author.



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## Preface

THIS work would not have appeared—at least in its present form—but for the diligent and successful researches of the late John Ross Robertson. My own investigations, pursued for some years, into the early history of Upper Canada, brought us together on many occasions. We found a common object of interest in John Graves Simcoe, our first Lieutenant-Governor. Mr. Robertson frequently urged me to write a life of Simcoe and I as often replied by urging him to do so. On almost the last interview we had, it was agreed that we should undertake the task together, he to write concerning Simcoe out of Canada and I concerning him in Canada. His lamented death prevented that project being carried into execution; but his son, Mr. Irving E. Robertson, has generously placed his collection of correspondence, &c., at my disposal that I might alone write what we had intended to write in association.

For the following pages I am alone responsible. Although the documents collected by Mr. Robertson have been utilized to the full, no use has been made of the chapters he wrote.

Much of the material is found in the Simcoe and Simcoe-Wolford Papers procured by the late Mr. Robertson; much collected by myself from the Canadian Archives and elsewhere, appears now in convenient form in three publications by the Ontario Historical Society—*The Correspondence of Lieut.-Governor John Graves Simcoe*, edited by Brigadier-General E. A. Cruickshank, LL.D., F.R.S.C. The Canadian Archives and those of Ontario with their many treasures, have been drawn on freely,

## P R E F A C E

as have the Parliamentary Library at Ottawa, the Reference Library at Toronto, the Riddell Canadian Library at Osgoode Hall, Toronto, and the Congressional Library at Washington. To those in charge of these institutions my sincere thanks are due and are here given for their unfailing courtesy and attention to what must have seemed at times almost unreasonable demands. Miss M. I. Sivers, who for years was closely in touch with Mr. Robertson and his work, has been of inestimable service in suggestion, criticism and correction.

While it is not to be expected that the following chapters are wholly without error, I have in practically every case given my authority, so that the error, if important enough, may be corrected.

Full credit has been given in the instances in which other accounts of Simcoe's life have been quoted. I have in all cases gone to the original sources and owe nothing to any previous biographer.

No attempt has been made at fine writing: the facts of Simcoe's life have been plainly stated and conjecture has been avoided.

The chapter on Simcoe as a Freemason has been added out of respect for Mr. Robertson's well-known love of the Craft.

I venture to hope that the present work will do something to make Simcoe better known in his public and private career.

WILLIAM RENWICK RIDDELL.

Osgoode Hall, Toronto,  
September 1926.

# John Graves Simcoe



## CHAPTER I

### Birth and Descent

**J**OHAN GRAVES SIMCOE who was to become the first Lieutenant-Governor of the Province of Upper Canada, was born, February 25, 1752, at Cotterstock, a hamlet in Northamptonshire<sup>(1)</sup>, about ten miles from Peterborough and a mile and a half from the old town of Oundle.

His father was Captain John Simcoe<sup>(2)</sup>, whose ancestry has given trouble to some biographers; it may now be stated with certainty that he was the only son of the Reverend William Simcoe, Vicar of Woodhorn, Northumberland, who had been Curate of South Shields, Durham.

Born in 1710, John Simcoe was a man of the highest character, well read in the classics and general literature and specially skilled in mathematics. He obtained an appointment as Midshipman in the Royal Navy through the influence of his father in 1730: the name of the ship is unknown.

In 1737, he was appointed Lieutenant and in 1743, Captain. We find him in 1746 in command of H.M.S. *Falmouth*, employed about Jamaica in the unnecessary war with France which Pelham had declared in 1743; he was ordered by Vice-Admiral Thomas Davers of the Red Squadron, June 20, 1746, to take to England in his ship certain Spanish Privateers who had been captured by British ships in the Caribbean Sea<sup>(3)</sup>. He was placed in command of the second of the two divisions into which the home-bound fleet was divided, and arrived in due



## JOHN GRAVES SIMCOE

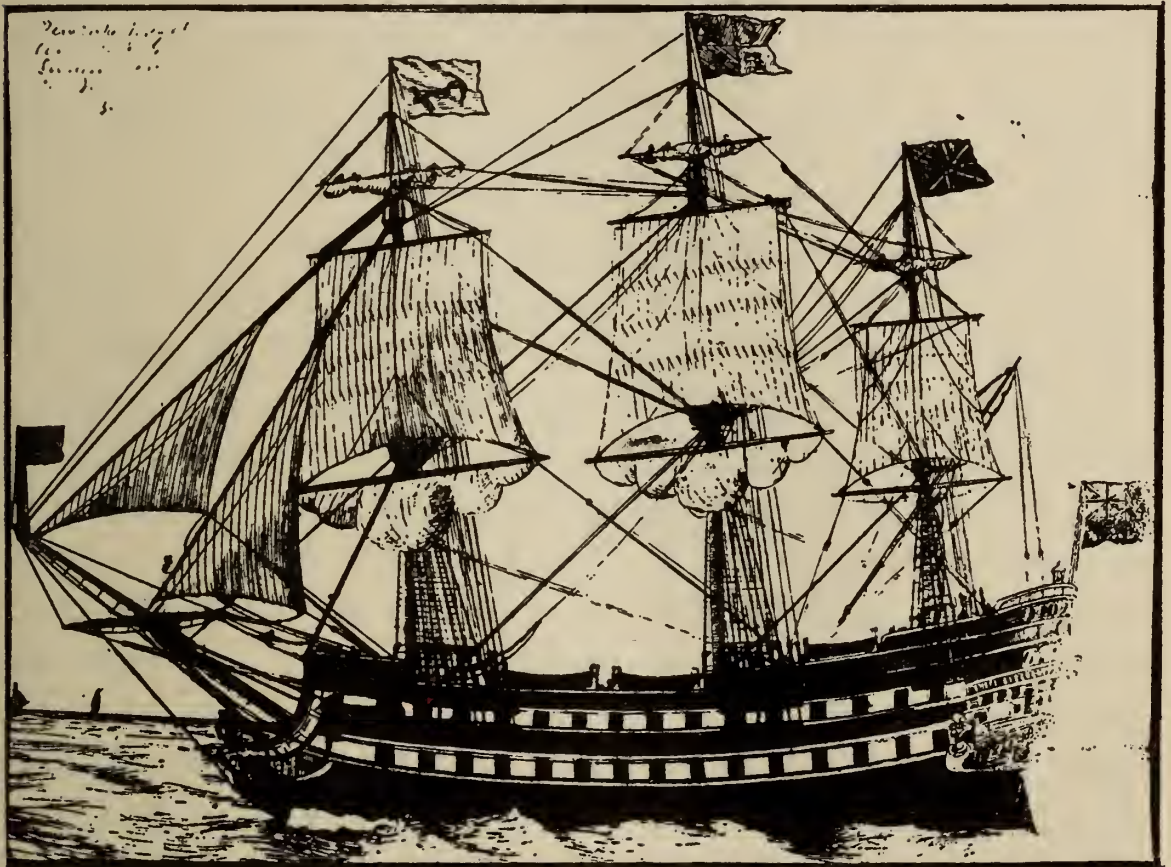
time at the Downs<sup>(4)</sup>. In the following year, 1747, we find him in command of H.M.S. *Prince Edward* in King Road, a roadstead in the estuary of the Severn<sup>(5)</sup>; and in the same year he was granted a coat of arms by the Garter and Clarencieux Kings of Arms—he was then described as of Chelsea, Middlesex.

In 1747, August 8, while still Commander of H.M.S. *Prince Edward*, he married Catherine Stamford; and after the Peace of Aix-la-Chapelle in 1748, settled in Cotterstock, where four sons were born to them, Pawlett William, John, John Graves and Percy William: the first and second died in infancy and the youngest was drowned in 1764. In 1749, he was involved in litigation arising out of his conduct as officer in the Navy; but he received the commendation of Chief Justice Willes at a trial at Guildhall<sup>(6)</sup>. He was an intimate friend of Samuel Graves, afterwards (1770) Vice-Admiral, and later (1778) Admiral; and the infant son received his second name in honour of this friend who became his godfather<sup>(7)</sup>. Simcoe hoped to be sent as Engineer in charge of the Forts and Settlements on the Coast of Africa, but the Committee of Merchants to whom was entrusted the choice selected another; he remained for a time in command of the *Prince Edward*, stationed at King Road, but in 1755 was looking for a command with little prospect of success; he applied to be permitted in case of war to serve as a volunteer with Sir Edward Hawke, and his request was granted by the Admiralty. But he almost immediately received the command of the *St. George* at Portsmouth—the Seven Years' War, which broke out in 1756, demanded the services of all men so well qualified as John Simcoe. It was on board the *St. George* that the Court Martial for the trial of Admiral Byng was held, Simcoe being a member of the Court<sup>(8)</sup>.

An expedition to North America being in prospect,

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Simcoe applied for and received the command of the *Pembroke*, a new 60-gun ship launched in April, 1757; he said that he had the seizure of Quebec so much at heart that he could "almost resolve to go as a volunteer"<sup>(9)</sup>. He was ordered by the Admiralty, November, 1757, to put himself in command of a number of ships and proceed with them and the *Pembroke* to join Sir Edward Hawke;



H.M.S. PEMBROKE

*From a Monument in St. Andrew's Church, Cotterstock*

he had sealed orders, but the Fleet was to join the Rochefort expedition, which proved unsuccessful.

The following year finds him at Halifax under the command of Admiral Edward Boscawen and later at Louisbourg, in the siege and capture of which he took part<sup>(10)</sup>.

There has been some confusion as to the movements of Simcoe during the winter of 1758-9: it seems now clear

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that being on the *Pembroke* he was attached to Rear-Admiral Durell's Squadron which wintered at Halifax.

This Squadron was intended to cruise off the mouth of the St. Lawrence, to block the entrance and cut off all aid from and intercourse with France. Durell, however, remained at Halifax and gave as an excuse when Wolfe and Saunders arrived, April 30, that he was waiting to hear if the ice would permit him to sail up the St. Lawrence. Saunders ordered him to sea, and Simcoe went with the Squadron with his ship, but he did not reach Quebec, as he died, apparently of pneumonia, on board the *Pembroke*, off Anticosti, May 15, 1759<sup>(11)</sup>.

He had strong views of the importance of the conquest of Canada, and its incorporation in the British Empire. In a letter, June 1, 1755, to Lord Barrington, Secretary at War, he points out the insolence and aggressiveness of the French and adds:—"Such is the position of Quebec that it is absolutely the key of French America, and our possession of it would forever lock out every Frenchman, be the signal of revolt to the Indians—Our seizure of Canada would undeniably . . . . . give us the monopoly of the fur and fishery trades, open to us so many new and vast channels of commerce as would take off our every possible manufacture especially of woollen and linen, whilst it poured in every growth and every material at so cheap a rate as would make us necessarily the mart of foreign exportation and most amply compensate for even the extinction of all our other foreign trade of importation—a circumstance . . . . . to be wished as it would reunite and fortify all our colonists and the exclusive possession of that continent will fill each ocean with British shipping without depopulating this Country . . . . . ." He recommends a plan of campaign and future conduct in considerable detail, and urges again and again the ease and importance of the conquest<sup>(12)</sup>.

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Lord Barrington recognized the importance of the project, for we find him writing to Simcoe, "desiring to know what force of ships and troops would be sufficient"<sup>(13)</sup>. Simcoe's answer does not seem to have been preserved; but it is known that his son, the Lieutenant-Governor, always considered that it was his father's plans which were followed in the conquest of Canada, 1759-1760, and that the conquest was undertaken by reason of his representations. Later in the year 1755 or in 1756, Simcoe sends to a Lord of the Admiralty, an elaborate scheme "for forming a body of seamen into a regular disciplined corps to answer all occasions of service in peace or war"—"a marine brigade"<sup>(14)</sup>. The Admiralty in 1755 revived the Marine force which had disappeared after the Treaty of Aix-la-Chapelle in 1748: it has been continuously sustained since the revival and for many years without change from Simcoe's scheme.

In 1756, he urges the formation of a "well regulated national militia": he urges the repeal of the Game Laws, and permission to the people to shoot game—saying to the "Freeholder" whom he supposed to object, that "it is better to participate with a good grace your monopoly of wild birds to those whose labour feeds and clothes you and whose bravery . . . . . will defend you, your wife, your children, your estate and your real property, civil and religious, than have with a very bad grace your all exposed to be ravished from you by every merciless, rapacious invader . . . . . Let the destruction of game be but by fire arms . . . . . of the militia and its sale be absolutely prohibited and the contraveners impartially punished and the game will rapidly increase". He points out that the "Buccaneers, the Negroes and the Indians who carry their guns for subsistence are the best marksmen and most dangerous partisans in the world and only want to be broken to the art of war to be the

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best regulars. So will the English prove when allowed the exercise of firearms, the prohibition of which by the Game Laws has broken that British spirit, and extinguished that bravery heretofore the terror of the French nation”<sup>(15)</sup>. A National Militia was indeed organized in 1757 to continue with little change until 1908; but the Game Laws remained practically the same.

In 1757, he urges the possession by British of a fortified harbour on each side of the Isthmus of Panama—the advantage “would be immense and surprising; nothing less . . . . . than the entire trade and dominion of the South Sea would be the natural consequence—here would be a vent for all the woollen, linen and silk manufactures of Great Britain . . . . . with an advanced price, we could sell every commodity infinitely cheaper than the Spanish Merchant could afford . . . . .”<sup>(16)</sup>.

His last extant letters are insistent upon the necessity of conquering France by way of Quebec; he had, when Braddock was appointed in 1755 to carry on the war in America, pointed out to Hugh Percy, Earl (later Duke) of Northumberland “that France could not be advantageously attacked in America but by a direct seizure of Quebec”. This he repeated in 1759 to Northumberland; and also that “a peace on any other terms but the absolute dominion of North America will destroy us . . . . . a peace which leaves an inch of ground in North America to France will undo Great Britain . . . . . We have now in our power by a vigorous attack on Quebec to become masters of all North America at one blow.”

To Admiral Boscawen about the same time he wrote: “The reduction of Quebec will at a blow give us the dominion over North America”; and to Lord Ravensworth: “Another war will ruin Great Britain . . . . . in a few years if any temporary delusive peace now leaves an inch of Canada in the possession of France. We have

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it in our power now to ruin her there forever if we take Quebec this next year"<sup>(17)</sup>.

In 1754 he wrote for the guidance of young officers in army and navy an admirable paper, "Maxims of Conduct", or "Rules for Your Conduct"<sup>(18)</sup>.

Captain John Simcoe was evidently well educated. He had read and could aptly quote Cicero in the original and was familiar with Plutarch (perhaps in Bryan's Latin version of 1729) : his style was clear, his logic convincing, his terminology accurate, his conclusions generally sound and always plausible—his writings were admirable in their vigor and force; if we cannot always agree with him we must at least recognize his candor, persuasiveness, utter loyalty to King and country, and devotion to their interests as he saw them.

It has been thought worth while to give the foregoing particulars of Captain Simcoe to indicate that many of the best traits of the Lieutenant-Governor were inherited. Of his wife, Catherine Stamford, little is known except that she was a model wife and mother.

On the death of her husband, Mrs. Simcoe removed from Cotterstock to Exeter, devoting her life to her two boys until the younger was drowned in the River Exe in 1764, and then to her sole surviving child, John Graves Simcoe. In 1766, her death took place at Newcastle.

## NOTES

<sup>(1)</sup>Duncan Campbell Scott, in *The Makers of Canada; John Graves Simcoe*, Toronto, 1905, pp. 15, 17, erroneously places Cotterstock in Northumberland.

<sup>(2)</sup>David B. Read, Q.C., in *The Life and Times of General John Graves Simcoe*, Toronto, 1890, erroneously calls his father John Graves Simcoe: this error is repeated in a paper: *Lieutenant-General John Graves Simcoe, First Governor of Upper Canada* by F. R. Parnell, Niagara Historical Society, No. 36, 1924.

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The father of Captain John Simcoe is said by John Hodgson in his *History of Northumberland* to have been the Reverend William Simcoe, Vicar of Long Horsley in that County; but the investigations made by Mr. J. Ross Robertson or at his instance, make it plain that this is a mistake, and that he was Vicar of Woodhorn, as stated in the text.

The genealogy has been traced back some generations:— (I) William Simcoe, of Spurstow, Bunbury Parish, Chester, was Churchwarden of that Parish in 1664; his eldest son was (II) John Simcoe, born 1624 or 1625. He is described as “a Chandler at the Sugar Loaf in Fetter Lane”, and afterwards of Red Lion Square, Gentleman. At the age of 40 he married, *en secondes nocces*, Anne Dutton, a widow aged 36; *Harleian Society*, Vol. 34, p. 158. They had issue, *inter alia*, (III) William, born 1676, who became Curate at South Shields, Durham, and later Vicar of Woodhorn in Northumberland and Chaplain to the Prisoners in Newgate, Newcastle-upon-Tyne. By his first wife, Mary, daughter of John Hutchinson of Leaside House, Township of Hilton and Parish of Staindrop in the County of Durham whom he married January 3, 1609/10, he had issue, *inter alia*, (IV) John Simcoe who was born at Leaside House, November, 1710.

(3)“Vicenza Lopez and Manuel Bosques, lately Commanders of the Spanish Galley taken by His Majesty’s Ship *Wager* and José Borrell, late Commander of the schooner *Santa Maria* taken by His Majesty’s sloop *Drake*.” Wolf. I, 1, 4, (i. e., Papers obtained by Mr. J. Ross Robertson at Wolford.)

(4)Wolf. I, 1, 5-7.

(5)do. do. do. 14.

(6)do. do. do. 17. A letter to Captain John Simcoe at “Cotterstock near Oundle in Northamptonshire,” dated, Stratford in Essex, December 21, 1749, from Bamber Gascoigne, Lord of the Admiralty, suggested that Simcoe’s costs in the law suit should be paid by the Crown.

(7)Graves was Commander of the North American Fleet which attempted to enforce the Boston Port Act of 1774. In a letter to John Simcoe from Maddox Street, May 9, 1752, Graves presents compliments “to you and Mrs. Simcoe and infant Graves”. Wolf. I, 1, 20.

(8)For the preceding statement, see do. do. do. pp. 21, 28, 30, 44, 46, 53. Although from the Wolf. Papers, it is not made to appear that Simcoe was a member of this Court, do. do. do. 53, 54,

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it is certain that he was such. On March 1, 1757, it was ordered by the House of Lords that the President (Vice-Admiral Thomas Smith) and other members of the Court Martial including Captain John Simcoe should attend the House to be examined on the second reading of a Bill to permit Members of the Court to disclose some facts relative to the sentence of death pronounced on Byng: 15 *Parliamentary History*, Col. 809. See also Wolf. I, 1, 60, 61; and Simcoe gave evidence, March 2, 15 *Parliamentary History*, Col. 816, saying that he had no desire to disclose anything. It will be remembered that Byng was found guilty of wilful negligence at Minorca and was executed—in Voltaire's bitter jest, *pour encourager les autres*. Simcoe seems to have had no doubt of the justice of the verdict and sentence.

The proceedings in the House of Commons in the matter will be found in the Report for February, 15 *Parliamentary History*, Coll. 803-807: the Bill passed and was sent up to the House of Lords, February 28, and failed to pass, do. do. do. Coll. 807-827.

<sup>(9)</sup>See his correspondence, February, 1757, with Admiral Sir Charles Knowles (who made a mess of things in the expedition against Rochefort and was superseded the same year) and with Temple, Wolf. I, 1, 58, 59.

<sup>(10)</sup>His master was James Cook, who in later years declared that he had received a great part of his training in navigation and seamanship from Simcoe—Cook had been a common seaman in the Navy only a few years before. We shall meet Cook again. There are still extant documents by Simcoe concerning the siege of Louisbourg. The official Record in the Admiralty gives as the date of Captain Simcoe's death May 14; but the contemporary entry in the log of the *Pembroke* is May 15, the latter is probably correct.

<sup>(11)</sup>In a letter to Lord Ravensworth from the *Pembroke*, October, 1758, Captain Simcoe says that he had "been in the Gulf of St. Lawrence on a cruise with Charles Hardy attended only with the advantage of proving the ease of attacking Quebec."

Admiral Durell's Journal from October, 1758, is now available in the Archives at Ottawa. October 2, 1758, we find "Capt. Simcoe of the *Pembroke* ordered to discharge into the Garrison of Louisbourg the Party of Men and officers belonging to Bragg's Regiment."

On Oct. 17, Simcoe presided at a Naval examination (in Louisbourg harbour still).



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On Oct. 25, Durell orders certain things to be accomplished "that we may sail the sooner for Halifax Harbour."

On Oct. 26, *Pembroke* and *Vanguard* are supplied "with 4 months supply of surgeons necessarys."

Nov. 7, prepared to sail for Halifax: Simcoe is mentioned as being supplied with signals.

On the 12th, they had not yet sailed and "ordered Capt. Simcoe of the *Pembroke* to receive from the Hospital at this place (Louisbourg), all the recover'd seamen belonging to His Majesty's Ships that are at Halifax." Sailed from Louisbourg, Nov. 15; arrived the 20th; 21st, Simcoe arranged a court-martial; 23rd, he presided at an enquiry.

Dec. 4, he is "ordered to issue slop"; Jan. 12, he examined qualifications of a lieutenant; during February, they get their ships ready for sea as soon as possible.

March 8, Simcoe examines conditions of damaged slops on the *Elizabeth*. March 22, the same on the *Crown*.

In Admiral Durell's *Journal* . . . *Princess Amelia, Halifax Harbour* under date April 3, 1759, is the entry: "This day ordered the Captains of the *Pembroke*, *Centurion* and *Squirrel* to get their provisions compleated, the two first for four months . . ." In his *Remarks on Board the Princess Amelia from Halifax to the River St. Lawrence*, under date May 15, 1759, is the entry "This day died Capt. Simcoe of His Majesty's Ship *Pembroke*. I have appointed Capt. John Wheelock of His Majesty's Ship *Squirrel* to act as Captain of the said ship until further orders."

In the Log of the *Pembroke*, kept by James Cook, Master, of which a copy is in the Canadian Archives, the heading after the appointment of Captain Wheelock contains the names of "Captain Simcoe and Captain Wheelock." The *Pembroke*, as is shown by its Log, took an active part in the siege of Quebec.

Wolfe had an unfavorable opinion of Durell. If Wolfe was right, while Durell seems to have had sufficient technical and professional skill, he was dilatory and unenterprising—and that in an undertaking which above all else demanded speed and daring. It may be that Wolfe was not wholly just: Saunders was of a different type. Durell's *Journal* furnishes ample proof that they spent the winter in Halifax Harbour as all the entries are marked, "In Halifax Harbour", and Durell mentions sending ships to cruise about and search for French boats, for English ships off their course and the like. Canadian Archives, "Admirals' Journals, No. 7".

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Beckles Wilson, *The Life and Letters of James Wolfe*, London, pp. 421, 423, 424, is in error in supposing that Durell sailed a few days before Saunders left Spithead, February, 1759—Durell did not leave this side of the Atlantic that winter.

Since the above was written an admirable study of Durell's movements has been contributed to The Royal Society of Canada by Miss E. Arma Smillie, M.A.; it is entitled: *The Achievement of Durell in 1759*, and is published in the *Proceedings and Transactions*, R. S. C., 3rd Series, Vol. XIX, Section II, p. 131.

In the memoir attached to the 8vo edition of John Graves Simcoe's *Military Journal*, New York, 1844, is found the following statement: "The most striking occurrence of his (i.e., Captain Simcoe's) life arose . . . . it is said from an accident improved in a manner peculiar to genius and extensive professional knowledge. The story is that he was taken prisoner by the French in America and carried up the River St. Lawrence. As his character was little known, he was watched only to prevent his escape, but from his observations in the voyage to Quebec, and the little incidental information he was able to obtain, he constructed a chart of that river and carried up Wolfe to his famous attack upon the Canadian Capital". This is copied in Henry J. Morgan's *Sketches of Famous Canadians*, Quebec, 1862, p.116, and almost verbatim in David B. Read's *The Life and Times of Gen. John Graves Simcoe*, Toronto, 1890, at pp. 9, 10, and less fully in David B. Read's *The Lieutenant-Governors of Upper Canada and Ontario, 1792-1899*, Toronto, 1900, at p. 21, also in the paper mentioned in note 2 *suprà*. Duncan Campbell Scott in his *The Makers of Canada: John Graves Simcoe*, p. 16, says: "It is stated that he was enabled to supply Wolfe with a chart of the river and with valuable information collected during an imprisonment at Quebec. No details of this capture and imprisonment are anywhere given and the story begins in shadow and does not close in light."

It is certain that there is no truth in the story of alleged capture and imprisonment. Dr. Scott says: "The prototype of this tale is that of Major Stobo whose capture, detention in Quebec and subsequent presence with Wolfe before the beleaguered city are authenticated." Morgan, *op. cit.*, p. 116, says that Simcoe "was killed at Quebec in the execution of his duty in the year 1759 whilst assisting the ever glorious Wolfe in the siege of that City."—an error repeated in more than one work, amongst them, *Kingsford's History of Canada*, Vol. VII, p. 337, and my own *La Rochefou-*

## JOHN GRAVES SIMCOE

*cault.* This seems to have originally been an incorrect inference from his monument in the Church of St. Andrew's, Cotterstock.

To the memory of John Simcoe, Esq., late Commander of His Majesty's Ship *Pembroke*, who died in the Royal Service upon the important expedition against Quebec in North America in the year 1759, aged 45 years. He spent the greatest part of his life in the service of his King and country, preferring the good of both to all private views. He was an officer esteemed for his great abilities in naval and military matters, of unquestioned bravery and unwearied diligence. He was an indulgent husband, a tender parent and a sincere friend; generous, humane and benevolent to all; so that his loss to the public as well as to his friends cannot be too much regretted. This monument was in honour to his memory, erected by his disconsolate wife, Katharine Simcoe, 1760.

Underneath lie Pawlett William and John, sons of the above John and Katharine Simcoe.

It may here be added that Surveyor-General Major Samuel Holland in a letter to Lieutenant-Governor Simcoe, at York (Toronto) from Quebec, January 11, 1792, says that he met Captain Simcoe a few days after the surrender of Louisbourg on his ship the *Pembroke*; and "during our stay at Halifax . . . . under Captain Simcoe's eye, Mr. Cook and myself compiled materials for a chart of the Gulf and River St. Lawrence, which plan at his decease was dedicated to Sir Charles Saunders, with no alterations than what Mr. Cook and I made coming up the River. Another chart of the River, including Chaleur and Gaspé Bays, mostly taken from plans in Admiral Durell's possession was compiled and drawn under your father's inspection and sent by him for immediate publication to Thomas Jeffery, (Jefferys) predecessor to Mr. Faden. These charts were of much use as some copies came out prior to our sailing from Halifax to Quebec in 1759." The chart was reprinted in 1775 and 1794 with the Title—*An Exact Chart of the River St. Laurence, from Fort Frontenac to the Island of Anticosti, showing Soundings, Rocks, Shoals, with views of the Lands.* There is a copy in the Rid-dell Canadian Library at Osgoode Hall, Toronto.

Holland adds:—"Being General Wolfe's Engineer during the

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attack of that place, I was present at a conversation on the subject of sailing for Quebec that fall. The General and Captain gave it as their joint opinion it might be reduced the same campaign, but this sage advice was overruled by the contrary opinions of the Admirals who conceived the season too far advanced so that only a few ships went with General Wolfe to Gaspé, &c., to make a diversion at the mouth of the River St. Lawrence. Again, early in the spring following, had Captain Simcoe's proposition to Admiral Durell been put into execution, proceeding with his own ship, the *Pembroke*, the *Sutherland* and some frigates via Cut of Canso for the River St. Lawrence in order to intercept the French supplies, there is not the least doubt that Monsieur Cannon with his whole convoy must have been taken as he only made the river six days before Admiral Durell, as we learn from a French brig taken off Gaspé. . . . . Had he lived to have got to Quebec, great matter of triumph would have been afforded him on account of his spirited opposition to many captains of the navy who had given it as their opinion that ships of the line could not proceed up the river whereas our whole fleet got up perfectly safe". Revd. Dr. Henry Scadding's *Surveyor-General Holland*, Toronto, 1876, pp. 3, 4.

<sup>(12)</sup>See this letter *in extenso* in my edition of *La Rochefoucault's Travels*, published by the Ontario Archives for 1916, pp. 137-144; Wolf. I, 1 33-38, has verbal and unimportant differences; but there are in this manuscript some suggestions not in the printed text, e.g., Simcoe says:—"The cession of the neutral lands or whatever France may take in the West Indies or Mediterranean all would be an empty purchase for Canada.

Perhaps the erection of Canada into a kingdom for Prince Edward would for ages answer the purpose as well as be a greater, more rational, and permanent accession of strength to this Kingdom and Royal Family than the wearing of so many crowns by the House of Bourbon in different parts of Europe can possibly be to that family or France."

It will be remembered that there was considerable discussion during the Seven Years' War as to whether Canada should be retained and Guadaloupe returned to France on the Peace and that Franklin's "Canada Pamphlet" turned the scale. See my Papers, *Franklin in Canada*, Empire Club Papers, 1923, and *Benjamin Franklin's Mission to Canada and the Causes of its Failure*, Historical Society of Pennsylvania, Dec. 1, 1923, 47 *Pennsylvania Historical Magazine*, 1923. It is also known that it was intended that

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the country to be formed by the Provinces at Confederation in 1867 should be known as the "Kingdom of Canada", and that the name was changed at the instance of Lord Stanley who feared that such name would offend the susceptibilities of the United States. It was not intended in 1867, however, that the Kingdom of Canada should have a separate King as in Simcoe's suggestion.

Prince Edward was, of course, not the Duke of Kent, father of Queen Victoria, but Edward Augustus, Duke of York and Albany (1739-1767), second son of Frederick, Prince of Wales, and younger brother of King George III.

A memorandum initialled by John Graves Simcoe and in his handwriting, presented by his daughter to the late Rev. Dr. Henry Scadding, reads as follows:—

"Major Holland told me that my father was applied to, to know whether his body should be preserved to be buried on shore. He replied, 'Apply your pitch to its proper purposes,—keep your lead to mend the shot holes and commit me to the deep'". Rev. Dr. Henry Scadding's *Surveyor-General Holland*, Toronto, 1896, pp. 4-5.

Major Samuel Holland was Surveyor-General of Canada: Holland Landing and Holland River were named after him.

<sup>(13)</sup>Wolf. I, 1, 25. William Wildman, Viscount Barrington, was Secretary at War, Nov. 14, 1755, to Mar. 18, 1761: he was not Secretary of War or a principal Secretary of State at all but an official of inferior rank. At this time, and from 1539 to 1768, there were two Secretaries of State only; but in 1794, a Secretary of State for War was appointed. There are now five principal Secretaries of State, one being Secretary for War.

Barrington was not a member of the Cabinet; he made it a condition when he accepted the post of Secretary at War in Rockingham's Administration that he should be permitted to vote against the Ministry, both on the Stamp Act and on the question of General Warrants. John Heneage Jesse: *Memoirs of the Life and Reign of King George the Third*, London, 1901, Vol. II, p. 21.

The paper as sent to Barrington is without the very appropriate motto from Cicero, *De Oratoribus*, 2, 40, 169, prefixed to the copy in John Graves Simcoe's possession and printed in my edition of *La Rochefoucault (ut suprâ)* "Si barbarorum est, in diem vivere, nostra consilia sempiternum tempus spectare debent," which was added in a copy sent a little later to one of the Lords of the Admiralty. Wolf. I, 1. 39-41. Captain Simcoe says that the letter to Barrington was "the substance of what I had spoken when Mr. Braddock was first des-

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tined to Virginia, whose fate was foretold. I say nothing more about it but leave to time and events to discover the error or solidity of the reasoning", do. do. do. 44.

(14)do. do. do., 39-41. A copy of the letter to Barrington accompanied the scheme.

(15)do. do. do. 50-55.

(16)do. do. do. 70-72.

(17)Letter to Northumberland, do. do. do. 94, 95. Letter to Boscawen, do. do. do. 96: other letter, do. do. do. 97. In the last named letter he says that he "will write to Mr. Pitt very soon". In all the letters he presses his claim to a flag.

(18)A memorandum in Wolford MSS., in the handwriting of Eliza Simcoe, a daughter of General Simcoe, reads:—"London, Portland Place, No. 3, Maxims of Conduct by Captain John Simcoe, R.N. The following maxims for the guidance of young officers in the British Naval and Military Service, were written in the year 1754, for the edification of his sons, by Capt. J. Simcoe, R.N., a highly accomplished officer, who, at the age of forty-five, died on service whilst commanding the *Pembroke*, 64, during Wolfe's memorable expedition against Quebec."

This summary draft, however hastily and inaccurately penned, will point out your course and serve as a general beacon in learning and executing your duty if you are well disposed; if you are not, a thousand volumes would be ineffectual. But know it is your indispensable duty to labour to become the great and accomplished officer, which duty your country has a right to expect from all in her service in half pay as full employment; though your views and promotion may be traversed by faction, malice or ignorance, though caprice or bad lessons may defeat your expectations arising from your consciousness of the best intentions and real service, though the wanton favour of the superficial and narrow-minded even the consciousness of demerit and guilt may give to the less worthy, or less able, the posts, which your poor country's all may depend on, though birth will generally (and ought) where all other things are equal, have the preference,—bear the disappointment or injury with temperance in the day of National distress, which Heaven avert from this Kingdom. The voice of the public will do you justice amidst the obscurity to which you are condemned, call you forth for its own sake and the great accomplished officer shine with double splendour, when the "Will of the Wisps", if they should exist, will vanish.

Cotterstock, Octr. 20th, 1754.

J. SIMCOE.

# JOHN GRAVES SIMCOE

## RULES FOR YOUR CONDUCT

1. Let the groundwork of your whole conduct be a just respect for and love of God; know that with such respect, every man must necessarily be brave, and without such due impression every man must as necessarily be a coward.

2. The love of your Country and King, which necessarily flows from the first maxim, must be your ruling principle; let no ill usage taint this principle, to the observance of which you must always and cheerfully be ready, when occasion calls to sacrifice life, fortune and the strongest ties.

3. Cherish carefully that delicate and essential principle Honour, which, if pure will readily dictate what is fittest to be done, and what is to be avoided more than death.

4. Remember always that you are the servant of the Public, that its honour and safety may in a greater or lesser degree, be entrusted to your conduct; you can then never without a violation of your trust, sacrifice either to what busy blind selfishness may repute private good, or suffer the least competition between private and public emolument; the labourer is undoubtedly worthy of his hire if he use the delegated authority and wealth of his master; to labour only for himself he deserves a halter instead of a ribbon; instances have been where Officers have uniformly done their duty in sacrificing private to public regards, and for reward have met with neglect, contempt or injury; others have as uniformly sacrificed public duty to selfish pursuits and in the chase rose to opulence, favour and credit. Let no ill maxims, however general or successful, allure you from, nor ill usage slacken your devout discharge of your duty; you are sure of the noblest and most lasting reward, the testimony of a good conscience.

5. Let your obedience to the commands of Superior Officers be exact, implicit and cheerful; if those commands should at any time be indiscreet, or lead you instantly to sudden death you are in all cases most punctually to execute them, and know the first virtue in an inferior is cheerful obedience and,—hesitation, impiety—your superior alone being answerable for his orders.

6. He who knows not how to obey, can never know how to command; you are therefore not only to obey, promptly and with all your spirit the commands of a Superior, but you are in the course of your service to learn practically the distinct duties of every officer.

7. Be strenuous in learning your duty, be not afraid of



LEESIDE HOUSE

The Birthplace of Captain John Simcoe, R.N., Hilton, Durham, England.



WHERE GOVERNOR SIMCOE WAS BORN, COTTERSTOCK, NORTHAMP-  
TON COUNTY, ENGLAND





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labour, nor of the Tar-bucket; but constantly attend, when duty requires you not elsewhere, the boatswain's people in knotting, splicing and rigging, handing and reefing; perfect yourself in the detail of all business from the stem to the stern, from the keelson to the masthead; and learn all duties from the common seaman's to that of the highest commission officer. When you come to be an officer you'll make but an awkward figure, if in ordering the execution of any service you know not how to go about it dexterously yourself; besides such general knowledge in the detail will give you lights and a presence of mind which on occasion may save the Crown's ship or squadron, with the lives of invaluable subjects.

8. Charles the 12th of Sweden used to say that "he was but half a man who was without numbers"; it is as true a maxim that he is but half a Sea Officer who is not equally a good soldier as Seaman, and you must not therefore, as is too common, think yourself a fine officer, if you can rig and work a ship in the ordinary methods, and in which without the theory of ship working, you'll probably find yourself outdone by the collier or your own forecastle man; you must strenuously apply to learn the duty of a soldier.

9. It will not in this pursuit be sufficient to learn the battalion exercise; you must learn all the necessary military motions, the breaking and forming any body of men into Platoons, Divisions, Battalions, Brigades, all the various dispositions and combinations, camp duty, field duty, garrison duty, trench duty; in short, you must successfully learn whatever pertains in the Infantry to the office of Sentinel, Corporal, Adjutant, Lieutenant, Captain, &c., upwards to that of the General; thus your knowledge must rise from the small detail to a comprehension of the great parts of the military science till you are able to plan or execute the great operations of War founded on rational and systematical principles.

10. This progress towards the finished officer will be slow and ineffectual if in your course you enter not into the rationale of things; you must by enquiry, reading or reflection learn the reason of every process from the strapping of a block to the orders of battle, in the seaman's part, and from the posting of a sentinel to the orders of battle, according to the genius of the ground, the disposition, nature and number of the enemy in the soldier's duty; when reasoning goes not hand in hand with the practice in both services it is but routine, the act of a parrot. You can pretend to, and you'll be lost in most things which have not occurred to your grovelling experience, unable to remedy as invent in common

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exigencies; what then would be your figure, or where the lustre of the officer on extraordinary occasions?

11. It will greatly aid you to gain some knowledge in designing and in fortification; the latter will be useful when you attack or defend any fortified place, or are to defend any Port where intrenchment may prolong your defence, and save your honour as man till you are relieved; the first will be serviceable in infinite occasions in the Sea and Land services; the French make it a rule to give the government of their Colonies to their Sea Officers but their officers are well qualified as Soldiers, Seamen and Engineers; we begin to follow their example in those promotions; can we doubt that the maxim would not be as general as rational if our Sea Officers would take pains to inform themselves in those respective duties?

12. Exactitude is a necessary quality, but affect not the Martinet. It is dwelling on the surface without penetrating the essence of things. It is labouring about minutes and things of no consequence, betraying want of understanding and an incapacity of entering into the spirit of the service, or of combining and varying of things according to circumstances; such a one may be dignified with the Staff of a Velt-Marshal or Admiral, but he is at bottom a Corporal or boatswain's mate.

13. Remember that as a Surprise is most ruinous in its consequences, it is the greatest disgrace an Officer can incur, as it must arise from negligence; be therefore ever alert, vigilant, and careful on your post, nor let inevitable destruction tempt you to desert it without order in any circumstances whatever. By sea or land the same rule holds good in civil and ordinary life; whatever your station be, act in it well and with dignity, considering it as a post entrusted to you by Providence; this just behaviour will in a cottage make you a greater man than a Prince who acts remissly.

14. In your reading avoid everything trivial or which leads not directly to the knowledge of your duty, such as romances, novels, plays or poems; amongst these are to be excepted Homer, Virgil or any Tyrtæus if you meet with them; a little practical Geometry will be necessary. Above all, read a thousand times over *Caesar*, *Polybius*, *Arrian*, *Thucydides* and *Xenophon*. In the latter you'll find the politest scholar, the best man, the finest gentleman, and excepting the much injured Alexander, the greatest Captain in all ages. If you know not the original languages get the best translations. These will open your understanding, enlarge your ideas,

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ripen and inform your judgment better than a thousand campaigns under incompetent masters. Do not think that the benefit of reading these great military Masters is confined to the Land service; their lessons by analogy necessarily reach the Sea service, and the Military art; as good sense in the application belongs to both elements and speaks all languages; you will find in these and some other authors a Naval Art of War more profound, intelligent, scientific and therefore more bold than has appeared since their days. No wonder the greatest Sea Captains of antiquity as of modern times were those who were the most accomplished leaders of Armies on shore.

15. The choice of good military authors is very small, but for the honour of the military profession they are sufficient for all purposes and abound with the best precepts as examples, for civil and military life, and I hazard my reputation on this assertion that they are not only the best models for military conduct, but for conduct in every station of the patriot, courtier, statesman, magistrate, and finished gentleman.

16. I must not omit to observe that military duty of two kinds—duty of danger and duty of fatigue; both go or ought to go, unless in critical conjunctures, by rotation. Duty of danger begins with the oldest Officer, suiting the command, who has a right to the post. Honour on extraordinary occasions requests voluntarily the post of danger; if granted, labour to discharge adequately the honour and trust reposed in you; if denied you have done your duty with a good grace, but if you should be appointed to a duty of fatigue which goes by rotation, beginning with the youngest Officer, and if it should be a tour of a junior Officer you must without the least hesitation or discontent execute it cheerfully, nay, it will be for your advantage, for every such duty will be probably a new lesson towards perfecting your knowledge.

17. Inure your body to bear extremes of heat and cold, hunger and thirst, and exercise to agility and strength by suitable toil.

18. Use your Officers and men with humane treatment, set them the examples of temperance, modesty and obedience to the laws of your Country; regard the orderly and deserving; punish inexorably the disobedient and flagitious.

19. Avoid quarrelling. Give offence to none, nor suffer it from any, but you are to intermit it when you are on actual service, with which no consideration is to interfere.

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## ADDITIONAL NOTE

A statement of the Admiralty Records concerning Captain Simcoe, and an account of his services extracted from Charnock's "Biographia Navalis" are subjoined. These I owe to the courtesy of the Secretary of the Admiralty.

## PUBLIC RECORD OFFICE

Public Record Office, 11 Jan., 1924.

Result of a Search in the Admiralty Records:

Name	John Simcoe
Birthplace	v
Baptismal Certificate	v
First Entry	v
Passing Certificate	v
Seniority	Lieutenant 7 Aug. 1739; Captain 28 Dec. 1743.
Death	14 May, 1759.

Ship	Rank	Date of Entry	Date of Discharge	Remarks
New-castle	Lieut. (3)	7 Aug. 1739	11 May 1740	
"	" (2)	12 May 1740	15 Oct. 1740	
Princess Caroline	" (3)	16 Oct. 1740	14 Jan. 1741	
Burford	" (3)	15 Jan. 1741	26 Apl. 1741	
Russell	" (4)	27 Apl. 1741	7 June 1741	
Cumberland	" (2)	8 June 1741	1 May 1743	
"	" (1)	2 May 1743	18 July 1743	
Thunder Bomb	Master & Commdr	19 July 1743	27 Dec. 1743	
Kent	Captain	28 Dec. 1743	18 Feb. 1744	
Seahorse	"	19 Feb. 1744	28 Jan. 1745	
Falmouth	"	29 Jan. 1745	24 Oct. 1746	paid
H.P. x	"	25 Oct. 1746	13 Mar. 1747	off
x—	Half Pay			
Prince Edward	Captain	14 Mar. 1747	12 Sept. 1748	
H.P.	"	13 Sept. 1748	2 July 1756	
St. George	"	3 July 1756	4 Apl. 1757	
Pembroke	"	5 Apl. 1757	14 May 1759	DD. at Sea.

NOTE.—Passing Certificate cannot be found; for his Services before being appointed Lieutenant the name of a ship on which he served previous to 1739 would assist in a further search being made.

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*From Charnock's "Biographia Navalis", Vol. 5, London, 1797.*

SIMCOE, JOHN,—The name of this gentleman is omitted in many of the navy lists we have seen. In some of them he is stated to have been promoted to the rank of Captain in the navy, and appointed to the Kent on the 28th December, 1743; but Mr. Hardy states his first commission to have been to the Falmouth, agreeing, however, with the date just given. We find no other mention made, not even of the commands held by this gentleman, till the latter end of the year 1756, when he was captain of one of the ships then lying at Portsmouth and was one of the members of the court-martial convened, in the month of December for the trial of Admiral Byng. Nothing farther occurs relative to him, except that, in 1758, he commanded the Pembroke, one of the fleet ordered in the ensuing year on the expedition against Quebec. He died on board that ship, in the River St. Laurence, on the 14th of May, before any operations had taken place.

(*"A Chronological List of the Captains of His Majesty's Royal Navy"*, by Rear Admiral John Hardy, London, 1784.)

## CHAPTER 11

### Education and Early Military Life

**J**OHAN GRAVES SIMCOE was a little over seven when his father died and the family removed to Exeter; he had already received the rudiments of an education and shortly after removal to Exeter he entered the Free Grammar School in that Cathedral City. He was attentive and studious, an apt but not a brilliant scholar; what he learned, he learned thoroughly and retained permanently; at an early age, he read Homer in Pope's translation, and as a boy, he took part with his companions in a play portraying the scenes of the Iliad. He attained proficiency in the branches of knowledge taught in the school and was among the first, if not the first in his standing; he was also well versed in modern history, not as yet taught in schools, and he eagerly read every tale of war. Active, filled with a spirit of emulation, he was foremost in all games of boyhood—his standing on the playground equalled that in the schoolroom.

No myths have grown up about him, he seems to have been a hardy, active, well-bred English boy of the best type, and he was likeable and ever on good terms with his fellows.

In 1766, he was sent to Eton, and three years afterwards he entered at Merton College, Oxford. He took a high place in both Colleges in his studies—there is reason to think, also in sport—but there was nothing phenomenal in either. Extant examples of his English and Latin verses in manuscript indicate diligence, accuracy and ability; and volumes of ancient and modern history with

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annotations in his own hand sufficiently evidence his devotion to that study.

He does not seem to have taken a degree<sup>(1)</sup>. The reason is not known, but it has been said that it was due to ill-health<sup>(2)</sup>. Whatever the reason, he remained at Merton for only one year and returned to Exeter, where he studied military science under a tutor<sup>(3)</sup>, having been promised an Ensign's commission by friends of his mother.

All was not going well with the Empire; George Grenville's theory of Colonies that they existed for the advantage of the Mother Country had resulted in 1765 in the Stamp Tax; the American Colonies resisted; and although Grenville lost power almost immediately, Townshend continued Grenville's policy. America still resisted and the King, George III, urged the use of compulsion. Whatever might otherwise have been the result, when the King succeeded in 1770 in making Lord North Prime Minister, an open war of force was inevitable.

This is not the place to treat at large of the merits of the controversy resulting in the Declaration of Independence and the destruction of the old British Empire<sup>(4)</sup>. It is, however, certain that men like Washington, Jefferson, Franklin, Adams, never contemplated separation from Great Britain until 1775, nor could any wish so to do until that time be discovered among the people of the Thirteen Colonies—that Chatham in 1773 said that the "New Englandmen feel as Old England should feel"<sup>(5)</sup>—that it was only when a bungling Ministry aided by a conscientious but ill-unbalanced King who had been as badly educated as he was badly advised, insisted on crushing by military and mercenary force all aspirations of a free people to free self government that Independence was declared.

A very large proportion of the Colonists did not



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recognize the necessity for severing connection with the Mother Country; but they were overborne, and the result we know.

There is nothing to indicate that Simcoe ever saw any merit in the contentions of the Colonies—he says “the late war in America . . . . . he always considered as forced upon Great Britain, and in which he served from principle . . . . . Had he supposed it to have been unjust he would have resigned his commission, for no true soldier and servant of his country will ever admit that a British officer can divest himself of the duties of a citizen or in a civil contest is bound to support the cause his conscience rejects”<sup>(6)</sup>.

All his education and the example of his father tended to impress him with certitude that the King and his Ministers were right, and he never wavered in that conviction. In 1770, he entered the Army as an Ensign in the 35th Regiment of Foot<sup>(7)</sup>, in which his intimate friend Edward Drewe served.

He was not sent to America with the first detachment of his regiment but remained in England until May, 1775; he arrived on the last ship of the fleet at Boston on June 19, 1775, two days after the famous battle of Bunker Hill<sup>(8)</sup>. His god-father, Vice Admiral Samuel Graves<sup>(9)</sup>, was in command of the North American fleet charged with enforcing the Act closing Boston Harbour to commerce; and Simcoe was entrusted by him with certain services, the performance of which brought him into acquaintance with many of the American Loyalists—“from them he soon learned the practicability of raising troops in the country whenever it should be opened to the King’s forces; and the propriety of such a measure appeared to be self-evident. He, therefore, importuned Admiral Graves to ask General Gage that he might enlist such negroes as were in Boston and with

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them put himself under the direction of Sir James Wallace who was then actively engaged at Rhode Island and to whom that Colony had opposed negroes: adding to the Admiral, who seemed surprised at his request, 'that he entertained no doubt he should soon exchange them for whites'<sup>(10)</sup>. General Gage, on the Admiral's application, informed him that the negroes were not sufficiently numerous to be serviceable and that he had other employment for those who were in Boston."

Simcoe continued with the 35th Foot in Boston when the City was besieged by the Revolutionary troops<sup>(11)</sup>; during this siege, he purchased a Captaincy in the Grenadier Company of the 40th Foot<sup>(12)</sup>.

Washington, as Commander-in-Chief of the American Forces, assumed command of the siege of Boston, and, taking advantage of an oversight on the part of General Howe, the British Commander, he, early in March, 1776, seized and fortified Dorchester Heights and placed the besieged Army in a most critical position. On March 17, the Army set sail for Halifax, which was speedily and successfully reached.

On June 11, 1776, the Army left Halifax for Sandy Hook, where it arrived June 29; then proceeded to Staten Island, where it disembarked July 3; here reinforcements were met, and the 40th was formed in Brigade with the 17th, 46th and 55th under Major Grant—the Grenadier Companies with those of other Corps were formed into Grenadier Battalions.

Considerable operations took place during the summer of 1776; Long Island was reduced, the American Army retiring in boats across the East River to New York and abandoning their fortifications—subsequently New York was captured, the 40th taking an active part in the operations.

The Americans took up another position, and General

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Howe, to separate them from New England, embarked a portion of the British troops, including the Grenadier Companies of the 40th, in boats, and landed them at Chester, October, 1776. Six days later, Howe re-embarked this detachment and landed at Pell's Point, near which a sharp engagement took place.

Washington, on evacuating New York, took up a position at White Plains, where Howe was about to attack him in force, October 31, when the Americans retired to the New Castle Heights. Howe then reduced Fort Washington. The Regiment then joined the forces of Lord Cornwallis, who, November 18, crossed the North River, and he pursued the Americans for three weeks through New Jersey, until they crossed the Delaware. The weather becoming cold, the British troops went into winter quarters at Brunswick.

During that winter, Simcoe went to New York expressly to solicit the command of the Queen's Rangers: "the boat he was in being driven from the place of its destination, he was exceedingly chagrined to find that he had arrived some hours too late, but he desired that Col. Cuyler, Sir William Howe's Aide-de-camp, would mention his coming thither to him as well as his design"<sup>(13)</sup>.

The American Army, recrossing the Delaware, marched towards Trenton; Cornwallis, recognizing the design, marched out to meet them, leaving the 40th and other regiments behind at Princeton under Lieutenant-Colonel Mawhood, January 3, 1777. Mawhood, in obedience to orders, marched from Princeton for Maidenhead, a village about half way to Trenton; he met American troops almost immediately on the beginning of the march and a sharp engagement, the Battle of Princeton, took place, the 40th being driven back to that place with serious loss<sup>(14)</sup>.

Brunswick was not attacked, but during all the winter

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and following spring there were continual skirmishes with more or less loss on both sides: Amboy was the headquarters for the 40th, but the Flank Companies, including Simcoe's, were stationed at Brunswick.

Howe determined to change the seat of war, and, in June, embarked his army for the Chesapeake; arriving, August 24, at Elk Ferry, a few days thereafter he marched on Philadelphia, but Washington, taking prompt advantage of Howe's dilatoriness, also moved his troops and was able to interpose them at Brandywine. There a sanguinary battle took place, September 11, in which the British had decidedly the advantage. Simcoe, who was with the 1st Battalion Grenadiers, was wounded in this battle; Captain Wemyss, of the 40th, was in command of the Queen's Rangers, who greatly distinguished themselves during the engagement<sup>(15)</sup>. Simcoe, by reason of his wound, missed the Battles of Concord and Germantown: on October 15, 1777, his cherished hope was realized, when Howe gave him the command of the Queen's Rangers, upon which he had long set his heart—he received the Provincial rank of Major, and joined the regiment the following day<sup>(16)</sup>.

## NOTES

(1) Foster's *Alumni Oxonienses*, Oxford, 1888, Vol. 2, p. 1297, has the entry:—

“Simcoe, John Graves, S. John, of Cotterstock, Northants arm. *Merton Coll.* matric., 4 Feb., 1769, aged 16: Major-General in the Army, the first Governor of Upper Canada, etc., M.P. St. Maws, 1790-2, died 26 Oct., 1806”. The Warden of Merton during Simcoe's residence was the Revd. Dr. Henry Barton, Royal Chaplain. Foster's *Oxford Men and their Colleges*, Oxford, 1893, pp. 90, 91. Merton had by this time outlived its earlier supremacy.

(2) John Ross Robertson, *The Diary of Mrs. John Graves Simcoe*, Toronto, 1911, p. 16. It is known that notwithstanding, and in some degree because of, his profession and active habits, Sim-

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coe suffered from ill-health in later years. I have not been able to obtain any information from the Exeter School or Merton College as to Simcoe. The Warden of Merton says that the College possesses no records of its members other than Wardens and Fellows in the 18th century, and the Head-master of Exeter School at Exeter says there are no registers of that school extant prior to 1817, and it is not even known how and when the former registers were destroyed.

In an admirable work, *The Eton College Register, 1753-1790*, edited by R. A. Austen Leigh, published at Eton by Spottiswoode, Ballantyne & Co., 1921, which gives biographical notices as far as possible of every boy attending Eton and appearing on the lists of the College from 1753-1790, appears the following entry:

“Simcoe 1765-68 (tutor Heath) John Graves entered 16 Sept. 1765 (Bagwell) o.s. John S. of Cotterstock, Co. Northampton, Capt. R.N. by Katharine Dau. . . Stamford, b. 25 Feb. 1752; educated at Exeter before going to Eton; Matric. at Oxford from Merton College 4 Feb. 1769. Admitted student Lincoln’s Inn 10 Feb. 1769. Ensign 35th Regiment 27 Apr. 1770; Major-General 1798; Lieut.-Gen. 1801; Commanded the Queen’s Rangers in the American War; M.P. for St. Mawes 1790-92; Governor of Upper Canada 1792-96; m. 30 Dec. 1782 Elizabeth Posthuma, Dau. Col. Gwillim of Old Court, Hereford; appointed Commander-in-General in India 1806, but being taken ill on his way out came home and d. at Exeter 26 Oct. 1806 (Dict. Nat. Biog., Lincoln’s Inn Reg., *The World* 7 Apr. 1787)”.

The latest entry of Simcoe’s name in the actual school lists of Eton is in “A Bill of Eton College, August, 1768”, in which Simcoe appears among the 5th Form Oppidans.

“Bagwell” means that he entered the Dame’s House of Miss Bagwell who lived at Gulliver’s.

<sup>(3)</sup>This was the usual course pursued by those intending to join the army who desired to be competent officers—the College of Sandhurst was not incorporated until 1863—we find the Earl of Chatham placing his eldest son under the tutorship of Captain Kennedy for instruction in fortification in the view of entering the Army. See Letters to Thomas Hollis from Chatham, dated, Burton-Pynsent, April 13 and 18, 1773. John Heneage Jesse’s *Memoirs of the Life and Reign of King George the Third*, London, 1901, Vol. III, pp. 504 sqq., 507.

Before Simcoe left for America he was made a Mason: parti-

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culars need not here be gone into—it is sufficient now to say that he was proposed at the Union Lodge of Free Masons meeting at the Globe Tavern in Exeter, November 2, 1773, and was admitted to the first two degrees at a meeting of the same lodge at the same place December 7, 1773, and to third at a meeting of the same lodge at the same place Jan. 18, 1774. See Chap. XXIX, *post*.

(4)To the philosophic student of history this result seems to have been inevitable unless the statesmen in London made a radical and revolutionary change in their conception of the status of Colonies and Colonists; and that was still far in the future. The chief cause of the conflict was the determination of England to control the Colonies, and the determination of the Colonies to govern themselves. “England was an oligarchy; each Colony was inevitably a democracy. The Englishmen who crossed the seas to found new homes were the most resolute and independent of all their countrymen. They wielded real authority in their new communities and however loyal in spirit to the mother land they might seem, they deemed themselves self-governing. In founding such states through her own sons, England had sown profusely the dragon’s teeth of democracy, and yet endeavored to check it by the weakest and clumsiest application of aristocratic government”. Prof. Wrong in 4 *The Canadian Historical Review* (December 1923), p. 338; cf. *passim* Egerton’s *The Causes and Character of the American Revolution*, Oxford, 1923.

(5)Letter Chatham to Hollis from Burton-Pynsent, February 3, 1775, 3 Jesse, p. 502.

(6)*A Journal of the Operations of the Queen’s Rangers From the End of the Year 1777 to the Conclusion of the late American War*. By Lieutenant-Colonel Simcoe, Exeter. Printed for the Author, 4to, Introduction: *Simcoe’s Military Journal* . . . . New York, Bartlett & Welford, 1814, 8vo., p. 13. See Chapter III, Note 13, *post*.

W. R. Givens in an article, *Unpublished Letters of Governor Simcoe*, *The Canadian Magazine*, Vol. 30, (March, 1908), at p. 404, says that the words used by Simcoe in a letter, Exeter, January 2, protesting against “the anarchy and tyranny in which the selfish and disgraceful factions of this country has betrayed” his correspondents Loyalists in America are “a clear evidence it would seem that Mr. (Duncan Campbell) Scott errs in his statement that the Governor (Simcoe) believed the war was forced on Great Britain. Rather, it would seem, the Governor felt that Great Britain forced

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the war herself". But Mr. Givens has misunderstood Simcoe's meaning; he was referring not to the War of Independence, but to the Peace of 1783 which had not sufficiently provided for the Loyalists in Simcoe's view and in that of most, if not all, of the Loyalists—they are the "deserving and much injured friends". Mr. Givens is also in error as to the date: it must have been January, 1784, not 1782: the letter of Mr. Arnott sufficiently fixes the date of Simcoe proposing to enter Parliament. See Chapter IV, *post*. It will be remembered that North had been dismissed only on December 18, 1783, that he had as a colleague Lord Carlisle, mentioned by Simcoe, and that Pitt was not yet firm in the saddle. Simcoe makes clear his view of the proper relation of Colony to the Mother State in a letter of July 26, 1763, referred to more particularly in note 16, Chapter XIII; he considers the American Commissioner, Timothy Pickering, "a violent, low, philosophic, cunning New Englander" as "he held out to our gentry of the same stamp . . . the doctrine that assimilates States to private families, and deduces from the child growing up into manhood and being capable to take care of himself that it is right and natural for a son to set up for himself and by a just inference that such is the disposition and tendency of all States."

(7) In a work by Captain R. H. Raymond Smythies, *Historical Records of the 40th (2nd Somersetshire) now First Battalion The Prince of Wales Volunteers (South Lancashire Regiment)*, Devonport, 1894, cr. 8vo., at p. 79, note, it is said that "at the age of nineteen he received an ensign's commission in the 53rd Regiment"; but the reference given to Simcoe's *Military Journal* shows 53 to be a misprint for 35. *The Historical Record of the Fifty Third or the Shropshire Regiment of Foot*, by Richard Cannon, London, 1849, does not contain Simcoe's name.

(8) In a letter to his mother, written from Boston shortly after his arrival, Simcoe says:—

"Boston, 22nd June, 1775.

Dear Madam:—We arrived here on the 19th, being the last ship of the fleet. Two days before our arrival the dreadful scene of civil war commenced, for at a distance we saw the flames of Charlestown and steered into the harbour by its direction.

On our arrival we learned that the rebels had taken possession of the heights on the opposite side, from whence the town at that time blockaded by numbers was endangered. To force this was absolutely necessary and it was done in the most glorious manner—

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an action by the confession of veteran jealousy that exceeds whatever had before happened in America and equalled the legends of romance. It proves to me how very narrow are the limits of experience.

Our light infantry was commanded by Drewe, whose behaviour was such as outdoes all panegyrick by every confession. He was wounded in three places, but fortunately neither to endanger life, limb or disfiguration. This I assure you upon my sacred honour, nor could I write in such case was the friend of my soul in the least danger. Massey was wounded and Bard, to my great regret, killed, having as ever, remarkably distinguished himself. Of our other company, the Grenadiers, they have equalled the misfortunes and gallantry of the others. The able and generous Lym is wounded almost past recovery; B. Campbell is slightly hurt, and by the consequence of this action we are free from any anxiety; we have strongly fortified it, and I suppose shall wait till we have at least 5,000 men from England before we commence operations which then I doubt not will be decisive—Would to God, Lord Chatham, Richmond—who have inflamed to rebellion, would lead on these infatuated wretches to their inevitable destruction. I have much to do—am now going to sup with Mrs. Graves. All well there—nor should I have written but to assure you that we are safe and shall be for some time, and by my sacred honour to confirm Drewe's letter should it not be satisfactory; perhaps his wound may be his preservation. Into the hands of God we commend our cause, nor do I doubt but this severe check they have received may cause an effectual reconciliation. The reason we lost so many officers is on account of their dress. This is altered as we now dress like soldiers. God bless you. I will write as often as possible. Adieu.

I am ever your affect. son,

J. G. SIMCOE."

To understand this letter fully it must be borne in mind that the Americans had taken possession of the Peninsula of Charlestown on the north shore of the Charles River opposite to Boston; and the left wing of the British Force in advancing at the Battle of Bunker's Hill (fought chiefly be it said on Breed's Hill) had to contend with a body of Americans posted in the houses in Charlestown, and in the conflict the town was set on fire and burned to the ground. This was June 17, 1775. See Stedman's *The History of the . . . . American War*, London, 1794, Vol. 1, pp. 124-127. This



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battle has been absurdly enough, claimed as a victory for the Revolutionary Troops.

D. B. Read in his *Life and Times of Gen. John Graves Simcoe* . . . . says at p. 11, "Simcoe did not embark from England with his regiment, but he landed at Boston on the memorable day of the Battle of Bunker's Hill, 17th June, 1775". Dr. Duncan Campbell Scott in his *John Graves Simcoe* (Makers of Canada Series) says, p. 18: "He . . . . reached Boston only on June 17th, 1775, in time to hear the roar of guns on Bunker Hill and see the town streets filled with wounded and dying". No authority is given for the statements as to the day of his arrival at Boston, and his own statements to his mother would seem to conclude the question.

<sup>(9)</sup>Simcoe naturally enough speaks of Admiral Graves as a "most upright and zealous officer"; and probably with truth. Graves had the bad fortune to be sent on a most ungracious duty, that of carrying out the "Boston Port Bill", (1774), 14 George III, c. 19, which was an Act "to discontinue . . . . the landing and discharging, lading or shipping of goods, wares and merchandise at the Town and within the Harbour of Boston in the Province of Massachusetts Bay in North America" from and after June 1, 1774. This Act was in retaliation for the "Boston Tea Party". Graves had an inadequate force and he undoubtedly failed, probably not by his own fault; while no charge was laid against him, he was superseded, January, 1776. His advance in rank to Admiral of the Blue and Admiral of the White, however, was not checked. See D. N. B., Vol. XXII, pp. 437-8.

<sup>(10)</sup>Simcoe's own words, *Journal*, p. 14, in the Exeter edn. at second page of Introduction.

The real objection to the enlistment of the negroes was the same as that taken to the enlistment of negro troops by the North in the Civil War and to their use in Africa as well as in Europe, because it was not well to allow them to feel that they might fight against any white man. It was the same feeling that influenced many Englishmen to deprecate the use by Britain of French-Canadians against the revolting North American Colonies: amongst those who so objected was Maseres, a former Attorney-General of Quebec, who said:—"I should be sorry to see the (French) Canadians engaged in this quarrel . . . . if they were to subdue the other Americans, I should not like to see a Popish army flushed with the conquest of the Protestant and English Provinces", Canadian Archives, *Shelburne Papers*, Vol. 66, p. 53. James Wallace



EXETER GRAMMAR SCHOOL



MERTON COLLEGE—THE QUAD, OXFORD, ENGLAND



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went out to America in 1774 as Captain of the *Rose*, a 20 gun Frigate, and at this time was "actively engaged in those desultory operations against the coast towns which were calculated to produce the greatest possible irritation with the least possible advantage." He was knighted in 1777 and subsequently became an Admiral. See D. N. B., Vol. LIX., pp. 100, 101.

(11) He is said to have acted during this siege as Adjutant of his regiment "but there is no record of his appointment". *Diary*, p. 16.

(12) The existing records of the 40th Foot indicate that this occurred during the siege; Captain Smythie's *Historical Records, ut suprâ*, gives, p. 46, the Roll of Officers of the 40th at the date of the Battle of Germantown from the Army List for 1777, corrected from official sources to October 1, 1777; amongst the Captains is John Graves Simcoe as of December 27, 1775, *vice* Joseph Greene, who (p. 39) sold out soon after arrival in America to take the rank of Major in the Regiment of Oliver De Lancy of New York, a leading Loyalist.

The following letter to his mother bears upon the movements mentioned in the Text.

"Boston, March 13th, 1776.

My dear Madam:—

Perhaps this is the last letter I shall write to you from Boston as we have entrained all our heavy stores and baggage, and wait, I believe, only for a farewell word to evacuate it. Gen. Howe has adopted this resolution, I believe, from our being likely to want provisions and not being willing to risk anything to the uncertainty of the sea. His last despatches from England bear date upwards of 5 months past, it is said. The rebels have performed the feat of throwing several shells and more shot in the town from Phipp's farm opposite Barton's Point, and from the heights below Roxbury. Two shots only have done any damage, the one breaking the leg of a boy; the other taking off the legs of 6 men of the 22nd Regmt., one of whom has since died. They in one night's time fortified the Heights of Dorchester Neck with works not unworthy the Roman Republic. Gen'l Howe determined to attack them; Regmts. (of which the 40th was one) fell down the river in ships. They were to have landed opposite the Castle; the Light Infantry and Grenadiers of the Army were to have landed from Boston. The violence of the wind prevented the execution of this design that night, and the General laid it aside and immediately determined to quit the town and, as reported, to go to Halifax.

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You have here a minute detail of our proceedings since our friends of the Fort returned. I hope they had a quick and pleasant passage. I purpose writing Mrs. Graves. Should we go to Halifax, which I rather fear than hope, and should I have a fortnight's secession from duty, I will borrow the dates and write you a kind of journal of this uncommon blockade. We are not to burn the town from motives I think of the best policy. We are paying every attention to preserve it from plunder, and daily discoveries are made of stores, which evidence clearly if any testimony was wanting, how long they have been preparing for hostilities—Had I the description of Drewe I would endeavour to paint my present situation.

It is past two o'clock in the morning. I am Capt'n of our Picquet. In one corner of the room, on one-half of my bed made (luxury indeed!) of clean straw, lies an officer asleep, with his feet towards the fire. He snores, but not in one drone, but in several modulations. My bayonet is stuck in the table, the socket of which serves as a candlestick to a night light. One half of my chair is now burning in the fire, and the other, when I shall have finished this letter, will be applied to the same use, serving rather to light the room than to warm it, there being no want of fuel from a multitude of wooden houses, and coal. Underneath me is Capt. Bradstreets; on the same floor my Company repose, almost drowning the solo of my companion with a most anti-musical concert. Scattered in the room lie many excellent and valuable books, picked up in the street by my Sergeant, where they were thrown in the trunk that contained them, to form part of a barricade. (N. B. If my Sergeant can smuggle them on board I shall not see it as they belong to Percy Morton, whose anti-Christian name bespeaks a rebel. But there is an order for no more baggage to be carried on board.) I have now been 11 days on duty. I should once have felt some inconvenience from it and been sleepy, but I am accustomed to snatch a slumber for an hour or two at a time, so that the perpetual gnaw, as I may call it, that I have been on since the 19th of June last is not the least wearisome to me nor did I ever, I thank God, enjoy a more uninterrupted state of health. Four of us have just supt upon a fowl which was stolen from a young man who had the impertinence to have possession of two at this time, when all our provisions are on board.

I go in the *Spy*, a remarkable fine sailor. I will now sleep, burning the legs of my chair and applying its rush bottom first as a pillow and in case of necessity as a paper. Adieu.

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14th. The wind and other matters unfavourable, so that we are not embarked and possibly may not for some days.

Yesterday's order was "The troops that are to embark at the Long Wharf to march in two columns, the right column to be composed of 22nd, 65th, 52nd, 23rd, and 44th Regmts. Left column 17th, 45th, 63rd, 35th and 38th Regiments. Brigadier-Gen's Robinson and Grant.

The troops to embark at Hancock Wharf to march in one column. The 43rd, 47th, 40th, 10th and 55th—Brigadier Gen's Jones and Smith."

15th. The wind against us. Though the rear guard took the . . . . . which consists of the light infantry, Grenadiers 4th and 5th Regiments. The Jonathans very quiet.

16th. Rainy weather, probably changing. We are ordered to be in readiness at the . . . . . to-morrow morning. A very great fire in the camp last night. Their barracks appear to have been on fire.

17th. About 7 this morning the whole column embarked, fell down the river, evacuated Charlestown and the lines in sight of the enemy, entrained, none daring to molest us.

18th. At anchor, the wind being not fair—the glass—it is much too long—a glass in a . . . . . case with screws made by Adams in Fleet Street . . . . . strong. If I have time I will write again. If not . . .

Believe me, &c.,  
J. G. SIMCOE."

The following letter was almost certainly to Mrs. Graves.

"Kings Road, Boston, March 19th, 1776.

My dear Madam:—You will suppose that I have made the proper wishes for your safe arrival in England with more than the sincerity of a compliment. I will then hasten to communicate to you the very material intelligence of our having evacuated Boston, and waiting now for a fair wind to proceed to Halifax. The rebels having completed their fortification at Phipps Farm, cannonaded us from thence, and threw some shells into the town from Cobb Hill, without the least damage but what some windows sustained. They also cannonaded us from Roxbury, and bombarded the lines with as little effect, except one unlucky shot which took off the limbs of six of the 22nd. This they continued for a few days. On the 4th of this month they increased their fire on our lines, which we returned

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with great spirit, but early the next morning when the curtain of the fog was drawn up, we discovered two redoubts nearly finished on the two high hills of Dorchester Neck, and two others with a wall of trussed hay to keep up the communication with their works to the left of Roxbury.

By twelve o'clock 5 Reg'ts, of which the 40th was one, received orders to fall down below the Castle, to land from thence. The wind however, proved so violent that we could not possibly land the next morning as was intended, so we disembarked in the evening and on our arrival on shore were informed that the General was determined to quit Boston, on account of the small quantity of provisions in the garrison.

It is said we were to have landed on one side, the Grenadiers, Light Infantry and some Regiments on the other, and that a diversion was to have been made at Roxbury. By two deserters who came in the day before yesterday it is reported that 15,000 men were at Dorchester, and in case that we had attacked it, that 5,000 men from Cambridge were to have attempted a landing on the Common; a disposition that I believe as it seems marked with the same ability that has characterized all their attempts. If true, I congratulate myself on the lucky escape. If spirit could have succeeded we had won the redoubts, as the personal attachment each individual of the officers bears to General Howe would have influenced them to have trod in his steps, who seemed to expect to die rather than to conquer, and when did the British soldiers ever leave their officers? It would have been dreadful to have met with as great a loss at an unimportant outwork as need not be sustained in carrying a point of the greatest consequence.

On the 17th the whole army embarked; the main body between seven and eight in the morning, the rear guard and troops at Charlestown about ten, and fell down to our present station, the enemy not firing a shot at us. By my glass I could discover them taking possession of Charlestown about an hour after we left, as they did of Boston. I forgot to mention that for some days we fired upon Foster Hill to prevent their raising a works there, and that this morning at daybreak it appeared four feet above the hill, with such wonderful expedition they construct their works. You may remember, at least the Admiral does, a little knoll in the centre of the curve that Foster's Hill and the point near the Castle form, that I used to say was the spot, which if ships could come near, would still demolish a first rate. The rebels placed two 24 pounders in the

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manner I had formed in my own mind; on them from whence we threw a shot that took the top off the fusilier barracks and lodged in one of your late outhouses.

We expect to sail the first fair wind from Halifax. We have not heard from England or the southward since you sailed. Dawson has distinguished himself in driving off 20 privateers and taking two ships in spite of them.

I forgot to mention that before the ice broke up we had an alért as it is termed, to Dorchester Neck. We burnt the houses there, took six prisoners, 70 others of the guard hiding themselves, and returned home. Four of these fellows Gen. Howe sent back; the other two were sent on board in charge of Bourmaster, from whom they escaped, stealing his boat. It is said he was informed of it while at the Admiral's, and just as he was boasting what care he had taken of them.

I hope the Admiral has the proper opportunities of \* conduct, and that a generous public, however it has been \* artifices and falsehoods is a length undeceived. I doubt it \* still think it happy for him that he was recalled, yet cannot but wish he may return whenever we attempt the Delaware. This might be a service not unworthy of him. At present I see nothing but dishonor; perhaps to you the scene may be less gloomy. You may know the support Great Britain intends to assist us with, and may perceive the nation has not yet lost all regard to its dignity. I have hopes that we are not destined for Halifax, but for some more active operations. As a soldier I will venture to affirm that no posts they had taken could be of sufficient force to drive us from the town, the heights of it and our artillery being considered, Noddle Island in our power and the harbour capable of containing our hospital, our women in the ships secure from all danger. No private store was searched for provisions, a measure I think that would have been taken had the want of them been the real cause of our retreat. Early the next morning after our retreat the rebels had assembled on Fort Hill. We left about 12, spiked a temporary Exp \* . Capt. Banks has hoisted his flag as Commodore. He had my \* forgot it. I gave it to Dick and kept the Admiral's, to whom I beg every wish that the utmost affection and gratitude can inspire, and beg leave to subscribe myself, dear madam,

Your most obliged,  
(*Signature torn*)

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\*Letter torn here.



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(13)*Journal*, p. 14. The command had been given to Captain James Wemyss of the 40th Regiment, who had joined in 1771. Later Simcoe wrote General Grant, under whom he had served, "requesting his good officers in procuring a command like that of the Queen's Rangers if any other corps intended for similar employment should be raised in the country to which the expedition was destined."

(14)Washington, in his Report to the President of Congress, said: "We found Princeton with only three regiments and three troops of light horse in it, two of which were on their march to Trenton. These three regiments, especially the two first, made a gallant resistance and in killed, wounded and prisoners must have lost 500 men". 3 Jesse, p. 125.

The 40th lost one lieutenant, one ensign, three sergeants, one drummer and eighty-eight rank and file killed, wounded and missing—of the latter, however, several rejoined afterwards at Brunswick." Capt. Smythie's *Historical Records, ut suprâ*, p. 48, (n).

(15)do. do. do. p. 49 (n). This work is very inaccurate as regards Simcoe—it makes him born "about 1753", receiving a commission as Ensign in the 53rd, and becoming "Governor of Canada".

The Queen's Rangers were highly commended for their gallant conduct at the Battle of Brandywine. The General Orders of September 13, contained the following:—

"The Commander-in-Chief desires to convey to the officers and men of the Queen's Rangers his approbation and acknowledgment for their spirited and gallant behaviour in the engagement of the 11th inst., and to assure them how well he is satisfied with their distinguished conduct on that day. His Excellency only regrets their having suffered so much in the gallant execution of their duty."

In a Pennsylvania newspaper of 3rd December, 1777, the following complimentary notice appeared:—

"No regiment in the army has gained more honour in the campaign than Major Wemyss' Rangers; they have been engaged in every principal service and behaved nobly; indeed most of the officers have been wounded since we took the field in Pennsylvania. General Knyphausen, after the action of the 11th September at Brandywine, despatched an aide-de-camp to General Howe with an account of it. What he said was short but to the purpose. 'Tell the General I must be silent as to the behaviour of the Rangers, for I want even words to express my own astonishment, to give him an idea of it'".

## CHAPTER III

### The Queen's Rangers

THE Queen's Rangers was a partisan corps<sup>(1)</sup> originally raised in 1776 by Colonel Robert Rogers in Connecticut and the vicinity of New York—its functions being to range over or scour the country, surprise the outposts and foraging parties of the enemy and the like. It was composed at first of American Loyalists only and at one period mustered over 400 men; the members of this corps were men of the greatest activity and daring, firm loyalty and devotion to the King and to their duty as they saw it; and they had profound contempt for the rebels, whom they looked upon as rascals and traitors.

After considerable service under Rogers, the command was, in 1777, given to Colonel French and afterwards to Captain Wemyss of the 40th with the rank of Major: by this time the personnel had changed; many Southern gentlemen who had joined Lord Dunmore and distinguished themselves under his orders received commissions in the Queen's Rangers in place of those who had been found incompetent. Moreover there were added some volunteers from the British Army; the numbers were kept up by the circumstance that to this corps was given the exclusive privilege of enlisting "Old-countrymen" and deserters from the Revolutionary Army. The Loyalists formed at all times the mass of the Regiment and were the source of its discipline and chief value, while those recruited from the army and otherwise were well aware of the arduous and dangerous work in which

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they would be engaged and joined only from love of the service and desire to distinguish themselves in it<sup>(2)</sup>.

Sir William Howe in consequence of their behaviour at Brandywine had promised that all promotions should go in the Regiment; and this had the effect of still further stimulating their zeal.

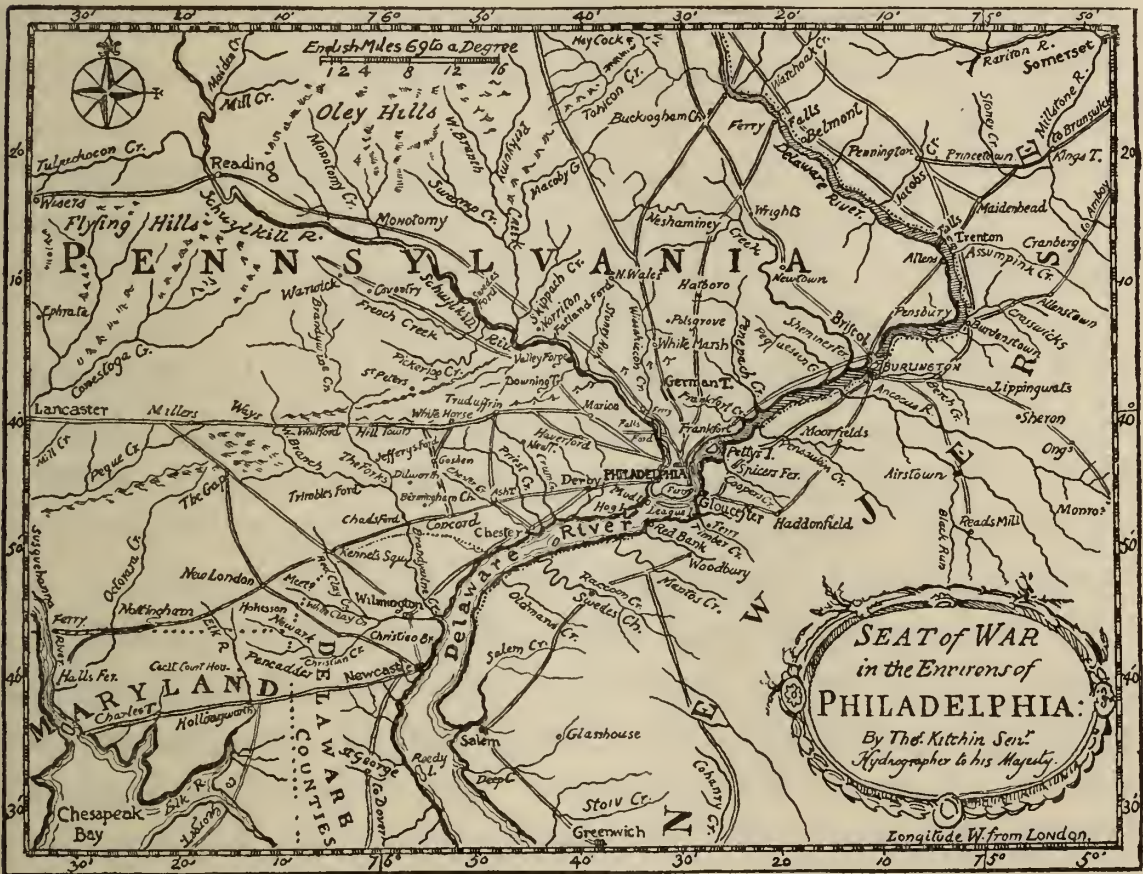
Shortly after Simcoe assumed command, the Regiment was increased by the addition of a company under Captain Smyth, making eleven companies which were equalized—the eleventh under Captain McKay being formed of Highlanders chiefly from North Carolina. This company was furnished with Highland dress and a piper—it was stationed on the left flank of the Regiment. The Regiment had its Grenadier and Light Infantry Companies and its eight other companies—the ordinary uniform being green for the purposes of concealment.

Simcoe, declining the proposition of Sir William Erskine to add dragoons to his Regiment, formed a mounted body from his own men; such men were selected for this service as the officers recommended for spirit and presence of mind and they were put under the direction of Kelly, a Sergeant of distinguished gallantry; they proved of great service in reconnoitring and outpost work.

Simcoe paid the greatest attention to the discipline<sup>(3)</sup> and internal economy of his command and saw to it that the ordinary course of rotation (except in ordinary duties) should not prevail but that those officers should be selected for any service who appeared to be the most capable of executing it. The men were relieved of most of the mechanical manual drill so dear to the regular army officer: a few motions of the manual exercise were considered sufficient, but the men were carefully trained in firing; and above all, attention was paid to the use of the bayonet—an almost total reliance upon that weapon being taught

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and insisted upon. Sergeant's guards were in a manner abolished, Simcoe holding the vigilance of a gentleman and an officer transcendently superior to that of any non-commissioned officer whatsoever—and it is to this that he attributes in great measure the striking fact that no sentinel or guard of the Queen's Rangers was ever sur-



prised—they moreover never gave a false alarm, and only one of their patrols was ever taken and that because a Cavalry Captain neglected Simcoe's principles.

Towards the end of October, the Rangers were ordered to patrol beyond Frankford, then four miles from, but now a suburb and substation of, Philadelphia; and for some time, they ranged the country in front of Philadelphia.

In a skirmish in which the Rangers, as part of Gen-

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eral Gray's column were engaged, December 8, one of these mounted men was shot by a Hessian Yager by mistake, as he was wearing a helmet taken from a rebel patrol some days before; this determined Simcoe to provide high caps for his mounted men, making them Huzzars, their number being soon increased to thirty. Many recruits were obtained from deserters from Washington's army at Valley Forge, and the corps kept up its numbers though constantly employed in arduous and dangerous operations.

When Sir William Howe resigned his command in 1778, Sir Henry Clinton, who succeeded, gave Simcoe the rank of Lieutenant-Colonel, antedating his commission to those of all Provincial Lieutenant-Colonels.

Simcoe took part in Abercrombie's expedition against the Americans under General Lacy near Crooked Billet; his march and a stratagem whereby he saved his command received the warm approbation of his superior officer, and are mentioned with admiration by the historian<sup>(4)</sup>.

The Army evacuated Philadelphia, June 18, 1778; and on the 27th, Simcoe received a slight wound in the arm in a skirmish, causing him excruciating pain and compelling him to retire to the baggage. He therefore missed the Battle of Monmouth, June 28, in which his Rangers were led by Captain Ross. He was able to resume command, July 1, and he marched with Sir William Erskine to Sandy Hook forming the rearguard—they then went to New York, went up to Morris's house and encamped there.

It seemed to Simcoe likely that the British Army would leave America and the war would be carried on in the West Indies; he accordingly applied for permission with his Corps and other Loyalists to join Colonel John Butler who, with his Rangers and Indians, was busy on the upper parts of the Delaware—but the Com-

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mander-in-Chief told him that<sup>(5)</sup> "he much applauded his spirit but thought he would find sufficient employment for him in his army."

Simcoe fell ill and was unable to resume his command until July 14—Washington being at White Plains, the Rangers had no rest. His favourite Sergeant Kelly being taken prisoner, and threatened with death as he had formerly been in the rebel service, Simcoe offered in exchange a Sergeant lately taken, and threatened that if Kelly were executed he would leave to the mercy of his soldiers the next six rebels who should fall into his hands—this soon brought about Kelly's release.

By reason of Lord Cathcart being given the rank of Colonel of Provincials, and Simcoe's feeling at Cathcart's ranking him, Clinton, while declining to give him the same rank as Cathcart, offered to make him Colonel—this Simcoe declined, to his own lasting regret.

In an engagement, August 20, Simcoe was again wounded—by Nimham, an Indian Chief, who had been in England, but had joined the enemy with some of his tribe: Nimham was killed by Simcoe's orderly huzzar. The wound was slight and Simcoe did not require to give up his station.

When General James Grant, who had been appointed to command the expeditionary force sent from New York to the West Indies (which captured St. Lucia in December, 1778), was about to embark, he offered Simcoe to take him and his corps among the picked troops selected for that purpose; but Simcoe declined this very advantageous offer which carried with it a certainty of British rank, because he thought it would not be just "to the many very valuable native Americans who were among their non-commissioned officers and soldiers"; he was allowed to remain in the Rangers although the 40th Regiment, in which he was Captain, sailed with Grant.

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He received orders to take up his winter quarters at Oyster Bay on Long Island, which he did. Recruiting was slow and the Rangers were handicapped by the greater bounties given for Regiments then being formed than the Government would allow the Provincials; Simcoe organized a recruiting fund to add to the government bounties and thereby make it possible to obtain recruits. To this fund, he and his officers contributed liberally, and recruiting became very effective<sup>(6)</sup>.

May 2, 1779, the Commander-in-Chief in General Orders announced that as a reward for the faithful service and spirited conduct of the Provincials, His Majesty had decided, *inter alia*, that the officers of the Provincial Corps should rank as juniors of their rank and if disabled in service should receive the same gratuity as the officers of the established army—that with the recommendation of the Commander-in-Chief their rank should be made permanent in America and on the reduction of their regiments they should be allowed half pay as in the case of officers of the British reduced regiments. The Queen's Rangers were recommended by Clinton and were styled the First American Regiment.

The Rangers, then consisting of 360 rank and file, left their cantonments, May 18, 1779, and after minor engagements joined the army of Lord Cornwallis in October. Not long afterwards Simcoe fell into an ambuscade: seeing some men concealed behind logs and bushes and trying to evade them his horse was killed and he fell: when he recovered his senses stunned by the fall he found himself prisoner. When he was lying senseless on the ground a boy had been prevented from bayonetting him, by a statement, "Let him alone, the rascal is dead enough", and another person regretted that he had not shot him through the head, as he would have done had he known him to be a Colonel, but he "thought all Colonels wore lace."

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He was in great danger of violence on account of the fury of the populace of that district aroused by the death



of Captain Vorhees, who had been killed a few days before by one of the Rangers; but Governor Livingston



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intervened and he was sent to Brunswick. October 28, he was removed on parol to Bordentown "to a tavern kept by Col. Hoogland of the Jersey militia, by whom he was treated with great civility", but the principal people of Bordentown were very violent. Many unfounded stories were current of Simcoe's cruelties, and some rebel Justices anxiously endeavoured to obtain affidavits to support them, but failed—many of their party in Pennsylvania offered to give evidence of his humanity and spoke most favorably of his conduct.

He was, however, made a vicarious sufferer in November. John Leshier had murdered a Loyalist and was confined in irons in New York: Captain Nathaniel Randal, the skipper of a vessel, was also in prison in New York—in retaliation for the sufferings of these two persons, it was ordered by the Council of the State of New Jersey that two British Officers should be put in close confinement and ironed. Col. Billop, Colonel of Staten Island Militia, and Simcoe were selected as the victims: they were sent to the Common Jail at Burlington; Billop had irons put on his hands and feet and chained to the floor in a close room; he received only bread and water—all to "teach Britons to act like men of humanity"; Simcoe was used as an ordinary prisoner.

Simcoe moreover was informed that if Lieutenant Hele (then imprisoned at Philadelphia awaiting the fate which should befall Cunningham, imprisoned for piracy in England) should die—and he was dangerously ill—he was talked of as a proper substitute for the Lieutenant; and he was at midnight removed from the room he had occupied to the felons' cell. He found means of receiving the earliest information of Cunningham's fate; and determined in case of news of Cunningham's execution arriving at Philadelphia, instantly to make his escape. His plans were all made: but he decided to apply

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to Washington himself through Major André. No answer was made by Washington to his application, but in a few days Billop and he were exchanged<sup>(7)</sup>, Simcoe leaving the Jail at Burlington, December 27, 1779.

He was not yet safe: on October 26, he had been engaged in an operation with his Huzzars and pretended to be of the American Forces—one of the Huzzars took “some thousand pounds of paper money . . . from a passenger”, and Simcoe told the man “that he would be answerable to give him the money that night at Brunswick, where he would quarter”; but, unfortunately, an inhabitant knew Simcoe and sent word to Governor Livingston as soon as Simcoe’s party marched. When Simcoe was released from Jail, it was reported that the person from whom the money had been taken had applied to the Governor to confine him until the money was returned, he having promised to pay it at Brunswick. “The promise of paying any debt by the laws of New England rendered the person who gave it liable for the payment; but this custom had never prevailed in the Jersies”<sup>(8)</sup>. However his apprehension proved without foundation and Simcoe left Brunswick: he was received with great joy by his friends at Richmond (now part of New York City) on the 31st and found that Clinton had reported to Lord George Germain, the Secretary of State, that he was dead<sup>(9)</sup>.

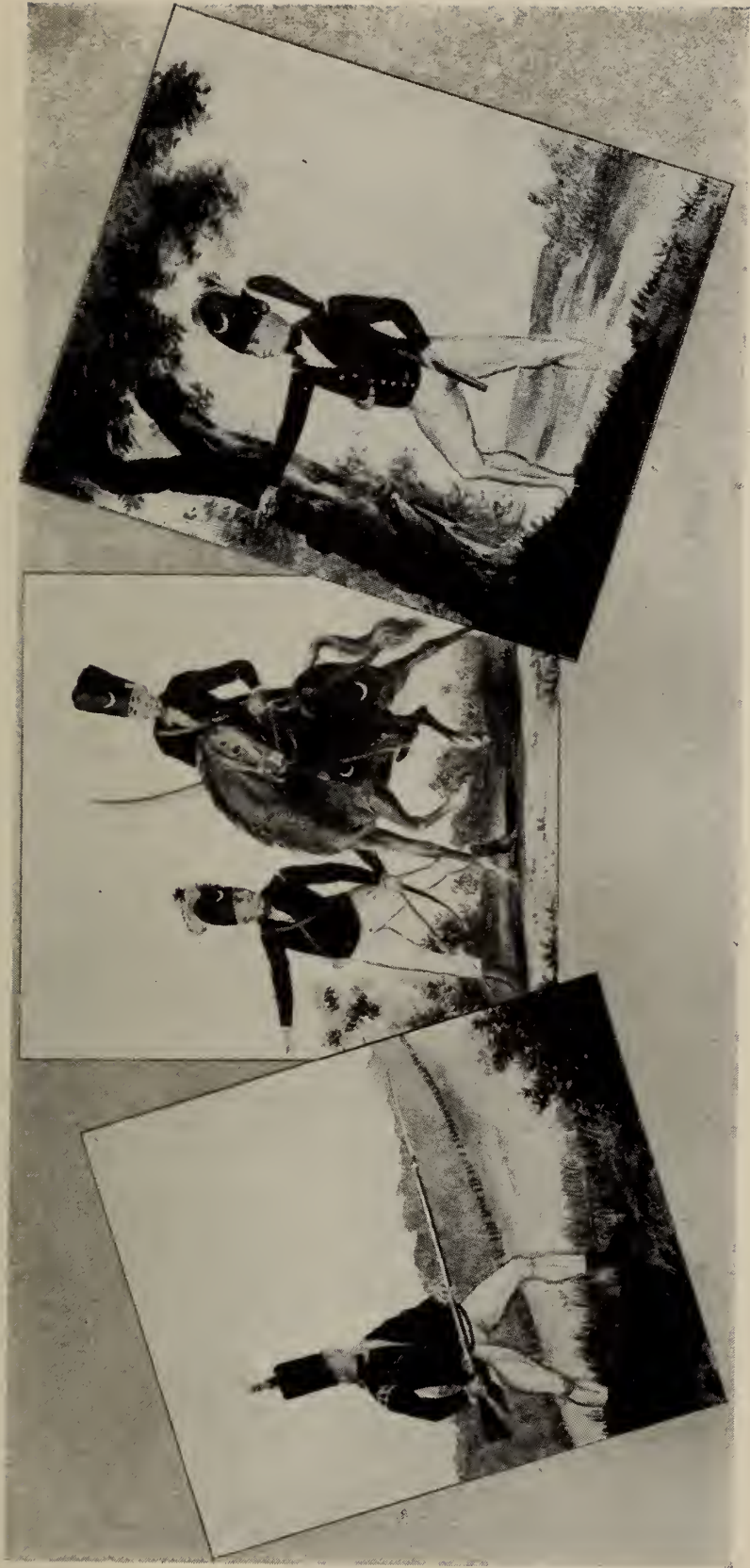
He applied to Clinton and Cornwallis to be allowed to join the Army to the southward, but did not succeed; and he was engaged in military operations until obliged to go to New York to recover his health, June 25—July 19, he rejoined his corps and with it crossed at Flushing to Staten Island. Next month, Clinton augmented the Rangers by two troops of dragoons and appointed Simcoe Lieutenant-Colonel of Cavalry, and the following month removal was made to Jamaica. Clinton entrusted

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him will full knowledge of the ill-fated negotiations through André with Benedict Arnold and told him what service his Rangers would be employed on in case these negotiations were successful. When André was captured, Simcoe offered to attempt his rescue "not doubting to succeed in whatever a similar force could effect": he protested in letters to Col. Henry Lee against the "useless murder of Major André which would almost annihilate . . . . the wish of a reconciliation and speedy reunion with . . . . revolted fellow-subjects in America"<sup>(10)</sup>. He ordered that the Rangers should "be provided with black and white feathers as mourning for the late Major André, an officer whose superior integrity and uncommon ability did honour to his country and to human nature".

December 11, 1780, the Rangers embarked under General Benedict Arnold in his successful raid on Richmond, Virginia—the next year, 1781, they joined Cornwallis and saw some severe fighting<sup>(11)</sup>. The British Army under Cornwallis being stationed at Yorktown, Virginia, at the end of August the advance ships of the French Fleet blocked up the York River and the British Army was in great danger. Cornwallis asked Simcoe whether he thought he could escape with the cavalry and Simcoe answered "without the smallest doubt"; but he was not allowed to try. Washington invested Yorktown, September 23. The health of Simcoe began totally to fail under the incessant fatigues, both of body and mind, which he had undergone for years; but when it was reported that Tarleton had suffered a defeat, he went himself to the redoubt occupied by the Rangers although he had to be carried from his bed to his horse. However he was soon obliged from total want of health to give up his command of Gloucester to Tarleton.

Cornwallis capitulated, October 19, 1781, refusing



Grenadier

Light Infantry  
and Hussar

Rifleman

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to allow Simcoe to endeavour to escape with his corps in some of the boats built by Arnold: the "corps consisted of Loyalists, the objects of the enemy's civil persecution". Simcoe himself by reason of his dangerous condition of health was permitted to sail for New York in the *Bonetta*, the sea-voyage being, in the opinion of the physicians, the only chance of saving his life; and with him sailed as many of the Rangers and of other corps, deserters from the enemy, as the ship would hold.

On arriving at New York, Simcoe was permitted by Clinton to return to England; December 19, 1781, he was made Lieutenant-Colonel in the Army, thereby giving him in the Regular Army and in the whole British world, the rank which had been made permanent for him in America in 1779 and the duties and title of which he had performed and enjoyed from 1777.

It may be well to give the subsequent history of the Queen's Rangers.

When Simcoe left for England, Captain Saunders arriving from Yorktown took command of that part of the corps which had come to New York in the *Bonetta*: Sir Henry Clinton, who resigned his command, was succeeded by Sir Guy Carleton, afterwards Lord Dorchester; Carleton does not seem to have had a high opinion of the usefulness of the Corps for we find him, March 31, 1783, directing their commanding officer to encourage his men to enlist in a Regiment then being recruited—a direction probably without precedent and certainly humiliating. Later, Carleton blaming the Rangers for plundering and marauding on Long Island, where they were cantoned with other troops, refused their officers their just promotions—and it was in vain that Capt. Saunders protested against "the falsehood and malevolence of the representations and requested an enquiry so that the officers might meet their accusers face to face."

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Fortunately a Court Martial established that the deprivations had been committed by soldiers of the Legion and not by the Rangers. Clinton made representations to the Home Authorities and, December 25, 1782, the rank of the officers was made universally permanent and "The Queen's Rangers, cavalry and infantry, were honorably enrolled in the British Army"<sup>(12)</sup>.

At the Peace, the Corps was disbanded and many of the officers and most of the soldiers settled on lands in Nova Scotia.

The conduct of Carleton in respect to the Queen's Rangers seems to have been the beginning of the personal ill will between him and Simcoe which had marked effect in their future lives.

The whole story of Simcoe and the Queen's Rangers proves him to have been an indefatigable and able officer, with great skill and judgment, always awake to opportunities afforded by the negligence of the enemy and never affording such opportunity to the enemy; courteous and humane, he was nevertheless firm and even ruthless when circumstances called for severity. His frequent ill-health did not prevent his efficiency being apparent: he was a credit to his country and her Army and he well deserved the praise of the Duke of Northumberland: "He is possessed of every good quality which can recommend him to your friendship. He is brave, human, sensible and honest"<sup>(13)</sup>.

The Colours of the famous Queen's Rangers were for many years in the main hall at Wolford, the home of John Graves Simcoe. When after the Great War, his great-great-grandson, Linton Simcoe, found it necessary to sell the family heirlooms, including even the war relics of his distinguished ancestor, the Colours and swords carried by Simcoe during the Revolutionary War were purchased and formally presented in February, 1924, to

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the Toronto Public Library. No more fitting place could be found for them; in the Reference Library are documents relating to the activities of the quondam commander of the Queen's Rangers as the first Lieutenant-Governor of Upper Canada; in the J. Ross Robertson Historical Collection of Pictures are a life-size portrait of Simcoe in regimentals, and many reproductions of drawings by Mrs. Simcoe, the originals of which are in the King's Library, British Museum, and which portray Canadian scenes and settlements in the closing years of the eighteenth century.

We shall see later in the Text that another corps called the Queen's Rangers was, at Simcoe's suggestion, organized in England and arrived in Canada in 1792; it was disbanded in 1802, having done no actual fighting but having been engaged for the most part in clearing the forest and in constructing roads and bridges.

Still a third Queen's Rangers came into being during the troublous times of 1837. It was commanded by Col. Samuel Peters Jarvis, whose father, William Jarvis, had served in the original corps. This force took part in the encounter at Montgomery's Tavern, and afterwards was sent to guard the Niagara Frontier. Subsequently returning to Toronto, the corps was disbanded in 1838, except the Toronto City Guard which remained organized for some years thereafter.

The Queen's Rangers again came into existence in 1925 through the merging of the West Toronto Regiment and the 2nd Battalion York Rangers, when the King "approved of the proposed formation of a new regiment at Toronto to be known as the Queen's Rangers".



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## NOTES

(1)“Partisan, *Mil.* A member of a party of light or irregular troops employed in scouring the country, surprising the enemy’s outposts and foraging parties and the like” Murray, *New English Dictionary, sub voc.* (There does not seem to be any etymological or other connection between this word and the word, “Partisan”, a military weapon).

“Ranger, *pl.* A body of mounted troops or other armed men, employed in ranging over a tract of country. Chiefly U.S.: in the British Army the title is given to one regular regiment, the Connaught Rangers”, *do. do. sub voc.*

In the Revolutionary War, “Butler’s Rangers” were an active corps which proved very useful and achieved great fame in Loyalist circles. See Genl. Cruikshank’s *Butler’s Rangers*, Lundy’s Lane Historical Society’s Publications, Welland, 1893.

(2)I have adopted the sentiments and almost the very language of Simcoe, *Journal*, pp. 18-20.

(3)An interesting fact as to discipline is mentioned by Simcoe—he found the practice existing of the soldiers taking the watches of those taken prisoner: he forbade this practice “till he accidentally overheard a man say it was not worth while to bring in a prisoner; he therefore made it a rule that any one who took a prisoner, if he publicly declared he had his watch, should keep it, so that no soldier was interested to kill any man. This spirit of taking as many prisoners as possible was most earnestly attempted to be inculcated and not without success”, *Journal*, pp. 26, 27. After being made Lieutenant-Colonel (in America), Simcoe, June 18, 1778, in General Orders directed that “Captains and Officers commanding companies . . . . should be answerable that no soldier quitted his rank on any pretence, but particularly to *drink*: this practice having been the death of many a valuable soldier, the permission of it was highly criminal.” *Journal*, pp. 62, 63.

(4)C. Stedman. *The History of the Origin, Progress and Termination of the American War*, London, 1794, vol. I, pp. 372, sqq.

(5)Col. John Butler began his march from Niagara, May 2, 1778, and fixed his headquarters at Unadilla on the Susquehanna, from which it would be easy to strike Cherry Valley, Schoharie and Wyoming: Wyoming fell, July 3—the subsequent massacre by the Indians has been much exaggerated, Campbell’s “Gertrude of Wyoming” being responsible for some of the undeserved obloquy cast on Brant.

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(6) It was apparently at this time that the advertisement appeared in *Rivington's Royal Gazette*, New York, the advertisement given in *Journal*, p. VIII, and copied in Morgan's *Sketches of Celebrated Canadians*, Quebec, 1862, at p. 118.

### "ALL ASPIRING HEROES

Have now an opportunity of distinguishing themselves by joining

### THE QUEEN'S RANGER HUZZARS,

Commanded by

LIEUTENANT-COLONEL SIMCOE.

Any spirited young man will receive every encouragement, be immediately mounted on an elegant horse, and furnished with clothing, accoutrements, &c., to the amount of Forty Guineas, by applying to Cornet Spencer, at his quarters, No. 1033 Water Street, or his rendezvous, Hewitt's Tavern, near the Coffee House, and the Defeat at Brandywine, on Golden Hill.

Whoever brings a Recruit shall instantly receive TWO GUINEAS,

*Vivant Rex et Regina."*

(7) *Journal*, Appendix, pp. 268-285. Simcoe adds, "it is to be remarked that soon after, Congress passed an Act declaring that all prisoners whatsoever whether taken by the Continental Army or militia, should be absolutely at the disposal of their Commander-in-Chief, General Washington, and not of the Governor of the different provinces."

(8) *Journal*, p. 286, What Simcoe is referring to is the well-known Statute of Frauds passed in England, 1676, 29 Charles II, cap. 3, which *inter alia* provides that no one is compellable to answer for the debt, &c., of another without a signed writing. This Statute was adopted as part of their common law by some of the Colonies and rejected by others.

(9) Germain's answer to Clinton's report of Simcoe's death is worth repeating:—"The loss of so able and gallant an officer as Colonel Simcoe is much to be lamented: but, I hope, his misfortune will not damp the spirit of the brave loyalists he so often led out with success. His last enterprise was certainly a very bold one; and I should be glad he had been in a situation to be informed, that his spirited conduct was approved of by the King."

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There is preserved (Wolf. I, I. 197, 208) a letter to Rivington's Royal Gazette, New York, reading in part:

"Having been informed that Lieut.-Colonel Simcoe was unfortunately killed at his last excursion into the Jerseys, my heart was filled with inexpressible concern; not only because he was a most constant friend of mine, but at the same time on account of the important loss of this brave and most gallant officer to the British Army. . . . ."

<sup>(10)</sup>Simcoe never wavered in his opinion that the execution of André was a murder, and "upon private not public considerations. It bore not with it the stamp of justice"—and he has no good word for the conduct of Washington in that regard. *Journal*, pp. 294, 295.

<sup>(11)</sup>The well-known Lieutenant-Colonel (Sir) Banastre Tarleton, so much maligned by some of the historians of the American Revolution, a man not given to indiscriminate praise, speaks highly of Simcoe as a soldier in his *History of the Campaigns of 1780 and 1781 in the Southern Provinces of North America*, London, 1787. There was a Dublin edition in the same year also 8vo. (The book is rare: the last price I have seen quoted was \$12.50) On p. 290 he says that the Light Troops met Simcoe, May 15, who had crossed the River Meherren the day before on his march towards Earl Cornwallis: pp. 297, 298, (action at Point of Fork); p. 334. Arnold's despatch to Clinton of May 12, 1781, informs him that the Queen's Rangers (with other troops) had, April 18, embarked at Portsmouth and fallen down to "Hampton Road": p. 347, Lafayette's despatch to Greene, June 27, says "the whole British Army came out to save Simcoe near Williamsburgh"; p. 350, Simcoe is mentioned by Cornwallis in his despatch to Clinton from Williamsburgh, June 30; p. 352, Simcoe in Cornwallis' advance guard: p. 398, Clinton orders Cornwallis, June 28, to embark a specified force including the Queen's Rangers for a rapid move to seize the stores at Philadelphia.

Articles of Capitulation, Yorktown, Virginia, October 19, 1781, provide Art VIII for the *Bonetta*, Sloop of War, to take despatches to Clinton, but to be delivered to Count de Grasse if she escape the perils of the Sea (pp. 440, 441): p. 450 shows that the Queen's Rangers had a total of 320: see also p. 376.

<sup>(12)</sup>Simcoe closes his *Journal* with the following well-deserved encomium:—

"Thus conclude the principal events in a journal of a corps of light troops, whose services can best be estimated by observing, that for years in the field, to use the language of a former age, they

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were the *forlorn hope of the armies in which they served*, and that even in *winter quarters*, when in common wars troops are permitted to seek repose, few hours can be selected in which the Queen's Rangers had not to guard against the attacks of a skilful and enterprising enemy."

(<sup>13</sup>)See Letter from the Duke of Northumberland (Thorighwegeri) to Captain Joseph Brant (Thayendanega) from Northumberland House, September 3, 1791, *Journal*, p. 328.

Simcoe wrote an account of the operations of the Queen's Rangers under his command; and had it printed in Exeter, England, in 1787. The work is a 4to of 184 pp. with an Introduction of 5 pp. and an Appendix of 48 pp., the Title page reading

A JOURNAL OF THE OPERATIONS OF THE QUEEN'S RANGERS FROM THE END OF THE YEAR 1777 TO THE CONCLUSION OF THE LATE AMERICAN WAR.

By Lieutenant-Colonel Simcoe, Commander of That Corps, Exeter. Printed For the Author.

A copy once the property of Sir David William Smith is in the Library of the University of Toronto, the gift of C. C. Robinson, Esq.: another in the possession of Aemilius Jarvis, Esq., whose great-grandfather was an officer in the Corps under Simcoe: a third is owned by the John Ross Robertson Estate. (This work is now quoted at £60—the Hoe copy brought \$660). Another edition, 8vo., of 328 pp., with a Preface of 2 pp. and a "Memoir of the Author", of XVII pp., was published in 1844: it contains an addition of 10 pp. to Simcoe's Appendix. The title page reads:

SIMCOE'S MILITARY JOURNAL. A HISTORY of the Operations of a Partizan Corps called The Queen's Rangers, Commanded by Lieut.-Col. J. G. Simcoe, During the War of the American Revolution. Illustrated by Ten Engraved Plans of Actions, &c. Now First Published with A Memoir of The Author And Other Additions—New York, Bartlett & Welford—1844.

When the octavo edition was published the following letter was sent to Mrs. Simcoe.

Madame,

New York, Augt 21st, 1844.

At the request of the publishers of the accompanying volume, I take the opportunity, through the kind care of the Rev. Dr. Scores-

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by, to acknowledge our indebtedness, here in the United States, for the valuable addition to the history of the American War of Independence which is found in the Journal of Lieut.-Col. Simcoe.

The existence of the work was first known here last autumn, when Messrs. Bartlett & Welford fortunately procured a copy from London and it was determined by them at once to reprint and publish it for the gratification of our historical readers.

The name of Colonel Simcoe I had frequently met in the records of the war, though my curiosity remained mostly unsatisfied as to his particular services in its campaigns until the discovery of the Journal. In attempting to furnish for the reprint a sketch of the author's life and a few notes to enlarge the original appendix, the information was hastily collected and used, which, in the new edition forms an increment to the first, a rapid though diligent research resulting as the Memoir will show. It was mainly formed of notices in the Gentleman's and the Monthly Magazines, and subsequently increased by the use of the other authorities cited. An apology is due for the crudeness and hurry observable in the manner of adapting matter which I regret has not received its deserved grace in its style of recombination. The suddenness of the undertaking will account for, if not excuse, the imperfect execution of the duty.

As was expected, the circulation of the volume evoked the lingering recollections of aged people, in the shape of many and various tales and anecdotes of the commander of the Queen's Rangers and his regiment. Newspapers and other local journals through the country noticed the narrative and quoted interested pages; and annotations, explanatory comments, &c., were elicited in different quarters from historical students and survivors of the last century. All such materials I have carefully preserved, and I hope they may yet be turned to good account in extending the honourable fame of a soldier who has left in our land the reputation of an accomplished, brave and humane officer—a just and magnanimous man.

Should any errors have been committed in relating the career of Col. Simcoe, it would be particularly gratifying to have such mistakes pointed out or the means for correcting and improving the account of his life and services made available. So great is now the interest felt here in the minute details of the progress of the Revolution—military or civil—that the smallest writing, drawing or other document, original or copied, is eagerly sought. By indications in the "Journal", many, to us, very curious and useful papers appear

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to have belonged to Genl. Simcoe, the loan or copies whereof would be most serviceable to the historical investigator. Doubtless there is not a little touching Major André, a soldier whose name awakens our tenderest sympathies, and concerning whom I hope soon to put forth a full collection of authentic historical materials, affording at the same time a good opportunity for a further introduction of the name and history of his intimate friend, Lt.-Col. Simcoe.

Doctor Scoresby has kindly offered to convey to you, Madame, this communication and a copy of the reprinted "Journal" which the publishers beg you to accept with their most respectful acknowledgments for the use of the original.

I am most happy in the occasion to express the high honour of which I am sensible in subscribing myself,

Madame,

Most respectfully,

Your old Humble Servant,

Mrs. Simcoe.

SILVANUS MILLER, JR.

The account of Simcoe's promotions, &c., as given by Captain W. H. Wilkin in his *Some British Soldiers in America*, London, 1914, at pp. 116, 117—I have verified and supplemented by enquiry in England. The correct account is as follows:

Ensign, 35th Foot, April 27, 1770.

Adjutant, 35th Foot, March 27, 1772, till December 26, 1775.

Lieutenant, 35th Foot, March 12, 1774.

Captain, 40th Foot, December 27, 1775.

Temporary Major, October 15, 1777.

Temporary Lieutenant-Colonel, October 15, 1777.

Local Lieutenant-Colonel, June 23, 1779.

(Brevet) Major, August 4, 1780.

(Brevet) Lieutenant-Colonel, December 19, 1781.

Lieutenant-Colonel, 1st American Regiment (Queen's Rangers),  
December 25, 1782.

Colonel, November 18, 1790.

Colonel, Queen's Rangers, September 1, 1791.

Major-General, October 3, 1794.

Local Lieutenant-General, November 10, 1796.

Colonel, 81st Foot, January 18, 1798.

Colonel, 22nd Foot, June 18, 1798.

Lieutenant-General, January 1, 1801.

## CHAPTER IV

### Life in England

**S**IMCOE was in bad health when he arrived in England, "equally the result of excessive fatigue from his arduous services and of vexation at the inglorious fate of his cherished soldiers", as he himself says.

He was a great favorite in society and well-received in the best circles, while the War Office always listened with respect to him though it did not always approve his suggestions.

He spent a short time in London in consultation with the War Office; and, early in 1782, he went to Exeter, his old home, and began the quiet life with perfect rest prescribed for him; it was not long before he thought himself quite recovered, though it is impossible for anyone to read of his after life without seeing that he never again had very robust health<sup>(1)</sup>.

The Administration of the Marquis of Rockingham who had been Prime Minister from March, 1782, was consistently conciliatory not only toward the American Revolutionaries, but also toward the French; but it lost its head by the death of Rockingham in July, 1782. For some time there was a division in the Ministry, some favouring Shelburne, the other, largely under the lead of Fox, putting forward the Duke of Portland. Shelburne was selected by the King: he had been determinedly opposed to the grant of American Independence and asserted that "to nothing short of necessity would he give way on that head." It was determined to press more vigorously against the ally in Europe in the hope of detach-

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ing him from the American alliance: and Simcoe's friend, Charles Stuart, who had served with him in the American wars, was selected to go to Gibraltar. He wanted Simcoe to accompany him as second in command: this request was refused by Conway but he persisted—and in August made a written request to Simcoe. The parole was in the way; and all his efforts for an exchange were fruitless—he could not serve against the French and was compelled, much to his own disappointment, to decline the request.

This disappointment was in a measure assuaged—*cedant arma amori*.

At Hembury Fort, near Honiton, Devonshire, there lived Admiral Graves, his god-father, whose wife was sister of the widow of Colonel Thomas Gwillim of "Old Court" near the Town of Ross-on-Wye, Herefordshire. After the death of Colonel Gwillim, his widow gave birth, 1766, to a posthumous child, who was christened Elizabeth Posthuma; the mother died shortly after the birth and the infant was taken by her aunt, Mrs. Graves, and tenderly nurtured by her as her own child, at Hembury Fort.

Simcoe on his visit to his godfather met the young girl of sixteen and mutual love was the result; they were married, December 30, 1782, at Buckerell Parish Church, with Admiral and Mrs. Graves as witnesses<sup>(2)</sup>. The young people lived for a time in Exeter, Simcoe being relieved of his parole early in 1783.

The fierce struggle between the influence of the Crown and that of the great houses attracted the attention of all Englishmen above the lowest station. Fox's India Bill, opposed in violent terms by Pitt, passed both Houses of Parliament, although the King authorised Earl Temple to state in the Upper House that he should regard everyone as his enemy who voted for it—December 19, 1783,



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the King dismissed Fox and his Coalition Administration and appointed Pitt, First Lord of the Treasury—a Prime Minister before he was twenty-five. The Commons received the announcement with derisive laughter, and Pitt, not being able to secure a suitable Member of the House to act as a Minister, had to fight single-handed—and his fight is historical.

Throughout the country, sentiment was divided—some taking the part of the King and his Royal Prerogative and others contending for what were called the rights of the Commons, but in fact the rights of the nominees of the great houses.

In this contest, there was no doubt of the position of Simcoe—he was before all else a supporter of the King—and he issued an Address to the Freeholders of Exeter in that sense<sup>(3)</sup>.

Parliament was dissolved: Simcoe, however, did not stand for Exeter or other constituency in that election.

In 1784, Mrs. Simcoe, who was a considerable heiress, purchased Wolford and the surrounding estate near Honiton, Devonshire, and the young couple went there to live<sup>(4)</sup>. In this and the following year, he was in correspondence with Anna Seward, the “Swan of Lichfield”, the friend (or enemy) of Dr. Johnson, in reference to Major André. Simcoe was the means of securing for her a copy of the drawing made by André of himself when about to be executed, an engraving of which appeared in her Monody on his fate<sup>(5)</sup>.

Simcoe spent the next few years as a country gentleman, improving his estate, building a Manor House at Wolford, laying out roads, &c. He was not neglectful of literature; he prepared and had printed, (1787), the *Journal of the Operations of the Queen's Rangers* so often referred to, and he was the author of some verses

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not without merit. Some of these disclose very clearly the trend of his mind. In a "Fragment", he writes:

"Essex! (ye Muses bless his name!) thy flight  
Nor shall mischance nor envious clouds obscure!  
Thou the bold Eaglet, whose superior height,  
While Cadiz towers, forever shall endure.  
O, if again Hope prompts the daring song,  
And Fancy stamps it with the mark of truth,  
O, if again Britannia's coasts should throng  
With such heroic and determined youth,  
Be mine to raise her standards on that height,  
Where thou, great Chief! thy envied trophies bore!  
Be mine to snatch from abject Spain the state,  
Which, in her mid-day pride, thy valour tore!  
And oh! to crown my triumph, tho' no Queen,  
Cold politician, frown on my return,  
Sweetly adorning the domestic scene,  
Shall my Eliza with true passion burn,  
Or smile, amid her grief, at Fame, who hovers o'er my urn."

Simcoe never was satisfied that Cadiz should remain in Spanish hands, and, January 10, 1788, he laid before Pitt a plan for its surprise and capture. He said that "the genius of the great Earl of Essex forced from the Councillors of Elizabeth to permit him to undertake the capture of this City. He succeeded and nothing but the selfishness of those who acted with him prevented him from keeping possession of it. He reluctantly quitted it after offering to remain with an adequate force in its garrison which would become, to use his own expression, 'a thorn sticking in the King's foot' . . . ." The information which enabled Simcoe to formulate his plan was given him by Lieutenant Spencer who had served with him in the Queen's Rangers. Spencer was the son of a Spanish merchant and Spanish was his native language; Simcoe at the Peace procured him recommendations which enabled him to live in Cadiz two years; he was a good engineer and made accurate observations; he was

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now in the 73rd Regiment and about to sail for the East Indies; this could be prevented by making him a Lieutenant of Cavalry or a Captain of Infantry. Simcoe was anxious for honorable, active, dangerous and responsible service such as he had been used to, and would be glad to accompany Spencer to Cadiz if further information was required. The plan was secret, no one knew of it except Simcoe and Spencer<sup>(6)</sup>.

Nothing came of this; and, indeed, Pitt was having on his hands at home all he could attend to and sometimes more<sup>(7)</sup>. Then the King lost his reason, largely through grief over loss of the American Colonies; and the contest over the Regency Bill began and continued until stopped by the recovery of the King.

A few days after the King's restoration to health, Simcoe sent to him a copy of his *Journal* (still in the British Museum), in support of a petition to be permitted to raise "a corps to consist of one troop of Hussars, four troops of Dragoons, eight battalion companies, two Grenadier companies and two light companies". This was sent, as he said in his autograph letter, "to confirm in some measure by actual experience what otherwise might appear to be too theoretical"<sup>(8)</sup>. The petition was unsuccessful.

Later on in the year, he presented a copy of his *Journal* to Evan Nepean, Under-Secretary of State for the Home Department<sup>(9)</sup>.

The minds of many thinking men were turned to the northern part of this Continent, and Simcoe's was naturally turned in that direction from the part he had taken in the war and from believing his father to have been the principal cause of Quebec being attacked. He wrote to Nepean, December 3, 1789, urging the abolition of every vestige of military government and the "miserable feudal system of old Canada"; and said, "I should

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be happy to consecrate myself to the service of Great Britain in that country in preference to any situation of whatever emolument or dignity"<sup>(10)</sup>.

This seems to be the earliest suggestion of his appointment to a post in Canada; and thereafter it seems to have been certain that he would receive an appointment at the proper time.

Precisely how, when and by whom, Simcoe's appointment was arranged is not quite certain. Lord Dorchester, who was Governor at Quebec, recommended Sir John Johnson, March 15, 1790, hoping that "his zeal and fidelity in the King's service from the first beginning of the late war, the sacrifice of a very considerable property and the advantage of a high degree of confidence among those loyalists will point him out to His Majesty as the Properest Person for the Government of Upper Canada"<sup>(11)</sup>. This encomium was well deserved; Sir John had been very active in the cause of the Loyalists and beyond question his appointment would have been most acceptable to them. But before the receipt by Grenville of this despatch, he had selected Simcoe for the place in case the division of Quebec should take place, had submitted his name to the King and received the King's approval. Sir John had not been forgotten or his services overlooked, but it was not thought desirable to have a person belonging to and possessing such large property in the Province to be Lieutenant-Governor especially in the formation of the new Government. "The disadvantage to His Majesty's Service which might be expected from the effect of local habits, connections and interests appear to me to be more than sufficient to counterbalance those benefits which may be stated as arising from the same circumstances"<sup>(12)</sup>.

The fact that Simcoe was to be chosen seems not to have been kept secret<sup>(13)</sup>.

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At the succeeding General Election, October-November, 1790, Simcoe was returned a Member of the House of Commons for St. Mawes<sup>(14)</sup> in Cornwall, his colleagues being Sir William Young, a political writer, afterwards Governor of Tobago, and always a man of influence and capacity.

The House was called for November 25; before it met, Simcoe laid a proposal before the Government to raise a corps of twelve Companies, each to consist of a Captain, two Lieutenants and one hundred rank and file, with two Majors, and two troops of similar number, he, of course, to be the Colonel. The Government was asked to allow the usual bounty of five guineas, the "Ensigns" to be sold and the money applied to recruiting. The corps was to be sent to Canada, and the men were to be employed two days in the week on the Public Works, two in Military exercises and two for their private advantage—the land they should thus clear should be sold at a stipulated price to emigrants and thus the pay of the soldier increased; and "when he should be dismissed he would acquire that Habit of Industry which instead of a Burden as is too generally the case at present would render him highly useful to the community"<sup>(15)</sup>. The scheme, as we shall see, was afterwards elaborated.

The House met, November 25, 1790, and after the formal debate on the Address, the first matter taken up was the Impeachment of Warren Hastings. Simcoe made his only reported speech, December 23, on the question of the state in which the Impeachment was left at the dissolution of the late Parliament; he supported Pitt and rebuked Burke—a rebuke to which Burke made an immediate, trenchant and effective reply<sup>(16)</sup>.

It cannot be said that Simcoe made any impression on the House: and, indeed, it appears that he was not versed in the arts of persuasion—he was a soldier and believed rather in force.



MRS. JOHN GRAVES SIMCOE IN WELSH DRESS  
*(From a Miniature)*



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Simcoe, bearing in mind the condition of the Colony, wrote, December 24, 1790, to Lord Grenville, Secretary of State, asking him to instruct Nepean, the Under-Secretary, to furnish "a *Canvas House* similar to that sent with the Governor of Botany Bay", as it "might be highly convenient, if not necessary, in the various expeditions 'twill be proper that I should make in order to be an eye witness of the situation of the new proposed Government and a faithful reporter to Your Lordship thereon"<sup>(17)</sup>.

Already the scheme had been decided upon to form two Provinces out of the enormous territory made into the Province of Quebec by the Quebec Act of 1774; but it was not till February 25, 1791, that the Royal Message of His Majesty's intention to divide Quebec into two provinces was presented by Pitt to the House of Commons<sup>(18)</sup>, and the Order in Council actually forming the two Provinces was passed, August 24, 1791<sup>(19)</sup>. Simcoe could not be formally appointed to the Lieutenant-Governorship of the Province of Upper Canada until this Order in Council, and he waited somewhat impatiently for all arrangements to be completed that he might sail during that year. At length everything that prevented his sailing was arranged, and, Monday, September 26, he set sail from Weymouth in the Frigate *Triton*, 28 guns, with Mrs. Simcoe, their youngest daughter Sophia and their four months old son Francis<sup>(20)</sup>.

The voyage was uneventful, but there was considerable apprehension that it would not be possible for the ship to reach Quebec; as it was so late in the season, it was feared that the river would be closed by ice and the *Triton* be compelled to sail for the Barbadoes. Simcoe seems to have been sanguine throughout, and he was not disappointed: October 28, the *Triton* made Sable Island; two days afterwards, Louisbourg was passed; November



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1, the Magdalen Islands were sighted and, Friday, November 11, at one o'clock in the morning the *Triton* anchored at Quebec<sup>(21)</sup>.

Simcoe was disappointed at not seeing the Harbour of Louisbourg "so often mentioned in his father's papers" and at not seeing the Gut of Canso "as his father . . . . . proposed to the Admiralty to carry large ships through it and would have gained much time in so doing". He had hoped to sail through this passage and proposed to the officers to do so, but they objected as they were afraid to take the risk<sup>(22)</sup>.

It is now time to say something of the country to which Simcoe came and of the problems and difficulties before him.

### NOTES

(1)In a letter from Evan Nepean to Simcoe from St. James' Palace, Saturday, September 10, 1791, the writer "is extremely sorry to hear by your letter that your indisposition has increased. It is not fitting that you should be out of condition on the eve of embarking on such an expedition. I trust that a few days sea air will set you to rights, and prepare you to encounter the gales on the American coasts". Wolf. I, 1, 372.

Simcoe's mother had died during his absence in America; in the *Newcastle Courant* of August 10, 1776, appeared the following death notice:—"Lately Mrs. Simcoe, widow of the late Capt. Simcoe of the 40th Regt., now in America". It will be seen that the paper confused Capt. Simcoe with his son.

Early in 1782, Simcoe received the freedom of the City of Exeter—the following is an entry in the Register:—"In Chamber, January 22, 1782, Resolved unanimously that the freedom of this city be presented to Lieutenant-Colonel Simcoe for his very able and spirited conduct in America. And this body hath a particular satisfaction in showing this mark of their esteem and respect to a gentleman who spent the early part of his life in this City and has proved himself so distinguished an ornament to his profession."

(2)Colonel Gwillim was Lieutenant of the Seventh or Royal Regi-

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ment of Foot in 1746—See *Historical Record of the Seventh or Royal Regiment of Foot, Compiled at the request and with the assistance of the officers of the regiment, by W. Wheater*. Printed for private circulation, Leeds, 1875. He afterwards became Lieutenant-Colonel of the 50th Foot.

Mrs. Graves did not approve of early marriages and tried to persuade her niece to “bide a wee”; the Admiral, however, who had a great fondness for Simcoe, favored the suit and quietly influenced his wife so that her objections were soon over-ruled, and plans and preparations were made for a wedding in December.

That his friends evinced interest in the event is shown by this extract from a letter in the family archives:—

“I cannot send off this letter without assuring you that you have interested all our family circle, consisting of my Father, Wife, Sister and self, (Tom being in town and Dick on his living in Cornwall). The prospect of any addition to your happiness gives a glow of animation to our spirits—We drink your health in a bumper to-day and shall remember you in our prayers at night—for with us old-fashioned people the sober glass of friendship and real devotion are not incompatible; however, the two extremes may run wild into intemperance and Methodism. I can give you no better wish than that you may realize all those true joys which I have experienced in matrimony and a domestic life.”

As Miss Gwillim was an heiress, the matter of marriage settlement had to be arranged with her aunt’s consent. This was given. On 27th November, 1782, Simcoe wrote his solicitor that—“This concurrence Mrs. Graves is ready to give, in this or any other matter that may facilitate the affair. You will be pleased, therefore, to make out the settlements, settling as heretofore directed upon Miss Gwillim whatever legally can be done; and if by any Article or obligatory Bond, the law can bind me to fulfill what is further intended to be settled on her when of age, viz: the whole or the remainder of her portion of the Aldwinckle Estate, you will be pleased to draw them up immediately.”

Of the wedding there is no special account in the Simcoe manuscripts. It is recorded thus in the register of Buckerell Parish Church:—

“Numb. 60—Lieutenant-Colonel John Graves Simcoe of this Parish and Miss Elizabeth Posthuma Gwillim of this Parish were married in this church by Licence this 30th Day of December in the Yeare One Thousand Seven Hundred and Eighty-two by me,

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Thos. Roskilly, Curate. This Marriage was solemnized between Us, John Graves Simcoe, Elizabeth Posthuma Gwillim, in the Presence of Saml. Graves, Margaret Graves."

The Gwillims were an ancient and noble family, with a genealogy extending back to the days of the Conquest—a descent from the British Lords of Brecon, from Henry Fitz Herbert, Chamberlain of Henry I, and from William the Conqueror. The archives at Wolford contained an elaborate genealogical outline by Francis Townsend, Windsor Herald in 1806, an excellent example of Heraldic art, showing about four hundred quarterings of colour.

(<sup>3</sup>)We find a letter addressed to him by Mathew Robert Arnott, a warm friend, from South Audley Street, Saturday, March 20, 1784, congratulating him on the birth of a daughter (Eliza, born January 1784), and adding:

"I approve most exceedingly of your address to the Freeholders of Exeter as I think it does honour both to your head and heart and hope it will not fail of having its due effect whenever a vacancy happens which, according to the present appearance of affairs, cannot be very far distant. Indeed there never was a period in the annals of this Country when it behoved the electors of this Kingdom to be more careful in the choice of their representatives than the present . . . . With all the veneration and respect I have for the House of Commons as a constituent part of this Government . . . . I cannot help thinking that their late attempts against the just prerogative of the Crown has a violent tendency towards subverting the balance of the Constitution upon the preservation of which the Rights and Liberties of this country so entirely depend. The contest is, however, happily over for the present and the only means of preventing its renewal seems to be a speedy dissolution of Parliament . . . . It is now said that this event will take place on Wednesday next, . . . . I shall be happy to see you returned. . . . " Wolf. I, 1, 231.

Arnott was a true prophet: Parliament was dissolved, Wednesday, March 24, and Pitt had a large majority.

A very fair and impartial account of this episode will be found in Jesse, Vol. IV, cap. 2, pp. 48, sqq. "If you resign, Mr. Pitt", the King is reported to have said to him, "I must resign too." do. do. do. p. 55.

Simcoe at this election was invited by a considerable body of the electors to become their candidate. He was about to accept the invitation and begin a canvass when he found that John Baring,

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Esq., who had been elected by the burgesses for the previous eight years, had announced his intention of becoming a candidate again; thereupon he withdrew from the contest "that I may, so far as is in my power, promote the tranquility of the City", as he says in his answer to the requisitionists of January 9, 1784.

(4) It would appear that Simcoe removed to Wolford Manor in 1784, but this is not certain. Mr. Robertson, *Diary*, p. 31, says that "it was not until 1788 that they made Wolford their permanent residence, after improvements in the house had been made"; but we find as early as October 4, 1784, Anna Seward writing him at "Wolford Lodge near Honiton, Devon"; the same address is given in her letter to him, February 20, 1785. *Wolf. I, 1, 234, 238*. Apparently his first two children and perhaps the third, were born at Exeter in January 1784, August 1785, and April 1787, respectively. *Diary*, p. 32.

(5) The copy seems to have been made by Mrs. Simcoe who had undoubted artistic talent. The poetess thought the "kind and thrice acceptable present . . . infinitely valuable in itself (and) that value doubled by the consciousness of receiving it from the beloved friend of that dear exalted martyr to whose fortitude and greatness of soul it bears such striking testimony. . . ." *Wolf. I, 1, 238*. Anna Seward's Monody will be found with André's portrait by Hopwood in a book published in 1808: *An Authentic Narrative of the Causes Leading to the Death of Major André, Adjutant-General of His Majesty's Forces in North America*, by J. H. Smith. The Monody has been reprinted in Lossing's *The Two Spies, Nathan Hale and John André*, N.Y., 1886.

(6) *Wolf. I, 1, 269, 270*. In this letter Simcoe says: "I am the more emboldened to write to you, Sir, my father having laid that plan for the Conquest of Canada, which was afterwards adopted, to your father, and as I am in possession of authentic documents which prove that General Wolfe in London planned the landing on that very spot near Quebec where he afterwards did land and that if he had commanded the Armament against Louisbourg agreeable to your great Father's expectations had surprised Quebec the same year".

Wolfe's belief, expressed in the course of a long letter to Sackville, that Quebec might that summer have fallen was justified. But Amherst did not share his belief, and the conquest of Quebec was delayed for a year.

Lieutenant Spencer of the 73rd afterwards went to India, and a

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loan of £100 was obtained for him on Simcoe becoming security. Simcoe paid the amount, August 6, 1791. Wolf. I, 1, 367.

It was probably about this time that Simcoe wrote his most successful poem: Cadiz and Essex seem to have been much in his mind.

### FRAGMENT

#### I

Fancy: to thee belongs the coming day:  
Adorn it with thy trophies: with such flow'rs  
As late o'er Wolfe were spread, while his cold clay  
Britannia, weeping, in yon fane embow'rs.  
Brave youth: for thee pure Glory framed the wreath,  
Not of those tints which fade before the noon,  
But of that sober cast, that hue of Death,  
True Amaranth, the dying Patriot's boon.  
Blest be thy memory and rest in peace:  
O may my soul be firm as thine, to meet  
Dangers, which skill may lay and which shall cease,  
Broke like the wave that bathes the proud rock's feet.  
Eliza: thou my triumphs still shall share;  
Fancy and Hope thy sufferings shall bear,  
And crown with twofold joy each fond suspended care.

#### II

Hope: to the sunbeam stretch thy rosebud wreath,  
And raise thy mild and all encheering eye,  
Piercing beyond the dark domain of Death  
To the bright confines of futurity.  
Point thou the course of Glory: Valour rears  
For her his veteran spear; her, Vengeance calls;  
Bid her resume the deeds of former years,  
And plant Britannia's colours on those walls;  
Then to this land returning Age shall pay.  
Hope: ample tribute to thy guardian power,  
And with true science graceful shall delay  
Youth's list'ning ear from Pleasure's wanton bower;  
Illume to acts of worth the manly train,  
And bid, from thine and Fancy's sacred strain,  
New Wolfes in arms arise, and Essex live again;

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## III

Hope: who with smiling and commanding air  
Hast thrown thine eaglet to the sky,  
And bid him soar with steadfast eye,  
To claim Jove's thunder, and to bear  
His high behests with forward wing;  
And thou, bright Fancy; powerful to fling  
Thy radiant eyebeams thro' the depths of space,  
And there, with keenest energy, to trace  
Whatever cold oblivion, with her veil,  
Dark mental night, malignant, would conceal,  
Receive me, hallowed pair; and bid my rhyme  
Disclose the secrets of revolving time.

## IV

Essex; (ye Muses bless his name;) thy flight  
Nor shall mischance nor envious clouds obscure;  
Thou the bold Eaglet, whose superior height,  
While Cadiz towers, forever shall endure.  
O, if again Hope prompts the daring song,  
And Fancy stamps it with the mark of truth,  
O, if again Britannia's coasts should throng  
With such heroic and determined youth,  
Be mine to raise her standards on that height,  
Where thou, great Chief: thy envied trophies bore;  
Be mine to snatch from abject Spain the state,  
Which in her mid-day pride, thy valour tore;  
And oh! to crown my triumph, though no Queen,  
Cold politician, frown on my return,  
Sweetly adorning the domestic scene,  
Shall my Eliza with true passion burn,  
Or smile, amid her grief, at Fame, who hovers o'er my urn!

(7) In fact he narrowly escaped defeat, March 5, 1788, when his "India Declaratory Act" was under discussion: Pitt being prevented by indisposition from replying to Fox, the Members of the House of Commons were so carried away by Fox's eloquence that the Ministry had a very close call. Pitt had got drunk the night before at Lord Temple's house in Pall Mall with Dundas and the Duchess of Gordon and had not got over the effects.

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(8) Captain W. H. Wilkin: *Some British Soldiers in America*, London, 1914, pp. 111, 112. The letter of Simcoe was dated London, March 15, 1789—the King's recovery was announced by the Lord Chancellor, February 19; and he resumed his authority, March 10, 1789, D. N. B., Vol. XXI, p. 186.

(9) In 1782 by the Act 22 Geo. III, c. 82, the Secretaryship of State created in 1768 to attend to American affairs was abolished, and the two Secretaryships remaining were denominated Home and Foreign. The Colonies and Ireland came under the care of the former. Evan Nepean who became a Baronet, was a person of much ability and influence, D. N. B., Vol. X, p. 222.

(10) The *Correspondence of Lieut.-Governor John Graves Simcoe* . . . . . collected and edited by Brigadier-General E. A. Cruickshank, LL.D., F.R.S.C., Ontario Historical Society, Toronto, 1923, Vol. I, p. 7. This is a timely and very valuable collection of letters to and from Simcoe including also some from and to others; but all the letters bear directly or indirectly on matters of interest to Simcoe. Simcoe Papers, I, 1, 7.

(11) I *Correspondence*, p. 10: Can. Arch. Q. 44, I, 130: Letter Dorchester to Grenville, Quebec, March 15, 1790.

(12) I *Correspondence*, p. 13: Can. Arch. Q. 44, I, 149, Letter, Private and Confidential, Grenville to Dorchester, Whitehall, June 3, 1790. The voice was almost certainly Nepean's, if the hand was the hand of Grenville.

The antagonism between Dorchester and Simcoe already begun was increased by this denial of the former's request in favour of the latter.

(13) Haldimand, who was at this time in London, notes in his Diary, Monday, June 12, that dining at Mr. Davison's, Nepean being also there, Nepean told him that Dorchester would certainly return to England next spring and probably would never go back to Quebec. Then he proceeds: "Davisson (qu? Nepean) me fit d'autres confidences en me disant que le Col. Simko etait nommé pr. (pour) le nouveau gouvernement—que Lord Dorchester avait recomendé le chev. Johnson de la façon la plus forte." "Davisson (qu? Nepean) made me other confidences, telling me that Col. Simko was named for the new Government—that Lord Dorchester had recommended Sir (John) Johnson in the strongest manner". I *Correspondence*, p. 294: Haldimand Papers, Can. Arch. See Report, Can. Arch., for 1889, Vol. III, pp. 294 and 295.

(14) In 28 *Parliamentary History*, London, 1816, Col. 884, the



WOLFORD LODGE, HONITON, DEVON, ENGLAND





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constituency is called "St. Mawe's: Wilkin, *op. cit.*, p. 112, calls it "St. Maw's", as do some others, Morgan, &c.; Kingsford, *Hist. Can.*, Vol. VIII, p. 339, calls it "Saint Maw".

Simcoe seems to have taken an active part in the election for the county—we find a letter to him from John Rolle who was elected member for Devonshire along with John Pollexfen Bastard. Rolle, who afterwards became Baron Rolle of Stevenstone, who had been member for Devonshire in the two previous Parliaments, 1780 and 1784, and was an ardent supporter of Pitt, a bitter Conservative all his life, was the hero of "The Rolliad", "in which he was gibbeted as the degenerate descendant of Rolle". D. N. B., Vol. XLIX, p. 164. Writing to Simcoe from Bidwell (Buton?), Saturday, July 3, 1790, as to a familiar friend, Rolle thanks him "for the great assistance I have experienced from your exertions during the contest. To the very active part taken by yourself and others and your very spirited conduct in particular at the conclusion I attribute the event being terminated so early. The opposition was crushed at a lucky moment. Every hour confirms me in the opinion that the plot was deeper than first imagined". Wolf. I, 1, 337. To be a political friend of Rolle showed Simcoe's politics. We find their friendship indicated in a letter of Simcoe's from Wolford Lodge March 1, 1785—Wolf. I, 1, p. 240.

<sup>(15)</sup>I *Correspondence*, p. 16: *Sim.* I, 1, 16-19. There is difficulty in the matter of this letter dated November 12, 1790. It is addressed to "Henry Dundas Secty. State". Henry Dundas (afterwards Viscount Melville) did not become Secretary of State until June 8, 1791: he was at this time P.C. and Treasurer of the Navy. William Wyndham Grenville (who in this year became Lord Grenville) was Secretary of State in 1790 for the Home Department; and as Simcoe had a conversation with him concerning Canada, and it was already arranged or was to be soon arranged that Simcoe should go to Canada, it seems likely that the proposal of Simcoe was to him and not to Dundas. The first letter to Dundas in the Canadian Archives is June 2, 1791, *Can. Arch.*, Q. 278, p. 228: but it was understood that Dundas was to be Secretary of State, and it may be that Simcoe wrote him as such before his formal appointment.

<sup>(16)</sup>28 *Parl. Hist. ut suprâ*, Cols. 1128-1140. In my *Slave in Canada*, *Journal of Negro History*, Vol. X, (July, 1920), p. 55, I incautiously said that "Simcoe had spoken against it (slavery) in the House of Commons in England"—cf. my *The Slave in Upper Canada*, *Journal of Negro History*, Vol. IV, (October, 1919), p. 377.

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My authority was a letter from a contemporary of Simcoe's in Canada; but on examination of the Proceedings in the House of Commons, for 1790 and 1791, it appears that while his old friend and comrade, Lieut.-Col. Tarleton, spoke against abolishing the Slave Trade in 1791—28 *Parl. Hist.*, Col. 1208: 29 *Parl. Hist.*, Coll. 279-281 saying "he should oppose the abolition of the slave trade whenever and in whatever shape it was brought forward", 29 *Parl. Hist.*, Col. 293: as did Simcoe's colleague, Sir William Young, 29 *Parl. Hist.*, Coll. 294, 314, 358, Simcoe is not reported as having spoken on the subject. He almost certainly voted in the minority of 88 which fell before the majority of 163 when Wilberforce's motion was lost, do. do. do. Col. 359.

He took part in Committee in discussion of the Canada or Constitutional Act of 1791, 31 George III, c. 31, as appears from *Debrett's Parliamentary Register*, Vol. 29, p. 414, in the report for Thursday, May 12, 1791, and p. 425, Monday, May 16.

**Colonel Simcoe** "Colonel Simcoe read an extract from an American paper, to prove that the congress thought a very small number sufficient for the members forming the House of Assembly for a western Province, and that two or four would be enough to represent Montreal and Quebec."

Again on *Report* stage, Monday, May 16, *Debrett*, p. 425, "Colonel Simcoe spoke in favour of the Bill, and having pronounced a Panegyric on the British constitution, wished it to be adopted in the present instance, as far as circumstances would permit."

**Colonel Simcoe**

(17)<sup>1</sup> *Correspondence*, p. 17; we shall meet "*Canvas Houses*" again.

(18) See as to this scheme Chapter V, *infra*: the Message will be found in 28 *Parl. Hist.*, Col. 1271: 4 *Ont. Arch. Rep.*, (1906), p. 158.

(19)<sup>4</sup> *Ont. Arch. Rep.*, (1906), pp. 158-160: *Documents relating to The Constitutional History of Canada, 1791-1818*, by Dr. Arthur G. Doughty and Duncan A. McArthur, Ottawa, King's Printer, 1914, pp. 3-5.

(20) The Exeter "Flying Post" of Thursday, June 9th, 1791, contains the announcement:—"Monday, the lady of Colonel Simcoe was safely delivered of a son and heir, at their seat at Wolford Lodge, near Honiton".

(21) The story of the voyage is entertainingly told by Mrs. Simcoe, *Diary*, chapter V, pp. 43-52.

(22) *Diary*, p. 48.

# LIFE IN ENGLAND

## ADDITIONAL NOTE

In 1787, Simcoe wrote a criticism on the Marquis de Chastellux's "*Voyage dans l'Amérique*", which he read in the English translation, "*Travels in North America in the Years 1779-82*", published in two volumes, 8vo., in 1787 (an edition appeared in London and another in Dublin the same year). Chastellux had served in the Revolutionary War under Rochambeau with some credit; and this work was largely an account of men and things as he saw them there. He was not complimentary to the Americans, and his book never was a favourite in the United States: he was still less complimentary to the British and the Hessians; and Simcoe thought he should take him to task.

Simcoe's work is very rare (the last price I have seen quoted is £3 3s.): it bears the title—*Remarks on the Travels of the Marquis de Chastellux in North America. London. Printed for G. and T. Wilkie, in St. Paul's Church Yard. MDCCLXXXVII. (Price Two Shillings) Cr. 8vo., 2-80 pp.*

(In Ink on the Title Page "By John Graves Simcoe")

In the "Advertisement" prefixed, the critic says:—"On reading the Travels of the Marquis de Chastellux I offer some remarks upon them to the public: his account of America strengthens many assertions relative to the late War that have hitherto been disbelieved; points out who were the enemies of Great Britain; what instruments separated her from her colonies; and produces the most ample evidence in favour of the military talents of the British Generals."

The critic says of the Marquis what the Marquis said of Lafayette:—"He was a Gascon as well as the rest of them". He agrees with Chastellux in his criticism of Washington's course at "German Town"; and disagrees with him as to the conduct of the Hessians for "even the Allied Army when it drove the French marauders from Hesse pillaged the Hessians more than the Hessians or British did America". It sounds strange, but the critic and the Marquis agreed that Washington's Army "was composed of all nations, not of native Americans . . . under a more severe systematic and uniform mode of discipline . . . than any European potentate in the time of war can avail himself of".

"The American buzzard should be stripped of the eagle's plumage . . . the capture of Lord Cornwallis' army was the effect of joint operation and French cannon. The surprize of Washington

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at Brandywine and defeat of German Town have not added to his reputation, and the terming his repulse at Monmouth a defeat of the British Army . . . . the army knew . . . . to be a dishonorable gasconade.”

Lafayette’s claim to any military reputation is absolutely denied: “General Wayne was indefatigable, active and brave”: “As an American soldier, Lee was the most injured man in the universe”: “General Gates . . . . is no hypocrite but real in his love for liberty”; “Boston, Philadelphia, Newport and Charles Town acquit them (the British Generals) of unnecessary destruction.”

“There is in general but one sentiment relative to America throughout Great Britain: she regrets only her national debt and not the loss of her colonies. Some are not wanting to say that even that debt is cheaply purchased if Great Britain is wise enough to attend to her internal advantages and to prefer the certainty of their cultivation to all foreign and precarious emoluments . . . . the sole object of the inhabitants of Great Britain is the preservation of peace.”

A very modern touch concludes the book. “As far as the interests of nations are superior to those of Kings, a Family Company in greater lustre and more extensive meaning would be created by an union of force and of commerce between Great Britain, Ireland and America. No unnecessary wars would disturb the world at this junction . . . . Away then with the remembrance of the late war and its individual miseries . . . . let all retrospect be avoided: let all harsh and aggravating expressions cease and such incendiaries as the Translator of the Marquis de Chastellux’s Memoirs be treated with deserved contempt. This conduct, religion recommends and history points out in the most forcible manner to Britons and their American descendants.”

As indicating the esteem in which Simcoe was held by those who knew him, may be read Dr. Hugh Downman’s tribute. Hugh Downman, M.D., (1740-1809), physician and poet, was born in Exeter and educated in the Exeter Grammar School. He entered Balliol College, Oxford, in 1758, and after taking Holy Orders in Exeter, studied medicine in Edinburgh University. After graduating there he “walked” the Hospitals in London and in 1770 after taking his M.A. in Cambridge settled down to the practice of medicine in Exeter. He wrote plays published in 1792 at Exeter in 8vo., *Tragedies by H.D., M.D.*, and many poems of some merit, amongst

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them *Poems to Thespia*, Exeter, 1781, 8vo. In this volume appear the following lines:

To Lieutenant-Colonel Simcoe,

### XVII

Simcoe, howe'er in weak illiberal days  
Merit may toil in vain, and valour bleed,  
Denied by prejudice their well-earn'd meed;  
Yet, mindful of her office high of yore,  
The Muse her vivid garland shall prepare  
And gird the intwined foliage round their hair:  
Tune with sincerest voice her notes of praise,  
Bid Glory open her refulgent store,  
While Truth and Virtue sanctify her lays,  
Read and approved till time shall be no more.  
Thy gallant acts, and each intrepid deed  
'Tis hers to adorn. Nor thou, each softer air  
Refuse; the strains which she to love could yield,  
While thou wert harrass'd in strifeful field.

## CHAPTER V

### Upper Canada of Simcoe's Time

CANADA as a province of France after having in 1759 suffered the loss of Quebec, became wholly British *de facto* by the surrender of Montreal in 1760 followed by the delivery of the Upper Posts. The rule was military but generously considerative of the laws and customs of the French during what has received the name of Le Régime Militaire or Le Règne Militaire<sup>(1)</sup>.

When by the Treaty of Paris of 1763, Canada was ceded to Britain, it was determined to form a "Government" of Quebec reaching a little west of the Ottawa River, and to reserve the western country for the Indians and fur trade. In 1764, civil administration was established and took the place of military rule. At the time of the Conquest and for some years thereafter, it was the confident expectation of the British authorities and the American Colonists to the south, that Quebec would speedily become Anglicised in race, language and religion: it was believed that most of the French-Canadians would leave the country, that English-speaking Protestant immigrants would come in from the British Isles and American Colonies and that the few French-Canadians who remained would be absorbed into the English mass.

This expectation proved vain: few of the French-Canadians left Quebec, few settlers came in from English-speaking countries, and the French-Canadians then, as always, were tenacious of their race, language and religion.

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By the Royal Proclamation of 1763 issued after the Treaty of Paris the King specifically promised "for the security of the Liberties and Properties of those who are or shall become Inhabitants" of the Province, that until there should be a General Assembly elected to make laws for them, "all Persons Inhabiting in or resorting to one said" Colony "may confide in our Royal Protection for the Enjoyment of the Benefit of the Laws of our Realm of England". It was also stated in the Proclamation—and truly—that express power had been given to the Governor to summon and call a General Assembly as soon as the state and circumstance of the Colony should admit. Few if any of the French-Canadians wanted an Assembly—such a body had been unknown in the French regime—none wanted the English civil law—the criminal law was not objected to except by some of the noblesse.

Guy Carleton (afterwards Lord Dorchester), who was Governor of Quebec from 1768 to 1778, used all his great influence to have the promises, express and implied, of the King brought to naught: and after much discussion and wrangling the famous Quebec Act of 1774 was passed. This extended the Province of Quebec, south to the Ohio (west of Pennsylvania and West to the Mississippi<sup>(2)</sup>): it put an end to the project for a General Assembly, leaving the Province to be governed in the old way by a Governor and a nominated Council; and it re-introduced the French-Canadian law in civil matters. This breach of faith with those—they were few indeed, but there were some—who came to Quebec on the strength of the representations contained in the Royal Proclamation of 1763, can be excused if at all on the ground of high reasons of state. Opinions vary, *sub judice lis est*, and this is not the place to discuss the question.

The Thirteen Colonies to the South made great efforts to bring Canada into union with them as the Fourteenth.



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The indefatigable energy and military skill of Carleton coupled with good fortune foiled the armed invaders while Bishop Briand, ever faithful to Britain, prevented the persuasive arguments of Benjamin Franklin and his colleagues, delegates to Canada from the Continental Congress in 1776, from being effective: Canada remained British and on the Peace of 1783, there was no thought of giving her up.

The Old British Empire was rent in twain, in time to be replaced by a greater and more admirable New British Empire.

What the united Empire failed to bring about, a disrupted Empire effected in some degree.

During, and more especially after, the Revolutionary War, many loyal British subjects left the rebellious territory and made their way northward into the loyal British territory: some into the southern part of what is now the Province of Quebec, and some further west to the left side of the Great Lakes and connecting rivers. These were, in general, English speaking and had lived under English law and custom: French-Canadian law and custom irked them, and many were their complaints. No remedy wholly satisfactory, could be found: that which was adopted was inadequate and it did some injustice; but it is hard to see how a better one could be suggested under the very peculiar circumstances. It was decided to divide the Province of Quebec into two Provinces, those of Upper Canada and of Lower Canada, and to give to each a Legislature with power to make such laws as should be thought proper for the particular Province.

The Upper Province was expected to be almost wholly English-speaking and Protestant: the Lower it was known would be for a time at least French-speaking and Catholic, but the hope was not wholly extinct that in



WOLFORD LODGE INTERIORS

1. The Hall. 2. The Morning Room. 3. The Salon.



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time it also would become largely English and Protestant.

Accordingly a Royal Message was presented to the House of Commons by the Prime Minister, William Pitt, February 25, 1791, stating the King's intention to divide the Province of Quebec into the two separate provinces and recommending the matter to the consideration of the House. A long and acrimonious discussion took place (resulting, *inter alia*, in the well-known rupture between Burke and Fox); and ultimately the Canada or Constitutional Act was passed and it received the Royal Assent, June 10, 1791. This Statute did not, as is so often said, divide the Province of Quebec nor did it authorize the King to divide it—that was for the King under his Royal Prerogative—but it provided for the government, &c., of the two Provinces at a date to be fixed after they should be formed.

The Order-in-Council which actually effected the formation of the Provinces of Upper Canada and Lower Canada was passed "at the Court of St. James's, the 24th of August, 1791". The Act having provided that it was to begin at a day to be fixed by the King on the advice of his Council or by the Governor or Lieutenant-Governor of the Province of Quebec or the person administering the Government there authorized so to do by the King on the advice of his Council, the Order in Council of August 24 directed Dundas to prepare a warrant to be passed under the Royal Sign Manual to authorize the Governor, Lieutenant-Governor or Person administering the Government there, to fix a day not later than December 31 of that year. This was done, the Warrant was executed and in the absence of Dorchester, Governor of Quebec, Major-General Alured Clarke, Lieutenant-Governor, issued his Proclamation at Quebec, November 18, fixing December 26, 1791, as the day for the commencement of the Canada Act.

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It is impossible not to recognise that Simcoe was disappointed at the position he was called upon to fill—there can be no doubt that he had originally supposed that he was to be the Governor of Upper Canada with no overlord but the King and the Home Administration: but it was otherwise decided: Dorchester, who had been Governor of Quebec, received a Commission, September 12, 1791, as “Captain General and Governor in Chief of our . . . . Province of Upper Canada and of our . . . . Province of Lower Canada”, while Simcoe the same day was constituted “Our Lieutenant-Governor of our Province of Upper Canada” and authorized “in case of his death or during the absence of Our Captain General and Governor in Chief of Our . . . . Province of Upper Canada . . . . to exercise and perform all and singular the powers and directions contained in our Commission” to him. The Royal Instructions accompanying the Commission were given to Dorchester, “Our Captain General and Governor-in-Chief in and over Our Province of Upper Canada”: none were given to Simcoe except that his Commission directed him to act “according to such Instructions as he (i.e., the Governor-in-Chief) hath already received from Us and such further Orders and Instructions as he or you shall hereafter receive from Us”. In a word, Dorchester was the Governor and Simcoe but the Lieutenant-Governor with the powers of the Governor only in case of his death or absence from the Province. As it was intended that Dorchester should continue to reside at Quebec, Simcoe’s authority was expected to be generally exercisable. But there was another difficulty, that is, the Command of the Forces—that was given to Dorchester, and Simcoe had but to carry out his orders. The relation of Lieutenant-Governor to Governor in the absence of the latter from the Province was a somewhat puzzling question.

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As to the extent of the territory, included in his Province, there was a difference between the Province of Upper Canada *de jure* and the same Province *de facto*.

When by the Treaty of Paris, 1783, it was agreed that the United States should have the territory to the right of the Great Lakes and connecting rivers, it was also agreed that "Creditors on either side shall meet with no lawful impediment to the recovery of the full value in sterling money of all bona fide debts" theretofore "contracted<sup>(3)</sup>: certain of the States had legislation which prevented British creditors receiving the amounts due to them from American debtors, and refused to repeal this obnoxious legislation. The loosely knit United States admitted inability to compel the carrying out of the stipulation; and Britain retained possession of the Posts at Michillimackinac, Detroit, Niagara, Oswego, Oswegatchie, Point au Fer and Dutchman's Point with some adjoining territory as security for the fulfilment of the Treaty. Upper Canada, therefore, in fact contained some territory now part of the United States: this continued during nearly the whole term of Simcoe's regime; negotiations for their surrender had been successfully carried through and the surrender made a few days only before he left Upper Canada.

The inhabitants of his Province were mainly United Empire Loyalists or their descendants: the Loyalists had during the Revolutionary War or on the conclusion of peace crossed into British territory and were mainly on the north side of the River St. Lawrence from the eastern boundary of the Province to the River Trent, on the west side of the River Niagara from a little north of the present Niagara-on-the-Lake to Lake Erie, and stretching along the north shore of Lake Erie to the East side of the Detroit River, up this river and the St. Clair to a short distance north of Lake St. Clair. Detroit was

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inhabited chiefly by French, although it had a number of English-speaking merchants. The nuclei around which the settlers were gathered were the present Cornwall, Kingston, Niagara and Detroit; and except in the last named practically all were English-speaking.

The numbers have been variously estimated: probably 10,000 is not far from the correct number.

The Indians constituted a difficulty, sometimes a menace: and it was never safe to count on the Colony being left undisturbed by these tribes—not, of course, the Six Nations on the Grand River, but the tribes which had not been closely associated with the British.

At this time, there were serious troubles between the United States and the Indians of the North Western Territory, i.e., the present States of Ohio, Indiana, Illinois, Michigan and Wisconsin. This Territory was formed by the Ordinance of 1787 and Arthur St. Clair became its first Governor: the Indians resented the invasion of their territory and early insisted that the white settler should not cross the Ohio: when Treaties were made, there were many complaints that they were not kept. War broke out, and General Josiah Harmar, with regular troops and militia, was badly defeated by the Miamis in 1790. Dorchester was very anxious over the situation: the Indians had been in general friendly with the British and there seemed at least a chance of Britain being brought into the war, especially as there was a well-defined sentiment in the United States in favour of attempting to take possession of the retained Posts by force. The Indians, too, bitterly complained of being betrayed by the British in the Peace Treaty. Dorchester gave specific instructions to the Commandants of the Upper Posts that while “We are at peace with the United States and wish to remain so”, “Common prudence requires a constant vigilance and readiness on our part to meet” a war begun by

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the United States "however improbable"<sup>(4)</sup>: St. Clair was placed in command of a larger army in 1791, and, November 4 of that year, he suffered a still more disastrous defeat at the hands of the Miamis; and it was not until "Mad" Anthony Wayne overthrew them at Maumee Rapids, August 20, 1794, that peace was assured.

### NOTES

<sup>(1)</sup>Much of the contents of this Chapter is evidenced by documents to be found in Drs. Adam Shortt and Arthur G. Doughty's *Documents relating to the Constitutional History of Canada, 1759-1791*, 2nd Edition, Ottawa, The King's Printer, 1918 (herein cited "S. & D."), Doughty and McArthur's *Documents relating to The Constitutional History of Canada, 1791-1818*, Ottawa, The King's Printer, 1914, (herein cited "D. & McA."), and General Cruickshank's *The Correspondence of Lieut.-Governor John Graves Simcoe*, Toronto, Ontario Historical Society, 1923 (herein cited "Correspondence"). The following particulars will probably suffice:

- 1763 Feb. 10, Treaty of Paris, S. & D., pp. 97-126.  
Oct. 7, Royal Proclamation, S. & D., pp. 163-168.
- 1774 Quebec Act, 14 Geo. III, c. 83, S. & D., pp. 570-576.
- 1783 Sept. 3, Treaty of Paris, (Britain & U.S.), S. & D., pp. 726-73c.
- 1791 Feb. 25, Royal Message to Ho. of Coms., 28 *Parl. Hist.*, Col. 1271.  
June 10, Canada Act, 31 Geo. III, c. 31, S. & D., pp. 1031-1051.  
Aug. 24, Order in Council dividing Quebec, D. & McA., pp. 3-5.
- 1791 Royal Warrant, Can. Arch., Q. 59 B., p. 199.  
Sept. 12, Dorchester's Commission, D. & McA., pp. 5-13.  
Dorchester's Instructions, D. & McA., pp. 33-48.  
Simcoe's Commission, D. & McA., p. 55.  
Nov. 18, Clarke's Proclamation, D. & McA., pp. 55-57.

<sup>(2)</sup>It will be remembered that it was the provision in the Quebec Act that the boundary of the Province of Quebec should run from the point at which the Ohio River struck the "Banks of the Mississippi . . . Northward to the Southern Boundary of the" Hudson Bay Territory which was the subject of the memorable dispute between the Dominion of Canada under Sir John A. Macdonald and the Province of Ontario under Sir Oliver Mowat which was



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determined only by Imperial legislation in 1889, 52, 53, Vict., c. 28. See my Paper read February 28, 1914, before the Royal Canadian Institute, *Transactions of the Royal Canadian Institute*, Vol. XI, pp. 1-18.

(3) *S. & D.*, p. 728, Article IV of the Treaty.

(4) *I Correspondence*, p. 19, Letter, Dorchester to Col. Gordon and Major Smith, Quebec, January 20, 1791: *Can. Arch.*, Q. 50 I., p. 66. See letter, Dorchester to Grenville, January 13, 1791, *Can. Arch.*, Q. 50, p. 21, for an account of Harmar's battle and Dorchester's fear for Detroit.

Dorchester also wrote to Sir John Johnson as to his anxiety to secure a cessation of hostilities between the Indians and the United States. Letter from Quebec, February 10, 1791, *Can. Arch.*, Q. 50, I, p. 76.

All the correspondence concerning these campaigns is very interesting.

## CHAPTER VI

# The Constitutional Act

**T**HE Canada or Constitutional Act of 1791 which, with a few amendments, was the written Constitution of Upper Canada as well as of Lower Canada for forty years, is an admirably drawn piece of legislation.

Simcoe in the Speech from the Throne on opening the First Parliament of Upper Canada, September 17, 1792, said: "I have summoned you together under the authority of an Act of Parliament of Great Britain . . . . which has established the British Constitution and also the forms which secure and maintain it in this distant country": and in closing the Session, he said that the Constitution of the Province was "the very image and transcript of that of Great Britain".<sup>(1)</sup>

In form, there was not a little justification for this claim.

As representing the King there was to be a Governor, Lieutenant-Governor or some Person appointed by the Sovereign to administer the Government within the Province—all laws to be effective must be assented to in His Majesty's name by such representative. The same form was followed at Westminster; but the Royal veto had been long obsolete and the Royal Assent had always been given to a Bill which had been passed by Parliament from the time Queen Anne refused it to the Scotch Militia Bill of 1707<sup>(2)</sup>. But the Governor<sup>(3)</sup> in the Province had the right and the duty when a Bill was presented to him for the Royal Assent, to exercise his discretion subject to the Instructions he received from the Home Administration,

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the so-called "Royal Instructions": he might give the Royal Assent, whereupon the Bill became law and a copy was transmitted forthwith to the Secretary of State—the King might then within two years of its receipt, disallow it, and it would then become null and void from the time the Governor made the disallowance known by Proclamation or Message to the Houses of Legislature. Or the Governor might withhold the Royal Assent: or he might reserve the Bill for the signification of the Royal Pleasure—if a Bill was reserved, it was not to become law until the Governor signified by Proclamation or Message to the Legislature that it had been laid before the Sovereign and assented to<sup>(4)</sup>.

The Act contemplated Instructions in this regard to be given to the Governor: and in fact, Royal Instructions were given to Dorchester, and Simcoe was directed to conform to them. He was to see to it that certain rules should be followed in the form of the Bills and "no Bill in any other form shall be assented to by you in our Name". Each different matter was to be dealt with in a different law; no clause to be used in any law, foreign to its title: no perpetual clause in any temporary law: no existing law to be modified by general words, but to specifically named: all laws for raising money, or imposing fines to state that the money, &c., is for the Sovereign for the public uses of the Province and to be accounted for through the Commissioners of the Treasury<sup>(5)</sup>. Assent was to be refused to all Bills for Naturalising Aliens, for Divorce, for allowing Aliens to hold or inherit land: also to laws enacted for less than two years except in cases of imminent necessity or immediate temporary expediency: also (without express leave granted for the purpose) to any law containing provisions previously disallowed by the King, and to Bills creating Paper Bills or Bills of Credit to be legal tender<sup>(6)</sup>. If any Bill respect-

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ing private property should be passed without having the rights of the Sovereign and all persons and corporation not mentioned in it saved, Assent was to be withheld, and the Bill reserved for the Royal Pleasure, as also every other Bill considered by the Governor to be of an extraordinary nature or requiring the special consideration of the Home Authorities<sup>(7)</sup>. There was another case of great importance in which Bills must be reserved for the Royal Pleasure—that is, those relating to exercise of any form of religious worship, or penalties or disqualification for that same, or the dues of the Clergy, &c.<sup>(8)</sup>.

It will be seen that the position of the Colonial Governor was not the same as that of the King: he had a discretion, the King had none, but he was limited by his Instructions, the King had none<sup>(9)</sup>.

In Westminster, there were two Houses: and the analogy in the Colony was not very remote. The Upper House was the Legislative Council: this in Upper Canada was to consist of not fewer than seven members of at least twenty-one years of age, and British subjects by birth, naturalization or cession. They had a life tenure of office subject to vacating the seat by taking any Oath of Allegiance to any foreign Power or residing out of the Province for four years without leave of the Sovereign or for two years without leave of the Governor or by being attainted of Treason<sup>(10)</sup>. They were to be summoned by an Instrument under the Great Seal of the Province by the Governor on his being authorized so to do by the Sovereign by an Instrument under his Sign Manual<sup>(11)</sup>.

The most interesting provision concerning the Legislative Council is one that was entirely novel in Colonial Constitutions—authority was given to annex to any hereditary title of rank, honour, or dignity in the Province, the hereditary right of being summoned to the Legislative Council. This was, of course, in analogy with

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the House of Lords in England, and it contemplated an hereditary peerage.

This provision was probably not due to the suggestion and influence of Simcoe; but that he approved of it is clear. In a letter to Sir Joseph Banks, President of the Royal Society, written, January 8, 1791, he says:—"I hope to have a hereditary Council with some mark of nobility". We find him later when speaking of "the just Aristocracy which the Canada Bill has provided for", saying:—"I have always estimated this power as barring the avenues to disaffection and sedition by making a Constitutional provision against those turbulent talents which may otherwise with great facility gain a more than aristocratic ascendancy over a people composed as are the generality of Colonists and who by the possession of such means may be capable and desirous of disturbing the operations of the Government . . . . I have always contemplated this aristocratic power as being the truest safeguard of the Sovereignty against such machinations particularly in a Province where the *direct* weight of the Executive is as a feather and it possesses none indirectly . . . ." <sup>(12)</sup>. At another time, we find him writing in an official despatch: "It has been justly considered that the principal cause of the American Revolt was the want of an aristocratic power which might afford a legal provision for the fair claims and just ascendancy of honourable ambition and not suffer it to waste its energy in dissatisfaction and discontent" <sup>(13)</sup>. The Government had been considering for some time the Constitution to be given the Canadian Provinces and, at least as early as 1789, had concluded that an aristocratic part of the Constitution was necessary—they said: "To the want of an intermediate power to operate as a check both on the misconduct of the Governors, and on the democratical spirit which prevailed in the Assemblies, the defection of the

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American Provinces may perhaps be more justly ascribed than any other general cause that can be assigned": moreover, "a respectable aristocracy" they considered "a support and safeguard to the monarchy". While it was thought that a mark of honour or distinction might be annexed to the station of Legislative Councillor even with descent to their families, it was always to be "understood that the station itself was not descendible"<sup>(14)</sup>. It was, then, the intention to confer upon the persons called to the Legislative Council, "some mark of Honour such as a Provincial Baronetage either personal to themselves or descendible to their eldest sons in lineal succession": but no provision to that effect was included in the Draught of the Bill proposed<sup>(15)</sup>.

Dorchester thought that "many advantages might result from an hereditary Legislative Council distinguished by some mark of Honour, did the condition of the country concur in supporting this dignity: but the fluctuating state of property in these Provinces would expose all hereditary honours to fall into disregard"<sup>(16)</sup>; and no hereditary Honour was provided for in the Draught Bill prepared by him with the assistance of the Chief Justice of the Province of Quebec, William Smith<sup>(17)</sup>.

Precisely when and by whom the clause in the Bill as passed was introduced, does not appear—there were many opinions. Lord Thurlow thought that an hereditary aristocracy "placed in hands unequal to it, will only be despised, but if lodged with families of permanent consideration will grow . . . into an independent interest"<sup>(18)</sup>.

Grenville had the somewhat odd scheme already noted of forming an hereditary aristocracy without the actual right to be summoned to the Legislative Council<sup>(19)</sup>.

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When the motion came up in the House of Commons for leave to introduce the Bill, March 14, 1791, Pitt said that it was proposed to "annex the dignity of a member of Council to every title of honour that might be conferred on the inhabitants of each Province"<sup>(20)</sup>. The Bill being reported, in the debate on its recommittal, Fox objected to hereditary powers and hereditary honours for these Colonies—"It seemed to him peculiarly absurd to introduce hereditary honours in America, where those artificial distinction stunk in the nostrils of the natives . . . . these powers and honours (were) wholly unnecessary"<sup>(21)</sup>.

The debate when the consideration of the Bill was resumed, took an extraordinary turn, columns of speeches were made on the French and American Constitutions, &c., and little on the Bill—Pitt, however, said that he "had suggested his intention to propose as the Bill in fact did propose, an hereditary Council in imitation of our House of Lords, whereas the Right Honourable gentleman (Mr. Fox) had suggested that an elective Council would be preferable": Fox urged an elective Council—he had not made up his mind whether the Members should be elected for life or a term of years—with an electorate of "persons of property", as he believed that "property was and had ever been held to be the true foundation of aristocracy". The House divided on the clause providing hereditary legislators and it was carried by a vote of 88 to 39. In the Lords, Lord Rawdon thought that "the experiment of hereditary nobility which the Bill set forth . . . . could not be attended with any good effect but would rather be a dangerous and unnecessary scheme": but the clause was adopted<sup>(22)</sup>.

It is one more instance of the irony of history that the clause which brought more and more acrimonious discussion than any other turned out in the event to be wholly

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academic; no Governor and no Government ever thought of acting upon it<sup>(23)</sup>.

In the Legislative Council, the Speaker was appointed by the Governor under the Great Seal of the Province: this was in analogy with the practice at Westminster where the Speaker of the Upper House was the Lord Chancellor<sup>(24)</sup>.

The popular House was in the Act styled "Assembly": power was given to the Governor to summon an Assembly, to divide the Province into "Districts or Counties or Circles and Towns or Townships" and to declare the number of representatives for each—also to nominate Returning Officers, the whole number of members to be elected not to be less than sixteen. Writs for the election were to be issued, the voters to be British subjects by birth or naturalization or cession, over twenty-one, who had freehold lands in the constituency<sup>(25)</sup> of the yearly value of Forty Shillings sterling if the constituency were a "District or County or Circle", or in the case of a "Town or Township", who were possessed of a dwelling house and lot of ground in the constituency in freehold of the yearly value of Five Pounds Sterling or being resident for twelve months before the Election, had paid one year's rent, for the dwelling house in which they resided, of Ten Pounds Sterling or upwards. This corresponded to the well known division in England of constituencies into County and Borough—or, as we now say, Rural and Urban. Persons attainted of Treason or Felony were disqualified.

In the House of Commons, Fox strenuously protested against what he considered the excessive qualification required of electors. "In England a freehold of forty shillings was sufficient: five pounds were necessary in Canada . . . . the qualifications on a house . . . . still higher . . . . ten pounds." This he said was part of "an



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attempt to undermine and counteract the professed purport of the Bill, namely, the introduction of a popular government into Canada": he did not, however, press this objection so far as to call for a Division on it: nor did he do so in the matter of the number of members which he said was entirely too small. "Sure he was that sixteen was a good number for an aristocracy, but by no means for a democracy"<sup>(26)</sup>. There was no qualification for Member of the Assembly provided for in the Act; but no "Minister of the Church of England or . . . . Minister, Priest, Ecclesiastic or Teacher . . . . of the Church of Rome or . . . . any other Profession of Religious Faith or Worship" could be a member nor could a Member of the Legislative Council. Members were required to take an oath in the form prescribed before being permitted to sit or vote in the Assembly<sup>(27)</sup>.

By analogy with the House of Commons at Westminster, the Speaker of the Assembly was always in fact elected by the House: but there is no provision in the Act for such election. Other provisions of the Act will be left for discussion in the proper place.

### NOTES

<sup>(1)</sup>The Speeches from the Throne will be found in 6 *Rep. Ont. Arch.*, (1909), pp. 2, 3, 11; 7 *Rep. Ont. Arch.*, (1910), pp. 1-3, 18. These Speeches were sometimes quoted later in the Legislature Assembly, and the Assembly caused them to be spread on the Proceedings of the House. In a letter to the Duke of Portland from Kingston, U.C., December 21, 1794, Simcoe, justifying his appointment of Lieutenants of Counties, said:—"A principle on which I have considered this Government as most wisely established and which I have never lost sight of in its administration, has been to render the Province as nearly as may be a perfect image and transcript of the British Government and Constitution". *Can. Arch.*, Q. 281, I, 164.

## THE CONSTITUTIONAL ACT

(2)The proper constitutional course for the Sovereign who disapproves of a Bill, is to dissuade the Ministry from pressing it, and in case of failure so to do, to dismiss the Ministry and call another to take the responsibility. If both courses fail, the Sovereign must constitutionally give his Assent.

(3)I shall for the sake of Brevity use the word "Governor" for "Governor, Lieutenant-Governor or Person appointed by the Sovereign to administer the Government of the Province". In Upper Canada, this was, in Simcoe's time, always the Lieutenant-Governor, but afterwards occasionally an Administrator of the Government acted, there being no Lieutenant-Governor or he being out of the Province.

(4)Of course, the Bills assented to or reserved were when sent to England considered not by the King personally but by the Lords of Trade who reported to the Privy Council. Every one will remember the extraordinary and atrocious charges against George III in the Declaration of Independence: "He has refused to assent to laws the most wholesome and necessary for the public good. He has forbidden his governors to pass laws of immediate and pressing importance unless suspended in their operation till his assent should be obtained. He has refused to pass other laws for the accommodation of large districts of people . . . ." &c., &c.

But it is too often forgotten that the Declaration of Independence was a political document intended to stir up the people to independence of the King; and that nearly till the 4th of July, 1776, the Continental Congress were almost fulsome in their assertions of loyalty and blamed all their wrongs on a wicked Ministry.

Professor Oliver Morton Dickerson in his admirable *American Colonial Government, 1696-1765*, Cleveland, 1915, gives many instances of the interference of the Board with Colonial legislation and, pp. 208, 209, shows that the King was wrongly blamed in the Declaration of Independence.

The provisions as to Royal Assent are to be found in secs. 30, 31 and 32 of the Act, *S. & D.*, pp. 1041, 4.

(5)All such cases had arisen in the Thirteen Colonies and had caused trouble. Dickerson, *op. cit.*, *passim*. These provisions are to be found in secs. 15, 16, and 19 of the Act.

(6)It is an interesting study to trace the gradual evolution of Responsible Government as shown in the Instructions to Governors from time to time. Some of the prohibitions lasted till after Confederation in 1867. For example, the direction to reserve for the

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Royal Pleasure, Bills for Divorce continued until Edward Blake's well-known protest in 1876 resulted in a change. The last Bills of Divorce reserved will be found noted in the Statutes of Canada for 1879, pp. iii to vi. They were passed in 1878.

(7) Secs. 12, 15.

(8) Sec. 15. Such Bills were by sec. 42 of the Canada Act not to receive the Royal Assent until thirty days after they were laid before both Houses of Parliament at Westminster and then only if neither House addressed the Sovereign to withhold assent.

(9) If the Royal Assent was given by the Colonial Governor, the law was valid even if the Governor disobeyed his Instructions.

(10) Secs. 3, 4, 5, 8, 10. Attaint of Treason means being sentenced for Treason not simply being found Guilty.

(11) The members of the Legislative Council were chosen by the Home Administration—not infrequently, indeed, at the instance of the Colonial Governor, but his recommendation was not always effective. The person chosen received from the Home Administration, an Instrument under the Royal Sign Manual called a Mandamus or Warrant and presented that to the Colonial Governor: thereupon the Governor summoned him to the Legislative Council by an instrument under the Great Seal of the Province.

(12) Can. Arch., Q. 282, I, pp. 6, 10. Letter, Simcoe to the Duke of Portland (No. 30) from Navy Hall, October 30, 1795. Simcoe continues:—"I should be very happy was there sufficient property and other qualifications in any Members of the Legislative Council to see the provisions of the Canada Act in this respect immediately completed by an hereditary seat derived from a Title of Honour being vested in their families". The Letter to Sir Joseph Banks mentioned in the Text just above will be found in a brochure of Dr. Henry Scadding's: *Letter to Sir Joseph Banks . . . . (For Private Circulation)*, Toronto, 1890, (In the Riddell Canadian Library, Scadding Brochures, Vol. 2), 1 *Correspondence*, pp. 17-19. Dr. Scadding, p. 5, says: "Pitt in the debate on the Constitution Act of 1791, has suggested such an arrangement"; but the debate was long after Simcoe's letter to Banks.

(13) Can. Arch., Q. 279, I, pp. 181, 186, Letter from Simcoe to Dundas (No. 12) from Navy Hall, November 23, 1792. Surely an extraordinary misconception of the situation.

(14) Discussion of Petitions and Counter-Petitions, Rê Change of Government in Canada, submitted by Grenville to Lord Dorchester enclosed in a Despatch from Whitehall, October 20, 1789, S. & D.,

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969-987, esp. p. 978. Can. Arch., Q. 42, p. 92; Can. Arch., C.O. 42, Vol. 21, p. 55.

<sup>(15)</sup>See Despatch from Grenville to Dorchester from Whitehall, October 20, 1789, *S. & D.*, p. 987: Can. Arch., Q. 42, p. 96; First Draught of Constitutional Bill, *S. & D.*, pp. 992, sqq.; Can. Arch., Q. 42, p. 105.

<sup>(16)</sup>Despatch Dorchester to Grenville from Quebec, February 8, 1790, *S. & D.*, pp. 1002, sqq. Can. Arch., Q. 44, I, pp. 20 sqq.

<sup>(17)</sup>This Draught, generally called the Second Draught of Constitutional Bill is to be found in *S. & D.*, pp. 1006, sqq. Can. Arch., Q. 44, I, p. 30; it was enclosed in Dorchester's Despatch to Grenville from Quebec, February 8, 1790, *ut supra*.

A report to Dorchester from Chief Justice Smith was also enclosed, dated at Quebec, February 5, 1790: in this, that able magistrate wisely said:—"Native as I am of one of the old Provinces (he was a native of the Province of New York and a member of the Council of that Province) and early in the public service and Councils I trace the late revolt and rent to a remoter cause than those to which it is ordinarily ascribed. The truth is that the Country had outgrown its Government and wanted the true remedy for more than half a century before the rupture commenced." But the most remarkable of his suggestions was "to put what remains to Great Britain of her ancient dominions in North America under one general direction for the united interest and safety of every Branch of the Empire"—what we have not yet succeeded in doing though a splendid beginning was made in 1867 when the Dominion of Canada was formed. The Chief Justice drew up a Bill for this purpose, but it was too early for such a comprehensive scheme. *S. & D.*, pp. 1018 sqq., Can. Arch., Q. 44 I, pp. 61, 68. Grenville thought "the information of a general Legislative Government for all the King's Provinces in America . . . liable to considerable objection"; but it was "a point which has been under consideration", Despatch, Grenville to Dorchester from Whitehall, June 5, 1790. *S. & D.*, pp. 1024-1027: Can. Arch., Q. 44, I, pp. 152, sqq.

<sup>(18)</sup>*I Correspondence*, p. 5: Letter from Lord Thurlow to Grenville, September 1-10, 1789.

<sup>(19)</sup>*I Correspondence*, p. 6: Letter from Grenville to Thurlow, Wimbledon, September 12, 1789, Grenville says: "I thought that by granting some kind of rank and distinction, descendible in lineal succession to the eldest sons of those who were once called to the

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Council, a body would gradually be formed and kept up, out of whom the Crown would probably select the Councillors with only a few occasional additions as other families grew to consideration and respect in the Province. The consequence would then be that no person could have a seat in the Upper Branch of the Legislature without feeling that sort of interest in the established government which arises from the possession of hereditary distinction; while at the same time the power reserved to the Crown of calling to seats in that House such only of those persons as might individually be judged proper for it, would retain to the British Government a great degree of weight and influence among this description of persons.”

(20) 28 *Parl. Hist.*, Coll. 1377, 1378.

(21) do. do. do. Col. 107.

(22) do. do. do., Cols. 399, 411, 429, 659.

(23) For Simcoe's reasons for not acting upon it see Note 12, *ante*.

(24) Formerly the Speaker might be Lord Keeper instead of Lord Chancellor; but the last Lord Keeper appointed was Lord Henley who became Lord Chancellor in 1761.

The rule that the Government appoints the Speaker of the Upper House has continued in Canada until the present day; the Senate at Ottawa receives as its Speaker, the nominee of the Government.

(25) The convenient and now universally used word “Constituency” for an Electoral District is not used in the Act: it does not seem to have been invented till forty years later. In 1831, Macauley, speaking of “constituencies if the word be permissible”, was told by Lady Holland that the word was odious.

Multa renascentur quae jam cecidère: cadentque  
Quae nunc sunt in honore vocabula, si volet usus  
Quem penes arbitrium est et jus et norma loquendi

Horace, *Ars Poet.*, vv. 70-72.

(26) He did divide the House on the question of the number of Members in the Assembly of Lower Canada which he thought should be one hundred: Pitt had been willing to make it fifty, but Fox insisted: his motion failed by 40 to 91 votes.

For the Debate on the Assembly, see 28 *Parl. Hist.*, Coll. 106, 107, 359, 427, 429, 430.

(27) A curious result of this provision will be mentioned in the Text, *infra*, pp. 174, 185.

## CHAPTER VII

### Needs of the Province

**A**BOVE and permeating all else Simcoe held "it to be determined upon and incontrovertible that Great Britain" was "to maintain her possession of Canada"<sup>(1)</sup>.

There was at the time no little truculence on the part of many Americans manifested towards Britain for whose military prowess some did not hesitate to express contempt: Canada had not ceased to be a land to be desired as part of the new Union and an attack on her was by no means beyond possibility. Much irritation was felt and given expression to, that the Posts on the right of the Great Lakes and connecting rivers in territory awarded to the United States by the Treaty of 1783 should still be held by Britain: and this irritation was not lessened by the fact that the reason advanced for this retention was the failure of the United States to implement the promise that creditors should meet with no lawful impediment to the recovery of the full value of *bona fide* debts<sup>(2)</sup>.

Simcoe thought that if the Posts should be "given up, the loss of Canada ultimately and not very remotely must follow".

To retain the Posts he thought impossible without an alliance with Vermont, and he urged an alliance, defensive and commercial, with this State—the inhabitants of which were "a brave, virtuous and English race of people, descendants of the best families in the Country: the Pierponts, Seymours, Stanleys, &c., Episcopalians and enemies to the New Yorkers and Congress". More-

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over, "they claim the territories on which Michillimackinac and Detroit now stand, and are disgusted with the United States, whose policy has allotted them to Connecticut"<sup>(3)</sup>.

To understand the matter, we must take into account some facts of the situation. The Colonies of New Hampshire and New York both claimed the territory now Vermont, and there was long a dispute as to the validity of Land Grants from each Colony: before the Revolution the inhabitants, the "Green Mountain Boys", had claimed to be independent in respect of both. In January, 1777, they declared themselves a free and independent jurisdiction under the name of New Connecticut alias *Vermont*: the Continental Congress did not recognize them but they were not deterred; and they proceeded to organize the new State.

Even after the Peace of 1783, Vermont carried on negotiations with Britain for navigation of the St. Lawrence, &c., independently, as she was not recognized as one of the Thirteen Colonies or as independent by the Revolutionary authorities: the negotiations went so far, indeed, as that it was suggested that Vermont should become a Royal Colony. Vermont was again refused recognition by the Congress, and after much controversy—and almost war with New York—it was admitted as a State of the Union early in 1791<sup>(4)</sup>.

Simcoe kept himself well informed on affairs in Vermont and urged upon the British Government the importance of keeping on good terms with that independent State<sup>(5)</sup>. Its admission to the Union frustrated all hope of Canada benefiting by an independent and separate State of Vermont, but Simcoe never wavered in his view of the necessity of retaining the Upper Posts, Michillimackinac, Detroit and Niagara<sup>(6)</sup>.

The hostilities between the United States and the

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Indians were a matter of great anxiety to him. He said, August 12, 1791, "The Indian War is so detrimental to commerce and uncertain in its events that I am anxious to be permitted (if it were possible) to mediate for its termination"<sup>(7)</sup>: and he urged the advisability of his going to Congress, to mediate for the Indians, on his way to Upper Canada<sup>(8)</sup>.

The necessity of a competent Military force to produce settlement of the Province was early in his mind: and indeed the circumstances of the Colony were such as to make some military force an absolute necessity. Recognizing the difficulties of the Government in the matter of finance and otherwise, he, November 12, 1790, laid before Dundas, proposals for a Corps of over 1,200 men for service in the Colony. "If there should be peace, the new Colony will certainly require an additional body of Troops. If it be a combined Corps, the best of all military arrangements, regiments or even some independent Companies now raising, Lieut.-Col. Simcoe is most anxious to be the Chief, that he may adopt the tactics and discipline of the Troops to the country and as far as possible render them of essential utility to the Colony".

Another means of ensuring that Canada should remain British, he thought out with great care. He remembered the Roman system of settling the outlying parts of the Empire with soldiers: *Coloniae*, Colonies, were made in many places composed of veteran soldiers, *Coloniae Militares*, which answered a double purpose of furnishing an outpost for observation and protection and providing for a class which might prove troublesome at home<sup>(9)</sup>.

He proposed to raise a Corps of 1,200 men: "Some officers added to it would speedily instruct a number of young men in their several employments; in particular, a



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few boat builders would teach a sufficient number a competent bill in that very necessary branch of military labour". He proposed to employ the Corps on Public Works two days in the week, two days in military exercises and to allow two days for the private advantage of the soldier—the lands thus cleared were to be sold to emigrants and the pay of the soldiers thus increased, but the main object was to cause the soldier to acquire that habit of industry which "instead of a burthen, as is too generally the case at present would render him highly useful to the Community"<sup>(10)</sup>.

These proposals in 1790 were not accepted by the Government: but Simcoe returned to them again and again.

In conversation with Grenville, he urged his scheme and, February 10, 1791, he wrote that his idea was "that the temporary Barracks of the Troops (and their attendant Artificers) be built by the Head of Navigation of the Rivers, whilst the Troops shall be employed in opening the different Roads of Communication"; and he adds the very novel suggestion that these Barracks "should be so erected as to be converted into publick Houses to become the property of the Government to be let by Auction for the purpose of revenue and that an Act of Assembly should pass to prevent the licensing of any publick Houses but in similar circumstances and for erecting them where it may be thought expedient"<sup>(11)</sup>.

In June, 1791, we find Simcoe moderating his estimate of the strength of the proposed Corps: he submitted to Dundas a revised plan which he urged as the "quickest, easiest and cheapest" way to facilitate settlement: it was "that there should be a Corps of Troops raised independent of the Line . . . who should be employed to the civil purposes of the colony, in the construction of the various Public Works, of buildings, roads, bridges and

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communication by land and on the waters, that this Corps should also take upon itself as soon as it shall be duly instructed therein, the navigating of the King's Vessels on the Lakes for the various purposes for which they may be required; and it should be carefully taught the duties of sailors on those fresh water Seas. The establishment of this Corps to consist of four Independent Companies of an Hundred each, Rank and File. Three officers only and the usual staff to each Company. To these Companies it is essential that a body of Military Artificers should be added . . . . . The Military utility of this Corps, though a very secondary object, remains to be separately and cursorily treated upon". He points out the necessity of an additional military force for the personal security of the officers of the Government even if they should not depart from Cataraqui (Kingston): if the Capital should be erected in the central part of the peninsula between Lake Huron and Lake Erie, the communications must also be preserved. Then the Indians, at that time federated against the United States, would in any event of that war remain in a confederacy and they were an enemy to be "dreaded by any infant Colony as their warfare is by surprise, devastation, torture and destruction". "The United States are governed by a set of men who, divided as they are in parties and separated in their interests by their own declarations, find no such bond of union as pretended dread or real enmity to Great Britain"<sup>(12)</sup>.

The proposition for Independent Companies and artificers, he returns to again, August 12, 1791: he considers "them as the vital principle of the Colony" having "the firm hope that they on soldiers' pay shall be able to execute those works which either by substracting from the labours of the peasant or by requiring additional allowances from Government have hitherto been a burden on the country. Following the great Masters of the World,

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the Romans of old, I propose to consider the winter stations of these Companies as the germs of so many well-affected Colonial Cities. There I propose the disbanded soldiers shall have their allotment of land; and I should be inclined to discharge them early in life, provided that without expense to the Crown they should be able to procure substitutes from the Americans, who might be disciplined by similar employments to British attachments and ultimately might attain to equal provisions. And to execute this purpose I am happy to have it in my power to propose officers who mean to become settlers with their families in that country: and who are second to no men whatsoever in their knowledge of the substance of service, and who had greater opportunities of exemplifying their talents in separate commands and self dependent action, than in the course of long lives fall to the share of the greater part of the General officers in Europe". He recommends Captains David Shank and John McGill for Captains; Captain Aeneas Shaw and Lieutenant Spencer as Captains-Lieutenant; Adjutant McGill of the 16th as Ensign and Adjutant, and Leonard Browne, "the son of an old officer with a large family and who had the good fortune to save the life of a particular friend of mine", for the Second Ensign. He also asks for the appointment of Surgeon McCaulay, late of Lord Cornwallis' Regiment, who had resigned from the "Botany Bay Corps", as surgeon of the Garrison, and Mr. Burnes as Surgeon of the Independent Companies.

He proposed that the Independent Companies or part of them should be composed of drafts from the Regiments at home and of such description of men as might be useful<sup>(13)</sup>. Having a conference with Grenville, in which he was given to understand that no such Independent Companies were to be raised for Canada, he thought his duty again to urge "a . . . . Colonial

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Military establishment Independent of the Troops of the Line . . . . For Public Works, buildings, roads, bridges and communications as well by land as on the water"<sup>(14)</sup>. Now he was successful: Dundas "explained fully to the King the utility and importance of this Corps, and he was impressed with the propriety of it. And while Dundas "felt that it was not likely to be popular at the War Office" and "that there would be difficulty in obtaining the draughts of a few soldiers to answer for non-commissioned officers", it was decided that a Corps of Infantry should be raised to be so employed, consisting of two Companies each of 207 non-commissioned officers and men, officered by a Captain, a Captain-Lieutenant, two Lieutenants and two Ensigns: and with a staff of an Adjutant, a Surgeon, a Surgeon's Mate and two Sergeants commanded by a Colonel Commandant without pay. Simcoe was asked to submit a plan (with the officers proposed) for "raising the Corps in such manner as may best answer the purpose"<sup>(15)</sup>: he did so, referring to his former suggestions but deferring a list of officers, as there had been a change in the establishment from that proposed<sup>(16)</sup>.

It will be seen that no provision was made in the plan adopted, for artificers: the Duke of Richmond, Master General of the Ordnance, pointed out that while, no doubt, a Company of Artificers would be extremely useful, the cost would be £1,924 per annum and that sum with £500 for raising a new Company would have to be charged to Upper Canada<sup>(17)</sup>.

This was the Corps called the Queen's Rangers which came to the Province in 1792: it was, of course, called after Simcoe's old command in the Revolutionary War: it was disbanded in 1802, most of the officers and men remaining in Upper Canada.

He had in view also other settlers: thousands of the inhabitants of the United States he thought had their

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affections "centred in the British Government and the British Name, who are positively enemies of Congress and to the late division of the Empire, many of their connections have already taken refuge in Canada". "The contest of the natives of Great Britain with the subjects of the American States was decided by arms and terminated by treaty. That of the American with the American still exists under all the injurious remembrances of open and covert vexation under the taunts of triumph, taxes and family confiscation". The dissatisfied, he thought, would be attracted by the form of Government granted to the new Province. Other classes of Americans he expected to emigrate to better their fortunes and hoped to make them zealously attached to the Province when they felt the advantages of the beneficence and wisdom of the Government, the equality of its laws and security from foreign invasion—he also expected "emigration of hardy, industrious and virtuous men . . . from the northern parts of Great Britain". He recognized the value of such immigrants "to promote the cultivation of the land, to give power and energy to civilization, efficacy to just government and to combine a force whose appearance may prevent the very meditation of hostility"<sup>(18)</sup>.

He expected also a considerable number of the Loyalists in England to proceed to the new Province and as a fact, the Reverend Dr. Peters, to be more particularly spoken of later, handed to Simcoe's officer a list of fifty-one Loyalist families ready to embark for Upper Canada<sup>(19)</sup>.

He urged the necessity of a Capital being established in some central situation and as soon as possible, and that "almost instantaneously, a great body of immigrants should be collected in its vicinity, so as to become the very transcript and image of the British people and to transfuse their manners, principles and attachments thro' the

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whole Colony.” This Capital he thought would be best placed in the Peninsula surrounded by the Great Lakes and this for various reasons; some, financial—there were very few Indians, most of the land had been bought and the rest should be acquired before the Indians recognized its value: some, from the point of view of population—its soil, climate and situation were better adapted to allure Americans than those of any other British territory, and its peninsular position would be likely to prevent emigrations till the country was filled up: some, commercial—it would produce a large quantity of raw materials which Britain now procures from foreign countries and increase the commerce of Great Britain<sup>(20)</sup>. As he expressed it in another place:— “For the purpose of commerce, union and power, I propose that the Site of the Colony should be in that great peninsula between the Lakes Huron, Erie and Ontario, a spot destined by nature sooner or later to govern the interior world”. He intended to call the Capital Georgina and to settle there Loyalists from Connecticut<sup>(21)</sup>. We shall see that to the end he retained the opinion that the Capital of the Province should be in the Peninsula, that he recommended the site of the present London for its locus, but that his proposal did not become effective, largely, it would seem, from the opposition of Lord Dorchester.

The protection of the Province from the United States and the Indians caused him much thought. He intended the Independent Corps, the Queen’s Rangers, to provide much of that but he recognized that a considerable body of Regular Troops would be necessary. He desired to have the command of them in the Province but this, to his great mortification, was denied him. He suggested that he should have the local rank of Major-General in the Province only, but that rank was not given him; nor could he be made a Brigadier-General

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as that would rank him above the King's son, Prince Edward (afterwards Duke of Kent and the father of Queen Victoria) who was Colonel of the 7th Foot, then at Quebec, and his request to be a full Colonel was granted, to be exercised only on the arrival of some part of The Queen's Rangers from England<sup>(22)</sup>.

A matter, in his opinion, of vastly greater importance was the establishment of a Church. There is no reason to doubt that Simcoe was sincerely religious; but it is quite certain that he looked upon the Church as a political and police institution whatever else it was.

He believed that "the Episcopalians were all Loyalists" and held "it to be indispensably necessary that a Bishop should be immediately established in Upper Canada"—"the State propriety of some form of public worship, politically considered, arises from the necessity there is of preventing enthusiastic and fanatick teachers from acquiring that superstitious hold of the minds of the multitude which persons of such a disposition may pervert, and are generally inclined to pervert, to the establishment of their own undue consequence in the State and often meditate and not infrequently turn such an ascendancy to its injury and destruction." He had no doubt that the Church of England was the Church that should be established and hoped that a Bishop would be sent—"an Episcopal Church without a resident Bishop seems to be an absurdity in fact as well as a contradiction in terms"—and also that the Bishop would have a seat in the Legislature, "which it is to be hoped while there is an Establishment, the wisdom of this country (England) will always insist upon". He had in view a clergyman for the office, the Reverend Dr. Samuel Peters, who, by reason of his Loyalist principles, had been compelled to leave Connecticut and was then in England: he did not "expatiate on his Loyalty and his sufferings, his abil-

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ity and integrity", but set out some political considerations why he thought he would be useful in the new Colony. Connecticut was so populous that she sent out many emigrants every year; Simcoe proposed that Dr. Peters, having been appointed Bishop, should go to Connecticut and invite six loyal Churchmen or Puritans, "who would embrace the doctrines of the Church of England, to settle and to form with their parishioners and such settlers as they might engage, in the proposed Capital—to their Clergy . . . . should be given the stipend which Government and the Society for the Propagation of the Gospel allow to their Missionaries"<sup>(23)</sup>. So much was he set on having a Bishop that he said, if the expense stood in the way, that he "would most readily and cheerfully offer to give up five hundred pounds per annum which with two hundred taken from the usual allowance may be a competent salary"<sup>(24)</sup>. This request was not acceded to; it was not till 1839 that a Bishop of the Church of England was appointed in Upper Canada: and Dr. Peters never had any preferment in the Province.

We shall see that Simcoe never forgot to advocate the establishment of the Church of England for reasons of State.

### NOTES

<sup>(1)</sup>This is manifest from many papers at various periods: the words in the Text are taken from Simcoe's Memorandum to Dundas, June 30 (2?), 1791, 1 *Correspondence*, pp. 27-34: *Can. Arch.*, Q. 278, pp. 228, sqq.

<sup>(2)</sup>A somewhat full if strongly anti-British account of this matter is given in Professor Samuel Flagg Bemis' *Jay's Treaty: A Study in Commerce and Diplomacy*, N.Y., The MacMillan Company, 1923.

<sup>(3)</sup>Letter, Simcoe to Evan Nepean, from Wolford Lodge, December 3, 1789, 1 *Correspondence*, pp. 7-9: Sim. I, 1, 7-12.



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Simcoe says in a Memorandum to Dundas, London, June 30, 1791, "The Episcopalians were all Loyalists", 1 *Correspondence*, pp. 27, sqq. He seems to forget Washington.

(4) See Zadock Thompson's *History of Vermont*, Burlington, 1853, Part II, pp. 19-24: Article *Vermont* in *The Americana* or any history of Vermont.

(5) Letter, Simcoe to Dundas, from London, August 1, 1791, *Can. Arch.*, Q. 278, pp. 259, sqq.

(6) Even after his arrival at Quebec, he received a communication from "An old officer and Loyalist," with a plan for raising, at the writer's own expense, "a Company of pioneers in the State of Vermont to consist of carpenters, the best narrow-axe men and farmers who had been accustomed to clearing and cultivating new lands" (A narrow-axe man was one who wielded the narrow axe of the American and Canadian pattern, not the English broadaxe). The recruits were to have transportation to Upper Canada for selves and families, rations, &c., have pay or permission to work for themselves two days per week and after three or four years be discharged with a grant of land. Sim. I, 1, 19-23. The offer does not seem to have been acted upon. He thought that giving up the Upper Posts, especially Detroit, would turn the Indians against Britain. See Letter, Simcoe to Dundas, August 26, 1791, 1 *Correspondence*, pp. 51 sqq., *Can. Arch.*, Q. 278, pp. 314, sqq.

(7) Letters, Simpson to Dundas, London, August 12, 1791, 1 *Correspondence*, pp. 43, sqq., *Can. Arch.*, Q. 278, pp. 283, sqq.

(8) 1 *Correspondence*, p. 21: *Can. Arch.*, Q. 278, p. 226. Letter, Simcoe to Nepean, London, March 16, 1791. It appears from this letter that the "original object" of Simcoe's wishes was "the Embassy to the United States", but this post was given to George Hammond. 1 *Correspondence*, p. 25.

(9) See an admirable article, "Colonia", in Smith's *Dictionary of Greek and Roman Antiquities*, London, 1890, Vol. I, pp. 479, sqq. Cologne was the Roman Colonia Agrippina: and the Colonies were scattered throughout the Empire in regions remote from Rome.

(10) 1 *Correspondence*, p. 16: Sim. I, 1, 16-19: "This is the earliest forecast of the employment of the Queen's Rangers in the public service of Upper Canada". 1 *Correspondence*, p. 16, n. 1. Proposals to Simcoe by Dundas, November 12, 1790. "Bill, 5c: Naut (ical), a list of persons assigned to duty", *New English Dictionary*, *sub voc.* BILL.

(11) Letters, Simcoe to Grenville, February 10, 1791, 1 *Correspondence*, p. 20: *Can. Arch.*, Q. 278, pp. 222, sqq.

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(12)Memorandum, Simcoe to Dundas, June 30, 1791, 1 *Correspondence*, pp. 27-34: *Can. Arch.*, Q. 278, pp. 228, sqq.

(13)Letter, Simcoe to Dundas, London, August 12, 1791, 1 *Correspondence*, pp. 43-51: *Can. Arch.*, Q. 278, pp. 283, sqq.

(14)Letter, Simcoe to Grenville, London (not dated but almost certainly in August, 1791). 1 *Correspondence*, pp. 53, 54: *Van Arch.*, Q. 278, p. 277.

(15)See Memorandum for War Office addressed to Sir George Yonge, Secretary-at-War, from Dundas, August 29, 1791, and enclosure. 1 *Correspondence*, pp. 57, 58: See also (private) Letter, Dundas to Grenville, September 5, 1791. 1 *Correspondence*, pp. 60, 61.

(16)Letter to Simcoe from M. Lewis, Acting Under Secretary-at-War, War Office, September 1, 1791, 1 *Correspondence*, p. 58. Sim. I, 1, p. 47: Simcoe's Reply and Plan, September 7, 1791, 1 *Correspondence*, pp. 63-64: Sim. I, 1, pp. 48-51.

(17)Letter from the Duke of Richmond to Simcoe, from Goodwood, September 15, 1791, 1 *Correspondence*, pp. 64-66: this was in answer to Simcoe's Letter to Richmond, London, September 12, 1791, *Can. Arch.*, Q. 278, pp. 327, sqq., giving his views as to the species of armament that should be sent to Upper Canada.

(18)Memorandum, Simcoe to Dundas, June 30, 1791, 1 *Correspondence*, pp. 27-34: *Can. Arch.*, Q. 278, pp. 28, sqq. His wise method of attracting Americans, he had already, January 8, 1791, expressed in a Letter to Sir Joseph Banks, President of the Royal Society: "The method I propose is by establishing a free, honourable British Government and a pure administration of its Laws which shall hold out to the solitary emigrant, and to the several states, advantages that the present form of Government doth not and cannot permit them to enjoy. There are inherent defects in the Congressional form of Government." He goes on asserting what is more questionable: "The absolute prohibition of an order of Nobility is a glaring one. The true New England Americans have as strong an aristocratical spirit as is to be found in Great Britain: nor are they anti-monarchical." 1 *Correspondence*, p. 18: Riddell Canadian Library, *Scadding Brochures*, Vol. 2.

(19)*Can. Arch.*, Q. 278, p. 345; also Peters' Letter to Davison, London, January 15, 1792, do. do. do. Q. 278, p. 340.

(20)Memorandum, Simcoe to Dundas, June 30, 1791, 1 *Correspondence*, pp. 27-34: *Can. Arch.*, Q. 278, p. 228.

(21)Letter to Sir Joseph Banks, *ut supra*.

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<sup>(22)</sup>See, e.g., Letters, Simcoe to Dundas, Wolford Lodge, September 6, 1791, 1 *Correspondence*, pp. 61-62, *Can. Arch.*, Q 278, p. 231. Sir George Yonge to Simcoe; War Office, September 21, 1791, 1 *Correspondence*, p. 71: do to do, War Office, September 21, 1791; do. do. p. 73: Simcoe to Dundas, Quebec, November 17, 1791, do. do. p. 81, *Can. Arch.*, Q. 278, p. 13.

In the *Parliamentary History*, Vol. XXIX, Coll. 813-815, a Report of the Debates in the Commons on the Army Estimates, February 15, 1792, shows that the following took place:

Colonel Fitzpatrick said that no reason had been given for the addition of Colonel Simcoe's corps.

The Secretary at War said the alteration in the government of Canada made that corps necessary.

Mr. Secretary Dundas said that the raising of the new corps for Upper Canada, met with his hearty approbation. He would explain the nature of that corps, and what were the advantages to be expected from it. It was certainly a military corps so far, as that those who composed it, and were sent out to that settlement, were to be under military discipline when they left this country, and after they were there, but they were to act in another capacity. It must be well known, that there was a great part of that country which it would be necessary to clear, and those men were to be employed for that purpose; when it was effected, the intention was, that each man should have a tract of land allotted to him instead of receiving pay as a soldier, and by these means, the country would not only be cleared, and rendered useful to the inhabitants, but those very inhabitants would, from having a necessary attachment to what their industry had made their property, be, in consequence of their military skill and habits, enabled to protect the province, and answer every purpose of a militia. The expense of a new corps was something above 11,000£; the expense of this would not be so much by 3,000£.

Mr. Fox said that the proposed reduction certainly had his approbation as to the principle of it, though he by no means approved of the manner in which it was to be done, nor could see any reason why it was not done long ago, or why it was not now carried to a much greater extent. When he had the honour to hold a place in His Majesty's Councils, he had proposed a reduction of the Army, but not in the mode now adopted: he wished to reduce the number of regiments to 64, instead of which the establishment had been kept up to 70, besides new corps raised for the East-Indies; and

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now one for Canada, and another for the West-Indies, at the very time we were talking about the reduction of the army.

He came next to notice what had been said by the Right Hon. Secretary, respecting the nature of the Canada corps. The Right Hon. Secretary wished that the committee would not consider them as a regiment nor think them any addition to the army establishment, because, he said, they were not sent out for military purposes, but to clear the country, and afterwards to inhabit it. He trusted the committee would beware of such arguments. We had already seen similar instances, such as the corps of artificers for Gibraltar, and others that he could mention. But the Right Hon. gentleman had said they were to become a militia to defend this settlement, after they had cleared it, and to protect the property which their industry had entitled them to possess; and they were, he understood, to people the province too. As to a militia, what was the necessity for sending a corps of regimented officers, and 400 men, to form a militia in Canada? Or were we to consider them as 400 drill sergeants, sent out to instruct the inhabitants in the military art? In establishing a government for that province, it undoubtedly was the wish of this country to give them one most suitable to their circumstances and situation; in short, to establish a government for the people, and not, as this military system would indicate, to make a people for the Government; and he would always contend that the Government of any country which required the least armed force to support it was the best, and that which required the greatest army to support it, the worst.

<sup>(23)</sup>He said: "There are few or no doctrinal tenets in which the Puritans differ from the Church of England, their ground of secession was taken out of hatred to the cruel and unjustifiable use which that Church in the days of Laud made of its secular power; and since the Peace (of 1783) many of the Puritans, and in great numbers, have flocked to the Episcopal Church in that State" (Connecticut). Memorandum, Simcoe to Dundas, June 30, 1791, 1 *Correspondence*, pp. 27-34, *Can. Arch.*, Q. 278, p. 228. He had written Sir Joseph Banks, *loc. cit.*, January 8, 1791: "I am to have a Bishop."

<sup>(24)</sup>Letter, Simcoe to Grenville, London, August 3, 1791, *Can. Arch.*, Q. 278, p. 271.

## CHAPTER VIII

### Simcoe in Canada

**A**S we have seen, Simcoe arrived at Quebec, in the *Triton*, November 11, 1791. Lord Dorchester, the Governor-in-Chief of the two Provinces, was still in England, and General (later Sir) Alured Clarke, the Lieutenant-Governor of Lower Canada, was the actual Administrator of the Government, Simcoe having no official power outside of Upper Canada.

He delivered to Prince Edward, a very warm friend, a private letter entrusted to him by the King: also to General Clarke, he delivered his own Commission, together with the Commission and Instructions of Dorchester which latter he was by his Commission directed to follow. A less agreeable act was the delivery to General Clarke of Sir John Johnson's Commission. Sir John was a man of much influence in Canada; he had expected to be Lieutenant-Governor of Upper Canada, and Dorchester had recommended him for the position; but his new Commission gave him jurisdiction only over the Indians. Moreover, Sir John had recommended certain persons as Councillors, Executive and Legislative, and his recommendations had been almost ignored in the actual selection. To anticipate a little, Simcoe succeeded in his anxious endeavour to placate Sir John; he recognized that "Sir John Johnson's interest if he chuses to exert it, will be very great in the Election of the members of the Assembly and it appears to me of the utmost consequence to the future well being of the Colony that no ill-humour should appear at its outset"; and he made a special trip to Montreal to meet him, explained away

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the misunderstandings and "produced every expression of good humour on his side"<sup>(1)</sup>.

In order to be guided by the best legal advice available, he placed himself in communication with William Smith, Chief Justice of Quebec<sup>(2)</sup>: a very short study of the Canada Act and the Royal Instructions revealed what might be a somewhat serious state of affairs in the Upper Province.

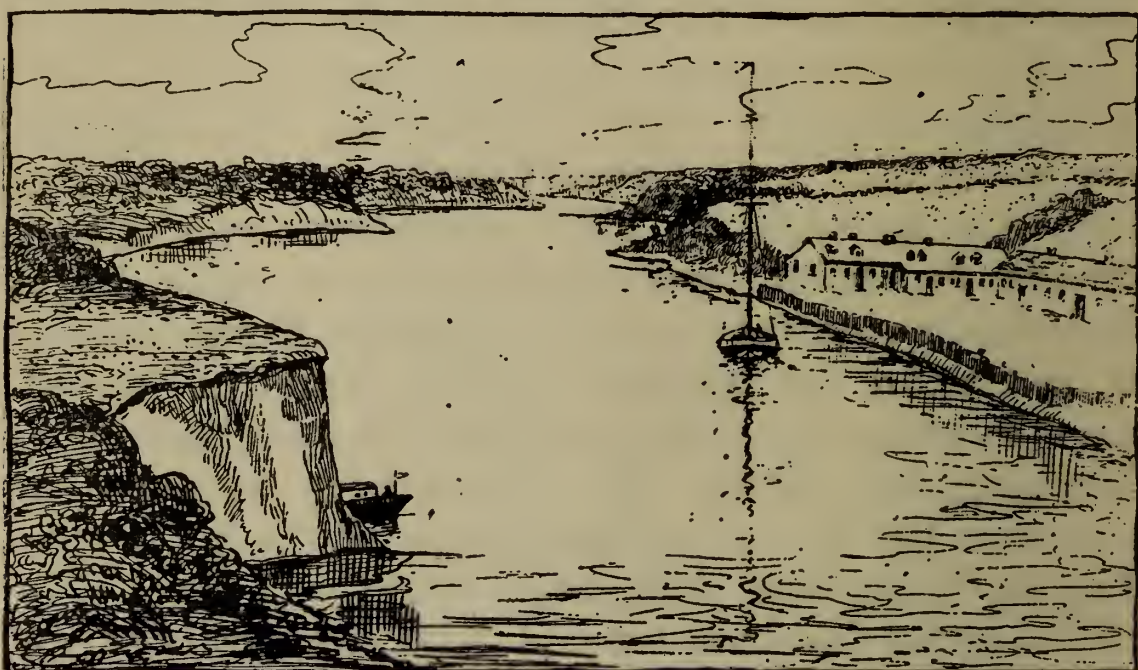
As soon as the Proclamation of Clarke should render effective the Canada Act, the provisions of the Act would put an end to the former administration of the Province of Quebec as a unit. The Commission of Clarke gave him jurisdiction over Lower Canada only and he had nothing to do with the civil administration of Upper Canada, that being reserved for Simcoe. The Royal Instructions required Simcoe to cause his Commission to be read before the members of the Executive Council, and then to take the oaths prescribed, as a preliminary to exercising his office. The Instructions named four persons as the Executive Councillors, William Osgoode, William Robertson, Alexander Grant, and Peter Russell<sup>(3)</sup>—at the Common Law at least a majority of any Council, &c., were required to be present in order that a *quorum* should be made and the Council, &c., properly constituted. Alexander Grant was the only Executive Councillor in Canada and three were required: Simcoe could not be "sworn in" and Upper Canada was therefore without a Governor. No "representative of the Crown" lawfully existing, mercy could not be exercised in the remission of fines or forfeitures and justice could not be "exemplified in executing the sentence of death"<sup>(4)</sup>. The opinion of the Chief Justice to that effect became known to the lawyers of Quebec and Montreal.

A similar difficulty arose as to the Administration of Justice, the Commissions of all magistrates were issued

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by the old Province of Quebec, and much doubt arose as to their competency to act after the division of this Province, no one having the power to continue the Commissions in Upper Canada as Clarke did in Lower Canada.

An information was laid by Thomas Golden, in the Township of Augusta, against Rice Honywell and Thirby Cromwell for "treasonable talk"<sup>(5)</sup>. Justus Sherwood, J.P., had them apprehended and admitted them to bail: when the General Quarter Sessions of the Peace



NAVY HALL, NIAGARA—FROM THE RIVER, 1792  
*From a Drawing by Mrs. Simcoe*

met in January, 1792, the Magistrates thought that the accused could not be tried by the Sessions jury, but could not be admitted to bail; they were accordingly sent to the Garrison at Fort Oswegatchie for safe custody. A prominent Judge of the Court of Common Pleas, John Munro, communicated with the authorities at Quebec in the matter: Simcoe caused the prisoners to be removed to Kingston and, approving the conduct of the Magistrates, told them that by the spirit of the Constitution they would be protected and indemnified by the Government and Parliament of Great Britain. Munro found that "the

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lawyers had infused an idea throughout our District (of Lunenburg) that we had no law; and as many wished to take advantage of it . . . . sent advertisements all over the District": he sent a copy of Simcoe's letter to Judge Macdonell of the Court of Common Pleas of the District, and it had the desired effect<sup>(6)</sup>. In the meantime, Simcoe was cheered by the information that the Courts of Common Pleas and Quarter Sessions of the District of Nassau were performing their usual duties<sup>(7)</sup>: it is known that the same was the case in the District of Hesse, and there was no complaint from the District of Mecklenburg.

In addition to these which may be called permanent Courts, there was another Court sitting in each of the four Districts into which the territory which afterwards became Upper Canada, had been divided by Dorchester in 1788: this Court was known as the Court of Oyer and Terminer and General Gaol Delivery, Commissions for which were issued, from time to time, as was found necessary: this Court tried all serious cases of crime but had no civil jurisdiction. William Dummer Powell had received a Commission of Oyer and Terminer and General Gaol Delivery to sit at Kingston; two men, William Robertson and another, soldiers of the 26th Regiment, had been charged with the murder of an Indian Chief, called The Snake, and the trial was to be had in that Court. It was feared that Mr. Justice Powell would raise objections to proceeding on the authority of the former Quebec Commission, and it was suggested that a Proclamation should issue: but Chief Justice Smith was able to assure Simcoe that he should hear nothing from Powell on the subject. The Chief Justice was right: for, although by the arrival of Chief Justice Osgoode and Peter Russell before the time for the sitting of the Court at Kingston, it became unnecessary to call on Powell to



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act on the Quebec Commission, he was quite prepared to do so without objection<sup>(8)</sup>.

It was feared with justice that if Powell should refuse to act, the inferior magistrates would follow his example: the common sense, for which Powell was always noted, saved the situation, and no trouble, in fact, ever occurred in reference to these Courts.

Simcoe would have been in a quandary had Powell refused to act, thus making it known that there was in his opinion no Civil Government in Upper Canada. It was suggested he might issue a Proclamation in any case leaving it to the general conjecture that he had the power usually found in Colonial Commissions to create an Executive Council for the purpose—this, of course, would be a grave step and one likely to lead to serious consequences both to Simcoe and others<sup>(9)</sup>.

Another suggestion was that he should fill up the blanks left for Canadians with the names of two other persons who would understand that their appointment was only for the particular occasion—then send for Mr. Grant to come to the eastern limit of the Province at Point au Baudet and with the three as a *quorum* thus supposed to be obtained, be sworn in as Lieutenant-Governor within the Province. It does not seem to have occurred to Simcoe that this course would be equally illegal for want of a *quorum*, the addition of two to the four already appointed would make the number six and three would not be a majority<sup>(10)</sup>. It was, however, seen that it might be invalid on other grounds; but Simcoe suggested that “if it shall appear to his Majesty’s Ministers to be necessary, a future Instruction or Act of Parliament . . . may legalize it”.

However, neither of these plans was it necessary to follow, and Simcoe was able to turn his mind in another direction.

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He made particular enquiry concerning the Indians and their lands in the vicinity of Detroit—that region he and the Home Government always considered to be the place from which danger was to be anticipated, and he was anxious as to the Indians and their disposition towards British rule. He received reassuring letters from Major Patrick Murray of the 60th Foot “Commanding Detroit and its Dependencies”<sup>(11)</sup>.

It was because of the fear that trouble might come from the Detroit region that even before Simcoe left England, it had been decided not to fix the capital at Kingston, as had previously been practically determined, but further up at “a situation which seems likely to afford him a convenient access to Detroit, the spot where . . . . discretion appears now most necessary to be exercised”<sup>(12)</sup>. He also made careful enquiry into the topography of Lake Huron, Matchedash Bay, &c.<sup>(13)</sup>, and he never forgot the great object to be attended to in securing a barrier against American aggression by the intervention of the Indians.

Simcoe recognized the necessity of a Navy if the Upper Country was to be kept; and he had not failed to press the matter on the Government: in Quebec, he did not allow this to escape his attention—we find him making enquiry of Commodore Alexander Grant as to “the depth of water in Toronto Harbour, the depth at the mouth of Tobicoak (Etobicoke) River and how far navigable for batteaux, the depth of water in the Harbour northward to Long Point and at the back of Grand River, how far navigable for boats . . . . the depths of water and how far navigable for batteaux on the River La Tranche or Lake St. Clair, what harbours we have on the north-east side of Lake Huron”<sup>(14)</sup>.

He issued a Proclamation (without legal warrant, indeed,) February 7, 1792, “to such as are disposed to settle on Lands of the Crown in the Province of Upper

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Canada", each applicant to receive a Farm Lot of not more than 200 acres, the Governor to be at liberty to grant to any person not exceeding 1,000 acres more, one-seventh of every Township to be reserved for the support of a Protestant Clergy and another seventh for a Crown Reserve, the applicants to take the oath of allegiance, while coal, gold, silver, copper, tin and lead were reserved to the Crown<sup>(15)</sup>.

He decided that Toronto was the natural arsenal of Lake Ontario, and the Head of Navigation of the La Tranche the proper site for the Capital. Of course, this selection was in accordance with his views long previously formed and never departed from<sup>(16)</sup>.

To one matter which now would be considered somewhat trivial but which was then of very great importance, Simcoe gave much attention. Before the utilization on this Continent of salt springs and salt beds—and it was not until 1788 that the manufacture of salt from these began—practically all the salt used was obtained from seawater by evaporation; and the price depended upon the distance from the ocean and the cost of carriage. At Montreal, in 1788, the price was 25d or 50 cents a bushel for crude salt, at Kingston 15s or \$3, and at Detroit 40s or \$8 (the latter place being supplied with salt smuggled through Niagara from the salt licks in the United States, sometimes at £5, York Currency, \$20, a bushel). The working of a salt spring was of enormous advantage to its neighbourhood; and Simcoe made enquiry as to the existence of such springs. He was early cheered by a report from Mr. John Collins, the Deputy Surveyor-General, that, there was a salt spring which he had seen and tasted, which fell into the Trent above the "Lake of Quinty" and which, according to the inhabitants, yielded a gallon of salt to every three gallons of water—it was not more than twenty miles from Lake Ontario, and was reserved for the Crown<sup>(17)</sup>.

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His suggestion that a Post Office should be established did not meet with favour<sup>(18)</sup>.

On June 2, Chief Justice William Osgoode and Receiver-General Peter Russell arrived at Quebec, thereby making a quorum of the Executive Council: John White, the Attorney-General, accompanied them<sup>(19)</sup>.

Simcoe supplied himself with a Private Secretary in the person of Thomas Talbot of the Malahide, near Dublin, a relative of the Marchioness of Buckingham, to whose husband he had been Aide-de-Camp along with Arthur Wellesley, afterwards Duke of Wellington, when the Marquis was Lord Lieutenant of Ireland, 1787-9. At this time Talbot was a Lieutenant with his Regiment, the 24th Foot, at Quebec, and the Marquis requested Simcoe to take Talbot "into his family": Talbot remained in the position of private and confidential Secretary until he was, in June, 1794, summoned to join his Regiment in England<sup>(20)</sup>.

Simcoe also appointed two Sheriffs—one, Alexander Macdonell of Collachie, who had been in Colonel John Butler's Rangers, and whose half pay was saved to the Public Chest by this appointment, the other, William Coffin, brother of the Comptroller-General, who had been a Lieutenant in the Royal Regiment of New York<sup>(21)</sup>.

Shortly after the opening of navigation, and on June 8, 1792, Simcoe left Quebec for the West, embarking with Mrs. Simcoe in a large batteau with an awning—Lieutenant Thomas Gray of the Fusiliers, or 7th Regiment, who had accompanied them in the *Triton* from England, and Thomas Talbot being with them. A second batteau carried the children, and a third, the servants and baggage<sup>(22)</sup>.

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## NOTES

(<sup>1</sup>)Letter, Simcoe to Dundas, "Secret and Confidential," Montreal, December 7, 1791; 1 *Correspondence*, pp. 88, sqq. *Can. Arch.*, Q. 278, pp. 22, sqq: Wolf. I, 1, 394-396. Simcoe received a letter of complaint from Sir John Johnson, dated Montreal, November 24, 1791, Wolf. I, 1, 392: *Can. Arch.*, Q 278, p. 32—in answering, Simcoe said:—"I must confess myself surprised at its very extraordinary contents. I do not enter into the subject at present: this may be better done by personal conversation whenever you shall favour me with the opportunity. I have intended it and hope to accomplish it as I have to visit Montreal in a few days." Letter, (Quebec), November 28, 1791, Wolf. I, 1, 349. Dorchester's recommendation of Sir John as Lieutenant-Governor is contained in his Despatch to Grenville, Quebec, March 15, 1790, 1 *Correspondence*, p. 10: *Can. Arch.*, Q 44, I, 130—"I cannot but hope his zeal and fidelity in the King's service from the first beginning of the late wars, the sacrifice of very considerable property, and the advantage of a high degree of confidence among the Loyalists will point him out to His Majesty as the properest person for the Government of Upper Canada."

(<sup>2</sup>)He was the "Billy Smith" of Simcoe's Letter to Nepean from Wolford Lodge, December 2, 1789, 1 *Correspondence*, pp. 7-9: *Sim.* I, 1, 7-11. Simcoe there gives him credit for loyalty; but "in the circumstance of Livingstone of the Manor, his brother, a notorious Rebel during the late War, having purchased a large tract of land (in Vermont) . . . . where New York claims proprietorship and Vermont obedience, his, Mr. Smith's, opinions should be examined with caution and the utmost scrupulousness on any point in which Vermont or New York may interfere with Canada".

Smith was a graduate of Yale, a man of high character and thoroughly loyal: Simcoe had no hesitation in putting himself under his guidance in legal matters.

(<sup>3</sup>)Blanks were left for some gentleman from Detroit and apparently another to be decided upon. Simcoe recommended Mr. Jacques Baby of Detroit for the position, "as I understand he is the most proper person in that District from whence it is but justice that a French gentleman, of undisputed loyalty, should be selected and the other vacancy, I think it would be proper to empower me to dispose of as I shall think fit, to the Speaker, or some Member in all probability of the House of Assembly". Letter, Simcoe to Dundas, Quebec, November 19, 1791, 1 *Correspondence*, pp. 83-84: *Can.*

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*Arch.*, Q 278, p. 7. Evan Nepean informed Simcoe, Letter, September 19, 1791, Wolf. I, 1, 379, that "Your Executive Council will be limited to five, viz: Osgoode, Robertson, Grant, Russell and a Canadian."

(4) See Simcoe's Letter just mentioned: also Chief Justice Smith's opinion, 1 *Correspondence*, p. 84: *Can. Arch.*, Q. 278, p. 12.

(5) Rice Honywell (Hunwell or Honeywell) had, according to Golden, said "G—— D—— King George, I have served the Congress"; but he denied the charge. He was not a U. E. Loyalist, but had served as a Congressional soldier; and he had received 100 acres of free land through Justus Sherwood against the protest of inhabitants. Thirby Cromwell was a young man of indifferent character; he had taken the oath of allegiance but had not received any land. Munro's letter to Hugh Finlay from Matilda, January 14, 1792, 1 *Correspondence*, pp. 103, 104; *Can. Arch.*, Q. 278, p. 68.

(6) See Letters from John Munro and James Gray to Simcoe, Matilda, January 14 and 15, 1792, 1 *Correspondence*, pp. 103, 104: *Can. Arch.*, Q 278, pp. 68-60: Simcoe to Gray and Munro, Quebec, February 2, 1792, 1 *Correspondence*, pp. 105, 106, 107: *Can. Arch.*, Q 278, pp. 66, 72. The "lawyers" referred to were lawyers in Montreal—there was none in the District of Luneburg and only one in all Upper Canada, Walter Roe of Detroit. The only lawyer Judge was William Dummer Powell of the same place. I have looked up the proceedings in this case: the Court of General Quarter Sessions of the Peace for the District of Luneburg sat at Osnabruck, January 10, 1792, the J.P.'s present being James Gray, William Fraser, Thomas Swan and Archibald McDonell.

"The King in Pros (ecution)

Thomas Golden

v.

Rice Honywell &

Thirby Cromwell.

} On the information of Thos. Golden. The Court order that Rice Honywell and Thirby Cromwell be examined concerning the Complaint against them.

The Examination taken before the said Justices in Sessions. Rice Honywell saith that he is not in any wise Guilty of the Charge as set forth in the foregoing complaint, but acknowledges to have been in his Barn early in the morning of the fifth Inst. But that he did see the complainant Golden at that time, and that he was a second time to his Barn about nine o'clock of the same morning to speak to the complainant Golden about some private business. But

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Thirby was not present with him at the Barn either of the times that day. He also acknowledges to have been in the American service during the late war.

The examination of Thirby Cromwell taken before the said Justices in Session who saith that he is not in any wise Guilty of the Charge as set forth in Golden's complaint, but acknowledges that he was at Rice Honywell's Barn early in the Morning of the fifth January Instant, but that the said Rice Honywell was not with him nor did he see the Complainant Golden.

The Court, having duly considered the nature of the Complaint against the said Honywell and Thirby, do order that they be confined in safe Custody till further orders: And that the Court be adjourned till further orders likewise".

In the Diary of John White, first Attorney-General of Upper Canada, under date Kingston, Monday, July 3, 1792, mention is made of "the case of two men confined for treason": they were not tried at the Court at Kingston but sent back to Luneburg District for trial.

At the General Quarter Sessions of the Peace for the District of Luneburg, held April 10, 1793, before James Gray, Richard Wilkinson, Thomas Swan and Jeremiah French, J.P.'s, a Bill was submitted to the Grand Jury against Rice Honywell and Cromwell Thirby: and the Grand Jury found No Bill—the prisoners were then discharged. Munro's letter to Finlay, January 14, 1792, 1 *Correspondence*, p. 103-4, *Can. Arch.*, Q 278, pp. 68, 69, says that "the crime alleged against them is forming a design to burn the King's garrison at Oswegatchie."

Honywell "swore the Peace" on Golden and he was bound over to keep the Peace. Original Records of Court of General Sessions of the Peace for the District of Luneburg.

(7) Letter from John Butler and Robert Hamilton, two of the three Judges of the Court of Common Pleas for the District of Nassau in the name of the other Magistrates, to Simcoe, Niagara, February 27, 1792, *Can. Arch.*, Q 278, pp. 131-133. William Dummer Powell was the sole Judge in the District of Hesse (Detroit), and it is known that his Court functioned regularly during this period. See Letter from General Alured Clarke to Simcoe, Quebec, July 12, 1792, 1 *Correspondence*, pp. 179, 180.

(8) Letters, Simcoe to Dundas, Montreal, December 7, 1791, and Quebec, January 5, 1792. 1 *Correspondence*, pp. 88-91, 100: *Can. Arch.*, Q. 278, pp. 22 sqq.: 40, sqq. Kingsford in his *History of*

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*Canada*, Toronto and London, 1894, Vol. VII, pp. 341, 342, with the irritating inaccuracy in matters of detail which characterizes much of that otherwise valuable work, says:—"As some cases were to be tried at Kingston in December, Judge Powell suggested that a Proclamation . . . . should . . . . be issued . . . . Powell, however, did not raise the question and there is ground for the belief that in this course he was influenced by the Chief Justice Smith". The cases were not to be tried in December, 1791, but in August, 1792: it was not Powell but "one of Mr. Ogden's correspondents" who suggested the Proclamation, and there is no reason to believe that he was influenced by Chief Justice Smith. Powell was as good a lawyer as Smith, and little used to being influenced by any man. The cases were in fact tried before Chief Justice Osgoode.

The Proclamation suggested was to be similar to that issued by General Alured Clarke by advice of his Executive Council to continue in office the Judges and other Civil Officers: such a Proclamation by Simcoe would have been a nullity in law and he was wise not to issue one. See Simcoe's Letter to Dundas, Quebec, January 5, 1792, 1 *Correspondence*, p. 100, *Can. Arch.*, Q. 278, p. 40.

<sup>(9)</sup>Simcoe seems to say that this suggestion was made by Chief Justice Smith, but his language is not clear; and it is not likely that a sound lawyer such as the Chief Justice undoubtedly was, would give such advice. Simcoe's words are:—" . . . . should I issue the necessary Proclamation leaving it to the general conjecture that I am empowered to create an Executive Council *pro hâc vice* as Judge Smith suggested and affirmed to have been the general usage in Colonial Government". Letter, Simcoe to Dundas, Montreal, December 7, 1791, 1 *Correspondence*, pp. 88, sqq.: *Can. Arch.*, Q. 278, pp. 22, sqq.

<sup>(10)</sup>This not being a legal treatise, I do not discuss the law at length. It was possible at the time and for thirty years after even for a lawyer to conjure up a contention that less than a majority might validly act. It had, indeed, been already decided that a majority could validly act—there were two reported cases to that effect—Attorney-General v. Davy, (1741), 2 Atkyns, 212, and Rex v. Beeston, (1790), 3 Term Reports, 592. These were later followed in *Withnell v. Gartham*, (1795), 6 Term Reports, 388; *Grindley v. Barker*, (1798), 1 Bosanquet & Puller, 229, and *Cook v. Loveland*, (1799), 2 Bosanquet & Puller, 31—So far, no one had been bold enough to argue that less than a majority could act: but in *Blacket v. Blizard*, (1829), 9 Barnwell and Cresswell, 851, it was



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solemnly contended that less than a majority had the powers of the whole—the Court of King's Bench, however, decided that at least 14 out of 26 persons were necessary: and said that it had always been the law that more than half were necessary to act validly for the whole number.

(11) See Letters of Pat. Murray to Simcoe, Terrebonne, December 23, 1791, and January 25, 1792. Wolf. I, 1, 399-406. This Major Patrick Murray should not be confused with Colonel John Murray or Richard Murray, Barrack-Master at Quebec, as is done in *Michigan Pioneer and Historical Collections*, Index No., vols. 1-16, p. 408: see do. do. vol. 12, p. 17; see also Major John Smith's Letter to Simcoe, Detroit, April 30, 1792, I *Correspondence*, pp. 149, 150.

(12) Letter from Dundas to Dorchester, Whitehall, September 10, 1791. Sim. I, 2, 124-130. The precise place for the Capital had not been decided, December 1, 1791, when Simcoe wrote Grant the letter mentioned in note (14) *infra*. We find him saying that he expected to be at Cataraqui (Kingston) as soon as possible, "When I shall be glad to confer with you . . . to fix upon the most convenient spot for the first meeting of the Legislative body".

(13) See Letter to Simcoe from John Humfrey, Montreal, February 8, 1792, Wolf. I, 2, 24: I *Correspondence*, pp. 115, 116.

(14) Letter Simcoe to Com. Grant, from Quebec, December 1, 1792, Sim. I, 1, 14-16: Grant's reply, Niagara, May 13, 1792, Wolf. I, 1, 106.

(15) I *Correspondence*, pp. 108, 109: *Can. Arch.*, Q. 278. pp. 76, 82, 4 Ont. Arch. Rep., (1906), pp. 171, 172.

The interpretation placed upon the Canada Act was always that the Clergy Reserves and Crown Reserves should be one-seventh of the whole: section 36 may not have that meaning, but the question is now academic.

Simcoe followed the Proclamation of Lieutenant-Governor Clarke for Lower Canada: *D. & McA.*, pp. 60, 61: Quebec Gazette, February 16, 1792: *Can. Arch.*, Q 58, I, p. 97, Clarke's Despatch, No. 21, February 16, 1792, I *Correspondence*, p. 112: *Can. Arch.*, Q 278, p. 44: he knew he had no power in law to issue such a Proclamation—See his Letter to Dundas, April 28, 1792, I *Correspondence*, pp. 137-145: *Can. Arch.*, Q 278, pp. 135, sqq.

(16) See Letter last mentioned in Note 15, *suprà*.

(17) See Simcoe's Letters to Dundas, Montreal, December 7, 1791, and May 28, 1792, I *Correspondence*, pp. 88, 159: *Can. Arch.*, Q. 278, pp. 22, 165, 167a, 167b.

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(18) See Letters, Simcoe to Dundas, Quebec, February 16, 1792, 1 *Correspondence*, pp. 112-114: *Can. Arch.*, Q 278, p. 44, and Dundas' Reply, Whitehall, June 9, 1792, 1 *Correspondence*, pp. 163, 164: *Can. Arch.*, Q 278, p. 101.

(19) *Diary*, p. 85: see my *Upper Canada Sketches*, Toronto, 1922, p. 106.

(20) For Talbot, see *Diary*, pp. 62, 63: Edward Ermatinger's *Life of Colonel Talbot*, St. Thomas, U.C., 1859: Judge C. O. Ermatinger's *The Talbot Regime*, St. Thomas, Ont., 1904. Talbot is generally said to have been a relative of the first Marquis of Buckingham (George Nugent-Temple-Grenville); but he was really related to the Marchioness, a daughter of the Viscount Clare, an Irishwoman. It would seem that Simcoe met him in Montreal. Mrs. Simcoe says (Sunday, December 11, 1791), "Coll. Simcoe arrived from Montreal which place he left yesterday. He brought with him Mr. Talbot . . . . Coll. Simcoe takes Mr. Talbot into his family".

(21) Letters, Simcoe to Nepean, Quebec, April 28, 1792, 1 *Correspondence*, pp. 145, 147.

(22) It does not certainly appear when and by whom Niagara was fixed upon. Apparently it was by Simcoe himself: he, as early as April 28, 1792, says: "I propose to call the House together near Niagara, as the most central spot in the Province for the convenience of the different settlements". Letter Simcoe to Dundas, Quebec, April 28, 1792, 1 *Correspondence*, p. 144: *Can. Arch.*, Q 278, pp. 144, sqq.: see also his Letters to Sir George Yonge, Montreal, June 17, 1792, 1 *Correspondence*, p. 166: and Montreal, June 21, 1792, 1 *Correspondence*, p. 169, "I shall proceed to Kingston tomorrow morning, where the Troops will rendezvous, and from thence to Niagara as soon as possible".

The despatch in which he had expressed the intention to winter in Cataraqui is that of December 7, 1791, written to Dundas from Montreal—the Capital had not then been fixed upon, 1 *Correspondence*, pp. 88-91: *Can. Arch.*, Q 278, pp. 22, sqq.

Captain Littlehales, who had been appointed Military Secretary, and who had arrived in Quebec with despatches, overtook them at Dautré, just above Lac St. Pierre, June 12; June 13, the batteau arrived at Pointe aux Trembles on the Island of Montreal; and Mrs. Simcoe travelled the remaining distance in Mr. Frobisher's phaeton, arriving at the Chateau de Ramezay at eleven o'clock, p.m.

While in Quebec, Simcoe had lived in a rented house in St. John Street.

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He had at first intended to winter in Cataraqui (Kingston), and early in the spring "occupy such a central position as shall be previously chosen for the Capital. If possible, I could wish to begin a settlement at Toronto."

In Montreal, Simcoe found that Captain Shaw of the Queen's Rangers was at Kingston with the First Division of the Queen's Rangers who had arrived at Quebec, May 28; Shaw had crossed on snow shoes with eleven others the 240 miles of land from St. John to Quebec the preceding winter. Captains Shank and Smith, with the remainder, who had arrived at Quebec, June 11, were on their way up the river. Simcoe appointed Captain Stevenson, Quarter-Master General: and himself was entitled to his advanced rank by reason of the arrival of the Queen's Rangers.

Simcoe left Montreal for Kingston at which place the Queen's Rangers were to rendezvous, June 22, the Chief Justice and Attorney-General having departed for Kingston the day before. By carriage to Lachine, then by batteau and occasional riding, the party arrived at Kingston on Sunday, July 1, 1792. Kingston was the most important place between Montreal and Detroit, and it was intended to organize the Government there. It had already been determined, however, to fix the Capital for the time being at Niagara as the most central spot in the Province and a place from which the Lieutenant-Governor could keep his eye on the western frontier with its Americans and Indians.

## CHAPTER IX

# The Executive Council

**F**OR the organization of the Government, a legally constituted Executive Council was necessary; and before continuing the narrative, something may be said of that body.

Before the Canada Act of 1791 came into effect and while the Quebec Act of 1774 was in force, the Province had a "Council for the Affairs of the Province of Quebec", not more than twenty-three or less than seventeen in number, appointed by the Crown: and to this Council was given the power of legislation with the consent of the Governor. This Council is called in certain sections of the Act the "Legislative Council", but it also acted as an "Executive Council".

It was one of the objects of the Canada Act to dissociate the Executive from the Legislative functions: and accordingly, as we have seen, a Legislative Council was provided as one of the Houses of the Legislature—but without any executive duties or powers. Another body, the Executive Council, was also in contemplation, corresponding to the Ministry at Westminster, but with the all-important difference that it was in no way responsible to or under the control of the popular House—its sole responsibility was to the Governor or, in the ultimate analysis, to the Sovereign and his Ministry at Westminster. Nothing of the kind was mentioned in the Canada Act, of course, but the fact was perfectly understood: it was not intended by the Act that Responsible Government should have any footing in Canada—indeed,

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such an idea would have been considered self-contradictory and ludicrous in the extreme.

The Executive Council was to have no part in legislation after the first meeting of the Legislature<sup>(1)</sup>. The Governor and Executive Council were to be a Court of Civil Jurisdiction for hearing appeals as had for some time been the practice in the Province of Quebec<sup>(2)</sup>.

The Sovereign was by the Act empowered to authorize the Governor with the advice of the Executive Council to erect Parsonages or Rectories "according to the Establishment of the Church of England", and to endow them with land—the Governor alone to present the Incumbent, a clergyman "of the Church of England"<sup>(3)</sup>.

Beyond the temporary and the judicial and quasi-ecclesiastical functions given to the Executive Council in the Act, nothing is said of its powers and duties—but these were well known in Colonial administration—they gave their advice with or without previous request to the Governor, but he was not bound to take it; he, not the Executive Council, was responsible for the Administration of the Province—responsible not to the Colonists or their representatives in the Legislature, but to the King alone. The final judges of the administration were not Canadians but Britons in the Ministry at Westminster on their responsibility to the British, not in any way to Canadian, electors.

No other method of Colonial administration entered the mind of anyone except a few theorists without power or influence; and the true lesson of the American Revolution had not been learned, its causes being misconceived and misunderstood.

As the members of the Executive Council were paid, that position was more desirable even than the life position of member of the Legislative Council; but the latter

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position was honourable and one to be desired. It will be convenient here to treat of the appointment of Executive and Legislative Councillors at the same time.

Dorchester, who was naturally consulted by the Home Administration as to the personnel of the Councils, had not an intimate personal knowledge of the prominent persons in the Upper Country: he consulted Sir John Johnson, who had, and Sir John furnished him with a list of names.

Dorchester submitted "Lists . . . . composed of persons pointed out . . . . by Sir John Johnson, whose intimate knowledge of the principal characters of that country renders him particularly competent to such a discrimination". It has been supposed that he did not send in Sir John's lists as given but made changes in them: the fact is that Sir John sent in a second list. Dorchester's lists were as follows:

*For Legislative Council:*

1. William Dummer Powell
2. Richard Duncan
3. William Robertson
4. Robert Hamilton
5. Richard Cartwright, Jr.
6. John Munro
7. Nathaniel Petit
8. George Farley

*For Executive Council:*

1. William Dummer Powell
2. Richard Duncan
3. William Robertson
4. Robert Hamilton
5. Richard Cartwright, Jr.
6. James Gray
7. Alexander McKee
8. Edward Jessup
9. Alexander Grant
10. John McDonnell
11. James McDonnell
12. Peter Drummond
13. Robert Kerr

and he added at the end of each list: "It will be advisable to add one or two Canadians from Detroit, but I am not sufficiently informed at present to make the selection"<sup>(4)</sup>.

Sir John's original list of suggested Legislative Coun-

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cillors corresponded with Dorchester's; except that he named James McDonell instead of George Farley. In his original list of Executive Councillors, he omitted Dorchester's first five and also James McDonnell; and he added George Farley<sup>(5)</sup>.

Having before him Dorchester's list, Dundas consulted Simcoe. Simcoe copied the list in the Treasury<sup>(6)</sup>, and after consideration was able to recommend only two, Alexander Grant, who was "generally spoken of as an old and faithful servant of the Crown", and William Robertson, who was then in London with whom Simcoe had some slight acquaintance, who had been in favour of the formation of the two Provinces and who seemed to him to be "a person of very good manners and good sense". He advised that not more should be appointed than should be necessary to "give birth to the functions of the new Government . . . without a more particular enquiry"—he had no particular wishes as he had but little information on the subject<sup>(7)</sup>.

His advice was followed in that regard<sup>(8)</sup>, and only four persons were named, that is William Osgoode (appointed Chief Justice), William Robertson (still in London), Alexander Grant and Peter Russell (appointed Receiver-General), leaving a blank for one or two Canadians<sup>(9)</sup>.

There is no provision in the Act or the Royal Instructions as to the number of Executive Councillors: the Royal Instructions directed the Governor in case of a vacancy to transmit "the Names and characters of such three Persons, Inhabitants of . . . Upper Canada, whom you shall esteem the best qualified . . ." To avoid the inconvenience arising from want of a *quorum*, an Executive Councillor was to vacate his seat if he were absent from the Province for six months without the Governor's leave or one year without leave under the Sign Manual of the King<sup>(10)</sup>.

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For the Legislative Council, Dorchester's list was not followed exactly—the name of William Dummer Powell, “the First Judge” at Detroit, was omitted, probably because the Chief Justice of the Province, William Osgoode, was to be appointed; Richard Duncan, William Robertson, Robert Hamilton, Richard Cartwright, Jr. and John Munro were named, but for Nathaniel Petit and George Farley (who Simcoe advised should be left out) were substituted Alexander Grant and Peter Russell. It will be seen that thus all the members of the Executive Council were also Legislative Councillors<sup>(11)</sup>.

When Simcoe came to Canada, he sent, November 21, 1791, to Sir John Johnson a list of the Executive and Legislative Councillors who had been appointed: Sir John was very angry; he said that it was with some reluctance and great diffidence that he had undertaken the unpleasant task of making the lists for Lord Dorchester, that he had given the matter the attention it deserved, but that the selection made from the lists was ill advised and partial as almost all had been left out of “the principal characters, particularly those who from the commencement of the late unhappy War distinguished themselves by their loyalty, zeal and exertions in His Majesty's service and who have been the humble but sole promoters of the settlement now the Upper Province<sup>(12)</sup>”.

Johnson was particularly interested in Richard Duncan, and when he found that Simcoe had omitted his name by mistake in the list sent and that he was a Legislative Councillor, he was placated<sup>(13)</sup>.

## NOTES

<sup>(1)</sup>By Section 50, it was enacted that during the interval between the commencement of the Act and the first meeting of the Legislative Council and Assembly—“It shall and may be lawful for



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the Governor . . . . with the consent of the major part of such Executive Council . . . . to make temporary laws and ordinances . . . ."; and these temporary laws and ordinances were to be valid only until the expiration of six months after the first meeting of the Legislature. No such legislation was in fact passed by Simcoe and his Executive Council.

(2) We shall have occasion to refer to this provision of Section 34 when speaking later in the Text concerning the Law Courts.

(3) The provisions for a "Protestant Clergy", (Sections 36, 37, 38, 39, 40, 41, 42) will be considered later in the Text when speaking of the Church.

(4) I *Correspondence*, pp. 10, 11: *Can. Arch.*, Q 44, I, 130-136. The Despatch from Dorchester to Grenville is dated from Quebec, March 15, 1790.

(5) Simcoe in his Letter to Dundas from Montreal, December 7, 1791: I *Correspondence*, pp. 88-91: *Can. Arch.*, Q 278, p. 22, sqq., says:—"He has given me the List which I transmit in his own hand that he originally sent to Lord Dorchester and which is very different from the one I copied at the Treasury as Sir John Johnson's". Dorchester does not say explicitly that the List which he sent was Sir John's, but the natural inference would be that it was.

The original List of Sir John, as copied by Simcoe, is given in *Can. Arch.*, Q 278, p. 35, Wolf. I, 1, 399, and is as follows:—

### *Legislative Council:*

1. William Dummer Powell, Hesse.
2. Richard Duncan, Luneburg.
3. William Robertson, Hesse.
4. Robert Hamilton, Nassau.
5. Richard Cartwright, Kingston.
6. John Munroe, Luneburg.
7. Nathaniel Petite, Nassau.
8. James McDonell, Kingston.

### *Executive Council:*

1. James Gray, Luneburg.
2. Alexander McKee, Hesse.
3. Alexander Grant, Hesse.
4. Edward Jessup, Luneburg.
5. John McDonell, Luneburg.
6. Peter Drummond, Luneburg.
7. Robert Kerr, Nassau.
8. George Farley, Kingston.

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I have been much puzzled by the discrepancy which cannot be explained by any documents in the Canadian Archives; but the whole matter is made quite clear by a Paper found at Wolford Manor, Wolf. I, 1, 376.

It would appear that Johnson, after the original List was sent in, made a second list.

The Paper mentioned is headed: "Names of Persons recommended for seats in the Executive Council," "Recommended in Second Paper."

	7. Alex. McKie (McKee)	
Off.	2. Richard Duncan	7. Nathaniel Petit
Maj.	8. Edward Jessup	2. Richard Duncan
Ser.	13. Robert Kerr	4. Robert Hamilton, J.
Com.	9. Alex. Grant	1. W. Dummer Powel, J.
	12. Peter Drummond	8. George Farley
Judge	1. W. Dummer Powel	6. John Munroe, off.
	6. James Gray	3. William Robertson
Off.	10. John McDonnel	5. R'd. Cartwright, Jr.
	3. William Robertson	
	11. James McDonnel	
Judge	4. Robert Hamilton	
	5. Richard Cartwright, Jr.	
Sheriff	Tyre	
	Brown	
	Baker	
Commanding Officer at Detroit,	Mon. Beaufette,	
	John Asken, Judge,	
	Jac. Babye.	

It will be seen that these lists are precisely the same as those sent in by Dorchester.

The whole matter is clear if we take the list Johnson "originally sent to Lord Dorchester" mentioned in Simcoe's Letter of December 7, 1791, to Dundas as an "original" list and Sir John to have sent in a second list which Dorchester forwarded.

<sup>(6)</sup>See Simcoe's Letter to Dundas, Montreal, December 7, 1791, 1 *Correspondence*, p. 90: *Can. Arch.*, Q 278, p. 22.

It may be necessary for the complete understanding of the Colonial situation to bear in mind the officers charged with the Colonies at this period.

When in 1782 by the Act, 22 George III, cap. 82, the Secre-

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taryship of State for the Colonies established in 1768 was abolished, and the terms Northern and Southern Departments were replaced by Home and Foreign Departments, the Colonies were allotted to the Home Department. It was not till 1801 that the Colonies were transferred to the War Department, a Secretaryship of which was formed in 1794; and in 1854 they obtained a Secretary of State for themselves alone. Consequently Simcoe, in connection with Canadian affairs, must deal with the Officials of the Home Department, that is:—

### Secretaries of State for Home Department.

1789, June 5, to 1791, June 8, William Wyndham Grenville (afterwards Lord Grenville).

1791, June 8, to 1794, July 11, Henry Dundas (afterwards Lord Melville).

### Secretary of State for War and Colonies.

1794, July 11, to 1801, March 17, Henry Dundas (afterwards Lord Melville).

### Permanent Under Secretaries for Home Department.

1782 to 1789—Evan Nepean (afterwards Sir Evan Nepean).

1789 to 1792—Scrope Bernard.

1792 to 1806—John King.

### Under Secretaries of State for War and Colonies.

1794 to 1795—Evan Nepean (afterwards Sir Evan Nepean).

1795 to 1801—William Huskisson.

### Secretaries-at-War.

1782-1794—Sir George Yonge (Apl. to Dec. 1783, Col. Richard Fitzpatrick).

1794-1801—William Windham.

(7) Letter, Simcoe to Dundas, London, August 12, 1791, 1 *Correspondence*, pp. 43-51, *Can. Arch.*, Q 278, pp. 283, sqq. Simcoe, in his letter to Alexander Grant, Quebec, Dec. 1, 1791, Sim. I, I, 14, says:—“I . . . made it my particular request that you might be of the very few to which a due attention to economy has restricted the Executive Council, and also that you might have a seat in this (Legislative) Council”. This he did “both from the personal character which I have heard of you and in respect to the very important office which you have filled for many years.”

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(8) From Simcoe's explanations to Sir John Johnson, it would appear that reasons of economy entered into the determination to appoint a small number—he says:—"I explained to him (Sir John Johnson) . . . that the expenses of the Executive Council rendered a larger number inadmissible". See preceding note.

Letter Simcoe to Dundas, Montreal, December 7, 1791, 1 *Correspondence*, p. 90: *Can. Arch.*, Q 278, pp. 22, sqq.

It was intended to pay the Executive Councillors £100 each per annum.

(9) Letter Evan Nepean to Simcoe, September 19, 1791, Wolf. I, 1, 379: "Your Executive Council will be limited to five, viz: Osgoode, Robertson, Grant, Russell and a Canadian. Sir John Johnson, in his Letter to Simcoe, November 24, 1791, (see note 12, *post*) speaks of two Canadians to be appointed.

(10) For the Royal Instructions, see *D. & McA.*, at p. 35.

(11) Powell blames certain extraordinary and unfounded statements against his loyalty—he was born in Boston and some of his relatives were prominent Revolutionaries—for his exclusion from the Councils; but the reason suggested in the Text seems much more probable. There is still some mystery concerning Powell, and the charges or rather insinuations against him. See the Paper by the late Dr. C. C. James in Vol. VI, 3rd Series (1912) Transactions Royal Society of Canada, Section II, pp. 47-220, *William Dummer Powell, a Critical Incident in his Life*: also my *Life of William Dummer Powell*, Michigan Historical Commission, Lansing, 1924. Letter Major John Smith to Simcoe, Detroit, April 30, 1792, 1 *Correspondence*, pp. 149, 150.

Powell saw Simcoe in Quebec, and was informed by him that the authors of the charge were two officers who had accompanied him to Montreal. Simcoe introduced him to Prince Edward and Lieutenant-Governor Clarke, who assured him of their confidence in him. The absurd charge was a recrudescence of a similar charge made in Montreal some years before during Powell's residence there which he had met and crushed on the spot. See the *Powell MSS.* in the Canadian Archives and the Toronto Reference Library; also my *Life of William Dummer Powell, ut suprâ*. The career of the libellers had a fearful termination, "one by drowning in a state of intoxication, the other in foreign dungeon for no good."

Simcoe himself suggested that Farley and Petit should be omitted. Evan Nepean's Letter to Simcoe, September 19, 1791, Wolf. I, 1, 379.

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<sup>(12)</sup>Letter, Sir John Johnson to Simcoe, Montreal, November 24, 1791, Wolf. I, 1, 392, *Can. Arch.*, Q 278, p. 32. This was the letter which excited Simcoe's amazement and caused him to go especially to Montreal, see *ante*, Chap. VIII, note 1.

<sup>(13)</sup>Letter Simcoe to Dundas, Montreal, December 7, 1791. I *Correspondence*, p. 90, *Can. Arch.*, Q 278, p. 22: if he did not send in a second list, Johnson had some reason to complain—of the eight originally recommended by him for Executive Councillors only one was appointed, Alexander Grant: of the eight in the Legislative Council only five. If, however, I am right in suggesting that he made a second List his complaints are minimized: in the Executive Council two of the four named were from his List: in the Legislative Council all but two—the two not named by him being William Osgoode, the Chief Justice, and Peter Russell, the Receiver-General.

## CHAPTER X

### Sojourn in Kingston

**K**INGSTON, the former Cataraqui and Frontenac, was at the time a thriving town with over fifty houses, only one of stone.

Simcoe was given a small but very airy house near the Barracks: and at once began preparations for his Government.

Alexander Grant had been summoned but was not yet present<sup>(1)</sup>: Osgoode and Russell<sup>(2)</sup> had, however, arrived the previous Friday (June 29), and Simcoe filled in the blank left for the French-Canadian gentleman from the Detroit District with the name of James (Jacques) Baby, so that a *quorum* was present of the Executive Council—three being present and only two, Grant and Robertson, absent.

Simcoe appointed the Protestant Church (St. George's) as a suitable place for opening the Royal Commissions, and on Sunday, July 8, 1792, repaired thither, accompanied by Osgoode, Russell, Baby and White, the Attorney-General, together with the principal inhabitants—the Commissions were read and Simcoe took the required oaths<sup>(3)</sup>. The Executive Council did not function until the following day, July 9, when Simcoe, now fully clothed with his office, formally appointed Osgoode, Robertson (still absent), Baby, Grant (still absent) and Russell, Executive Councillors—Osgoode, Baby, and Russell took the oaths required: Littlehales was appointed Clerk, and William Jarvis, Secretary of the Executive Council, and they took the oaths required<sup>(4)</sup>. A Proclamation was issued continuing the Judges and other civil officers in their positions: the Militia returns were taken

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into consideration and then the Council proceeded to divide the Province into Constituencies: the following day, July 11, Grant appeared and took his seat, and the business of forming the Constituencies continued each day until the plan was completed, Sunday, July 15. A Proclamation was ordered to be prepared concerning the Constituencies, and another to call together the Legislature.



PROTESTANT CHURCH (ST. GEORGE'S) KINGSTON, 1791

On July 16, the Proclamations were issued: William Osgoode, James Baby, Richard Duncan, William Robertson, Robert Hamilton, Richard Cartwright Jr., John Munro, Alexander Grant, and Peter Russell were summoned by writ to the Legislative Council, David Burns took the oath as Clerk of the Crown and Court of Common Pleas, and Richard Pollard and Alexander Mac-

## SOJOURN IN KINGSTON

donell as Sheriffs<sup>(5)</sup>. On July 21, an additional Proclamation was issued respecting the continuance of civil officers in Judicial and ministerial employments<sup>(6)</sup>; no further Council business was done at Kingston.

But Simcoe did not waste his time—he inspected Carleton Island, where the extensive fortifications had been dismantled: he examined the harbour and also the flour mills, the “Kingston Mills” about five miles from Kingston (at the present first lock on the Rideau Canal), which had been some ten years previously built for the Quebec Government by Robert Clarke.

He had from the beginning been anxious that none but those of undoubted loyalty should have any part in the affairs of the Province. He was always in favour of halfpay officers, men who had fought for British connection. On his way from Montreal to Kingston he had found “that the general spirit of the country was against the election of half-pay officers into the Assembly, and that the prejudice ran in favour of men of a lower order, who kept one table, that is, who dined in common with their servants”. Attorney-General John White had a desire to be in the Assembly, and spoke to Simcoe about offering himself for the County—Simcoe decidedly approved, and as he says: “It was by great good fortune that the temporary residence I made at Kingston created sufficient influence to enable me to bring the Attorney-General, Mr. White, into the House”. White made an active canvass, and although for a time it looked as though Elizabethtown, in the County of Leeds, would present a candidate of its own, in the long run he was returned by acclamation—but no one can doubt that the influence of the Governor was potent. Simcoe also did all possible to secure the return of Lieutenant David William Smith (afterwards Sir David William Smith), son of Major John Smith of the 5th Regiment, from Essex and Suffolk,



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and prevented some others from setting up, so that Smith would have no opposition from them<sup>(7)</sup>.

The Province was divided by the Proclamation into nineteen Counties, Glengary, Stormont, Dundas, Grenvil, Leeds, Frontenac, Ontario<sup>(8)</sup>, Addington, Lenox, Prince Edward, Hastings, Northumberland, Durham, York, Lincoln, Norfolk, Suffolk, Essex, and Kent. There were, however, only sixteen members to be elected for the Assembly:

Glengary and Kent, each two members .....	4
Stormont, Dundas, Grenvil, each one .....	3
Leeds and Frontenac .....	1
Ontario and Addington .....	1
Prince Edward and Adolphustown Township .....	1
Lenox(except Adolphustown), Hastings and Northumberland	1
Durham, York, and First Riding of Lincoln .....	1
Lincoln, Second Riding .....	1
Lincoln, Third Riding .....	1
Lincoln, Fourth Riding and Norfolk .....	1
Suffolk and Essex .....	1
In all	16

The Constituencies named in the Proclamation give evidence of the relative settlement of the Province, as we know from the official Records that substantially equal numbers were given to each representative and the Militia returns were taken as a basis. The present Glengary was well settled and settlement continued fairly good on the water front up to the River Trent—west of that River there was practically no settlement up to the Head of the Lake Ontario: the Niagara country was well settled and there was a sprinkling of inhabitants along Lake Erie and the Detroit River. Inland there was practically no settlement except along the River La Tranche (Thames).

The anomalous position of those in the Detroit country did not escape the attention of Simcoe, and he insisted

# SOJOURN IN KINGSTON

that the British subjects on the west side of the River should vote, although the territory which *de jure* belonged to the United States, just as later he insisted that

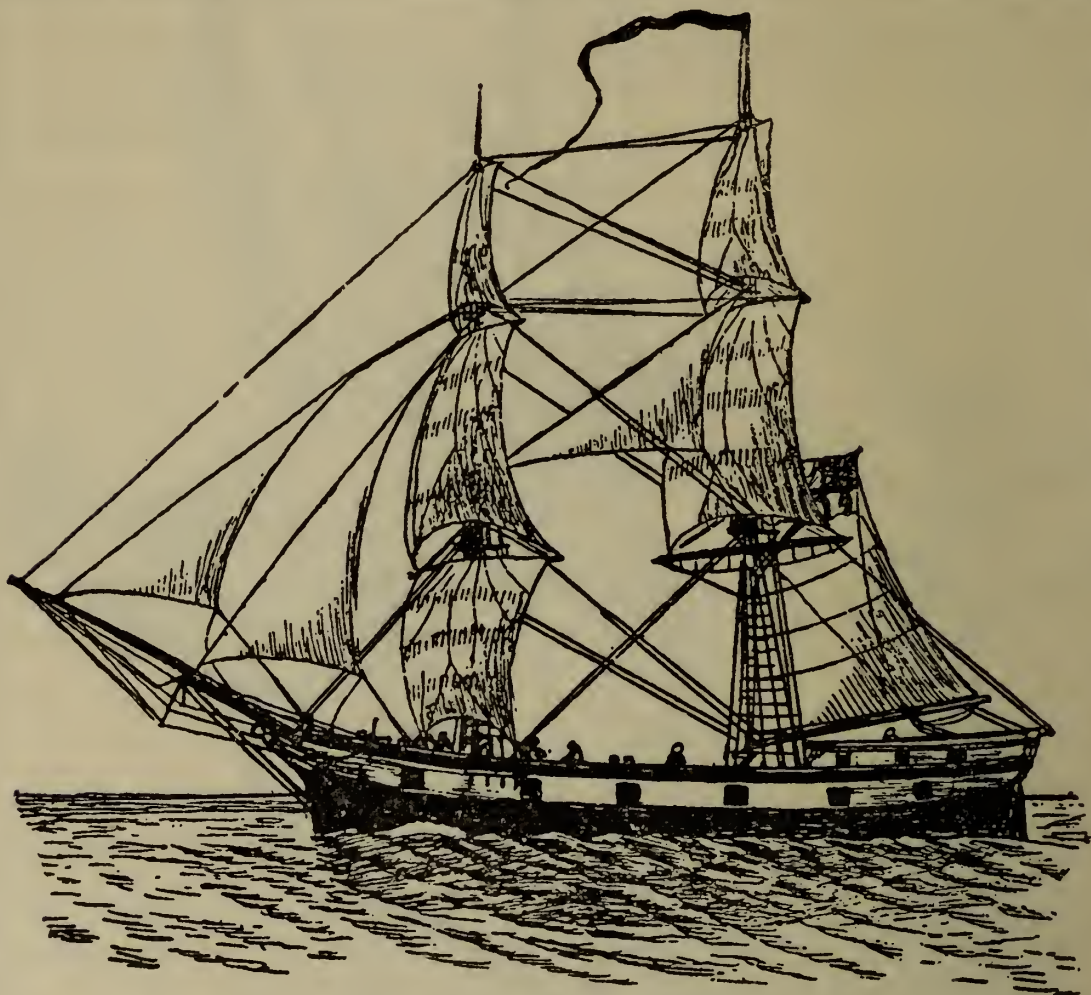


PLAN OF KINGSTON, UPPER CANADA, 1790

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they should be treated in all respects as of Upper Canada<sup>(9)</sup>.

Simcoe embarked on the *Onondaga*, Commodore Beaton, on Monday, July 23, for Niagara, having reluctantly given up his original plan of rowing along the North shore of the Lake and around the Head of the



H. M. SCHOONER ONONDAGA  
*From a drawing by Mrs. Simcoe*

Lake to his Capital. He was able to resist the arguments of the Kingstonians that Kingston was the proper place for the Capital, that there was a dearth of houses and provisions at Niagara as well as the certainty of ague, &c., &c.<sup>(10)</sup>. He arrived at Niagara, Thursday, July 26. But he left behind the Chief Justice and Attorney-General White, who had serious work to do in Kingston.

## SOJOURN IN KINGSTON

A Commission of Oyer and Terminer and General Gaol Delivery was issued to Osgoode, thereby superseding the Quebec Commission to Powell; and Osgoode presided at the ensuing Court. When White arrived at Kingston, June 30, the murder of the Indian Chief, The Snake, had already been committed: the papers were placed in White's hands by the Coroner, which proving imperfect, he directed a new Inquest: this was held and the verdict charged William Robertson and another, soldiers of the 26th Regiment, with murder. White communicated with Simcoe and Simcoe with General Alured Clarke, Commander-in-Chief of the Forces in the absence of Lord Dorchester. Clarke directed Colonel Gordon to send the soldiers under guard to Kingston: he did so, and the two charged, after being examined before Mr. Cartwright, were fully committed for murder.

The Court sat, August 23, 1792; and the next day, the two soldiers were tried and acquitted<sup>(11)</sup>. Osgoode and White left Kingston for Niagara on Sunday, September 2, by the *Onondaga*, Russell having preceded them on the same ship, Thursday, August 3,<sup>(12)</sup>; and the whole official family were united at Niagara early in September.

### NOTES

(1) Simcoe's letter to Grant, Quebec, December 1, 1791, I *Correspondence*, p. 86, Sim. I, 1, 14, (which reached Grant only February 29), and Grant's reply, Niagara, May 13, 1792, I *Correspondence*, pp. 156, 157: Grant did not take his seat until July 11. *Can. Arch.*, Q 282, I, p. 199.

From a copy certified by Littlehales, it appears that Simcoe inserted the name of Baby between those of Duncan and Robertson.

(2) John White's Diary in MS. See my *Upper Canada Sketches*, *ut suprâ*, p. 106.

(3) *Diary*, p. 116: *Can. Arch.*, Q 278, I, p. 175.

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(4) William Jarvis was recommended by Simcoe to Grenville and Dundas as "Secretary and Clerk of the Council as held by Mr. Odell in New Brunswick". Simcoe's Letter to Dundas, London, August 12, 1791, 1 *Correspondence*, p. 47: *Can. Arch.*, Q 278, pp. 283, sqq. He was an old friend and comrade of Simcoe's, having been an officer in the (original) Queen's Rangers: and he married a daughter of the Reverend Dr. Samuel Peters, Simcoe's choice for Bishop in Upper Canada.

White in his MS. Diary notes, under date, Friday, July 7, "At 8 Cap. Jarvis and family arrived, all well". On the same day he notes:—"The last Detachment of Troops arrived about 3 o'clock". Monday, July 10, was, he says, "very rainy". Simcoe, in his letter to Dundas, Quebec, November 17, 1791, had said: "I wish that Mr. Jacques Baby of Detroit may be appointed to the first vacancy, both in the Executive and Legislative Councils, as I understand he is the most proper person in that District from whence it is but justice that a French gentleman of indisputable loyalty should be selected." 1 *Correspondence*, pp. 83-84, *Can. Arch.*, Q 278, p. 7: *Sim.* I, 1, 116, sqq. I can find no authority given to Simcoe to appoint Baby, and the appointment was probably invalid in the beginning; but the question is academic, because he reported it, November 23, 1792, and it was approved, May 2, 1793. Simcoe says he had filled in the blank in both Councils with the name of "James Baby, the son of a reputable French gentleman of that District, lately deceased, and the nephew of Mr. Baby of the Council of Lower Canada". He could not find "another Canadian gentleman in that District proper to appoint". Letter to Dundas, Navy Hall, Niagara, November 23, 1792, 1 *Correspondence*, p. 263, *Can. Arch.*, Q 279, I, p. 181, Dundas replied, Whitehall, May 2, 1793, 1 *Correspondence*, p. 326: *Can. Arch.*, Q 279, I, p. 219.

(5) *Can. Arch.*, Q 282, I, pp. 177-201: Burns' proper title was "Clerk of the Crown and Pleas"—Richard Pollard took the place as Sheriff of William Coffin, who did not qualify.

(6) *Can. Arch.*, Q 282, I, 202.

(7) White, in his Diary notes, Wednesday, August 8:—"Mr. Cartwright called to say that Grogan had determined to stand for the counties and had procured forty-five votes. Bustled about much this morning to secure my election". Monday, July 23, he wrote:—"Learnt for the first time that the Town of Elizabeth, in the Co. of Leeds, is very populous and likely to defeat my election by sending a person of their own. So I wrote an address to be distributed

## SOJOURN IN KINGSTON

amongst them and hope 'twill produce a desirable effect." However, Friday, August 10, "The election came on this morning. No other candidate than myself appearing, my election became unanimous. After which they dragged me about in a chair to the diversion of the mobile and my inconvenience. Gave two Barrels of porter and bread and cheese". The right thing for a successful candidate to do is shown by a letter of D. W. Smith to John Askin, Niagara, July 26, 1792, 1 *Correspondence*, pp. 182, 183:—"Should I be returned without an undue election or the appearance of party or bribery I shall be most happy: and in that case, I beg an ox be roasted whole on the common and a barrel of rum to be given to the mob to wash down the beef." White's "mobile" was Smith's "mob."

Simcoe's Letter to Dundas, Navy Hall, Niagara, November 4, 1792, 1 *Correspondence*, p. 249: *Can. Arch.*, Q 279, I, p. 79. The fact that Simcoe boasts of this influence to his superior speaks volumes for the existing conception of the position, duty and rights of a Lieutenant-Governor as held both by Simcoe and by the Home Government.

(8) Ontario had nothing to do with the present County of Ontario, which at that time, was part of the County of York—the County of Ontario as formed by the Proclamation of July 16, 1792, consisted of the Islands in the St. Lawrence, Amherst, Gage, Wolfe, Howe, and "to comprehend all the islands between the mouth of the Gananoque to the easterly limit of the late Township of Marysburgh called Point Pleasant". See the Proclamation in full, 4 *Ont. Arch. Rep.*, (1906), pp. 176-181: *D & McA*, pp. 77-82.

I follow the orthography of the Proclamation. In Simcoe's Letter to Dundas, Niagara, August 20, 1792, he says:—"The Principle which it was thought proper to adopt to equalize the numbers for the purpose of representation was the Militia returns." 1 *Correspondence*, p. 198: *Can. Arch.*, Q. 278, p. 197. The official Record reads:—"As equal a Representation as possible and as the nature of circumstances would permit."

(9) See *post*, Caps. XIII, XV. In an answer to the Merchants and Inhabitants of the Town of Detroit, dated at Niagara, August 1, 1792, Wolf. I, 2, 155, Simcoe says:—"Your loyalty and attachment to our most gracious Sovereign cannot be better expressed than by your hope that the Province of Upper Canada may ever remain incorporated with the British Empire." The address will be found in Wolf. I, 2, 120. The constituencies, however, did not in fact run west of the river.

(10) See *Diary*, p. 120.

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<sup>(11)</sup>See Letters, Clarke to Simcoe, Quebec, July 12, 1792, 1 *Correspondence*, p. 179: Simcoe to Clarke, Niagara, July 29, 1792, *do*, p. 184. White's MSS. Diary, under dates July 2, 4, 27, August 6, 25. White adds, "as was also Wm. White for stealing a sheep, the property of the Commodore".

I cannot find anywhere the name of the other soldier. I have examined John White's Diary, also his account as Crown Counsel; and while Robertson's name is repeatedly mentioned, the other's is not.

Robertson, in the Court Martial proceedings, made a confession, but accompanied it with a letter of explanation which seems to have obtained credence—although Simcoe, in his Letter to General Clarke of July 29, 1792, says:—"I am sorry to say there is little doubt of their guilt and conviction."

Some five years later there is a reference to this case. The Governor-in-Chief, General Robert Prescott, writing to President Peter Russell from Quebec, May 11, 1797, says:—"It is a circumstance exceedingly to be regretted as this crisis that the Indians should have any ground for declaration or complaint; and I exceedingly regret that means were not found to bring the supposed murderer of the Messissagua Chief in question to a public trial. A similar circumstance happened a few years ago, as I am informed, at Kingston, when an Indian Chief of the same Nation was killed by a soldier of the 26th Regiment: but by bringing the supposed culprit to tryal, and burying the murdered body in a particularly distinguished manner, as well as giving the relations of the deceased some handsome present in Public Council, the matter was settled and they satisfied.

I cannot too strongly recommend pointed regard to be paid to the Indian Nations at present, particularly when it is known that evil disposed persons are tampering with them, may endeavour to estrange them effected as from the British Government and join its enemies". *Can. Arch.*, Sundries, U.C.

<sup>(12)</sup>See John White's Diary.

## CHAPTER XI

### Early Days in Niagara

**A**T nine o'clock in the morning of Thursday, July 26, 1792, the *Onondaga* anchored off Navy Hall on the West bank of the Niagara River and opposite Fort Niagara on the east bank, which, still British, commanded the mouth of the River.

Navy Hall was a wooden building, or rather group of four buildings just below which Fort George was built in 1796: the building was originally for the use of the Commanders of the armed vessels on Lake Ontario, not only as a temporary residence but also to store supplies of various kinds, a sort of local or branch marine storehouse, the chief place for such supplies being Kingston. When Navy Hall was fixed upon for the official residence of the Governor, it was recognized that it must be added to and have much-needed repair—Simcoe calls it “an old hovel”. The repairs not being completed, Simcoe ordered three marquees<sup>(1)</sup> to be erected on the hill above the Hall on very dry and well drained ground, in parts covered by small oaks. In one of these he lodged the Attorney-General when he arrived, while he took into his own house the Chief Justice, whom he found a very agreeable companion as well as a competent and careful legal adviser.

He seems to have abandoned some part of his project as to the stationing of the Queen's Rangers: “Upon mature deliberation”, he says, “I have found it most advantageous to hut the Queen's Rangers at the New Landing (Queenston) upon the Niagara River, and early in the spring, I hope to occupy a Post near to Long Point



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upon the Lake Erie, another at Toronto upon the Lake Ontario"—but he still considered Niagara a mere temporary Capital, for he adds:—"and to set myself down on the River La Tranche." He intended to make a personal investigation if possible before the onset of winter<sup>(2)</sup>.

Not long after his arrival at Niagara, Simcoe had to deal with an atrocious crime of what was afterwards known as lynching. A Chippaway Indian, Wawanesse, attempted to stab three persons at Michillimackinac, June 28, 1792: one, Myers Michel, in taking away his knife, was wounded, but overpowered him and tied his hands behind his back—the Sergeant of the day took him in custody, but a large number of people, English and French, attacked, stabbed and tomahawked the Indian until he was rescued by the Captain in person and some seven assailants were arrested: he died from the brutal treatment which he had received. A Coroner's jury declined to particularize anyone: and the Magistrates admitted the seven prisoners to bail. The Captain, Edward Charlton, reported to Col. England, commanding the Detroit District: England reported to Simcoe, Simcoe consulted Mr. Justice Powell, who could see nothing to be done but wait the action of the Grand Jury at Detroit. As showing how such a killing of an Indian was looked upon, it may be said that in the meantime sixty-three traders of Michillimackinac "in consequence of the unhappy and disagreeable affair which has caused the imprisonment of our fellow citizens," petitioned Captain Charlton to interfere with the magistrates so that those concerned in the "death of the Indian, who was yesterday unfortunately killed," should not be imprisoned in the Fort but left at large in the Town. As was to be expected in such a state of public opinion, the murderers of the Indians escaped punishment<sup>(3)</sup>.

## EARLY DAYS IN NIAGARA

During this summer, Prince Edward, the future Duke of Kent, visited Simcoe at Niagara, arriving August 21, visiting the Falls, and on August 26, setting sail for Kingston. Simcoe was not well enough to see the Prince or his companions, Lord Garlies, afterwards Earl of Galloway, and Captain Markham, more than once: he



CASTLE FRANK IN THE SUMMER OF 1796  
*From a drawing by Mrs. Simcoe*

kept his room for a fortnight, suffering from a violent pain in the head, supposed to have been occasioned by the concussion of a cannon firing a salute for the Prince. Later on he walked to Burlington Bay and again to Fort Schlosser above the Falls. The first Legislature was called for September 17, 1792, to meet at Niagara, the name of which Simcoe during the summer changed to Newark in honour of Newark, New Jersey, with which

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he had been acquainted during his campaigns in the Revolutionary War. By his Proclamation of July 16, 1792, he changed the names of the Grand River to the Ouse and that of the La Tranche to the Thames.

Before giving an account of this Legislature, it will be well to mention the arrangements made for the administration of the affairs of the Province.

Simcoe believed that Upper Canada would pay, would "if encouraged to attain its natural dimensions . . . dilate itself into an increasing and majestic support of the British Empire," that it was not only sentimentally but financially the interest of Britain to give it all reasonable support<sup>(4)</sup>: but the Province had no means to pay for its own administration and money must be provided by the Mother Country. He had the satisfaction of learning that Parliament voted for the year 1792 as expenses attending the Civil Establishment of the Province the sum of £6,565 7s 0d—of this, indeed, £465 7s went for fees to officers at Westminster for the Patents of Dorchester and Simcoe and £200 for an agent in London. One of the items showed an ignorance of the state of the Province, as there was an appropriation for two Judges of the Common Pleas at £500 each<sup>(5)</sup>. The remainder was assigned as follows:—

Salary of Lieutenant-Governor . . . . .	£2,000
Chief Justice . . . . .	1,000
Attorney-General . . . . .	300
Solicitor-General . . . . .	100
Clerk of the Crown & Pleas . . . . .	100
Two Sheriffs @ £100 . . . . .	200
Secretary of Province & Register . . . . .	300
Clerk of the Council . . . . .	100
Surveyor of Lands (no salary) . . . . .	
Receiver-General of Revenue . . . . .	200
Five Executive Councillors . . . . .	500
Naval Officer . . . . .	100

## EARLY DAYS IN NIAGARA

Moreover, Simcoe was notified by General Clarke, Commander of the Forces, that the Lords of the Treasury authorized him to grant Simcoe a credit on the Military Chest for a sum not exceeding £5,000; and Clarke very thoughtfully sent him a remittance of £2,500 without waiting for a formal requisition<sup>(6)</sup>.

The persons filling the offices provided for were:

Lieutenant-Governor	John Graves Simcoe
Chief Justice	William Osgoode
Attorney-General	John White
Solicitor-General	(None until 1795)
Clerk of the Crown & Pleas	David Burns
Two Sheriffs	Richard Pollard and Alexander Macdonell
Secretary of Province and Register	William Jarvis
Clerk of the Council	(Vacant)
Surveyor-General	The Surveyor-General of Lower Canada
Receiver-General of Revenue	Peter Russell
Five Executive Councillors	Osgoode, Grant, Russell, Baby (Robertson, not in Canada)
Naval Officer	Alexander Grant

Simcoe complained that no Surveyor-General had been provided for, but it was explained that it had been thought wise that no Surveyor-General should be appointed for Upper Canada, and that the Surveyor-General of Lower Canada should fill the same situation for Upper Canada without any additional salary<sup>(7)</sup>.

In addition to the Civil List there was a Military List, of less amount of course, as that was specially under the supervision of the Commander of the Forces at Quebec. Simcoe, however, had a small staff provided for:

## JOHN GRAVES SIMCOE

Major of Brigade—Capt. Edward Baker Littlehales, from the half-pay of an Independent Company. . . . .	£172.17.6
Commissary of Stores and Provisions—Capt. John Mc- Gill, from the half-pay of the Queen's Rangers. . . . .	172.17.6
Surgeon—John Macaulay, Gentleman, late surgeon to the New South Wales Corps. . . . .	172.17.6
Chaplain—The Reverend Edward Drewe . . . . .	115. 5.0
Fort Major—Ensign Robert Eyre, from the 32nd Regi- ment of Foot . . . . .	86. 8.9
Barrack Master—Justus Wright, Gentleman, (since dead) . . . . .	69. 3.0
	£789.9.3 <sup>(8)</sup>

The Civil List, too, was partially relieved by the payment of salary in advance for part of the year (i.e., up to April 30, 1792) of William Dummer Powell, the only Judge of a Court of Common Pleas paid by salary and not by fees from litigants<sup>(9)</sup>.

Simcoe did not call together his Executive Council until the Legislature had met and was well under way: he received many Addresses, loyal and flattering, none of which calls here for any notice; and many Petitions of more or less importance, some of which will be mentioned in their proper place.

The summer was spent in agreeable social intercourse, visits to the Falls and other places, but the curse of mosquitoes and the inevitable fever and ague—the connection between mosquito and malaria, though already suspected, had not been established—made Niagara less agreeable than it otherwise would have been.

### NOTES

<sup>(1)</sup>The repairs to Navy Hall took all the carpenters of the Post—Corporal John Douglas of the Royal Artillery reports, Niagara, August 16, 1792, "Governor Simcoe's arrival at this place has employed all the carpenters"—and he cannot build a storehouse. Wolf.

## EARLY DAYS IN NIAGARA

I, 2, 164. Simcoe, in a letter to Sir James Bland Burgess, Niagara, August 21, 1792, says: "I am miserably off for accommodation in this country and I am fitting up an old hovel that will look exactly like a carrier's ale-house in England when properly decorated and ornamented." 1 *Correspondence*, p. 205. These Marquees are not to be confused as they have been by some with the Canvas Houses.

(2) Letter, Simcoe to Dundas, Niagara, August 20, 1792, 1 *Correspondence*, pp. 198, 199: *Can. Arch.*, Q 278, p. 197. He did not make the investigation until later, as we shall see. The Queen's Rangers built their own huts, *Diary*, p. 132.

(3) See Letter, Capt. Edward Charlton to Lieut.-Col. England, 12 *Michigan Pioneer Collections*, p. 38: *Can. Arch.*, C 511, p. 24. Wolf. I, 2, 141: Petition of Michillimackinac Traders to Capt. Charlton, Wolf. I, 2, 140: Simcoe's Letters to Clarke, Niagara, August 9 and 23, 1792, 1 *Correspondence*, pp. 193, 205: England's Letter to Francis Le Maitre, Detroit, July 5, 1792, 12 *Michigan Pioneer Collections*, p. 38: *Can. Arch.*, C. 511, p. 21. Simcoe, *loc. cit.*, says:—"It is whispered that they (the Grand Jury) may throw out the Bill—if so, it will confirm me in what I have some thoughts of the declaring Military Law at Michillimackinac". His fears were realized—See *Powell MSS.* Michillimackinac was then garrisoned by a detachment of the 24th Regiment under Capt. Edward Charlton: Wolf. I, 2, 151. England to Simcoe, Detroit, July 24, 1792. For some account of proceedings in this shocking case, see my *Michigan Under British Rule*, Michigan Hist. Comm., Lansing, 1926, pp. 336, 454-456.

(4) See for example his Letter to Dundas, London, August 12, 1791, 1 *Correspondence*, pp. 43-51: *Can. Arch.*, Q 278, pp. 283, sqq.

(5) See Chapter XVI, *post*.

(6) See Letter, John King, Permanent Under-Secretary of State for the Home Department, to Simcoe from Whitehall, March 6, 1792. Sim. I, 1, 353, 354, Wolf. I, 2, 37, 38: also Letter Thomas Aston Coffin to Simcoe from Quebec, September 29, 1792: Wolf. I, 1, 305. Drawing on the Military Chest at Quebec went on in Upper Canada until 1816.

We find sums advanced out of the Military Chest at Quebec for special purposes—e.g., James Givins, being intrusted with special dispatches, &c. to and from the United States, went from Quebec to Philadelphia (then the Capital of the United States) in the summer of 1792 and was paid for his expenses, £57 15s 7d, currency. Coffin to Simcoe, Quebec, April 27, 1793: Wolf. I, 1, 308.

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(7) Letter, Simcoe to Dundas, Montreal, June 21, 1792, 1 *Correspondence*, pp. 171-173: *Can. Arch.*, Q 278, pp. 163, sqq., and Letter Dundas to Simcoe, Whitehall, August 15, 1792, 1 *Correspondence*, pp. 196, 197: *Can. Arch.*, Q 278, pp. 194, sqq. Samuel Holland, Surveyor-General of Lower Canada, recommended his son John to Simcoe as Surveyor-General of Upper Canada. See Letter, Quebec, October 6, 1792, Wolf. I, 2, 208. As there has been much inaccuracy in speaking of the comparative value of money, sterling and currency, it may be mentioned that Coffin informed Simcoe that this £2,500 @ 4/6 was equal to £2,592 11s 10d @ 4/8. To understand this, it should be borne in mind that 1 dollar was 5 shillings currency and calculated generally in the Upper Country @ 4/8: the real rate, as fixed in Quebec, was 4/6—and £2,500 @ 4/6 would produce the same amount in dollars as £2,592 11s 10d @ 4/8, i.e., \$11,111.11. Wolf. I, 1, 306.

(8) Littlehales, Simcoe asked for specially as Brigade Major (or Aide-de-camp). 1 *Correspondence*, p. 62: *Can. Arch.*, Q 278, p. 321: McGill, formerly of the original Queen's Rangers, came from the 16th Foot. 1 *Correspondence*, p. 72—he had been recommended by Simcoe, do., p. 45: Macaulay, Simcoe calls "my old surgeon", do, p. 19, and had asked for him. For the complete list, see Wolf. I, 2, 353: *Can. Arch.*, Q 278, p. 334.

(9) Powell's salary was £500 sterling.

In addition to Powell, the following had been paid till April 30, 1792.

Rev. John Stuart, Minister of the Protestant Church at Kingston .....	£100 per annum
Rev. John Langhorne, Minister of the Protestant Church at Ernestown, District of Mecklenburgh .....	£100 " "
Rev. John Bethune, Minister of the Protestant Church of Cornwall, District of Lunenburg .....	£100 " "
Patrick Sinclair, Lieutenant-Governor at Michillimackinac .....	£200 " "
John Valentine, Preventive Officer at Oswego on account of such salary as may be fixed by the Lords Commissioners of His Majesty's Treasury .....	£ 60 " "

Wolf. I, 2, 123, 127.

## CHAPTER XII

### First Session of Legislature

**T**HE First Legislature met at Newark on Monday, September 17, 1792. During the summer, preparations had been made for the Session; and the Houses, or at least the Legislative Council, met in Freemasons' Hall<sup>(1)</sup>, at the northwest corner of King and Prideaux Streets, next door to Wilson's Hotel. The Hall had been erected in 1791 on the authority of the Land Board of the District of Nassau; it had an upper and a lower chamber, the former for the Craft and the latter for public meetings.

In the Legislative Council appeared the Chief Justice, William Osgoode, who produced an Instrument under the Great Seal of the Province, appointing him Speaker of the Legislative Council; there also attended James (or Jacques) Baby, whose name had been inserted in the list by Simcoe, Robert Hamilton, Richard Cartwright, Jr., John Munro, Alexander Grant and Peter Russell. The absentees were William Robertson and Richard Duncan. Robertson was in England; he did not return to Canada and soon resigned his seat in both Councils<sup>(2)</sup>. Duncan did not take his seat until 1793; he was a man of great prominence in Dundas County, but afterwards returned to the United States for business and pecuniary reasons.

In the Assembly appeared John Macdonell of Glengarry (Second Riding) and some others the number of whom is not certainly known, but tradition has it that there were seven in all—the Attorney-General, John



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White, was certainly one. All present were sworn in by William Jarvis, and John Macdonell was elected Speaker.

During the Session, in addition to the Speaker and the Attorney-General, there appeared Ephraim Jones of Grenville, David William Smith of Suffolk and Essex, Hugh Macdonell of Glengarry, (September 18), William Macomb of Kent, Jeremiah French of Stormont, Alexander Campbell of Dundas, (September 21), Benjamin Pawling of Lincoln (Second Riding), Nathaniel Pettit of Durham, York and Lincoln (First Riding), Hazelton Spencer of Lenox, Hastings and Northumberland, Francis Baby of Kent, (September 24), and Isaac Swayze of Lincoln (Third Riding), (October 4)<sup>(3)</sup>. There is no record of the attendance during this Session of Joshua Booth of Addington and Ontario or Parshall Terry of Norfolk and Lincoln (Fourth Riding); and Philip Dorland, elected for Prince Edward and the Township of Adolphus, had a peculiar fate which will now, somewhat anticipating, be told.

Philip Dorland, a man of prominence and high character, had been elected, August 21, as "knight girt with a sword", to represent the County of Prince Edward with Adolphustown; and he was duly so declared by the Returning Officer, John Peters. But he was a Quaker and could not conscientiously take the Oath of Allegiance required by section 29 of the Canada Act to be taken before sitting or voting. He accordingly made a written statement of the facts and handed it in to Mr. Jarvis. Jarvis presented it to the House, and the House ordered the Speaker to issue a new writ of election, "Philip Dorland, Esquire, being declared incompetent to sit or vote in the House without having taken . . . . the Oath set forth in the Act of Parliament . . . ." <sup>(4)</sup>. A new writ was issued; but the election did not take

## FIRST SESSION OF LEGISLATURE

place in time for Peter Van Alstine, who was elected, to sit in the House till the following Session<sup>(5)</sup>.

The Lieutenant-Governor, in his Speech from the Throne, said that he had summoned the Legislature "under the authority of an Act of Parliament . . . . which has established the British Constitution and all the forms which secure and maintain it in this distant country", and he hoped that "the blessings of our invaluable Constitution thus protected and amplified" would "be extended to the remotest posterity." The House, in answer, asserted its determination "to strengthen our union with the present Kingdom and add our mite to its splendour and glory"; and the Legislative Council was equally loyal.

The first measure to come up in either House was a Bill introduced in the Council by Mr. Cartwright to legalize marriages theretofore contracted within the Province.

The law of marriage was not absolutely clear. The English law for a regular marriage required the presence of a priest or deacon episcopally ordained (before the Reformation, a priest was necessary), and it was generally assumed that a Church of England clergyman could validly marry in any country, settled or unsettled, under British rule and even in unsettled territory not British. But there were remote places where a Church of England clergyman was not available, and the Commanding Officer, Adjutant or Surgeon of a Post performed the ceremony from the Prayer Book: sometimes Justices of the Peace officiated. Where there was no clergyman present, the common view was that marriages were irregular and invalid and the children illegitimate in English law. Sometimes, when the couple came to a place in which there was a clergyman, they had the ceremony repeated and thereby the marriage

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validated; and, indeed, it was manifest that the people generally desired regular marriage. Cartwright had himself contracted such an irregular marriage at Niagara in 1784 and had three children, the issue of it. It was natural that he should desire to validate his marriage and legitimize his children. Robert Hamilton, who was his partner and personal friend, seconded him with all his power, and Alexander Grant who, too, had contracted a marriage of this kind, was also assisting.

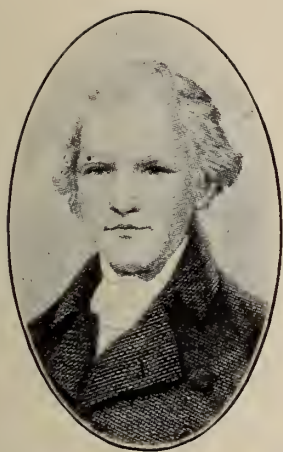
The precise form of Cartwright's Bill is not known, but Simcoe calls it "hasty and ill-digested." Simcoe saw him about it and persuaded him to withdraw it on the express promise that a Draft Bill should be prepared for the opinion of the Home Government and sent to London during the coming winter<sup>(6)</sup>.

In later chapters, the history of the law in this regard will be given.

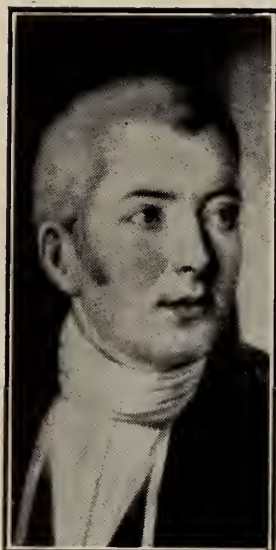
The next Bill introduced in the Council was of the utmost importance.

Although by the Royal Proclamation of 1763, the English Law was introduced *sub modo* into Quebec as then constituted, in 1774 the Quebec Act, which extended Quebec so as to include all of the subsequent Province of Upper Canada, reintroduced the former French-Canadian Law as the rule for decision in matters of Property and Civil Rights: the Canada Act of 1791 left the law in this state, so that Upper Canada began her career under the French-Canadian civil law.

Simcoe and the legal officers, the Chief Justice and the Attorney-General, were English to the core, and the Executive Council also were almost a unit; the Province at large was populated almost wholly by English-speaking people, and there could be no doubt that English Law was sincerely desired by practically all. A Bill prepared at Simcoe's request by Chief Justice Osgoode



CHIEF JUSTICE OSOODE



HON. ALEX. MACDONELL



HON. PETER RUSSELL



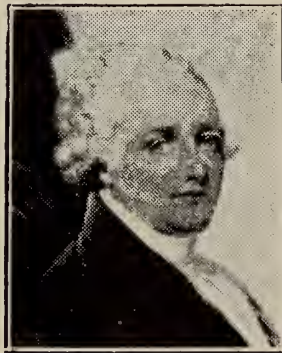
HON. ALEX. GRANT



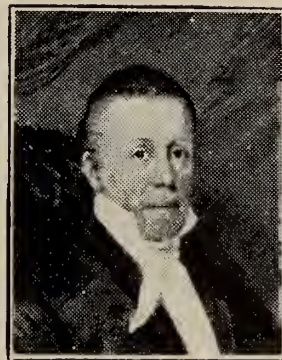
SEC'Y. WM. JARVIS



HON. ROBERT HAMILTON



HON. (SIR) D. W. SMITH



HON. JAMES BABY

MEMBERS OF SIMCOE'S ADMINISTRATION



## FIRST SESSION OF LEGISLATURE

was introduced in the Legislative Council; it rapidly passed its various stages and was sent down to the House, which speedily concurred, *nemine contradicente*. This was the first Act of the Legislature of Upper Canada; it enacted that "in all matters of controversy relative to property and civil rights, resort shall be had to the Laws of England as the rule for the decision of the same"<sup>(7)</sup>.

The English Criminal Law, introduced by the Proclamation of 1763, was not interfered with by the Quebec Act, and was in force in Upper Canada without further enactment<sup>(8)</sup>. As an almost necessary consequence of the change in the civil law, an Act was passed introducing trial by jury of all issues of fact—juries having been allowed in only a few cases under the existing law<sup>(9)</sup>.

After the substantive law comes the means of enforcing it.

In 1788, Dorchester divided the territory which was to become Upper Canada into four Districts: Lunenburg from the East to the Gananoque River (then called the Thames); then Mecklenburg westward to the Trent; Nassau westward to Long Point, Lake Erie, and Hesse further west. Each District had its Court of Common Pleas, all but Hesse with three laymen as Judges; Hesse with a lawyer, William Dummer Powell, as First and only Judge with the powers of three. Litigants, in no matter how small a case, must needs go to Cornwall, Kingston, Niagara or Detroit; this in small cases was a hardship; and it is known that often a magistrate or an officer was called in to decide. The Legislature passed a Bill (originating in the Assembly) which gave to two Justices of the Peace in a "Court of Requests" the power of trying cases involving not more than 40 shillings (\$8): these are the original of our present Division Courts<sup>(10)</sup>.

In this Act, an innovation was made in the rules of

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evidence for such Courts of Requests; quite contrary to the rules of the English Law, the Parties themselves were allowed to give evidence on their own behalf, which was not allowed in England till 1846 or in other Courts in Upper Canada until later still<sup>(11)</sup>.

A trifling change was made by another Act in the practice in cases under £10 sterling in the Courts of Common Pleas<sup>(12)</sup>.

The names of the Districts were changed: Luneburg became Eastern; Mecklenburg, Midland; Nassau, Home; and Hesse, Western; a Gaol and Court House were to be built in each District—at New Johnstown (Cornwall), Kingston, Newark (Niagara), and for the Western District, “as near to the present Court-House as conveniently may be”<sup>(13)</sup>.

The Winchester measures, the standard of His Majesty's Exchequer in England, were adopted and the use of “any other Weight, Measure or Yard whereby Corn, Grain or other thing is bought or sold” was forbidden under penalty, while grist-millers were limited to a toll of not more than one-twelfth, the toll which is to this day still in force<sup>(14)</sup>.

A somewhat curious difficulty arose as to Detroit. The merchants of that prosperous town were desirous of fire protection, but there was an objection to legislation specifically naming Detroit, for Detroit *de jure* belonged to the United States, and to mention it in the Legislature of a British country as in British territory might stir up trouble. However, D. W. Smith got over the difficulty by introducing a Bill in general terms, enabling the Magistrates in every District to make fire regulations, &c., in any town or place “where there may be forty store houses and dwelling houses within the space of half a mile square”<sup>(15)</sup>.

In all these measures, there seems to have been prac-

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tical unanimity, as also in the appointment by the Assembly of a Clerk of the House, Angus Macdonell, at a salary of £91 5s Currency, (say \$365), a Sergeant at Arms at £55 12s 6d, (say \$222.50), and a Doorkeeper at £10, (say \$40)<sup>(16)</sup>; the Legislative Council also appointed officers with an equal wage-bill.

The expense of Gaols, Court Houses and Officers of the Legislature was not provided for in the vote of the Parliament at Westminster; and provision had to be made for it in the Province itself. And here we find the first clash between the Houses—not indeed in the first proposal to levy a small tax upon the land: Smith proposed a tax of a farthing per acre on all holdings above 200 acres; but all the Members of the Council were land-owners; they all insisted that the smallest tax on real property would prevent immigration, and were deaf to Simcoe's suggestions and Smith's arguments; and Smith's Bill was not proceeded with<sup>(17)</sup>.

The real difference arose over the proposal to levy a duty of 6d per gallon on all spirits and wine brought into the Province, which duty it was expected would produce a revenue of £1,500. A Bill to that effect passed the Assembly, (October 4), but it was thrown out in the Council on its Second Reading. Various reasons were adduced, but the actuating one was that three-fourths of the spirits passing through the Province was the property of the merchants of Montreal and such an impost would raise a misunderstanding and perhaps vindictive measures between the two Provinces<sup>(18)</sup>.

This was the only measure which caused irritation between the Houses, and this soon subsided.

There was another measure which elicited a great difference of opinion in the House itself.

The Members of the Assembly were generally from the American Colonies in which they had been accus-



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tomed to local municipal institutions—local Home Rule by persons elected at the Town-meeting or meeting of similar character. They were desirous of having such institutions established by law, as they had been in a few instances already established by custom. This was not the English way, and many of the English looked upon all such popular institutions as levelling and subversive of English principles; they thought that such meetings had been, to a considerable extent, the cause of the American Revolution and that they must always be attended with riot and confusion; that the people should not be called together except to choose their Representative in the Assembly.

A Bill was proposed for the choice of Parish and Town officers by the inhabitants and another to give the nomination altogether to the Magistrates; neither was proceeded with “under the Idea that Town Meetings should not be too much encouraged,” and the suggestion of Smith to give the power to the magistrates was distasteful<sup>(19)</sup>.

Before the end of the Legislature, the Executive Council held a Session—the first at Newark. The Reverend John Stuart, who was Chaplain to the Legislative Council, produced his appointment by the Bishop of Nova Scotia as Commissary; he claimed the right as such to issue Marriage Licences under the English Common Law; but it was pointed out that while the Royal Instructions directed the Governor to give all proper support to “the Right Reverend Father in God, Charles Inglis . . . Bishop of Nova Scotia . . . in the exercise of his jurisdiction, Spiritual and Ecclesiastical . . . in . . . Upper Canada,” they reserved the granting of Marriage Licences to the Governor<sup>(20)</sup>.

This was the first open attempt on the part of any official of the Church of England to claim in Upper

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Canada for that Church the same rights which it had in England.

Certain clergymen of the Church of England had been supported in part from the public chest of the former Province of Quebec, but no provision was made in the Parliamentary vote for continuing this support in Upper Canada. The Clergymen or Missionaries for a time had to rely upon the Society for the Propagation of the Gospel for their support. Naturally they expected—and in a short time obtained—a continuation of their allowance.

The Church of England did not stand alone in the desire for support at the public expense.

The celebrated Alexander Macdonell, then recently from Scotland, a Roman Catholic Priest, later to be the first Roman Catholic Bishop in the Province, sent in a petition to Simcoe, dated at Montreal, June 20, 1792. He thought it “a circumstance pregnant with the most happy consequence that” Simcoe had “this great Province to settle at an epoch where religious toleration, balanced liberty and sound philosophy risen at first on the glorious horizon of Great Britain, shine with gradual emanation and brightening splendour all over the world.” At the same time, he apprehended “there may be some danger of missing those benefits and of falling into error opposite to ancient bigotry and superstition if no mode of religious worship be immediately encouraged and if the various tribes of husbandmen pouring into the new country be left without a form to which they may be, from the principles where they were bred from infancy, inclined to accede.”

He conceived that from the spirit of levelling lately gone abroad, “it would be a very judicious measure in order to insure subordination in a country daily receiving swarms of republicans into its bosom to establish the

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Church of England, that guardian of aristocracy and firm support of the throne on a stable and splendid footing and also the Church of Rome in a degree suitable to the extensive views of Government. . . . For whatever other articles discriminate the tenets of both those great Churches, in this they agree, that they strenuously uphold subordination of civil ranks, monarchy and ecclesiastical monarchy (?)"

"That indeed the gross ignorance and blind errors of many of the Romish scholastics, the avarice, luxury and tyranny of many of the Prelates and, above all, the ambition and usurpation of many of the Popes have for ages, not undeservedly, caused the Roman system to be generally considered in the British nation as subversive of society and inimical to sovereignty and for fear of a renewal of the same dangerous opinions or a remainder of the maxims of such pernicious tendency, the Petitioner thinks every precaution should be taken to exclude or extirpate them entirely out of the Province . . . ." He thought it necessary "that an Archpriesthood, Deanery or some such thing should be created with a competent appointment and conferred upon a priest possessing the confidence of" Simcoe, "who should, in order to set an example to the Romish Clergy of the sister Province and to future generations, give sufficient assurance of fidelity towards the Sovereign, the Constitution, the Empire under the most sacred sanctions." Himself aspiring to the dignity, he solemnly engages, if appointed, "to renounce and abjure by oath every kind of temporal power ascribed to or claimed by the Roman Pontiff within any part of His Britannic Majesty's Dominions, which power is by some writers called direct, by others indirect only, in either of which meanings the Petitioner is equally ready to abjure it. By the same Oath the Petitioner is ready to acknowledge the King . . . . of Great

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Britain as political head of the Church or churches within His Majesty's Dominions and by his supremacy entitled to exercise every legal authority over the temporalities of every denomination of Clergy. In short, your Petitioner confines his obedience to the Pope and dependence on His Holiness to matters that are merely spiritual."

He asked Simcoe to revolve in his great mind a plan for erecting a sufficient number of schools to prevent the youths of those who spoke only Gaelic from becoming a "race of barbarous, unconnected and useless savages"<sup>(21)</sup>.

Simcoe's answer, if any, does not seem to have been preserved, but he had no power in the premises—his Instructions were always to remember that it was tolerance, not establishment, to which the Church of Rome was entitled—"The powers and privileges of . . . an established Church . . . being a Preference which belongs only to the Protestant Church of England"<sup>(22)</sup>.

As little could he help the Lutherans of Williamsburg, Matilda and Osnabruck, who, June 29, 1792, petitioned for an allowance to their Minister, the Reverend Mr. Schwerdfeger, formerly of Albany County, whom they had at length, at a great deal of cost, obtained to live amongst them. He was "a man of approved loyalty to the King and British Government, whose sufferings in that cause during the American Rebellion were such as gave unquestionable evidence of his principles, and whose moral character and abilities as a preacher will . . . bear the strictest scrutiny." "The Lutheran Church . . . is, and always has been, in communion with the Church of England, embraces her as a Sister Church and approves of her doctrine and discipline"<sup>(23)</sup>.

The Presbyterians were not behind in asking for support from Simcoe. The congregation of Glengarry and Stormont sent in a petition supported by Major James

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Gray. The Revd. John Bethune of the Kirk of Scotland, coming to Canada from North Carolina in 1783 with the United Empire Loyalists, was stationed at Montreal, at a salary of over £100; but he gave up that cure to take charge of the Highlanders to the west who did not understand English. Before Upper Canada became a separate Province, the Government allowed him £50 per annum, but of course that allowance ceased with the old Province of Quebec. He had gone on in his ministerial functions without pay except a few bushels of wheat given by his poor parishioners—they were not able to support him and he asked Simcoe for aid; he was the only clergyman of English or Scottish Church in the Lunenburg (Eastern) District<sup>(24)</sup>.

Simcoe could do nothing, except pay Mr. Bethune the first year—and this he did.

## NOTES

(1) There have been several conflicting accounts of the place of meetings of the First Session. William Dummer Powell, Chief Justice, says in his MS. Narrative that it met in the Canvas houses which had been prepared for, and used by Banks and Solander, in their voyage of discovery with Captain Cook, 1768-1771; but Powell in his later years was often unreliable. Nevertheless, he but repeated a very common saying, he himself not having been a Member of that Legislature or, so far as is known, present at the meeting. Some have said that the Sitting was held in the open air under trees; some in Navy Hall; some in "a marquee tent one remove in the scale of ascending civilization from the aboriginal council lodge." See my Articles, *Some Early Legislation and Legislators in Upper Canada*, 33 *Canadian Law Times* (1913), pp. 22, 96, 180. Dr. Duncan Campbell Scott, in a Paper before the Royal Society of Canada, May 28, 1913, *Notes on the Meeting Place of the First Parliament of Upper Canada . . .* Trans. Roy. Soc. Can., 3rd ser., vol. VII, 1913, Sec. II, pp. 175, 191, has, I think, successfully proved that Freemasons' Hall was the place of meeting of the Leg-

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islative Council. The evidence is a General Order, September 16, for a "Royal Salute when His Excellency . . . goes to open the House of Assembly tomorrow morning . . . . A subaltern Guard of the 5th Regiment to mount tomorrow morning at Freemasons' Hall." The argument is that a methodical soldier like Simcoe would have his guard posted where he was to go; and that is very likely. But the House of Assembly was not to be and was not opened in the Chamber of the House of Assembly, but in that of the Legislative Council.

In the Proceedings of the Legislative Council for Monday, September 17, 1792, we read:

"At one o'clock His Excellency the Lieutenant-Governor came to the House.

The Clerk of the Legislative Council was sent with a message to the House of Assembly acquainting them with His Excellency's arrival and requesting their attendance at the Upper House.

The Members of the Assembly attended . . ." 7 *Ont. Arch. Rep.* (1910), p. 1.

In the Proceedings of the Legislative Assembly we read:

"A message from His Excellency requiring the attendance of the House in the Council Chamber. The House attended accordingly and being returned . . ." 6 *Ont. Arch. Rep.* (1909), p. 1.

It seems clear enough that the Legislative Council sat at Freemasons' Hall, and it may be that the Assembly did so also—one Chamber occupying the Lodge Room—but it cannot be said to be certain. Certainly both Houses did not sit in the one room.

(<sup>2</sup>) See Letter, Simcoe to Dundas, Navy Hall, November 4, 1792. 1 *Correspondence*, p. 248: *Can. Arch.*, Q 279, I, p. 1, sqq.

(<sup>3</sup>) 6 *Ont. Arch. Rep.* (1909), pp. 1, 2, 3, 5, 13. The dates in the Text are when the names first appear in the Proceedings: that John White was present on the first day appears by his Diary.

"Monday, 17. This day our House of Assembly met, At 12, I went to the House. Everything passed off very well."

(<sup>4</sup>) 6 *Ont. Arch. Rep.* (1909), pp. 3, 4. These proceedings were creditable to all. By the Canada Act a person elected could not sit or vote until he took the oath prescribed; it was against the principles of the Quaker to take any oath, and the only possible course was taken which was consistent with law, honour and conscience.

(<sup>5</sup>) On Friday, May 31st, 1795, the first day of the Second Session, Jarvis reported the election of Peter Van Alstine, and next day he was sworn in and took his seat. *do. do.*, pp. 22, 23.

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(6) Simcoe's Letter to Dundas from Navy Hall, November 4, 1792, 1 *Correspondence*, pp. 249, 251: *Can. Arch.*, Q 279, I, p. 79: *Marriage in Early Upper Canada*, Canadian Magazine, September, 1918, p. 384: *Simon Girty's Marriage*, Canadian Magazine, December, 1921: *The Law of Marriage in Upper Canada*, Canadian Historical Review, September, 1921, p. 226: *Some Marriages in Old Detroit*, 6 Michigan History Magazine, 1922, p. 111. Simcoe says without much exaggeration that almost all in the Province was in the same predicament as Cartwright and Grant, *loc. cit.*

The formal Proceedings in the Leg. Council are to be found in 7 *Ont. Arch. Rep.* (1910), p. 4.

I do not think it necessary to discuss the question (now academical) whether such irregular marriages were absolutely invalid—lawyers and writers are not agreed: but the opinion then prevailing in Upper Canada was that they were invalid for every purpose.

(7) (1792), 32 Geo. III, c. 1, s. 3, (U.C.). Certain Laws, such as the Poor Laws and Bankruptcy Laws, were not introduced, s. 6.

(8) It was not until 1800 that legislation was passed formally introducing the Criminal Law of England (1800), 40 Geo. III, c. 1 (U.C.).

(9) (1792), 32 Geo. III, c. 2. (U.C.) By the Ordinance of (1787), 27 Geo. III, c. 4, trial by jury was allowed in actions of a "mercantile nature between merchant and merchant and trader and trader . . . and also of personal wrongs proper to be compensated in damages," i.e., torts.

(10) (1792), 32 Geo. III, c. 5, (U.C.). They became Division Courts in 1841, by 4, 5, Vic. c. 3. (Can.) which also provided that the Judge of the District (now County) Court should preside. They were called "Division" Courts from being Courts for the "Division" into a number of which a County was divided.

(11) See *Boyle v. Rothschild*, (1908), 16 *Ont. L. Rep.*, 424.

(12) (1792), 32 Geo. III, c. 4 (U.C.).

(13) (1792), 32 Geo. III, c. 8 (U.C.).

(14) (1792), 32 Geo. III, cc. 3, 7 (U.C.): R.S.O. (1914), c. 128, s. 2.

John White says in his Diary, October 1, 1792, that "in the House of Assembly . . . there has been unusual ignorance and stupidity." The story is told that a zealous advocate of the Grist-millers urged that the legal toll should be one-fifteenth, which he thought more than one-twelfth. *Si non è vero, è ben trovato.*

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<sup>(15)</sup>(1792), 32 Geo. III, c. 5 (U.C.). See Letter, Smith to John Askin, Niagara, October 2, 1792, 1 *Correspondence*, pp. 231-2.

<sup>(16)</sup>The Revd. Robert Addison, Church of England Clergyman at Newark, was appointed Chaplain of the Assembly, but his salary was not then fixed: 6 *Ont. Arch. Rep.* (1909), p. 4: he afterwards received £25 (\$100) per annum.

<sup>(17)</sup>Smith says: "The Court party and the popular party were both against me and I stood alone in the House." Letter to John Askin, *ut suprâ*, Note 15. In a later letter to Askin from Niagara, October 19, 1792, he defends himself from the "malicious reports" concerning his motives in introducing the Bill because he had at the very time a petition to the Governor and Executive Council in his father's name and his own for 6,400 acres (which had since been granted). Letter, Smith to Askin, Niagara, October 20, 1792, 1 *Correspondence*, p. 237.

<sup>(18)</sup>Simcoe's Letter to Dundas, November 4, 1792, *ut suprâ*. Smith voted against the project in the House, Letter to Askin, October 2, 1792, *ut suprâ*, Note 15, for the double reason that he thought the Imperial Parliament should deal with the matter and that the measure would make West India Rum pay twice the duty of Lower Canada Rum, *do. do. do.* See Letter, Richard Cartwright to Isaac Todd, Kingston, October 21, 1792, 1 *Correspondence*, pp. 238-240.

<sup>(19)</sup>See Letter, Smith to Askin, October 2, 1792, *ut suprâ*, Note 15. Letter Simcoe to Dundas from "York (late Toronto), U.C." September 16, 1793. *Can. Arch.*, Q 279, II, pp. 335, sqq.

Smith was an intense Englishman, who had "no Cronys". Letter to Askin, Niagara, January 17, 1793, 1 *Correspondence*, p. 275.

<sup>(20)</sup>In England, the Bishop in each Diocese as Ordinary could issue licences, dispensing with banns in his Diocese, through his Chancellor and Surrogates. The Archbishop of Canterbury, through his Vicar-General, could issue one valid throughout England. In Canada, however, from the beginning of British rule, that power was reserved for the Governor, and the Church of England never exercised it. See, e.g., Instructions to Governor Murray, December 7, 1763, *S. & D.*, p. 192; Instructions to Dorchester, December 16, 1791, *D. & McA.*, p. 45.

<sup>(21)</sup>Wolf. I, 2, 137-138. No one can doubt the absolute candour and good faith of this patriotic, independent and able Churchman. The word "Monarchy" queried was probably "hierarchy" in the original.

<sup>(22)</sup>*D. & McA.*, p. 43, sec. 42.



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(23) Wolf, I, 2, 139.

(24) See Letter, J. A. Gray to Simcoe, Cornwall, April 21, 1793, Wolf. 3, 71.

The Rev. John Bethune had been Chaplain to the 84th Regiment; he was the father of Bishop Bethune, the second Anglican Bishop of Toronto and is the Presbyterian Minister referred to in Cartwright's Report. 1 *Correspondence*, pp. 234-6. See *post*, p. 190.

## CHAPTER XIII

### Provincial Matters of Import

ONE of the first acts of Simcoe after the Legislature rose, was to appoint Lieutenants of Counties as in England—this he did on his principle of making Upper Canada as nearly as possible “an image and transcript of Britain.” He selected some of the Lieutenants from the Legislative Council in order to increase the importance of the Councillors; and he gave to the Lieutenants the recommendation of Justices of the Peace and the nomination of officers of the Militia<sup>(1)</sup>. The Duke of Portland, the Secretary of State, unequivocally disapproved of this scheme; and, while not cancelling the appointments already made, he directed that none should be made in future. The Secretary deprecated the view “that by assimilating the modes of the Government of the Province to the modes of the Government of England, you will obtain all the beneficial effects which we receive from them. Whereas to assimilate a Colony in all respects to its Mother Country is not possible, and if possible, would not be prudent”<sup>(2)</sup>. The time had not come for such an experiment.

The pressing question of the irregular marriages, Simcoe took up without delay. Cartwright, deeply interested personally, made a careful Report to him just before the Legislature was prorogued: he pointed out that the two lower Districts, the Eastern (Luneburg) and Midland (Mecklenburg) had had since 1785 one Church of England Clergyman; the Home (Nassau) District had received one only a few months before, but the Western (Hesse) District never had one. The state of the Church

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of England (to which he himself belonged) in the Province was not flattering:—a very small proportion of the inhabitants belonged to it, and the immigrants from the United States were for the most part sectaries or Dissenters—in the Eastern District there was no Church of England Clergyman, the Presbyterians had one minister, who had been paid £50 per annum by the Government—there was also a Lutheran Minister, but the Dutch Calvinists had not yet succeeded in obtaining a pastor: in the Midland District were two clergymen and many itinerant Methodist preachers: in the Home District, one Clergyman since July, 1792, but many Presbyterians: in the Western District, no Clergy but those of the Church of Rome, the Protestants being generally Presbyterians<sup>(3)</sup>.

Simcoe directed Chief Justice Osgoode to draw up a Bill concerning the irregular marriages with provisions for future marriages—which he did; and Simcoe transmitted it for the consideration of the Home Administration: this the Home Government submitted to the Law officers of the Crown for their opinion: the Law officers suggested some amendments to Osgoode's Bill; but there was so much delay that before the opinion reached the Colony, another Bill had been passed and assented to by Simcoe<sup>(4)</sup>.

If there had been any doubt as to the position of the inhabitants of Detroit and other places which were held by Britain, although given by Treaty to the United States, it came to an end, Dundas specifically instructing Simcoe that they were subject in all respects to the laws of Upper Canada. This agreed with Simcoe's own view about which he never had any doubt<sup>(5)</sup>.

During this winter, Simcoe carried out the plan he had long had in contemplation and personally explored the Peninsula in some part of which he had determined to fix his Capital.

## PROVINCIAL MATTERS OF IMPORT

On Monday, February 4, 1793, he left the hut which he had had constructed for himself and hung with tapestry from Stowe; he was accompanied by his Private Secretary, Major Littlehales, Captain Fitzgerald and Lieutenant D. W. Smith of the 5th Regiment, then stationed at Fort Niagara across the River, Lieutenants Talbot, Gray and Givins, travelling in sleighs. The winter was an open one and the roads were wet; much of the long journey was made on foot. The little expedition passed through the present Grimsby, across the mountains to Seneca Township and the Mohawk Indian Village. Joseph Brant joined them with twelve Indians: they passed on to the La Tranche, succouring a starving traveller (who turned out to be a thief) on the way—to the Delaware Indian Village and a Council meeting of the Six Nations—the Moravian Village—the Forks of the La Tranche and on to Detroit, where they arrived, February 18; leaving Detroit, February 23, they arrived at Newark, March 10, by way of Ancaster and Burlington Bay<sup>(6)</sup>.

By this inspection of the La Tranche country, Simcoe was confirmed in his opinion as to the proper place for the Capital of the Province, the Forks of the Thames; and he chose the name, "New London", for it. He also selected Oxford (now Woodstock), "the head of the carrying place between Lake Ontario and the Thames" to become a Town, and Chatham, nearer the mouth of the River "which has so many advantages that may make it the Capital of the Lower District"<sup>(7)</sup>.

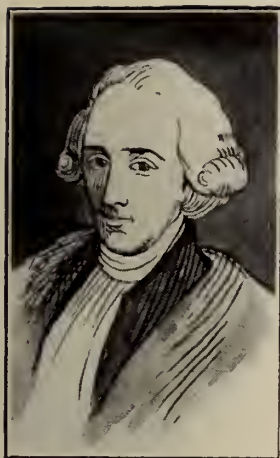
In May, Simcoe visited Toronto, going round the Head of the Lake in a batteau with seven officers; he was much pleased with the Harbour, and picked out a fine site for the town he determined to build—this was a little removed from the Bay-front, east of the present George Street, and reaching as far east as Berkeley Street.

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In August, he changed the name of Toronto to York in honour of the Duke of York, the King's son, who had defeated the French in Holland.

At the first meeting of the Executive Council, March 21, 1793, after his return from Detroit, a shocking story was told which had important and almost immediate results. A Negro, Peter Martin, in the service of Col. Butler, informed the Council, composed of Simcoe, Osgoode and Russell, that one Fromond, near Queenston, had bound Chloe Cooley, a Negro girl in his service, and delivered her across the River to some person unknown. William Grisley said that Fromond had told him he was going to sell his Negro Wench to some persons in the States, and that in the evening he saw her tied with a rope and carried off in a boat across the River, and, screaming and resisting, delivered to a man on the bank. He had seen another Negro tied thus and had heard that many people intended to dispose of their Negroes in the same way. It was resolved by the Council that it was "necessary to take immediate steps to prevent the continuance of such violent breaches of the public peace, and for that purpose that His Majesty's Attorney-General be forthwith instructed to prosecute the said Fromond"<sup>(8)</sup>.

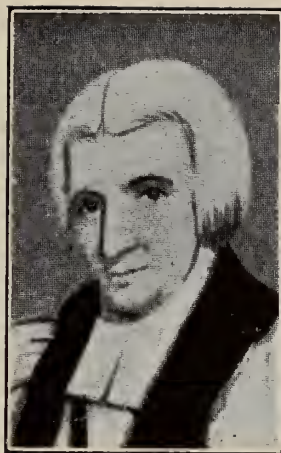
The Attorney-General, John White, received the instructions; but he was a lawyer, and knew that the master had the same right to bind, export and sell his slave as to bind, export and sell his heifer, and that what happened was no more a breach of the peace than if Chloe Cooley had been his heifer instead of his Negro slave<sup>(9)</sup>. No proceedings were ever taken in the matter; but it is probable that it was this incident which caused Simcoe to press for legislation on slavery, which he did at the succeeding Session. To anticipate a little—at Simcoe's instance, the Attorney-General, John White, drew a Bill respecting Slavery and had it introduced in the Assembly,



CHIEF JUSTICE SMITH



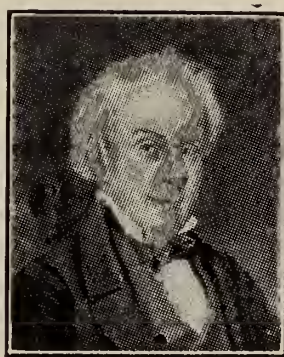
LORD DORCHESTER



BISHOP MOUNTAIN



SIR ALURED CLARKE



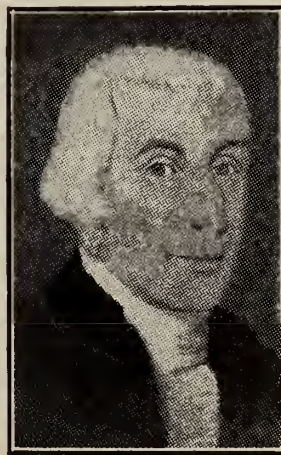
COLONEL TALBOT



SIR JOHN JOHNSON



REV. JOHN BETHUNE



REV. JOHN STUART

SOME OF THOSE WHO HAD A PART IN THE AFFAIRS OF UPPER CANADA



## PROVINCIAL MATTERS OF IMPORT

he “debated the Slave Bill hardly, met much opposition but little argument”: the Bill passed both Houses and, being assented to, became law. It was, however, not such as had been intended, but was a compromise. Much plausible argument was made, based upon the dearness of labour and the difficulty of obtaining servants, the discouragement of immigration, &c.; some possessing slaves were for defeating the Bill altogether, others wished two years’ grace to obtain them by importation. The compromise finally effected was that all slaves then in existence in the Province should remain slaves, but that all persons thereafter born or brought into the Province should be free<sup>(10)</sup>.

Simcoe used all his influence to have as favourable a Bill passed as was possible, and incurred a great deal of unpopularity for that reason; and John White’s career as a member of the Assembly came to an end with the existing House<sup>(11)</sup>.

During the spring and summer of 1793, Simcoe suffered from gout; but was able to attend to affairs with slight interruptions.

In May, the three Commissioners appointed by the United States to treat with the Indians arrived at Newark, John Randolph, Benjamin Lincoln and Timothy Pickering<sup>(12)</sup>. There was much disquiet among the Indians over the encroachment by the Americans on Territory considered by the Indians their own. The Treaty of Paris, 1783, it was contended by the Americans, gave them all the territory to the right of the Great Lakes and connecting rivers, but the Indians denied the right of the King to give away their territory without their consent.

At a General Council of several Indian Nations held at the Glaise in September, 1792, it was agreed that an offer should be made to the Americans if they wanted to make peace to meet them in the spring at Lower San-



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dusky to settle the boundary line. This proposition, communicated to a representative of the United States at a Council held at Buffalo Creek, November 13, 1792, was accepted by the United States Government. The meeting was expected to be about the first of June, 1793; the Six Nations and the Buffalo Creek Indians, however, had a preliminary meeting, April 20, at Niagara, which was attended by Simcoe at their request. It was agreed that Joseph Brant should proceed to the Indian Council which was to be held at Lower Sandusky preliminary to the meeting with the American Commissioners. At that preliminary Council, it was decided that the meeting should not take place as agreed, but that a Deputation should first meet the Commissioners and obtain some satisfaction as to the armed forces in their territory and as to the powers of the Commissioners to agree upon a boundary. The Commissioners were informed at Fort Erie that the Indians desired to meet them in presence of Simcoe and that the Indians would at another time give their reasons for not holding the meeting which had been agreed on. The Commissioners agreed to meet Brant and his Indians in presence of Simcoe; and a Council was accordingly held at Freemasons' Hall, Niagara, Sunday, July 7, and the following two days when Simcoe attended with his Staff. Brant and the Deputation of Indians also attended as did the American Commissioners. Brant explained why the Indians had decided not to hold the meeting as arranged, the chief reason being that many armed Americans had far advanced into their territory. After much talk and some explanation, the Commissioners expressed their intention of attending the Indians at a place of meeting which had been agreed upon, hoping that there would be a termination to the existing disputes on terms equally advantageous and satisfactory to all parties. The Indians had

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desired Simcoe to be present at the coming Council, but the Americans did not concur and consequently Simcoe declined the request.

I have anticipated a little, and it is now time to turn back.

The Commissioners were entertained at Navy Hall by Simcoe from the time of their arrival, Sunday, May 12, despite their courteous expostulations.

Lincoln speaks in the highest terms of Simcoe's courtesy and hospitality; and also of his deep regard and consideration for the happiness of the people of the Province<sup>(13)</sup>.

There can be no doubt that Simcoe was sincerely desirous that the mission of the American Commissioners should be successful. He even, at the request of the Indians, gave orders that they should be amply supplied with provisions—as he told them, “in order to enable you to meet the United States” and “to enable you to prosecute so good a work as the establishment of peace in your country”<sup>(14)</sup>. At the request of the Commissioners, he detailed to go with them, Captain Banbury and Lieutenant Givins. He also, at the request of the Indians and with the assent of the Government of the United States, directed Cols. John Butler and Alexander McKee, Deputy Superintendents of Indians, to be present at the meeting; he made it clear to them that they were to consider themselves in the light of mediators and not advocates, and directed them to act with the utmost caution and circumspection, warning them that unwise language or conduct on their part might impress the people of the United States with the belief that it was not the injustice of the Federal Government or the obstinacy of the Indians, but the interposition of the British agents which prevented the restoration of peace. He directed them, also, in case the meeting was unsuccessful, to prevent as

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far as possible, insult or injury to the Commissioners, adding: "I most earnestly entreat and recommend . . . . that you exert all your power and influence to this effect in a far greater degree than you would do, should I have been at the Council, for my personal protection and safety."<sup>(15)</sup>

The Commissioners freely consulted with Simcoe over their objects and took occasion to deliver a formal protest against the arts of a few unnamed "Bad men"—not unobscurely hinting that Simcoe was one of them—who were spreading reports adverse to the United States amongst the Indians. Simcoe answered with dignity.

Simcoe was in no way responsible for the failure of the negotiations. The determination of the Indians to have the Ohio River as the limit of the territory of the United States and the equally strong determination of the Commissioners that it should not be, made a rupture inevitable<sup>(16)</sup>. He had sent the Commissioners forward from Fort Erie on a Government vessel; he had advised the Indians strongly to make peace and he was undoubtedly much disappointed at the failure.

Nevertheless, he could not blame the Indians for insisting on the boundary they claimed or the Americans for refusing.

He must have been touched by the Address of the Indians: in reporting the failure, they cordially acknowledged that all his promises had been faithfully performed; they considered that his heart was placed in the centre of the Indian Confederacy, and concluded:

Father,

"We expect now to be forced again to defend ourselves & our country. And we look up to the Great God who is a Witness to all that passes here, for his pity & his help. We need not, we hope, again repeat the great reliance we have on you for your advice &

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assistance; and altho' many have united themselves with us at this Council fire, yet we can depend on nothing so certain as your protection & friendship; of this, Father, you may be well assured that at no former period have we stood in so much need of both<sup>(17)</sup>.

### NOTES

(1) In his despatch to Dundas, November 4, 1792, Simcoe says: "In order to promote an aristocracy most necessary in this country, I have appointed Lieutenants to the most populous Counties which I mean to extend from time to time." *I Correspondence*, p. 251: *Can. Arch.*, Q 279, I, p. 79. The Circular to the Lieutenants appointed is dated at Navy Hall, Upper Canada, November 1, 1792: *Wolf*. I, 2, 224-7: *Can. Arch.*, Q 281, I, 173. The next Report to Westminster is December 21, 1794. *Can. Arch.*, Q 281, I, 163.

(2) See Letter from Portland to Simcoe, Whitehall, May 20, 1795. *Can. Arch.*, Q 278 A, pp. 744, sqq.

The following are known to have received Commissions under the Great Seal as Lieutenants of Counties:—

1792—Oct. 2—Peter Van Alstine, M.L.A.	Addington
1795 William Johnston, Sr.	Addington, <i>Wolf</i> . I, 6, 95, 96, 97.
1792—Oct. 2—John Butler	Lincoln
1792—Oct. 2—(Hon.) James Bâby	Kent, 1 <i>Correspondence</i> , p. 261.
1792—Oct. 2—James Breckenridge	Leeds
1792—Oct. 2—(Hon.) Richard Cartwright, Jr.	Frontenac, <i>Wolf</i> . II, 5, 238; I, 11, 45.
1792—Oct. 2—(Hon.) Richard Duncan	(Dundas), <i>Sim</i> . I, 5, 17,
	Stormont, <i>Wolf</i> . I, 11, 45.
1792—Oct. 2—(Hon.) John Macdonell, M.L.A.	Glengarry
1792—Oct. 2—James Gray	Dundas
1794—Apl. 7—Peter Drummond	Grenville, <i>Wolf</i> . II, 5, 45; I, 11, 98.
(William Fraser, Deputy Lieutenant)	Grenville, <i>Wolf</i> . II, 5, 46.
1794 Alexander McKee	Essex, 2 <i>Correspondence</i> , 390.
	(Kent), <i>Wolf</i> . I, 11, 45.
1794 Hazelton Spencer	Lennox, 2 <i>Correspondence</i> , 298: <i>Wolf</i> . I, 2, 320.

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See List of Commissions issued by His Excellency Lieut.-Gov. Simcoe, Wolf I, 2, 320. See White's account, *do., do., do.*

We shall see that the Legislature in 1793 authorised the appointment of a Lieutenant in each County.

<sup>(3)</sup>*I Correspondence*, pp. 235, 236: October 12, 1792, *Can. Arch.*, Q 279, I, pp. 174-5.

<sup>(4)</sup>Simcoe sent the Draft Bill in his despatch of November 6, 1792, *I Correspondence*, pp. 251, 252: *Can. Arch.*, Q 279, I, p. 169: the Home Ministry submitted it to the Law Officers of the Crown, May 22, 1793: the Law Officers, William Scott (afterwards Lord Stowell), Attorney-General, John Scott (afterwards Lord Eldon), Solicitor General, and John Mitford (afterwards Lord Redesdale), Advocate General, reported, June 24, 1793: King, Under Secretary of State, sent it to Simcoe, July 12, 1793: *Can. Arch.*, Q 279, I, p. 227: Simcoe assented to the Upper Canada Act, July 9, 1793. See Simcoe's despatch, August 2, 1794: *Can. Arch.*, Q 280, I, p. 256.

I copy here the Report of the Imperial Law Officers:—

“Sir:

In obedience to His Majesty's Commands signified to us by your letter of the 22nd. May last, directing us to report to you for His Majesty's consideration such provisions as by law we should think necessary for the purposes expressed in the draught of a Bill transmitted to us with the said letter, to make good and valid certain marriages contracted in the Province of Upper Canada, and to provide for the future solemnization of marriages in the said Province, we submit as proper for the purposes which appear to us to have been intended by the draught so transmitted the provisions herewith enclosed. We observe that the draught transmitted to us contains no provision respecting marriages solemnized by Ministers duly ordained, either with reference to past or future marriages, and we therefore presume that such provisions have been or are intended to be made by a separate Act.

We have the honor to be sir,

Your most humble servants,

WILLIAM SCOTT,  
JOHN SCOTT,  
JOHN MITFORD.

24th. June, 1793.

The Right Honorable Henry Dundas.

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The following are the provisions referred to by the letter enclosed herewith:

“That all Marriages before a day to be specified which shall have been publicly contracted before any Magistrate or Commanding Officer of a Post, or Adjutant or Surgeon of Regiment acting as Chaplain, or before any other person publicly officiating for such purpose not being a Priest or Minister ordained according to the form of ordination in the Church of England shall be declared to be good and valid in law to all intents and purposes as if the same had been duly solemnized by a Priest or Minister duly ordained.

That for the purpose of preserving evidence of all such Marriages, it shall be lawful for the parties who have contracted such marriages respectively or either of them to go before a Magistrate and make oath of the fact of such Marriage, the form of the oath being specified in the Act, and the Magistrate being authorized to administer the same.

That if one of the parties shall be dead it shall be lawful for the survivor to make oath to the same effect according to the circumstances.

That if both shall be dead, or if both or either of the parties shall be living and shall require the same, it shall be lawful for a Magistrate to take the deposition or oath of any person or persons present at such marriage.

That in every such oath or deposition there shall be expressed what issue shall have been born of such Marriages respectively, and the times and places of the birth of such issue so far as such particulars shall be known to the deponents respectively.

That such depositions when taken shall be subscribed by the persons making the same and certified by the Magistrate, who shall take the same and be returned and filed in some proper office or offices to be appointed for that purpose, and transcripts thereof shall be returned in books or registers to be kept by such officer or officers.

That such depositions or such transcripts thereof or copies of the same duly attested as the Act shall prescribe shall be received as evidence of such Marriages respectively, subject to the objections which may be made to the credit to be given to the testimony therein contained.

That until there shall be in the respective districts of the Province a certain number to be limited in the Act of established

## JOHN GRAVES SIMCOE

Parochial Ministers duly ordained according to the form of ordination in the Church of England, it shall be lawful for parties desirous of inter-marrying, and not living within a specified distance of a Parochial Minister or Priest ordained as aforesaid to contract Matrimony before a Justice of the Peace, having first obtained a license for that purpose from the Governor or Lieutenant-Governor or person administering the Government of the Province to grant licenses for such purposes or notice of such intended marriage having been first duly published at such times, in such manner and according to such form as shall be prescribed by the Act.

That such Justice shall in pursuance of such license, or after the publication of such notice be authorized to marry such parties according to the form of the Church of England, and shall give the parties a certificate of such marriage in a form to be prescribed by the Act, and to be signed by the Justice and also by the parties and by two or more persons present at such Marriage.

That the Justice shall transmit or cause to be transmitted to such Officer or Officers as before mentioned, a duplicate of such certificate signed in like manner, which duplicate shall be filed by such Officer and a transcript thereof inserted in the Book or Register before mentioned, and such certificate or duplicate or transcript to be attested as the Act shall prescribe shall be evidence of such Marriage.

That when there shall be within any district of the Province such number as beforementioned of established parochial Clergy ordained as aforesaid, the same shall be certified by the Governor, Lieutenant-Governor or person administering the Government of the Province to a general quarter sessions to be holden for such district, and such certificate shall be publicly read by the Clerk of the Peace, and from thenceforth the power of Justices to celebrate Marriages shall cease within such district.

That if after publication of such certificates as aforesaid any person not being a Minister ordained as aforesaid shall knowingly or wilfully take upon himself to solemnize Matrimony according to the form of the Church of England and be thereof lawfully convicted, he shall be punished in such manner as shall be prescribed by the Act.

That it shall be no valid objection to any Marriage which has been or shall be solemnized within the said Province that the same was not celebrated in a consecrated church or chapel.

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That proper fees shall be provided for the Justices and other officers and persons on whom duties shall be imposed by the Act, such fees to be ascertained by the Act.

That proper compulsory clauses shall be contained in the Act, and particularly clauses to compel persons who shall have been present at any Marriage to go before a Magistrate and make deposition concerning the same at the instance of the parties or either of them or any of their issue.

WILLIAM SCOTT,  
JOHN SCOTT,  
JOHN MITFORD,

24th June, 1793."

(<sup>5</sup>) Simcoe when Captain Stevenson was going to England entrusted him with despatches; Stevenson spoke of the contention raised by some that the people of Detroit were not subject to the laws of Upper Canada: apparently, by some misunderstanding, the Home officers thought that Simcoe wished for Instructions on the point; and Instructions were given. See Letters, Dundas to Simcoe, Whitehall, October 2, 1793: *Can. Arch.*, Q 279, I, p. 251. Simcoe to Dundas, February 28, 1794: *Can. Arch.*, Q 280, I, pp. 106, 107. See further Chapter XV, *post*, pp. 222, 223.

(<sup>6</sup>) See Littlehales' Journal of this trip, I *Correspondence*, pp. 288-293: Wolf. I, 3, 25, sqq.

(<sup>7</sup>) See Letter, Simcoe to Dundas from York, September 20, 1793: *Can. Arch.*, Q 279, II, p. 491. We shall see that he intended to make Chatham a station for building ships of war, &c.

(<sup>8</sup>) For the proceedings in Council see I *Correspondence*, p. 304, *Can. Arch.*, Q 282, I, p. 212: my *The Slave in Canada*, Washington, D.C., 1920, p. 55, Note 5. There is the usual variation in spelling. Fromond, Fromand, Frooman, Froomond (the real name was Vrooman); Grisley, Crisley, &c., &c. It having been represented that a boat of one of His Majesty's vessels under the command of Captain Shank of Queenston, had been employed in the affair, Simcoe, March 22, 1793, ordered Shank "to make the strictest enquiry and report to His Excellency the circumstances of the King's or any other boat being so unlawfully employed". Wolf. I, 5, 33.

(<sup>9</sup>) See my *The Slave in Canada*, p. 56. That White was instructed and asked for his opinion appears by his Diary, Wednesday, March 14, "Called on the Govn. intending to leave my opinion respectg. the Cooley Case."



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<sup>(10)</sup>(1793) 33 Geo. III, c. 7. (U.C.) The last survivor of those who had been slaves in Canada was John Baker who died at Cornwall, 1871. *The Slave in Canada*, pp. 56-58: See my *Legal Profession in Upper Canada*, Toronto, 1916, p. 156.

Simcoe's Letter to Dundas from York, U.C., September 16; 1793: *Can. Arch.*, Q 279, I, p. 335.

<sup>(11)</sup>Mrs. Hannah Jarvis, wife of Mr. Secretary Jarvis, writing to her father the Revd. Dr. Samuel Peters from Newark, Upper Canada, September 25, 1763, says:—"He (i.e., Simcoe) has by a piece of chicanery freed all the negroes by which move he has rendered himself unpopular with those of his suite, particularly the Attorney-General, Member for Kingston, who will never come in again as a representative." Jarvis, Peters, Hamilton Papers: *Can. Arch.* See my *Upper Canada Sketches*, Toronto, 1922, p. 117. John White could not find a seat in the Second Legislature.

<sup>(12)</sup>See *Diary*, p. 164; the date is Sunday, May 12: I *Correspondence*, pp. 349-351.

Simcoe says that the Commissioners stayed at Navy Hall from May 17 being still there, June 14, I *Correspondence*, p. 354. He thinks "that these gentlemen have much of that low craft which distinguishes, and is held for wisdom by people who, like the subjects of the United States, naturally self opinionated, have a very trifling share of education". And certainly for a State-paper the communication of the American Commissioners is not too creditable.

An official letter to McKee from Littlehales, dated at Navy Hall, May 22, 1793, says: "two of the Commissioners, viz., Messrs. Randolph and Pickering . . . arrived here last Friday. General Lincoln is hourly expected at Navy Hall by way of Oswego." Wolf. I, 5, 117.

<sup>(13)</sup>In Lincoln's "Journal of a Treaty Held in 1793 with the Indian Tribes North West of the Ohio by Commissioners of the United States," we find the following:—

"May 25. Immediately on my arrival at Niagara, Governor Simcoe sent for me; the other Commissioners were with him; he shewed me my room. We remained with him a number of days; but knowing that we occupied a large proportion of his house, and that Mrs. Simcoe was absent, and so probably on our account, we contemplated a removal, and of encamping at the Landing, six miles from this place, where the Friends were encamped. But when the Governor was informed of our intentions, he barred a

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removal. His politeness and hospitality, of which he has a large share, preventing our executing the designs we had formed. This was in a degree painful, because we could not see a period to it, as the time of assembling the Indians was uncertain.

“June 4. The King’s birthday; to all the ceremonies of which our duty required us to attend. At eleven o’clock the Governor had a levee at his house, at which the officers of the government, the members of the legislature, the officers of the army, and a number of strangers attended. After some time the Governor came in, preceded by two of his family. He walked up to the head of the hall, and began a conversation with those standing in that part of the hall, and went around to the whole, and I believe spoke with every person present. This was soon over, and we all retired. At one o’clock there were firings from the troops, the battery, and from the ship in the harbor. In the evening there was quite a splendid ball, about twenty well-dressed, handsome ladies, and about three times that number of gentlemen present. They danced from seven to eleven. Supper was then announced, where we found every thing good, and in pretty taste. In all this there was not anything very particular; the music and dancing were good, and every thing was conducted with propriety. What excited the best feelings of my heart, was the ease and affection with which the ladies met each other; although there were a number present whose mothers sprang from the aborigines of the country. They appeared as well dressed as the company in general, and intermixed with them in a manner which evinced at once the dignity of their own minds and the good sense of others. These ladies possess great ingenuity and industry, and have great merit; for the education they have acquired is owing principally to their own industry, as their father, Sir William Johnson was dead, and the mother retained the dress and manners of her tribe.

“Governor Simcoe is exceedingly attentive to these public assemblies, and makes it his study to reconcile the inhabitants, who have tasted the pleasures of society, to their present situation, in an infant province. He intends the next winter to have concerts and assemblies very frequently. Hereby he at once evinces a regard to the happiness of the people, and his knowledge of the world; for while people are allured to become settlers in this country, from the richness of the soil and the clemency of the seasons, it is important to make their situation as flattering as possible.” *Diary*, p. 166.

*The Correspondence of Lieut.-Governor John Graves Simcoe*

## JOHN GRAVES SIMCOE

. . . . . published by the Ontario Historical Society, Toronto, 1924, Vol. II, p. 25.

These daughters of Sir William Johnson wholly deserved the encomium (See *Diary*, p. 167): their mother was "Molly" Brant, sister of the celebrated Chief Joseph Brant, the "Indian wife" of Sir William—she does not seem to have been legally married to him. See my Article, *Was Molly Brant Married?* Ontario Historical Society's Papers, 1922, pp. 147-157.

Mrs. Simcoe's references to the American Commissioners are as follows:

"Sun. May 14th—Three commissioners, who are appointed by the United States to treat with the Indians at Sandusky, Ohio, are arrived here, and intend to stay at our house until they receive further orders from Philadelphia. Mr. John Randolph, a political friend of President Jefferson, is a Virginian. Benjamin Lincoln and Coll. Timothy Pickering are both of Massachusetts, New England. Coll. Simcoe calls the latter my cousin; his ancestor left England in Charles Ist's reign, and this gentleman really bears great resemblance to the picture Mr. Gwillim has of Sir Gilbert Pickering.

If the proffered mediation of England with respect to this treaty of Sandusky had been accepted by the States, and Washington had gone thither, Gov. Simcoe would have gone to meet him. I am sorry that the circumstance is avoided."

"Wed. 26th—The Indian Commissioners went to Fort Erie."

She had returned to Navy Hall, June 14, after spending a month with Mrs. Smith, wife of Lieutenant (afterwards Sir) David William Smith, at Fort Niagara across the River, *Diary*, p. 168.

(14) Simcoe's Speech to the Western Indians, Navy Hall, June 22, 1793, 1 *Correspondence*, p. 363.

(15) The Commissioners from what they had learned had expressed concern and apprehension of violence. Simcoe's Letter to Butler and McKee from Navy Hall, June 22, 1793, *do. do.*, p. 366.

(16) Col. John Butler was unable to attend the Council at Lower Sandusky. Letter, Major Littlehales to Walter Butler Sheehan (Butler's nephew) and William Johnson, Indian Interpreters, 1 *Correspondence*, p. 368: but McKee did attend. He, reporting to Simcoe the failure of the Conference in his letter from the Foot of the (Miami) Rapids, August 22, 1793—2 *Correspondence*, p. 35, says:

"However conscious I may be of having used no improper influence in the Councils of the Confederacy, so as to prevent the attainment of peace, which I again assure your Excellency, would

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have afforded me a most sensible gratification; I nevertheless expect from the malevolent, disappointed & all ill disposed, to be blamed for the Opinions which the Indians have adopted for their Resolution which put an end to the Negotiation, I shall not, however, lament on account of their Animadversions while I continue to be honored with your Excellency's Approbation of my conduct.

With the greatest respect, I have the honor to be,"

Simcoe's private opinion of the Commissioners does not seem to have been very high. Writing to General Alured Clarke (?) from Camp, Queenston, July 26, 1793, 1 *Correspondence*, p. 400, Sim. I, 5, 184, he says:—

"You may be sure I was glad to be ridden of the Commissioners after six weeks of their company. General Lincoln was very civil, Randolph able and of the rakish or Virginian cast of character, and Pickering a violent, low, philosophic, cunning New Englander. In conversation at our table, he had held out to our gentry of the same stamp, Hamilton and Cartwright, the doctrine that assimilates States to private families, and deduces from the child growing up into manhood and being capable to take care of himself that it is right and natural for a son to set up for himself and by a just inference that such is the disposition and tendency of all States.

"In a day or two after, when the Commissioners had answered the Indian Deputation and laid much stress on the impossibility of Wayne's advance, because it was contrary to orders, I took occasion jestingly to say to Lincoln, that by the argument Col. Pickering had used, Wayne was full grown, and might set up for himself and not be obedient to Washington's orders: 'No, no,' says the General, 'he is not likely to do so, he is too unpopular.' I relate the conversation to Your Excellency as elucidatory of some former opinions of Wayne's character, and to add my own, that if popularity be the only requisite, a victory over the Indians would supply that gentleman with an ample share, and he might safely follow his own path to the succession of the elective crown of the United States."

(17) Much of the written evidence of the facts here stated will be found in 1 *Correspondence*, pp. 227, 258, 259, 270, 283, 295, 301, 304, 305, 317, 363, 377, 382: 2 *Correspondence*, pp. 5-21, 25, 27, 34, 35, 36.

It may be said here that for the year 1793, Britain voted £6,700 sterling for the Civil Administration of Upper Canada: 2 *Correspondence*, p. 36.

## CHAPTER XIV

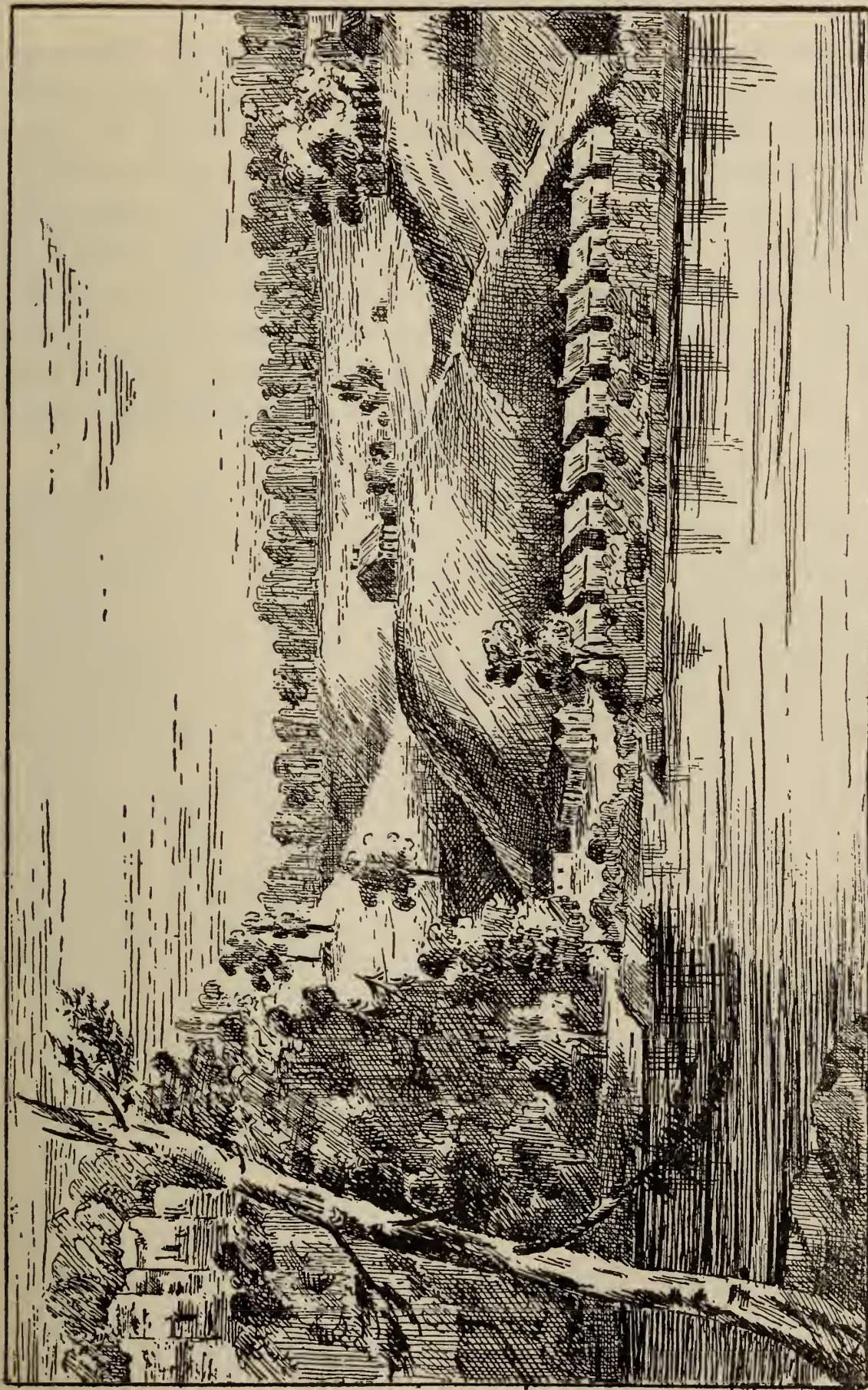
### The Second Session

**T**HE Legislature met for the Second Session, May 31, 1793, at Newark.

During the recess, Simcoe had caused additions to be made to Butler's Barracks for the meeting of the Legislature; and these additions—"sheds"<sup>(1)</sup> Simcoe calls them—were used for the Sittings of the Legislature during all the remainder of his Governorship in the Province.

War having broken out with France, now in the throes of revolution, Simcoe in his Speech from the Throne, called attention to the necessity of a Militia Bill. The Houses made a suitable Reply, and at the earliest moment, the Bill which the Attorney-General had, at the instance and with the assistance of Simcoe, drawn up, was introduced into the Assembly. The Bill passed without much opposition and became law.

This authorized the appointment of a Lieutenant in each County—the disapprobation of the Home Government had not yet been expressed—the Lieutenant to appoint a Deputy Lieutenant and a sufficient number of Colonels, Lieutenant-Colonels, Majors and other officers to superintend and conduct the training. The Militia was to be composed of all male inhabitants from 16 to 50 and liable to serve in any part of the Province; it was to be divided into Regiments, Companies, &c.; Quakers, Mennonists and Tunkers were excused from serving but to pay each per annum 20 shillings (say \$4) in time of peace and £5 (\$20) in time of actual invasion or insurrection<sup>(2)</sup>.



BUTLER'S BARRACKS, AT QUEENSTOWN, 1793  
*From a drawing by Mrs. Simcoe*

## JOHN GRAVES SIMCOE

We have already seen that a Bill respecting Marriage was passed during the Session without awaiting the views of the Home Administration. This validated all marriages theretofore contracted between persons not being under any canonical disqualification, publicly contracted before any Magistrate or Commanding Officer of a Post or Adjutant or Surgeon or any other person in any public office or employment. For the future until there should be five parsons of the Church of England in any District, a Justice of the Peace could perform the ceremony, using the ritual of the Church of England<sup>(3)</sup>.

This Bill was satisfactory to no one. The Assembly amended the Bill which Cartwright had introduced into the Council, by giving power to Ministers of every sect and denomination, of which there were not a few, to solemnize matrimony. In the Council, Cartwright and Grant, the two personally interested, were appointed with Russell (who was not married) a Committee to confer with a Committee of the Assembly upon this Rider. Macomb, Campbell and Van Alstine were appointed by the Assembly. The Commissioners met and a compromise was effected: the Councillors agreed to support a Bill of any latitude to be introduced next Session by Hamilton, the Assembly in the meantime to withdraw the rider.

This was reported to the House and the compromise agreed to.

Simcoe was placed in a predicament: there was a general cry for the Bill and, as he says, he could no longer withhold the Royal Assent under the pretence of consulting any opinion in England, having already availed himself of that excuse for delay: he, therefore, could not refuse the Royal Assent, but he gave it grudgingly<sup>(4)</sup>.

The Act respecting Slavery has already been mentioned.

## THE SECOND SESSION

The desire of the common people for Municipal Home Rule could no longer be resisted; and an Act was passed authorizing the inhabitant householders of every Parish, town or township to elect a clerk, assessors, town-wardens or church-wardens, high constables, fence-viewers, &c.—the beginning of our Municipal System<sup>(5)</sup>. Simcoe did not approve of such an unEnglish measure, but he thought it “advisable not to withhold such a gratification to which they (i.e., the people) had been accustomed, it being in itself not unreasonable and only to take place one day in the year”<sup>(6)</sup>

As a natural result of a municipal system followed a system of assessment (the first of our myriad Assessment Acts), most of the provisions of which may here be passed over. But there is contained in it a provision for the payment of Wages to the Members of the House of Assembly—a practice that had been dead in England for a century. The amount of wages was not startling: a Member was entitled to demand from the Justices of the Peace of his District 10 shillings (\$2) per day, the amount to be paid out of the rates.

This measure was not palatable to Simcoe or to the Secretary of State.

In the First Session, Simcoe reported “Many of the Members were not averse to Parliamentary Wages” and it was intended to pay them out of the proposed Duty on Spirits—but the scheme was deferred.

The plan of making the Member ask for his pay from the Justices of the Peace, Simcoe thought a good one—it had already caused some disgust and would probably lead to offers of unrewarded service from the Candidates at the next Election<sup>(7)</sup>. Dundas did not approve of paying Members, wages at all—the receipt of wages from their constituents would tend to make them view things as local and not as connected with the welfare of the



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Province at large, a narrow and contracted policy; but he did not write in time for Simcoe to refuse the Royal Assent and did not think it proper to annul the Act, already assented to<sup>(8)</sup>. Members of the popular House have been paid wages to this day, but now they dignify it with the title of "Indemnity."

Ways and Means, Money and how to raise it, must always be the most pressing matter in the popular House. Fortunately much of the expense of the Province was paid by the Mother Country—a vote of £6,700 was passed for 1793—but there were Gaols, Court Houses, Officers of the Legislature, &c., &c., to be provided for. And again a Duty upon Spirits was proposed—a Tax on Land then was an abhorrent thing as it always has been and is to-day. The Assembly again passed a Bill for levying a duty of 6d a gallon upon all Spirits entering or passing through the Province: the Legislative Council again rejected it, "in the firm persuasion that Lower Canada must have recourse to the same article as the most fitting and productive subject of taxation"<sup>(9)</sup>.

But revenue had to be raised somehow—and intoxicating liquor was the readiest article to hand to provide money.

By an Imperial Act of 1774 it had been provided that a duty of £1.16, sterling, should be paid for every licence in the Province of Quebec for keeping a house of public entertainment or for retailing wine, brandy, rum or other spirituous liquor. But it was considered that such licences would stand a higher tax. The Committee of Ways and Means in the Assembly recommended that all retailers of spirituous liquors and wines should pay £3 currency, £2 currency (the £1.16 sterling of the Imperial Act) to be paid into the Imperial Exchequer as usual and the remainder for the Provincial Legislature. This finally passed after somewhat vigorous opposition; and sale without licence was forbidden.

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A duty of 4d. per gallon was placed on Madeira and of 2d. on all other wines.

But the further recommendations that persons keeping an open shop for the sale of merchandise must take out a licence and pay £2.5 currency (\$9), and that all persons going into the Indian country to trade must do the same were negatived<sup>(10)</sup>.

Another measure of great importance came up.

Most of the non-Canadian goods which were imported into Upper Canada came through Lower Canada and it was to the interest of Lower Canada that nothing should act as an interference with that trade. It was clear that such a result would follow if Upper Canada placed duties large or even small upon goods coming through the other Province: at the same time Upper Canada should have a revenue from such goods. It was thought prudent that Upper Canada should refrain from imposing such duties upon receiving a part of the duties the other Province levied upon them. The Legislature, therefore, passed an Act authorizing the Governor to appoint "three able and discreet persons to treat" with an equal number from the other Province to establish regulations concerning duties, drawbacks, &c., on goods passing from one Province to the other and the proportion each Province should receive—the Act to be in force until April 1, 1795<sup>(11)</sup>.

A Court of Probate was erected for proving wills, &c., which was wholly unnecessary under the former French-Canadian law in which a will has validity as such whereas in English law it derives its validity as to chattels from the Letters of Probate<sup>(12)</sup>.

An Act concerning the Courts of General Quarter Sessions of the Peace calls for remark as indicating that Detroit and Michillimackinac were to be considered as in the Province—it was provided that the Court for the

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Western District should sit in Detroit and that a special Court should sit in July every year in Michillimackinac<sup>(13)</sup>.

Other Legislation was for the appointment by the Governor of Returning Officers and for Bounties for destroying Wolves and Bears, which requires no special comment here—the Act respecting Highways introduced the evil system of local administration which kept the roads of this Province a disgrace to civilization for a century.

There was no money to pay the salaries of the officers of the Legislature and contingent expenses; and the Governor was asked to lend the amount necessary, which he did after receiving the authority of the Executive Council<sup>(14)</sup>.

Already a great difference was manifest between the Houses of Parliament at Westminster and the Houses of Legislature at Newark—in the Province there was nothing corresponding to Government and Opposition. As Simcoe says: "It does not appear that there is any disposition in either House to oppose the measures of Government by system . . . . the only debates that have taken place have been upon the detached clauses . . . . No adverse party seems hitherto to have formed itself. But sooner or later it seems to be the natural result of all political institutions. If I were to indulge in a spirit of conjecture I should be induced to think it may sooner take place in the Upper than in the Lower House altho' many of the Members are pleased to express a strong attachment to Government . . . . Upon the whole, tho' there be no direct and systematic opposition to Government it is apparent that on the other hand there is no direct support of its measures . . . ." <sup>(15)</sup>

By "Government" Simcoe meant himself as Governor and his servants—they had the administration of the

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affairs of the Province and the spending of the £6,700 sent from England—no Opposition could have anything to say about that and money is the root of all parliamentary opposition.

His suspicion as to the Upper House arose from the prominence of two of the Legislative Councillors, Robert Hamilton, who, he said, was “an avowed Republican” (with him a term as black as “pro-German” was during the recent war) and his friend and partner, Richard Cartwright—these men, he said, from the ascendancy which they must acquire from being agents for the contract to supply the King’s Troops, would have “nothing to prevent them from exercising it to the detriment of the Government if they have any particular object to promote that may gratify their avarice, ambition or vanity.”

Cartwright and Hamilton, it must be remembered, were most active in the Marriage legislation which Simcoe disliked; and they were opposed to his plan for a Capital on the Thames which they thought—and Cartwright said—was “a complete piece of political Quixotism.” They were independent and that was something which Simcoe reprobated and could not forgive. He urgently asked for the appointment of Aeneas Shaw to the Legislative Council so as to be sure of a majority for his measures and so be relieved from exercising the Prerogative in refusing to assent to Bills.

Cartwright correctly estimated the so-called independency of the Legislative Council supposed to be secured by giving the members a life tenure of their seats—the spirit of the Act had been evaded by making the majority of the Legislative Council consist of “Executive Councillors and officers of Government dependent for their salaries on the good pleasure of the Governor”<sup>(16)</sup>.

So far there had been no open break between Simcoe

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and these independent-minded Councillors; but it was not long in coming<sup>(17)</sup>.

We should not omit to note here a vigorous assertion of the rights of the Members of the Legislative Assembly. W. B. Sheehan, Sheriff of the Home District, had the temerity to serve a Member of the House with a Writ of Capias during the Session. This being brought to the attention of the House, it was resolved that the Speaker should inform him that the House entertained a strong sense of the impropriety of his conduct and that it only dispensed with bringing him before the Bar to be further dealt with from a conviction that his obnoxious act proceeded from want of reflection and not from contempt of the House<sup>(18)</sup>.

### NOTES

(1) Letter, Simcoe to Alured Clarke, Navy Hall, June 4, 1793, I *Correspondence*, pp. 347, 348. 7 *Trans. R. S. Can.* (1913), Sec. 11, p. 175. The alterations and additions were ordered, July 26, 1792.

(2) 1793, 33 Geo. III, c.1, (U.C.). The old law made at Quebec in 1777 was repealed.

(3) 1793, 33 Geo. III, c.5, (U.C.).

(4) Letter, Simcoe to Dundas, "York (late Toronto), U.C.," September 16, 1793, *Can. Arch.*, Q 279, II, p. 335.

(5) 1793, 33 Geo. III, c.3, (U.C.).

(6) See Letter mentioned in Note 4, *suprà*.

(7) Letters, Simcoe to Dundas, Navy Hall, Niagara, November 4, 1792, I *Correspondence*, p. 250: *Can. Arch.*, Q 279, I, p. 79, and from York (late Toronto), U.C., September 16, 1793, *ut suprâ*, Note 4.

I cannot find that candidates offered their services *gratis* at any time.

(8) See Letter, Dundas to Simcoe, Whitehall, March 16, 1794, *Can. Arch.*, Q 280, I, p. 16. For a full account of the "Wages" system, see my articles *Some Early Legislation and Legislators*, 33 *Canadian Law Times* (1913), pp. 22, 96, 180.

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<sup>(9)</sup>See Letter mentioned in Note 4, *suprà*. The former Bill passed the Assembly, October 4, 1792, but received the three months' hoist in the Council, October 8.

In this Session, June 27, Smith and White were appointed "a Committee to bring in speedily Bills for levying a duty of Excise on distilled liquors brought into this Province and on Wines": June 28, they did so; July 1, second reading; July 2, third reading; July 6, the three months' hoist in the Council.

<sup>(10)</sup>(1793), 33 Geo. III, c. 13, (U.C.): 6 *Ont. Arch. Rep.*, (1909), pp. 25, sqq.

<sup>(11)</sup>(1793), 33 Geo. III, c. 9, (U.C.). Commissioners were appointed from time to time but there never was a satisfactory arrangement until the Union in 1841 put an end to the two Provinces.

<sup>(12)</sup>(1793), 33 Geo. III, c. 8, (U.C.). In England at that time the granting of Letters of Probate, &c., was in the hands of the Bishop.

<sup>(13)</sup>(1793), 33 Geo. III, c. 6, (U.C.), esp. secs. 4, 5.

<sup>(14)</sup>6 *Ont. Arch. Rep.*, (1909), pp. 41, 42.

In the Assembly the sums were:

	£	s.
Clerk at 5/ per day for one year.....	91	5
Chaplain, per annum .....	25	0
Sergeant-at-Arms, per annum .....	45	0
Door Keeper, per annum .....	10	0
Stationery and other contingent expenses....	20	0
	£191 5	

*Can. Arch.*, Q 282, I, 221; Q 279, II, 483.

<sup>(15)</sup>Letter, Simcoe to Dundas, September 16, 1793, Note 4, *suprà*.

<sup>(16)</sup>*Life and Letters of the late Hon. Richard Cartwright*, Toronto and Sydney, 1876, pp. 49, 54—a work of extraordinary interest which, *me judice*, should have been made much longer by the insertion of more of Cartwright's Letters.

<sup>(17)</sup>See Chapter XVI, *post*.

<sup>(18)</sup>6 *Ont. Arch. Rep.*, (1909), p. 31.

## CHAPTER XV

### Defences and Fortifications

**A**T the first news of the war with France, which arrived at Newark, May 4, 1793, Simcoe issued a Proclamation offering Letters of Marque or Commissions of Privateers to British subjects; he also determined to withdraw the Queen's Rangers from Queenstown where they were hutted—an unhealthy place, he said—and to remove them to Toronto, which he intended to fortify; and shortly after the Assembly was prorogued, (July 9), Captain Shaw with 100 men set off in batteaux, followed a few days later by another detachment in schooners. They were encamped at the present Old Fort. Simcoe followed shortly afterwards with the remainder of the Rangers, arriving July 30; Mrs. Simcoe and the children went with him. They lived in "the Canvas House"<sup>(1)</sup> erected near the encampment of the Queen's Rangers, and on a rising ground east of the present Old Fort. Opposite on the Peninsula, now the Island, was what we call Hanlan's Point, and to which Simcoe gave the name "Gibraltar Point" because he thought that, although the land was low, the sand banks were so formed as to make the place capable of being so fortified as to be impregnable. He gave its name to the Don River; apparently St. John's Creek retained its old name a little longer, before it became the Humber<sup>(2)</sup>.

Simcoe desired to build a Block House, "Cavelier or Stone Redoubt", on Gibraltar Point to defend the mouth of the harbor of York which he designed to make the chief naval station of the Province. He asked the sanction of Lord Dorchester, the Commander in Chief, to

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the scheme; although General Alured Clarke, who was Acting Governor during Dorchester's absence, had expressed his approval, Dorchester, who returned to Quebec in September, 1793, answered that he could not approve of any fortifications being erected there at that time. These two men, Dorchester and Simcoe, were in general perfectly antagonistic, and Simcoe was quite justified in his complaint that "Dorchester's opinions are . . . . entirely opposite to every view in which I have contemplated the situation of the Province of Canada"<sup>(3)</sup>.

Simcoe also wished to make an establishment at Long Point, Lake Erie, to counteract that made by the United States at Presqu'Isle (now Erie in Pennsylvania) across Lake Erie; but this project also came to nothing, although the Surveyor found an admirable harbor at the place.

It was only want of means that made him postpone fortifying a post on the Thames which was of more importance in his view than garrisoning Detroit. He thought that all the garrison at Detroit except one Company should be removed to London and Chatham, the garrison at Niagara reduced and the troops stationed at Long Point and York, especially as the vicinity of the United States encouraged desertion<sup>(4)</sup>.

London, he consistently and persistently urged as the site of the Capital; that was the only plan he could devise to form a union with the Indians and prevent them from being turned against the British Colonies; he considered that the great means of keeping the Indians friendly was to bestow upon them the King's bounty with every possible ceremony at the Capital<sup>(5)</sup>.

With a view to connecting the proposed Capital and the valley of the Thames with Lake Ontario, he sent Captain Smith with a hundred men to open a road from the Head of Lake Ontario westward—this was the well-known Dundas Street.



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I cannot better the following description of Dundas Street:—

“The definite location of Dundas Street is uncertain in some parts of it. It is mostly shown as leading from the forks of the Thames to the crossing of the Grand River, just below the forks (Paris) and from there to Dundas, leaving Ancaster somewhat to the south. The forks of the Thames, where he mentally located London, which, however, did not begin to take form as a settlement centre until about twenty-five years after his time, was Governor Simcoe’s . . . . choice as the capital for Upper Canada . . . . Dundas was the main landing-place at the end of the lake, afterward, and especially in the decades before railway building, developing into a flourishing lake port, the main Lake Ontario port for the south-western part of the province. From Dundas the location of the road was inland to Waterdown, and from there, always well back of the lake shore, on to York. This part of Dundas Street is characterized by sunken water-courses, in wide ravines, deep below the generally level surface of the country, entailing abrupt descents and ascents slanting transversely down to the stream and up again. The road later fell into disuse as a main road of through travel, as in fact did most of the old road west of Dundas also. Only in recent years have these deep ravines, on the Waterdown-Toronto section, been crossed by high viaduct bridges, constituting a great improvement, bringing the road back to main use, and making it an important relief passage for inland travel which had been going out of its more direct course to the lakeshore highway. Topographically the road from Waterdown westward might well have remained above the Niagara escarpment. There is a steep descent from the west into Dundas; and the ascent out of Dundas again, proceeding northward and eastward, is a long and difficult climb; but

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Dundas was too important to pass by. Location by the lake shore eastward from Dundas appears to have been avoided mostly on account of the insecurity of the marshy surface. The lake shore between Dundas and York was largely occupied by the Mississauga Indians in the earliest days of the new province.

The location of Dundas Street through the city of Toronto is another point on which the authorities differ, including the present city street authorities. The old location from the west is the present one as far as Ossington Avenue. The present Dundas Street recently extended east of Yonge Street by cutting through the solid block, is not the original Dundas Street"<sup>(6)</sup>.

A circumstance which afforded Simcoe great gratification was the appointment of the Bishop of Quebec, Jacob Mountain, to be a Legislative Councillor of Upper Canada—a Warrant to the Governor or Lieutenant-Governor to summon him to the Legislative Council being incorporated in the direction to issue his Patent as Lord Bishop of Quebec<sup>(7)</sup>. The Bishop's enormous Diocese included all of Upper Canada; Simcoe had a strong desire and hope that there might soon be a Protestant Bishop of the Church of England for Upper Canada alone.

During this Second Parliamentary recess, Simcoe formulated a plan which had been in his mind from the beginning of his connection with Canada as part of the Anglification of the Province.

To understand the measure in question it may be well to mention again the existing condition of the Courts.

In 1788, Dorchester, as we have seen, divided the territory which afterwards, late in 1791, became Upper Canada into four Districts; in each of these Districts was erected a Court of Common Pleas with full civil jurisdiction. In three of the Districts, the Court was presided

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over by three laymen, in the fourth, Hesse, by a lawyer, Judge William Dummer Powell. The system of local Courts with full civil jurisdiction was that adopted in the old Province; and it is still in force in the Province of Quebec. The English system was, and is, to have one (or more than one) Court for the whole Country; trials were not as in the provincial system held in the Court itself (except in very rare instances); but a convenient number of times each year, Commissions of Assize and *Nisi Prius* for the trial of civil actions were issued to persons named, one being a Superior Court Judge, to try the issues joined in the Superior Court. The Judges in the Provincial system lived at the District Seat or *Chef-Lieu*; in the English system, in or near the Capital.

Simcoe determined to have the system in his Province assimilated to that in England, and he brought the matter up in the Executive Council. He admitted that he had the power under his Commission and Instructions<sup>(8)</sup> to erect the Court himself by Prerogative act; but he preferred that it should be done by the Legislature. He had, therefore, directed Chief Justice Osgoode to draw up a Bill for the purpose and Osgoode did so—it was considered in the Executive Council—at least in form—and directed to be brought down to the Legislative Council at once<sup>(9)</sup>.

During this recess, Simcoe gave orders that a Council House should be built at the Government's expense at the Mohawk Village on the Grand River (the name of which river he had in vain changed to the "Ouse")<sup>(10)</sup>.

It is quite certain notwithstanding many statements by Canadian and other writers to the contrary that Simcoe did not intend that Toronto should be the permanent capital of the Province; but he intended it as a naval station, a winter station and refitting port in place of Kingston.

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He expected that it would be the seat of Government for a time and that, becoming a flourishing mart of trade, it would be the rendezvous of most of the Indians on the north of Lake Huron, who at that time went to Michillimackinac<sup>(11)</sup>.

He had, even before arriving in the Province, considered Toronto "the natural arsenal of Lake Ontario"<sup>(12)</sup>, and he never wavered in that opinion. As we have seen, not long after reaching Newark, he named it York in honour of the Duke of York, son of King George III<sup>(13)</sup>. On August 26, 1793, Simcoe having received information of the success in the Low Countries of the Duke of York with his command, ordered that on the raising of the Union Flag at noon the following day, "a Royal salute of twenty-one guns be fired to be answered by the shipping in the Harbour in respect to His Royal Highness and in commemoration of the naming of this Harbour from his English title, York"<sup>(14)</sup>.

Kingston, the existing Naval Station, he considered absolutely indefensible, and being near the United States, liable to be destroyed at least in winter when it was constantly frozen up<sup>(15)</sup>.

The failure of the negotiations between the United States and the Indians north of the Ohio was a matter of deep concern to Simcoe; the renewal of hostilities must necessarily be of serious consequences to the Province. Already the trade at Detroit and Michillimackinac had suffered; and it was to be apprehended that, however the conflict should terminate, British interests would suffer. If the Indians should be successful they would be still more arrogant in their charge that Britain abandoned them, her faithful allies, and in claiming more valuable and abundant presents, "till the first refusal of any extravagant request will be interpreted as injury and will be avenged by predatory excursions that must terminate in

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open war." If the United States conquered, the Indian Tribes would almost certainly flee to British territory and thence continue a perpetual warfare which would sooner or later involve the Provincial Government with the United States. If it were determined to refuse the Indians shelter in His Majesty's Dominions or the protection of his fortresses, the Indians could in an instant destroy the settlements and massacre the unfortunate inhabitants of Upper Canada; "and the untutored savage in the first impulse of his resentment and the last deliberation of his Council would reconcile such an attempt to his general mode of reasoning, and to which opportunity and necessity would powerfully urge him, without it being prompted by the Indians or White Emissaries of the United States who in any case are a ready and formidable engine, fully prepared to turn the views of the Indians to their own purposes, and gradually to alienate their minds from the King, their Father, and to dispose them to Hostility against His Subjects"<sup>(16)</sup>.

Desiring an accurate acquaintance with the country to the north of York and with the harbours on Lake Huron, Simcoe, toward the end of September, made an expedition to the Lake by horse as far as the Holland River and down the river in canoes to Lake La Claie, which he called Lake Simcoe in memory of his father—then crossed the Lake and down the Matchedash or Severn. He was accompanied by three army officers, a Land Surveyor, a dozen soldiers and some Indians. After a careful examination of the harbours he concluded that there were several good roadsteads or havens on the southern side of Gloucester Bay—he had an especially high opinion of Penetanguishene. Then, provisions running low, the party made for York, where they arrived after twenty-seven days' absence: the party had divided, and those with Simcoe became lost and were put

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on the right way by his compass. When they had remaining provisions for one day only, they caught sight of Lake Ontario—this the Governor declared was the “most delightful sight” he had ever seen.

During the Autumn, he selected a lot of 200 acres on the west side of the River Don for his young son Frank; and in the following spring, he built a log house on the brow of a steep, high bank overlooking the River—the well known “Castle Frank.”

Simcoe determined to remain all the winter, 1793-4, at York with the Queen’s Rangers; the soldiers were huted, while Simcoe and his family occupied the Canvas House and a couple of huts until Castle Frank was made habitable shortly after the New Year and then Castle Frank was sometimes occupied.

He planned to go with Mrs. Simcoe and his family to Detroit and reside there for six months to reconcile the inhabitants “as much as possible to the King’s interest”<sup>(17)</sup>.

A somewhat curious mistake arose as to Simcoe’s view concerning the inhabitants of Detroit and certain other Posts and their vicinity; and it may be well to speak somewhat at length of their position.

We have seen<sup>(18)</sup> that some part of Upper Canada *de facto* was American territory *de jure* during practically all of Simcoe’s governorship; he never had any doubt, however, that the inhabitants there were in precisely the same position as though their territory were British *de jure*. We have already seen how he viewed the question of their right to vote.

In November, 1792, Captain Stevenson, one of his staff and much in his confidence, being called to England on his family affairs, was entrusted by him with Despatches; and Simcoe wrote to Dundas that he was “perfectly capable of communicating any information

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you may require relative to this Government"—obviously, information relative to the Province was meant<sup>(19)</sup>.

Stevenson seems to have considered himself charged to deliver himself on other matters, and he gave to Dundas a number of "Requisitions" (which were really suggestions), one of which raised the question as to the position of the settlers at Detroit and the other Posts. Dundas rather sternly wrote Simcoe: "there cannot be a doubt but that the settlers at Detroit and at the other Posts are subject to the Laws of the Province in like manner with the other inhabitants, and nothing can be more disadvantageous to His Majesty's interests and to those of the Province than to raise or countenance any doubts on this head. So long as these Posts are in our possession all Persons resident within the same must be considered to all intents and purposes as British subjects"<sup>(20)</sup>. Simcoe was able to say with truth: "I have never intimated a doubt but that the settlers at Detroit are amenable to our Laws"<sup>(21)</sup>.

But he was informed by Col. McKee, who knew the inhabitants at Detroit and vicinity well, that they were not to be trusted; he knew that those in the town, as was to "be expected in trading communities", were "divided into parties full of petty emulation and trivial jealousies"<sup>(22)</sup>; he was very anxious to induce them to cross the river into what was British territory, *de jure*, but could not succeed. He recognized, however, the wisdom of attaching them to the side of the King.

He did not go and reside at Detroit as he intended. Gen. Anthony Wayne was reported to be threatening to advance within nine miles of Detroit<sup>(23)</sup>. Dorchester was alarmed at the project and determined to build a Fort on the Maumee, to prevent, if possible, an incursion by the Americans upon territory in possession of the British.



YORK (TORONTO) HARBOR, 1793.  
North side of the Bay, near the Old Fort.  
*(From a Drawing by Mrs. Simcoe)*





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He sent specific instructions to Simcoe to build a fort there. Simcoe had very decided opinions against the advisability of such a proceeding; he believed it would be construed into hostility to the United States; and he did not hesitate to express his views both to Dorchester himself and to the Home Authorities<sup>(24)</sup>.

But Dorchester was his military superior and had the right to command: Simcoe's duty was to obey. He urged upon Dorchester the necessity of occupying Matchedash and Long Point; he considered it impracticable to defend Detroit against Wayne, and these were the only ports in which British shipping could find shelter if "the Army of the States should occupy Detroit." Moreover, he continued to insist on strengthening the Provincial Navy. Partly in that view he recommended that Captain Alexander Grant, the Senior Officer on the Lakes, should be placed in the Executive Council, both that he might be "stamped with eminence and respectability in his professional situation and that the Government might avail themselves if necessary of his experience therein": he advised that Grant "should have the General Superintendency of the Marine Department of the Province . . . with a new Commission and Rank"<sup>(25)</sup>.

He had also intended to form a Battery on the ruins of the old wharf on the east side of the Niagara River. This was to be built by the Queen's Rangers, but sickness in that Corps prevented it being done<sup>(26)</sup>.

He received orders to go to the Maumee, March 14; it was necessary to wait until the existing cold weather should cease so that he might pass up the Lake to Burlington Bay<sup>(27)</sup>: he left for Detroit with Talbot, March 18, having in the meantime directed Lieutenant Pilkington, who was an engineer, to be ready to attend him. Going to Niagara by the Head of the Lake, he sent Talbot

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to Joseph Brant's on the Grand River, to order the preparation of the necessary canoes. Simcoe himself followed soon after; and, the Thames opening, the little group left for Detroit, March 26, made their way to Detroit and then to the Maumee.

At Detroit, he ordered a Detachment to accompany him with such ordnance as was available—not very satisfactory it must be said: he arrived at the mouth of the Maumee, April 16, and there he established the detachment of troops. He directed a log fort to be erected on Turtle Island, and another on the River Raisin; but did not build the fortification which he had been instructed to build. He came back to Niagara with Pilkington to get together all the artificers of the 5th Foot, then at Niagara, such soldiers of the Queen's Rangers as he should think proper and all the civil artificers he could procure—they had found great difficulty in obtaining workmen and proper tools at Detroit<sup>(28)</sup>. Accordingly, immediately after his return to Newark, he gave orders to the Officers Commanding at the various stations “to furnish Lieutenant Pilkington of the Engineers with such artificers as he may require from the Garrison under your command and in every respect facilitate the service he is directed upon, the fortifying the Miamis River on Lake Erie”<sup>(29)</sup>.

Pilkington gathered a body of artificers and, returning, completed his task. Some of the merchants of Detroit offered to build other fortifications and to garrison them, supplying small arms and ammunition upon terms mentioned<sup>(30)</sup>.

All this caused bitter comment in the United States, and there seemed every danger of actual war<sup>(31)</sup>; fortunately, the nations agreed: before the year was out, Jay's Treaty was signed and the trouble came to an end<sup>(32)</sup>.

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It is time now to turn to Niagara and the Third Session of the Provincial Parliament.

### NOTES

(<sup>1</sup>) *The Upper Canada Gazette* of August 1, 1793, has the following:—

“Navy Hall, Aug. 1st, 1793

A few days ago the first division of His Majesty's Corps of Queen's Rangers left Queenston for Toronto (now York) and proceeded in Batteaux round the head of Lake Ontario by Burlington Bay; and shortly afterwards another division of the same Regiment sailed in the King's Vessels, the Onondago and Caldwell for the same place.

On Monday evening (July 29) His Excellency the Lieutenant-Governor, left Navy Hall and embarked on His Majesty's schooner, the *Mississaga*, which sailed immediately with a favourable gale for York with the remainder of the Queen's Rangers.” 2 *Correspondence*, p. 1.

At the sale of the effects of Captain Cook's expedition, 1768-1771, Simcoe bought one or more canvas houses which had been used by Banks and Solander. He had, however, two other canvas houses made for him, apparently by Mr. Nathan Smith. We find Alexander Davison writing him from Harper Street, September 20, 1791, about “Improvements in the Canvas Houses which Mr. Smith can point out”: Wolf. I, 1, 381: Nathan Smith, April 7, 1792, renders an account to Alexander Davison (for Simcoe) for “2 Canvas Rooms made in frames each 38 feet 4 inches long by 12 feet wide and 7 feet 2 inches high at the sides with six glazed windows and a partition to each room, also a cosy iron stove, fender, shovel, poker, and tongs, the inside of the rooms papered complete, the outside painted in oil colour and properly packed, marked and numbered included at per room £100 £200.” Wolf. I, 2, 84.

March 17, 1792, is an invoice for camp tables and chairs “packed with the canvas houses”, do, do, 41.

These canvas houses are distinct from the marquee tents as is shown clearly by John White's Diary.

Mrs. Hannah Jarvis, wife of Mr. William Jarvis, Provincial Sec-

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retary, writing from Newark, September 25, 1793, to her father, the Revd. Dr. Peters, No. 5 Queen's Row, Pimlico, London, says:—

"The Governor and Family are gone to Toronto (now York) where it is said they winter. The Governor has two canvas houses. Everybody are sick at York, but no matter, the Lady likes the place": and adds:—

"When you come out bring with you a Canvas House—it will save you many a Pound and Cold Fingers—it can be boarded up and serve for a good warm House." *Can. Arch.*, Peters-Jarvis Papers.

(2)The name "River Humber" for St. John's Creek, I find mentioned for the first time in Simcoe's Letter to Dorchester from York, December 2, 1793, *Can. Arch.*, Q 280, I, p. 43.

In a Petition to Lieutenant-Governor Sir Peregrine Maitland in 1823, William Cooper says that he came to the Province in "1793 and built the first House in the Town of York and in the year 1806 there not being a Grist Mill between York and the Head of the Lake he built a Grist and Saw Mill on the River Humber which at that time was much wanted . . . unfortunately the Damb was cut away by which your Petitioner is nearly ruined"—he asked for Lot No. 9 in Broken Front or Concession C. of the Township of Etobicoke a Crown Reserve and adjoining his lands. *Can. Arch.*, Sundries, U.C., 1823.

(3)See Wolf. I, 3, 210, 226, 304: *Can. Arch.*, Q 280, I, pp. 31, 75; Q 279, II, pp. 494, 513.

(4)Simcoe's Letter to Dorchester from York, December 2, 1793. 2 *Correspondence*, pp. 110, 112.

(5)Simcoe's Letter to Dundas, York, March 2, 1794, *Can. Arch.*, Q 280, I, pp. 118, sqq. 2 *Correspondence*, p. 169.

(6)*Can. Arch.*, Q 280, I, pp. 39, sqq. W. H. Breithaupt, C.E. *Dundas Street and Other Early Upper Canada Roads*, 21 "Papers and Records, Ontario Historical Society," 1923, pp. 6, 7.

(7)Wolf. I, 3, 149. He was appointed an Executive Councillor in June 1794, do. do., I, 4, 23. Dr. Scott calls him "Jehoshaphat," Scott's *John Graves Simcoe*, p. 239; but George Jehoshaphat Mountain was his son and the Third Anglican Bishop of Quebec. The former received his Warrant as Executive Councillor, June 30, 1794. Wolf. I, 4, 231.

(8)*D. & McA.*, pp. 11, 20.

(9)*Can. Arch.*, Q 282, I, p. 229.

(10)Elijah and Benjamin Lockwood were paid, Grand River, Aug. 1794, £72.0.0, N.Y.C. (\$180) for 90 days work in Building a

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Council House at the Mohawk Village on the Grand River by order of His Excellency Governor Simcoe at 8/ per diem each, N.Y.C. This was paid by the Receiver-General as £45 Quebec Currency at 5/ Quebec Currency per dollar, Wolf. I, 1, 356.

“N.Y.C.” means “New York Currency” in which the shilling was 12½ cents (the “York Shilling” or “Yorker” of my boyhood) and the pound, \$2.50. In Quebec Currency (Halifax Currency or Provincial Currency) the shilling was 20 cents, the pound, \$4.00.

(11) Simcoe’s Despatch to General Alured Clarke from Navy Hall, July 24, 1793; 1 *Correspondence*, p. 396: *Sim.* I, 5, 177.

(12) Simcoe’s Despatch to Dundas from Quebec, April 28, 1792; *Can. Arch.*, Q 278, p. 104: 1 *Correspondence*, p. 144.

(13) The first use in Simcoe’s correspondence of the name of York for Toronto is in his Despatch to Dundas from Navy Hall, November 4, 1792, *Can. Arch.*, Q 279, I, p. 1: 1 *Correspondence*, p. 246. By May, 1793, both he and Alured Clarke speak of it as “Toronto now York”; 1 *Correspondence*, pp. 339, 342, 367.

(14) The General Order signed by Major Littlehales is given in 2 *Correspondence*, p. 46—its effect is not quite correctly stated in *Diary*, p. 188. August 27, 1793, has not infrequently been given as the “Natal Day” of York, e.g., *Diary*, p. 440; but this is incorrect—the Harbour had been named York more than a year before, and from his arrival in the Harbour July 30, 1793, Simcoe dated his letters from “York” or “York (late Toronto)” 2 *Correspondence*, pp. 1, 4, 36, 39, 40—while the General Order of August 26, 1793, is itself dated at York, Upper Canada, *do. do.*, p. 46.

(15) Simcoe’s Despatch to Dundas from York, Upper Canada, September 20, 1793, *Can. Arch.*, Q 279, II, p. 488: 2 *Correspondence*, p. 57. In his Despatch to Dundas from the same place, February 23, 1794, he says:—“The Harbour and Post at Kingston is too extensive to be defended by the whole force of both Canadas.” *Can. Arch.*, Q 280, I, 55: 2 *Correspondence*, p. 160.

It cannot be made too plain that Upper Canada was, with apparent good cause, in constant fear of aggression from the United States till after the War of 1812 proved that she would not be an easy prey.

(16) Simcoe’s letter to George Hammond, the British Minister to the United States, from York (late Toronto), Upper Canada, August 24, 1793. *Can. Arch.*, Q 279, 2 p. 525: 2 *Correspondence*, p. 40.

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(17) Despatch, Simcoe to Dorchester, from York, March 14, 1774: 2 *Correspondence*, p. 180.

(18) *Ante*, Chap. V. The Definitive Treaty of Peace concluded, September 3, 1793, ratified by the Continental Congress, January 14, 1794, was the first by which Britain finally and irrevocably acknowledged the Independence of the United States. *Treaties and Conventions between the United States and other Powers . . .* Washington, 1889.

Professor Samuel Flagg Bemis in his *Jay's Treaty, a Study in Commerce and Diplomacy*, Knights of Columbus Historical Series, MacMillans, New York, 1923, an interesting if not important work, convinces himself that "the real reason for this settled policy to refuse delivery of the posts notwithstanding the terms of the treaty lies in the fur trade, at that time the greatest and most profitable single industry in North America." p. 4. He quotes Dr. Brymner, the Canadian Archivist, as saying:—"That there was a settled policy to refuse delivery of the posts notwithstanding the terms of the treaty is evident." *Report, Can. Arch.*, 1890, XXXII. But he refrains from quoting Dr. Brymner's statement of the reasons:—"The retention of these posts was, it is clear, a measure adopted in consequence of the non-fulfilment of Articles IV and VI of the Treaty . . . technically . . . the terms of the Treaty may have been complied with in the case of the fifth article but the British Government held and maintained that there was no performance of the other articles and that until these were complied with the reciprocal obligations could not be insisted on," *do. do. do.*, XXXIII.

Professor Bemis cites Dr. Brymner further:—"It was on such grounds that the British Government declined to give up the possession of the posts within the boundaries agreed on by the treaty", but he does not quote the words almost immediately preceding which show what the "grounds" were, i.e., "contravention of articles four and six", *do. do. do.*, XXXIII. The strong, anti-British bias of this author is manifest on almost every page: even the facts alleged must be scrutinized with care.

The complaint of the United States will be found in the Letter of Thomas Jefferson to George Hammond, the British Representative at Philadelphia, then the Capital of the United States, December 15, 1793, 2 *Correspondence*, pp. 120-122.

(19) Despatch, Simcoe to Dundas, from York, Upper Canada, February 28, 1794, *Can. Arch.*, Q 280, I, p. 105: 2 *Correspondence*, p. 166.

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(20) Despatch, Dundas to Simcoe, from Whitehall, October 2, 1793, *Can. Arch.*, Q 279, I, p. 264: 2 *Correspondence*, p. 80.

One cannot blame Simcoe for saying that Stevenson made him appear to Dundas "as a hasty, inconsiderate Person . . . scarcely endowed with commonsense." *Can. Arch.*, Q 280, I, 105: 2 *Correspondence*, p. 166.

(21) Despatch, Simcoe to Dundas, from York, February 28, 1794, *Can. Arch.*, Q 280, I, p. 105: Memorandum, 2 *Correspondence*, p. 167.

(22) Despatch, Simcoe to Dorchester, from York, March 14, 1794: 2 *Correspondence*, p. 180.

(23) Gen. Anthony Wayne was Major-General in command of the American Troops, who were detailed to fight the Indians northwest of the Ohio—and in the hope and expectation of forcing the abandonment by the British of the Posts on the right side of the rivers connecting the Great Lakes. When the attempt in 1793 to fix a boundary by Treaty failed, he moved his forces north and threatened the Indians. There were many alarming reports as to his intended movements against the Posts which were held by the British.

(24) In his Despatch to Dorchester from York, March 14, 1794, he said "From the tenor of Mr. Knox's (Gen. Henry Knox, American Secretary of War, 1785-1795) Instructions and his Commands to Gen. Sinclair (Arthur St. Clair, Governor of the North-West Territory, 1789-1802, who suffered a terrible defeat by the Indians under Little Turtle, near the Miami Villages in 1791), there seems to me to be little doubt but that the possession of these posts will be construed into hostility. Whether such shall immediately take effect may depend upon the temper of Genl. Wayne and his Force comparatively to the Strength of the positions which may be taken." 2 *Correspondence*, p. 179.

(25) Simcoe to Dorchester, York, March 3, 1794: 2 *Correspondence*, p. 174.

(26) Simcoe's Observations on Niagara, March 24, 1794, 2 *Correspondence*, p. 192.

(27) Simcoe to Dorchester, York, March 14, 1794: 2 *Correspondence*, p. 179. Mrs. Simcoe suffered "an exceedingly great disappointment." *Diary*, p. 217, (Saturday, March 15, 1794).



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(28) The diary of his journey to Detroit and return reads:—

- 1794, March 26th—Departed from the Grand River.  
27th—On the march.  
28th—Reached the River La Tranche.  
29th—Descended the River.  
30th—Arrived in the evening at the Delaware Village; encamped about two miles below it.  
31st—Reached the Moravian Village.
- April 1st—Mr. Dolson's.  
2nd—Arrived at Detroit.  
3, 4 and 5—At Detroit.  
6th—Set off for the Miamis River, stopped at Captain Elliott's.  
7th—To the River Raisin.  
8th—Arrived at the foot of the Rapids.  
9-15th—At Colonel McKee's.  
16th—At the mouth of the Miami River.  
17th—Turtle Island.  
18th—On board the *Ottawa*, encamped in the evening on the West Sister.  
19th—The Bass Island.  
20, 21 and 22—Encamped on the North Bass Island.  
23rd—Altered our position, and encamped on the Islands, near Hope's Cove.  
24th—In the afternoon went on board.  
25 and 26—On board.  
27th—Arrived at Fort Erie in the morning, and reached Niagara.

2 *Correspondence*, p. 219.

From Mrs. Simcoe's *Diary*, under date May 2, 1794, it appears that he rode from the Grand River to the Thames, went in canoes down that river, and to Detroit; and that he also rode from Captain Matthew Elliott's to the Maumee. He killed seven rattlesnakes on one of the Islands. Mrs. Simcoe dates his arrival at Fort Erie, April 25th. *Diary*, p. 221. She says further that he arrived at York, May 2nd, *do. do. do.*

The Diary of David Zeisberger of the Mission to the Indians shows that Simcoe had with him "a suite of officers and soldiers . . . with eight Mohawks"—that he arrived, March 31, and departed for Detroit, April 1. 2 *Correspondence*, pp. 219, 220.

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(<sup>29</sup>) Simcoe's Despatch to Dorchester from Navy Hall, April 29, 1794, and accompanying Sketch. 2 *Correspondence*, pp. 220, 221.

(<sup>30</sup>) See 2 *Correspondence*, pp. 244, 245. Detroit also offered to furnish an independent company and do all possible to remain under the British Flag. Wolf. I, 4, 148.

(<sup>31</sup>) See, e.g., Prof. Bemis, *op. cit.*, pp. 199, 234, 227, n. 30: 202, n. 40: Letter, Edward Thornton (Secretary to George Hammond, the British Representative to the United States) to (Sir) James Bland Burges of the Foreign Office from Philadelphia, May 27, 1794:—"The general malignity against the British name is so much increased when concentrated and pointed against a known Englishman, especially if he has any public employment, that a residence in any part of the country is become extremely unpleasant. At Baltimore, solitude or insult is almost my only alternative." 2 *Correspondence*, p. 250. See the Hammond-Grenville Correspondence in the Foreign Office Record, 1: the Randolph-Hammond Correspondence, 2 *Correspondence*, pp. 238-242, &c., &c.

(<sup>32</sup>) Some account of the Treaty will be given later in the text.

## CHAPTER XVI

### The Third Session

**T**HE Third Session of the Legislature began, June 2, and continued until July 7, 1794. The House sat at Newark, now a town of fifty or more houses and rapidly increasing in population, extent and importance<sup>(1)</sup>. Simcoe congratulated the Houses on the successes in the West Indies which promised the Province material benefit—but the fear of war was prominent in his mind and he urged that the law relating to the Militia should be amended so “as in case of emergency to give efficiency to the natural defences by land and water.” The Houses replied most loyally and sympathetically<sup>(2)</sup>.

The Militia Act of 1794 was passed without opposition: it made the Militia liable to serve as well upon the lakes and rivers as upon land, and authorised the formation of troops and cavalry; military age was made from 16 to 60 instead of 16 to 50 as theretofore, and certain provisions for regulating the turn of duty were laid down<sup>(3)</sup>.

It will be remembered that the Marriage Act of 1793 had been assented to by the House of Assembly on the agreement by the Commissioners from the Legislative Council that they would support a Bill to be introduced in the Session of 1794 by Mr. Hamilton: it was an implied agreement that this Bill would extend the right of legally solemnizing marriage to the ministers of several denominations. During the recess, the opinions of the Law Officers of the Crown at Westminster on the Act of 1793 had been considered and Osgoode had prepared a Bill containing some amendments. But on the opening

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day of the Session, petitions were presented to the Legislature from Menonists, Tunkers and others, praying that their ministers might be empowered to solemnize matrimony. Effect was not given to these petitions but it was obvious that if any change should be made, all the denominations would press their claims and probably have them allowed. This was thought by Simcoe and those of his way of thinking, to be too radical—they desired the unique position of the Church of England to be continued; and were willing to relax so far only as they must to avoid arousing strong feelings of protest and perhaps legislation calling for refusal of the Royal Assent. As Simcoe says:—"It was thought most advisable to suspend all proceedings on the subject till it should be known whether it was thought expedient that the power requested should be extended to the ministers of any other religious description (than the Church of England) in order that opinion may be sounded and previous measures taken to effectuate if possible what may be thought most beneficial for the Province in such behalf"<sup>(4)</sup>. What he thought about the matter is best shown by his official attitude when, in 1796, the Reverend John Bethune and the Presbyterians of Grenville petitioned the House that ministers of the Church of Scotland should be empowered to marry. Although Mr. Bethune had been chaplain of Sir John Johnson's Corps and was drawing half pay; although he had been paid £50 a year by the former Province of Quebec, and Simcoe was still paying the salary on the direction of Lord Dorchester, Simcoe "thought it proper to say in the most decisive terms to the purport that the Petition was the product of a wicked head and most disloyal heart"<sup>(5)</sup>.

The most important measure during the Session was the Judicature Act intended to introduce the English system of Courts. We have already seen<sup>(6)</sup> that the Prov-

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ince was divided into four Districts, each with a Court of Common Pleas, which in the District, had unlimited civil but no criminal jurisdiction. This was the system in vogue in the old Province of Quebec and in most of the American Colonies; but it was quite different from the English system in which the Superior Courts had civil jurisdiction throughout the Kingdom. The Court of King's Bench in England had unlimited criminal jurisdiction as well. Simcoe, apparently of his own motion, but certainly encouraged by the Chief Justice, William Osgoode, and the Attorney-General, John White, determined to have the Court system in Upper Canada made to correspond to that in England.

At his request the Chief Justice drew up a Bill for the purpose: Simcoe called the Executive Council together "to communicate his wishes that a Supreme Court of Judicature might be established in the Province and that altho' he was empowered by his commission to establish from his own authority such Courts of Justice as he may see necessary, it was notwithstanding, his desire that this measure should be carried into Execution by an Act of the Legislature, and that the Chief Justice had in consequence of his request drawn up a Bill for that purpose which would be brought into the Upper House this day"<sup>(7)</sup>.

It might have been, and probably it was known in advance, that two of the Executive Councillors, Cartwright and Hamilton, would oppose the Bill: they were Judges of the Courts of Common Pleas at Kingston and Niagara respectively: moreover, Cartwright had been promised a Judgeship by Sir John Johnson when he expected to be Lieutenant-Governor,—it was not to be expected that they would willingly support a measure depriving them of a position of honour and some emolument.

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The Legislative Council was at the time composed of seven members, Osgoode (Speaker), Russell (who introduced the Bill), Baby, Shaw, Munro, Cartwright and Hamilton. Munro was in the same case as Cartwright and Hamilton, and it was believed that he would vote with them against the Bill: Russell, Baby and Shaw were to be relied upon to support anything Simcoe should desire—it, therefore, was expected that the result would depend on the vote of the Speaker, Chief Justice Osgoode.

Russell, having obtained leave on June 9, introduced the Bill, Wednesday, June 11: the Assembly expecting a field day, rose and attended the Council in a body to hear the debate. "The arguments used against the Bill were founded on general topics of expediency in the present condition of the Province while the population was scattered and the communications uncertain. The Bill was supported as a measure expected by the public as one of the first objects of every civil establishment and as a benefit enjoyed by every colony connected with the British Dominions."

The vote on the First Reading was 4 to 2, Munro unexpectedly voting for the Bill. The House of Assembly, curiously enough, was a unit in favour of the measure: this may be explicable by the dissatisfaction which was undoubtedly felt by many at the decisions of the Judges of the Courts of Common Pleas, laymen as they were, it being thought that lawyers would not have given the same opinion<sup>(8)</sup>.

The Bill was in the Council eight days and finally it passed by 4 to 2, and was sent down to the Legislative Assembly. There, there was difficulty in preventing the House from giving it all three readings the same day it was received. However, it was kept till the next day and was then passed unanimously and without debate. Cartwright and Hamilton entered a Protest on the Records

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after the manner of the House of Lords at Westminster, setting out their reasons<sup>(9)</sup>.

This measure, which introduced the English system of Courts, had a curious by-product—so long as the Courts were presided over by laymen, they were rather informal, the practice was simple and litigants could conduct their own cases or have non-professional agents conduct them<sup>(10)</sup>. Lawyers were not needed, and indeed there were only two resident lawyers in the Province, the Attorney-General and Walter Roe of Detroit. But with the English system it was intended that, as in England, lawyers should be appointed to the Bench and the practice become technical. There was, indeed, no such abstruse mystery about the practice that an intelligent and diligent layman could not master it by careful study; but it would not pay the ordinary litigant to devote the requisite amount of time to such study simply for his own case or cases. It was, therefore, thought necessary to form a class of professional lawyers; and a somewhat amusing expedient was adopted. That was to qualify “by another Act, certain persons to the number of sixteen . . . . to be nominated by the Governor, to act as lawyers; who, without any previous study or training and by the mere magic virtue of the Privy Seal”, were “at once to start up adepts in the science of the law and proficient in the intricate practice of Westminster Hall”.

Says Cartwright: “This Bill was hurried through in a manner not very decent. My proposal to have it printed previous to discussion was overruled with some warmth and blustering and you will be astonished to hear that a law of such importance and, in conversation at least, disapproved by several of the Members of the Lower House should be passed through that House without debate and in a single day”<sup>(11)</sup>.

The appointees under the Bill turned out reasonably proficient<sup>(12)</sup>.

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Another by-product of the Judicature Act was the appearance for the first time of what might be called an Opposition—at least what Simcoe thought was “formal and regular opposition”—for thus he reported the position of Cartwright. Apparently he did not intend to suggest that this was “a formal and regular opposition” to the Government and its measures, but only to the Judicature Act. But he had in an earlier report said that there would be no opposition to the Militia Bill and “none except on the part of Mr. Cartwright to the general measures of Government and he has thought fit to give notice that he shall oppose the preamble of a Bill”, (i.e., the Judicature Bill). This ambiguous language led the Secretary of State to infer that Cartwright was in general opposition to the Government; and Simcoe himself was so embittered that he wrote to Lord Dorchester concerning Cartwright’s opposition apparently in the hope that Dorchester would punish Cartwright in connection with his sub-agency for Army supplies; “but his Lordship, as usual, took no notice of that letter.” However, Simcoe afterwards did full justice to Cartwright’s patriotism and ability<sup>(13)</sup>. It is plain that Simcoe, looking upon himself—as he was—as the Government, expected the appointed Legislative Councillors to support every scheme proposed by him, and he had no hesitation in injuring financially and otherwise, one who disappointed that expectation.

Cartwright, while doing full justice to the disposition of Simcoe to consult the welfare of the Province, resented the idea that he should be a mere tool and pay implicit respect to the caprice of the Governor—“in the intercourse of private life, I am disposed to be as accommodating as any man, but in the discharge of a public trust I must follow my own sense of duty and propriety.” He properly asks for what purpose he was given a seat



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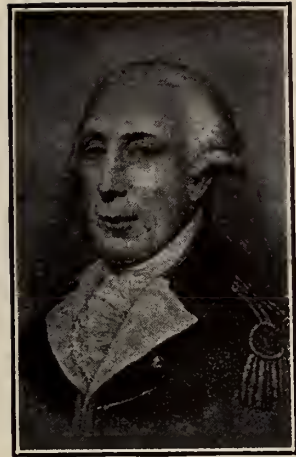
in the Legislative Council, and he thinks it was not merely to show his complaisance to the person at the head of the Government; and he declines to approve of or be silent upon measures which are totally inapplicable to the country and inconsistent with its geographical situation.

He accurately sums up Simcoe's character:—"He is a man of warm and sanguine temper that will not let him see any obstacles to his view: he thinks every existing regulation in England would be proper here. Not attending sufficiently perhaps to the spirit of the constitution he seems bent on copying all the subordinate establishment without considering the great disparity of the two countries in every respect"<sup>(14)</sup>.

The seriousness of the change made in destroying the Court of Common Pleas in the *chef lieu* of each District to which access was reasonably easy, and in erecting a single Court with its offices at the Capital had been stressed by Cartwright and Hamilton both in speech and Dissent—"in the Province with a thin population scattered over so immense an extent of territory . . . . divided . . . . by inland seas and large tracts of waste lands of from two to three hundred miles in extent, shut out from all communication . . . . for nearly five months in the year . . . . such an arrangement from the expense, delay and embarrassment that must necessarily attend it appears to us highly to operate in many instances as a denial of justice . . . . "<sup>(15)</sup>.

The hardship was in part removed by the institution in each District of a District Court with jurisdiction from 40/ (\$8.00) to £15 (\$60.00) in cases of contract only<sup>(16)</sup>; all cases of tort, such as negligence, trespass, &c., had, however, to be brought in the Court of King's Bench. These District Courts were for long presided over by non-professional gentlemen without legal training.

The "wages" of members of the Assembly were more



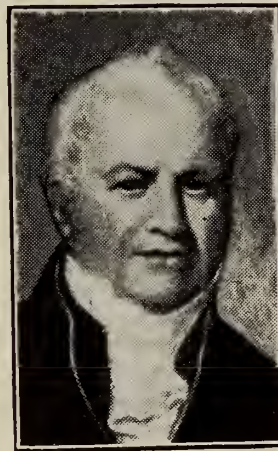
DR. JAS. MACAULAY

H.R.H. PRINCE EDWARD

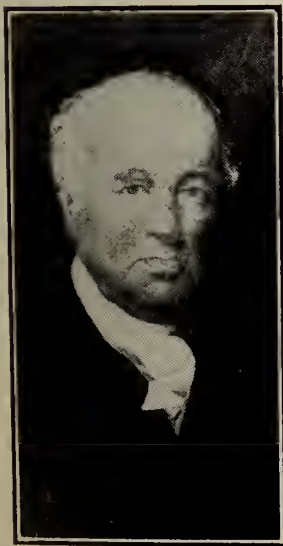
HON. JOHN MUNRO



MAJ.-GEN. ÆNEAS SHAW



CAPT. (SIR) E. P.  
LITTLEHALES



MR. JUSTICE POWELL.



JOSEPH BRANT  
(Thayendanegea)



ROBERT ISAAC DEY GRAY.

SOME NOTABLES DURING SIMCOE'S REGIME



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specifically provided for to be paid by their constituents<sup>(17)</sup>.

Public revenue was becoming more and more necessary: a duty was laid upon every still and a licence required to be taken out by every distiller, distillers being forbidden to sell by retail; Public Houses as authorized by the Magistrates in each Division, had to take out a licence<sup>(18)</sup>.

### NOTES

<sup>(1)</sup>Letter, Simcoe to Portland, from Navy Hall, October 23, 1794, 3 *Correspondence*, p. 141, *Can. Arch.*, Q 280, II, p. 452. "A Town laid out on the King's side of the strait of Niagara opposite the Fort which consisted on my arrival of only one or two houses now containing upwards of fifty and rapidly increasing."

<sup>(2)</sup>7 *Ont. Arch. Rep.* (1910), pp. 37, 39, in the Council; there is no complete record of the proceedings in the Assembly of 1794: 6 *Ont. Arch. Rep.* (1909), pp. 47-51, XI.

<sup>(3)</sup>1794, 34 *Geo. III*, C. 7, (U.C.). The utilizing of the Militia for naval as well as military service had been under consideration for some time: e.g., in Simcoe's Despatch to Dorchester from Navy Hall, June 2, 1794, he said that he would do all he could "to regulate a system of defence by Gun Boats . . . possibly the Legislature may entrust the Executive Government with the power of manning them from the Militia," 2 *Correspondence*, p. 256. The proposition originated in the impossibility of obtaining seamen by hiring, &c. Col. R. G. England, in command at Detroit, wrote Simcoe from that place, May 19, 1794, concerning the Gun Boats which Simcoe had ordered to be prepared:—"The gun boats . . . look very smart, sail and work well . . . I am, however, concerned to add . . . there has not been a single seaman entered since he (Commodore Grant) received your orders nor is there any probability of one being engaged," 2 *Correspondence*, p. 238: *Wolf. I*, 4, 118-9.

"Quakers, Menonists and Tunkers" over 50 years of age were relieved from paying for their exemption the annual sum of 20/ in time of peace, but in time of war they must either serve or pay £5 every year until they were 60—Sec. 9.

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(4) Letter, Simcoe to Dundas, from Navy Hall, August 2, 1794, *Can. Arch.*, Q 280, I, p. 237, and "Memorandum respecting the Marriage Bill" enclosed, *do. do.*, p. 256.

(5) Letter, Simcoe to Portland, from York, June 20, 1796, *Can. Arch.*, Q 282, II, p. 280.

This very earnest and perfectly respectful Petition which certainly deserved better treatment from Simcoe and had it not been for his ill-health would probably have received it, will be found in Wolf. I, 8, pp. 121-124.

" To the Honorable Representatives of the people of Upper Canada for the redress of greviances,  
The Petition of the Presbyterian inhabitants of the County of Grenville in the said Province,  
Most Humbly Sheweth

That an Act passed in the second Session of the Legislature of this Province entitled an Act to confirm and make valid certain Marriages which confines the solemnization of marriages to the Clergy of the Church of England, and thereby renders those solemnized by Presbyterian Clergymen null and void in law, and the issue of such Marriages illegitimate, has greatly astonished and hurt your Petitioners, who are not conscious of a single blemish in their public character from the memorable era of 1775 to this hour, that deserved any disqualifying distinction.

That Religion being a personal thing, amenable only to the Divine Jurisprudence, and its outward forms having no more connection in the nature of things with Civil Government than with Military Discipline, your Petitioners conceive that an honest man is more deeply interested in liberty of conscience, than in anything else in the world, and every good and peaceable subject is as much entitled to the exercise of private judgment in choosing the form of Worship and Church Government that is most agreeable to his own ideas, as he is in regard to the management of his land or the model of his house. They can therefore see no reason why all Christian Marriages solemnized in the fear of God and agreeably to His Law, should not be equally valid by the laws of man.

That whatever insinuations may be thrown out to the prejudice of Presbyterian Church polity as hostile to Monarchy your Petitioners are not afraid but the History of the British Monarchy will prove this doctrine to be a popular error propagated by their ene-

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mies, and imbibed by many enlightened Members of the Church of England, without any other proof than the strong assertions of men who are visibly interested in subjecting thousands of their fellow christians and fellow subjects to Civil disabilities, and therefore inculcate an essential and natural union between their Church and the State, although these things be as distinct and unconnected in their own nature as Bravery and Scarlet, or Piety and Black.

That in mentioning these things it is by no means the intention of your Petitioners to enter into an argument with their rulers on the subject or in any respect to dictate to them, but that conscious of their own integrity, and taking it for granted their rulers will be guided by principles of justice, they presume to state truths, proper in their opinion for the Legislation of a free and equitable Government to investigate before a very great majority of His Majesty's faithful subjects in this Province be deprived of a privilege which they humbly conceive to be as much their religious and political right, as the propagation of their species is a natural one; and which no part of their conduct has ever forfeited. Nay if Church polity be admitted as a criterion of political desert, your Petitioners will aver in the face of the world, that no description of British subjects have deserved more honorable distinction from the Protestant succession in the illustrious House of Hanover, than Presbyterians, and but for their zealous and steady co-operation with the moderate part of the Church of England, the Revolution of 1688 had been defeated and the British constitution rivetted into tyranny by High Church-men, who have ever since pursued them with political vengeance upon pretence that will bear neither light nor examination.

But your Petitioners, sensible that all civil distinctions on account of religion, tend only to political disunion and unchristian wrath, wish for no exclusive privileges, though if such privileges were at all eligible they have by desert an equal claim to them with any others, and decidedly a prior one by numbers. The great object of their hearts is to concur with their fellow subjects of every denomination in advancing the public prosperity, and forgetful of all the evils which men of their communion have endured with most exemplary patience for these hundred years and upwards, to live in peace and love, with their fellow Christians of all persuasions and to transmit their Loyal character without contamination to posterity.

That after such a declaration supported by recent and undisputed testimony, your Petitioners hope their rulers will not consider the privileges of other good subjects being extended to them in the light

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of presumptuous or unreasonable request, and as long as they themselves entrust their Clergy with the more solemn and awful duty of admitting them into public covenant with God, the Legislature will allow them to regard the same men as fully competent to give public validity to the Marriage vow.

Then every remnant of Religious intolerance is growing odious in the eyes of every enlightened Government, when the sister Colony of Lower Canada has admitted all descriptions to a participation of the same rights, and the Government of Upper Canada is knocking off with all their strength the Shackles from the unhappy African, your Petitioners might reasonably hope to share in this general philanthropy, if this public character were ever doubtful, but untainted as it is they flatter themselves that the Honorable Legislature will repeal such parts of the Marriage Act, as tend to make them aliens in their own country and have therefore given just cause of uneasiness to every member of their communion.

And your Petitioners as in duty bound shall ever pray etc.

(A true copy)                      G. B. L. (LITTLEHALES)  
ALEX. BURNS

County of Grenville this 27th day of March, 1796.”  
(B. Signed by 93 persons)

The Presbyterians were not alone in this request; we find the Baptists sending in the following Petition to Simcoe, Wolf. I, 8, p. 178.

“ To His Excellency John Graves Simcoe, Esquire, Lieutenant-Governor, Major-General and Commander-in-Chief of His Majesty's Province of Upper Canada in Council, etc.

This Petition Humbly Sheweth,

That your Petitioners now inhabiting the Province of Upper Canada, and loyal subjects to His Majesty King George the 3rd, have been educated in and are professors of the Baptist Religion, and wish not to intermeddle with the affairs of any other Denomination, therefore pray to be indulged and protected in the enjoyments of such privileges as His Majesty's good subjects of any other Denomination in this Province enjoy. Particularly we pray that those which now are or hereafter shall be regularly ordained Elders in any Baptist Church in this Province shall be fully empowered to administer the ordinance of Marriage, and that a Certificate from the

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Ordaining Council shall be their sufficient Warrant, and your Petitioners will ever pray.

(Signed) ABEL STEVENS  
JAMES STARK  
THOMAS KNOLTON  
PHILIP PHILIPS  
OBEDIAH REED."

Bastard, 12th May, 1796.

(6)Chapter XII, *ante*, pp. 177, 178.

(7)Meeting Executive Council, Wednesday, June 11, 1794, Wolf. Ex. Col. 1, 170—There were present Simcoe, Osgoode, Grant, Baby and Russell. Simcoe refers to clauses 21 and 22 in Dorchester's (and his) instructions, *D. & McA.*, p. 39, *Can. Arch.*, G 181, p. 1; and to the Commission which empowers him "with the advice of the Executive Council to erect, constitute and appoint such Court or Courts of Judicature or Public Justice . . . as you or they shall think fit as necessary for the hearing and determining of all Causes as well Criminal as Civil according to Law and Equity . . ." *D. & McA.*, p. 11, 4 *Ont. Arch. Rep.* (1909), p. 167; *Can. Arch.*, M 229, p. 54.

(8)7 *Ont. Arch. Rep.* (1910), p. 46. Notwithstanding the prepossessions of an Ontario lawyer in favor of the English—and Ontario—practice, it seems to me that the dissentients had the better of the argument. Cartwright sets out the arguments also in his letter to Isaac Todd from Kingston, October 1, 1794, *Life and Letters of . . . Richard Cartwright, ut suprâ*, pp. 59-61. His speech is given, *do. do.*, pp. 67-72; 2 *Correspondence*, p. 268.

(9)2 *Correspondence*, p. 269; 7 *Ont. Arch. Rep.* (1910), p. 46.

(10)As in our Division Courts to-day.

(11)See Cartwright's letter to Isaac Todd, Kingston, October 1, 1794, *Life and Letters, ut suprâ*, p. 60. However the Bill was introduced in the Council by Cartwright himself—the First Reading, June 27; the Second, June 30; the Third, July 1—sent down to the Assembly, July 1, returned agreed to, July 2. The Assembly seems to have been more conservative than the Council—in the Council the names of the terms were changed at the instance of Cartwright and Hamilton from the traditional English names, but the Assembly restored the "names that have distinguished them for centuries but which the opposers of the Bill in their zeal for innovation had been suffered to alter", Simcoe to Dundas, August 2, 1794, 2 *Correspondence*, p. 348, *Can. Arch.*, Q 280, I, p. 237.

(12)Fifteen (possibly sixteen) persons of good standing were appointed. See my *Legal Profession in Upper Canada*, Toronto, 1916,



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pp. 9, 25, 26. The appellation, "Heaven-born Lawyers", in more recent years sometimes applied to them, I find for the first time applied to those appointed under the Act of 1803 under which five persons received a Licence from the Lieutenant-Governor, amongst them D'Arcy Boulton (afterwards Judge) and Dr. W. W. Baldwin, *do. do.*, pp. 15, 31.

<sup>(13)</sup>Simcoe to Dundas, Niagara, U.C., June 14, 1794, *Can. Arch.*, Q 280, I, p. 146; 2 *Correspondence*, p. 264; Simcoe to Dorchester June 15, 1794, *Can. Arch.*, Q 280, p. 174; 2 *Correspondence*, p. 265; Portland to Simcoe, Whitehall, September 5, 1794, *Can. Arch.*, Q 280, I, p. 162. 3 *Correspondence*, p. 39.

Simcoe to Portland, Kingston, U.C., December 23, 1794, *Can. Arch.*, Q 281, I, 217. 3 *Correspondence*, p. 240: in this letter Simcoe says:—"I conceive Mr. Cartwright's opposition to have been principally directed to the establishment of a Court of Justice which deprived him of the seat of a judge, a station of some trifling emolument but of greater power and to display his own talents which are respectable . . . . If I may believe popular rumours, Sir John Johnson who expected to have added the Lieutenant-Government of this Province to the Superintendency of the Indians, had promised all the offices to different gentlemen, Mr. Cartwright being of that number it is said and expected the permanent office of Judge . . . . I am in hopes that I shall in future meet with little opposition to such measures as may be necessary for the public interest, but on the contrary derive much useful information from Mr. Cartwright . . . . I believe there is no man I could have more depended upon than this Gentleman."

Simcoe on reporting to Dundas as to Cartwright's conduct, found himself wholly approved by Portland. Letter to Simcoe, Whitehall, September 5, 1794, *Can. Arch.*, Q 280, I, p. 162. 3 *Correspondence*, p. 39.

He rather boasts:—"In the last year an intimation from the agent for the Flour contract that he (Cartwright) and Mr. Hamilton being subordinately employed in that branch of the Commissariat depended upon my approbation contributed to a very visible change in the language and manners of those Gentlemen". *Can. Arch.*, Q 280, I, p. 174. 2 *Correspondence*, p. 265, Simcoe to Dorchester, Navy Hall, June 15, 1794.

<sup>(14)</sup>Letter, Cartwright to Isaac Todd, Kingston, October 1, 1794, *Life and Letters, &c., ut supra*, pp. 56, 57.

<sup>(15)</sup>As to the Dissent, see *ante*, (n) 9. It was necessary in order to

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begin an action to obtain a writ at the Capital, sec. 5: this was amended in 1797 by the Act 37 Geo. III, c. 4, (U.C.), which provided that the Clerk of the Crown and Pleas should have an office with a Deputy in each District as well as in Newark for the issue of process—this is still our system.

<sup>(16)</sup> (1794), 34 Geo. III, c. 3. (U.C.) The District Court was the original of our County Court—in 1797, 37 Geo. III, c. 6, s. 1, (U.C.), the jurisdiction was increased to £40 (\$160) in liquidated contracts and to £15 in trespass, &c. Other amendments were made. The Acts were consolidated in 1822, 2 Geo. IV, Sess. 2, c. 2 (U.C.): (1845), 8 Vic. c. 13 (Can.)—finally in 1849 by 12 Vic. c. 78 (Can.) they became County Courts.

<sup>(17)</sup> (1794), 34 Geo. III, c. 6. (U.C.).

<sup>(18)</sup> (1794), 34 Geo. III, cc. 11, 12. (U.C.).

## CHAPTER XVII

### War Clouds Dispersed

**T**HE Judicature Act had provided for a Court of King's Bench for the Province of Upper Canada, presided over by the Chief Justice and two Puisné Justices.

William Osgoode, the Chief Justice, had earlier in the year been appointed Chief Justice in Lower Canada; but Simcoe had persuaded him to remain in Upper Canada to put through the Judicature Act. Forthwith after the Session, Osgoode left for his new sphere of labour: Simcoe felt his loss very keenly and asked the Home Authorities to send him an English barrister to take his place<sup>(1)</sup>. He was doomed to be disappointed, for John Elmsley, Osgoode's successor in the Chief Justiceship of the Province, did not arrive until after Simcoe's departure.

A very capable lawyer, William Dummer Powell, First (and only) Judge of the Court of Common Pleas of the District of Nassau, residing at Detroit, was selected as a Puisné Justice of the Court of King's Bench. The Second Puisné Justiceship remained vacant during Simcoe's time and until Henry Allcock's appointment in 1798<sup>(2)</sup>. Until the appointment of a Second Puisné, from time to time, Hon. Peter Russell, the Receiver-General, received a temporary Commission to sit as a Justice, a practice wholly unsatisfactory in theory and in practice<sup>(3)</sup>.

Shortly after the Legislature was prorogued, Simcoe was given five thousand acres of land, not in his capacity of Lieutenant-Governor but as having been Colonel of the original Queen's Rangers in the Revolutionary Wars<sup>(4)</sup>.

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The staff of Law Officers of the Crown in the Province was completed by the appointment by Simcoe of Robert Isaac Dey Gray as Solicitor-General. This was done on the recommendation of the "Gentlemen of the Law Department"; and Gray proved a valuable public servant until his tragic death in the waters of Lake Ontario<sup>(5)</sup>.

During the whole of this period, there was much alarm on account of the American General "Mad Anthony" Wayne's actions in the region of the Miami fortifications: more than once war seemed imminent and it is certain that armed attacks by Wayne would have met vigorous armed resistance. There was much public outcry in the United States for war to enforce the territorial claims under the Treaty of 1783. The Federalists, on the other hand, used all their efforts and influence to avoid war which they believed, and with reason, would be disastrous. Washington was urged to send a Special Envoy to England to effect a peaceful settlement, and at length in the summer of 1794, he appointed John Jay, the Chief Justice of the United States Supreme Court: Jay left in May, arrived in England after a trip lasting thirty days and proceeded to his task without delay. Simcoe was cheered by receiving reports of the probable success of this mission<sup>(6)</sup>. He was too wise, however, to place much dependence on such assurances, and until the Treaty was finally ratified and made public he did not relax his vigilance in the Western and South Western districts<sup>(7)</sup>.

A source of anxiety arose in the settlement by many persons claiming under the State of New York, at Sodus about thirty miles W.S.W. of the present Oswego at which was the British Fort, Ontario. Not only was there much smuggling past the Fort, but permanent settlements were made in territory which though *de jure* in the United States, Britain continued to hold. Fears were ex-

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pressed by the Commandant at Fort Ontario of actual hostilities; and there was real peril that an armed conflict might ensue<sup>(8)</sup>. This did not escape the notice of Dorchester: he directed Simcoe to protest against the settlement, and Simcoe obeyed the instructions<sup>(9)</sup>. He commissioned Lieutenant (afterwards General Sir Roger) Sheaffe of the 5th Foot, then at Niagara, to proceed to the place and make a formal protest after conference with the Commandant at Fort Ontario. He was directed to make enquiries as to settlements said to be forming at Salmon River (some twenty-eight miles below Oswego), Hungry Bay and elsewhere: and if he thought it advisable, to leave a protest at these places<sup>(10)</sup>. Sheaffe took with him a subaltern and a guard, a boat's crew of eight or ten men, rowed along the south shore of Lake Ontario from Fort Niagara, delivered his formal protest—and was laughed at by the settlers<sup>(11)</sup>.

The situation in the West became very alarming. Wayne defeated the Indians and came close to the Fort at Miami. For a time it looked as if actual war would begin, but Major Campbell, the British commander, was dignified and resolute, and Wayne prudently did not attack notwithstanding his somewhat truculent language<sup>(12)</sup>.

Simcoe thought it necessary to have the militia in readiness and to order a detachment of the Queen's Rangers and other troops to Miami. The victory of Wayne over the Indians at the Battle of Fallen Timbers, August 20, 1794, he thought an evil omen and disagreed with Major Campbell's view that it would prevent a war<sup>(13)</sup>. He determined to visit the scene himself, and leaving Niagara, arrived at Fort Erie, September 13. Mrs. Simcoe, who accompanied him that far, sailed on the 18th for Kingston *en route* to Quebec where she was to remain until danger of war should blow over<sup>(14)</sup>. After a delay of a week from contrary winds he succeeded in setting

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sail up Lake Erie to the fortifications. On a thorough inspection of these, he found too few men fit for duty and ordered an immediate reinforcement of one hundred and thirty rank and file with proper officers from the 24th Foot<sup>(15)</sup>; he went on to Detroit on horseback. There he stayed four days and set off for the Huron Village of Brownstown for a Council with the Indians. At the Council were many Indians, amongst them Joseph Brant: there were many angry demands that the British should send them assistance against the "Long Knives" which they claimed had been promised them by Dorchester. He promised to transmit the request to Dorchester, but carefully refrained from making any promise of his own.

After four days of somewhat acrimonious discussion, Simcoe crossed the River to Detroit, and, October 18, he arrived back at Navy Hall<sup>(16)</sup>.

About this time an appointment was made, which is little known, and the circumstances of which illustrate the anxieties and watchful care of Simcoe.

The French settlements in the "Upper Country", Detroit and Michillimackinac, with the dependencies and adjoining territory were not much enamoured of British rule. In Detroit there was little trouble, there being a strong leaven of English and Scottish traders: in and near Michillimackinac some suspicion was aroused by the conduct of French priests, but the settlement at the River Aux Raisins caused the greatest anxiety both on account of its geographical position, about midway between Detroit and Miami, (as its loss would imperil the safety of Detroit) and its relative populousness. There appeared at that place from time to time emissaries from the south who tampered with the loyalty of the French-Canadians. Some of these intruders came from France, clothed with clerical authority: some were French-

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Canadians in the service of the United States. Simcoe, August 1, suggested to Dorchester "whether some trusty, loyal clergyman might not be of use in the Settlement . . . . to counteract . . . . improper opinions and transactions if such a person can be found in Lower Canada." Dorchester applied to the Roman Catholic Bishop of Quebec, Right Reverend Jean François Hubert, who selected the Reverend Edward Burke, priest of St. Peter's and St. Lawrence in the Isle of Orleans, and sent him. It was none too soon; the settlers had already resolved to refuse obedience to the militia law and were in an ugly mood. The efforts of the priest, "as good a subject as the King" had, were successful in suppressing the flames which had broken out<sup>(17)</sup>.

Simcoe determined to make a tour round Lake Ontario and along the north bank of the St. Lawrence: he left Niagara, November 13, and after being snowbound at Burlington Beach, he arrived at York. There he examined the fortifications and inspected the improvements in the nascent town—then to boat again, past Presqu' Isle, and arrived at Kingston, December 3<sup>(18)</sup>. He carefully inspected all the public works and property in and near Kingston, laid plans for roads, including one to the Forks of the Rideau. He made full enquiry into the lands which had been surveyed, and arranged as much as possible for their speedy settlement. He also considered the feasibility of communication by water with the River Ottawa, a scheme brought to fruition many years later by the Rideau Canal.

When in Kingston he expressed to the Home Authorities, plans for still further assimilating Upper Canada to England, his principle being, as he often repeated, to make the Province as nearly as possible an image and transcript of the Old Land.

We have already spoken of the appointment of Lieu-

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tenants of Counties<sup>(19)</sup>. Simcoe now suggested another scheme of assimilation. He proposed to Portland that the Towns of Niagara and Kingston should be incorporated as Cities with maritime jurisdiction over the Lakes and River St. Lawrence—so far as Lake Ontario was concerned, the intermediate port of York was to have its share. These special jurisdictions were wholly disapproved of by Portland, who stated in the plainest language that neither the scheme of Lieutenants of Counties nor the Corporation scheme was proper in the existing condition of the Colony; and he declined to assent to the proposition that the Colony should be like the Old Land<sup>(20)</sup>. This was the first real check that Simcoe had met at the hands of the Home Authorities, though he had experienced many a rebuff from his military superior, Lord Dorchester.

He had already secured a house in Johnstown and he made a tour along the north bank of the St. Lawrence as far as that place, where he remained for a fortnight, expecting Mrs. Simcoe. He went half way to Pointe au Bodet, the boundary of his Province, and met her, February 11th. They then returned to Johnstown and shortly after to Kingston, where they were lodged in the Barracks<sup>(21)</sup>.

Simcoe was relieved of some financial anxiety by the report that the Commissioners appointed under the Act of 1794 had come to an agreement with the Commissioners of Lower Canada. The account and consideration of this is however postponed to the chapter on Provincial Finance<sup>(22)</sup>.

He had a meeting with the Oswegatchie Indians at Oswegatchie, February 2, and recommended gratifying them with trifling presents and an appropriation to build their church<sup>(23)</sup>.

He also urged complete reformation of the Indian



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Department; practically powerless to interfere or to do anything but recommend, he saw many abuses and more errors of judgment in those charged with the conduct of Indian affairs; his prayers fell on deaf ears and the reorganization of this Department had to wait for many years.

His activities were interrupted towards the end of March by a very serious illness which confined him to his room at Kingston for several weeks: a constitution weakened by the toils of the Revolutionary War had not been fully reinstated. The anxieties of the situation in the west and southwest, the physical labour and discomfort of the journeys to Miami, Detroit and the St. Lawrence, proved too much for him; and to these must be added the harassing coldness, not to say contempt, with which he was treated by Lord Dorchester, and what he thought to be indifference of the Home Administration.

Partially recovering, he set sail from Kingston, May 15th, and arrived at York, May 17th, 1795. After staying there four weeks, he completed his journey to the Capital with Mrs. Simcoe by canoe, arriving, June 16th. Simcoe was able to resume his duties by the end of May, but it is impossible not to see that he was seriously shaken.

The arrival of an official copy of Jay's Treaty, as finally approved, relieved him, however, of fear of aggression from the United States.

### NOTES

(1) Despatch, Simcoe to King the Under-Secretary, from Navy Hall, June 20, 1794, "I shall feel an irreparable loss in Mr. Chief Justice Osgood. I hope to God he will be replaced by an English lawyer." 2 *Correspondence*, p. 281: *Can. Arch.*, Q 280, I, p. 176: *Wolf*, I, 6, 215.

Despatch, Simcoe to Dundas, from Navy Hall, June 21, 1794: *Can. Arch.*, Q 280, I, p. 178. 2 *Correspondence*, p. 283: "I cannot but rest upon you in confidence that the successor to this important

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duty will be a British Lawyer, accustomed to the forms of the English Bar, of undoubted loyalty and of approved integrity"—“British” and “English” were synonymous in Simcoe’s mind, and the remark of “undoubted loyalty” seems to be an implied reflection on William Dummer Powell. Powell, born in Boston, Mass., had taken the Loyalist side in the Revolution and was wholly loyal to British connection during his long life. But he was suspected and indeed charged with disloyalty again and again—by Judge Mabane in Montreal before Powell became a Judge and in Detroit in 1791, when he was Judge of the Common Pleas. Later on, the notorious Judge Thorpe and Attorney-General William Frith, in official communications with the Home Authorities, repeated the same unfounded charges. Simcoe himself had no doubt of Powell’s loyalty and so expressed himself more than once in his despatches, but for public reasons, he probably thought it better that Powell should not be made Chief Justice, as he fully expected and had a right to expect. See my *Life of William Dummer Powell*, Michigan Historical Commission, Lansing, 1924. When Powell was the only Justice on the Bench of this Court he was often called Chief Justice Powell, e.g., by Mrs. Simcoe, September 2, 1795, *Diary*, p. 290. Simcoe privately recommended Grenville to appoint (Sir) Thomas A. L. Strange, Chief Justice of Nova Scotia and afterwards Chief Justice of Madras, to the post, Wolf. II, 5, 183: Private Letter from Niagara, October 30, 1794. 3 *Correspondence*, p. 162.

(2) John Elmsley became Chief Justice, November 21, 1796: Henry Allcock became a Puisné Justice, November 30, 1798, and Chief Justice, October 7, 1802: Powell did not become Chief Justice until 1816.

(3) E.g., Powell solemnly records that Russell was so ignorant of law that he did not know a petit jury was composed of an even number of men. Although Powell in his private papers gibes at Russell, he had officially advised that it was necessary to appoint a Judge *ad interim*, Simcoe’s Despatch to Portland from Niagara, November 10, 1794, *Can. Arch.*, Q 281, I, p. 23: 3 *Correspondence*, p. 178. He also called the attention of the Secretary of State to the fact “that the salaries of the Puisné Judges are very inadequate to the Respectability of their Stations in this distant and most dear part of His Majesty’s dominions.” H. C. L. was known in this Province more than a century and a quarter ago.

(4) Minutes of Executive Council July 9, 1794, 2 *Correspondence*, 313: Wolf. Ex. Col. I, 212.

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The expenses of the position of Lieutenant-Governor of the Province were not so great then as at the present time, but they were high enough.

We have a record of the cost for refreshments at the Ball given by Simcoe, Wednesday, June 4, 1794, in the Council Chamber at Newark. There were twenty couples, and the ladies were all well-dressed. Supper was at midnight in a room as large as the ball-room and the party broke up at 2 a.m. It may be interesting to give the caterer's bill—*autres temps, autres moeurs*, but not so very different.

1794, June 4th		His Excellency Governor Simcoe			
		To James Fitzgerald . . . . .	Dr.		
		To Tea, Coffee and Supper for one hundred persons at one dollar per head . . . . .	25		
		“ 20 pounds of Candles at 1/6 <sup>3</sup> / <sub>4</sub> . . . . .	1	11	3
		“ 7 dozen and 9 Bottles of Madeira, 60/ . . . . .	23	5	
		“ 4 dozen and 1 Bottle of Port, 45/ . . . . .	9	3	9
		“ 20 Bowls Sangree with 2 Bottles of Madeira in each Bowl, 12/6 . . . . .	12	10	
		“ 11 ditto with 2 Bottles of Port, 10/ . . . . .	5	10	
		“ 6 Decks of Cards, 1/10 <sup>1</sup> / <sub>2</sub> . . . . .		11	3
		“ 3 Dozen of Porter, 33/9 . . . . .	5	1	3
		“ Supplies for Music. . . . .	1	5	
		“ Ditto for Servants . . . . .		16	3
		“ A Woman attending the Ladies . . . . .		5	
		“ Half a cord of wood for Cooking . . . . .		5	
		“ Men attending to bring water, &c. . . . .		5	
		“ 5 Glass tumblers broke, 1/10 <sup>1</sup> / <sub>2</sub> . . . . .	9		4 <sup>1</sup> / <sub>2</sub>
		“ 4 Wine Glasses broke, 1/3 . . . . .	5		
			£86	3	1 <sup>1</sup> / <sub>2</sub>

Errors Excepted

Quebec Currency

Niagara, 16th June, 1794.

Received the Contents in full by the Hands of Peter Russell, Esq., Receiver-General. (Sd) JAMES FITZGERALD, Wolf. I, 4, 204.

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Sangree (Sangaree, Sangrie) was a cold drink, composed of wine diluted and spiced.

The caterer seems a little high, "for 'tis their nature, too", in some items: e.g., Joseph Willcocks in a letter to his brother, (Sir) Richard Willcocks, from York, November 3, 1800, says:—"Madeira 2s. 2d. per quart is excellent and cheap: Claret is not drank here: Port good at 1s. 10d. a quart," *Can. Arch.*, Joseph Willcocks Papers; Fitzgerald charged 5/ for Madeira and 3/9 for Port, more than double. Two hundred and four quarts of wine in addition to tea and coffee did not seem excessive in those heroic days.

Mrs. Hannah Jarvis, wife of William Jarvis, Provincial Secretary, writing to her father, the Revd. Dr. Samuel Peters, from Newark, Sept. 25, 1793, says: "The Governor has given two public balls: viz, Queen's and King's Birthday," *Can. Arch.*, Peters-Jarvis Papers.

(<sup>5</sup>) Gray was appointed in the fall of 1794. Simcoe's Despatch to Portland, from Niagara, November 10, 1794, *Can. Arch.*, Q 281, I, p. 23; 3 *Correspondence*, p. 178, but not sworn in until 1796: his Warrant is dated February 3, 1796. See my *Upper Canada Sketches*, pp. 128, 129. He was drowned in 1804, *do. do.*, p. 138.

(<sup>6</sup>)E.g., the letter to Simcoe from his friend and agent, George Davison, dated Harper Street, Friday, 1st August, 1794, contains the following:—"It is with much satisfaction that I can inform your Excellency that the apprehensions which the intelligence from America had created have given place to the best grounded hopes of an amicable adjustment of the points in dispute. Mr. Jay was, I believe, a very proper envoy upon this business; he has temper I am given to understand and must have a thorough knowledge of the interests of the two countries. There is on our side all the disposition to accommodate. Nothing more is wanting one would say to ensure a pacific issue of the negotiation, and such I have little doubt to be able to state in a short time." *Wolf. I*, 4, 283.

Jay has not received generous or even fair treatment from Dr. Bemis, *op. cit.*: but the description in that work of his appointment and the effect of his diplomacy is sufficiently accurate.

(<sup>7</sup>)The Treaty was concluded, November 19, 1794, ratified by the Senate of the United States (except as to one clause) June 24, 1795. The "Republican" Party, which detested Britain and had burned Jay in effigy, called him a traitor, &c., tried to block its execution and nearly succeeded. Hamilton, who was largely responsible for Jay's mission, was stoned, and Washington himself was grossly abused for signing it; but ratification was exchanged at London, October 28,

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1795, and the Treaty proclaimed, February 29, 1796. A copy reached Simcoe very shortly after its conclusion, as we find him speaking of it in his Despatch to Portland from Kingston, December 20, 1794. *3 Correspondence*, p. 230: *Can. Arch.*, Q. 280, I, p. 280. See also, *do. do.*, pp. 199, 2.

(8)The Despatches from the Commandant at Fort Ontario at the mouth of the Oswego River are numerous, e.g., as to smuggling. *Wolf. I*, 4, 104, 219, 226. *2 Correspondence*, p. 226.

The settlement was a real peril. Captain Schoedde, Captain in the 60th Foot, Commanding at Fort Ontario, writes to Major Littlehales from Fort Ontario, June 27, 1794:—"Generals Steuben and Gansevoort and a Major North of the United States are arrived at the Salt Works of Onondago to lay out fortifications there and at Big Sodus. Captain Walton acquaints me that the Onondago people threaten still an attempt on this Post and that they are supplied with powder from New York. I have ordered all the wood within range of musket shot to be cut down and palisades to be provided to replace those which are decayed . . . . owing to the smallness of my Garrison and to the dangers which surround it I dare not send out parties to cut wood for the winter . . . . *Wolf. I*, 4, 226, 227.

See Simcoe's Letter, Niagara, July 3, 1794, as to the claim made by Abbé Des Jardins to land which he had bought from the State of New York between Salmon River and Oswegatchie (Ogdensburg), *Wolf. I*, 4, 234. Captain Schoedde wrote Simcoe, August 4, 1794, complaining of his want of proper artillery, *do. do.*, 291.

It may be of interest as showing the determined boldness of smugglers, to copy part of the Proceedings of the Executive Council held at Navy Hall, Newark, June 21, 1794, *Wolf. Ex. Col.*, I, 177.

"The Attorney General

laid before His Excellency in Council the deposition transmitted to him by Major Smith Commander of the Garrison—

Deposition of Sergeant Tho's Lawson of the 5th Regiment of Foot . . . .

That on Sunday evening the 31st of May last about eleven o'clock he with several of the Non Commissioned Officers and Private Men of the 2'd Reg't and Queens Rangers were ordered on command in pursuit of a Boat that had passed the Garrison that night, on board of which it was supposed that there was smuggled goods, going to the States of America That he the said Sergeant Tho's Lawson, & one Private man of his party being some distance in front of the rest of the Party on the lake side, came within about Thirty yards of

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a Boat or Canoe, and saw the men on board push him off from the Shore, and immediately after discharged a piece at him loaded as he imagines with Shot, from the rattling it made against the bushes—that in a short time after they fired a second time at him the contents of which fell behind him, that he then fired upon them, seeing that they were endeavouring to make off into the Lake—That the Private Man that was along with him fired directly after him,—and the rest of His Party coming up they fired also That he called several times to the People on board to return to Shore, but they paid no attention to his orders that after several shots had been fired at the Boat the People on Board cryed out for God's sake cease firing and we will put the Boat on Shore, that His Party then gave over firing, but finding they were deceived, & that the Boat was going farther into the Lake instead of returning to Shore, as the Men on board had promised, they commenced firing again which they continued till the boat was out of their reach.

That as he and his party were returning towards the Garrison they met McNabb—Superintendent of Inland Navigation—with two Boats with Soldiers on board of each, that he and one of his Party went on board of the Boat that Mr. McNabb was on board of, that they went as far as the Twelve Mile Creek where they saw two Americans & a Negro Man but the latter inform'd him that the boat they belonged to had returned to the four Mile Pond to take in Furs which they were to take to the States of America.

That he saw the above mention'd three Men take three Boxes and some Provisions into the wood where they hid them, that on their return to the Garrison they met the Boat returning from the four Mile Pond which Mr. McNabb stoped and examined, but did not find any goods on board, that was seizable—

Whereupon His Excellency gave directions that a Reward of £50.0.0. Quebec Curr'cy should be inserted in the Upper Canada Gazette, (as under)

George the Third, by the Grace of God of Great France and Ireland, King, Defender of the Faith, & so forth,

Whereas by certain information it appears that several persons in the night of the 31st of May last about eleven oclock passed by the Garrison of Niagara, in a Boat or Batteau carrying with them as it is presumed contraband Goods; and upon being haild by the Centinel, refused to return an answer:—thereupon Sergeant Thomas Lawson of the 5th Regiment of Foot, & a party of the Privates of the said Reg't were despatched to stop the said Boat or Batteau & de-

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tain the Persons till further enquiry should be made, & whereas it appears that the Persons, or some or one of them upon being again challenged by the said Sergeant Lawson not only refused to come on Shore, but fired upon the said Sergeant and his Party, & again in a short time afterwards fired a second time, in defiance of the Laws, & in contempt of the Peace of our Lord the King—Now I do hereby give Notice that if any Person or Persons will give Information to any of His Majestys Justices of the Peace, of the said Party or any of them that were on the said Boat or Batteau, so that they or any of them may be brought to Justice, or if any one or more of the said Party will give Information to any of His Majesty's Justices of the Peace or the Person or Persons that fired as afore s'd upon the said Sergeant and his Party, so that they may be bro't to Punishment he or they, shall receive upon conviction of the offender or offenders the Sum of Fifty Pounds, Quebec Currency; and if the Informer or informers should have been of the said Party in the said Boat or Batteau, other than the Person or Persons that fired as aforesaid, he or they shall receive the King's Pardon upon such information and Conviction as aforesaid, besides receiving the above Reward. Given under my Hand and Seal this 21st of June 1794.

JOHN GRAVES SIMCOE ESQ'R

Lt Gover'r & Commander in Chief of the said Province.

Government House  
Navy Hall, Upper Canada."

<sup>(9)</sup>It does not seem to have been so much the fear of actual hostilities as of prejudicing the British claim to the land that actuated Dorchester. The chief sinner was Captain Williamson, formerly of the 25th Foot in the British service, agent for an English Company of land jobbers who had made an establishment at Sodus Bay.

<sup>(10)</sup>Prof. Bemis appears to think that Simcoe in having the Protest delivered, acted upon his own responsibility, Bemis, *op. cit.*, p. 179, but Dorchester's orders appear in his Despatch to Simcoe from Quebec, July 11, 1794, 2 *Correspondence*, p. 317: the form of Protest is given, *do. do.* p. 318, 319. *Can. Arch.*, Q 282, 2, 289, 290: Wolf. I, 4, 325. Cf. *Can. Arch.*, Q 281, 1, 129: M 109, 203: R.O., F.O. 5, 5, Q 70, 132. Simcoe's answer is from Navy Hall, August 10, 1794, *Can. Arch.*, Q 280, 2, 280: 2 *Correspondence*, p. 363.

The instructions to Sheaffe will be found in Wolf. I, 4, 302: 2 *Correspondence*, p. 364. The Protest was sent at once by Williamson to Randolph, the American Secretary of State. 2 *Correspondence*, pp. 393, 394.

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<sup>(11)</sup>The Protest is in the following words:—"I am commanded to declare that during the inexecution of the Treaty of Peace between Great Britain and the United States and until the existing differences respecting it shall be mutually and finally adjusted, the taking possession of any part of the Indian Territory either for the purposes of War or sovereignty, is held to be a direct violation of His Britannic Majesty's rights as they unquestionably existed before the Treaty and has an immediate tendency to interrupt and in its progress to destroy that good understanding which has hitherto subsisted between His Britannic Majesty and the United States of America.

I therefore require you to desist from any such aggression." Wolf. I, 4, 325: 2 *Correspondence*, pp. 318, 319.

It was served by Sheaffe on "Thomas Little, Agent for C. Williamson," at Great Sodus, August 16, 1794, *do. do.*

Williamson was absent and Sheaffe left for him a letter in the following terms:—

"Sodus, 16th August, 1794.

Sir:—

Having a special Commission and Instructions for that purpose from the Lieutenant-Governor of His Britannic Majesty's Province of Upper Canada, I have come here to demand by what authority an establishment has been ordered at this place, and to require that such a design be immediately relinquished, for the reasons stated in the within declaration accompanying this letter and for the receipt of which Protest I have taken the acknowledgment of your agent, Mr. Little.

I regret exceedingly in any private as well as public character that I have not the satisfaction of seeing you here, but I hope on my return which will be about a week hence, to be more fortunate.

I am sir,

Your most obedient servant,

R. H. SHEAFFE, Lieut. 5th Regt.

Q.M.G. Dept. in His

Britannic Majesty's Service."

Captain Williamson,  
Bath.

Wolf. I, 4, 329: 2 *Correspondence*, p. 385.

Sheaffe seems to have met Williamson on his return: We find a letter (in the *Melville Correspondence*) from Charles Williamson to Edmund Randolph, Secretary of State of the United States, dated



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from Bath, U.S.A., September 2, 1794, containing the following:—"I told him as his demand was to know by what authority I and my Settlers were there, I thought I could with more propriety, ask, by what authority I had the honour of this visit from him—His answer was, that he came under the authority of His Britannic Majesty, and by the order of Lieut. Governour Simcoe.—I told Mr. Sheaffe, that I had no sort of connection with that Government, nor could I conceive that they had any sort of business with this Country.—That as to myself, I had purchased these lands, and held them under the United States, and that I would sacrifice my life in defence of the Government under which I lived, and in the protection of those who had come to settle under me . . . . Mr. Sheaffe told me, he had a message to deliver from Governor Simcoe to myself—which was, that his Excellency reprobated exceedingly my conduct in attempting to procure flour from Canada.—I answered, if I had, I certainly enjoyed the same right that he did to get beef from the Genesee . . . . But if my conduct meets with the approbation of his Excellency the President it will give me the greatest pleasure."

A copy of this letter was sent to Henry Dundas, Viscount Melville by Sir William Pulteney.

Pulteney never forgave Simcoe—e.g., he wrote Melville, June 26, 1795:—

" . . . . I am told there are doubts if our Treaty with America will be ratified. The Southern Coloneys, particularly Virginia, are deeply tainted with French principles, and vast bribes have been lavished in that country—I wonder that Simcoe, who has given so much disgust to the Americans, has not been recalled."

Only a fertile imagination or personal dislike could attribute the opposition to Jay's Treaty to any action on Simcoe's part.

<sup>(12)</sup>The story can be read in Prof. Bemis, *op. cit.*, pp. 180, 181: the correspondence between Wayne and Campbell in Wolf. I, 4, 364: II, 5, 14, 16, 31, 86, 2 *Correspondence*, 385, 405, 406, 407, 408. The conduct of both officers received the approbation of their superiors. *Can. Arch.*, Q 281, I, p. 17, Simcoe to Portland from Niagara, November 10, 1794: *do. do.* p. 22. Dorchester to Simcoe from Quebec, September 17, 1794, Wolf. II, 5, 60. Simcoe to Col. England from Navy Hall, August 31, 1794: *do. do.* 61, 62, 63. 3 *Correspondence*, p. 25, Simcoe to Major Campbell, Fort Miamis, from Navy Hall, August 31, 1794: 3 *Correspondence*, pp. 25, 26; see also Wolf. II, 5, 114.

Campbell became Governor of the Bermudas: after his death for

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several years there was an item in the Estimates for the Civil Establishment of Upper Canada as follows: "Allowance to the widow of the late. Lt. Col. Campbell, Governor of the Bermudas in reward of his firm and judicious conduct and able services at the Myamis and in consideration of her straightened circumstances." The allowance was at first £150. *Can. Arch*, Q. 293 A, p. 13: but in 1804, it was increased to £250, *do. do.* pp. 59, 73, 74, 90, &c.

(13) P.S. to Simcoe's letter to Pilkington, September 5, 1794, Wolf. II, 5, 76, 3 *Correspondence*, p. 44, "Wayne's Victory in Major Campbell's judgment will prevent a war, I hold it certain."

The response to the call on the militia was different in the various sections. François Baby of Detroit said that the people behaved very ill and that he had to take the steps authorized by the Militia Act to bring them to their duty. This perhaps was at least in part due to the fact that the law had not been translated into French. Wolf. II, 5, 79.

John Munro of Dundas County reported every man attending on one day's notice cheerfully, ready for active duty, *do. do.* 81.

(14) See *Diary*, p. 267: Wolf. II, 5, 89—Husband and wife were reunited, Wednesday, February 11, 1795, at Johnstown, a little east of Prescott.

(15) Letter, Simcoe from Fort Miamis, September 27, 1794, to Lt.-Col. England, commanding at Detroit, Wolf. II, 5, 136. 3 *Correspondence*, p. 106.

(16) *Can. Arch.*, Q 281, 1, 199, 207: William Mayne's account of the trip, &c., Wolf. II, 5, 89-95: *do. do.* 126-128.

Simcoe did not hold an Executive Council meeting from July 15 till Nov. 4.

(17) Simcoe's suggestion is in a Despatch of August 1, 1794, to Dorchester, in part copied in his Letter to the Reverend Edward Burke, then one of the Vicars-General of the Diocese of Quebec, dated at Quebec, September 5, 1796. *Can. Arch.*, Q 93, p. 206: the commendation of Burke's loyalty is in a Despatch by Thomas Aston Coffin to Simcoe from Quebec, September 18, 1794, Wolf. II, 5, 110. Burke himself says that he was sent "expressly to counteract the machinations of Jacobin Emissaries, whose influence among the Settlers and numerous Tribes of surrounding Indians might, not to say infallibly would, have caused an insurrection, the consequences of which might prove fatal to the King's 24th Regiment then stationed in the Forts of Detroit & the Miamis about eighty miles distant one from the other, the strong settlement of the River midway between

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them." He remained a useful British servant until the territory was given up in 1796 under Jay's Treaty. He was offered the Parish of St. Anne, Detroit, but that would involve his becoming an American citizen. He accordingly returned in that year to Quebec, where he was given by Governor Prescott a pension of £100 stg. per annum "as an indemnification for losses sustained & a reward for his services and Loyalty." He was stationed at Sandwich, Upper Canada, and paid £50 per annum from the military chest: in 1801, he was sent by the Right Reverend Peter Denault, Bishop of Quebec, to Halifax, Nova Scotia, to compose differences among his co-religionists in that city, whereupon his pension ceased. He came back to Quebec, where he became a Vicar-General of that Diocese. Born in 1742, he died in Halifax in 1820. His life and activities can be fairly well followed from the documents which will be found in Wolf. II, 5, 110: *do.* I, 6, 41, 43, 86. *Can. Arch.*, Indian Affairs, M.G., VII, VIII, C. 248, pp. 119, 195, 198, 201, 203, 208, 329: C. 256, pp. 8, 61: 6, 676, p. 92: Q 93, pp. 201, 206. *Michigan Pioneer and Historical Collections*, Vol. XII, pp. 159, 161, 169, 171, 172, 178: Vol. XV., pp. 52, 79: Vol. XX, pp. 392, 393, 406, 407, 408: Vol. XXIII, p. 68: Vol. XXV, pp. 130, 131, 212, 213, 214. (The reference to Vol. XI, 915 in Index. Vols. 1-15, p. 94 is an error, the celebrated Edmund Burke being there meant). In an address dated at St. Antoine, January 29, 1795, to the Wyandots of Sandusky, he calls himself "Vicar General of Upper Canada." Letter from Edmund Randolph, American Secretary of State, to Hammond, British Minister, May 11, 1795, Wolf. I, 6, 150-153.

The misconduct of the people of River Aux Raisins is referred to in a letter from Baby to Simcoe, Wolf. II, 5, 309: Baby recommended Simcoe to billet forty or fifty soldiers on them. The successful labours among them of Rev. Mr. Burke are fully detailed by him in a very long private letter, Wolf. I, 6, 178-181: *do. do.* 212.

There was considerable trouble at Michillimackinac over a French Dominican priest Le Dru who had been sent by Bishop Carroll of Baltimore, Maryland, (who, as it is well known, had himself accompanied the American Commissioners to Montreal in 1776 in the vain attempt to detach Canada from Britain). After residing for two years at Kaskaskias in Illinois, he came to St. Joseph and then in 1794 to Michillimackinac, Wolf. I, 4, 215: 2 *Correspondence*, p. 292: Simcoe was warned against him and took immediate steps, 2 *Correspondence*, p. 338. He left Michillimackinac for Detroit, whence he was ordered away, Wolf. I, 4, 307, and thence

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for Fort Erie, 2 *Correspondence*, p. 343. He was not allowed to land, but was ordered back to Detroit and out of the Province, *do. do.*, p. 361. At Detroit he was ordered back to Michillimackinac, *do. do.*, 370, Wolf. I, 4, 307; but it was too late to get a ship to transport him. He offered to go to Fort Pitt (Pittsburg) by way of Sandusky, but Col. England, the Commandant, would not permit it, although he was so poor that the Commandant was obliged to supply him with rations: Wolf. II, 5, 19: 2 *Correspondence*, p. 415; accordingly he sent him back to Fort Erie to await Simcoe's further orders, September 16, 1794. Wolf. II, 5, 113: 3 *Correspondence*, p. 96. He is called a sansculotte Emissary by Rev. Edmund Burke, Wolf. I, 6, 178.

<sup>(18)</sup>Diary of Captain William Mayne of the Queen's Rangers who accompanied him. Wolf. II, 5, 95: 3 *Correspondence*, pp. 73-79.

Simcoe had earlier in the year expressed to Dorchester his regret that he was not personally able to examine the points suitable for the protection of the deposit of stores and preservation of the communication between Montreal and Lake Huron. Despatch, Simcoe to Dorchester from Navy Hall, September 5, 1794. *Can. Arch.*, Q 281, I, p. 31. November 11, he wrote Portland that he would set off immediately in a boat for the Lower District round Lake Ontario. *Can. Arch.*, Q 281, I, p. 29. And later he said that Dorchester's reference to his knowledge of places he had never visited compelled him in the absence of a Quarter-Master-General to go to examine them himself, *do. do.*, p. 129. Despatch to Portland from Kingston, December 20, 1794, cf., *do. do.*, p. 180. 3 *Correspondence*, p. 226.

<sup>(19)</sup>Chapter XIII, *ante*, p. 189.

<sup>(20)</sup>Simcoe's Despatch to Portland from Kingston, December 21, 1794, *Can. Arch.*, Q 281, I, 164: Portland's reply is from Whitehall, May 20, 1795, *do.*, Q 281, 2, 328.

His logic may appear from the following quotation from his Despatch: "Niagara should be incorporated as soon as possible were it only to preserve its name in the King's Dominions. It is the policy of the United States to call themselves solely Americans, not only with the view to melt down in that general name every part of their confederation but to enforce when time shall suit, their principle that all colonies connected with European Government, or depending on them are foreign and invaders and that they themselves only are the natives." *Plus ça change, plus c'est la même chose.*

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<sup>(21)</sup>William Fraser, writing from Johnstown to Littlehales, December 16, 1794, says that he had been informed that the Governor wished a house at New Johnstown (now Cornwall). He offered his own at Johnstown. "There is none better in Johnstown. It has two rooms, two bedrooms and a kitchen." Wolf. I, 6, 244. 3 *Correspondence*, p. 224. See *Diary*, pp. 267, sqq.

<sup>(22)</sup>Chapter XXIII, *post*, pp. 324, sqq. See Wolf. I, 6, 55, 56, 61, 62, 64. *Can. Arch.*, Q 281, 2 pp. 462, 480, sqq.

<sup>(23)</sup>*Can. Arch.*, Q 281, 2, pp. 292, 296, 298.

## CHAPTER XVIII

### The Fourth Session

**T**HE Fourth Session of the Legislature met at Newark, July 6, 1795. Before it met, Simcoe was visited by the celebrated Duc de La Rochefoucault, but any account of the visit may be deferred for the present<sup>(1)</sup>.

The Session was very short and unexciting. No Record of the Proceedings in either House is extant, and we must to a great extent rely upon the Despatches of Simcoe and the Statutes themselves.

The first matter obtaining consideration was the Practice of Medicine. The Act authorized the issue by the Lieutenant-Governor of a Licence to any person found duly qualified by a Board composed of the Hospital Surgeon, the Surgeons of the Regiments and duly licensed practitioners, or any two of them. It also provided a penalty for those practising without a Licence<sup>(2)</sup>.

The first of our Representation Acts followed. It was found necessary by reason of the influx of Americans, lured by the cheap land rather than by what is given as the inducement in the Preamble of the Act, "the excellence and lenity of his Majesty's Government to become inhabitants of the Province." Many of these became loyal British subjects and peaceful citizens, but many were open and more were underhand propagandists for separation of Canada from Britain and its union with the United States. A claim was made by and for them that having been born in the Colonies before the Treaty of 1783, they were "natural born British subjects" and consequently entitled to a vote and to be elected Members

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of the Assembly under the provisions of the Constitutional Act of 1791<sup>(3)</sup>. This right was claimed even for those who had taken the oath of allegiance to the United States<sup>(4)</sup>. The loyal part of the population were alarmed at the prospect of an increased number of such immigrants, their attaining political power and electing disloyal representatives.

The Representation Act of 1795 recited that "many natural born subjects of His Majesty who had sworn allegiance to other States and powers and been resident in the dominions of the same have been induced or may hereafter be induced . . . . to become inhabitants of the Province" and that it was "inexpedient that such persons should be immediately admitted to all the privileges of British subjects." It then provided that to be elected to the Assembly a person must have been under His Majesty's government at the passing of the Act and for seven years previously a *bonâ fide* British subject. The consideration of the third Act concerning duties and an agreement with Lower Canada is deferred for the present<sup>(5)</sup>. Chapter IV gives the Court of King's Bench jurisdiction over contraband goods—the amount of smuggling going on was enormous<sup>(6)</sup>.

The next Act is one of the most important and most useful passed at any time. We who have a system of registering deeds and other evidences of titles to lands have little conception of the inconveniences attending the want of something of the kind—the constant care to be taken of deeds, &c.; their production on every change of title and the like were necessary in all parts of England except two Counties<sup>(7)</sup>. The Act of 1795 established a Registry office in every County and Riding in the Province for memorials of deeds, &c., affecting lands. These offices have been continued and added to up to the present time and have saved hundreds of thousands of dollars<sup>(8)</sup>.

## THE FOURTH SESSION

These five Acts constitute the whole legislative grist for this Session; no record is extant concerning any other legislation proposed: Prorogation took place, August 10.

### NOTES

(<sup>1</sup>)See Chap. XIX, *post.* 272: also note (8) *post.*

(<sup>2</sup>)The Act proved unworkable and was repealed in 1806 by 46 Geo. III, c. 2, (U.C.). See the story in my address before the Ontario Medical Association, 1911, *The Medical Profession in Ontario, A Legal and Historical Sketch*, Canadian Journal of Medicine and Surgery, September, 1911.

(<sup>3</sup>)The Canada Act, (1791), 31 Geo. III, c. 31, s. 21, ((Imp.), provides that to be eligible to vote at an election for the Assembly or to be elected, one must be "of the full age of twenty-one years and a natural born subject of his Majesty or a subject of his Majesty naturalized by Act of the British Parliament or a subject of his Majesty having become such by the Conquest and Cession of the Province of *Canada*." It will be observed that the Provincial Legislature had no power to naturalize: it did not receive this power for many years. The first Naturalization Act of the Upper Canada Legislature was 1829, 10 Geo. IV, c. 23, (U.C.), naturalizing a number of settlers of German descent in the Townships of Waterloo and Woolwich.

(<sup>4</sup>)Although it might be thought hardly credible, Barnabas Bidwell (father of the well-known Marshall Spring Bidwell), who had been Attorney-General of Massachusetts, 1807-1810, and also a Member of Congress, who had consequently taken the American Oath of Allegiance, came to this Province in 1810 and settling here, was elected to the Assembly. He was unseated, but his argument is intelligible. He claimed that being born before the Revolution he was a natural born subject, that no subject can divest himself of his character as such, *Nemo exuere patriam potest*: and that when he came within the King's Dominions he was no longer a citizen of the United States under the Treaty of 1783, but reverted to his original condition. The House rejected his argument, and their decision was confirmed by the Law Officers of the Crown at Westminster and the Court of King's Bench in England. See my paper, *The Bidwell Episode*, Ont. Hist. Soc. Proc., 1924.

(<sup>5</sup>)See Chap. XXIII, *post.* pp. 324, *sqq.*



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(6)The Wolford Papers teem with reports made to the Lieutenant-Governor of goods smuggled, especially in the St. Lawrence region.

(7)Yorkshire and Middlesex since Queen Anne's time have had Registry Offices, 2 Ann. c. 4: 5 Ann. c. 18; 6 Ann. c. 35: 7 Ann. c. 20: 25 Geo. III, c. 4. I do not take account of recent legislation.

(8)The officer in charge of such an office was called "Register" not "Registrar", which is a comparatively recent word.

It may be thought worth while to give La Rochefoucault's description of the opening of the Legislature, Vol. II of the French ed., 1799, of his Travels, pp. 88, 89. "It was during our stay at Navy Hall that the opening of the Assembly of Upper Canada took place. The attendance of a Chief Justice announced from England, the hope of being instructed on the details of the Treaty with the United States, had determined the Governor to delay the Session until the present time; but the time was the time of the harvest which in Upper Canada as elsewhere is more pressing than public affairs. Two members of the Legislative Council were present instead of seven, no Chief Justice to preside or Speaker of the Legislative Council, five members of the Assembly instead of sixteen—these were all that could be got together. The law requires a greater number in each Chamber to give them the right to deliberate. Nevertheless, a full year from the last Assembly expired in two days. The Governor accordingly thought that he should open the Session, with permission to the two Chambers to adjourn from day to day while waiting the arrival of ships from Detroit and Kingston which it was hoped would bring the Members desired or at least the certainty that their arrival could not be counted on.

A guard of fifty men of the garrison of the Fort was all the formality of the Governor, who in a silk coat, accompanied by the adjutant and two secretaries, passed into the hall, his hat on his head.

The two members of the Council caused the Assembly to be notified by its Speaker; it appeared at the Bar and the Governor delivered his Speech based so far as the affairs of Europe were concerned upon that of the King, conceived in courteous terms toward the United States in respect of the Treaty and very concise as regards Canada. For where there are no taxes to discuss, no accounts to receive, no military arrangements to examine, there is little business . . . ."

Simcoe's Speech from the Throne is given in Wolf. I, 6, 233.

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*Can. Arch.*, Q 281, 2, p. 455. He regretted that the war still continued with France: saw that the Treaty of Amity, Commerce and Navigation, i.e., the Jay Treaty, would be beneficial to the people of the United States and to the subjects of the King "more especially in British America" and "it may be hoped will effectually remove all grounds of misunderstanding." He then urged measures for the security of possessors of capital who might be induced to invest it in land in the Province. This, it is certain from the Prorogation Speech, was the cause of the Registry Act passed in this Session. He had "the well-grounded belief that the great mutual blessings of superior soil and of climate, British freedom, British union and the experienced loyalty of those who inhabit this Province will speedily raise it up to an unexampled height of prosperity and of permanent security." See address of Legislative Council, Wolf. I, 6, 234, and Simcoe's answer, *do. do.*, 235: Address of Legislative Assembly, *do. do.*, 236, and Simcoe's answer, *do. do.*, 237 (the only place I have found them). On Prorogation, August 10, 1795, the Governor thanked the House for disqualifying "those from becoming the representatives of the people who, having borne allegiance to any Foreign Power, shall not by a competent residence within this Province give sufficient evidence of their loyalty to his Majesty and attachment to the Public Welfare."

He also thanked them for their attention to his recommendation for substantiating the security of landed property by the "Register Bill." Wolf. I, 7, 43: *Can. Arch.*, Q 281, 2, p. 459.

## CHAPTER XIX

### La Rochefoucault at Newark

**W**HILE La Rochefoucault arrived at Newark June 22, before the opening of the Session, he remained within the Province until after the Session had well begun, and it seems convenient to speak here of his visit.

François Alexandre Frederic La Rochefoucault-Liancourt, born in 1747, the son of la Rochefoucault, duc d'Estissac, Master of the Robes to the King of France, became an officer of Carabineers; but losing the favor of Madame du Barry, he left the Court for his estate at Liancourt. President of the National Assembly, it was he who warned the King of the seriousness of the situation in Paris: "Non, Sire, c'est une révolution" he answered to the King's remark as to a revolt. His friendship for the unfortunate Louis Seize brought him into disfavor with the Revolutionists and in 1792, he went to England. In the winter of 1794-95, he crossed to this Continent on a "journey for philosophical and commercial observation": he left Philadelphia, the capital of the United States, in May and arrived at Fort Erie in Upper Canada, June 20, and at Newark, June 22.

He was most courteously received by Simcoe, was invited to stay with him and to consider the house as his own. La Rochefoucault was a careful observer and his account of the Province is of great value. Dorchester forbade his entering Lower Canada and we are consequently deprived of an account by him as an eye witness of that Province<sup>(1)</sup>.

He does full justice to Simcoe's detestation of mili-

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tary rule, to his love of all that is liberal and fair and his ardent desire for the good of his Province: he recognizes how Simcoe was embarrassed by the attitude of Dorchester and the impossibility of carrying out his own plans.

La Rochefoucault, however, exaggerates Simcoe's dislike for the United States, which he more than once calls hatred, "haine." That Simcoe did dislike the United States is true, as was natural in one who had fought on the Loyalist side during the Revolutionary Wars. But that dislike, increased as it was by the truculent bearing of some Americans, was no greater than (say) that of prominent Union men after the Civil War toward those of the South, or than that of the Cavaliers toward the triumphant Roundheads. No doubt he cherished the hope that the United States would come back to the ancestral allegiance, but it is a calumny to charge him, as La Rochefoucault by implication at least does, with "assisting last year the Indians by all the counsel and all the means he could without too much compromising himself, having as much as he could provoked a war the success of which, certain in his view, would flatter at the same time his love of glory and his sentiments of hate and of vengeance"<sup>(2)</sup>.

This is quite inconsistent with Simcoe's constant assurance that more than anyone else he desired peace with the United States for he saw, "with reason in that, one great means of success for his new Colony."

Justice is done to his character:—"In private life, Governor Simcoe is simple and straightforward; he lives in a miserable little wooden house formerly occupied by the Commissioners for the navigation of the Lake. He is guarded there by four soldiers who come from the Fort in the morning and return in the evening. There he lives generously and hospitably without ostentation: his mind is facile and enlightened; he speaks well on all subjects, more willingly on his projects than on anything else . . . ."<sup>(3)</sup>.

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Notwithstanding that Jay's Treaty had been concluded, there was still fear of trouble with the Americans—the Treaty had not been ratified by the Senate until June 24, 1795, and there was a strong sentiment against it in the United States, so much so indeed that the Republican Party for a time succeeded in preventing the grant of the appropriation necessary to carry it into effect<sup>(4)</sup>.

The situation south of Lake Erie continued to be disquieting. Simcoe heard that a Pennsylvania detachment of three hundred men was at Presqu'Isle with the design of building a fort at the mouth of the river, and determined to make a semi-military settlement in the vicinity of Long Point. He thought Turkey Point the best place and asked leave from Dorchester to send a hundred rank and file of the Queen's Rangers there without delay. Being firmly of opinion that military establishments should precede settlement in that district he had consistently refused to authorise settlements near the centre of Lake Erie and the time had come to make an immediate move, while the half-pay officers would favor a proper basis for settlement. Before the close of the Session he had made up his mind himself to visit the intended settlement<sup>(5)</sup>, and soon after the close he carried the project into effect.

After attending an Indian Council of the Six Nations at Fort Erie, August 28, 29<sup>(6)</sup>, he left for Long Point: there, notwithstanding his wretched state of health he made a careful examination of the locus, with which he was very much pleased: he fixed a place for a town, which he called Charlotteville<sup>(7)</sup> in honour of Queen Charlotte, also for a barracks; he selected a suitable position for a pier and block-house to give safety and protection to the shipping, and where ships might, if required, be built. He confidently expected that his scheme would be advantageous and hoped for the building of saw and grist mills in the vicinity of Long Point and on the

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Thames, and so reported to Dorchester. In view of the change in the situation, Dorchester had already withdrawn his objection to Simcoe making use of such part of the Queen's Rangers as he should think proper so long as the transport of military stores and provisions should not be interfered with.

Portland approved of the scheme and thought that it could not fail to lay the best foundation of attachment to the Crown and Constitution. Simcoe thought that Dundas had previously approved of it, but now Dorchester repudiated any responsibility and asserted that he would continue the present military communication until one more convenient and less expensive could become practicable. He intended on the evacuations under Jay's Treaty becoming a realized fact to withdraw all the troops from Upper Canada but the Queen's Rangers and as many of the Royal Artillery as should be necessary to take care of ordnance stores. He could not prudently consent to any change in the existing disposition of the troops—and once more Simcoe was blocked in his plans<sup>(8)</sup>.

Some Gun Boats had already been begun at Chatham. Simcoe still considered that the shipyard at that point should not be given up as he was convinced that vessels could be built there more cheaply than at Detroit<sup>(9)</sup>—but that scheme also came to naught.

On November 13, the family went by ship to York: the Governor's health not improving, he made application for leave of absence. He stated that he had been suffering for some months from a severe bilious disorder and that the medical men had advised him to leave the country as he had no longer the power to contend with the autumnal heats here. His condition was such that if leave of absence could not be given he would be obliged to resign his commission<sup>(10)</sup>.

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He did not receive leave for some time and his health appreciably improved, but by no means was it perfect<sup>(11)</sup>.

The family returned to Newark, April 29, the Legislature opening, May 16. Simcoe intended to dissolve it before June 1, when it was expected that the Fort at Niagara would be given up to the Americans under Jay's Treaty. He had determined to remove the capital to York and was preparing the necessary buildings there<sup>(12)</sup>.

### NOTES

(1)The 13th Report of the Bureau of Archives Ontario, 1917, contains an Edition of that part of La Rochefoucault's work which relates to Canada. In 1794 La Rochefoucault published at Paris his *Voyage dans Les Etats-Unis d'Amérique* in eight volumes. This was translated by Neuman and published in English, 1799 and 1800. The translation is not creditable to the translator, and his errors are to some extent the cause of the unfavourable comments by (Sir) David William Smith, which have been accepted at their face value by more than one Canadian author. I have in the edition spoken of, given reasons for disagreeing with much of it. The French edition should be used by all who desire accuracy—the English edition is unreliable.

What is chiefly complained of is his description of Mrs. Simcoe, which is characterised as ungentlemanly, discourteous and unworthy. I here extract it from the French edition, Vol. II, p. 61:—  
“Madame Simcoë, femme de trente-six ans, est timide, a de l'esprit, est obligeante et bonne, parle peu, est occupée de ses devoirs de mère et de femme, qu'elle pousse jusqu'à être le secretaire de confiance de son mari; son talent pour le dessein qu'elle applique au tracé des cartes lui donne aussi le moyen de lui être très utile.”

“Mrs. Simcoe, a lady of thirty-six, is bashful, has wit, is obliging and kind-hearted, speaks little, is occupied with her duties as mother and wife which she carries so far as to be her husband's confidential secretary: her talent for drawing, which she applies to tracing maps, gives her also the ability to be useful to him.”  
 (“Timide” I translate “bashful”: Littré's Dictionary defines it thus: “Qui manque de hardiesse ou d'assurance.”)

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I can see nothing ungentlemanly or ungenerous in this description, and am confident that both Mrs. Simcoe and her husband would look upon it as conveying a high compliment. I may perhaps add that Mr. J. Ross Robertson at almost our last interview agreed with me in that regard.

(2) The quotations are translations of passages from Vol. II, p. 59 of the French edition.

(3) *Do. do.*, pp. 60, 61.

Simcoe should be allowed to speak for himself as to the charge of hatred to Americans. When the Neuman Translation of La Rochefoucault was to be published in 1799, the publisher, Phillips, wrote to Simcoe the following letter, Wolf. I, 8, 470:

No. 71 St. Pauls Ch. yd.  
June 19th, 99.

SIR:—

I have the honor to transmit to you some sheets of the travels in North America of the Duke de La Rochefoucault Liancourt. As a bookseller I left the work to the conduct of the translator who I have no doubt has rendered every passage faithfully from the original. An accidental inspection of the sheets previously to the publication of the book has however led me to feel some difficulty respecting the passage at page 240; nothing would more seriously afflict me than to be a mean of circulating falsehood or misrepresentation. The contents of the pages which *preceeds*, and of those which *follow* I am proud to be a means of conveying to the public.

I am desirous of placing myself under your instructions and in respect to the passage which appears to me to be obnoxious either to cancel it or to alter it in such a way as you may advise. It is not improbable but you may wish it to appear just as the Duke has chosen to write it and I am aware that alterations in these cases are dangerous and have sometimes a directly opposite effect, especially as the original both in French and German will be freely circulated in Europe and America.

As the book is now ready for publication it will be a great convenience to me to be favored with your early answer.

I have the honor to be Sir,  
Your very humble servant,

R. PHILLIPS.



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Simcoe replied as follows:—

“Wolford Lodge,  
25th June, 1799.

“I feel myself highly obliged by your Letter of the 19th of June, and the more so, as the press, since the commencement of the American war, has fashioned itself to the views and interests of those, who have endeavoured to destroy the constitution of England.

“In respect to the subject of your Letter, I do not see how it would be practicable to alter, in the translation, what the Duke de Liancourt has printed in his native language. The Sheets before me are, I think, uniformly mistatements, and those on points (such as the Canada constitution) where he had the subject matter in print. I presume these errors not to be wilful. In respect to any part of my public conduct, that will be always ready to meet discussion where *such discussion* is useful to the public; but, I trust, our American enmity has ceased, and I know that under God, I am the instrument that prevented the war between the two Countries.

“If the Duke de Liancourt, on his return to Philadelphia, told the Americans, that should a war commence, I said ‘it must be a war of the purse,’ and that instead of their attacking Niagara, ‘I meant to attack Philadelphia,’ his visit (and also that of many others) was of great temporary utility to the King’s Service. But where he could pick up the story of there being *fifty thousand* Indians (which no American could believe) or that they had all taken *oaths* to *roast* and scalp the Americans, which many Americans would swallow, I am at a loss to conceive.

“On the whole, let his book take its course in the world, if necessary, I shall contradict it: if otherwise, still in process of time my posthumous Memoirs may appear, and a niche may be reserved for this very ungenerous Frenchman.

“In the 240th page the Duke mentions my *boasting*: I detest the word, and trust it has never infected my conduct: I wish it could be altered to ‘speaking’, or any other word. The fact is not true; I *never* burnt a house during the whole war, except foundries, gaols, and magazines; and in the ‘Memoirs of the Queen’s Rangers,’ a few copies of which I published, in one view to contradict such Characters as La Fayette, and Chastellux, I expressly remarked, page 20, ‘on the return, and about two miles from Haddonfield, Major Simcoe was observing to some officers a peculiar strong ground, when looking back, he saw a house that he had passed, in flames: it was too far gone for all his endeavours to save it; he was exceedingly

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hurt at the Circumstance, but neither threats of punishment, nor offers of reward, could induce a discovery. This was the only instance of a disorder of this nature that ever happened under his command; and he afterwards knew it was not perpetrated by any of the Queen's Rangers'.

"So that you see, sir, my proud *boasting* is of a different quality from what Monsieur Liancourt has apprehended: but most certainly, if American *Avarice*, *Envy*, or *Folly*, had attempted to overrun Upper Canada, I should have defended myself by such measures as English Generals had been accustomed to, and not sought for the morality of war in the suspicious data of the insidious Oeconomist: my humanity, I trust, is founded on the religion of my Country, and not on the hypocritical professions of a puny Philosophy.

"That the Duke de Liancourt asserts my *defensive* plans were settled, and that I loudly professed my hatred to the United States, I conceive with the *candid reader*, will make all those shafts fall harmless, which through me, *he aimes, as an honest Frenchman*, at my Country and its best interest, namely, an irrevocable union with the United States. Those sentiments of mine were called forth into public, by the improper conduct of Mr. Randolph, the American Secretary of State, in 1794, and are printed in Debret's collection. I know they gave great satisfaction to the English-Americans, and as much umbrage to the Philosophists and Frenchmen.

"I will trouble you for a moment to say, that if you publish any papers as an appendix to your translation, you may not think it improper to include the speech I inclose, which has never been printed in England, and is illustrative of the objects I had in view, and may, by a note of reference, be easily connected with the view of them, as exhibited by Mons. Liancourt.

"His descriptions, it may be easily traced, originated from snatches and pieces of my conversation.

"Should this speech not enter into your plan, I will be obliged to you, to return it to me.

"Does the Duke de Liancourt mention his companion, Petit Thouars? Perhaps your translator may not know that he was Captain of the *Tonant*, and killed in the battle with Lord Nelson; if he does not, the anecdote may be agreeable to him.

"I am now to apologize for the trouble I give you in this hasty letter: receive it as a mark of my respect, as I would wish to stand well in the opinion of a man, who, like you, has the wisdom to see

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that the character of the nation is interested in that of the individual; and that unspotted reputation is the most desirable acquisition for a military and civil servant of his King and Country to secure and to enjoy.

“I observe the translator says, p. 229 ‘*York designed to be the seat of Government*’ etc. It is at present the seat of Government, but before I left England for America, I designed London, on the Thames, or *La Tranche*, as the seat of Government, and York as an Arsenal. I did not, as Mons. Liancourt seems to suppose, act from circumstances, for I always expected Niagara to be given up, and never thought its possession of importance.”

Simcoe also a few months later delivered to Rufus King, American Minister at London, a Paper reading:

“The Duke de Liancourt-Rochefoucault, in the recent publication of his travels thro’ North America, speaks with much freedom of Major-General Simcoe, then Lieutenant-Governor of Upper Canada.

“It must evidently appear to any person, who shall give the subject due consideration, that the conclusions which the Duke de Liancourt draws from his supposed communications with the Lieutenant-Governor (while living in his family) are at variance, and inconsistent with themselves; yet, as a servant of his King and Country, Major-General Simcoe deems it proper to say, that the principles which governed his conduct while in the administration of the Government of Upper Canada, were the reverse of what is insinuated by the Duke de Liancourt, and that he was actuated by the most sincere intentions to preserve peace, good neighbourhood, and good will between the King’s subjects and those of the United States; and he has ever been of opinion, in express contradiction to Mons. de Liancourt, that the most strict union between the two nations, is the real interest of each, and will mark the soundest policy and true wisdom in those who shall, respectively, govern their councils. Major-General Simcoe is so conscious of having personally acted upon those principles, during his administration of that Government, that he has claimed from the Duke of Portland and Mr. Pitt, protection and consideration, as having been the principal means of preventing hostilities with the United States, from the mode in which he executed the military orders he received in Upper Canada.

“In testimony of these premises, Major-General Simcoe begs leave, most respectfully, to offer this representation to the Honorable Rufus King, Minister plenipotentiary from the United States to the King of Great Britain.



SITE OF CHARLOTTEVILLE, AT LONG POINT, 1795.  
*(From a Drawing by Lieutenant Pilkington, copied by Mrs. Simcoe)*



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“Lieutenant-General Simcoe adds a letter of his father to the late Lord Barrington. This monument of the elevated views and statesman-like projects of an accomplished officer, will best elucidate the earliest impressions of his son, relative to America, and vindicate the motives of his conduct from any misrepresentation. The Duke de Liancourt Rochefoucault would therein find what incited the Lieutenant-General to prefer the Lieutenant-Government of Upper Canada to any other object that might be fairly supposed to be in his reach. The events of the American War have not annihilated the essential interests of Great Britain and the United States.”

(4)On April 29, 1795, on a Resolution in the House of Representatives that the Treaty should not be carried into effect, the vote stood 49 to 49: the next day, however, the Opposition failed, having only 48 to 51. Had it not been for Washington it seems probable that the Treaty would have been rejected by the United States. Simcoe seems to have received a printed copy of the Treaty from Phineas Bond, the British Chargé d’Affaires at Philadelphia, in a letter from that place, August 21, 1795. Wolf. I, 7, 60, 126. See Simcoe’s Despatch to Portland from Fort Erie, August 29, 1795, *Can. Arch.*, Q 281, 2, p. 392. Bond said it had been ratified by the President “within these few days”, but he had already received a copy by Aug. 13, *Can. Arch.*, Q 281, 2, p. 481.

(5)Simcoe’s Despatches to Dorchester from Navy Hall, July 30, 1795, *Can. Arch.*, Q 281, p. 390: and to Portland from Navy Hall, July 31, 1795, *do. do.*, p. 386.

One reason for forming a settlement was to counteract the anarchical principles which the citizens of the United States were trying to disseminate, *do. do.*, p. 386.

(6)Mrs. Simcoe, in *Diary*, p. 289, seems to place this on August 29, but Simcoe in his official Despatch to Portland from Fort Erie, August 29, enclosing his speech to the Indians, gives the date August 28, *do. do.*, pp. 392, 394: however, he did give an answer to the Indians, August 29, *do. do.*, p. 405.

(7)Charlotteville or Turkey Point was, by the Act (1801) 41 George III, c. 6, (U.C.), made and for a considerable time, (1801-1815) was the District Town of the London District until it was displaced by Vittoria. It was at the Assize Court at Charlotteville that Col. Joseph Ryerson made the remark that Mr. Justice Thorpe’s language in his answer to the Grand Jury’s Presentment was “more like that of a United Irishman than a Judge”, which led to the prosecution in 1807 of the only case of *Scandalum Magnatum*

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known in this Province. See my Article, *Scandalum Magnatum in Upper Canada*, Journal of American Institute of Criminal Law, Chicago, (May 1913) pp. 12-19.

It may be added that Colonel England, Officer Commanding at Detroit, writing from that place to Simcoe, August 20, 1795, said "from the several accounts I have received, there is reason to imagine that some of the Troops under General Wayne (I am informed four hundred) proposed to march immediately for either Turkey Point or Point Aux Chines." Wolf. I, 7, 52. See also information of Charles Tellier, a Canadian, *do. do.*, 169, 170.

(8)For the statements in the Text, see Despatches, Simcoe to Dorchester, from Navy Hall, July 30, October 12, December 9, 1795: *Can. Arch.*, Q 281, 2, pp. 390, 502; Q 282, 1, p. 53, Wolf. I, 7, 139, 260.

Simcoe to Portland, from Navy Hall, May 29 and August 13, 1795: *Can. Arch.*, Q 281, 2, pp. 369, 481.

Dorchester to Simcoe from Quebec, August 17 and November 5, 1795: *Can. Arch.*, Q 281, 2, p. 500; Q 282, 1, 45; Wolf. I, 7, 41, 200.

Portland to Simcoe from Whitehall, October 24, and December 6, 1795, *Can. Arch.*, Q 281, 2, pp. 382, 426.

Simcoe to Dundas from York, September 16, 1793, *Can. Arch.*, Q 279, 2, p. 331.

Dundas had, in his despatch to Simcoe of October 1793, *Can. Arch.*, Q 278 A, p. 39, said:—"Keeping in view the Defence of the Province, a station on Lake Erie for the security of the shipping of that Lake would be the next object (after the Capital and its security): Long Point appears to be well situated for this purpose but if as has been represented to me it is unhealthy the advantage of its situation would be rendered nugatory." The objection from unhealthiness was subsequently removed.

Portland in his Despatch to Simcoe of December 5 (or 6), 1795, *Can. Arch.*, Q 278 A, p. 85; Q 281, 2, p. 426, said: "Your idea of giving countenance and support to your proposed settlement in the vicinity of Long Point by a previous establishment of a small military detachment appears to me to be a very judicious arrangement: and the Gentlemen whom you mention as desirous with their followers of settling themselves on that important part of Lake Erie cannot fail to lay in that quarter the best and strongest foundations of attachment to the Crown of Great Britain and to that happy Constitution which they enjoy in common with us here."

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(9) See Peter Russell's statements, September 17 and 22, 1795, and other statements, Wolf. I, 7, 88, 95, 98, 139; also *Can. Arch.*, Q 281, 2, pp. 428, 502, 505, Simcoe's Despatch to Portland from Navy Hall, July 29, 1795, William Baker, Builder charged for disbursements for timber, tools, nails, iron, glass, shingles and other materials, and for pay sheets of Artificers and Labourers at Chatham £1, 752.8.3. Most of this had gone into the boats but in October, 1795, it was proposed to build a Block House for the residence of Baker and his assistants, Wolf. I, 7, 144, the existing Block House being in danger from the greater part of the bank between it and the River having fallen in, *do. do.*, 151.

The story of Chatham is interesting but too long to be gone into here—the following must suffice.

David William Smith, the Acting Surveyor-General, at a meeting of the Executive Council, held at Newark, June 20, 1795 (present, the Lieutenant-Governor and Messrs. Peter Russell and Aeneas Shaw) "laid before his Excellency the Lieutenant-Governor & Council two Plans for the Town of Chatham and the Lots in its Vicinity with sundry Petitions for Lots in that Township which were read accordingly, the Plans approved & the Petitioners names inserted on the Lots which were granted to them respectively & assignment directed to be prepared for them by the Act'g Surveyor General."

The persons to whom Lots were given were all strongly—even aggressively—loyal to British connection—most of them in or very closely allied to the official class.

### First Township, North Side.

First Concession  
E. 5. Matt'w Elliot  
Thos. McKee  
Coleman Roe

Second Concession  
M. 40 Wm. Mickle  
Dr. Harffy  
Simon Girty

### Second Township, North Side.

Wm. Baker  
Thos. Reynolds

### First Township, South Side.

First Concession  
Peter Curry  
Col. McKee  
D. 76 Thomas Duggan & D. W. Smith



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Second Township, South Side.

First Concession

Thos. Clarke

Wm. Thorne and G. 19 John Goudie

Wolf. Ex. Col. 2, 346, 7.

At a Council Meeting held at Newark, August 14, 1795, (present, Messrs. Russell, Grant and Shaw) Walter Roe, Clerk of the Peace for the Western District, sent in a Petition stating that he had served as a Midshipman in the Royal Navy from 1779 to the conclusion of the War since which time he had been resident in this and the London Province, and praying for 2,000 acres of land on the River Thames and a Town Lot in the reserve at Chatham.

“Order a Town Lot.”

Wolf. Ex. Col. 2, 344.

At a Council meeting held at Newark, August 17, 1795, (present, Russell, Grant and Shaw) the following persons were given one Town Lot each in the Town of Chatham

Col. McKee

Thos. Duggan

Lt. Thos. McKee

Geo. Ironside

Capt. Mathew Elliott

Ranald McDonell

Prideaux Selby

Thos. Alexr. Clark.

The Petitioner was Alexander McKee, who asked for the Lots for “himself and his friends.” Wolf. Ex. Col. 2, 352.

After Simcoe left the Province the scheme to make Chatham a real Town was abandoned—the workmen left some of the ships on the stocks (afterwards, tradition has it, burned for their iron by the neighbouring settlers) and only one person remained. Later there was a revival. John Howison, who spent two and a half years in Upper Canada in the second decade of the 19th century, says of Chatham (see my article, *Upper Canada in Early Times*, Canadian Magazine, May, 1913), “a spot called the town of Chatham. It contains only one house and a sort of church, but a portion of the land there has been surveyed into building lots and these being offered for sale, have given the place a claim to the appellation of a town. There are many towns like Chatham in Upper Canada and almost all of them have originated from the speculations of scheming individuals. When a man wishes to dispose of a piece of land or to render one part of his property valuable by bringing settlers upon the other, he surveys a few acres into building lots. These he advertises for sale at a high price, and people immediately feel

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anxious to purchase them, conceiving that their situation must be very eligible indeed, otherwise they would not have been selected for the site of a town."

<sup>(10)</sup>Letters from Simcoe from York, December 1, 1795, to Evan Nepean, *Wolf*. I, 7, 249: to John King, *Can. Arch.*, Q 282, 1, 42, also Despatch to Portland, same day, Q 282, 1, 39. He asked for transportation for himself and family in the spring coming.

<sup>(11)</sup>See Letter, Richard Cartwright from Kingston, February 6, 1796, to Littlehales, *Wolf*. I, 8, 42, "His Excellency was in a fair way of recovering his health": Letter, Phineas Bond to Simcoe from Philadelphia, February 15, 1796:—"I flatter myself . . . . that the return of winter effectually restored you to health and that you are now perfectly well", *do. do.*, 51: see *Diary*, pp. 301, 310. Peter Russell's Letter to Simcoe, March 9, 1796, *Wolf*. I, 8, 101, speaks of the unfavorable reports of Simcoe's progress to convalescence.

To show the slowness of the transmission even of official letters, it may be said that the Despatch of Dorchester to Simcoe from Quebec, November 22, 1795, announcing that Prescott was to be appointed Lieutenant-Governor of Lower Canada reached Simcoe only on February 19, 1796. *Wolf*. I, 8, 66: cf. *Can. Arch.*, Q 282, 1, p. 163.

<sup>(12)</sup>Despatch, Simcoe to Dorchester from York, March 3, 1796, *Wolf*. I, 8, 85.

Orders were given from Headquarters, Quebec, March 17, 1796, "The Troops in Upper and Lower Canada beyond our Treaty Line with the United States will hold themselves in readiness at a short notice to evacuate the different Posts with the Public Stores and all the King's moveable property of every description." *Wolf*. I, 8, 104.

## CHAPTER XX

### The Fifth Session

**T**HE First Legislature of the Province met in its Fifth and last Session at Newark, May 16, 1796.

The Lieutenant-Governor congratulated the Houses on the ratification of the Treaty with the United States and said that the Governor-General was making the preparations necessary to carry it into execution—it could not help to be beneficial to the Province. He suggested that the local knowledge possessed by the Members might enable them to devise some remedy for the scarcity of grain in the Province. The Houses made a dutiful reply and promised to consider regulations in respect of the scarcity of grain. This, however, was beyond “the application of Legislative wisdom” and they did nothing in that regard<sup>(1)</sup>.

During the Session, Simcoe for the first time submitted to the Legislature his General Accounts Current for the Civil Expenditure from the first establishment of the Province until December 31, 1795<sup>(2)</sup>.

The Legislature sat only till June 3, and the legislative grist was not large.

The first Act was for the better regulation of certain coins current in the Province and the amounts for which they should be legal tender. The coins current give us some conception of the difficulties of business transactions at the time. We find in gold not only the British Guinea fixed at £1.3.4 and the American Eagle, £2.10, but also the French Louis d’Or, £1.2.6, and Pistole, 18/, the Spanish Milled Doubloon or four Pistole piece, £3.14, and the Portuguese Johannes, £4 and Moidore, £1.10. Of

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silver we find the British Crown, 5/6, and Shilling 1/1, the American Dollar, 5/, the Spanish Pistareen, 1/0, the French Crown, 5/6, piece of 4 livres 10 sols Tournois, 1/8, piece of 36 sols Tournois, 1/1, and piece of 24 sols Tournois, 1/1, and the Spanish milled Dollar, 5/ equal to 4/6 Sterling<sup>(3)</sup>.

A penalty of one year's imprisonment and one hour in the pillory was provided for anyone counterfeiting or uttering any of these coins; a second offence to be a felony without benefit of clergy. The amount of copper money to be legal tender was limited to one shilling currency.

The next Chapter regulated Public Houses and the next was in respect of Courts of Quarter Sessions of the Peace and District Courts. This was rendered necessary by the impending abandonment of Detroit and Michillimackinac, and is the only statutory recognition of that important event.

The Act of 1793 directed the Court of General Sessions of the Peace for the Western District to sit in the Town of Detroit and provided that a Special Court should be held every year in the Town of Michillimackinac. The Act of 1794 directed that the District Court of the Western District should sit in the Town of Detroit. That of course would be impossible after the delivery of these places to the Americans fixed by Jay's Treaty as not later than June 1, 1796. Accordingly the sittings at Michillimackinac was abolished, and instead of Detroit the Courts were directed to sit in the Parish of Assumption (now Sandwich) until the Magistrates should decide to remove the place to nearer the Isle of Bois Blanc.

Bois Blanc itself was for long in dispute; although from the soundings Simcoe himself thought it within the American lines, it was not surrendered with Detroit in 1796, and in fact it was allotted to Britain by the Utica Award

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of 1822. In Simcoe's time many merchants in Detroit were anxious for a town to be laid out as near as possible to the Post which Dorchester had directed to be established on the Island and it was at this proposed town that the Courts were expected to sit<sup>(4)</sup>, but in fact they continued to sit at Assumption.

The reward for killing bears and wolves was cancelled—"it is found to be no longer necessary to encourage by a public bounty the destroying of bears in any part of this province"<sup>(5)</sup>.

Commissioners to frame new arrangements with Lower Canada in respect of the difficult matter of the share of duties to be paid to each Province, were authorized<sup>(6)</sup>.

And last came a new Assessment Act with a new and, it was believed, more satisfactory method of raising the money to pay the wages of the Members of the Legislative Assembly.

The Legislature was prorogued, June 3, with a Speech replete with emotion, urging the members "to recommend our Public acts to our fellow subjects by the efficacy of our private example and to contribute to this tract of the British Empire to form a Nation obedient to the Laws, frugal, temperate, industrious, impressed with a steadfast love of justice, of honor, of public good, with unshaken probity and fortitude amongst men with Christian piety and gratitude to God."

We can recognize the swan song in his concluding words:—

"Conscious of the intention of well-doing, I shall ever cherish with reverence and humble acknowledgment the remembrance that it is my singular happiness to have borne to this Province, the powers, the privileges, the principles and the practice of the British Constitution. This perpetual monument of the good will of the Em-

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pire, the reward of tried affection and Loyalty can best fulfil the just end of all Government as the experience of ages past proved by communicating universally, protection and prosperity to those who shall make a rightful use of its advantages.”

Just before prorogation, the welcome news had come of the final ratification of Jay's Treaty<sup>(7)</sup>.

### NOTES

(1)For the Speech from the Throne and Addresses, see Wolf. I, 8, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198: *Can. Arch.*, Q 282, 2, pp. 487, 490, 493: the Prorogation Speech is Wolf. I, 8, 240: *Can. Arch.*, Q 282, 2, p. 496.

(2)Wolf. I, 8, 206, 207.

(3)At this time and for long after the Provincial (Quebec or Halifax) currency was considered 9/10 of Sterling, i.e., 5/ currency was 4/6 Sterling. *Par* was accordingly \$4.44 4/9, the dollar being 5/ currency. This is still called par, the real and intrinsic value of the gold pound or sovereign now being \$4.8667, Sterling is said to be 1.09½, \$4.8667 being 9½% more than \$4.44 4/9. It may be interesting to compare values in the several Ordinances or Statutes. The first British Canadian Ordinance concerning currency was made at Quebec, September 14, 1764, by General Murray, Governor; the next at Quebec, March 29, 1777, by the Governor and Council. The latter of these of course had validity in the territory afterwards Upper Canada, the former in a small part of it.

#### —GOLD—

	1764	1777	1796
	dwt. gr.		dwt. gr.
Johannes of Portugal	(18.... 6) 4.16.0	4. 0.0	(18.... 0) 4. 0.0
Moidore of Portugal	( 6....18) 1.16.0	1.10.0	( 6....18) 1.10.0
Carolin of Germany	( 5....17) 1.10.0		
Guinea	( 5.... 4) 1. 8.0	1. 3.4	( 5.... 6) 1. 3.4
Louis d'Or	( 5.... 3) 1. 8.0	1. 2.6	( 5.... 4) 1. 2.6
Spanish Pistole	( 4.... 4) 1. 1.0		
French Pistole	( 4.... 4) 1. 1.0		( 4.... 4) 0.18.0
Milled Doubloon			
(4 Pistole Piece)			(17.... 0) 3.14.0
American Eagle	(11.... 6)		2.10.0

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## —SILVER—

	dwt. gr.		1764	1777	1796
Seville, Mexico or Pillar Dollar	(17.12)	6.0	Spanish	5.0	Sp. Milled 5.0
French Crown (6 livres)	(19. 4)	6.8		5.6	55.6
French Piece (4/6 Halifax)	(15.16)	5.6	(4 liv.) (10 sols.) (Tournois)	4.2	(4 liv.) (10 sols.) (Tournois) 4.2
French Piece (24 sols. Tournois)				1.1	1.1
French Piece (36 sols. Tournois)				1.8	1.8
French Ninepenny Piece		1.0			
Pistareen (Spanish)		1.2		1.0	1.0
British Shilling		1.4		1.1	1.1
American Dollar					5.0

## —COPPER—

Twenty British Coppers 1.0

The Silver American Dollar was first coined in 1794 under the Coinage Act of April 2, 1792, "of the value of a Spanish milled dollar . . . now current." The first American Gold Dollar appeared in 1849 under the Act of March 3 of that year. The first American Eagle appeared in 1795 under the Coinage Act of January 2, 1792; half Eagles appeared at the same time, quarter Eagles in 1796 and double Eagles in 1849.

The pillory being part of the punishment for a first offence against this Act, it may be mentioned that it has sometimes been said (e.g., by Mr. James Edmund Jones in his interesting and valuable work, *Pioneer Crimes and Punishments in Toronto and the Home District*, Toronto, 1924), "There is no record of its (the pillory's) having been in use here." This is an error: the official reports of the Circuit Judges to the Lieutenant-Governor of which there are many in the *Can. Arch.*, Sundries, (U.C.), contain no few instances of sentences involving standing in the Pillory.

Unless this sentence should be commuted, as sometimes occurred, it was executed. A case that created a great sensation at the time was that of Bartimus Ferguson, the editor of the *Niagara Spectator*, in whose paper (it is said, during his absence) appeared a letter signed by the celebrated Robert Gourlay. Ferguson was sentenced, November 8, 1819, to imprisonment for eighteen months and to stand in the public pillory between the hours of 10 a.m. and 2 p.m. in the first of these months; he was also to pay a fine of £50. Upon making a humble submission, he was relieved of a substantial part of the punishment.

(4)The cause of removal is very delicately put: "as it seems no

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longer expedient to hold the said Court in the Town of "Detroit", s. 3. The former Acts are (1793), 33 Geo. III, c. 3, (U.C.) and (1794), 34 Geo. III, c. 3, (U.C.).

For Simcoe's opinion see his Despatch to Dorchester, Navy Hall, May 29, 1796. *Can. Arch.*, Q 76, p. 120, also his Letter to Col. Mann, York, July 14, 1796, Wolf. I, 8, 296. Several merchants and others of Detroit applied to the Executive Council of Upper Canada for a Town to be laid out as near as possible to the Block House on the Island directed by Dorchester to be established there. This request was presented to the Council by Hon. Alexander Grant, one of the Executive Councillors, May 7, 1796; and it was resolved "That His Excellency the Lieutenant-Governor and the Honourable Executive Council think it for the Public Interest and Benefit of the Province that the wishes of the applicants be complied with" and further "That an Especial Executive Council be held on this important subject as soon as may be after the arrival of the Hon'ble Mr. Baby." Hon. Mr. Baby having arrived at Newark, at a meeting of the Executive Council held on May 25, 1796, "His Excellency the Lieutenant-Governor & Council having taken into further consideration the establishing a Town at Bois Blanc,

Resolved that Application be made to His Excellency the Commander in Chief for the purchase of the Huron reserve that a Town may be laid out therein."

June 5, 1796, Simcoe wrote to Dorchester "to request of Your Lordship to direct the Deputy Superintendent of Indian Affairs to purchase if it be practicable such part or the whole of the Huron Reserve in that neighborhood (i.e., near the island aux Bois Blanc) as seems best to be appropriated for a Town adapted to mercantile and other purposes." Wolf. I, 8, 242.

Dorchester acceded to the request and Thomas Aston Coffin directed Alexander McKee, Deputy Superintendent of Indian Affairs, to take the necessary measures to carry it into effect, and to report to General Robert Prescott who was to take command when Dorchester left. *Can. Arch.*, C. 250, p. 17.

Before anything was done, Simcoe had left Canada never to return; but, December 9, 1797, Hon. Peter Russell was able to inform him, "The British merchants at Detroit having solicited me to give them a town on that River where they may settle and carry on their trade with equal convenience, I purchased from the Indians the Gore near the Huron Church for their accommodation and named it Sandwich, and I am informed that several houses have been



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already built there and that it promises fair to become soon the most beautiful town in the Province". Wolf. I, 8, 410.

The subsequent history of Bois Blanc can be traced in *Can. Arch.*, Q 76, pp. 119, 120, 121, 122: Q 80, 1, p. 180: C. 250, pp. 17, 575: C. 254, pp. 39, 41, 126: C. 260, p. 511: C. 426, p. 216: C. 688, pp. 49, 76, 133, 136, 162, 169, 245: C. 726, p. 115: M 10, p. 98: M 15, p. 8. *Mich. Hist. Colls.*, XII, 260: XVI, 106, 111, 112, 135, 142-149, 151, 164, 189, 214, 615: XX, 457, 458, 513: XXI, 523: XXIII, 11, 12, 13, 21, 354, 414: XXV, 120, 124, 125, 127, 169: XXVI, 623. Wolf. I, 8, 260.

General Robert Prescott, Governor in Chief, writing to Mr. President Peter Russell from Quebec, April 11, 1797, says:—

"I hope you will excuse my declining to give my sanction to the purchase of the Huron Reserve which has been recommended by the Council of Upper Canada. The ground being wanted for Civil purposes I really cannot (as Commander in chief) take upon me to direct it to be purchased without having the authority of the Secretary of State for such a measure."

*Can. Arch.*, Sundries, U.C.

(5) This does not mean that there were no bears or wolves left in the Province. The notorious Joseph Willcocks, in his letters to Ireland, repeatedly speaks of them. E.g., writing from York, Upper Canada, June 29, 1801 to his brother (Sir) Richard Willcocks, he tells of an Indian killed by wolves after he had slain seven of them. Writing to him from York, November 3, 1800 he says:—"There was a great depredation committed the night before last by a flock of wolves that came into the Town. One man lost 17 sheep; several others lost in proportion." In another letter to him from York, August 31, 1800, he says: "There were two great bears visited us last week and took away two pigs, the least of which I assure (you) would weigh two cwt. We fired several shots at them but to no effect. They carried the pigs in their arms and ran on their hind legs . . ." *Willcocks MSS.*, in possession of D. W. Saunders, Esq., K.C.

Bay Street was at first Bear Street from a bear chase on it, and the story of Mr Justice Boulton's horses, Bonaparte and Jefferson, attacking a bear in their pasture on the Grange property is well accredited. Revd. Dr. Scadding's *Toronto of Old*, p. 308.

(6) Consideration of this will be postponed until the finances of the Province are dealt with in Chapter XXIII, *post* pp. 324, *sqq.*

(7) On June 1, *Diary*, p. 312: cf. Wolf. I, 8, 291.

## CHAPTER XXI

# Good-Bye to Canada—In England Again

IT was not many days after Prorogation that Simcoe received a positive refusal in respect of his plans to form semi-military settlements at Charlotteville and Penetanguishene, Dorchester stating "No more military Posts appear to me to be necessary"<sup>(1)</sup>.

He went with his family on June 16, 1796, by boat to the River Credit and thence to York: there he awaited with anxiety the answer to his application for leave of absence, having been advised by his physicians that he could expect to re-establish his health only in Europe. He felt, too, the extra burden cast upon him by the removal of Osgoode and the omission to send a successor<sup>(2)</sup>.

Leave reached him at York, July 14,<sup>(3)</sup> and he was notified that the *Pearl*, sailing on August 10, would carry him from Quebec to England.

Wednesday, July 20, he and his family took leave forever of Castle Frank and the next day boarded the *Onondaga* for the east: on the following Monday they arrived in Kingston and on the 30th at Montreal. From that place he took occasion to communicate with General Prescott and to assure him that should any circumstances arise requiring his presence in Upper Canada he should not hesitate to risk his remaining therein in proof of that duty and attachment which he bore to the King's interests<sup>(4)</sup>.

Leaving Montreal, August 2, they arrived at Quebec on the 5th. Detained there by reason of the absence of

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the *Pearl*, they embarked on the 10th September and set sail next day.

There was some fear of French Cruisers<sup>(5)</sup>, but fortunately this fear was not justified by the event and, October 13, they were safely landed at Deal. After spending a few hours there, they went to Dover and Canterbury, then to London and finally by coach to Exeter and Wolford Lodge.

When Simcoe arrived home he expected a long rest. He busied himself with the management of his estate; but he was still Lieutenant-Governor of Upper Canada and he kept his hand upon its affairs. Both he and those he had left behind fully expected an early return<sup>(6)</sup>.

Peter Russell, the Receiver-General, had become Administrator of the Government in the absence of the Lieutenant-Governor<sup>(7)</sup>: and he kept Simcoe *en rapport* with affairs in the Province and continually asked his advice.

All the Posts had been given up to the Americans<sup>(8)</sup>: the seat of Government had been ordered to be removed to York, where brick buildings were being prepared for the Houses and for the Court of King's Bench. Russell was preparing to go to that place<sup>(9)</sup>, notwithstanding the severe loss he had sustained in the burning of the residence he had nearly finished there. The troops were mostly removed from the Province despite Simcoe's strong protest to Dorchester that in "dismantling . . . the Province of Upper Canada", he had "not consulted His Majesty's civil interests or followed the intentions of the King's confidential servants respecting its military protection"<sup>(10)</sup>.

Prescott seems to have been as little regardful of the civil government of the Province as Dorchester had been: we find him forbidding Grant leaving his station to attend Council meetings, and a Council could not be

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held for a time. He also refused to allow Indian presents to be placed at York, or repairs to be made to the Huts at York; and Russell, hampered at every turn, longed for Simcoe's return<sup>(11)</sup>.

But Simcoe had sterner work to do. As a by-product of the French Revolution, the Blacks in San Domingo, the French portion of the beautiful Hispaniola of the Castilian adventurers, determined to be free. They rose against their former masters, and hideous scenes of outrage and blood occurred in every corner of the land. Both parties resorted to aboriginal brutality: reason seemed to have deserted her throne and wild cruelty reigned supreme—occasional instances of humanity and loyalty but made blacker the prevailing darkness. The Whites were forced further and further back and, 1791, in desperation they asked aid from Jamaica and other neighbours, in troops, arms, ammunition and food. A section of them made overtures to Governor (afterwards Sir) Adam Williamson of Jamaica to place their country under British protection. In common with most of the Jamaican planters who knew that insurrection and opposition to constituted authority had a way of spreading, he favoured the proposition and urged it upon the Home Government. They had too much on hand to send assistance from Europe, but finally in 1793<sup>(12)</sup>, they gave Williamson discretionary powers to take over such parts of the Island as the inhabitants might desire and to send from Jamaica a force sufficient to maintain and defend them.

Williamson undertook the task with enthusiasm. He made a descent on San Domingo in September, 1793, the armament consisting of the 13th Foot, seven companies of the 49th Foot and a detachment of Artillery, in all 870 rank and file, the first division of about 679 rank and file under Lieutenant-Colonel (afterwards Lieutenant-Gen-

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eral) John Whitelocke<sup>(13)</sup> landing at Jeremie, September 19, 1793. At first the invaders were successful, taking the Fort at the Mole of Cape St. Nicholas; but the French Republican Commissioners called the Blacks to their assistance, issuing a sounding declaration that every kind of slavery was abolished and that the former slaves were to consider themselves, and be considered, free citizens.

The Town of St. Nicholas joined the Republican cause and the promised co-operation of the planters failed. Whitelocke failed to take Tiburon and the dreaded yellow fever broke out among his troops. After varying success during the following months, a reinforcement arrived under General Whyte, May 19, 1794. Port-au-Prince fell; but yellow fever again broke out and in two months slew forty officers and six hundred rank and file. Whyte was succeeded by General Horneck, and in the following April, 1795, a reinforcement came in of the 81st and 96th and part of the 82nd Foot. These were also stricken by the fatal disease.

In May, 1795, Williamson arrived at Port-au-Prince, having in the previous October resigned as Governor of Jamaica and been appointed Commander-in-Chief of all the British West India possessions with the Order of the Bath.

In August came the remainder of the 82nd Foot—980 strong on landing; 350 remained alive in six weeks. In May, 1796, came 7,000 troops under Brigadier-General Howe, and there continued to be much desultory fighting. The Republicans were gaining on every hand; the British were discouraged and scourged by disease. Affairs were desperate and Pitt determined to send Simcoe to command.

Simcoe stipulated for and was promised by the Government and the King himself, that his family should be

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provided for if he should "perish in the mission which he was about to proceed upon . . . ."; he had been "obliged to quit a Southern climate even without contagion to preserve life" twice already<sup>(14)</sup>.

In other respects he was not so fortunate. He asked the Duke of York to be allowed to take with him "such officers as from personal attachment have offered themselves for this service": this he deemed necessary "to the preservation of my character and comfort." He particularly asked that Lieutenant-Colonel Talbot, his former Secretary, should be Quartermaster-General, saying "the multifarious duties that may call for exertion in that department under my Instructions cannot escape your Royal Highness nor the insufficiency of that Department in point of numbers." The Duke refused this most reasonable request, and Dundas, apparently misunderstanding a passage in Simcoe's letter, was about to involve him in a dispute with the Duke. Rather than have any dispute with the son of his King, he consented to take the San Domingo assignment without a staff of his own choice—"a submission, as I told the Duke of Portland on my return, I would not have made had (his beloved benefactor and friend) Sir Wm. Howe been Commander-in-Chief."

Simcoe had no hesitation in writing to his friend Ad-dington, who had informed him that Pitt had selected him for "the mission to St. Domingo for his integrity"—"happy and fairly dealt with should I have been, had I served solely under his directions or those of the Duke of Portland; but I soon found what I had been assured by officers of the first respectability would be the case, that Mr. Dundas and his office would make me feel that no authority but theirs was of any consequence or could be productive of public advantage or private reputation."

Before finally determining not to resign his Commission under the Great Seal he consulted his old friend,

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Lord Percy, now Duke of Northumberland, who gave him wise if amusing advice how to deal with incompetent or untrustworthy officers<sup>(15)</sup>.

His acceptance of the Commission came as a great shock to Mrs. Simcoe, but he determined to retain it. Appointed December 3, 1796, though he did not expect to live—but his father had died rather than quit his station: and *sequitur patrem*—he set sail from Portsmouth in H.M.S. *James*, a former Dutch vessel, a slow and heavy ship. Some ships of the French Fleet were about and two of them were actually seen one night but they did not attack as they had the option of doing. There was a “series of bad weather”, and after a passage of two months, he arrived at Mole St. Nicholas late in February, 1797<sup>(16)</sup>.

He soon left the Mole for Port au Prince to “diligently execute his functions” that he “might the more speedily return.” He had hopes of conquering not only the French but also the Spanish part of the Island. With characteristic energy, he at once proceeded to throw himself into the administration of the affairs, military and civil, of that part of the Island under British control. He went through his territory, personally examining into the situation. He cancelled the leases made by absentee planters, many of whom had gone to France or elsewhere out of the Island: he improved the Colonial corps and made other reforms: and he pressed the war with energy. ’Twas not in mortals to command success, but he deserved it; and he always contended that he was successful beyond all computation. He firmly asserted that for any apparent want of success it was not the fault of the soldiery, and he warmly resented and repelled the insinuation that they were less efficient than those in Wolfe’s army or those engaged in the Revolutionary Wars. Much indeed was due to the climate of the West Indies, much to

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the ravages of yellow fever, but more to those who were the directors at home and elsewhere, of the campaign.

So much was he feared in any case by the French that they had, the month of his arrival, called the celebrated Toussaint l'Ouvreture to the command of the forces<sup>(17)</sup>. Simcoe had to retire to the capital, leaving the fertile places to the enemy. Reports seem to have been made to London adverse to him, and at length, harassed and outnumbered by the enemy troops, worried and indignant at unjust and malevolent charges, he asked for leave of absence and returned to England<sup>(18)</sup>.

He was not generously treated: he was not allowed the ship to return to England which he had been promised; but had to use a vessel in which he "had to dread pestilence, shipwreck and imprisonment."

He was received by the Commander-in-Chief, not as a victorious officer, but as a culprit: the Minister, Dundas, to whose want of capacity he attributed the perilous condition of the country, did not choose to see him. He had even to meet—as he did without difficulty—the charge of abandoning his post. Junior officers whom he had superseded, were given regiments as were those whose military pretensions were unknown. No attention was paid to his representations of the practicability of the conquest of San Domingo and the ultimate good effect it must inevitably produce to the King's service, the safety of the British possessions in the West Indies and national commerce. He accordingly resigned his San Domingo Commission. At the same time he resigned his Lieutenant-Governorship of Upper Canada because he would not keep a position he could not execute, and he was determined not to return to Canada in a subordinate position. He had had enough of that experience.

It should be said that while he always believed that a return to the West Indies meant death, had his representa-



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tions been heeded, he was determined to return in the confident expectation that he could render great service *in universum genus humanum* by carrying into effect a scheme for the freeing of the negroes which was much in his mind, as it had been in Upper Canada some years before, and which he believed would unite the opinions of Pitt and Wilberforce as well as those of Addington and himself in the wisdom and practicability of its application.

It may well be that had Simcoe had his way, Emancipation in the British Empire would have been advanced thirty years.

He applied to the King for a Regiment as alms for himself and bread for his children: he had an interview with Pitt, the Duke of York and the Duke of Portland. The Duke of Portland told him that he destined him to succeed Prescott as Governor-General of Canada, and therefore he made no claim for remuneration as Civil Governor of San Domingo, as otherwise he would have done.

He received the command of the Western District in England comprising Devon and Somerset (except Plymouth), a service laborious and incessant but giving him the pleasure of serving with "English Generals and English Gentlemen." Having obtained from the King two cannons as a mark of His Majesty's appreciation of his military service, he withdrew to Wolford Manor and his District to await events.

He had on his arrival in England at once to take up with General Ira Allen of Vermont, the case of a vessel, the *Olive Branch*, loaded with military stores for that State which had been seized by the British authorities on the suspicion that these supplies were for the traditional enemy France<sup>(19)</sup>. He also was consulted concerning the claim of Benedict Arnold and his family to a grant of land in Upper Canada<sup>(20)</sup>.

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Notwithstanding Dorchester's veto, the settlement at Long Point went on apace, Russell being careful in his selection of persons for that purpose<sup>(21)</sup>.

Russell, the Administrator, continued to hope for his speedy return to Upper Canada and to ask for his advice in connection with the Province: and other officers had the same hope, even after it was currently stated that he had resigned<sup>(22)</sup>. As late as May, 1799, the Executive Council considered him, Lieutenant-Governor and ordered the Receiver-General to pay him half the Lieutenant-Governor's fees for Seals, i.e., for affixing the Great Seal to Grants, &c.<sup>(23)</sup> Mr. Justice Allcock, the scheme for a Court of Chancery being broached, besought his influence that he might be appointed Judge<sup>(24)</sup>.

It was currently reported in Upper Canada as well as in Lower Canada that he was to succeed Prescott, a rumor that did not receive its quietus until Prescott left for England in July, 1799, leaving the Lieutenant-Governor, Robert Shore Milnes, to carry on the Government.

### NOTES

(1) Despatch, Dorchester to Simcoe from Quebec, June 9, 1796, Wolf. I, 8, 253. Simcoe complained of this to Portland, June 18, 1796, *Can. Arch.*, Q 282, 2, p. 461.

(2) Letter to Phineas Bond from York, July 1, 1796, Wolf. I, 8, 290. He had been notified of the appointment of John Elmsley but Elmsley did not arrive till after Simcoe left the Province.

(3) The first reference I find in his own papers to leave being granted him is in his "Confidential" Letter to Peter Russell from York, July 18, 1796. Wolf. I, 8, 313, "the administration . . . will soon devolve upon you in consequence of His Majesty's gracious permission to me of leave of absence for the recovery of my health." But Mrs. Simcoe fixes the date as July 14 in the afternoon. *Diary*, p. 335. See Despatch Simcoe to Prescott, July 20, 1796, Wolf. I, 8, 318.

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(4) Letter to Prescott from Montreal, July 31, 1796. Wolf. I, 8, 324: and with Simcoe these were no conventional words destitute of real meaning.

(5) See Letter of Hon. Peter Russell, November 15, 1796. Wolf. I, 8, 347: *Diary*, pp. 354, 355: letter, James Rivington to Simcoe, New York, August 15, 1797. Wolf. I, 8, 392.

(6) Peter Russell, in his Despatch to the Duke of Portland, from Niagara, August 6, 1796, stating his intention to call the new Parliament for June, 1797, adds: "I shall hope before that period to resign my command to Lieutenant-Governor Simcoe". Wolf. I, 8, 320. *Can. Arch.*, Q 282, 2, p. 559.

Writing to Simcoe from Niagara, December 31, 1796, Russell says: "I flatter myself with the expectation of seeing your Excellency before April that you may open the Provincial Parliament in June". Wolf. I, 8, 355.

He sent Simcoe copies of his official Despatches. Wolf. I, 8, 367: and hoped that the statement that he had accepted the Governorship of San Domingo was not true, *do. do.*, 375. Even after his return to England from San Domingo the same hope was expressed. Russell to Simcoe from Niagara, September 13, 1797. Wolf. I, 8, 394, "Your return to this country being anxiously looked for". John McGill to Simcoe, York, September 27, 1797: *do. do.*, 399. McGill, writing him from York, February 24, 1798, says:—"It appears to be the general opinion that we may hope the honor of your Excellency's return to Canada early next summer as Governor-General of Canada: it is an event much wished for I am informed, in Lower Canada and has been announced in some of the United States Gazettes. I trust from my very heart that the report is well founded, *do. do.*, 421: June 5, 1798, he thinks the hope of Simcoe's returning to Upper Canada very small—an account had reached the Province of his resignation, *do. do.*, 432. Russell was pleased that no mention had been made of resignation in Portland's Despatches, York, October 15, 1798, *do. do.*, 442: May 20, 1799; he longed exceedingly for his return, *do. do.*, 463. He had asked Simcoe's influence to have him appointed a Puisné Justice, December 31, 1796, *do. do.*, 356: and later if Simcoe were to be Governor-in-Chief he wanted to be Lieutenant-Governor of Upper Canada.

(7) See Despatch, Simcoe to Prescott, July 20, 1796. Wolf. I, 8, 318: Letter, Russell to Simcoe, York, July 19, 1796. *Can. Arch.*, Q 282, 2, p. 567. The first meeting of the Executive Council after Simcoe's departure was on November 24, 1796, at which were

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present Russell and David William Smith (one of the two Special Executive Councillors, the other being John McGill). The only business transacted was the swearing in of John Elmsley, the new Chief Justice, he taking also the oath as an Executive Councillor. Elmsley had left his wife and family in Boston. Wolf. I, 8, 348.

(8)The last Post to be delivered was that of Niagara garrisoned with a detachment of the 5th Foot: that was given up to a detachment of American troops, August 11, 1796. Russell's Despatch to Portland from Niagara, August 20, 1796. Wolf. I, 8, 328: *Can. Arch.*, Q 282, 2, p. 572: also August 29, 1796, Wolf. I, 8, 332: *Can. Arch.*, Q 282, 2, p. 580.

(9)The usual sickness, now called aestivo-autumnal malaria, made its appearance in August. Letter, Russell to Simcoe from Niagara, September 22, 1796. Wolf. I, 8, 336: *Can. Arch.*, Q 282, 2, p. 583.

(10)Simcoe's Letter to Prescott, from Quebec, September 6, 1796: Wolf. I, 8, 333.

(11)Letter, Russell to Simcoe, from Niagara, November 24, 1796: Wolf. I, 8, 348.

(12)This seems to have been due to the efforts of M. de Charmilly, a man of great ability, who had been commissioned to communicate with the British Ministry at the instance of many of the principal planters of San Domingo. War had come on with France; De Charmilly went to Jamaica and himself saw Williamson.

(13)The same Whitelocke who made the disastrous attack on Buenos Ayres in 1807, was forced to abandon Monte Video and was cashiered on Court Martial the following year.

(14)Once from Charleston—once from Upper Canada, where he was unable to stand the terrible summer and autumn heat.

(15)“If the officer was not of too high a rank and I did not wish to trust him with a command, which in the regular course of duty came to him, I generally contrived to order some detachment which was not wanted, make it march a mile from camp and then sent him orders to return and this got rid of his hour of duty. If of an higher rank I used to send my Aide-de-Camp so that he might arrive at the place at about the same time and who, after having first reconnoitred the ground, if he saw occasion to make any alterations he delivered what he saw necessary as Orders from me . . . . It is a sad case My Dear Genl. where those who command instead of being assisted by the knowledge and experience of those immediately under them are obstructed in everything they would wish to attempt from their inexperience and ignorance . . . . This unfor-

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tunately happens oftener in our service than in any other power in Europe . . . .”

Letter, Duke of Northumberland to Simcoe, from Syon, December 11, 1796, MSS. Northumberland had been removed from the service in 1787 but as he says: “Like the old Huntsman, I still love the crack of the whip”. Letter, *do. to do.* Syon, June 11, 1801, MSS.

Simcoe seems to have been dissatisfied with his Aide-de-Camp as well as the remainder of the staff.

The statements in the Text are from MSS. letters from and to Simcoe in my possession.

A letter to his friend Addington, who had long known him and who had on his arrival from Canada hinted to him unofficially that “he should be glad to see me employed in forming and arranging the Yeomanry, Cavalry and Troops intended for our Internal Defence”, is illuminating. It is written, December 11, 1796, and contains the extract of a paper which Simcoe had delivered to Dundas in 1791 which fully proved his “ideas relative to the importance of the office of Quarter Master General being in the hands of an officer of strict integrity for whom the General ought to be personally responsible. My conversation with the Duke of York was to the same effect and that in his mind any improper sensations should have arisen from my letter founded upon the knowledge that he was unacquainted with the extent of my Instructions is certainly as cruel a circumstance as hitherto has happened in my military life . . . . I feel most severely in this respect . . . .”MSS.

(16)The date is given as March by several authorities: but I have before me a letter written by him to Speaker Addington from Mole St. Nicholas, February 23, 1797. In *Can. Arch.*, Q 278 A, 114, it is stated that he set sail for San Domingo, March 10, 1797.

(17)The story of San Domingo is taken largely from a work by Marcus Rainsford, formerly Captain in the Third West India Regiment, who was himself a prisoner and sentenced to death by the Black Troops. The work is entitled *An Historical Account of the Black Empire of Hayti* . . . . Albion Press, London, 1805. I have in many instances used the very words of Captain Rainsford and make this acknowledgment to avoid the imputation of any claim to originality. But I have also utilised other sources, e.g., *The National Dictionary of Biography*. Some earlier occurrences in San Domingo are narrated in a very curious book in French by Bellin, *Description des debouquemens qui sont au nord de l'Isle de Saint-Dominique*, Versailles, 1773.

## GOOD-BYE TO CANADA

Captain Rainsford's tribute to Simcoe is worth transcribing: "The writer cannot omit . . . paying his tribute of respect to this excellent and gallant officer. If all the abilities of the general, the suavity of the gentleman and the vigorous powers of a manly understanding may be expected to unite in one person, it is in Lieutenant-General Simcoe". *op. cit.*, p. 208 n.

Some of Simcoe's strategy will be found detailed in Wolf. I, 8, 383, 384.

The best consecutive account of the Black revolt I find in *Notes on Haiti* . . . by Charles Mackenzie, F.R.S., &c., London, 1830, Vol. II, pp. 18-73. Rainsford is somewhat discursive and disconnected. From Mackenzie's account, it appears that the San Domingan planters appealed first to the Earl of Effingham, Governor of Jamaica: the assistance granted was less than expected, but this lack arose from want of means. Then the appeal was made to Martinique from which no supplies were had.

Mackenzie had been H.B.M. Consul in Haiti: he does not mention Simcoe's name.

The Island was abandoned in 1798 and Williamson, who had sacrificed his own private fortune, was financially ruined.

<sup>(18)</sup>Several dates are given for his leaving the Island. In the Memoir of the Author prefixed to the New York edition (1844) of his *Military Journal*, the date is given as "the month of July", p. XVI: Scott in his *John Graves Simcoe*, gives "September 27th, 1797", p. 220: Read: *The Life and Times of General Simcoe*, quoting Rainsford, gives August, 1797: James Rivington, writing to Simcoe from New York, August 15, 1797, says:—"A week ago Capt. Chichester McDonell of the Fifth St. Domingo or Major-General Graham's Regiment, arrived here from Port au Prince with an account of your embarkation . . . ." Wolf. I. 8, 392. Peter Russell writes Simcoe from Niagara, September 13, 1797, that Osgoode had told him Simcoe "had sailed in good health from St. Domingo after having happily finished your campaign there with a large increase of reputation and honor", Wolf. I, 8, 394. John McGill, writing Simcoe from York September 27, 1797, says: "I learned through the channel of the Albany Gazette of your embarkation in good health for England on the 7th July after having beat and drove the enemy at all points and repressed avarice and peculation . . . ." Wolf. I, 8, 399.

The D.N.B., Vol. LII, p. 253. "In July, 1797, he returned to England . . . ."

Moore Hovenden, writing to him from St. Domingo, November

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2, 1797, says that he had landed there August 5th and found that Simcoe had returned to Europe a fortnight before. Wolf. I, 8, 408. There is the same difference in the account given of his state of health. I can find nothing to indicate that his health suffered materially in San Domingo.

The first letter I find written by him after his return is dated at Wolford Lodge, September 17, 1797. Wolf. I, 8, 397, where he says absence from home had prevented him "until of late" receiving Gen. Ira Allen's letter of August 29.

<sup>(19)</sup>See Simcoe's Letter to General Ira Allen from Wolford Lodge, September 17, 1797, Wolf. I, 8, 397.

Simcoe, in this letter, speaks of "a family compact which with whatever differences there may be in the modes of Government has always appeared to me to be the true interest of both nations", Great Britain and the United States.

See also Simcoe's Letter to Portland, Wolford Lodge, October 17, 1797, *do. do.*, 406.

<sup>(20)</sup>See, *inter alia*, *do. do.*, 406, 425, 428, 430: *Can. Arch.*, Q 284, p. 444. Simcoe does full justice to Arnold's services and says that he should be happy to serve him, notwithstanding the murmurs of the American Loyalists who did not forget his severe treatment of them when he was a Revolutionary officer. These objections were got over by the understanding that Arnold was not to live in Canada.

<sup>(21)</sup>Russell to Simcoe from York, December 9, 1797, Wolf. I, 8, 409, 410.

<sup>(22)</sup>E.g., Letters to him from John McGill from York, June 5, 1798, January 30 and May 27, 28, 1799: *do. do.*, 454, 465, 467: Simcoe to Russell, Wolford Lodge, July 21 and October 15, 1798, May 30, 1799, *do. do.*, 439, 440, 462: McTavish Frobisher & Co. to Simcoe, Montreal, October 15, 1798, *do. do.*, 438.

<sup>(23)</sup>£576.4.7½—the other half going to the *locum tenens*, the Administrator, Russell, *do. do.*, 453.

<sup>(24)</sup>*do. do.*, 458, May 8, 1799, Henry Allcock to Simcoe from York.

## CHAPTER XXII

### Simcoe's Latter Days

**I**N 1796, an Act was passed for raising a very considerable body of Cavalry to be enrolled and kept in readiness for service when called upon—one horseman and horse for every ten men. These were to be under call for drill, &c., and the service was sufficiently onerous<sup>(1)</sup>.

Mr. Speaker Addington had intended that Simcoe should have the command of this Force in the West of England and had unofficially announced this to him; but the exigency of San Domingo had induced Pitt to utilize his services in that Island<sup>(2)</sup>.

When he returned from San Domingo, as we have seen, he was given a more extensive command—the militia as well as the army and navy were largely increased in that year<sup>(3)</sup>.

All was not well with the Empire. Attempts made by Pitt in the previous autumn (1796) for peace with France, had totally failed: a run on the Bank of England followed and cash payments were suspended in February, 1797. While the victory off St. Vincent by Jervis was heartening, the Fleet at the Nore mutinied<sup>(4)</sup>, and the Dutch Fleet threatened invasion. Ireland was on the verge of open rebellion and the prospect was dismal. One striking proof of the seriousness of the outlook is furnished by the fall of Consols to 48.

Renewed attempts at peace were made in April, 1797; but in the following November, they again failed.

A rebellion broke out in Ireland in 1798, and it was necessary to increase the Navy. The victory of the Nile, August 1, a little relieved the tension, while the capture



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of the Dutch Fleet in the Texel assisted in the same direction in the following year. The unfortunate expedition to the Netherlands under the Duke of York disgracefully failed: peace negotiations offered by Bonaparte near the end of 1799 were refused by Grenville with the approval of Pitt, and the War with France went on.

During this time, Simcoe continued at his post, and apparently his health was restored, for no complaints of sickness appear in the numerous letters written to and by him. Towards the end of 1799, it was publicly stated in the newspapers that he was to command a force to be sent to support the Chouans of France; but this came to naught<sup>(5)</sup>.

Early in 1800, his close friend, Sir Charles Stuart, the conqueror of Minorca in 1798 (who, as we have seen, had in 1782 asked him to accompany him to Gibraltar but Simcoe's want of exchange had interfered) was instructed to sail for the Mediterranean with a force of 15,000 men and he asked Simcoe to go as second in command, reminding him of his statement that he desired to serve with him. Only three weeks' notice was possible. Simcoe replied that the condition of his wife, who expected to be confined in ten days, obliged him reluctantly to decline the friendly offer—he remembering the "severe shock which my sudden expedition to St. Domingo gave to her health."

Lord Grenville later joined in Stuart's offer. The child, Henry Addington (so named after the Speaker), was born, and Simcoe accepted, apparently too late, for the Duke of York had named another for the post, General Sir Henry William Paget (afterwards Lord Anglesey), who had been with the Duke in the Netherlands in 1799. On Stuart's urging the matter, the Duke consented to Simcoe going as Paget's superior and he was officially

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notified, April 2, 1800, that he was to go on the staff as a Major General with one aide-de-camp.

Simcoe did not go and Paget did. Stuart complained that instead of a reinforcement of 8,000 men which he had been promised, he was supplied with only "one thousand men and most of them felons afflicted with the jail distemper", so that he could only bully and not attack Egypt or Italy<sup>(6)</sup>.

Stuart returned from the campaign in ill-health. He was not reserved concerning the way he had been treated by the Ministry, and Simcoe was so outspoken that it was feared he had spoiled all his chances with the authorities.

When, on his return from San Domingo, Simcoe resigned his Governorship of Upper Canada, the Duke of Portland promised that he should succeed Prescott as Governor-General of Canada. Simcoe did not expect to be Commander of the Forces as well—that position being occupied by his friend, Edward, Duke of Kent<sup>(7)</sup>—but he always claimed the former position as his right. Time was passing, Simcoe was not very well off, his family had increased, and, in 1801, he began pressing for the fulfilment of the promise. He asked the Duke of Kent for his influence, but made it clear that he would insist on a Peerage. "The Peerage is the object for which alone I would willingly spend five years in the King's American Dominions, colonizing, legislating, and with the concurrence of your Royal Highness as Commander-in-Chief, establishing, I trust, on immovable foundations His Majesty's American Empire in Canada." Nevertheless, just as in 1796, he had "in a dying condition . . . undertaken what Sir R. Abercrombie had thought proper after its acceptance to decline" and had gone to San Domingo, so now he was willing to serve his sovereign in Canada<sup>(8)</sup>.

The Duke probably took the matter up with Adding-

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ton, but nothing came of it: Prescott, though absent from the Colony, remained Governor-General until 1807. The Duke was, the next year, 1802, made Governor of Gibraltar and his Commission as Commander-in-Chief in Canada ceased; no successor was appointed.

During the year 1801 and a little earlier, there were serious riots in the Somerset part of Simcoe's district owing to the distress of the poorer classes arising from the War. He was able in conjunction with some of the principal gentlemen of that quarter to devise such measures of relief as to put an end to that kind of trouble.

In the same year, Simcoe requested the reversion of the Lieutenant-Governorship of Plymouth, the existing incumbent, Colonel Campbell, being advanced in years and not likely to live long. The Commander-in-Chief, the Duke of York, termed the request a modest one, and promised so far as it depended upon him that Simcoe should have the position.

But this promise was not kept; the Duke appointed Lieutenant-General England to the position; and Simcoe had to console himself with the thought that he was being reserved for a better position<sup>(9)</sup>. Lord George Lennox, the Governor, was in delicate health, and that position Simcoe used all his influence to obtain. His friend, Henry Addington, had become Prime Minister in March, 1801, and was appealed to.

But Addington was having his troubles. The Treaty of Amiens signed in March was indeed triumphantly approved in the House of Commons, Pitt and Fox joining in its support; but Pitt never willingly took a subordinate position, and Canning and others kept urging that he should be Prime Minister.

A General Election was imminent. Simcoe went up to London and as it was understood that Mr. Francis Glanville, a Member for the Borough of Plymouth, who

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had been elected in 1794 and 1797, would not offer himself as a candidate, it was arranged that Simcoe should seek the suffrages of the election in Glanville's stead, as a strong supporter of the Government. Addington, however, asked him to wait for further instructions from him before taking any steps in that direction. Simcoe wrote Addington several times without reply, and concluded that Sir William Elford, the other member for Plymouth, would bring down verbal directions and that they would proceed to the canvass together. Through some misunderstanding, Sir William came down from London unknown to and without communicating with Simcoe and began his canvass alone. The same afternoon, Philip Langmead declared himself a candidate as a supporter of the Government. When Simcoe learned of this, he was extremely mortified—"every circumstance rendered a seat in Parliament desirable to" him,—but he feared that if he should offer himself also, the popular ferment was such that there was danger of some one being elected who would be less favorable to the administration of Addington than Langmead. He accordingly obtained from Langmead, in presence of the Mayor and others, a pledge to support the existing Administration; and abandoned all thought of standing for Parliament, although, he says, "the disappointment is incalculable . . . . I have only the satisfaction that I did not throw away the boon intended me"<sup>(10)</sup>.

The hope of succeeding to the Governorship of Plymouth came to nothing. Addington was forced in April, 1804, to give away to Pitt and Simcoe lost a powerful friend. He continued in his round of duty. His health failed, from time to time being improved by rest and a stay at Cheltenham Waters. Others were advanced—for example, he complains of "the flagrant job of General Ross having a Government"<sup>(11)</sup>—but he was passed over.

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He continued in the active discharge of his military duties although when in March, 1805, Sir James Craig was superseded in the command of the Eastern District, he considered his military career as finished: he thought that he had no military future owing "to the employment of the Scotch officers with so unaccountable a preference to the English nation"<sup>(12)</sup>.

Notwithstanding his gloomy view, what seemed the opportunity of his life was soon to come.

Pitt, who seems never to have cared for or appreciated Simcoe, died in January, 1806, having received his death blow from the news of Napoleon's astounding victory at Austerlitz. Lord Grenville was sent for by the King and overcame the King's determination to exclude Fox from office. Fox entered the Cabinet as Foreign Secretary, insisting that Addington, now Lord Sidmouth, should come in also—which he did as Lord Privy Seal.

Thus was formed the Cabinet of All the Talents, the Broad-bottomed Administration, to last till Fox's death in the following September<sup>(13)</sup>.

India had been troubled for some time by the Second Mahratta War. Cornwallis, sent out by the Court of Directors of the East India Company as Commander-in-Chief and Governor, with the determination "to bring this wretched and unprofitable war to an end", died on his way up-country, October 5, 1805, and was succeeded as Commander-in-Chief by General (afterwards Viscount) Lake in February, 1806. Lake did not approve of the policy of abandoning hard won territory, and did not hesitate to say so. But a Treaty had been signed, November, 1805, which put an end to this Second War with the Mahrattas, and Lake was allowed to give up his command<sup>(14)</sup>.

The Government of India at that time was peculiar. While in name the East India Company had full imme-

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mediate control, Pitt's East India Bill of 1784 (amended in 1793) provided for a Board of Control (commonly called the India Board), composed of six Privy Councilors to have control over all the British Possessions in the East Indies and the affairs of the East India Company. On the Board as constituted in February, 1806, was John Hiley Addington, a brother of Lord Sidmouth's and a close friend of Simcoe's. We need not search far to account for the fact that Simcoe came to be considered. He had, moreover, had experience in dealing with "natives" in Upper Canada, and there were already mutterings of insubordination at Vellore and Wallajabad. He was offered the command vacated by Lake: Lake had left behind him "a reputation for adventurous valor and high feeling which will not be forgotten"<sup>(15)</sup>, but Simcoe had no need to fear comparison even with him.

He accepted the assignment in July and began to make all preparations for departure. But he was fated never to see India.

Napoleon after Austerlitz was naturally more aggressive than before. Fox had been cured of his penchant for the French and recognized the absolute necessity of resisting Napoleon's schemes with the utmost vigor. Hopes of a peace treaty disappeared early in the life of the new Administration. Napoleon was set on avenging the defeat of Trafalgar, and determined to invade Portugal with the army of 30,000 men then stationed at Bayonne. This came to the attention of the Administration early in August while Simcoe was still preparing for the East. "From perfectly reliable information it was believed that it was the object and intention of Bonaparte to dethrone the royal family and to partition Portugal, allotting one part to Spain and the other to the Prince of Peace or to the Queen of Etruria. The Ministers, thereupon resolved to send an army to the Tagus to be there

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met by a competent naval force, the whole to be intrusted to the command of Lord St. Vincent and Lieutenant-General Simcoe with full powers, conjointly with Lord Rosslyn, to negotiate with the Court of Lisbon."

The celebrated Henry (afterwards Lord) Brougham was attached to the Commission as Secretary and (unofficially) as fourth Commissioner. St. Vincent, who was cruising off Brest with the Channel Fleet, received orders to proceed to Lisbon; and soon he was at anchor opposite that city with a Squadron of six sail of the finest ships of the line, six being the number to which the British were restricted by treaty to have in the Tagus at one time. The remainder of the Channel Fleet and the Squadron off Ferrol were held in readiness to reinforce the detachment if required. A large and well-appointed army was assembled at Plymouth ready to sail for Portugal at a moment's notice. Simcoe and Rosslyn with Brougham and their Staffs were sent to join St. Vincent and, entering into communication with the supine Court of Lisbon, to endeavor to rouse it to a sense of the danger and induce it to adopt the best means of resisting with the cooperation of Britain. They arrived at Lisbon, August 25, and found St. Vincent with his Squadron at anchor in the Tagus.

On the voyage out on H.M.S. *Illustrious*, 74, Simcoe had for a time shown his usual vigor; he had discussed with intelligence and ability the object of the mission with his colleagues and was able to make his influence felt. But towards the end of the voyage he was taken ill; and after his arrival, the malady increased so rapidly that it was considered imperatively necessary for him to return at once to England. He resisted for a time, but it was not long before he recognized the wisdom of the advice of his physicians. The *Illustrious* was again put in commission and set sail for Torbay, arriving there, October

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20th. A sloop was there prepared for him, and it took him up the River Exe to Topsham the following day. The next day, he was taken by carriage to the house of Archdeacon Moore in the Cathedral Close at Exeter, where he died, October 26th, 1806<sup>(16)</sup>.

He was buried by torchlight on the evening of November 4th at the family seat, Wolford Lodge.

Some years later his grateful County, Devon, commissioned the celebrated sculptor, John Flaxman, R.A., to execute a becoming memorial, and this monument stands in the South Choir Aisle of Exeter Cathedral. The inscription reads:—

“SACRED TO THE MEMORY OF.  
JOHN GRAVES SIMCOE.

Lieutenant General in the army and  
Colonel of the 22nd Regiment of Foot,  
Who died on the 26th day of October, 1806,  
Aged 54,

In whose life and character the virtues of  
the “Hero,” the Patriot and the Christian,  
were so eminently conspicuous, that it may  
justly be said he served his “King” and  
his country with a zeal exceeded  
only by his piety towards his God.”

At the foot of this monument is another inscription:—

“During the erection of this  
Monument  
His eldest son,  
FRANCIS GWILLIM SIMCOE,  
Lieutenant in the 27th Foot.  
Born at Wolford Lodge, in this  
County,  
June 6th 1791. Fell in the  
Breach at the Siege of Badajoz  
April 6th 1812, in the 21st year  
of his Age.”



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Just north of the North-West Rebellion monument in Queen's Park, Toronto, is a statue of Simcoe. On 27th May, 1903, in presence of His Excellency the Earl of Minto, His Honour William Mortimer Clark, and a large gathering of spectators, this monument to the memory of the first Lieutenant-Governor of the Province of Upper Canada, was unveiled. His uniformed figure in bronze, one hand resting on his sword hilt, and the other holding his helmet, surmounts a granite pedestal, on the front of which is the word "Simcoe" encircled by a wreath of acanthus leaves.

Wolford has now passed entirely out of the Simcoe family, in whose possession it had been since the eighteenth century. Mr. Linton Simcoe, who on the death of Mrs. John Kennaway Simcoe, widow of the General's grandson, in 1920, inherited the fine old estate, was unable to retain the property, which, with the exception of "Windsor" farm was sold some months later. Various changes followed until finally General Kemball acquired Wolford. He had the stately, beautiful house demolished, erecting on the site, and of the same stone, a smaller, less dignified residence.

A pathetic link with the past still exists, however, in Wolford Chapel, built by Simcoe in 1800-2, where once stood the ancient chapel of "Wulphere", which belonged to the Cistercian order of monks. At its opening services, the Vicar of Dunkeswell was asked by Simcoe to officiate:—

"Dear Sir:—I wish to open our chapel with Divine service on Monday next at 11 o'clock, before our most valued relative, Mrs. Graves, returns to Bath. I shall be obliged to you for a sermon on the occasion, and I should wish the text to be "As for me and my House, we will serve the Lord", an inscription that hereafter will be placed in the church. I have not been able to finish the building, in fact it was built in the year 1800, a circumstance, the beginning of a century, to which if you think proper you may allude, and also to

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the tremendous apostasy of the antecedent times,—under the impression of which, a principal reason for my erecting this building arose in my mind, that I might convey the strongest sense of my own belief and my most earnest hope and endeavour that my posterity might “serve the Lord.” The Chapel stands on the ancient precincts of a former church, and over the bones of those who have departed centuries ago; circumstances that led me to prefer this site to the convenience of placing it adjoining the house.

Most faithfully yours,

J. G. SIMCOE.”

To the Revd. J. Pratt.

In the building which meant so much to him, Simcoe and most of his family are buried. Simple mural memorial tablets, set into the foot of the walls, record, *inter alia*, the date of death and the place of interment. The tablet of Simcoe, next that of his wife, reads:—

“Sacred to the memory of Lieut.-Gen. John Graves Simcoe, who died October 26, 1806, aged 54. His mortal remains were buried at the foot of this stone six years after he had erected this chapel to the glory of God and the manifestation of the purpose in which he lived and died. ‘As for me and my house, we will serve the Lord’. He left a widow and nine children to lament his loss.”

An atmosphere of neglect and disorder fills the interior, a painful contrast to the old days when Wolford was astir with life, and when at Sunday services congregations from scattered farms and hamlets gathered. Decay and dampness are doing their work. The entire interior is a mute appeal for preservation of the chapel which should still be a memorial to one who faithfully served his country and his God<sup>(17)</sup>.

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## NOTES

(1) (1796), 37 Geo. III, c. 6, (Imp.) Tarleton made a very strong speech against the measure, urging the ancestral ways, and saying that 100,000 men were already under arms and a navy equal to any in the country's history; but he lost on a division, 140 to 30: 32 *Parl. Hist.*, coll. 1241-1255, November 2, 1796; the Bill became law, November 11, 1796.

(2) The well-known quasi-mathematical couplet not unfairly describes the relative ability of Pitt and Addington:—

As London is to Paddington  
So Pitt is to Addington.

(3) See (1796), 37 Geo. III, cc. 3, 4, 5, (Imp.).

(4) The Duke of Northumberland, writing to Simcoe from Bath, June 22, 1797, expressed the pious hope that Parker, the principal ring leader in the meeting at the Nore, then being tried by court-martial, would be hanged. Wolf. MSS. He was not disappointed; Parker was hanged at Sheerness, June 30, 1797.

(5) See letter from Duke of Northumberland to Simcoe from Northumberland House, December 6, 1799. Wolf. MSS. The Chouans were the French in the western part of France—the Vendée proper, Lower Poitou, Anjou, &c.—who, strongly religious and monarchial, took up arms against the Republicans. This was the second period of the Chouans in which the leader was Georges Cadoudal; but in 1799 he had to flee to England. It was then that an expedition to be led by Simcoe was suggested, but the counter-revolution came to an end early in 1800 and nothing was done by Britain.

“Chouan” has been confidently put forward, apparently without real foundation, as the original of the Masonic word, “Cowan.”

(6) Admiral Thomas Graves, a relative of Admiral Samuel Graves, describes the ships' company as the “dregs and refuse of large Towns”. Letter to Simcoe from H.M.S. *Cumberland* at Spithead, October 12, 1800. Wolf. I, 10, 21.

(7) Not only did he think that the Duke of Kent would continue to be Commander-in-Chief, but even if the Duke should return to England, there was in Canada, Col. Thomas Carleton, Lord Dorchester's brother, Simcoe's superior in rank. See Simcoe's letter to the Duke of Kent, November 24, 1801. Wolf. I, 10, 40. But Carleton preferred to remain Lieutenant-Governor of New Brunswick: he left the Staff, “having preferred that to the necessity of remov-

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ing from his farm and establishment at Fredericton, his residence at Halifax being insisted upon in case he remained on the Staff in his proper rank". Letter from the Duke of Kent to Simcoe from Kensington Palace, December 13, 1801, Wolf. I, 10, 47: Col. Carleton was Lieutenant-Governor of New Brunswick from 1784 to 1803.

(8) See letter of November 24, 1801, *ut suprâ*.

(9) Simcoe shared and did not hesitate to express the common view that the appointment of General England unsolicited had been made to establish a precedent in favor of General Whitelocke when he should become a Lieutenant-General. Whitelocke was brother-in-law of Matthew Lewis, Deputy Secretary at War, and owed most of his success to the influence of Lewis. He was at this time Lieutenant-Governor of Portsmouth; but though he became Lieutenant-General in 1805, his disgraceful failure at Buenos Ayres prevented his advancement. Simcoe's letter to Addington from Exeter, April 18, 1802. Wolf. MSS.

(10) Sir William Elford and Philip Langmead were duly elected, 36 *Parl. Hist.*, col. 926. See as to the elections, *House of Commons Paper*, Session 1878, No. 69, pp. 196, 202. Some of the information in the text, I owe to the kindness of the Clerk of the House of Commons, Sir Thomas Lonsdale Webster, K.C.B.

"The return of Members of Parliament (*House of Commons Paper*, Session, 1878, No. 69) has on page 202, referring to the Parliament summoned to meet on 12th July, 1796, and dissolved on 29th June, 1802, the following entry:—

<i>Name</i>	<i>Date of Return</i>	<i>County, City, etc.</i>
Francis Glanville, esq., <i>vice</i> Sir Frederick Leman Rogers, bart., deceased.	} 7th July 1797	Plymouth Borough.

On page 196, referring to the Parliament summoned to meet on 10th August, 1790, and dissolved on 20th May 1796 is this entry:—

Francis Glanville, esq., of Catchfrench, County Cornwall, <i>vice</i> Benjamin Bond Hopkins, esq. deceased.	} 11th February 1794	Malmesbury Borough.
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The member returned with Mr. Langmead to the Parliament of 1802 for Plymouth Borough is given as Sir William Elford, bart. He was returned for Plymouth in the previous Parliament with Sir Frederick Rogers, who was succeeded by Mr. Glanville."

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The following letter, written about this time, sufficiently indicates some of Simcoe's activities, hopes and disappointments:—

Wednesday, August 1st, 1802.

“Dear Walcot:—

“I waited for the arrival of Mrs. Graves before I answered that part of your letter which relates to Mrs. Gwillim's monument.

“Upon consultation, it is agreed that the monument should be as plain as possible, *perfectly* agreeing with the inscription. Now, if you will send me the inscription and say what you allow for all expences, I will undertake to execute the business from Bristol or Bath, in the course of the year.

“In respect to Aldwinckle, I have so fully expressed my ideas that I have nothing further to communicate on that head but my hopes that it will speedily be finished.

“I am unwilling to lock up Eighteen Hundred Pounds, by contract, although I have no object that for sometime may call for it.

“I consider five per cent as the probable interest to be obtained upon mortgage in this County—should that sum be divided into Five Thousand Pound lots.

“I have purchased a Manor and Estate near my house, for which I have partly paid, taking up the residue, Five Thousand Pounds at five per cent. This may or may not be paid off, provided I had similar interest from Lord Lilford.

“The enclosure of a Commons is of very great advantage to me. The Commissioners who reduce all its parts to money, for the purpose of division, have estimated my allotments in their present state, at upwards of Five Thousand Pounds per annum; and I have purchased all that has been sold, and mean to bid for the remainder that is to be sold to pay the expences; the amount will be less than Five Thousand Pounds. My wishes have been much attended to in the division and my Estates of Wolford, Bywood and Windsor will be united by these allotments, being nearly ten thousand acres in a ring fence.

“The three Manors and the hundred covers many miles and is the best partridge and woodcock country in Devon. I wish you could come and see us and suggest agricultural improvements. I have no estate that does not pay me nearer five than four per cent; and had I no family to provide for, for which purpose it is right to accumulate from income, I could extend my purchases at an immediate four per cent, to any amount.



STATUE OF JOHN GRAVES SIMCOE, QUEEN'S PARK, TORONTO



## SIMCOE'S LATTER DAYS

"We purpose coming to town in the Autumn for the purpose of hiring, if not purchasing a house, as may seem most advisable.

"I had a right to expect to have been continued in employ or to have commanded in Chief in Ireland; but Mr. Addington told me that was "The Intentional Government when Ireland was in danger",—be it so, no man has more prosperously attained the object of his public life than myself, and, I thank God, without bestowing a thought on the unworthy treatment I have met with, from Ministers.

"I paid my duty at Weymouth, and met as usual, with the most kind treatment, from the best friend I have ever known; His Majesty advised me not to be in a hurry in selling, as many persons must soon want to purchase Estates on their return from foreign stations, and told me to have my Estate valued, above all things.

"He was much pleased with my informing him how much the Estate was enhanced by Mr. Have's judgment respecting the woodlands.

"I write this in our Grand Jury Room for the purpose of its being franked.

"Most affectionately yours,

J. G. SIMCOE."

<sup>(11)</sup>Letter, Simcoe to Addington, from Exeter, January 9, 1805. Wolf. MSS. This was not Alexander Ross, the great friend of Lord Cornwallis, but Andrew Ross who was sent to Gibraltar in 1802: D.N.B., Vol. 49, p. 257. There he did very well. It would seem from a letter to Simcoe from Addington's brother that Lord Ross took an interest in him. Letter from Pay Office, July 30, 1803. Wolf. MSS.

<sup>(12)</sup>Simcoe's letter to Addington, now Lord Sidmouth, December 3, 1805. Wolf. MSS.

The Duke of Northumberland long before had in his letters to Simcoe complained of the unjust preference given to the Scot, and undoubtedly there was much jealousy between the officers of the two nations. There were in York, the little Provincial Capital of Upper Canada, a like animosity and jealousy between the Scots and the Irish. Col. Thomas Talbot wanted to be appointed a Legislative Councillor "to check the *Scotch* faction": Letter to Simcoe from Talbot, York, September 21, 1804. Wolf. I, 9, 104: while John McGill wrote to Simcoe from York, July 20, 1806: "Mr. Burns, Clerk of the Crown is dead; he fell a martyr to brandy and water. I hope



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they will send out some person to fill the situation, but not an Irishman. We have more than enough of them here already". *do. do.*, III.

<sup>(13)</sup>Sidmouth himself resigned from the Cabinet in February, 1807, when it was proposed to open Commissions in the Army and Navy to Roman Catholics and Dissenters. He was wholly in accord with Simcoe in his views of the Church of England.

<sup>(14)</sup>Lake's failure to take Bhurtpore in January-February, 1805, which has been described as "a memorable instance of a British army in India having to turn back with its object unaccomplished", does not seem to have been harmful to his reputation at the time. Mill, *History of British India*, London, 1840, Vol. VI, p. 605, has trouble in understanding "the difficulty found by this victorious army of subduing the capital of a petty Rajah of Hindustan". Lake and Sir George Barlow, the temporary Governor-General, were entirely opposed in opinion on many matters of extreme importance. Sir John Malcolm, in his *Political History of India from 1784 to 1823*, London, 1826, Vol. I, pp. 356-385, gives a graphic account of their differences. See also Mill, *op. cit.*, Vol. VI, pp. 658-683: Thornton, *British Empire in India*, London, 1843, Vol. IV, pp. 43-59. It is the consensus of opinion, now, that Lake was right; but Barlow probably had no choice under his instructions. Thornton, *op. cit.*, Vol. IV, p. 56.

<sup>(15)</sup>The insubordination, after being apparently subdued, broke out in a flame of open mutiny and sedition at Vellore in July, 1806, and was quelled without much trouble or delay. Thornton, *op. cit.*, Vol. IV, pp. 59-78.

<sup>(16)</sup>The date of his death is variously stated.

The *Annual Register* for 1806, p. 224, says that he "died a few hours after he landed": the American edition of his Journal, p. xvii, says, "shortly after his arrival at Torbay in Devonshire"; the D.N.B., LII, p. 253, and Duncan Campbell Scott: *John Graves Simcoe*, Toronto, 1905, p. 221, October 26. Read, *The Life and Times of General John Graves Simcoe*, Toronto, 1890, p. 301, "shortly after his arrival in England", and quotes from the *Upper Canada Gazette or American Chronicle*, a paragraph which would make the death either November 4 or October 28: Robert Dymond, *Exeter and Its Neighbourhood under George the Third*, p. viii, October 25.

<sup>(17)</sup>Since this was written Wolford Chapel and its burying ground with the graves of Simcoe, his wife and children have, largely

## SIMCOE'S LATTER DAYS

through the energy and patriotism of the Revd. Alexander Sharpe, M.A., of St. Barnabas, Plymouth, been bought by "The Western Morning News" of Plymouth and Exeter in order to preserve them as a place of pilgrimage for Canadians. In the Chapel are Simcoe's Bible and Book of Common Prayer, both on their cover bearing the inscription "Wulphere Church, A.D., 1800." See *The Western Morning News*, Saturday, September 25, and Monday, September 27, 1926, which contain a full description of the chapel.

Canadians generally and citizens of Toronto perhaps more particularly owe a debt of gratitude to The Western Morning News and the Revd. Mr. Sharpe (who, it may be mentioned, is a Canadian).

## CHAPTER XXIII

### Finances of the Province

**A**FTER the famous Declaratory Act of 1766, no one in the British World imagined that the Imperial Parliament considered itself limited in its power of taxing any property within the British dominions: but when Parliament in the same year imposed certain duties upon certain specified articles, it was provided that the duties on such goods imported into any British American Colony or Plantation, while they should be paid into His Majesty's Exchequer, were to be entered and kept separate from all other moneys and be applied "towards defraying the necessary expenses of defending, protecting and securing the said British Colonies and Plantations in America."

The American Revolution, beginning formally with the Declaration of Independence in 1776, brought about an even more stringent self-denying ordinance, Parliament enacting that no duty, tax or assessment should be levied payable in any of the American Colonies or Plantations except such as were expedient to regulate commerce, "the net produce of such duties to be always paid and applied to and for the use of the Colony, Province or Plantation in which the same shall be . . . levied, in such manner as other duties collected by the authority of the . . . General Courts or General Assemblies . . . are ordinarily paid and applied."

When the Canada or Constitutional Act was passed in 1791, it was thought proper to reserve to the Imperial

## FINANCES OF THE PROVINCE

Parliament the power of regulating or prohibiting or imposing duties for regulating navigation or commerce between the two Canadas or between either Province and any other country, or of giving the Provincial Parliament power to vary the law; but the important proviso was made that the net produce of any duties thereafter imposed should be for the use of the Provinces and at the disposal of the Provincial Parliaments.

In 1774, when the enlarged Province of Quebec was formed by the Quebec Act, Parliament by an Act of the same year provided for duties over and above all existing duties, and upon liquors, molasses and syrups imported into that Province (which, it will be remembered, included all the territory afterwards Upper Canada) and also for fees for inn licences to be paid into the hands of the Receiver-General of the Province "for the future disposition of Parliament." All this legislation was in force when Upper Canada began her provincial career, 1791-2.

No duties were imposed by the Imperial Parliament under the provisions of the Canada Act: and that may here be passed over. Accordingly the Provincial Parliaments had no fund to draw upon.

But there were certain funds available for the use of the Provinces, namely those imposed by the Acts of 1766 and 1774. These were not paid into the hands of any Provincial Officer, and were at the disposal, not of the Provincial Parliaments, but of the Imperial Parliament.

This Parliament recognized the situation and provided a sum for the use of the Province each year.

— 1 7 9 2 —

For the year 1792, the House of Commons voted £6,565.7.0 "for the Civil Establishment of the Province

## JOHN GRAVES SIMCOE

of Upper Canada"<sup>(1)</sup>. The money was to be spent according to the following Estimates:—

Salaries—

Lieutenant-Governor .....	£2,000
Chief Justice .....	1,000
Attorney-General .....	300
Solicitor-General .....	100
Two Judges of the Common Pleas at £500 per annum each .....	1,000
Clerk of the Crown and Pleas .....	100
Two Sheriffs at £100 each .....	200
Secretary of the Province and Register .....	300
Clerk of the Council .....	100
Surveyor of Lands (no salary) .....	
Receiver-General of Revenue .....	200
Five Executive Councillors .....	500
Naval Officer .....	100
Agent .....	200
	£6,100

These salaries may be called ordinary; but there was an extraordinary item for

Expenses in passing a Commission under the Great Seal, appointing Guy, Lord Dorchester, Captain-General and Governor-in-Chief in and over the Province of Upper and Lower Canada in America and the Commission of the Lieutenant-Governor of the latter Province .....

465.7.0

In all £6,565.7.0

Some of the items for salary call for remark. While there were a Chief Justice, William Osgoode, and an Attorney-General, John White, there was no Solicitor-General, the first Solicitor-General of the Province being Robert Isaac Dey Gray, appointed in the fall of 1794 and sworn in in July, 1796<sup>(2)</sup>.

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The Courts of Common Pleas, one in each of the four Districts, had as Judges, laymen who were paid by fees except in the District of Hesse in which there was but one Judge and he a lawyer, William Dummer Powell. It is not quite certain how the error arose<sup>(3)</sup>.

There was a Clerk of the Crown and Pleas, David Burns, but there were four Sheriffs, one for each District. The Secretary of the Province and Register was William Jarvis; the (acting) Clerk of the (Executive) Council was Edward Baker Littlehales. The Surveyor of Lands was nominally Holland, the Surveyor-General of Lower Canada, without further salary, but David William Smith was Acting Surveyor-General: the Receiver-General was Peter Russell: the Executive Councillors were Osgoode, Russell, James Baby, Alexander Grant and William Robertson. Robertson never took his seat and there were only four Executive Councillors in 1792<sup>(4)</sup>.

The charge for the Commissions to Dorchester and Simcoe was in favour of certain civil servants at Westminster, much of whose emolument came from fees<sup>(5)</sup>.

The Lieutenant-Governor, Attorney-General and Secretary added to their salary, fees for the grant of lands and from other sources. The Attorney-General had also fees for conducting criminal prosecutions at the Courts of Oyer and Terminer, and he was allowed to practise law privately. The Chief Justice made a little money in the allowance for travelling expenses, &c., on Circuit.

But from the very beginning, the pay of Provincial Officers was wholly inadequate, and the inadequacy sometimes gave rise to irregularities and occasionally to scandal. Jarvis and Simcoe were both implicated, but this was later.

The vote of £6,565.7 was by no means all the money that Upper Canada cost Britain. There were the Queen's Rangers and other Forces, military and naval, kept up

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in the Province, paid for out of the military chest. Indians received gifts and Officers of the Indian Department were paid, in fact outside of the actual civil administration nothing was paid for out of this vote. Moreover, the Lieutenant-Governors of Upper Canada were authorised to draw upon the military chest at Quebec<sup>(6)</sup>. It would not be an extreme estimate to say that the Province cost Britain over £20,000 sterling per annum for many years, and returned practically nothing.

The first year did not go by without requests for supplies of one kind and another, stationery, a printing establishment, machinery for working salt springs and saw mills, axes, paint, &c.<sup>(7)</sup>; and it must be said that the Home authorities never turned a deaf ear to such requests.

But there was no provision by Parliament for the expense of courts, gaols, &c.: for of course the Provincial Parliament had no power over the Imperial grant.

As a consequence, the Provincial Houses were necessitated to raise money and we have already seen the attempts made in that direction<sup>(8)</sup>. None of them succeeded.

The House of Assembly resolved to pay the following salaries to its officers:<sup>(9)</sup>

Clerk of the House .....	£ 91. 5. 0
Sergeant at Arms .....	45. 12. 6
Door Keeper .....	10. 0. 0
	£136. 17. 6

There were no funds to pay these salaries or that of the Chaplain, and the officers went unpaid as did the officers of the Legislative Council<sup>(10)</sup>.

Moreover, there were clergymen who had been paid by the Government of the former Province of Quebec, generally of the Church of England, but one Presbyterian<sup>(11)</sup>.

## FINANCES OF THE PROVINCE

— 1793 —

For 1793 the Imperial Parliament voted £6,700<sup>(12)</sup>.

The local Parliament bestirred itself to obtain funds and this time with success—an Act, Chapter 3, provided for an assessment to pay for building gaols and houses of correction, for paying gaolers, coroners, &c., for the support of prisoners, bridges, &c.; and also an assessment to pay the wages of the Members of the House of Assembly. Another Act, Chapter 10, provided a fund for paying the salaries of officers of the Houses and contingent expenses, the amount to be raised by a duty on wine.

Now, the Speaker of the House was to be given “a salary proportionate to his situation”—and to tide over until the money should be collected, the Lieutenant-Governor was requested by the Assembly to advance the necessary amount<sup>(13)</sup>. On this being brought before the Executive Council, it was approved and the Receiver-General paid the sum required into the hands of the Clerk of the House<sup>(14)</sup>.

The Legislative Council resolved that their officers should be entitled to receive the same salaries as those of the House of Assembly<sup>(15)</sup>; but did not ask for an advance from the Governor.

We now come to a matter which was a source of constant irritation between the Provinces of Upper and Lower Canada until the Union of 1841.

Most of the goods which were imported into Upper Canada came up the St. Lawrence through Lower Canada, including wines and other liquors. Moreover, Lower Canada had laid a duty on wines by an Act passed in 1793. Upper Canadians considered it unfair that all the duty paid upon these goods should belong to Lower Canada; and Lower Canadians admitted the justice of the claim.



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An Act was passed in 1793 for the appointment of three Commissioners, "able and discreet persons", to meet an equal number appointed by Lower Canada to treat concerning regulations regarding the collection of duties or payment of drawbacks on goods passing from one Province to the other and also concerning any proportion to be received or paid of duties already imposed or to be imposed on articles passing from one Province to the other<sup>(16)</sup>.

After some preliminary correspondence, the Commissioners met at Montreal, February 13, 1794, and continued their conferences until February 18, when they arrived at a conclusion.

Upper Canada was to receive £333.4.2 as her share of the duties on wines under the Lower Canadian Act of 1793, until the end of 1794. For the future, it was agreed that a proportion based upon the population estimated at 1 to 7 should be adopted. Upper Canada agreed not to lay any duty on any article coming from Lower Canada, but Lower Canada might levy any duty on articles coming from Upper Canada, paying Upper Canada one-eighth. This agreement was to continue until the end of 1796<sup>(17)</sup>. It was approved by the Parliament of Upper Canada in 1795.

— 1 7 9 4 —

The appropriation for 1794 was £6,450<sup>(18)</sup>.

In the Province a question arose as to the disposition of fines and penalties.

In 1792 a penalty of £2 Quebec Currency had been imposed for keeping any weight measure or yard other than those prescribed; and one of £10 Quebec Currency for a gristmiller demanding or taking a toll of more than one-twelfth.

In 1793, a penalty had been imposed of 40/ or 10/ for

## FINANCES OF THE PROVINCE

non-appearance of militiamen when called out, and for disobedience, and of £5 for selling accoutrements, &c., these to be sent to the Receiver-General; also 40/ for refusal to act by anyone elected at a town or parish meeting as clerk, collector, assessor, overseer of highway or pound keeper, to be paid to the Treasurer of the District (except in the case of overseers when the penalty was to go into the hands of the Commissioners of Highways): also of a penalty of £20 for omission to render an account, &c., by overseers and various smaller penalties for not doing statute labour, interfering with highways, &c., &c. The Militia Act also provided for the payment of composition money in lieu of militia service by Quakers, Menonists and Tunkers<sup>(19)</sup>. No special disposition was made of these moneys.

By the Royal Instructions, all laws of the province for levying moneys or imposing fines, &c., should declare the same to be granted to His Majesty for the public uses of the Province or as by the laws should be directed. This had been overlooked and the omission was rectified in 1794 by an Act which provided that all such moneys should be accounted for to the King through the Commissioners of His Treasury, i.e., accounted for by the Receiver-General to the Home Administration<sup>(20)</sup>.

— 1795 —

For 1795 the appropriation was £7,175<sup>(21)</sup>. A penalty of £10 for practising medicine, &c., without a licence was to be paid into the hands of the Receiver-General, to be accounted for by him to the Commissioners of the Treasury: £100 for an unqualified person offering himself as a candidate for election as Member of the Legislative Assembly, half to the person suing for it and half to be paid to the Receiver-General and similarly accounted for<sup>(22)</sup>.

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— 1796 —

There was no substantial change in 1796<sup>(23)</sup> except that a penalty of £20 was imposed for selling liquor without a licence, payable and accounted for as by the Statute of 1794 provided<sup>(24)</sup>.

## NOTES

<sup>(1)</sup>Letter to Lieutenant-Governor Simcoe from John King, Under-Secretary, Whitehall, March 6, 1792, Wolf. I, 2, 37; the Estimates are given, *do. do.*, 38. There was no debate on these Estimates, but there was some on Simcoe's Queen's Rangers.

It is worth while to copy some of the debate in the Commons: 29 *Parliamentary History*, coll. 814, 815.

On February 15, 1792, during the debate on the Army Estimates, the following took place:

"Colonel *Fitzpatrick* said, that no reason had been given for the addition of Colonel Simcoe's corps.

"The *Secretary at War* said, the alteration in the government of Canada made that corps necessary.

"Mr. Secretary *Dundas* said, that the raising of the new corps for Upper Canada, met with his hearty approbation. He would explain the nature of that corps, and what were the advantages to be expected from it. It was certainly a military corps so far as that those who composed it, and were sent out to that settlement, were to be under military discipline, when they left this country, and after they were there, but they were to act in another capacity. It must be well known, that there was a great part of that country which it would be necessary to clear, and those men were to be employed for that purpose; when it was effected, the intention was, that each man should have a tract of land allotted to him instead of receiving pay as a soldier, and by these means the country would not only be cleared, and rendered useful to the inhabitants, but those very inhabitants would, from having a necessary attachment to what their industry has made their property, be, in consequence of their military skill and habits, enabled to protect the province, and answer every purpose of a militia. The expense of a new corps was something above £11,000.; the expense of this would not be so much by £3,000.

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“Mr. Fox said, that the proposed reduction certainly had his approbation as to the principal of it, though he by no means approved of the manner in which it was to be done, nor could see any reason why it was not done long ago, or why it was not now carried to a much greater extent. When he had the honour to hold a place in His Majesty’s councils, he had proposed a reduction of the army, but not in the mode now adopted; he wished to reduce the number of regiments to 64, instead of which the establishment had been kept up to 70, besides new corps raised for the East-Indies; and now one for Canada, and another for the West-Indies, at the very time we were talking about the reduction of the army. . . . He came next to notice what had been said by the right hon. secretary, respecting the nature of the Canada corps. The right hon. secretary wished that the committee would not consider them as a regiment, nor think them any addition to the army establishment, because, he said, they were not sent out for military purposes, but to clear the country and afterwards to inhabit it. He trusted the committee would beware of such arguments. We had already seen similar instances, such as the corps of artificers for Gibraltar, and others that he could mention. But the right hon. gentleman had said they were to become a militia to defend this settlement, after they had cleared it, and to protect the property which their industry had entitled them to possess: and they were, he understood, to people the province too. As to a militia, what was the necessity for sending a corps of regimented officers, and 400 men, to form a militia in Canada? Or were we to consider them as 400 drill serjeants, sent out to instruct the inhabitants in the military art? In establishing a government for that province, it undoubtedly was the wish of this country to give them one most suitable to their circumstances and situation; in short, to establish a government for the people, and not, as this military system would indicate, to make a people for the government; and he would always contend that the government of any country which required the least armed force to support it was the best, and that which required the greatest army to support it, the worst.”

(2) See my *Upper Canada Sketches*, Toronto 1922, pp. 127, sqq. for a full account of Gray.

(3) It is not improbable that the Secretary had in mind the Royal Instructions to Carleton, 1775, to erect a Court at Detroit and at Michillimackinac. Shortt and Doughty, *Constitutional Documents*, 2nd Edit., Ottawa, 1918, p. 613.

(4) Of course the occupants of these official positions were selected

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at Westminster by the Home Authorities; some of them had never been in Canada, e.g., Osgoode, White and Russell.

At the meeting of the Council holden at Kingston, July 9, 1792, David Burns was sworn in as a Clerk of the Crown and Pleas, and as Sheriffs, Richard Pollard and Alexander McDonell. They had also been selected previously.

Edward Baker Littlehales was named by Simcoe, Clerk of the Council, *pro tempore*, July 9, 1792: John Small did not take office until May 18, 1793, but as late as November, 1792, Littlehales was pressing his claim to be permanent clerk, *Can. Arch.*, Q 279, I, pp. 1, 251. William Jarvis was sworn in at Kingston, July 9, 1792.

(5) It may be news for Canadians to hear that even in our democratic country, Judges still have to pay a fee for their Commissions as such. These fees, however, go to "the Crown."

(6) This went on until 1816.

(7) Despatch, Simcoe to Nepean, from Navy Hall, November 5, 1792. *Can. Arch.*, Q 279, I, pp. 72, 74, 76, 77: also *do. do.*, Q 279, 2, pp. 325-329.

(8) *Ante*, Chap. XII, p. 173, *Can. Arch.*, Q 279, I, p. 79: I *Correspondence*, p. 249.

(9) Angus Macdonell was sworn Clerk of the House, September 26, 1792, and the same day George Law as Sergeant-at-Arms.

It will be observed that the Clerk was to receive \$1 a day for 365 days, the Sergeant \$0.50 a day (the House does not seem to have noticed that 1792 was a Leap year), and the Doorkeeper \$40 per year.

The Rev. Mr. Addison was, September 21, 1792, appointed Chaplain: his salary was not formally fixed at that time, but from subsequent entries it would appear to have been £25. This makes £171.17.6: Simcoe says that the amount was £174. Despatch to Dundas, November 4, 1792, *Can. Arch.*, Q 279, I, p. 79, I *Correspondence*, pp. 249, 250.

(10) There does not seem to have been any formal appointment of officers or fixing of salaries by the Legislative Council in 1792. The Revd. Mr. Stewart acted as Chaplain. The salary of John McBride, Doorkeeper of the Executive Council, at £30 per annum was paid by Peter Russell, June 7, 1792. *Wolf*, I, 11, 7.

(11) The first payments by Peter Russell of clerical salaries were on June 24, 1793. Revd. J. Stewart and J. Langhorn (Church of England) were paid £100 each and J. Bethune (Presbyterian) £50. *Wolf*, I, 11, 29.

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(12)—Despatch, John King, Under-Secretary, to Simcoe, Whitehall, April 3, 1793, Wolf. I, 3, 60. I do not find the Estimates though they are said to be enclosed.

(13)Proceedings of Ho. Assy., July 8 and 9, 1793.

(14)The amounts were:—

For Clerk .....	£ 91.5
Chaplain .....	25
Sergeant-at-Arms .....	45
Doorkeeper .....	10
Stationery and other contingencies .....	20
	£191.5

The payment was made July 13, 1793, under authority of a Resolution of Governor and Council the same day. Wolf. I, 11, 73.

(15)Proceedings Leg. Council, July 9, 1793.

(16)(1793), 33 Geo. III, C. 10 (U.C.)—the Commissioners appointed for Upper Canada were Hon. Richard Cartwright and Hon. John Munro of the Legislative Council and John Macdonell of the Legislative Assembly.

(17)Report of Commissioners to the Lieutenant-Governor. Wolf. I, 7, 304: the agreement appears at length in the Act of 1795, 35 Geo. III, c. 3 (U.C.).

(18)Despatch, King to Simcoe, Whitehall, June 18, 1794, Wolf. I, 4, 205. I do not find the Estimates.

(19)(1792), 32 Geo. III, cc. 3, 7, (U.C.): (1793), 33 Geo. III, cc. 1, 2, 4 (U.C.).

(20)(1794), 34 Geo. III, c. 5. (U.C.) For the Royal Instructions to the Governor, see *D. & McA.*, pp. 33, sqq.

(21)Despatch, King to Simcoe, May 5, 1795, Wolf. I, 6, 141; the Estimates are to be found in Wolf. II, 7, 283, as follows:—

For January 1 to December 31, 1795,

Salary of Lieutenant-Governor .....	£2,000
Chief Justice .....	1,100
Attorney-General .....	300
Solicitor-General .....	100
Two Judges of the Common Pleas at £500 per annum each .....	1,000
Clerk of the Crown and Pleas .....	100
Two Sheriffs at £100 per annum each.....	200
Secretary and Register .....	300
	£5,100

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Forward .....	£5,100
Clerk of the Council .....	100
Surveyor-General of lands (none)	
Receiver-General of the Revenues .....	200
Five Executive Councillors, £100 each .....	500
Naval Officer .....	100
Allowance toward building churches.....	500
Bishop's Commissary .....	150
Arrears of do. from time of his appointment..	75
Allowance on account of fees on the receipt and credit agent .....	200
	Total    £7,175

There was no Chief Justice or Solicitor-General; John White was Attorney-General. William Dummer Powell was a Judge of the King's Bench (the Courts of Common Pleas having been abolished in 1794); there was no other regular Judge of this Court, but Peter Russell had a Special Commission from time to time until he became Administrator and was prevented from giving himself a commission only by the stern rebuke of the Secretary of State. He asked Simcoe's influence to have him permanently appointed after the latter had left the Province. David Burns was Clerk of the Crown and Pleas: William Jarvis was Secretary and Register; John Small, Clerk of the Executive Council (Richard Barnes Tickell was made Confidential Clerk, November 4, 1794; he was paid £30 salary, Wolf. I, 11, 161): Peter Russell was Receiver-General of the Revenues. The Executive Councillors in 1795 were Peter Russell, Alexander Grant, James Baby, Aeneas Shaw, a vacant seat being left for a Chief Justice. David William Smith was Acting Surveyor-General of Lands.

We shall leave the Church and Commissary to be dealt with in another place (Cap. XXIV, *post*, p. 337). Russell was allowed £250 for his trouble in receiving moneys and accounting for them to the Home Government.

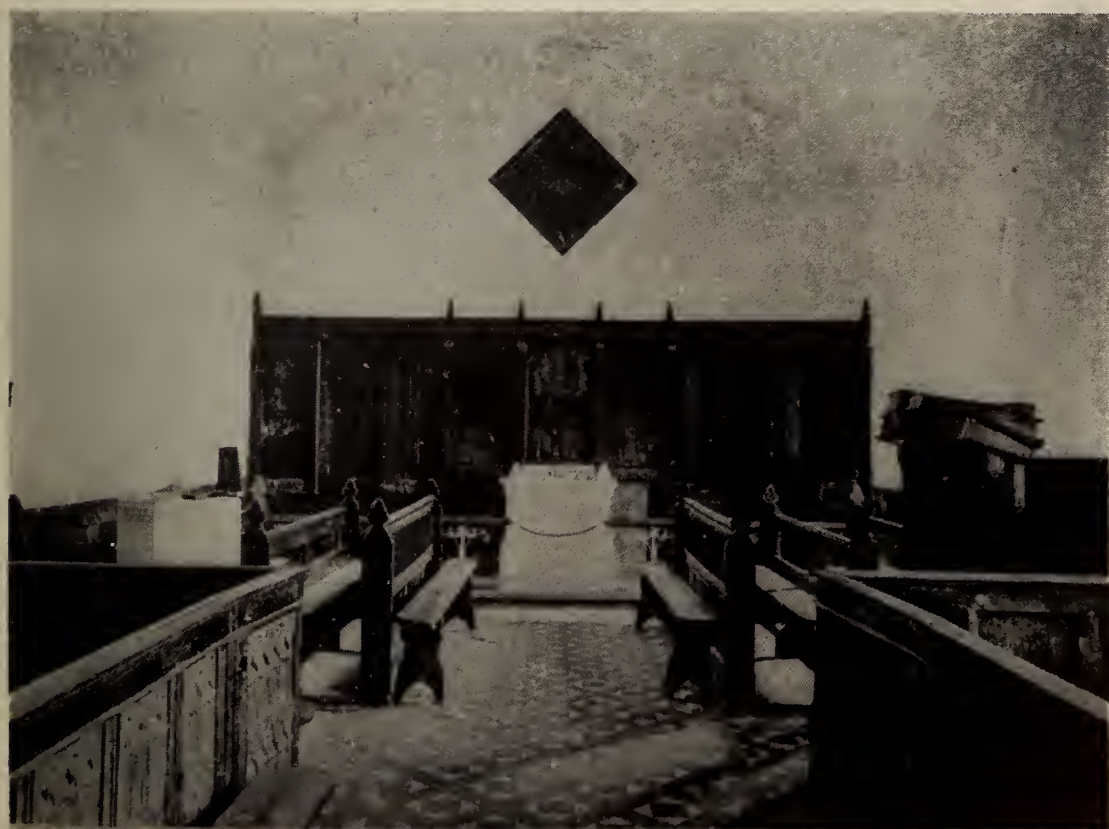
<sup>(22)</sup> (1795), 35 Geo. III, cc. 1, 2, (U.C.)

<sup>(23)</sup> Despatch, Simcoe to King, June 22, 1796, *Can. Arch.*, Q 282, 2, p. 507.

<sup>(24)</sup> (1796), 36 Geo. III, c. 3 (U.C.)



WOLFORD CHAPEL, WEST VIEW, NEAR HONITON, DEVON, ENGLAND



WOLFORD CHAPEL, INTERIOR





## CHAPTER XXIV

### Religion and Education

**S**IMCOE was undoubtedly a sincere and devout Christian, a firm believer in the tenets of his Church and a devoted member of her communion. He was, too, a well-educated man, well read in Latin and English and was by no means ignorant of or indifferent to the advantages of a University education.

It is, however, difficult to avoid the conclusion that, pious and educated as he was, religion and education, the Church and the University, were chiefly valuable as means to a political end—the retention of Canada as a Colony of England to redound to the glory of England and the Empire. As to education, nothing can be further from the truth than the common idea that Simcoe was the father of our university system; to him as much as to any other person—perhaps more—was due the long delay in the establishment of a National University System.

He had, moreover, no conception of a national system of education in our modern sense: England in that regard, as in all else, was his model. The common people would be none the better for an education which would probably make them discontented with their station. As is well known, the system or lack of system in primary education in England was until but the other day a reproach to her statesmen and people generally.

Even when urging the institution of a University at the expense of the Treasury, the common people were, in his view, to be left to their own resources, and “such education as may be necessary for people in the lower degrees of life, necessarily requiring but little expense,

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may at present be provided for by their connections and relations"<sup>(1)</sup>.

And in fact no legislation in respect of education was passed in Upper Canada in Simcoe's time or until 1799, when provision was made, largely based upon the English law, for what was called "the education and support of orphan children or children who may be deserted by their parents": and that consisted in giving the Town Wardens of any Township, with the approbation of two Justices of the Peace, the power of binding the child apprentice until the age of 21 in the case of a male or of 18 in the case of a female<sup>(2)</sup>.

It must in justice to him be said, however, that he foresaw a time when the "people in the lesser degrees of life" might be educated at public expense; for in the same Despatch which has already been quoted, he says that the education in question "may . . . be provided . . . more remotely by Lands allotted for that purpose". This was a thought which had not at the time occurred to any responsible English statesman for application in England, although long familiar in Scotland.

What has been quoted seems to be the only suggestion by Simcoe concerning the "lower classes" or primary education. He had very strong views as to the necessity of the establishment, largely at the expense of the Mother Country, of "schools of education . . . for the higher classes". He pointed out that "the cheapness of education in the United States" would "invite the Gentlemen of Upper Canada to send their children thither for education, by which means . . . their British Principles will be perverted and one of the strongest holds that Great Britain has and which promises to bind Upper Canada for ages to her side, Loyalty which glories in the honest pride in having withstood all the tempests of Rebellion will be totally undermined and subverted by dif-

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ferent principles being instilled into the rising generation”<sup>(3)</sup>.

Every loyal Canadian will wholly approve this eulogy of the United Empire Loyalists, and everyone at all acquainted with the almost fanatical hatred of England then rampant in many classes in the United States must recognize that it was a very real danger against which Simcoe was trying to guard, the destruction of the loyalty to British connection which should characterize the young “Gentlemen of Upper Canada”, “to whom their parents and connections . . . . look forward with fondness and hope as the means of transmitting the remembrance of their honourable principles to the remotest posterity.” As Upper Canada had no revenue from which this kind of education could be paid for, he urged that the British Ministry should supply the funds, at least for a few years. He thought a thousand pounds per annum would be enough for building, salaries, &c.

He recommended two school masters, one at Kingston and one at Niagara, at £100 per annum. The schools at these places were of course, intended to be like the Public Schools in England, not Public Schools in our modern sense.

Then as to a University, he advised “an University with a Head and professors in the Capital” (then intended to be on the River la Tranche) “all of whom should be of the Church of England and, the medical professor perhaps excepted, Clergymen.” He thought that the expenses might be lessened and in time extinguished by “expedients—Rectories might be appropriated in the room of salaries whenever they should become of sufficient value—an island which ought never to have been granted, and other desirable settlements might be let out to relieve the British Government as soon as possible from this burden”; and he hoped that “all

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classes and descriptions of Public men would lend their assistance . . . . and supply an increasing income to be strictly applied to that just and honourable purpose". Where the public men were to get the money, he did not say.

Dundas did not see his way to accede to this request: he thought that for some time at least the University must wait—"the Country must make the University, and not the University the Country". As to the Schools suggested by Simcoe, they or "at least one of them, should be of the first order" and, he adds significantly, "whenever any steps are taken by the Province for establishing such a seminary as on your representation will meet with the approbation of His Majesty, I shall with great satisfaction receive His pleasure with regard to the extension of the Royal Bounty in support of such a plan at a proper season"<sup>(4)</sup>.

This was a perfectly plain shelving of the project for a University, and an equally plain intimation to Simcoe that he and his Province should establish a School or Schools, and it or they would be assisted by the Imperial Treasury.

Simcoe replied:<sup>(5)</sup> "In respect to a just attention to the Interests of Religion & a Provision for the Education of the rising Generation, who must take their due Lead in Society, under the present Constitution & principally fill up the Offices of Government I . . . beg . . . to refer you to my late Despatches on these Subjects. I have therein stated strongly what I have felt sincerely: and these momentous Concerns will not only involve in themselves the Comfort and Happiness of the Settlers in this Country and be the surest means of rendering it populous but will chiefly contribute to that intimate union with Great Britain which if duly improved & properly supported as Necessity requires at the present season, I see

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no reason why it should not become permanent for ages.”

He received no encouragement from Westminster and seems to have taken no steps whatever towards the establishment of Schools of any kind for some years.

In 1795, however, he took up the project again. Writing<sup>(6)</sup> to the first Church of England Bishop of Quebec, Jacob Mountain, he says: “Liberal Education seems to me . . . . to be indispensably necessary: and the completion of it in the establishment of a University in the Capital of the Country, the residence of the Governor and the Council, the Bishop, the heads of the Law and the general quality of the inhabitants consequent to the seat of Government . . . . would be most useful to inculcate just principles, habits and manners in the rising generation; to coalesce the different customs of the various descriptions of Settlers, emigrants from the old Provinces of Europe, into one form. In short, from these distinct parts would there establish one nation and thereby strengthen the union with Great Britain and preserve a lasting obedience to His Majesty’s authority”. He continues: “I naturally should wish that the Clergy requisite for the offices in the University in the first instance should be Englishmen . . . . ” He hopes that “a few pious, learned men of just zeal and primitive manners” will be sent and that the Bishop will “not too strenuously insist upon learning as a qualification for ordination where there are obvious marks of religious disposition and proofs of morality”. This, he thinks, would insure the rising generation being “brought up competently learned and properly imbued with religion and loyalty . . . . In short”, he continues, “My Lord, if the maintenance of religion and morality be merely considered in a commercial light as so much merchandise, the bounty I implore . . . . will augment that produce in which the union of the country with Great Britain and the preserva-

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tion of His Majesty's sovereignty may ultimately depend. These objects would be materially advanced by a University in Upper Canada . . . . Parliament voted £20,000 for the erection of the University proposed by Bishop Berkely in Bermuda . . . . certainly of trivial importance to what I now propose. The labors of the Society for the Propagation of the Gospel are visionary as applicable to the conversion of the American Indians in their present state, but would be of most essential benefit by promoting a University which if placed in the port I meditate (i.e., London on the Thames, U.C.) would . . . . have great influence in civilizing the Indians and, what is of more importance, those who corrupt them<sup>(7)</sup>. The Episcopal Clergy in Great Britain, from pious motives as well as policy, are materially interested that the Church should increase in this Province. I will venture to prophesy its preservation depends upon a University being erected therein . . . . The Universities of England I make no doubt would contribute to the planting of a scion from their respectable stock in this distant Colony. In short . . . . I have not the smallest hesitation in saying that I believe if a Protestant Episcopal University should be proposed to be erected even in the United States the British nation would most liberally subscribe to the undertaking. . . . ”

He returns to this again in another letter to the same Bishop from Navy Hall, Newark, October 16, 1795<sup>(8)</sup>: “My views in respect of a University are totally unchanged: they are on a solid basis and may or may not be complied with as my superiors shall think proper, but should certainly appear as my system to the judgment of posterity.”

He continued to urge the matter on the Home Authorities. Writing to the Duke of Portland from Navy Hall, November 8, 1795, he says: “The state of the coun-

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try calling loudly for a Public School of the first class, and the late Lieutenant-Governor Hope, having built a house for that purpose at Kingston, on consultation with the Bishop, Mr. Stuart<sup>(9)</sup>, the respectable missionary at that place, has undertaken to superintend it until His Lordship (the Bishop) shall provide a proper person . . . . I have felt myself authorized to promise one hundred pounds per annum, the salary allowed at Montreal and Quebec . . . . At Niagara, the want of a school is most visible: the Reverend Mr. Addison is willing to undertake the office on the same terms as Mr. Stuart, and I hope for . . . . approbation of a measure most necessary for the welfare of the Province.”

Portland was sent a copy of the letters to the Bishop, including one of February 25, 1796, from York in which Simcoe regretted that there was scarcely the slightest hope of his views for the national interests being supported, and said: “In particular I have no idea that a University would be established though I am daily confirmed in its necessity . . . . ”<sup>(10)</sup>. The Duke, writing from Whitehall, London, June 22, 1796, says: “I am far from unwilling to recommend that some provision should be made for their (i.e., schoolmasters’) maintenance; but in doing this I must observe that my ideas of schoolmasters best suited to the present state of Upper Canada are such as are thoroughly competent to teach reading, writing, accounts and mensuration. The stipend . . . . exclusive of what they would receive from some at least of their scholars ought to be very moderate. With respect to a Public School of a higher order where the Greek and Latin languages and some other branches of learning may be taught, I should think that Quebec or Montreal would naturally offer themselves as most proper for an establishment of such a nature during the infancy of Upper Canada”. He goes on to speak of a



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good Seminary of the kind in Nova Scotia, and adds: "I shall await to hear from you in return before any final measures are adopted on a subject which requires due consideration in order that the establishment proposed may (not) either be above or below what the present exigency of the Province requires—for in either of these cases, but more especially in the former, they would be totally useless and thereby operate as a positive retardment to establishments of a higher nature and which would otherwise naturally take place in the Province"<sup>(11)</sup>. This Despatch was far from satisfactory to Simcoe; but the closing words showed that Portland was in agreement with him as to who should be schoolmasters. "As this despatch relates only to the church establishment of your Province, you will of course communicate it to the Bishop of Quebec and will concert with him the best means of carrying into effect the objects to which I have directed your attention."

Simcoe never took up the project for Schools of the character suggested by Portland; but in his last Despatch to the Secretary, dated from York, July 20, 1796, he again urged the University. He thought that the seventh reserved for the Crown in all surveys would become valuable and productive if sold for public purposes, "the first and chief of which I beg to offer . . . . must be the erection and endowment of a University from which more than any other source or circumstance whatever, a grateful attachment to His Majesty, morality and religion will be fostered and take root throughout the whole Province"<sup>(12)</sup>.

According to the recollection of the first Church of England Bishop of Toronto, Simcoe, in his desire for the erection of a University, authorised Cartwright and Hamilton, two of his Executive Councillors, to procure a gentleman from Scotland to organize and take charge of

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the proposed College or University; and on their applying to some friends, these friends "offered the appointment first to Mr. Duncan and then to Mr. Chalmers, neither of whom was yet much known, but both declined". Then overtures were made to Mr. Strachan, and he accepted only to find, on arriving at Kingston, December 31, 1799, that Simcoe had left the Province and the University project had been postponed<sup>(13)</sup>. However that may be, it is plain from extant official documents that Simcoe's view was that primary education for "people in the lower degrees of life" should be paid for "by their connections and relations", at least for a time: that schools "for the higher classes" should be erected and maintained at public expense; that a University should be provided also at public expense; that University and higher schools, that is all State-supported schools, should be part of the Church Establishment of the Province, taught by the Church of England clergymen with the possible exception of the Professor of Medicine, and that the main function of this was to preserve British connection.

The Government at Westminster agreed with him as to who should teach in State-supported educational institutions, but thought the University must wait and that even the higher schools, important as they were, were not so important as schools in which the common branches of education, reading, writing and arithmetic, should be taught.

Simcoe's efforts toward the foundation of a University in the Province have not passed without recognition.

The University of Toronto, a National University, on a non-denominational basis, a system of which he never would have approved, has nevertheless expressed its appreciation by naming its spacious Administration Building, "Simcoe Hall." The reason officially given

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for the adoption of the name is that Simcoe was the first person to forecast the establishment of a University for the Province, and that as a result of his suggestion, but after his departure from the Province, the Legislature of the Province petitioned the Crown to appropriate a certain portion of the waste lands of the Crown as a fund for the establishment and support for a reasonable Grammar School in each district of the Province and also of a College or University for the instruction of the youth in the different branches of liberal knowledge. As a result 549,000 acres of Crown Lands were set apart for these two purposes.

The development of the University has been, it is true, on different lines from those in Governor Simcoe's project. Nevertheless, it was considered that he first gave the impetus to the establishment of higher learning in this Province. The original National "College with the style and privileges of an University" created by Royal Letters Patent of March 15, 1828, "to continue forever, to be called King's College" was such as he contemplated and desired. The Archdeacon of York was *ex-officio* to be President: the Lieutenant-Governor was to be the Chancellor: the seven Professors were to be members of the Established Church of England and Ireland who had subscribed the Thirty-Nine Articles, but "no religious test or qualification . . . . required of" Scholars or Graduates (except in Divinity). Perfect tolerance in respect of religion so far as students or graduates were concerned; but the University to be under the control of members of the Church of England, substantially as Trinity has been and is.

The abolition of the old King's College and institution of the University of Toronto by Baldwin's Act of 1849, 12 Victoriae, cap. 82 (Can.), Simcoe would have regarded with the same indignation as any other attempt

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to place members of other communions on a level with those of his own.

It cannot be said that the action of the University of Toronto in naming its new building, "Simcoe Hall", was ungenerous.

On a tablet at the entrance is inscribed:—

"This building, known as Simcoe Hall, erected in the year 1923—bears the name of LIEUT.-GENERAL JOHN GRAVES SIMCOE, 1st Lieutenant-Governor of Upper Canada, who planned the establishment of this University, which was founded as King's College by a Charter of King George IV, Anno Domini, 1827."

Simcoe's attitude towards the Church of England (which he not infrequently called the Protestant Episcopal Church) has been mentioned more than once, but at the risk of wearisome iteration, it will be discussed here.

His experience during the War of Independence had satisfied him that the Church was loyal and the members of the Church were opposed to the Revolution. In this view he had much support from undoubted fact—although there were many (and some distinguished) exceptions, it being sufficient to mention Washington and Weems. But Simcoe went further and came to the conclusion that those who were not of that communion were to be suspected of disloyalty.

With his fixed determination that everything should be done to ensure continued British connection, it necessarily followed that he favored the establishment in his Province of his Church. It is quite clear that he looked upon that Church as the Church of Great Britain and as one of the institutions to be established to make the constitutions of the Province "the very image and transcript of that of Great Britain by which she has long established and secured to her subjects as much freedom and happi-

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ness as it is possible to be enjoyed under the subordination necessary to civilized Society”<sup>(14)</sup>. This view was shared by the Home Administration, and the Royal Instructions were framed in that sense. They were drawn, indeed, looking rather to the special needs of the Lower Province, but they are identical in this regard for Upper Canada. “Whereas the Establishment of proper Regulations in matters of Ecclesiastical Concern is an object of very great Importance, it will be your indispensable duty to take Care that no arrangements in regard thereto be made, but such as may give full satisfaction to Our New Subjects in every Point in which they have a right to any Indulgence on that Head, always remembering that it is a Toleration of the free Exercise of the Religion of the Church of Rome only to which they are entitled but not to the Powers and Privileges of it as an established Church, that being a Preference which belongs only to the Protestant Church of England”<sup>(15)</sup>. This did not indeed formally establish the Church of England in the Province; but, taken in connection with other clauses, it came very near to doing so.

While freedom of burial of the dead in the Churches and Churchyards was “allowed indiscriminately to every Christian Persuasion”, much as in England—and liberty of conscience and free exercise of all modes of religious worship “not prohibited by law” were enjoined, it was specifically ordered that when the Governor presented to a Benefice, “the Person so presented shall be instituted by the Bishop (of Nova Scotia) or his Commissary duly authorized by him”; and the Governor was also instructed to recommend to the Provincial Parliament “to settle the Limits of Parishes in such a manner as shall be deemed most convenient.” He was not to present any Protestant Minister to any Benefice “without a proper certificate from the Bishop of Nova Scotia or his Com-

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missary of his being conformable to the Doctrine and Discipline of the Church of England.”

There being no mention of any other Protestant Church, it is not to be wondered at that it was considered that the Church of England was alone in view in the provision made by section 36 of the Canada Act “for the support and maintenance of a Protestant Clergy”—particularly when by the same Act the Governor was given power with the advice of the Executive Council to erect “Parsonages or Rectories according to the establishment of the Church of England”, to endow them and (without such advice) to present “to every such Parsonage or Rectory an incumbent or minister of the Church of England who shall have been ordained according to the rites of the said Church”<sup>(16)</sup>.

With this legislation and these Instructions, it would have been practically impossible for Simcoe to hold any other view even had his inclination and principles been different.

But before the Canada Act was passed, we find him writing to the Archbishop of Canterbury, Dr. Moore, December 30, 1790, that he was “decisively of the opinion that a regular Episcopal establishment subordinate to the primacy of Great Britain is absolutely necessary . . . . in regard to a colony in Upper Canada . . . . peculiarly situated amongst a variety of republics, every establishment of Church and State that upholds a distinction of ranks and lessens the undue weight of democratic influence must be indispensably introduced . . . . The neglect of this principle of overturning republicanism in former periods . . . . is much to be lamented: but it is my duty to be as solicitous as possible that they may now have due influence . . . . I . . . . feel the utmost conviction that the best mode of population and the best line of connexion with the United States is combined in giving due support

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to that Church Establishment which I consider as necessary to promote the national religion of which I am a sincere believer and to maintain the true and venerable constitution of my country"<sup>(17)</sup>.

A week later in a letter to Sir Joseph Banks, he says: "I am to have a Bishop"<sup>(18)</sup>. In his Memorandum to Dundas of June 2 (or 30), 1791, he says: "I hold it to be indispensably necessary that a Bishop should be immediately established in Upper Canada. The State Propriety of some form of public worship politically considered arises from the necessity there is of preventing enthusiastick & fanatic Teachers from acquiring that superstitious hold of the minds of the multitude which Persons of such a description may pervert & are generally inclined to pervert to the Establishment of their own undue consequence in the State & often meditate & not infrequently to turn such an ascendancy to its injury & destruction". This "mischief-making Enthusiasm of the Sectaries" is the more dangerous "at a Period when . . . all men read & only one description of People write & when the Aim of the Sectaries is avowedly to destroy the national establishment." He points out that Episcopacy has been happily introduced or is introducing into all the United States<sup>(19)</sup>: urges that the power and supervision of the Bishop over the Clergy would inculcate a sober, industrious, religious and conscientious spirit in all classes, "which will be the best security that Government can have for its own internal preservation". An "Episcopal Church without a resident Bishop seems to be an absurdity in fact as well as a Contradiction in terms"<sup>(20)</sup>.

He returns to the same topic in his Memorandum to Dundas of August 12, 1791, and says that he considers "the present to be the Critical Moment in which that system (i.e., the Episcopacy) so interwoven and connected with the Monarchical Foundations of our Gov-

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ernment may be productive of the most permanent and extensive Benefits in preserving the Connection between Great Britain and her Colonies"<sup>(21)</sup>.

We find nothing to indicate that these representations were thought worthy of consideration; the Act and the Royal Instructions contained all that was thought necessary.

It was not till after the troubles already mentioned in respect of the celebration of marriage that Simcoe returned to the charge. We find him very shortly after the close of the Session of Parliament, writing to Dundas from Navy Hall, Niagara: "the best security that all just Government has for its existence is founded on the Morality of the People and . . . such Morality has no true Basis but when placed upon religious Principles. It is, therefore, that I have always been extremely anxious both from political as well as more worthy motives that the Church of England should be politically established in Upper Canada; and I must be permitted to say, Sir, I received the greatest satisfaction from your expression 'that you did not think that Government complete without a Protestant Bishop', as I conceive such an Institution necessary to the support of the experiment that is now making whether the British Government cannot support itself by its own Supremacy in this distant part of the World". He considered that "it would be the worst and most disabling of all Oeconomy to lose the great opportunity that is now open of forming the Character, Temper and Manners of the People of this infant Colony to British Habits and to British Principles . . . .", and that the "Influence of the Protestant Clergy" would be adverse to those "who shall be hostile to the Union of Upper Canada with Great Britain" and he thought that "sons of respectable Settlers would offer themselves for ordination and tho' they might not in the first instance



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have the learning of the European Clergy, their Habits and Morals might as essentially promote the interests of the Country''<sup>(22)</sup>.

His hopes were raised by a reply from Dundas in the following May: "I take this opportunity of observing to you that the appointment of a Bishop's See in Canada is now in contemplation and the attainment of many of the objects you have stated will naturally be the result of such an establishment should it take place''<sup>(23)</sup>.

These hopes were doomed to be disappointed; it was as Bishop of Quebec, not as Bishop of Upper Canada, that Jacob Mountain was consecrated, July 7, 1793; and Simcoe was told by Dundas: "I am of opinion that it is from hence for the present that the necessary supply for the Provinces of Clergymen properly and duly qualified for their duty must be looked for''<sup>(24)</sup>.

In all cases Simcoe restricted himself within clear law. When a claim was made on behalf of the Church of England that the Bishop or his Commissary should, as in England, issue Marriage Licences, he refused to permit it. Another claim of rather an anomalous character he also had to deal with. The Reverend John Stuart at Kingston was made Bishop's Commissary: while firm in asserting the claims of his Church and wholly convinced of the position she should occupy, he was nevertheless conciliatory and desired to live in peace with those not of his Communion; he is known to have recommended some of their ministry for land grants<sup>(25)</sup>, and to have helped others. He recognized that there was much discontent in respect of the monopoly of the right to perform the marriage ceremony possessed by the Clergy of his Church: and evolved, or at least favored, a scheme for granting to the ministry of the non-Anglican bodies, this right—under licence from himself as Commissary. The request to be permitted to grant such licences came

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before Simcoe: he referred the question as one of law to John White, the Attorney-General: White reported adversely, and the matter dropped<sup>(26)</sup>.

Before leaving the subject a somewhat interesting incident may be mentioned. In 1746-7, the Hurons removed from their old Village near Fort Pontchartrain to the South side of the Strait at the Point de Montreal, the site of the present Sandwich, where a settlement had been formed called L'Assomption. There, a new Church was built in 1746 which was in use during all the remaining French period: it had a pew reserved for the Commandant at Detroit who represented the King. After the Conquest, the Commandant was not a Roman Catholic and the pew was not required. But when in 1792, the Hon. Jacques Baby was made Lieutenant of the County of Kent, he claimed the right to occupy the reserved pew as being His Britannic Majesty's Representative in the County. This claim was contested: and at length the matter was referred to the Roman Catholic Bishop of Quebec, Bishop Hubert. The Bishop decided that a place of honor in the Church was due to the Government and was to be occupied by the one to whom the Government assigned it—consequently the matter was without his jurisdiction; but he added, if the Representative of His Majesty would but make it clear, neither the priest of the Parish nor the Church officials would have any further action except to allow a location suitable to the place of honor in the Church, to which a pew should conform in construction as well as to the other Sittings in design. This being communicated to Baby, he conferred with Simcoe and Simcoe authorized a letter to the Grand Vicar that "the said Pew and honors thereto appertaining are one of the privileges to which the Lieutenant or in his absence the Deputy Lieutenant has an undoubted right", and ordered: "You will accordingly be

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pleased to give directions that the same conduct which was observed formerly towards the French Commandant be now kept towards the person who will in future occupy the pew in question”<sup>(27)</sup>.

### NOTES

(1) See Despatch to Henry Dundas from Quebec, April 28, 1792: *1 Correspondence*, p. 136: *Can. Arch.*, Q 278, p. 104: *Documentary History of Education in Upper Canada . . .* by Dr. J. George Hodgins, Toronto, 1894, Vol. 1, p. 11. This very valuable work will be cited thus “*Hodg.*”

The first letter we have of Simcoe’s, dealing with education, is that to Sir Joseph Banks, P.R.S., January 8, 1791, in which he says: “Schools have been shamefully neglected. A College of a higher class would be eminently useful and would give a tone of Principles and of Manners that would be of infinite support to the Government”: *1 Correspondence*, p. 17: Scadding’s *Brochures*, The Copp Clark Co. Ltd., Printers, Toronto: *Hodg.*, p. 11.

(2) (1799), 39 Geo. III, c. 3, (U.C.) If the mother were alive, she had the power to bind out her abandoned children with the consent of two magistrates.

(3) Dr. Hodgins, *op. cit.*, gives only the substance of the Despatches.

(4) Despatch, Henry Dundas to Simcoe, from Whitehall, July 12, 1792: *1 Correspondence*, p. 178: *Can. Arch.*, Q 278, p. 172: *Hodg.*, pp. 11, 12.

(5) Despatch, Simcoe to Dundas, from Navy Hall, November 23, 1792: *1 Correspondence*, p. 263: *Can. Arch.*, Q 279, 1, p. 181: *Hodg.*, p. 12.

(6) *Hodg.*, pp. 12, 13, 3 *Correspondence*, pp. 348-353, written from Kingston, Upper Canada, April 30, 1795.

We may easily fail to do full justice to Simcoe in the matter of education if we do not bear in mind that he was to a great extent under orders.

The Royal Instructions of September 16, 1791, *D. & McA.*, pp. 33, sqq., were specific:—

50. It is Our Will and Pleasure, that you will recommend to the Legislative Council and Assembly of Our said Province of

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Upper Canada to make due provision for erecting and maintaining of Schools, where Youth may be educated in competent Learning, and in knowledge of the Principles of the Christian Religion.

51. And it is Our further Will and Pleasure that no Person shall be allowed to keep a School in the Province of Upper Canada, without Your Licence first had and obtained. In granting which You are to pay the most particular Attention to the Morals and proper Qualifications of the Persons applying for the same, and in all Cases where the School has been founded, instituted or appointed for the Education of Members of the Church of England, you are not to grant such Licences except to Persons who shall first have obtained from the Bishop of Nova Scotia, or One of his Commissaries, a Certificate of their being properly qualified for that purpose.

(7)The Reverend Father Burke, writing to Major Littlehales, the Governor's Secretary, from the "River Raisins", August 14th, (17th) 1795, says of the traders among the Indians:—"the fair trader—the rattlesnake is not a greater rarity in St. James Park . . . . the very possibility of a fair trade does not exist in this country in its present state. The merchant plunders the inhabitants with his paper shillings and sixpences, one half of which is lost before the time of payment. He is himself plundered by his emissaries . . . . these, a set of low-lived infamous scoundrels, traitors to a man, are plundered by the Squaws who form their little Seraglios and they in turn plunder the intoxicated Indians . . . . the unlimited intercourse of the white people with the Indians produces another . . . evil, *i.e.*, a total corruption of morality. Hundreds who are at present a disgrace to humanity and whose influence amongst the Indian tribes is of the most dangerous tendency . . . . desperadoes . . . . an universal toleration to the profligate to murder and plunder with impunity . . . . " Wolf. I, 7, 31.

(8)*Hodg.*, p. 12. *Can. Arch.*, Q 282, I, p. 18.

(9)Of course the Reverend John Stuart: for an account of this remarkable man, see Prof. A. H. Young's interesting brochures: *The Revd. John Stuart . . . . Kingston, U. C.*, and *The Parish Register of Kingston . . . . Kingston, 1921.*

(10)*Can. Arch.*, Q 278 A, p. 103: Q 282, II, p. 157: *Hodg.*, p. 14.

(11)*Can. Arch.*, Q 281, I, p. 161: *Hodg.*, p. 14.

(12)*Can. Arch.*, Q 282, II, p. 508: *Hodg.*, p. 14.

(13)*Hodg.*, p. 9, quoting a sketch of his own early career made by the Bishop in 1860, he being then 82 years of age. I find it ex-

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tremely difficult to fit in this account with Simcoe's extant despatches and known principles. If there was anything upon which he always insisted it was that Church of England Clergymen should be engaged. I cannot find that he ever recognized Scotland at all as a part of the Empire (except indeed later in life when he complained that Scots were receiving the preference in military appointments). It is scarcely conceivable that he would have authorised going to Scotland for a University Head; he certainly could not have authorised an offer of the position to Thomas Chalmers, a Presbyterian, although, Duncan being a physician, he might make an exception in his favor (Chalmers, by the way, was born in 1780). Moreover, in the very last letter, July 20, 1796, on the subject of a University, Simcoe says nothing to indicate that he expected a University at any near period.

Gourlay says of Dr. Strachan that he was a schoolmaster at Duninno and Kettle, attending St. Andrew's College at the same time as an irregular student. "The Rev. Dr. Hamilton, of Glads-muir in East Lothian, my wife's uncle, having a commission from a friend in Upper Canada to send out to him a person qualified for a family tutor, offered £50 a year to procure one, and Strachan agreed to go out". See my *Robert (Fleming) Gourlay*, 14 Ontario Historical Society's *Papers and Records*, Toronto, 1916, p. 20: Gourlay's *General Introduction*, pp. cxix-cci.

It would seem probable that the memory of the Right Reverend Prelate failed him. Of course he was as incapable of falsehood as Gourlay himself; and no one has ever detected Gourlay in a mis-statement of fact.

It passes the bounds of probability that such a position as the Head of a University intended to be a Church of England institution could have been offered to Chalmers, a Presbyterian not yet 19 or to Strachan not of age, not a Church of England Clergyman or indeed an open adherent of this Church in Presbyterian Scotland.

<sup>(14)</sup>Simcoe's own language in proroguing the First Parliament, October 15, 1792: 6 *Ont. Arch. Rep.*, (1909), p. 18. To an attentive reader these words will be seen to contain his political theory in a nutshell—union with Britain but due subordination, no struggling against the decision of those in authority across the sea and no questioning their wisdom.

<sup>(15)</sup>*D. & McA.*, p. 43. The document called "Commission and Instructions to Guy, Lord Dorchester as Governor-in Chief over

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Upper and Lower Canada", in 4 *Ont. Arch. Rep.*, (1906), pp. 161, sqq., contains only the Commission, not the Instructions.

<sup>(16)</sup>This gave rise to the famous Clergy Reserve controversy which agitated the Province for many years. The Provincial Land Officers of the Crown never had any doubt that it was the Church of England alone which was thus provided for: and notwithstanding the opinion of the Imperial Land Officers of the Crown that the Church (or Kirk) of Scotland might participate, it is difficult for a lawyer (at least, for me) to see that the Provincial interpretation was wrong. Fortunately the question has long been academic. See for a fairly complete account, Charles Lindsey's *The Clergy Reserves, their History and Present Position*, Toronto, 1851. The opinion of the Imperial Attorney-General, Solicitor-General and Advocate-General (Gifford, Copley and Robinson), November 15, 1819, is to be found on p. 9 of this work.

Simcoe was, of course, bound by his Instructions—these should never be overlooked in any consideration of his wishes or actions. The Royal Instructions of September 16, 1791, *D. & McA.*, pp. 33, sqq., read:

"42. Whereas the Establishment of proper Regulations in Matters of Ecclesiastical Concern is an object of very great Importance, it will be your indispensable Duty to take Care that no arrangements in regard thereto be made, but such as may give full Satisfaction to Our New Subjects in every Point in which they have a right to any Indulgence on that Head, always remembering that it is a Toleration of the free Exercise of the Religion of the Church of Rome only, to which they are entitled, but not to the Powers and Privileges of it as an established Church, that being a Preference which belongs only to the Protestant Church of England:

"Whereas We did by Our Commission under Our Great Seal of Great Britain bearing date the 1st day of August, 1787, appoint the Right Reverend Father in God, Charles Inglis, Doctor in Divinity to be Bishop of the Province of Nova Scotia, and thereby give to him and his Successors in the said See, Jurisdiction, Spiritual and Ecclesiastical, in and throughout the said Province of Nova Scotia, and its Dependencies according to the Laws and Canons of the Church of England, which are lawfully made and received in England in the several Causes and Matters particularly expressed and set forth in the said Commission and no other; And Whereas by another Commission We did also give and grant to the said Bishop of Nova Scotia full Power and Authority by himself, or his sufficient Commissary or

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Commissaries, to exercise the like Spiritual and Ecclesiastical Jurisdiction, within the Provinces of Quebec, of New Brunswick and the Islands of St. John, Cape Breton and Newfoundland, as is set forth in the said Commission; We do hereby order and enjoin you, that you do give all fit support and countenance to the said Bishop in the exercise of his Jurisdiction, Spiritual and Ecclesiastical, according to the Laws of this Realm and the Laws to be established in Our Province of Upper Canada, and to the Tenor of the said Commissions. It is nevertheless Our Will and Pleasure to reserve to you, the granting of Licences for Marriages, Letters of Administration and Probates of Wills as heretofore exercised by you and your Predecessors; And also to reserve to you, and to all others to whom it may lawfully belong the Patronage and Right of Presentation to Benefices, but it is Our Will and Pleasure that the Person so presented shall be instituted by the Bishop, or his Commissary, duly authorized by him, as directed by Our said Commission.

“48. You shall recommend to the Legislative Council and General Assembly of the Province of Upper Canada to settle the Limits of Parishes in such a manner as shall be deemed most convenient.

“53. You are not to present any Protestant Minister to any Ecclesiastical Benefice within Our said Province by virtue of the said Act passed in the present Year of Our Reign, and of Our Commission to you without a proper Certificate from the Bishop of Nova Scotia, or his Commissary of his being conformable to the Doctrine and Discipline of the Church of England.

“54. And you are to take especial Care that a Table of Marriages established by the Canons of the Church of England, be hung up in all places of Public Worship according to the Rites of the Church of England.”

(<sup>17</sup>)For this remarkable letter in full see Lindsey, *op. cit.*, p. 4: Dr. Hodgins, *op. cit.*, refers to but does not copy it, p. 8. It does not appear in *Correspondence*. A good collection of letters to and from Simcoe relating to the Church will be found in a rare publication in the Riddell Canadian Library: *Canadian Clergy Reserves . . . .* by Rev. W. J. D. Waddilove, Newcastle-on-Tyne, 1840.

(<sup>18</sup>)Letter to Joseph Banks, F.R.S., January 8, 1791, 1 *Correspondence*, p. 18: Scadding's *Brochures*, Vol. 2, (Riddell Canadian Library) Copp. Clark & Co., Toronto, 1890: Dr. Hodgins, *op. cit.*, p. 8, refers to but does not print it.

Simcoe was not alone in his view of “Dissenters”—we find among the Sir William Johnson Papers at Albany, a letter to the

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learned Reverend Dr. Barclay from Johnson Hall, March 30, 1763, in the handwriting of Guy Johnson, but written for his uncle, Sir William Johnson, which—at least in the draft—contains the views of the sender of the letter as to these people. Speaking of a proposed Indian Book of Common Prayer, the letter says:

“I am of opinion that this Edition will conduce to incline the Christian Indians to the Established Church, which will have a better effect upon them than what I see arises from their inclination to the Presbyterians as all those Indians who are Instructed by the Dissenting Missions (who are the only Clergy in these parts) have imbibed an air of the most Enthusiastical cant and are in short intermixed with the greatest Distortion of the features & Zealous Belchings of the Spirit, resembling the most Bigotted Puritans, Their whole time being spent in Singing psalms amongst the country people, whereby they neglect their Hunting & most Worldly affairs, & are in short become very worthless members of Society. I cannot omit mentioning my opinion of the great necessity there is for some Ministers of the Established Church to reside in these parts as well for the Whites as Indians, without which the former must in short time become altogether Presbyterians, which I have observed seldom betters them, Encreasing the Misanthropy of the Splenetick, & rendering them enemies to all our Laws & the British Constitution; and as to the Inds. who in general begin to incline to that Presbytery all those of that denomination, are likewise become the most troublesome & discontented Exchanging their Morality for a Sett of Gloomy Ideas, which always render them worse Subjects but never better men.” *The Papers of Sir William Johnson*, vol. iv, Albany, 1925, pp. 72, 73.

(It should however be said that the most offensive of these words may have been left out of the letter as sent.)

The language of His Lordship, Jacob Mountain, Bishop of Quebec, may also be quoted. Writing from Powell Place, near Quebec, September 15, 1744, to Dundas, 3 *Correspondence*, pp. 91-94, he says:

“With respect to Religious Instruction the state of these settlers is for the most truly deplorable. From Mont-



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real to Kingston, a distance of 200 miles, there is not one clergyman of the Church of England: nor any house of religious worship except one small Chapel belonging to the Lutherans, & one, or perhaps two, belonging to the Presbyterians. The public worship of God is entirely suspended, or performed in a manner which can neither tend to improve the people in Religious Truth, nor to render them useful members of Society. The Presbyterians and the Lutheran Clergymen are, I believe, men of good character, but their influence is necessarily limited to their own little congregations. The great bulk of the people have, & can have no instruction, but such as they receive occasionally from itinerant & mendicant Methodists; a set of ignorant enthusiasts whose preaching is calculated only to perplex the understanding & corrupt the morals; to relax the nerves of industry, & dissolve the bonds of society.

. . . . .

In the whole progress of my visitation, I found the better part of the people extremely unhappy under the privation of Religious Instruction, & to the last degree earnest in their entreaties that I would use the power, which they supposed me to possess, of sending Ministers of the Church of England among them; They represented in the strongest terms not only the uneasiness which the more serious and reflecting persons among them feel, for themselves & for their families; but the dreadful consequences which follow a total want of religious principles among some of the lowest orders of the people; whose ignorance, profligacy, & barbarism, they represent as being more shameful, & degrading than those of the savages, by whom they are surrounded, & whom they affect to despise.

. . . . .

Such a conformity appears to be no less desirable on a political than in a Religious point of view: In times like the present, I humbly conceive that it would prove the best security to Government for the submission, fidelity, and loyalty of its subjects."

On reading the valuable and interesting life of Thomas Chandler Haliburton, "Sam Slick," by Dr. Chittick, Columbia University Press, 1924, I was struck by the identity of Judge Haliburton's

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views, half a century later, with those of Simcoe in respect of the Church and some other matters.

While both believed in the perfect toleration of Roman Catholic and Dissenter worship, they thought that the strength of the nation lay in the union of the Church and State and to sever the connection was the object of all the evil disposed—that the Church of God as established in England was the best that was known to the human race and the Constitution was the perfection of human wisdom—all the care of sick and aged, all the education of deserving poor in America and the Colonies was the glorious fruit of the Church of England, &c., &c., *Attaché*, second series, I, 88, 89, 119, 120.

Haliburton's views as to the cause of the American Revolution, he thus expresses:

“Had Washington been sent abroad in command of a regiment, Adams to govern a colony, Franklin to make experiments in an observatory like that at Greenwich and a more extended field been offered to colonial talent, the United States would still have continued to be dependencies of Great Britain.”

*Attaché*, first series, I, 85.

(19)The first Bishop of the American Protestant Episcopal Church, Samuel Seabury, waited in vain for a year in England to obtain consecration as Bishop from the English Bench and was forced to obtain the rite from the Bishops of the Episcopal Church of Scotland, 1784. But in 1787, English Bishops at Lambeth consecrated William White, Bishop of Pennsylvania and Samuel Provoost, Bishop of New York. In 1791, James Madison was consecrated in England, Bishop of Virginia; and in 1792, these four American Bishops joined in the consecration of John Claggett, Bishop of Maryland; and the American Church was wholly independent, a Sister, not a Daughter-Church.

(20)Memorandum by Simcoe to Dundas from London, June 2 (or 30), 1791: I *Correspondence*, p. 27: *Can. Arch.*, Q 278, p. 228: *Hodg.*, p. 8, refers to but does not copy the memorandum.

(21)I *Correspondence*, p. 43: *Can. Arch.*, Q 278, pp. 283, *sqq.*

(22)Despatch to Dundas from Navy Hall, November 6, 1792: I *Correspondence*, p. 251: *Can. Arch.*, Q 279, I, p. 169.

(23)Despatch, Henry Dundas to Simcoe, from Whitehall, May 2, 1798: I *Correspondence*, p. 326: *Can. Arch.*, Q 279, I, p. 219: *Sim.* I, 5, 71.

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<sup>(24)</sup>Despatch, Henry Dundas to Simcoe, from Whitehall, October 2, 1793: 2 *Correspondence*, p. 80: *Can. Arch.*, Q 279, I, p. 251.

The Bishop of Quebec is described by Rev. Dr. Stuart as "a Scholar, Gentleman, Orator & Zealous Churchman": he appointed Dr. Stuart, his Commissary for Upper Canada.

Letter, Dr. Stuart to the Right Reverend Dr. White, Bishop of Pennsylvania, from Montreal, February 8, 1794: 2 *Correspondence*, p. 147.

<sup>(25)</sup>For example, see his Letter to Simcoe from Kingston, May 8, 1796, Wolf. I, 8, 174: "The Reverend Mr. Wygant is a young man of decent appearance of the Lutheran Church. He produces very ample testimonials of his Ordination, Learning, and Morals, but being a stranger I can say no more of him. I told him that no public salary could be expected. However, he, if that is refused, will be contented with a small allowance of land.

<sup>(26)</sup>White's Report as to the request to grant licences to clergy men, other than those of the Anglican Church is given, Wolf. I, 8, 238:

"Niagara, June 2nd, 1796.

Sir:—

I had the honor of Your Excellency's letter of this date, desiring my opinion whether the Bishop of Quebec or his commissary Mr. Stuart is authorized to grant licences to Ministers of Churches dissenting from the established Church of England to solemnize Marriages, and whether Marriages solemnized under such authority will be valid and legal, any law of this Province notwithstanding? And can at present only inform your Excellency that the exercise of this power depends upon the Lord Bishop's Commission, and the nature of his instructions. If they extend to invest His Lordship with this power, it will certainly not militate against any law of the Province, but as I conceive rather be upheld by the 25th H. 8, c. 21, which I beg to submit to Your Excellency's wisdom.

Having the honor, Sir, to be most respectfully,  
Your Excellency's most obedient and  
humble servant,

J. WHITE, A.G.

His Excellency the Lieut.-Governor."

The Act referred to by White, (1533), 25 Henry VIII, c. 21, is the "Act concerning Peters-pence and Dispensations" which forbade paying Peters-pence to or asking Dispensations from the Pope,

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and enabled the Archbishop of Canterbury to grant Dispensations in respect of solemnization of marriage, &c.: but it does not especially authorize him to grant a Dispensation as to the power to perform the ceremony.

(27) For some particulars concerning this Church, see 15 *Ont. Arch. Rep.* (1918-19), pp. 691, *sqq.* Most of the correspondence is on file in the Cardinal's Archives at Quebec, some is in the Assumption Church Registers. The dispute seems to have come to a head early in 1796. Bishop Hubert wrote to Baby from Quebec, April 19, 1796; the letter in Simcoe's name actually written by Baby is dated at Niagara, June 7, 1796, *Wolf. I*, 8, p. 252 (in the copies made for Mr. John Ross Robertson it is addressed to The Rev. G. "Rush", Grand Vicar, this should be, "The Rev. E. Burke". Edmund Burke already mentioned in the Text, was now acting Vicar-General of the Diocese of Quebec in Upper Canada: *Wolf. I*, 6, p. 150. 22 *Mich. Hist. Colls.*, pp. 408, *et al.* He was paid £50 per annum by the Treasury so long as he remained in Upper Canada. *Can. Arch.*, C 576, p. 92: 15 *Mich. Hist. Colls.*, p. 79). The Bishop wrote Burke, October 13, 1796, with instructions as in the letter of June 7, "à nous adressé en date du 7 Juin"; and the Vicar-General, January 7, 1797, issued his final decree accordingly. (I translate): "We, the said Edmund Burke, Priest Vicar-General of the Diocese of Quebec, because of the orders above indicated and to us addressed by His Excellency the Lieutenant-Governor of Upper Canada, and by His Lordship the Bishop of Quebec, have decreed, and by these presents do decree that the place of honor in the gallery on the epistle side next to the wall shall be assigned to the Lieutenant, or in his absence, to the Deputy Lieutenant, of the County of Essex, to the end that he may erect there a pew of customary design, and we forbid, by the authority of the said Lieutenant-Governor of Upper Canada, and of the said Bishop of Quebec, any person to trouble him in the possession of the said place of honor". (The letter speaks of "l'honorable Jacques Baby" as "Lord Lieutenant du Comté de Kent"). The Priest, Jean Carlisle Marchand, made the public announcement at Mass the next day, January 8, 1797; (as to Father Marchand, see *Can. Arch.*, Q 256, p. 8, *et al.*, 15 *Mich. Hist. Colls.*, p. 52, *et al.*: he had been a Missionary to the Indians and later became Vicar-General: he survived until 1825: *Can. Arch.*, C. 265, p. 4: 23 *Mich. Hist. Colls.*, p. 127.

The objection to Baby's claim seems to have been due to his unfortunate martial relations. Chap. XXVI, Note 52, *post* p. 401.

## CHAPTER XXV

### Ills, Antidotes and Menus

**I**T has been not unobscurely hinted that Simcoe's ground for asking for leave of absence was feigned, the conventional method of extricating oneself from an unpleasant position being to plead ill health.

But this is unjust. While Simcoe himself says little of it, the candor and straightforwardness which ever characterized him contra-indicate pretence of sickness; and the Diary of his wife, taken in connection with his previous and subsequent life history, abundantly justifies the conclusion that he could not stand the climate and conditions of Upper Canada.

We have seen that in 1781, he was so ill that in the opinion of his physicians his life could be saved only by a sea voyage—that even before this time, possibly even before joining the army, he was frequently indisposed, and that he left America for England to recover lost health.

He was in reasonably good physical health after reaching Canada, until August, 1792, when, standing too near the cannon which were saluting Prince Edward of Kent at Newark, he was seized by so violent a pain in the head that he had to keep his room for a fortnight. This neuralgia often affects the gouty. Simcoe had had for some time a gouty pain in the hand, and not long afterwards a similar pain in the foot. But neuralgia is a very frequent concomitant of malaria, and all indications suggest malaria as the inducing cause, accompanied, as it was, by the very great strain on the nervous system from mental overwork and anxiety<sup>(1)</sup>.

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The very acute pain in the head abated, and early in November, it was hoped that he would have fewer letters to write and fewer headaches. However, he continued in poor health until he made the long journey to Detroit to a great extent on foot, when the exercise and air, aided by freedom from worrying despatches, made him remarkably well—March 10, 1793.

The gout had not disappeared: it returned a few days later in the hand, but within the week he was able to be about and walk on the sands. In the following August, in York, he had gout in the foot but does not seem to have been disabled, and except for a cold in August, 1794, which was very unusual but by no means unprecedented, he seems to have had reasonably good health until his trip to the east in the fall of 1794.

In these previous illnesses, he seems to have been treated by Dr. James Macaulay or Dr. John Gamble, and no doubt, *secundum artem*.

In Kingston he was stricken, March 21, 1795, and became so ill that he could not leave his room for five weeks. The migraine recurred, so severe that he could not bear any person but his wife to speak loudly or walk across the room. This was complicated by total loss of appetite and an entirely new symptom, so severe a cough that some nights he could not lie down but sat in a chair all night.

He had left his surgeon in Newark and was attended by "a horse doctor who pretended to be an apothecary". With characteristic unselfishness, Simcoe had left his medical attendants to look after the soldiers at York and Newark; but he had the great advantage of a tender and devoted nurse in Mrs. Simcoe. Molly Brant, the "Indian wife" of Sir William Johnson, prescribed a root which relieved the cough in a very short time. This root was probably the skunk cabbage which has still some vogue

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in certain rural districts; but possibly it was the sweet flag or calamus<sup>(2)</sup>.

He never recovered from the attack; he got a little better, indeed, but in August he was again very ill, and after another partial recovery he became much worse; his affliction was diagnosed as bilious fever. "Bilious fever" is—or rather was—a generic term applied to what is now called malarial fever, and particularly to the aestivo-autumnal fever of the later summer and fall. It was well known in Upper Canada as country fever, remittent fever, etc.; the origin was supposed to be bad air from swamps, etc.; but it is now known to be caused through the bite of a particular kind of mosquito carrying the parasite from a sick person to some other. Ague is one of the forms of malaria: and Mrs. Simcoe seems scarcely ever to have been free from ague, which was notoriously prevalent at Newark.

Simcoe partially recovered when the cold weather came on, but always suffered from lassitude: and summer coming on, he was again very ill. His physicians were quite justified in saying that his only chance for health was to leave the Province<sup>(3)</sup>.

That mosquitoes swarmed in Upper Canada then and for long after is notorious: Mrs. Simcoe as early as July, 1792, "was driven home by the bite of a mosquito through a leather glove". She says "My arm inflamed so much that . . . . I fainted with the pain"; and she informs us that people went to Carleton Island "to get rid of the ague, a complaint which is very prevalent in this Province". The same month at Newark she "suffered exquisite pain all the day from a mosquito bite which the extreme heat increased and at night my sleeve was obliged to be cut open". When the mosquito net was left behind by mistake, she suffered severely and passed a wretched night. It was scarcely possible for her to

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write or use her hands "which were always occupied in killing them or driving them away". At the Twenty Mile Creek, the place "abounds so much with mosquitos that the farmer does not sleep in his house from June till September but sleeps in his barn to avoid them"<sup>(4)</sup>. As has been said, no one at that time knew that this insect pest was the vehicle for the transmission of ague, remittent fever, bilious fever, country fever, but there can now be no doubt of it. The sand flies of which she complains, were an annoying nuisance, indeed, but they carried no disease.

Mrs. Simcoe, as became a lady in those days, was a perfect compendium of the popular medicine of the place and time, "simples". Turpentine from the cones of the balm of Gilead fir was a remedy for wounds greatly esteemed: "Elder flower leaves take off the pain of the gout or rheumatism."

The negro of Carolina who obtained his freedom by the discovery that the juice of horehound and plantain cured the bite of a rattlesnake would have been a very great benefactor to Upper Canadians, in whose country at Newark, Niagara Falls and York, rattlesnakes abounded, but for the fact that the indigenous rattlesnake plantain (called by Charlevoix, Senega) was equally efficacious. So was pounded crayfish applied to the wound.

For ague, Mrs. Simcoe drinks "the buds of Sassafras in tea and it removed the symptoms"; for headache, "sweet majorie tea"; as a stomachic, "cat mint in tea"; the roots of the black haw boiled are "a cure for complaints in the stomach": "sarsaparilla, golden thread . . . . the roots when steeped in brandy . . . make a fine aromatic tincture and liquorice", while "the tough skins from the inside of wild pigeons' gizzards hung up to dry and grated to a fine powder is an infallible cure



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for indigestion". The Indian turnip cures a cough; the berries of the mountain tea or wintergreen "are of a very warm nature and raise the spirits". The roots of the Oswego bitter infused in brandy make a wholesome cordial. The celebrated capillaire has all the virtues attributed to its Montpellier namesake by Formius<sup>(5)</sup>: ginseng is a root highly valued as a tonic; crowsfoot boiled in milk till it becomes red also cures stomach complaints; *trippe de roche*, a kind of liverwort, is good for diseases of the liver. Then there was the "Consumption Vine, a pretty creeper—Green's daughter was cured of consumption by drinking tea made of it". Toothache plant, "a beautiful species of fern"; sore throat weed, Dragon's blood; "Adam and Eve or Ivy Blade . . . . which heals cuts or burns"; but beware of strawberry spinach, which though often eaten in Upper Canada, was considered poisonous in Lower Canada. So with the May apple, a pleasant fruit, but whose roots were poisonous. The cardinal flower was used by the Indians medicinally. Then there was a spring but recently discovered in the woods below the mountains whose water tasted like ink and looked very dark; it smelt very sulphurous as did the ground around it but it was said to "cure lameness and blindness and every disorder."

To anyone not acquainted with the opulence in food material in Upper Canada in its natural state, the variety and abundance of the Simcoe table might be a matter of wonder.

The military supplies of beef, pork, etc., (the lady disliked pork) aside, the Governor and his family indulged in venison whenever so inclined. The Indians within an area of seven miles killed over five hundred deer a month, and venison toasted before a large fire became one of the regular accompaniments of a winter outing. An occasional bear—the Indians present the

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head to their chief and make a rule to eat all the bear's meat which has been dressed but the bear tastes too much like pork. The Governor and suite on their Detroit trip ate raccoons and porcupines, the latter tasting like pork; a fat raccoon eaten with mint sauce tasted like lamb. Hares and black squirrels were also eaten; the black squirrel was boiled and was "as good to eat as a young rabbit"—a true English meiosis to anyone who had ever eaten a stewed black squirrel.

Chickens and turkeys, as well as eggs, are still as abundant as then, but the passenger pigeon has gone, and the wild turkey almost so. The pigeons flew "so low that at Niagara the men threw sticks at them from the fort and killed numbers; the air was sometimes darkened by them . . . . Sometimes they fix a bullet to a string tied to a pole and knock them down . . . . Besides those they roast and eat at present, they salt the wings and breasts of them in barrels and at any time they are good to eat after being soaked". It is gratifying to local pride to hear that while those at Newark were particularly good, those at York, where the air was full of them, were fatter and better<sup>(6)</sup>. Wild ducks were much more abundant than at present—Coote's Paradise (near Hamilton) and Ashbridge's Bay (Toronto) were full of them. The large black duck had already asserted its pre-eminence and was "esteemed one of the best". An occasional wild goose made its appearance, too.

Of fish, salmon were abundant, red and good, best in the month of June; at Newark they were speared at night, a jack light being used to attract them. They were caught in the Don also. Black Bass were extremely good, as large as carp, as firm as a dory; thirty had been taken out of one hollow tree. They were often trolled for in the St. Lawrence. An occasional perch was had, but this fish does not seem to have had much vogue.

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We hear of "maskalonge (a superior kind of pike) and pickerell" in the St. Lawrence, and the former in abundance in Lake Simcoe.

Sturgeon about six feet long were caught in the Niagara; one person caught forty in one day, and the 5th Regiment a hundred; but caviare was not prepared from the roe as was done on the Pacific Coast by the Indians with salmon roe "beating them up with sorrel, a plant with acid taste, till it becomes a kind of caviare."

Tortoises were also eaten though it would appear not infrequently "cut up and dressed like oysters in scollop shells"—they "were very good at supper."

The large trout of Lake Simcoe, weighing about twelve pounds each, were not so good as the smaller trout; these were excellent and to be found in most streams. The small red trout caught in the Don through the ice were excellent, but were easily frightened away by sleighs being driven over the ice.

But all these were inferior compared with the Niagara Whitefish, whose praises are sung time and again, never too loudly or too fulsomely, *me judice*. "They are most exquisitely good . . . better than any other fresh or salt water fish . . . so rich that sauce is seldom eaten with them, but it is a richness that never tires, it is of so delicate a kind . . ." <sup>(7)</sup>. Generally taken in nets, the Lake Whitefish was speared near Gananoqui.

Fish chowder, Col. Pickering, the American Commissioner, taught his hostess to make of salmon, sea biscuit and pork stewed for twenty minutes; it proved a blessing, being easily dressed in the woods after being prepared in a kettle at home; and even at Castle Frank, the dinner was sometimes of wild duck and chowder.

The vegetable kingdom was equally generous.

Potatoes, of course, there were in abundance; bread made in the ordinary way or with rennet and whey with-

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out yeast or water and baked in wicker or straw baskets as was the style taught in the Moravian School at Bethlehem, Pennsylvania; Dutch cakes; corn just yellowing, boiled or roasted (that, *horresco referens*, was eaten with lemon juice)<sup>(8)</sup>; maple sugar and, what is now unknown, walnut sugar—the maple sugar selling for 10 cents a pound. The walnut sugar was said to be made from black walnut trees and was darker and sweeter than that from the maple. Wild asparagus had to be eaten when very young; afterwards it became poisonous; walnuts, butternuts, “better than walnuts”, roasted chestnuts—apparently hazel nuts had not come to their own. Everlasting peas were good to eat when boiled.

Fruits and berries were abundant; apples, peaches—they were very small and high-flavored—Mrs. Simcoe ate thirty peaches in a day, but that was a trifle compared with what the young men, Talbot and others, ate; and “when tired of eating them raw, Talbot roasted them and they were very good.” Some peach trees were planted at Castle Frank. Cherries, the large May Duke variety of which the Indians were especially fond, and winter cherries which were preserved; plums, in which Carleton Island abounded.

Shaddock or Grape fruit was of course imported from the West Indies.

Of small fruit, there were several kinds of strawberries. Some of the wild kind “were as large and as well flavoured as the best scarlet strawberries in gardens in England.” They became ripe about the first of June but even by the middle of May they were edible. Raspberries of the wild variety were “uncommonly fine” and raspberry vinegar in place of tea gave a good night’s rest. Cranberries, both the “low bush” and the “high bush” kinds—of the former some were as large as cherries and as good, the best growing under the water; they were a

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favorite gift from the Indians. The high bush kind were less bitter than those in England. Then there were fox berries, which we now call bear berries or bears' grapes—apparently their medicinal properties had not been discovered, and no mention is made of the Indian smoking material, Kinnikinnic, made from the leaves. Only the domestic currant is mentioned, but the huckleberry (called hurtleberry or whortleberry), which ripened about the end of July, was larger than those in England, was quite black, and dried in the sun was as good as the imported Levant currant. Dried by the Indians it is like Irwin's patent lozenges, but tastes of smoke. About the beginning of March, partridge berries were gathered; the scarlet berry adheres to the plant all winter, is eatable but dry and almost tasteless.

The May apple, our mandrake, has a fruit of the colour and near the size of a magnum bonum plum, which ripens in August. The root is poisonous (the French call the fruit, *citrons sauvages*). Melons were grown in large quantities and of the best quality near the Head of the Lake, and the finest water melons Mrs. Simcoe ever saw were at York; she ate two or three a day.

Wild rice is spoken of more than once as splendid food for wild ducks, but it does not seem to have been used on the table.

Tea drinking was of daily occurrence. In addition to the imported article, or rather in its absence, there were those of native growth. Mountain tea berry or wintergreen was so much thought of that it was planted at Castle Frank; Mr. McGill drank "tea made of hemlock pine; it is not pleasant but thought wholesome"; and tea and coffee made of peas were good, the coffee being the better.

Balls and dances were of very frequent occurrence. Mrs. Simcoe became a confirmed whist player under the

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tutelage of the "old bachelor", Chief Justice William Osgoode, and had an occasional game of chess. She took some sumach wood to make chessmen, the wood being so beautiful.

So living, they suffered no harm from the earthquake shocks they felt in Quebec, December 5, 1791, and in York, December 27, 1795.

### NOTES

(<sup>1</sup>)See *Encyclopædia Britannica*, *sub voc*, Neuralgia. Though Sir William Osler, *Practice of Medicine*, 5th ed., p. 104, casts doubt on the malarial origin, it seems well established; but even he says "It occasionally occurs in malarial cachexia."

And whatever theory be adopted for either neuralgia or gout, there can be no doubt of the fact that "headache and megrim attacks are not infrequent" in the gouty. Osler, *op. cit.*, p. 415.

(<sup>2</sup>)The Skunk Cabbage in the Thomsonian System was much advocated. The root was dried, powdered and made into a tea and it was good "for asthma, cough, difficulty of breathing and all disorders of the lungs"; or as a later authority puts it, "good for coughs, asthma, spasms and worms"—or later still (1836), "asthma, coughs, consumptions, etc., a good vermifuge when taken in powder". By this time the Sweet Flag was recommended for colic taken as a Bitter. The Indian Turnip, *Arisaema triphyllum*, may possibly be meant; it was good, the roots being taken in a tea, for coughs, colds, consumption, cramps in the stomach, &c.

See my Article on the *Pharmacopoeia of a Botanical Physician* and the two sequels in Transactions, Bot. Soc., Edinburgh, November 13, 1913, January 14, 1915, and October 3, 1919.

I have known the Indian Turnip used for coughs and also the Skunk Cabbage. The names of the former in common use are Wild Turnip, Dragon Root, Wake Robin, &c. Mrs. Simcoe says that it "cures a cough. It is like an aram" (*arum*); but this is before Molly Brant gave her prescription, and it is not likely that the latter was the Indian Turnip.

(<sup>3</sup>)I cannot find that his involuntary plunge in ice cold water at the Ice Bridge, Quebec, February 15, 1792, did him any hurt, or produced anything but a temporary inconvenience. *Diary*, p. 77.

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A shot in the shoulder and finger received by accident when a soldier fired at an Indian dog in July, 1794, did no permanent injury, painful as it was.

(4)As I have done a score of times, *Consule Planco*. That the celebrated Robert Gourlay was laid up for two months by mosquito bites in 1817, he himself says. See my Paper, *The Mosquito in Upper Canada*, 17 Proc. Ont. Hist. Soc. (1923). John Howison, a short time before, tells us of a cloud of mosquitoes extinguishing his candle, no unusual occurrence half a century ago. *Upper Canada in Early Times*, Canadian Magazine, May 14, 1913. *Sketches of Upper Canada . . . .* by John Howison, Edinburgh, 1821.

(5)See my *Rochefoucauld, ut suprâ*, p. 166.

(6)Howison, *op. cit.*, says of the wild pigeon: "Myriads of them are killed by firearms or caught in nets by the inhabitants for they fly so close and in such numbers that twenty or thirty may sometimes be brought down at a single shot". I have myself killed six at a single shot. Wilson, the celebrated ornithologist, saw a flock in Ohio more than a mile in breadth and at least two hundred and forty miles in length, which he calculated to contain 2,230,272,000 pigeons. It is believed that there is not one bird of the species alive to-day or has been for at least twenty years. The last I saw I shot in 1871. *Mea culpa, mea maxima culpa*.

(7)William Kirby's encomium of the Niagara Whitefish may be remembered:

" . . . . . of all that swim, the daintiest;  
Most beautiful and best! Yea! Catus missed  
The choicest thing e'er lay in golden dish—  
The Addikameng of Ontario."

to which I added a note, "Kirby is not too enthusiastic or encomiastic over the Niagara Whitefish; neither the sole of England nor the turbot of Ireland can compare with it in delicacy of flavour". *William Kirby*, Toronto, Ryerson Press, 1924, pp. 44, 64.

(8)The pumpkin was at that time considered good for milch cows: in my time a little more than half a century ago, many farmers believed that it would dry the cows.

## CHAPTER XXVI

### Simcoe's Executive Council

THE Royal Instructions named as the Executive Council for Upper Canada: (I) William Osgoode (the Chief Justice), (II) William Robertson, (III) Alexander Grant, and (IV) Peter Russell—a blank in the Instructions, Simcoe filled in with the name of (V) James (Jacques) Baby. These, with the exception of Robertson, were all sworn into office in July, 1792. (VI) Aeneas Shaw, was sworn in, June 21, 1794: and (VII) The Right Reverend Jacob Mountain received a Warrant or Mandamus for his admission as early as June 30, 1794. I do not find any record of his being sworn in or taking a seat in the Council<sup>(1)</sup>.

March 2, 1796, a Royal Warrant or Mandamus was issued to admit and swear in (VIII) Captain John McGill and (IX) Lieutenant David (William) Smith as Executive Councillors-Extraordinary. They were not to act as such except when specially summoned by the Person having the Government of the Province and were not to receive any salary as Executive Councillors. McGill was sworn in at a Council meeting held at the Garrison at York, June 18, 1796, and Smith at a meeting at the same place, June 27, 1796, and both acted in Simcoe's time<sup>(2)</sup>.

(I)—WILLIAM OSGOODE—There has been a great deal of mystery thrown around the first Chief Justice of Upper Canada<sup>(3)</sup>; but the main facts of his life are perfectly clear largely owing to the letters to and from him, now the property of the Law Society of Upper Canada<sup>(4)</sup>. He was the son of William Osgood<sup>(5)</sup>, Gentleman, of St. Mar-



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tin's Parish, London, and was there born in 1754. Educated at Christ Church, Oxford (matriculating 1768, B.A., 1772, M.A., 1777), he became an accurate Greek and Latin scholar while his English is clear and concise. He entered Lincoln's Inn in 1773 and after a trip to and a stay of about a year in France, he was Called, November 11, 1779. He did not go on Circuit and apparently did not take Common Law briefs at all, confining himself mainly to Equity drafting. In 1779, he published a small quarto opposing certain of Blackstone's views on the Law of Descent, which was highly thought of by competent judges but failed to convince the Bench<sup>(6)</sup>.

The reasons for his appointment as Chief Justice of Upper Canada do not appear; his Warrant is dated December 31, 1791, but he did not sail until the Spring, when he accompanied John White, the Attorney-General, and Peter Russell, the Receiver-General, to Quebec, June 2, 1792, where they joined Simcoe accompanying him to Montreal about a fortnight later. Preceding Simcoe by one day they arrived at Kingston, June 29. He was there sworn in of the Executive Council, July 9, and took part in the deliberations. He also presided over the Court of Oyer and Terminer and General Gaol Delivery for the District of Mecklenburg trying a case of murder and some cases of other offences.

He became Chairman of the Executive Council, which position he occupied as long as he remained Chief Justice of the Province. He was a faithful attendant at the meetings<sup>(7)</sup> and did much useful work in the interval. It is to him that we owe the very well-drawn Judicature Act of 1794, the foundation of the Common Law practice until the more celebrated Judicature Act of 1881<sup>(8)</sup>.

He also drafted an Act respecting Marriage: and in the Legislative Council of which he was Speaker, exer-

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cised a supervision over the legislation proposed by the Assembly. He attended every meeting in the three Sessions of his stay in Upper Canada<sup>(9)</sup>.

Appointed Chief Justice of Lower Canada, he resigned on a pension in 1802, proceeded to England and there lived until his death in 1823 at the age of 70.

Simcoe even before any experience with Osgoode seems to have formed a high opinion of him. In his Memorandum to Dundas of June 30, 1791, he says: "The administration of public justice has been nobly provided for in the selection of a Gentleman to fill its Principal office of such respectable personal & professional Character as may ensure the equal & just execution of its responsible Duties"<sup>(10)</sup>. In a letter to Dundas from London, August 12, 1791, he says: "In regard to the legal Appointments, the placing of so respectable a man as Mr. Osgoode at the Head of the law Department leaves me nothing to desire on that Subject"<sup>(11)</sup>. Throughout Osgoode's tenure of office, Simcoe continued to speak of him in the highest terms and to rely upon him implicitly. When he was to take leave of him, he said: "I shall feel an irreparable loss in Mr. Chief Justice Osgood"<sup>(12)</sup>.

Dorchester watched his career in Upper Canada and when the death or retirement of Chief Justice William Smith of Lower Canada was imminent, he had urged upon the Home Authorities the appointment of a duly qualified Chief Justice as his successor; so when Osgoode was appointed he was content and wrote to Simcoe urging that he should come to Quebec as soon as possible<sup>(13)</sup>.

A competent judge, and one not given to flattery, is Hon. Richard Cartwright, Jr., a Legislative Councillor; and he says of Osgoode: "The Chief Justice appears to be a very worthy and respectable man"<sup>(14)</sup>.

His portrait at Osgoode Hall shows him to have been a man of fine presence with a handsome and refined face.

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His correspondence and all that is known of him (if we disregard the malignant gossip of a certain class in Lower Canada) bear out what has been said of him. No person admitted to his intimacy ever failed to conceive for him that esteem which his conduct and conversation always tended to augment<sup>(15)</sup>.

While he left no mark upon our jurisprudence, his name will be perpetuated by the title of the building, Osgoode Hall, the seat of our Supreme Court, the lineal descendant of the Court he did so much to establish although he never sat in it; and the name is the more to be venerated because it was given our Hall by one of the most illustrious of Osgoode's successors in State and the Court<sup>(16)</sup>.

(II)—WILLIAM ROBERTSON — William Robertson was of Scottish birth and descent. As early as 1777, his brother, Capt. Samuel Robertson, was established in Michillimackinac; he died in 1784. His father-in-law, John Askin, was carrying on business in Detroit and in the winter of 1782-3, William Robertson came to Detroit as his clerk. He rapidly became a personage at Detroit and soon established himself in business, apparently in 1784. In 1788 he admitted his brother David as a partner, the firm being "W. & D. Robertson."

He took an active part in urging the necessity of local Courts at Detroit and when Dorchester in 1788 divided the territory afterwards Upper Canada into four Districts (the District of Hesse including Detroit and Michillimackinac) Robertson was named one of the Judges of the Court of Common Pleas for the District. He took a very active part in having the Bench of three lay Judges (including himself) replaced by one lawyer. He went to Quebec with that object which finally was achieved when William Dummer Powell was appointed First and only Judge with the powers of three.

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He was made a Member of the Land Board for the District of Hesse.

He seems to have remained in the east as we find him writing from Montreal, October 15, 1790; and he certainly went to England shortly afterwards. Simcoe met him in London, found him "to be a person of very good manners & good sense" and approved of him as an Executive Councillor<sup>(17)</sup>: but thought that his associations would scarcely permit him to be much at the Capital, which was a great desideratum<sup>(18)</sup>. He was recommended for a seat in both Executive and Legislative Councils by Dorchester and Sir John Johnston, and received the appointment accordingly.

He did not find it convenient to return to Canada and during the first year of Upper Canada's life, he sent in his resignation<sup>(19)</sup>. He never was sworn in and never became *de facto* a Member of either Council.

He returned to Detroit in 1795 and took a prominent part in the endeavor to secure large tracts of Indian lands in what is now the lower peninsula of Michigan and the northern part of Ohio, Indiana and Illinois<sup>(20)</sup>.

Leaving Detroit in 1796 he went to Montreal where he lived four years; returning to Detroit in 1800, he left there the next year for Toronto and Niagara, then to England where he is said to have lived wretchedly in the vicinity of Billingsgate. He died in 1806 leaving an only child, his daughter Elizabeth Lucy who married Dr. Henry Ronald of Old Brentford<sup>(21)</sup>.

(III) ALEXANDER GRANT—Alexander Grant<sup>(22)</sup> was the son of Patrick Grant of Glenmoriston, Invernesshire, Scotland; born at Glenmoriston House, May 20, 1734, he served three years in the Royal Navy, and in 1757 exchanged into the 77th Foot or Montgomery's Highlanders, with whom as an Ensign he sailed for America in 1758. He was in the expedition against Fort Du-

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quesne, being there Lieutenant in the 77th Foot in 1759. He was in command of a sloop of 16 guns on Lake Champlain and served under Amherst against Ticonderoga and Crown Point.

In 1760 he was appointed to the command of a sloop of 20 guns on Lake Champlain; when, in 1764, the Highlanders were disbanded, he was appointed by General Gage to command all the vessels upon the several Lakes. This caused him to take up his residence at Detroit where we find him in 1771 engaged in building two vessels for the King<sup>(23)</sup>.

In 1773 or early in 1774 he went to New York to wait upon Haldimand recently appointed Commander-in-Chief of the British Forces in America, apparently to explain and press his plans for naval control of the Lakes. He returned to Detroit in the summer of 1774<sup>(24)</sup>.

Carleton before leaving for England in 1778, confirmed Grant in his position, giving him, in 1777, the command of the vessels on Lake Ontario, Erie, Huron and Michigan; but Haldimand when he replaced Carleton, confined him in 1778 to the three Lakes, Erie, Huron and Michigan, thinking the former command too extensive for one man and giving Captain Andrews command on Lake Ontario<sup>(25)</sup>. In this year he was of great assistance to Lieutenant-Governor Henry Hamilton in his attempt on Vincennes, having charge of the fleet conveying Hamilton and his troops to the Maumee, and also carrying supplies. Grant, however, went no further on the expedition; he returned to Detroit and escaped capture by Col. George Rogers Clark<sup>(26)</sup>. He remained in Detroit having brought back all the British vessels to that Port in view of a probable attack by Clark. He used all his force and even the prisoners of war in completing the fortifications; no army, however, reached Detroit.

Some apparent irregularities in his accounts led to

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Captain Shank's being sent to Detroit to investigate, and the investigation cleared Grant of any imputation of dishonesty or other misconduct<sup>(27)</sup>.

He continued in command, and in the summer of 1782 was stationed on the Miami River with all his Fleet to bar the advance of the Republican troops; there he built a Blockhouse but being taken ill was obliged to return to Detroit. In the fall he went to Sandusky.

After the peace he remained in Detroit and endeavored to obtain a grant to himself and two associates of the tract of land between Lakes Huron and Ontario but deservedly failed<sup>(28)</sup>.

The forces were reduced in consequence of the Peace and Grant was relieved from active service. He had in 1774 married Thérèse Barthe, the daughter of Charles Barthe, a Canadian farmer<sup>(29)</sup>, and had a growing family; he therefore bought and worked a farm of considerable size at Grosse Point near Detroit.

In 1788 he was appointed one of the first Commissioners of the Peace for the new District of Hesse formed by Dorchester's Proclamation of that year; and assisted the Government in sounding the channel of the Detroit to find if possible a good channel between Grosse Isle and the right bank<sup>(30)</sup>.

In 1789 he became a member of the Land Board for the same District and rendered important services in that capacity. He still continued head of the Naval Service.

We have seen that he was one of the Executive and Legislative Councillors named in the Royal Instructions to the Governor and took his seat at Kingston, July 11, 1792. He was a fairly regular attendant at the meetings of both Councils and always supported the Government<sup>(31)</sup>.

In the troubles at Maumee he took an active part being in command of the vessels conveying the British Troops.

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On the approach of the surrender of Detroit to the Americans, Grant left the farm at Grosse Pointe which he had improved and upon which he had erected suitable buildings and so adapted it for the lavish Highland hospitality for which the "Grant Mansion" became noted. His title to this property of about 236 acres was confirmed by President Madison, June 1, 1812, just before the outbreak of the war. He took up his residence at Sandwich, "handy to the Church" of Ste. Anne.

In 1799, on the death of Alexander McKee, Deputy Superintendent General of Indian Affairs, Grant was joined in a Commission given by Peter Russell, the Administrator, with James Baby and Thomas McKee to take his place, but on the arrival of Sir John Johnson the Superintendent the Commission was withdrawn. During this time there seemed a prospect of an Indian uprising against the British but it came to naught<sup>(32)</sup>. In the same year he became Lieutenant of the County of Essex.

On the death of General Peter Hunter at Quebec in August, 1805, he became Administrator of the Government, which position he filled until the arrival of Francis Gore, August, 1806. During his short term of office he had the misfortune to spend some of the money raised by the Provincial Parliament without obtaining legislation for the purpose. Following the advice of Attorney General Scott and neglecting that of a much shrewder man, Mr. Justice Powell, Grant made the matter worse by a weak and wavering reply to an Address by the Legislative Assembly complaining of it. The matter was amicably settled the next year by Gore on the instructions of the Home Government<sup>(33)</sup>.

When General Hull made his invasion from Detroit, Grant took part in the meeting of Council, August 4,

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1814, when Martial Law was directed on Prorogation<sup>(34)</sup>.

His age was telling and Brock had already seen that he must soon be retired from active service; but he retained his title of Commodore and exerted himself to the utmost in defence of his country, Captain Robert H. Barclay taking over his office. His strenuous exertions were too much for a frame weakened with age, and he died, May 8, 1813. His body lies in the churchyard at Sandwich, and within the church is a tablet erected to his memory by his grandson, the late Judge Woods<sup>(35)</sup>.

(IV) PETER RUSSELL—Peter Russell, a descendant of the Russells of Bedford, was born at Cork, Ireland, 1733<sup>(36)</sup>. After attending the University of Cambridge which he left without a degree, he joined the army in which he served for a time in the medical service. Receiving a Commission as Lieutenant, January 9, 1760, he was, on the reduction after the Peace in 1763, retired. In 1775, when troubles in the American Colonies were becoming acute, he rejoined the army, receiving a commission as Lieutenant in the 64th Foot, August 15 of that year and as Captain-Lieutenant and Captain in the same Regiment in 1778. He became Assistant-Secretary to Sir Henry Clinton, took part in the expedition against Savannah and Charleston, 1779-1780, and, on the Peace in 1783, was retired. Living on his half pay, he was in 1791 selected as his Secretary by Andrew Elliott who had been offered the Embassy to the United States; but Elliott finally declined the position and Russell was strongly recommended to Simcoe as a suitable person "to watch over every Branch of the Civil Revenue & Expenditures". Russell "expressed a willingness to undertake any Post that might afford a competent Income & respectable Situation"; and Simcoe recommended him to Dundas, at the same time expressing a hope that



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in view of the important services he was to perform and "to the offices & Rank which Mr. Russell has hitherto borne", he might be appointed a seat in the Executive and Legislative Councils<sup>(37)</sup>.

He was appointed Inspector General of Accounts and Receiver General and his name appeared in the Royal Instructions as a member of each of the Councils. He set sail in the spring of 1792 along with William Osgoode the Chief Justice, and John White the Attorney General and joined Simcoe at Quebec, June 2, 1792. The three accompanied Simcoe to Montreal and leaving him to follow pushed on, June 21, for Kingston which they reached, June 29, two days before Simcoe's arrival. Sworn in as Executive Councillor, July 9, he began a long and faithful service as Executive Councillor<sup>(38)</sup>.

In addition to his position as Receiver General and Councillor, he in June, 1793, became Third Justice of the Court of Common Pleas for the Home District, which sat at the Capital<sup>(39)</sup>.

He was an indefatigable office seeker and when the Courts of Common Pleas were abolished in 1794, he obtained a Commission as Justice of the new Court of King's Bench, *ad hoc*, though he knew no law<sup>(40)</sup>.

When Simcoe went to England in 1796, he became (as Senior Councillor) Administrator of the Government of the Province and continued such until the arrival of Peter Hunter in August, 1799. He had the unwisdom—to use no harsher term—to grant Commissions to himself as *ad hoc* Judge until checked by the stern rebuke of Portland<sup>(41)</sup>.

His grants as Administrator to himself as an individual were notorious, but no legal objection was ever found to any of them<sup>(42)</sup>. As Administrator he considered himself Simcoe's deputy and tried to carry out

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what he understood to be Simcoe's policies; and in this, he was reasonably successful<sup>(43)</sup>.

When he left the office of Administrator on the arrival of Hunter, he continued to exercise the functions of Councillor with diligence until nearly the end of his life<sup>(44)</sup>.

The house built by him in York when the capital was to be removed to that place, was destroyed by fire in January, 1797; Russell failed to have an allowance made him on that account, and built on the southwest corner of Princess and Front Streets the house long known as "Russell Abbey" or the Palace<sup>(45)</sup>.

He died at Russell Abbey, September 30, 1808<sup>(46)</sup>.

"His portrait, preserved in the Baldwin family, shows a portly gentleman, with a face full of character not unlike that of Thomas Jefferson."<sup>(47)</sup>

(V) JAMES (JACQUES) BABY—The Canadian Baby family<sup>(48)</sup> is descended from Jehan Babie, Seigneur de Ranville of the *petite noblesse* of Guienne. His son, Jacques Babie de Ranville, born in 1633, came in 1665 to Nouvelle France as an officer in Captain de St. Ours' Company in the celebrated Carignan-Salières Regiment and ultimately settled at Champlain. His posthumous son, Raymond, born in 1688, became a fur trader in the Western Country. It is possible, but not very probable, that it is he who was the person of that name living in Detroit in 1708. He died in 1737. His fourth son was Jacques Duperon Baby (Jacques Duperron Baby, Jacques Duperon-Baby) born at Montreal in 1731, who served in the armies of France against Britain on the Ohio, in Virginia and in Pennsylvania. Before the Conquest of Montreal in 1760 he had settled in Detroit<sup>(49)</sup>. On the approach of Major Rogers to take possession of that Port under Villeneuve's Capitulation, he hastened his marriage, intending to depart. On possession being

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taken by the British he refused to take the oath and left with his bride for France. He went to Fort Pitt on his way. Illness prevented him proceeding for some time, but at length he left for Montreal. There he was arrested on the baseless charge of inciting the Indians to revolt but was soon released, the charge being proved false. He went to Fort Pitt again and once more to Montreal, and then to Detroit. He seems to have accepted British allegiance on the Peace of 1763 as we find him in Detroit assisting the British in defence against Pontiac. At all events, thereafter, he was a loyal British subject. Parkman in his *Pontiac's Siege of Detroit* speaks of him more than once. He became a Captain and Interpreter in the Indian Service and was highly thought of by Haldimand.

When, in 1788, Dorchester formed four Districts out of the enormous territory afterwards Upper Canada, he appointed him one of the three judges of the Court of Common Pleas for the District of Hesse<sup>(50)</sup>. While Baby did not think it courteous to sign the Petition to that effect, he did all that he could to induce Dorchester to supersede the three laymen and appoint a lawyer Judge, which, as we have seen, Dorchester did in the person of William Dummer Powell. He was a man of considerable means, having a household of several white servants, and a score of slaves, black, mulatto and Indian (Panis). He died at Sandwich, August 2, 1789.

The Councillor James Baby was the third son of Duperon Baby—his two (twin) elder brothers and one sister having died in infancy, he is generally called the eldest. He was born at Detroit, August 25, 1763, during the siege by Pontiac. In the absence of satisfactory schools in the Upper Country, he was sent to Quebec to the care of his father's brother, François, to be there educated. After a short stay at the little Seminary there,

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<sup>(51)</sup> the only classical school in the city, which had taken the place of the Jesuit College, he was removed by his father and placed under the Curé of Longue-Pointe for private tuition until ready for the Philosophy classes in the College. He at the same time was provided with dancing and fencing masters by the care of his father who was determined that his education should be complete; he thus acquired that ease of deportment and grace of manner which ever characterised him.

He returned to Detroit and his home in 1783, but was in 1786 sent on a tour of Europe<sup>(52)</sup>, principally in England; returning he engaged in trade with his father and took control of the farms and mills on the River Rouge. When the old Province of Quebec was divided into two in 1791, he seems to have been in the mind of all those competent to judge, as a proper person to represent the loyal French-Canadian element in the Detroit district. It has been said that Simcoe's attention was called to him by his uncle, Hon. François Baby of Quebec<sup>(53)</sup>; and that is not at all unlikely. At all events, while Simcoe was still at Quebec, he requested the appointment of Baby to both Councils on the first vacancy<sup>(54)</sup>.

As we have seen, Simcoe at Kingston filled in one of the two blanks left in his Instructions with the name of Baby; this he ventured to do because the Secretary of State did not answer his request, and silence, he considered, gave consent<sup>(55)</sup>. He attended the meetings of the Executive Council at Kingston in July, 1792, most faithfully; but thereafter he failed to attend until May 30, 1793; then attended every meeting during that year, the last being on July 24; he also attended the meetings in June and July, 1794, and then not until May and June, 1796.

He took an active part in the election in 1792 of his brother François to the Legislative Assembly for Kent

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in the first Parliament of Upper Canada<sup>(56)</sup>. In the same year he was made Lieutenant-Colonel of Militia and also Lieutenant of the County of Kent. He was a painstaking and competent Militia officer and his influence with his compatriots was of great value in the Miami troubles. He removed from Detroit in the Fall of 1795 to Sandwich, Upper Canada, in consequence of the approaching surrender to the Americans of that Post, under Jay's Treaty<sup>(57)</sup>. He was made Deputy Superintendent General of Indian Affairs and had much influence with the Indians.

During the War of 1812 he commanded the 1st Kent Regiment Flank Companies and other Militia; his merits were conspicuous and his services disinterested. His family were driven from their home and he lost very severely in a financial way; in recognition of his distinguished services and in partial compensation for his great losses, he was given the important office of Inspector-General. For many years before his death, he was Senior Member and President of the Executive Council.

His health being impaired by the hardships of the War, he was ordered by his physicians to go to Lower Canada to which he had sent his children—his wife having died of a fever prevalent in Detroit and its neighborhood in 1812-13—when it was determined to withdraw the troops from the Western part of Upper Canada. On the return of Peace in 1815, he returned to Sandwich where he remained a short time, but when he was, in 1816, appointed Inspector-General he removed to York (Toronto), residing at that place until his death in 1833.

One who knew and loved him well, writes of him, "as a member of both Councils, he displayed the most uncompromising probity, and no influence could induce him to give up an opinion, which, after mature examination, he concluded to be right. Owing to his having cultivated

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both languages, French and English, and sometimes speaking in one and sometimes in the other, he seemed at times slow of apprehension, and after having made up his mind, somewhat pertinacious, but it was the result of high principle. There was nothing of levity or selfishness allowed in forming his conclusions"<sup>(58)</sup>.

It cannot be said that he exhibited any originality in the Councils; he was a Royalist and a consistent supporter of the existing Colonial system, having no sympathy with any of the movements looking to Responsible Government.

Much of such influence as he had was based upon his being considered to represent the French element in the Western part of the Province; as their relative importance diminished by immigration of the English-speaking, he was less regarded. In his later years, he was respected indeed, but almost a nonentity<sup>(59)</sup>.

By his marriage with Elizabeth Abbott<sup>(60)</sup>, daughter of James Abbott of Detroit in 1802, he had several children. Some of his descendants are still in the Province.

(VI) AENEAS SHAW—Shaw did not become an Executive or a Legislative Councillor until Simcoe had been some time in Canada. He was a native of Inverness, Scotland, and served in the Revolutionary War in the Queen's Rangers. He was also in the 30th Foot for a time. On the reduction of the forces by reason of the Peace he was retired on half-pay with his rank of Captain. He went to New Brunswick and worked hard as a settler on the Nashwaak River for some years<sup>(61)</sup>.

He had commended himself to Simcoe for we find him recommended as Captain in the Corps of Foot proposed to be raised for Upper Canada<sup>(62)</sup>; he received the appointment accordingly. He was then living on the Nashwaak, near to Fredericton, New Brunswick, and made the noted march with some others, a party of 12,

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from Fredericton to Quebec, some 370 miles. They travelled up the River St. John and then crossed the height of land on snowshoes; they are said to have made 240 miles in 19 days, and arrived at Quebec, March 4, 1792, there joining Simcoe<sup>(63)</sup>.

Simcoe was impressed with the necessity of having a sufficient number of Executive Councillors always at the Capital to have the Council function efficiently; he thought that Robertson's business would keep him away and that neither Shaw nor any French gentleman to be appointed would be able to be much at the Capital. We find him recommending Shaw, "a very able man as well as an officer, and who has a perfect knowledge of Infant Settlements, having with his own hands worked hard for some years in Nova Scotia to form one."<sup>(64)</sup> Shaw took the command of the First Division of the Queen's Rangers which, arriving at Quebec, May 28, 1792, pushed on to Montreal where Shaw joined them, and proceeded west to Upper Canada, arriving at Kingston before Simcoe<sup>(65)</sup>.

On the Legislature closing, Simcoe took up the matter again and urged Shaw's appointment by reason of the inconvenience arising from the small number of Councillors. He said of him: "a Gentleman of Education, Ability & Loyalty & who has served his Majesty during the greater part of the last War as Captain; on the reduction he retired to New Brunswick where with great Industry he formed a Plantation which he quitted to serve under me as Captain-Lieutenant risking the chance of his being reduced on half pay with an inferior income. He has a large family (seven by this time) & as he is one of those Gentlemen who is most likely to effect a permanent Landed Establishment in this country, I beg . . . in the strongest terms to recommend him to your Protection"<sup>(66)</sup>.

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The application was approved in May, 1793: Shaw obtained his mandamus, but great delay occurred and he was not sworn in until June 21, 1794,<sup>(67)</sup>.

In the meantime he was recommended by Simcoe for a seat in the Legislative Council also, "as a character of approved Loyalty and unquestionable Attachment to His Majesty's Government and a proper person to fill it"<sup>(68)</sup>. This was approved by the Home Administration and Shaw took his seat, June 19, 1794<sup>(69)</sup>. He was a diligent attendant at the meetings of both Councils<sup>(70)</sup> and proved a clear-headed, businesslike adviser: Simcoe had no difficulty with him at any time.

He came to Toronto in 1793 and built the first house on the east side of Garrison Creek, a small log cabin dignified by the name of "Lambeth Palace." This later on became the Commandant's office and Shaw removed to near the recent situs of Trinity College, Queen Street West, where he built a home calling it "Oakhill."

In 1799, he was one of the three Commissioners whom Hunter entrusted with the administration of the Government temporarily during his absence in Lower Canada.

During all his life in Upper Canada he took the deepest interest in the Militia and was for several years in command of the Garrison at York. He was still Captain in the Queen's Rangers in 1803 when they were disbanded. He continued an Executive Councillor until 1807; became a Major General in the Army in 1811 and died in 1814<sup>(71)</sup>.

As the Right Reverend Jacob Mountain did not act at all, and Captain John McGill and Lieutenant (afterwards Sir) David William Smith very little, I do not here sketch their career.



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## NOTES

(1) For the Royal Instructions, see *D & McA.*, p. 34.

As to Bishop Mountain, there is in Wolf. I, 4, p. 231, a copy of the Royal Warrant or Mandamus dated "at our Court at St. James' the thirteenth day of June, 1794", for him to be admitted and sworn in the Executive Council of Upper Canada "and to take his seat next after Our Chief Justice of the said Province and on the death or absence of such Chief Justice next after the Senior Executive Councillor . . . ." but he was not to receive a salary as Executive Councillor.

Whether it was by reason of the want of salary or for some other reason, the Bishop did not proceed to Newark to be sworn in: and January 25, 1796, Dorchester sent the Mandamus to Simcoe, Wolf. I, 8, 22. Simcoe acknowledged the receipt from York, February 29, 1796, Wolf. I, 8, 74.

(2) For the Royal Mandamus, see Wolf. Ex. Col. Vol. 2, pp. 425, 426: McGill's admission, p. 425: Smith's admission, p. 427.

(3) Apparently due in great measure to Garneau's silly story of his being supposed to be the son of King George III. Even in the new revised and much improved Paris edition of 1920 of Garneau's *Histoire du Canada*, tome II, at p. 451, we read "Osgoode que l'on disait fils naturel de George II". The former edition credited the parentage to George III, Bell (Garneau's) *History of Canada*, Vol. 2, p. 232. General Cruickshank in 1 *Correspondence*, p. 129, note 2, gives some countenance to the grotesque and unfounded story. See 4 *Canadian Historical Review*, (December, 1923) p. 343. George III was 16 when Osgoode was born, and his grandfather George II, 71. Anyone who knows of the younger King's early training will acquit him, and the elder King was kept busy in 1753 and 1754 about Hanover. There is not the faintest shadow of a shade of evidence indicating a particle of truth in the story which seems to have originated in idle and malicious gossip at a time when Osgoode was in bad odor with many of the Quebecers.

(4) For a fairly full account of Osgoode, see my articles in 41 *Canadian Law Times* (April and May, 1921), pp. 278, 345.

The account given by the late David Read, Q.C., in his *Lives of the Judges*, Toronto, 1888, is creditable in view of the paucity of the material at his disposal. But he could not utilise the valuable

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Records now in the Canadian Archives at Ottawa, the Diary of Mrs. Simcoe, the Wolford Manor Papers, the Powell MSS., the Diary of John White (still unpublished but of which I have a copy), the Jarvis-Peters Papers, or most important of all, the extraordinarily interesting and valuable letters to and from Osgoode, now the property of the Law Society of Upper Canada through the generosity of H. S. Osler, Esq., K.C.

(<sup>5</sup>)He spelled his name "Osgood" and was so addressed by his friends, amongst them the celebrated wit, Joseph Jekyll, until 1781. The father retained the original spelling without the "e" until his death in 1767; the father was a spiritual son of Charles Wesley and a friend of John Wesley's, who said of him (December 13, 1767) that "he came to London over thirty years ago and from nothing amassed more and more till he was worth several thousand pounds". Wesley feared "that his money was a great clog to him and kept him in a poor low state all his days, making no such advance as he might have done either in holiness or in happiness". But he left to Wesley's Society £20 and directed that he should be "buried in . . . . Bunhill Fields, decently and without pomp", and he left five guineas to John or Charles Wesley for reading the funeral service over him and preaching a funeral sermon in West Street Chapel. See authorities cited in my articles, *ut supra*, pp. 357, 358.

(<sup>6</sup>)A copy is in the Riddell Canadian Library, the gift to me of the Honourable Society of Lincoln's Inn; a copy is in Harvard Law School Library of another work of his said to have been printed in 1797.

(<sup>7</sup>)He attended every one of the meetings of the Executive Council from the first on July 9, 1792, until his departure for Lower Canada in July, 1794. His last meeting was on July 9.

There were 65 meetings in all during that time. As has been said, Osgoode attended them all. Simcoe attended 51; Russell, 63; Grant, 33; Baby, 30; and Shaw, 5.

(<sup>8</sup>)Which we owe to an equally able lawyer, Sir Oliver Mowat.

(<sup>9</sup>)The Legislative Council sat in 1792, 18 times; 1793, 24 times; 1794, 21 times—in all 63 times. Peter Russell seems to have been present at more meetings than any other Legislative Councillor except the Speaker Osgoode; he is noted as taking part in the proceedings on 33 days.

(<sup>10</sup>)I *Correspondence*, p. 33: *Can. Arch.*, Q 278, p. 228. It must be remembered that the word "respectable" had then its etymologi-

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cal meaning and had not acquired its present deprecatory connotation.

(<sup>11</sup>) *1 Correspondence*, p. 47: *Can. Arch.*, Q 278, pp. 283, sqq.

(<sup>12</sup>) Letter to John King, Under-Secretary of State, from Navy Hall, Upper Canada, June 20, 1824: *Can. Arch.*, Q 280, I, p. 176: *2 Correspondence*, p. 281.

(<sup>13</sup>) Dorchester, writing to Dundas from Quebec, December 5, 1793, says that Smith "is given over by the physicians", *Can. Arch.*, Q 67, p. 44; December 31, 1793, he urges the importance of the appointment of a duly qualified Chief Justice, *Can. Arch.*, Q 67, p. 45; May 11, 1794, writing from Whitehall, Dundas says to Dorchester, "By the appointment of Osgoode the Province is secured" from abuses, *Can. Arch.*, Q 67, p. 71: May 29, 1794, Dorchester writes to Simcoe, "I have received a letter from Mr. King stating that Mr. Dundas has directed him to inform me that His Majesty has been pleased to appoint Mr. Osgoode to be Chief Justice of Lower Canada in the room of the late Chief Justice Smith. As the situation of the Province is exceedingly critical and I may say seditious, Mr. Osgoode's presence is of importance, and therefore I hope to see him here as soon as possible", *2 Correspondence*, p. 251.

(<sup>14</sup>) Letter, Cartwright to Isaac Todd, Kingston, October 21, 1792, *1 Correspondence*, p. 238. See note (10) *ante*.

(<sup>15</sup>) The *Canadian Review*, July, 1824, quoted by the Rev. Dr. Scadding in his *Toronto of Old*, p. 314. The reverend writer is however in error in making the Chief Justice a resident in Toronto and a pew-holder in St. James' Church, which was first built in 1803.

(<sup>16</sup>) (Sir) John Beverley Robinson (Bart.) who became the seventh Chief Justice of Upper Canada in 1829.

(<sup>17</sup>) Letter, Simcoe to Dundas, London, August 12, 1791; *1 Correspondence*, p. 43; *Can. Arch.*, Q 278, p. 283.

(<sup>18</sup>) Letter, Simcoe to Nepean from Quebec, April 28, 1792; *1 Correspondence*, p. 145.

(<sup>19</sup>) Simcoe refers to his resignation in a Despatch from Navy Hall, November 4, 1792: *1 Correspondence*, p. 248: *Can. Arch.*, Q 279, I, p. 1—this resignation was the reason, or at least an ostensible reason, for Simcoe asking for the appointment of Aeneas Shaw to the Executive Council. Dundas, Despatch to Simcoe from Whitehall, May 2, 1793, informed him that Shaw had been "appointed to a seat at the Executive Council vacant by the resignation of Mr. Robinson": *1 Correspondence*, p. 326: *Can. Arch.*, Q 279, I, 219: *Sim.* I, 5, 17—

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and see Simcoe's answer from York, U.C., August 23, 1793: 2 *Correspondence*, p. 39: *Can. Arch.*, Q 279, 2, p. 283.

(20) This, although perfectly open, is, of course, dubbed a "Plot" by certain American writers, who cannot understand anything promoted by British subjects at that time as being honest or anything else than a rascally plot against the young Republic. Those interested in this "Plot" will find particulars—lurid enough sometimes—in 8 *Mich. Hist. Colls.*, pp. 406, sqq. It is to be observed that the "Plot" was to obtain the title of the land from the United States. See p. 407.

It was made a matter worthy of remark that Mr. Justice Powell did not see Robertson when visiting London in 1793. Letter, Thomas Duggan to Col. McKee: 12 *Mich. Hist. Colls.*, p. 77: *Can. Arch.*, (Indian Affairs) M.G. VI: dated Detroit, August 25, 1793.

(21) Very much of the story of William Robertson, I owe to the courtesy of Mr. C. M. Burton and Mrs. Woltz of the Burton Library, Detroit, for whose constant kindness and courtesy I cannot be sufficiently grateful.

(22) Much of this story also I owe to Mr. Burton and Mrs. Woltz; but I have consulted original authorities. See also the Article *Commodore Alexander Grant (1734-1813)*, 22 *Ont. Hist. Soc. Papers and Records*, pp. 167, sqq.

(23) Letter from General Gage from New York, April 8, 1771: *Can. Arch.*, B. 27, p. 84: 10 *Mich. Hist. Colls.*, p. 246. These vessels he engaged as early as 1768 to build: Letter, General Gage from New York to Captain Stevenson, April 8, 1768: *Can. Arch.*, C. 249, p. 161.

Most of the preceding facts are set out in Grant's Petition to Haldimand, dated at Quebec, September 8, 1784: *Can. Arch.*, B. 216, p. 170: *Mich. Hist. Colls.*, pp. 256, 257.

(24) Letter, dated New York, June 21, 1774, "Captain Grant is going to your Post to-morrow": *Can. Arch.*, B. 33, p. 294: 10 *Mich. Hist. Colls.*, p. 261.

(25) *Can. Arch.*, B. 216, p. 170: B. 141, p. 2: B. 121, p. 25: 9 *Mich. Hist. Colls.*, p. 351: 20 *do. do. do.*, p. 256.

(26) See Hamilton's Report after his return to England, dated at Jermyn St., London, July 6, 1781: *Can. Arch.*, B. 123, p. 53: 9 *Mich. Hist. Colls.* pp. 489, sqq. Hamilton says: "the various necessaries of the Winter movement of 600 miles being provided by the activity & good will of Captains Lernoult & Grant, the latter of whom had attended to everything afloat".

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(27) *Can. Arch.*, B. 99, pp. 82, 86, 88: *do. do.*, 104, p. 32: *do. do.*, B. 142, p. 78: 9 *Mich. Hist. Colls.*, pp. 415, 422: 18, *do. do. do.*, p. 436, 649.

Haldimand, writing from Quebec, June 18, 1779, to Lt.-Col. Bolton, said: "I have ordered Capt. Schanck to examine minutely into the several articles of Capt. Grant's last account amounting to upwards of £7,000 and in case either Capt. Brehm or Schanck find any irregularity in the vouchers they are immediately to send Capt. Grant with all his accounts to Quebec to have them finally arranged here." On an examination of the accounts he was found entitled to £89.3.5, subject to an accounting for certain freights. See his letter to Haldimand, Quebec, July, 1781. *Can. Arch.*, B. 142, p. 78.

(28) The very garden of Canada then thought of but little value; Simcoe seems to have been the first in official position to understand the value of this splendid peninsula. See *Can. Arch.*, B. 98, p. 267: 11 *Mich. Hist. Colls.*, p. 420.

(29) For the particulars of this marriage, see my Article, *Some Marriages in Old Detroit*, 6 Michigan History Magazine (1922, No. 1), pp. 111, sqq. It was irregular but afterwards validated under the Upper Canada Marriage Act of 1793.

(30) *Can. Arch.*, Q 47, 1 p. 112: 12 *Mich. Hist. Colls.*, p. 31.

(31) Grant attended every Council Meeting but one from July 11 to November 21, 1792; then he did not attend till June 8, 1793, when he again regularly attended till July 9, 1794, (except May and two June meetings). Beginning again July 22, 1795, he attended pretty regularly during the remainder of Simcoe's term.

(32) See Despatch from General Robert Prescott to the Duke of Portland from Quebec March 5, 1799. *Can. Arch.*, Q 82, p. 238; 25 *Mich. Hist. Colls.*, p. 192. Prescott had no doubt that the French were stirring up the Western Indians, as Joseph Brant had reported; but as he had had no information of any serious danger from the officers at the different Posts in the Upper Country, he thought that Brant's intelligence was probably ill-founded as far as anything serious was concerned—indeed, he rather thought Brant might "be actuated in a considerable measure by a desire of increasing his importance in the eyes of the people of the Upper Province."

The Indian movements so far as apparent were on the Fox and Wisconsin Rivers. Brant wrote to Peter Russell and he sent a copy to Prescott. Prescott at once despatched Sir John Johnson to inform

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himself of the actual state and disposition of the Indians all through the Western Country and Sir John went accordingly. There was considerable talk about this time of a French attack by troops coming up the Mississippi from Louisiana; Brant was raising trouble; Liston, the British Ambassador at Philadelphia heard of certain statements of his there, apparently disloyal to the Crown and claiming independence for his Nations, and wrote to Portland warning him. Portland wrote Peter Russell, June 7, 1798: *Can. Arch.*, Q 284, p. 126, and said: "Vigilance is to be observed in watching what may be passing to the Westward between him and the Mississippi, particularly on the Fox River or the Wisconsin." Prescott wrote Russell, October, 1798, from Quebec that he had information that Collot, a French General, who had formerly endeavored to stir up rebellion in Canada, had gone into the Western Country in 1796 and 1797 to prepare the Indians to make an attack on Upper Canada, and had then gone to France to concert matters. Prescott instructed Russell to find out what tribes had been tampered with. *Can. Arch.*, Q 286, 1, p. 33. Russell replied November 2, 1798; *do. do.*, Q 286, 1, p. 35, that he had the most serious apprehensions of an attack by the Western and Lake Indians even if those on the Grand River should be faithful as "Brant says they are although he has no doubt that the Caughnawagas and other Canadian Indians are in the French interest." Russell also wrote Portland, November 8, 1798: *Can. Arch.*, Q 286, 1, p. 30, expressing no doubt of Brant's loyalty, but that his ambition was to be Chief of all the tribes and for this purpose he was seeking to effect a union among the Five Nations, the Mississaugas and the branches of the Chippewas between York and Matchedash on Lake Huron. Alexander McKee had just before his death been somewhat apprehensive of trouble: *Can. Arch.*, Q 286, 1, p. 87, but Brant was able to report by April, 1799, that there were no Indians assembled on the Mississippi or any French troops to make an attack on Upper Canada. *do. do.*, pp. 105, 110.

(33) This, the first real opposition in the Assembly to the Government, was led by Mr. Justice Thorpe and Joseph Willcocks. See my *Upper Canada Sketches*, Toronto, 1922, pp. 61, sqq. Thorpe was the only one to stand out from the general reconciliation.

(34) *Can. Arch.*, Q 118, p. 187; *Mich. Hist. Colls.*, p. 327.

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(35) The tablet reads,

IN MEMORY  
of the late  
HONORABLE ALEXANDER GRANT

Born 1734. Died May 13, 1813.

Commodore Grant was the fourth son of the  
7th laird of Glenmoriston, Invernesshire,  
SCOTLAND.

He was a member of the first Government of  
Upper Canada, an Executive and Legislative  
Councillor, County Lieutenant for Essex and  
Suffolk, and Administrator of the Province in  
1805 — 1806.

He was 53 years in command of the Lakes and  
57 in his Sovereign's Service.

*This tablet is erected by his grandson, R. S. Woods.*

Also of JAMES WOODS, Sr., Barrister.

Born in St. John's, Quebec, 1778. Died June, 1828.

JAMES WOODS, Jr., Barrister.

Born in Sandwich 1806. Died 1832.

ALEXANDER. Born 1810. Died 1826.

MARY. Born 1814. Died 1836.

All interred in the graveyard of this Church.

In the Parish Register is the following entry:—

“ALEXANDER GRANT, late senior officer of His Majesty's  
Marine Department, departed this life the eighth day of  
May, A.D. One thousand Eight hundred and thirteen, and  
was buried at Sandwich on the 10th inst.

Richd. Pollard,  
Rector.”

(His Honour Robert S. Woods was Judge of the County Court of  
the County of Kent for many years until his death in 1907).

The mother of His Honour Judge Woods was Elizabeth Grant,  
born April 16, 1787, married June 12, 1804, to James Woods of Sand-  
wich who had been an Advocate in Lower Canada: he was called to  
the Bar of Upper Canada as No. 17 (next after the notorious Wil-  
liam Weeks), Easter Term, 1801. He afterwards removed to  
Chatham: he and his wife Elizabeth were blessed with issue, four  
sons and three daughters. An account of the descendants of the

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Commodore is given in the Article, *Commodore Alexander Grant (1734-1813)*, 22 *Ont. Hist. Soc., Papers*, (1925), pp. 167, sqq.

Grant is sometimes confused with Major Alexander Grant of the New York Volunteers, who came out from Scotland with Montgomery's Highlanders and resided in Dutchess County, New York; he fought on the Loyalist side in the Revolutionary War at Boston and elsewhere, and was killed at the attack on Fort Montgomery. His family of widow and four children, one son and three daughters, removed to Annapolis, N.S. The children, one of whom was the mother of Thomas C. Haliburton (Sam Slick), made a claim for compensation as Loyalist Refugees, the mother dying, March, 1787. 1 *Ont. Arch. Rep.*, (1903), pp. 312-314.

Our "Alexander Grant, Esq. of Detroit, Captain and Commander of His Majesty's Vessels on Lake Erie" by an affidavit sworn, June 17, 1786, claimed compensation for 12,000 acres of land worth 10/N.Y. Cy. per acre, £6,000 (i.e., \$15,000) in the Province of New York.

<sup>(36)</sup>He was a cousin of William Willcocks, once Mayor of Cork and later of some note in Upper Canada; he was of the Aston Abbott subdivision of the widespread Bedford Russells.

<sup>(37)</sup>Letter, Simcoe to Dundas, London, August 12, 1791: *Can. Arch.*, Q 278, pp. 283, sqq; 1 *Correspondence*, pp. 43, sqq.

<sup>(38)</sup>Of all the meetings of the Executive Council in Simcoe's time, Russell missed only 2, July 11 and 13, 1793, being not infrequently one of the only three members present.

<sup>(39)</sup>This fact not, I think, mentioned elsewhere, I owe to the research of Mr. F. J. Audette of the Archives at Ottawa, who has been good enough to send me a copy of the Commission, dated at Navy Hall, June 27, 1793. Benjamin Pawling had resigned and his resignation was accepted.

<sup>(40)</sup>Powell says of him: "An assistant Judge commissioned each Term *pro hac vice* who had been bred to Physick and had served as a Secretary to the Commander-in-Chief during the Revolutionary War. This Gentleman was so little versed in Constitutional Law that he expressed his astonishment to find a Jury consisted of even numbers . . . ." *Life of William Dummer Powell*, p. 86.

<sup>(41)</sup>*Life &c.*, p. 212: *Can. Arch.*, Q 284, pp. 16, 19. He even complained of Simcoe's issuing a Proclamation calling Parliament together before he left thereby depriving him of £75 fees.

<sup>(42)</sup>The current gibe ran that he was called Receiver-General because he was "generally receiving"—but he was never convicted of



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any illegality and there was much malice in those days even among those of high station.

(43) He asked Simcoe to use his influence to have him appointed a permanent Judge of the Court of King's Bench, but that scandal was avoided. There was no appointment of anyone but a barrister as Judge of that Court.

(44) He never was on good terms with Lieutenant-Governor Hunter or Allcock, Hunter's favourite adviser.

(45) Afterwards the residence of Bishop Macdonnell. For the particulars of this residence, see Scadding's *Toronto of Old*: Index "Russell"; Robertson's *Landmarks of Toronto*, Vol. I pp. 120, sqq.

(46) He never married. On his death his large landed property passed to his unmarried sister who lived with him. She left it all to Dr. William Warren Baldwin, whose descendants still hold much of it. As Dr. Scadding says: "Russell . . . was . . . an example of man who would do well unto himself"; but he was not alone in that category.

(47) *Landmarks of Toronto*, Vol. I, p. 121. The whole Chapter XLI is well worth reading.

(48) Much of the information concerning the Baby's is obtained from Madame C. E. Casgrain's *Memoires de Famille, Rivière-Ouelle, Manoir D'Airvault, 1891*, Privately printed. In the appendix under the heading "La Famille Baby" is a fairly full account of the family (Mme. Casgrain was herself neé Baby). I, pp. 254, sqq. See also Philippe-Baby Casgrain's *Memorial des Familles Casgrain, Baby et Perrault, Quebec, 1898-9*. In the excellent work by the late Dr. Benjamin Sulte, *Le Régiment de Carignan*, Montreal, 1925, the French progenitor is listed in St. Ours' Company as "Bavie . . . . sergent: Jacques Baby (ou Bavie) de Ranville, né 1633", (p. 140) and in the list of "Sergents" he is given as "Jacques Baby de Ranville, Cie Saint Ours", (p. 77).

(49) There is considerable confusion between (Jacques) Dupéron Baby and his son (Hon.) Jacques Baby. They both seem to have been baptised Jacques Dupéron, but the father generally used the name "Dupéron" and the son the name "Jacques". The elder received the name "Dupéron" or "Duperron" (as it was sometimes written) from his grandmother, Delle Marguerite Duperron Baby, his cousin and daughter of Pierre Duperron.

(50) The Patent makes Dupéron Baby, First Justice, Alexander McKee, Second Justice, and William Robertson, Third Justice, of the Court of Common Pleas for the District of Hesse.

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(51)The discipline there the high-spirited boy resented; he always attributed his deafness in one ear to a blow on the side of the head, given him by a teacher.

(52)On this tour he contracted a secret marriage with an actress, clever and attractive, but with little to recommend her. This marriage coming to the knowledge of his father, caused his recall from Europe, with bitter reproaches for his folly. His wife was well-supplied with money by the father, but it does not appear that she ever crossed the Atlantic. In 1801 her death took place.

(53)François Baby had been appointed to the Legislative Council of the Province of Quebec in 1777: and after the Canada Act of 1791 he was appointed to the Executive and Legislative Councils of the new Province of Lower Canada. *D. & McA.*, pp. 14, 16, (in the latter appointment he is called "Francis Baby").

(54)" . . . . as I understand he is the most proper person in that District (Detroit) from whence it is but Justice that a French Gentleman of undisputable Loyalty should be selected . . . .". Despatch, Simcoe to Dundas, Quebec, November 19, 1791: *1 Correspondence*, p. 84; *Can. Arch.*, Q 278, p. 7; *Sim.* I, 1, p. 116.

(55)Simcoe describes him as "Mr. James Baby the son of a respectable French Canadian of that District lately deceased and the nephew of Mr. Baby of the Council of Lower Canada. Mr. Baby is by far the principal French settler in that District. His brother was lately brought into the Assembly. In my letter of the 19th November immediately after my arrival at Quebec, I proposed Mr. Baby for that seat which I supposed was reserved for a Person of that description, to which as I received no answer from you, Sir, I conceived there was no objection. This Gentleman has accordingly taken his seat and been very serviceable in both Councils". On careful enquiry he could find no other "Canadian Gentleman" proper for him to recommend for so important a trust. Simcoe's action was approved, May 2, 1793. *1 Correspondence*, p. 327; *Can. Arch.*, Q 279, p. 219; *Sim.* I, 5, 71. Baby always was looked upon and always considered himself a representative of the loyal French-Canadians of the Upper Country, Detroit, &c. In a letter written to his uncle François in Quebec after his Commission of Lieutenant of Kent in 1793, he says that "the main thing is to help our poor Canadians who have no one else to look to"—he had already been able to do them some service in spite of their enemies, and will do more. *Baby Papers* in Bibliothèque St. Sulpice, Montreal. In another letter from Kingston, July 18, 1792, he expresses his pride in sitting next to the Governor

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in the Executive Council, the absence of William Robertson giving him second place. *do. do.*

(56) There has been a great deal of confusion as to the representatives for Essex and Kent in this Parliament, but it is quite certain that Kent sent François Baby and William Macomb, and Essex, David William Smith. See 1 *Correspondence*, pp. 187, 188: Wolf. I, 8, 249.

See *ante*. Cap. XIII, note 2, p. 197. D. W. Smith in a letter to John Askin from Niagara, November 13, 1792: 1 *Correspondence*, p. 261, says: "The Interest which brought the Young French Gentleman into the Council has prevailed in having him appointed Lord Lieutenant for the County of Kent, and that interest was not only planted previously to the Government's taking place but seems to have taken exuberant Root in Quebec, where his Consequence, his Interest, his Property & his Loyalty seem to have been blazoned in lively tropes."

There is a confusion also in these Lieutenancies. Baby is given to Essex and Alexander McKee to Kent in John White's Account against the Government: Wolf. I, 11, 45: but the reverse in 1 *Correspondence*, p. 261: 2 *Correspondence*, p. 390, (White's Account is known to be inaccurate in other respects)—and Colonel England's official letter as Senior Colonel of Militia from Detroit, August 16, 1794, to Baby as "Lieutenant of the County of Kent" should be decisive: 2 *Correspondence*, p. 381. Colonel England writes from Detroit, August 21, 1794, to Baby directing him to arrange certain Militia matters "in the absence of the Lieutenant of the County of Essex": 2 *Correspondence*, p. 400: cf. *do. do.*, pp. 93, 395, 413.

Thomas Duggan, writing from Detroit, July 30, 1793, to Colonel McKee says: "It appears that Mr. Jacques Baby's Appointment of Lieutenant for the County of Kent has given umbrage to some of our great folks here who talk of nothing but resigning in consequence of it. I mean some of our Militia Officers": *Can. Arch.*, Indian Affairs, M.G. VI; 12 *Mich. Hist. Colls.*, p. 73. Writing from Detroit, September 9, 1793, Duggan says: "The 10th, twelve o'clock noon, Mr. Jacques Baby has just taken the official Oath as Lieutenant for the County of Kent at Forseths and some of the French Militia assembled on the Bank & fired several vollies on the occasion": *Can. Arch.*, Indian Affairs, M.G. VI; 12 *Mich. Hist. Colls.*, p. 79. See also his letter to Lieutenant-Governor Gore from Raleigh, U.C., December 1807, as "Lieut. of the County of Kent". *Can. Arch.*, Q 107, p. 247; 24 *Mich. Hist. Colls.*, p. 232.

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<sup>(57)</sup>See his letter to Simcoe from "Detroit, Sandwich Side", February 2, 1799, asking Simcoe's influence to procure his appointment to the Indian Department on the death of McKee—"the young and numerous family my father left which fell to my care, has greatly contributed to my present exigency". *Can. Arch.*, Q 282, 3, p. 428: 25 *Mich. Hist. Colls.*, p. 190. President Peter Russell as Administrator gave him and two others (Alexander Grant and Thomas McKee) a Commission jointly to exercise the office of Deputy Superintendent of Indian Affairs in the Province, February 2, 1799; Col. Sir John Johnson, the Superintendent and Inspector-General in both the Canadas, sent post haste by Prescott, arrived in the West and took the direction of these affairs himself; whereupon Russell withdrew the Commission, March 14, 1799: *Can. Arch.*, Q 82, p. 238: Q 286, I, pp. 95, 97: 25 *Mich. Hist. Colls.*, pp. 191, 194, 195, 196, *et al.*

<sup>(58)</sup>The Rt. Rev. Bishop Strachan in a biographical notice in *The Correspondence* (York), February 23, 1833, Mme. Casgrain, *op. cit.*, pp. 262-271.

<sup>(59)</sup>Dent's story of his humiliation at the hands of Sir Peregrine Maitland is all too true. The brave old spirit must needs bend under the potent *res augusta domi*; and he was by no means the only one in those times who had to choose between abandoning opposition to Government measures and losing office and daily bread; Dent, *The Story of the Upper Canadian Rebellion*, Toronto, 1885, Vol. I, pp. 140, 215-218.

The story of his sons taking part with other "young bloods" in the silly raid on William Lyon Mackenzie's printing office in 1826, and of Baby's contribution towards paying the verdict which followed, with the remark to his son: "There, go and make one great fool of yourself again", is well worth reading: Dent, *op. cit.*, Vol. I, p. 140.

It may interest some to know that, October 22, 1793, Baby bought at auction (William Roe, auctioneer,) a negro boy, Frank, 12 years old, the property of Philip Joncière, (deceased) of Bell Fontaine near Springwells for £213, New York Currency, (\$532.50) 1 *Mich. Hist. Colls.*, p. 415.

<sup>(60)</sup>She was of course, his second wife. She predeceased him about 1812, leaving a family of five sons and one daughter. Mme. Casgrain, *op. cit.*, p. 265: Philippe-Baby Casgrain, *op. cit.*, pp. 142, 143—the precise date of her death seems to be unknown, but the disease was apparently the "Cold Plague", much the same as the "Spanish Flu" of a few years ago.

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<sup>(61)</sup>It must be remembered that New Brunswick was part of Nova Scotia until 1784. The Nashwaak is a river emptying into the St. John on the left bank, opposite Fredericton.

A delightful picture of Shaw's settlement on the Nashwaak is given in 1 *Correspondence*, p. 44, n., taken from P. Campbell's *Travels in the Interior Inhabited Parts of America*, 1793, pp. 42-3. His bare-headed Yanky wife, so blooming and well-looking as to be taken for a maiden though with four boys and two girls: the Captain himself employed with his man clearing and burning off his land and coming "home in the evening as black as a collier". The date of Campbell's visit is September 6, 1791, about the time of Shaw's appointment to the Queen's Rangers. Mr. Robertson's *Landmarks of Toronto*, Vol. I, p. 541, says that Shaw was of Tordorach in Strathcairn; the last word is a misprint for Strathnairn. Dr. Scadding's *Toronto of Old*, p. 358, describes him as "a man of great vigor and decision."

<sup>(62)</sup>Letter, Simcoe to Dundas, London, August 12, 1791: *Can. Arch.*, Q 278, I, p. 283: 1 *Correspondence*, p. 44. Letter, Sir George Yonge to Simcoe, War Office, September 21, 1791: 1 *Correspondence*, p. 71: Wolf. I, 1, 385.

<sup>(63)</sup>An interesting account of this march is given by Mrs. Simcoe, *Diary*, Sunday, March 4, 1792, p. 79. His wife and seven children did not arrive until April, 1793. *Diary*, April 19, 1793, p. 161.

<sup>(64)</sup>Simcoe to Nepean from Quebec, April 28, 1792: 1 *Correspondence*, p. 145: for some reason he does not mention the subject to Dundas in his letter of the same date. *Can. Arch.*, Q 278, p. 104.

By the time Shaw was appointed to the Queen's Rangers, 1791, his settlement was no longer in Nova Scotia. See note <sup>(61)</sup>, *suprà*.

<sup>(65)</sup>Simcoe to Sir George Yonge from Montreal, June 21, 1792, 1 *Correspondence*, p. 169: Simcoe to Dundas from Montreal, June 21, 1792: 1 *Correspondence*, p. 171: *Can. Arch.*, Q 278, p. 178.

<sup>(66)</sup>Despatch, Simcoe to Dundas, from Navy Hall, November 4, 1792: 1 *Correspondence*, p. 246: *Can. Arch.*, Q 279, 1, p. 1.

<sup>(67)</sup>Dundas to Simcoe, May 2, 1793, 1 *Correspondence*, p. 326: *Can. Arch.*, Q 271, 1, p. 219: Sim. I, 5, 71: Wolf. Ex. Col. U.C. I. 177. Shaw was informed by Simcoe of his appointment as early as August, 1793. 2 *Correspondence*, p. 39: *Can. Arch.*, Q 279, 2, p. 283.

<sup>(68)</sup>Simcoe to Dundas from York (late Toronto), September 16 and 20, 1793: 2 *Correspondence*, pp. 53, 55: *Can. Arch.*, Q 279, 2, p. 335, 349, 486.

<sup>(69)</sup>Not so much delay took place in this appointment. Dundas

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notified Simcoe, March 16, 1794, that Shaw's Mandamus as Executive Councillor had long been made out and both it and the Mandamus as Legislative Councillor "will be delivered to Mr. Shaw's agent upon his calling for them and paying the Fees". 2 *Correspondence*, p. 185: *Can. Arch.*, Q 280, 1, p. 16. The Mandamus arrived in time to save trouble in the Legislative Council over the Judicature Act: 2 *Correspondence*, p. 264. *Can. Arch.*, Q 280, 1, p. 146.

(70) He missed only one meeting of the Executive Council in Simcoe's time (that of July 17, 1794—the other ostensible meeting of November 3, 1794, not being a real meeting).

(71) The tragedy of his daughter Sophia, the fiancée of Sir Isaac Brock, is well known: "Home they brought her warrior dead."

## CHAPTER XXVII

### Members Legislative Council

THE names of those directed to be summoned to the Legislative Council appear in the Royal Instructions to Lord Dorchester which Simcoe was directed to follow.

They were (I) William Osgoode, (II) Richard Duncan, (III) William Robertson, (IV) Robert Hamilton, (V) Richard Cartwright, Junior, (VI) John Munro, (VII) Alexander Grant and (VIII) Peter Russell<sup>(1)</sup>. Simcoe filled in a blank left for representatives of the French-Canadians with the name of (IX) James Baby: and these nine were, July 16, 1792, summoned by writ to the Legislative Council by analogy to the Writ of Summons to the House of Lords: June 19, 1794, (X) Aeneas Shaw produced his Writ of Summons and was sworn in.

In the first Session appeared Osgoode, Hamilton, Cartwright, Munro, Grant, Russell and Baby. Robertson never took his seat: Duncan was sworn in, June 17, 1793, and, as has been said, Shaw, June 19, 1794<sup>(2)</sup>.

We have given some account in the last chapter of Osgoode, Robertson, Grant, Russell, Baby and Shaw. Of the remaining Legislative Councillors, only Cartwright and Hamilton played any part in the affairs of the Province in Simcoe's time, but some account may be given of the others.

(II) RICHARD DUNCAN. Duncan was the son of John Duncan, an officer in the 44th Foot: born at Berwick-on-Tweed of Scottish descent, he came to America about 1755 with his father. In 1775, he was residing in

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Schenectady, where he had gone as early as 1763, and was an ardent Loyalist. He received a Commission in Sir John Johnson's Corps in 1776 and at some risk, he assisted General McLean and Captain John Munro in their escape in disguise to Canada. In 1777, Duncan joined Burgoyne with a few of his men and took part in the disaster at Saratoga. Then he came to Canada and served the remainder of the Revolutionary War, leaving 3,500 acres of land in Charlotte County, Vermont, which he had been deeded by his father in 1775 and which the father held under a New York grant. He left also houses and lots in Schenectady and over 6,000 acres of land in New York Province. He settled at Rapid Plat.

When Dorchester divided the territory afterwards Upper Canada into four Districts in 1788, Duncan was made one of the Judges of the Court of Common Pleas for the District of Lunenburg; and at his house at Rapid Plat, William Dummer Powell and his family stayed one night on the memorable journey to his place of judicial labour<sup>(3)</sup>.

Duncan did not serve as Judge after May 22, 1793; in the Legislative Council he attended, June 17, 1793, and was sworn in. He left for New York State to attend to his affairs there, and entered into business between the Mohawk and Buffalo. He wrote several letters still extant stating his intention to return to Canada permanently, but this he failed to carry out. His last appearance in the House seems to have been in February, 1804<sup>(4)</sup>.

He had no influence in the legislation of Upper Canada.

(IV) ROBERT HAMILTON. Hamilton was a man of different calibre. Of Scottish birth and descent, he established himself at Niagara. During the Revolutionary period he was in partnership with Richard Cartwright, Junior, afterwards his colleague in the Legislative



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Council, and with him established a business post on Carleton Island near Kingston which enjoyed a very large trade with the Indians. Shortly after the close of the War, he removed to Queenston, where, still in partnership with Cartwright, he carried on business in wheat, &c., and in supplying the Imperial Troops. The stone house built by him at Queenston was one of the marvels of the day and is mentioned by several travellers of the times. The American Commissioners to the Indians in 1793 were entertained here, and La Rochefoucault speaks of it and him with admiration<sup>(5)</sup>.

When the Districts were formed in 1788, Hamilton became one of the Judges of the Court of Common Pleas of the District of Nassau and also a member of the Land Board of the same District. He was one of those named in the Royal Instructions as members of the Legislative Council for the new Province of Upper Canada. Being present the first day, September 17, 1792, of its Sittings, he continued a faithful attendant and took a very active part in its deliberations. From the beginning, his weight was recognized and during the first Session his conduct met the approval of Simcoe.

The second Session saw the spirited debate in the Legislative Council over the Marriage Bill. Hamilton from the beginning of the agitation in the previous year had taken a strong stand in support of his friend Cartwright's measure<sup>(6)</sup>. During this Session the friends went rather in advance of Simcoe's views, and in his Despatches he indicates that an opposition might possibly be looked for in the Council<sup>(7)</sup>. While saying that "no adverse party seems hitherto to have formed itself" he adds "as sooner or later it seems to be the natural result of all political institutions, if I were to indulge in a Spirit of Conjecture, I should be induced to think it may sooner take place in the Upper than in the Lower House

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. . . tho' there be no direct and systematic opposition to Government, it is apparent . . . there is no direct support of its measures. . .” It was the deliberate policy of Simcoe to have obnoxious measures which had met the approval of the Assembly defeated in the Council so as to avoid the use of the Prerogative of the Crown in refusing Assent. He feared that this policy might not be successful—“In particular as it seems at the present season proper to avoid making use of the negative of the Crown, I am sorry to observe there is too great reason and probability that the Legislative Council are more likely to promote than to suppress any attempt that may demand the exercise of that prerogative.” Coming down to particulars, he says: “Mr. Hamilton is an avowed Republican in his sentiments and altho' the merchants are justly obnoxious to the settlers of this Province and He is particularly so yet the ascendancy He and his friend Mr. Cartwright must acquire by being Agents for the Contract which supplies the King's Troops with provisions is of that nature that there is nothing to prevent them from exercising it to the detriment of Government if they have any particular object to promote that may gratify their avarice, ambition or Vanity”<sup>(8)</sup>.

It was not so much their position in connection with the Marriage Act which raised Simcoe's alarm: already the intention to change the Judicial system had become public. Hamilton and Cartwright were both Judges of the Courts of Common Pleas and were both outspoken in opposition to the change<sup>(9)</sup>. It is perfectly plain that both Hamilton and Cartwright claimed the right to think for themselves, declined to follow the lead of the Lieutenant Governor, and did not conceal their sentiments. As has been said, Simcoe rather boasts that a hint from the Agent for the purchase of stores for the Troops that their position under the Agent depended upon Simcoe's appro-

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bation led to a "very visible change in the language of these Gentlemen"<sup>(10)</sup>. However that may be, business considerations may have closed their mouth. When the Judicature Act was introduced in 1794, Hamilton and Cartwright openly opposed it. The result we have already seen<sup>(11)</sup>. Curiously enough, Simcoe does not complain of Hamilton in this connection but allows his wrath vent on Cartwright. It may be that Hamilton recommended himself to him by offering himself for active service, by furnishing information concerning matters in the United States in which were constant mutterings of war till after Jay's Treaty, and in taking an active part in forming the Loyal Association of those in the Home District who were "anxious to maintain and preserve the blessings they enjoy from their connection with Great Britain and their participation in her happy Constitution." They desired "to associate for the purpose of supporting the Laws, of discountenancing all seditious or incendiary opinions and of defending at the risk of their Lives and Fortunes their present Government against all foreign and domestic Enemies." By becoming Chairman of this Loyal Association, Hamilton effectually answered and dissipated all charges of Republicanism and disloyalty to British institutions. We hear no more of such charges, but Hamilton continued an active Legislative Councillor during the remainder of Simcoe's stay in Upper Canada. His last appearance in the Legislative Council was in the Session of 1806. He took a very active part in promoting a Bill for the relief of Methodists which, however, ultimately failed<sup>(12)</sup>.

(V) RICHARD CARTWRIGHT, JUNIOR. Richard Cartwright, Junior, was probably next to Osgoode the ablest member of Simcoe's Legislative Council<sup>(13)</sup>. He was born at Albany in the Province of New York, February 2, 1759, the son of an English immigrant of the same

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name. His mother was of Dutch descent and was said to be of great ability. Her strength of mind, excellent judgment and tenacious memory were inherited by her son.

Educated privately, his reading took a very wide range both in English and the classical tongues. Sincerely religious and strongly attached to the Church of England, he intended to devote himself to her ministry<sup>(14)</sup>, and with that view applied himself to the study of Hebrew and Divinity. He had not completed his preparations for Holy Orders when the American Revolution broke out. Theretofore he had not taken part in the agitation which disturbed the Colonies but now he took a firm stand. Coming to Canada with his parents, he joined Col. John Butler's Queen's Rangers and for a time acted as Secretary to the Colonel. He took part in two campaigns and was in service until the conclusion of the War. Amongst other services he took part in the much-misrepresented Wyoming expedition and the Cherry Valley campaign. Seeing no prospect in the Church, he joined Robert Hamilton in business. The partnership at Carleton Island being dissolved, when Hamilton went to Queenston, Cartwright remained at Kingston. When, in 1788, the Districts were formed by Dorchester, Cartwright was made a Judge of the Court of Common Pleas for the Mecklenburg District with headquarters at Kingston: he was also created a Justice of the Peace. During his whole life thereafter, he was active in the Quarter Sessions and until its abolition in 1784, in the Court of Common Pleas; he was a sound if not an erudite lawyer, rigidly impartial and "most attentive, mild and discriminating" as a Judge.

One of those named in the Royal Instructions of September 16, 1791, as Members of the Legislative Council, he attended the first day of the Session, and was a faithful legislator until called away by death<sup>(15)</sup>.

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We have a pretty full account of his legislative activities in his letters to his friend Isaac Todd, some of which have been published in the volume mentioned in note(1). These letters show a man of great ability and considerable learning, strongly attached to British institutions and with a more accurate knowledge of the actual British Constitution than was possessed by Simcoe, absolutely honest, wholly tolerant and sincerely desirous to do his duty whatever might be said by Governor or his associates<sup>(16)</sup>.

He had a not unnatural and not unfounded dislike for the English practice of law, "the complicated, elaborate and artificial systems of Westminster Hall . . . fruitful sources of oppression and chicanery". He resisted the project of Simcoe to have the Capital of the Province at London, saying that it was "a scheme perfectly utopian, to which nature has opposed invincible obstacles; unless Montgolfier's ingenious invention could be adapted to practical purposes and air balloons be converted into vehicles of commerce"<sup>(17)</sup>.

No doubt it was the fact of his own marriage being irregular and perhaps legally invalid which caused him to urge a modification of the marriage laws. He made an excellent report on the subject which may still be consulted with advantage<sup>(18)</sup>.

Simcoe although not at all satisfied with his proposed Marriage Act which he considered "a hasty and ill-advised Bill", looked upon him as "a leading character" and gave him a Commission as Lieutenant of the County of Frontenac<sup>(19)</sup>. Cartwright while a firm, convinced and devout member of the Church of England differed *toto coelo* from Simcoe as to the propriety of making that Church the State Church. He was "astonished at the zeal and tenaciousness of the Executive" in matters "relative to the Church and Dissenters", and was outspoken in

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his opinion that it was as impolitic as it was unjust to attempt to give that Church the same extensive advantages that it possessed in England "in a Province in which nineteen-twentieths of the inhabitants were of persuasions different from the Church of England"<sup>(20)</sup>.

Simcoe, while unable to see eye to eye with Cartwright, after he got over the irritation caused by his opposition to the Judicature Act of 1794, gave him full meed of praise and placed confidence in his patriotism and good judgment. Before he left the Province he did justice to Cartwright and removed an unfortunate and apparently unintentionally caused misunderstanding in the mind of the Secretary of State. During all the regime of Simcoe, Cartwright took his full share of the labor of legislation; his subsequent career, long and honorable as it was, does not concern us here.

(VI) JOHN MUNRO. John Munro was of Scottish descent and (as is almost certain) of the Fowlis family of that name. Born in Scotland in 1731, he came to America in 1756 in Colonel Webb's (the Northampton) Regiment, the 48th Foot. On receiving his discharge, he became a trader in a large way of business in Albany, having many transactions with Sir William Johnston and others.

He married Mary Brower, daughter of Cornelius Brower of Schenectady in 1760, in which year he was an Elder of the Presbyterian Church in Albany, becoming also a Trustee.

He obtained grants of large tracts of land in what is now the State of Vermont and was then claimed as their territory by both the Colonies, New York and New Hampshire—the well known "Hampshire Grants" controversy which more than once nearly precipitated civil war. Munro received his Grants from New York: in 1767, he built a house on part of the land in Shaftesbury

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(now in Vermont) and in the following year, making his home there, he called it, "Fowlis in the County of Albany". Thereafter he was a storm centre in the dispute carried on, sometimes in the Courts but more often by open violence. Becoming a Justice of the Peace, he acted also in that capacity in upholding the claims of New York and he had the confidence of Governor Tryon.

In the troublous times of the Revolution, he took the Loyalist side and was one of the principal "Tories" of Shaftesbury. In June, 1775, he joined General Allen McLean in New York and was of material assistance to him in furnishing him with information—he accompanied McLean as far as Schenectady in his perilous journey to Canada by way of Oswego.

He took part in raising Loyalist troops but being captured, he was tried and sentenced—imprisoned, sometimes in irons, in Albany, he escaped but was recaptured and sentenced to death: but he escaped from his prison at Esopus. In 1777, he was driven from his home in Vermont by the Council of Safety and nearly all his property there was seized.

He made his way to Quebec where he received a Commission as Captain in the Royal American Regiment of New York: he was chiefly occupied in caring for the wants of the refugees; and was joined at St. John's, Quebec, by his own family in October, 1778.

In 1780, he originated a scheme for an invasion of New York from Canada which received the approval of the authorities and was put into effect. With 100 men of the King's Royal Regiment of New York nearly all being his former neighbors, some 34 Rangers and some Mohawks under Lieut. Langan, he left Crown Point, October 7, 1780, invaded the Colony of New York and took Ballston. Being unable to effect a junction with Sir John Johnson, and finding his situation perilous, he

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joined Major Carleton, with nineteen prisoners including Colonel Gordon, the whole expedition being effected without the loss of a man. One prisoner taken by Munro's force was instantly killed by the Mohawks, but some others were saved with great difficulty from Indian vengeance by Munro's care and vigilance.

Munro received the approbation of Haldimand and remained under arms until the Peace, not, however, engaged in actual hostilities.

When the Independence of the United States was acknowledged by the Treaty of Paris, 1783, Munro with a number of men of the Royal American Regiment, "Protestants", petitioned for a grant of 12,000 acres in the District of Montreal, behind the Seigniory of La Veltrie: but the application was unsuccessful. He also went to Nova Scotia in the hope of obtaining land there but was again unsuccessful.

He then came to what was afterwards Upper Canada and, in 1784, obtained land in Matilda. Leaving his family in Canada, he went to England that Fall and in London presented his claims before a Commission—he estimated his losses at £14,231, New York Currency, (\$35,577.50), not including household furniture and 6,000 acres of land in Vermont.

He returned to Canada in 1787 after two years in England and the following year when the new Districts were formed by Lord Dorchester, he was appointed on the Land Board of the District of Lunenburg and also a Justice of the Peace.

In 1792, on the retirement of Richard Jessup, he was appointed a Judge of the Court of Common Pleas of the District and continued to serve as such until its abolition in 1794. He took his seat as Legislative Councillor on the first day; and attended for the last time in 1800.

Munro was a consistent supporter of the Govern-



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ment; although himself a Judge of a Court of Common Pleas, he somewhat unexpectedly voted for the Judicature Act of 1794 and earned the good will of Simcoe.

His influence in legislation was negligible: but he was a very active and useful Magistrate.

### NOTES.

(1) *D. & McA.*, pp. 36, 55.

(2) Simcoe, in a letter to Portland, London, November 28, 1796, after his leaving the Province, recommended John McGill to be a Member of the Legislative Council and would have recommended David William Smith also but hoped "he will be elected to the Assembly". *Can. Arch.*, Q 282, 2, p. 593.

(3) Anne Powell, in her account of the journey of her brother William Dummer Powell, afterwards Chief Justice of Upper Canada, from Montreal to Detroit in May and June, 1789, says: "We passed one night in the house of a Capt. Duncan whose wife I had often heard mentioned by my sister and whose story I commiserated before I saw her . . . she is one of the loveliest young women I ever saw, both in person and manners, is now only nineteen and has been five years married to a man who is old, disagreeable and vicious but was supposed to be rich . . . After the sacrifice was made, her friends had the mortification of finding themselves deceived in his circumstances: so far from being rich, he was deeply in debt and had nothing to live upon but his half-pay and his new lands which were then in a state of Nature. There, however, he brought her and there she lived in a hut without society, and almost without the necessaries of life 'till he built a house which he has done upon so large a scale that it will never be finish'd . . ." See my *Life of William Dummer Powell*, Lansing, Mich., 1924, pp. 62, 63.

James Croil in his *Dundas or a Sketch of Canadian History*, Montreal, 1861, has this to say about Duncan (p. 146):

"Duncan in his day seemed to have monopolized every office. A store-keeper, and holding a captain's rank, he dealt out Martial Law, dry goods and groceries alternately. A member of the Legislative Council he framed Laws, and as Judge of the Lunenburg District he dispensed them. His universal hospitality gathered

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around him a host of friends, while in his capacity as magistrate he was a terror to evil doers. He was possessed of large tracts of land, acquired partly from Government and partly by purchase, besides other property to a considerable extent, and enjoyed a full measure of the influence and outward respect usually attendant upon wealth. He left the country somewhat abruptly for the United States, where he remained till his death.

He had it seems, been extensively engaged in the lumber business, and it was said that some transactions in connection with this were so imprudent that he dared never return to Canada. This circumstance detracted from that upright character, which otherwise he has acquired."

(4) See Duncan's evidence before the Loyalist Commissioners at Montreal, March 5, 1788. *Second Ont. Archives Report*, (1904) pp. 474-6: *Seventh Ont. Archives Report*, (1910) pp. 21, 58, 129, 205: Letters in *Can. Arch. Sundries*, U.C.

(5) *1 Correspondence*, p. 25: See my *La Rochefoucault Liancourt's Travels in Canada*, 1795, *13 Ont. Arch. Rep.* (1916), p. 25, "a very fine house built in the English style; he has also a farm, a distillery and tan yard. This merchant bears an excellent character; he is a Member of the Legislative Council but at present in England", June 22, 1795.

(6) Not for the personal reason which Cartwright had—his marriage was irregular and legally void: while both Hamilton's were canonically regular and valid.

(7) *2 Correspondence*, pp. 53-55: *Can. Arch.*, Q 279, 2, pp. 335, 349.

(8) The charge of Republicanism was at that time worse than one of horse-stealing. As against Hamilton and Cartwright the charge meant simply that they took their position as legislators seriously and declined to obey the wishes of Simcoe. All through the history of this Province we find the charges of Republicanism, &c., made against political opponents. One amazing instance is in 1810 when the Costs of Actions at Law were fixed by Statute instead of being left to the Courts. Attorney-General William Firth and Solicitor-General D'Arcy Boulton united in a solemn protest to the Privy Council that this was "a species of innovation (borrowed from the popular institutions of a neighboring State) directly levelling the King's Prerogative . . . ." Firth, in a private letter to the Secretary of State, stated it to be the formal and decided opinion of the Solicitor-General and himself that by "such vulgar republican inno-

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vations . . . . the King's Prerogative (was) manifestly shaken and the Act . . . . pregnant with evil and mischief to the Kingly Government". *Can. Arch.*, Q 313, 2, p. 555: Q 318, 2, p. 527. See my article *William Firth, the Third Attorney-General of Upper Canada, 1807-1811*: *The Canadian Bar Review*, April, May, 1923, pp. 326, 404.

British connection and monarchical government have in the minds and mouths of those more loyal than the King himself been threatened by a hundred innovations or suggested measures, but they are more secure than ever—sometimes, indeed, in consequence of the very measures so assailed.

Simcoe's rather unworthy hint as to the agency of Hamilton and Cartwright in supplying the troops received the approbation of Dundas who said: "The conduct of Mr. Hamilton and Mr. Cartwright appears to be such as by no means entitle them to the favour or Attention of His Majesty's Government in Canada. I make no doubt of your having already represented their Conduct and their Principles to Lord Dorchester; for nothing is more destructive both in example and in effect than that the influence, flowing from the Executive should be exerted against that Authority". Despatch, Dundas to Simcoe, Whitehall, 16th March, 1794. *2 Correspondence*, pp. 184, sqq.: *Can. Arch.*, Q 280, 1, pp. 16, sqq. Simcoe tried to get the Commissariat under his own control and suggested this to both Dorchester and Dundas. Despatch, Simcoe to Dundas, Navy Hall, U.C., June 20, 1794. *2 Correspondence*, p. 281: *Can. Arch.*, Q 280, 1, p. 269. But this did not succeed. A timely hint, however, was given to Hamilton and Cartwright by McGill that their position depended on Simcoe's good-will.

<sup>(9)</sup>This fact explains the expression: "their avarice, ambition or vanity." In the following year, Simcoe in his Despatch to Dorchester, Navy Hall, 15th June, 1794, says of Cartwright's opposition to the Judicature Act that he thought it "springs from the spirit of Vanity & sordidness in the man rather than from any disaffection", adding: "tho' from the habit of his Education He is constantly offering sentiments diametrically opposite to the British Constitution". *2 Correspondence*, p. 265: *Can. Arch.*, Q 280, 1, p. 174.

Hamilton roused Simcoe's wrath by another suggested scheme. Certain of the Loyalists had been assured that they would have their land without paying fees; the officers whose duty it was to make the Patents had to buy the parchment, &c., themselves, and Simcoe thought it but fair that at least the cost of the material

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should be paid them. As to fees, Dorchester and Haldimand had refused the fees to which they as Governors were entitled and Simcoe wanted a ruling from the Secretary of State. The U.E. Loyalists were naturally impatient and "Mr. Hamilton, a member of the Legislative Council, had not scrupled to say what He in his folly may attempt to perform, that He could carry a bill through both Houses to give titles to present possessors of land". Letter from Simcoe to John King, Under-Secretary of State, from York (late Toronto) Upper Canada, August 22, 1793: 2 *Correspondence*, pp. 36, 37.

See also *do. do.*, p. 265: *Can. Arch.*, Q 280, 1, p. 174: See *ante* (n) 7.

<sup>(10)</sup>*Ante*, cap. XVI p. 239.

<sup>(11)</sup>See Hamilton's Letter to Simcoe from Queenston, April 29, 1794: 2 *Correspondence*, pp. 223, 224: Hamilton's Address as Chairman of the Loyal Association of the Home District to Simcoe, Newark, August 16, 1794: *do. do.*, p. 355. Also Simcoe's Despatch to Dorchester, April 30, 1794, 2 *Correspondence*, pp. 225, 226.

<sup>(12)</sup>He was twice married and left several children, one of whom, George, was the founder of the City of Hamilton.

The celebrated Gourlay was a relation. It was on the visit to Gourlay in Wiltshire of William Dickson in 1810 when he went across the Atlantic with Hamilton's children by his second wife, that Gourlay first considered coming to Canada. See my *Life of Robert (Fleming) Gourlay*, Ont. Hist. Soc., Toronto, 1916, p. 12.

<sup>(13)</sup>Many of the facts of Cartwright's early life are taken from the funeral sermon preached by his friend and former protégé, the Reverend John Strachan, afterwards Bishop of Toronto. It is to be found abridged in an exceedingly interesting little 12 mo. of 145 pages: *Life and Letters of the late Hon. Richard Cartwright . . . . Edited by Rev. C. E. Cartwright . . . .* Toronto and Sydney, N.S.W., Belford Brothers, 1876.

<sup>(14)</sup>The reverend biographer suggests that "a misfortune which had befallen him early in life assisted in leading him to this determination. A boy in playing struck him with a stone in his left eye which deprived him almost entirely of its use and turned the ball outside, by which his countenance otherwise remarkably fine, was somewhat deformed". *Op. cit.*, p. 11.

<sup>(15)</sup>The last note of his attendance in the Legislative Council is March 11, 1814, the Speaker (Chief Justice Thomas Scott), William Claus and he having formed the Legislative Council for nearly the whole Session. Cartwright was absent the first part of the Session

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on duty at Kingston and the Council had to adjourn for want of a quorum, but he appeared, February 23, and thereafter the three sat. John McGill took Cartwright's place on March 14, the day of Prorogation only. The Minutes of the years 1815, 1816, 1817 and 1818 are lost.

(16) Simcoe thought Hamilton and Cartwright, "gentry of the same stamp" as Timothy Pickering, "a violent, low, philosophic, cunning New Englander", who held "the doctrine that assimilates states to private families and deduces from the child growing up into manhood and being capable to take care of himself that it is right and natural for a son to set up for himself and by a just inference that such is the disposition and tendency of all States". I *Correspondence*, p. 400.

(17) Montgolfier's invention was, of course, the balloon—the aeroplane was to come more than a century later. I *Correspondence*, p. 239. Cartwright had been named as the person "to furnish such supplies of Flour and Peas as may be required for His Majesty's service in Upper Canada" at Kingston: Robert Hamilton at Niagara and John Askin and William Robertson at Detroit. See Commissary-General John Cragie's Letter to Simcoe, Quebec, 14th March, 1792. I *Correspondence*, p. 121: also John Gray to Simcoe, Montreal, 17th March, 1792, *do. do.*, p. 300.

(18) I *Correspondence*, pp. 234, sqq.: Wolf. I, 3, 71: *Can. Arch.*, Q 279, I, p. 174.

(19) October 2, 1792: see *ante*, Cap. XIII, note 2 p. 197: I *Correspondence*, p. 250: *Can. Arch.*, Q 279, I, p. 79.

(20) Letter, Cartwright to Isaac Todd, Kingston, October 14, 1793, 2 *Correspondence*, p. 87: *Life and Letters, &c.*, pp. 51-6. While giving Simcoe credit for perfect honesty, Cartwright had no great opinion of his capacity or wisdom.

## CHAPTER XXVIII

### Members Legislative Assembly

**T**HE Legislative Assembly in Simcoe's time consisted of sixteen members representing the nineteen Counties into which Upper Canada was divided by Simcoe's Proclamation of July 16, 1792<sup>(1)</sup>.

1. Glengarry had two Ridings and sent to the Assembly (I) Hugh Macdonell<sup>(2)</sup> from the First Riding and (II) John Macdonell from the Second.

2. Stormont sent (III) Jeremiah French.

3. Dundas sent (IV) Alexander Campbell.

4. Grenville sent (V) Ephraim Jones.

5. Leeds and 6. Frontenac, sent (VI) John White, the Attorney General.

7. Ontario and 8. Addington sent (VII) Joshua Booth.

9. Prince Edward and the Township of Adolphustown in the County of Lennox sent (VIIIa) Philip Dorland. He could not take the prescribed oath as he was "one of the persons commonly called Quakers" and he was replaced by (VIIIb) Peter Vanalstine.

10. Lenox and 11. Hastings, sent (IX) Hazelton Spencer.

12. Northumberland, 13. Durham, 14. York and the First Riding of Lincoln sent (X) Nathaniel Pettit.

15. Lincoln, Second Riding, sent (XI) Benjamin Pawling. Lincoln, Third Riding sent (XII) Parshall Terry. Lincoln, Fourth Riding, and 16. Norfolk sent (XIII) Isaac Swayze.

17. Suffolk and 18. Essex sent (XIV) David William Smith.

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19. Kent sent (XV) William McComb and (XVI) Francis Baby.

Of these the only legislators who are known to have had any influence in Simcoe's time are (VI) John White and (XIV) David William Smith; but some short account will be given of the others.

(I) HUGH MACDONELL. Hugh Macdonell was of Highland descent and birth and of the Aberchalder Branch of that illustrious Clan, the son of Alexander Macdonell (Aberchalder). Born in Scotland he came with his father and uncle to America and with them took up residence in the Mohawk Valley; in the eighth decade of the 18th century, 1773, he received a grant of 100 acres from Sir John Johnson. When the Revolution broke out, Macdonell with others of his Clan took up arms for the Crown: he was Lieutenant in the 1st Battalion of the King's Royal Regiment for seven years. At the peace, he settled in what became Upper Canada: we find him signing with "other inhabitants in the neighborhood of New Johnstown", a congratulatory address to Lord Dorchester, December 2, 1786. On the formation of the Province, he was in 1793 made a Justice of the Peace. He ceased to be a member of the Legislative Assembly with the First Parliament; but he was appointed in 1792, the first Adjutant General of Militia of Upper Canada, later Captain in the 2nd Battalion of the Royal Canadian Volunteer Regiment of Foot, the first Regiment raised in Upper Canada. Later, in 1805, he was Commissary-General at Gibraltar on the staff of H.R.H. the Duke of Kent (father of Queen Victoria) and Consul General at Algiers 1811-1820. He was also for a time Lieutenant Colonel of the Glengarry Militia.

In Parliament he was, in the Session of 1792, one of a Committee of two to ask a conference with the other House; the only other act noted is in 1793 when he moved

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a resolution that "such Acts as have already passed or may hereafter pass the Legislature of this Province be translated into the French language for the benefit of the inhabitants of the Western District of this Province and other French settlers who may come to reside within this Province and that A(ngus) Macdonell, Esquire, Clerk of this House be likewise employed as a French translator for this and other purposes of this House"<sup>(3)</sup>

(II) JOHN MACDONELL: an elder brother of Hugh Macdonell. He entered the Revolutionary War as Ensign in 1775; being then resident in Tryon County, New York, near Johnstown, he joined the 84th Regiment or Royal Highland Emigrants in which he served more than three years: then he served for nearly six years in Butler's Rangers. Along with his kin, he settled in the Township of Charlottenburgh on the banks of the St. Lawrence about six miles east of Cornwall, where they drew a very large tract of land. When the Districts of Lunenburg, Mecklenburg, Nassau and Hesse were formed in 1788, he received a Commission as Justice of the Peace and also as Judge of the Court of Common Pleas for the District of Lunenburg. He continued to act as Judge until the abolition of the Court of 1794.

Elected for the Second Riding of Glengarry, he was present the first day of the first Session, September 17, 1792 and was unanimously chosen as Speaker. There is no record of any legislative activity on his part.

He was re-elected for the Second Parliament for the same Riding, but he does not seem to have attended the first session in 1797<sup>(4)</sup>. David William Smith was elected Speaker and the respect in which Macdonell was held appears by the following entry June 9, 1798, "Mr. Speaker addressed the House in the following words to wit:

Gentlemen of the House of Assembly:—As you have



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done me the honour to call me to the Chair of the House, I feel it a duty I owe to the recollection of the services of Col. Macdonell to move you that in order to mark the sense I entertain of his former situation as Speaker, a place be considered as appropriate to him during the present Session being the first next to the chair on the right hand." This was unanimously agreed to and ordered accordingly<sup>(5)</sup>. June 22, 1799, he received permission to absent himself from the House for the remainder of that the third Session<sup>(6)</sup>. He was not elected for the Third Parliament (1800) or any later.

He took a prominent part in military matters, was Colonel of the Glengarry Militia and was in command of the 2nd Battalion of the Royal Canadian Volunteer Regiment of Foot with headquarters at Fort George near Niagara; this, the Upper Canada Battalion, garrisoned the Province from 1796 until it was disbanded in 1802.

As we have seen, he was made Lieutenant of his County, Glengarry<sup>(7)</sup>. In that capacity, he proposed in 1807 the formation of a Corps of Glengarry Fencibles. This suggestion was not carried out at the time but the Glengarry Light Infantry Regiment which fought so gloriously in the War of 1812-14 was later raised by his kinsmen much along the same lines. His health and fortunes failing, he obtained the Paymastership of the 10th Veteran Battalion, but died at Quebec on his way to England.

His name is not connected with any legislation<sup>(8)</sup>.

(III) JEREMIAH FRENCH, one of two brothers, (Gershon being the other) of English descent; born in America, they occupied a farm in Vermont, the present site of Manchester. Jeremiah was at one time High Sheriff of Manchester. On the outbreak of the Revolutionary War, he went to Albany and joined the 2nd Battalion of the King's Royal Regiment of New York, in which he

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served as Lieutenant in Peters' company for seven years. After his departure for Albany, his wife, Elizabeth Wheeler, who was an outspoken Loyalist, was expelled by the Continentals: his property had been seized and some of the chattels were now sold to pay for her transportation—then with a few belongings, she was sent to the British camp.

Lieutenant French drew lands in Cornwall and Montague. Elected in 1792, he gave way in 1796 to Robert Isaac Dey Gray, the first Solicitor-General of Upper Canada, and died in 1805.

His name is not connected with any legislation<sup>(9)</sup>.

(IV) ALEXANDER CAMPBELL. Of Campbell, little is known. His name appears as Lieutenant in McAlpine's Company of the 2nd Battalion of the King's Royal Regiment of New York, 1777. In the list of officers of the Corps of the Loyal Rangers commanded by Major Jessup he is described as born in the Province of New York, "a wealthy farmer of some considerable property in that Province lost by the rebellion"<sup>(10)</sup>. He was present during the first, second and fourth Sessions: he was living in Johnstown in 1795, but he seems to have later removed to Montreal. He was not re-elected and his name is not connected with any legislation<sup>(11)</sup>.

(V) EPHRAIM JONES—a descendant of Josiah Jones who came to Boston in 1665 and settled in Weston, Middlesex County, Mass., dying there, 1714, aged 94. His grandson, Elisha, American-born, had a large family of fourteen sons and one daughter: he lived at the mansion house and farm at Weston. He and all his family adhered to the Loyalist cause; some settled in New Brunswick, some in Nova Scotia and some in Upper Canada: Ephraim was the tenth son. When the Revolutionary War broke out, he was living at West Hoosac and he joined the British Forces at Pointe au Fer under

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General Riedesel. Afterwards he served under Sir Guy Carleton and General Burgoyne: in the latter command, he was Commissary of Forage and was taken prisoner at Saratoga. In 1781, he entered as a Volunteer in the Loyal Rangers, where he served as Commissary until the Corps was reduced in Canada. He drew land in the Fifth Township, Augusta, and was for a time Commissary of the Stores provided by the British Government for the settlers in Upper Canada. That, however, had ceased before he made an application before the Loyalist Commissioners at St. Johns, May 29, 1787, in which he claimed a share in the estate of his late father, Col. Elisha Jones, which his brothers gladly accorded him, one of them, Josiah, swearing that Ephraim had "served in the British Army the whole War." No legislation is connected with his name and he was not re-elected<sup>(12)</sup>.

(VI) JOHN WHITE—The first Attorney-General of Upper Canada was the only son of John White<sup>(13)</sup> of Hicks Hall in the Parish of St. Sepulchre in the County of Middlesex. He does not seem to have been a University man, but he was admitted to the Inner Temple, October 17, 1777. A fellow-student, the celebrated Samuel Shepherd, married White's sister in 1783: White and Shepherd studied under Sergeant Remington, a Special Pleader of great eminence. White was called to the Bar in 1785; he married and went to Jamaica to practise law. There he was unsuccessful, and the climate seems to have sown the seeds of a sickness from which he suffered intermittently during the remainder of his life. He returned to Britain and went to Wales intending to take Holy Orders; but Shepherd recommended him to Osgoode who was to be Chief Justice of Upper Canada, and Osgoode recommended him as Attorney-General to Evan Nepean a Commissioner of the Privy Seal; through his influence, White was appointed.

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He came to Canada in company with Osgoode and arrived at Kingston in June, 1792. He was called into active practice at once as he had to prosecute a number of criminal cases at Kingston in August. While waiting for the Court of Oyer and Terminer to sit in August, White, remaining at Kingston, was elected Member of the Legislative Assembly largely through the influence of Simcoe. After the Court, he sailed for Newark (Niagara): and he had not been at the Capital a week when clients began to come in. As he was the only regular lawyer in this province except Walter Roe of Detroit (the Judges, William Osgoode and William Dummer Powell, were of course, not practising), he soon had a fairly large practice—and this, it may here be said, kept up until his tragic death, January 3, 1800, although the fees including his salary as Attorney-General were always pitiably small,—he complains that he was obliged to dig his own potatoes and cut his own firewood.

White in the Assembly in fact represented the Government, although he was not a member of the Executive Council. He took a very active part in the House “where indeed”, he says “there has been unusual ignorance and stupidity.”

In the session of 1793, he had charge of the Slave Bill and, as it is believed, made some changes to render it more efficient. The bill was unpopular with his constituents and it was openly prophesied that he would not again be elected by reason of his support of that measure—a prophecy which was fulfilled when Christopher Robinson defeated him at the General Election for the Second Parliament<sup>(14)</sup>.

He also had charge of the Judicature Act in 1794, but in that instance there was no opposition.

While he was not a member of any succeeding Parliament, he continued as Attorney-General until his death.

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He took an active part in the organization of the Law Society of Upper Canada, formed by the Statute of 1797; and nearly succeeded in introducing the English system wherein the same person cannot be Barrister and Solicitor.

He had expected to be appointed Chief Justice of Nova Scotia on the resignation of (Sir) Thomas Andrew Strange (1798) and had actually accepted the post; but other considerations intervened, and Sampson Salter Blowers received the appointment. He had also reason to expect the Chief Justiceship of Upper Canada on Osgoode's removal to Lower Canada in 1794, but was disappointed.

At the Christmas season of 1799, he made use of language concerning Mrs. Small, wife of Major Small, Clerk of the Executive Council that must needs, according to the ethics of the time, lead to his death or that of the lady's natural defender. If not true, it should not have been said and still less, if possible, if it were true. A challenge followed and White was killed. He died January 3, 1800<sup>(15)</sup>.

(VII) JOSHUA BOOTH—is almost unknown. There is no doubt that he was of English descent and his family was settled in Orange County, New York. After the war, in which he had served as Sergeant in the Loyalist Troops, he came to Canada and settled in Ernestown. He became proprietor of the King's Mill, west of Kingston on the present Mill Creek. He was not re-elected and has no legislative activities to his credit<sup>(16)</sup>.

(VIIIa) PHILIP DORLAND. The peculiar experience of this Member has already been stated <sup>(17)</sup>.

He belonged to a well known band of "Quakers" or Friends in Dutchess County, New York, who, however, were not prevented by their love of peace from taking up arms in the Loyalist cause. He, with many of his

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brethren, settled in Adolphustown and was a leader among his people.

Elected as Member, his conscience would not allow him to take the required oath; he accordingly never took his seat. A new Writ of Election was issued and his neighbour Peter Vanalstine took his place<sup>(18)</sup>.

It is not without interest to note that not all the "Fighting Quakers" during the Revolution were on the side of the Crown.

A number of Quakers in Philadelphia took up arms in the cause of the Continentals. On the conclusion of peace, they were "churched" by their people for their part in the war. But, taking the name, Free Quakers, they built a church by public subscription which still stands on the southeast corner of Fifth and Arch Streets immediately across Fifth Street from the Quaker Burying Ground, where are the graves of Benjamin and Deborah Franklin. I have frequently seen this building with the block of marble inserted in its north gable with the inscription:—

"By General Subscription,  
For the Free Quakers, Erected In the Year  
of our Lord, 1783; Of the Empire 8"

(The "Empire" of course, means the Empire of the United States considered as beginning on the Declaration of Independence, July 4, 1776.)

(VIIIb) PETER VANALSTINE—Vanalstine was the son of Alexander Vanalstine<sup>(19)</sup> of Dutch descent and was born in Kinderhook, New York, where he lived until 1775. A Loyalist, he was, in 1776, chosen by those of that inclination a Member of the Committee of Albany. He found himself in the minority and he and sixteen others were made prisoners as friends of the King and imprisoned for seventeen days. Early in the following year, 1777, he was obliged to leave home, and after re-

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remaining concealed for a time, in September of that year he joined the Forces of Burgoyne with 30 men. In 1778, he went to New York and served as Captain of Batteaux men. Afterwards he did duty as Major of Associated Loyalists<sup>(20)</sup> serving at Smith Town, Long Island.

He came to Adolphustown after the Peace, and his somewhat extensive estates at and near Kinderhook were forfeited by the New York Commissioners of Forfeitures in 1783. He was placed in charge of the provisions for the settlers in Adolphustown assisted by Philip Dorland. They were responsible, acting under the instructions of a Committee for the distribution among the families. Vanalstine was not re-elected. He left Adolphustown for Prince Edward County where he had large holdings, and built the mill at the Lake of the Mountain; he subsequently returned to Adolphustown, where he died in 1811.

He is said never to have lost his Kinderhook Dutch accent<sup>(21)</sup>.

(IX) HAZELTON SPENCER. He was the eldest son of Benjamin Spencer, who was, like his son, born in America. The son was born at East Grenville, Rhode Island, August 29, 1757. The family removed to Durham County on the Winooski River, Vermont, to a farm of about 300 acres, which they farmed<sup>(22)</sup>. The father was elected to the Provincial Assembly or Congress, but proving loyal, he was forced to fly the country; he joined Burgoyne in 1777 and Hazelton joined with him. His father was present at the Battle of Bennington and died shortly thereafter at Ticonderoga. The son served as a Volunteer with Sir John Johnson until 1781, when he got a Lieutenancy in the 2nd Battalion of the King's Royal Regiment of New York and served for the remainder of the War. When the regiment was disbanded, he settled at Fredericksburgh above Kingston<sup>(23)</sup>.

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When the Second or Upper Canada Battalion of the Royal Canadian Volunteers was formed under the Colonelship of John Macdonell, Spencer was appointed Major, and from 1797 to 1803 he was Commandant at Kingston.

He was appointed by Simcoe, Lieutenant of the County of Lennox and took a very prominent part in all militia matters. He was actively preparing for the war with the United States when he died February, 1813<sup>(24)</sup>.

He was also an active Magistrate of his District<sup>(25)</sup>.

(X) NATHANIEL PETTIT—the son of Jonathan Pettit who lived in the Province of Pennsylvania but had land also in New Jersey. It is not quite certain when Nathaniel came to Canada, but it seems probable that he came earlier than his brother Andrew and that is known to have been in 1787. Nathaniel took up land upon which Grimsby, Ont., now stands and was a man of some consequence in the community.

When Dorchester formed the Districts in the Upper Country, he made Pettit a member of the Land Board, and October 22, 1788, he also made him one of the Judges of the Court of Common Pleas for the District of Nassau<sup>(26)</sup>. When Upper Canada was to become a separate Province, Sir John Johnson and Lord Dorchester recommended Pettit for appointment as Executive Councilor<sup>(27)</sup>.

He served only one Session in the House. It is not known whether as some think, he went back to New Jersey or died and was buried on his farm on the Lake Front.

(XI) BENJAMIN PAWLING.—Benjamin and Jesse Pawling were brothers, sons of a Welsh immigrant who had settled in Pennsylvania. Remaining loyal to the Crown, they were forced to move to Nova Scotia, whence they made their way on foot and by canoe to Quebec.



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Enlisting there, they fought through the War. Benjamin became a Captain-Lieutenant in Butler's Rangers and served in all seven years. Settling in the Niagara country he drew land immediately east of Port Dalhousie; he not only farmed<sup>(28)</sup> but also acted as Land Surveyor at times. He was commissioned a member of the Land Board of the District of Nassau in 1788; he was intended to be made a Judge of the Court of Common Pleas for the District, his brother Jesse was by mistake named in the Patent, but this error was quickly corrected.

He was not re-elected; he died at Twelve Mile Creek and was buried, December 16, 1818.

(XII) PARSHALL TERRY. Some mystery has been made concerning this member of the first Assembly for the Fourth Riding of Lincoln and Norfolk.

Dr. Canniff states the name of the representative as ". . . . Young", and is followed by Mr. J. A. Macdonell. The Quebec Almanac gives it as "Pashal Tarry": Dr. James correctly reads this, "Parshall Terry", but does not give a decided opinion. None of these had the advantage of the Wolford Manor Papers which contain the official list made up by William Jarvis, Provincial Secretary, June, 1796: these make it clear that Terry was the representative<sup>(29)</sup>.

We are, however, not much farther advanced because beyond the facts that he came from New York State, that he was later associated with Isaac Swayze in furnishing supplies at the Garrison at York, that he came to York and conducted a milling business on the Don, that he became Swayze's bondsman when an Information *ex officio* was laid against him in 1795, and that he was drowned in a freshet of the Don in 1808, he is quite unknown<sup>(30)</sup>. He was not re-elected.

(XIII) ISAAC SWAYZE<sup>(31)</sup>. This member came from New Jersey; during the Revolutionary War he was a

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Scout—the Revolutionaries called him a spy. He was in the supply department furnishing horses, etc. to the Loyal Forces: the Revolutionaries called him a horse-thief. In any case, he was loyal and did his best for the cause of the Crown, and Lord Dorchester accredited him as "Pilot to the New York Army". It does not precisely appear when he came to Canada, but as early as 1784, he is found on Lot 27 of Township No. 1 on Niagara River<sup>(32)</sup>.

He was associated with Parshall Terry in supplying the Troops at York. A prominent Freemason, he was wont to boast in his cups that he had taken part in the abduction of Morgan; but he denied this when it seemed likely to get him into trouble.

In 1795, an Information *ex officio* was filed against him for sedition by John White, Attorney-General: he was tried and found guilty. Submission and expression of regret reduced his sentence to a fine of £10 Provincial money (say \$40), to stand committed until the fine was paid and to find sureties for good behavior for two years<sup>(33)</sup>.

In 1807, he had serious trouble as Inspector of Licences for the District of Niagara. He had collected a considerable sum, £178.5.8  $\frac{1}{4}$  Provincial Currency (say \$713) for Duties on Licences issued January 5, 1806 and kept the money in his house. He claimed that on the night of January 28, 1806, his house was broken open and he was robbed of that money and a large amount of his own. He petitioned the House of Assembly in the Fourth Parliament (of which he was a member) to take his case into consideration and grant him such relief as they in their wisdom should think meet. A Bill was brought in for his relief, read the first and second time and referred to the Committee of the Whole. The Committee reported that consideration of the Bill should be

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postponed to the first week of the next Session. The Report was adopted by a vote 10 to 5 and Swayze had leave to withdraw his Petition. Notwithstanding this, the Bill was again referred to a Committee of the Whole. The Committee reported progress and asked leave to sit again. The House finally refused to resolve itself into a Committee on the Bill, but contented itself with passing a Resolution that in the opinion of the House, he had been robbed of the amount "and that he was at the same time severely beaten and wounded". In the next Parliament of which he was not a member he represented his Petition but the House refused leave to bring in a Bill for his relief<sup>(34)</sup>.

He was re-elected for the Third, Fourth, Sixth and Seventh Parliaments.

Swayze has received much notoriety and some obloquy, from the fact that it was he who initiated the prosecution of the celebrated "Banished Briton", Robert Fleming Gourlay, in 1818. Gourlay treats him in his voluminous writings with the utmost contempt, calls him a spy, a horse-thief, a perjurer, &c; but the expressed opinions of the informant were shared by many in the highest stations in the land and he may have been perfectly honest as he was perfectly open<sup>(35)</sup>.

Swayze died in 1828.

(XIV) DAVID WILLIAM SMITH—Smith was the only child of John Smith, sometime of Salisbury, England, who was Major (afterwards Lieutenant-Colonel) of the Fifth Regiment of Foot, stationed at Detroit, 1790-1792, and then removed to Niagara of which Post Colonel Smith was Commandant until his death, November 19, 1795. The son was born in the Regiment, September 4, 1764<sup>(36)</sup>. He was appointed Ensign in the 5th Foot in 1779, and Acting Paymaster the following year by Earl Percy, afterwards the Duke of Northumberland, his life-

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long friend and patron. When his father, Major Smith, was Commandant at Detroit and member of the Land Board for the District of Hesse, the son was appointed Secretary of the Board as well as to his father, 1790. He also became Fort Adjutant the same year and Assistant Engineer the following year.

His regiment was moved to Niagara in the spring of 1792 and he with it. He was created Deputy-Quarter-Master-General there, April 12, 1792, and Secretary to the Commandant in June.

He had aspirations for public life, and, after consideration, he selected the constituency of Suffolk and Essex<sup>(37)</sup> for which he was duly returned.

He became Deputy Surveyor General of Lands for Upper Canada the following month. In the Session of Parliament he took an active part and recommended himself to the Lieutenant-Governor. He was also made Deputy-Judge-Advocate.

Desiring to practise law, he was, June 2, 1793, articulated to John White, the Attorney-General and was one of those so fortunate as to receive, July 7, 1794, from Simcoe, a Licence "to be and appear as Advocate and Attorney in all and every of His Majesty's Courts"<sup>(38)</sup>. There is, however, no record of his ever appearing in Court, and, when, in 1797, the Law Society of Upper Canada was formed, he was not called to the Bar<sup>(39)</sup>, not being then practising law.

He became Captain in the 5th Foot in 1795, having obtained the rank of Major in the Provincial Horse Artillery, the previous year.

In the Second Parliament, he was elected Speaker, having been elected for the Third Riding of Lincoln; in the Third Parliament, he represented Norfolk, Oxford and Middlesex and was re-elected Speaker. In the meantime, he had become Lieutenant and Colonel of Militia of

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the County of York and Master of Chancery. He had been Deputy Lieutenant and Colonel of Militia for Lincoln. He had visited England from time to time for the benefit of his health, which was seriously impaired, his place as Speaker being filled by Samuel Street and Richard Beasley, and, finally in May, 1804, he resigned his Canadian appointments<sup>(40)</sup> and went to England, where the next year he became Commissioner for his friend the Duke of Northumberland. A Baronet in 1821, he died near Alnwick, England, May 9, 1837, aged 73.

There are many of his papers in the Toronto Public Library. In 1799, he published in London a work *A Short Topographical Description of His Majesty's Province of Upper Canada in North America to Which is Annexed a Provincial Gazetteer* which is frequently referred to and is valuable historically and topographically. He also annotated that part of La Rochefoucault's Travels which refers to Canada<sup>(41)</sup>.

(XV) WILLIAM MCCOMB. The name is really "Maccomb"—he was the son of John Maccomb who came from the North of Ireland to America about 1750 and carried on business at Albany, New York, chiefly in supplying the British Posts on the large Lakes and Rivers from Montreal to Detroit. His two sons, Alexander and William, entered on the same business. We find them as early as 1776 supplying the Post of Detroit and with another person also at Michillimackinac<sup>(42)</sup>.

William adhered to the Loyalist cause and was one of the most influential and affluent of the Detroit merchants. He lived at Detroit and became the owner of large tracts of land in that Post and the vicinity, including the Cass farm now in the best part of Detroit, Belle Isle, Stony Island, &c.

He chose British citizenship when the time came under Jay's Treaty for the surrender of Detroit, but he died before the actual surrender in 1796<sup>(43)</sup>.

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(XVI) FRANÇOIS BABY. François (or Francis) Baby, born in Detroit, 1768, was a younger brother of Jacques Baby the Executive and Legislative Councilor<sup>(44)</sup>. He entered the political field at the instance of his brother to represent the French Canadians of the Detroit region. Jacques desired him to stand for Essex where the French people would be sure to vote for him,<sup>(45)</sup> but finally he selected Kent where he seems to have been elected along with Macomb without opposition.

He was not re-elected.

He became Colonel of the Kent Militia in 1793 and was an active and efficient officer. Electing British citizenship, he crossed the River when Detroit was surrendered to the Americans under Jay's Treaty. In the War of 1812, he was on active service: he took part in the Battle (sometimes called the Massacre) of River Raisin, January 23, 1813, and exerted himself to restrain the ferocity of the Indians, ransoming captives from them when other means were unsuccessful. General Hull, when he made his impotent gesture against Upper Canada and crossed the River, occupied Baby's fine house as his headquarters. The same house was Headquarters for Brock, Procter and Harrison, commanding as it did a fine view of the River.

Baby, after an honorable career of three score years and ten, died at Windsor, Upper Canada, in 1838.

### NOTES.

(1)*D. & McA.*, pp. 77, sqq.

See the Return made June 6, 1796, by William Jarvis, Provincial Secretary, Wolf. I, 8, 249: (Isaac Swayze's name is omitted): cf. my Article *Some Early Legislation and Legislators in Upper Canada*, 33 *Canadian Law Times* (1913), pp. 22, 96, 180.

(2)"Macdonell" is the orthography now universally adopted by the members of this loyal and important family; but Jarvis in the

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Return spells it "McDonell" and some of the family at that time adopted this spelling, e.g., Angus Macdonell signs his name thus on the Roll of Advocates and Attorneys on receiving a Licence to practise under the Act of 1794, 34 George III, C. 4 (U.C.) See my *The Legal Profession in Upper Canada in Its Early Periods*, Toronto, 1916, p. 146.

(3) This Resolution is attributed by Sir John A. Macdonald (1890, *Hansard*, Vol. 1, p. 894) to Hugh Macdonell. The official record, (6 *Ont. Arch. Rep.*, (1909), p. 23), is silent as to the name of mover and seconder. Sir John, as quoted in Mr. J. A. Macdonell's *Sketches Illustrating the Early Settlement and History of Glengarry in Canada . . .* Montreal, 1893, p. 105, gives the date as July (instead of June) 3, 1793: on July 3, the Assembly did not sit. The Order is incorrectly given by Sir John; the text I copy from the official record, *ut suprâ*. His name next appears in the official record, June 13, 1799, when his Petition as Adjutant-General was presented, 6 *Ont. Arch. Rep.*, (1909), p. 101. Macdonell's career was a romantic one: it is given at length in his kinsman's *Sketches, &c.*, pp. 104, sqq. When Consul-General at Algiers he suffered the greatest hardship at the hands of the Dey, the lives of himself and family being in constant danger and he frequently imprisoned. "It was necessary for Lord Exmouth, then in command of the Mediterranean Fleet, to bombard Algiers in order to procure his release in August, 1816". He retired on a pension in 1820. After his death, his widow, his second wife, the daughter of Admiral Ulrich, Danish Consul-General at Algiers, married the Duc de Talleyrand-Perigord and died in 1870 at Florence at a very advanced age. *Sketches, &c.*, p. 110. Many of his descendants have had a distinguished military career.

(4) We find that he took the oath and his seat June 9, 1798: 6 *Ont. Arch. Rep.* (1909), p. 59, his previous non-attendance being excused "by reason of indisposition": *do. do. do.*

(5) *Do. do.*, p. 60.

(6) *Do. do.*, p. 112.

(7) October 2, 1792. See *ante*, Cap. XIII, note 2, p. 197.

(8) His wife was a Miss Yates of Schenectady, New York, whose family adhered to the Revolutionary cause. He left one son, Alexander, who served as Major throughout the Rebellion of 1837-8 in the Lancaster Regiment of the Glengarry Highlanders.

For further information concerning the two Macdonells, see Mr. J. A. Macdonell's *Sketches, &c.*, *ut suprâ*; also his privately-

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printed *Fighting Men of a Highland Catholic Jacobite Clan . . . .*: the late Judge Pringle's *Lunenburgh*, Cornwall, 1890: two papers by the late Dr. C. C. James, C.M.G., *Transactions, Royal Society of Canada, Section II*, (1902), p. 93: (1903), p. 145. Simcoe's Despatch to Dundas, Navy Hall, November 4, 1792: 1 *Correspondence*, p. 247: *Can. Arch.*, Q 279, I, p. 1. I have also been favored with much information by my friend, A. McLean Macdonell, Esq., K.C., of Toronto, who has made an exhaustive study of the history of his clan and has been good enough to respond to my enquiries, many in number and far-reaching in scope.

<sup>(9)</sup>See the account of French by Dr. James, *Trans. R. S. Can. Section II*, (1902), p. 102; the particulars were derived by Dr. James from his descendant, F. J. French, Esq., K.C., of Prescott.

We are told that he was an intimate friend of the Rev. Dr. John Strachan, afterwards first Anglican Bishop of Toronto. His son Benjamin and Dr. Strachan married two sisters.

A pathetic story is told that when Lieutenant French was entertaining the Duke of Kent, father of Queen Victoria, at a turkey-hunt, he being about to fire, his daughter crossed just in front and he shot her dead. Mr. J. A. Macdonell in his *Sketches, &c.*, p. 86, conjectures that French represented Grenville, but there is no doubt that his constituency was Stormont.

<sup>(10)</sup>Judge Pringle's *Lunenburgh*, *ut suprâ*, pp. 356, 361.

<sup>(11)</sup>James Croil in his *Dundas or a Sketch of Canadian History*, Montreal, 1861, at p. 279 gives the residence of Campbell as Montreal. He says of him:—"The first on the list of members may have been a Whig or a Tory, a lawyer or a merchant, of such matters there is no record, and the little that is preserved of his history, presents few inducements to prosecute the enquiry. His character is summed up in this, that he was familiarly known at the time by the unenviable *soubriquet* of *Lying Campbell*."

He was certainly not a lawyer; but we find him, July 14, 1795, a resident of Johnstown, but then at Newark (no doubt attending the Session which began July 6) sending a Petition to Simcoe to appoint him as Notary Public for the Eastern District as in the settlement wherein he lives he has been "frequently applied to for the drawing up of writings, agreements and other acts of a mercantile nature such as are usually performed by notaries" and there are none in the Eastern District. He asks also to be appointed Register (our "Registrar") of Deeds if a Registry Office should be there established. He failed in his request. *Wolf*. I, 6, 262.



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(12) In addition to the authorities mentioned in (n) 8 *ante*, see Leavitt's *History of Leeds and Grenville*, Brockville, 1879, p. 98: also the evidence given by Jones and his brothers before the Loyalist Commissioners, 1 *Ont. Arch. Rep.*, (1903), pp. 911, 916, 917.

Ephraim Jones married Miss Coursoll of Montreal and left four sons and four daughters. One of the sons, Jonas, became a Judge of the Court of Queen's Bench; another, Charles, was a Member of the Legislative Council: one daughter, Charlotte, married Levius Peters Sherwood, afterwards a Judge of the Court of Queen's Bench; another, Eliza, married Henry John Boulton, Attorney-General of Upper Canada and later, Chief Justice of Newfoundland.

(13) The identification of John White cannot be considered quite certain though it is very probable. At one time I thought that he was the eldest son of Thomas White of Cork—a John White who was admitted at Gray's Inn, April 12, 1780, but this I am convinced was an error. See my *Old Province Tales*, Toronto, 1920, pp. 14, sqq.

(14) Christopher Robinson's Bill in 1798 for repealing the Slave Act and reintroducing slavery in the Province carried the House by 8 to 4, but received the "three months' hoist" in the Legislative Council.

(15) I have a large mass of material concerning White, some of it from his descendants in England. His MSS. *Diary*, in the possession of Mrs. Egerton in Toronto, has been drawn upon. See my *Old Province Tales*, pp. 14, sqq. Since that work was published I have discovered in the Canadian Archives the words used by White of Mrs. Small. They were unworthy of him and no gentleman of the time could do other than Small did in vindication of his wife's honor. See also my *Legal Profession in Upper Canada in Early Periods*, pp. 151-153.

The not very remote cause of the tragedy was no doubt White's wretched health; his *Diary* makes it quite clear that he was never wholly well and that he had frequent attacks of "biliousness", "malaria", &c.; his "liver was out of order" and he shows irritation at trifles and unreason in more important matters. He had in July 1799, got into a dispute with Captain William Fitzgerald of the Queen's Rangers which led to Fitzgerald writing him two letters and White bringing the Captain before the Court of King's Bench at York, Chief Justice Elmsley and Justices Powell and Allcock, who bound him over in £1,000 with two sureties of £500 each to keep the peace towards White and all other His Majesty's subjects for

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12 months. *Term Book, Court of King's Bench*, July 13, 1799 (Trinity Term, 39 George III).

White well knew the imminent peril of death he was in after he was shot by Small. His Will, on file at Osgoode Hall, was made, written by his own hand, January 2, contains the clause "I forgive everyone. I shd. like to have lived for the sake of my family, but I hope I am no other afraid to die than a rational being ignorant everything but his own insignificance and the power of the Almighty shd. be." The Will further said: "I desire to be rolled up in a sheet and not buried fantastically and that I may be buried at the back of my own house." His close friend and executor, Peter Russell, saw to it that this desire was complied with. White's body was buried in his own garden not far from the corner of Bloor and Sherbourne Streets. In 1871 his bones were uncovered by workmen digging for sand. They were reverently taken up and re-interred in St. James' Cemetery by Clarke Gamble, K.C., the Nestor of the Toronto Bar. Small was tried for murder at York, January 20, 1800, before Mr. Justice Allcock and acquitted by the Jury. As was said by Chief Justice Sir John Beverley Robinson in a similar trial: "Juries have not been known to convict when all was fair." See my article *The Duel in Early Upper Canada*, 35 *Canadian Law Times* (1915), pp. 226, sqq.

White made an attempt to re-enter the Legislative Assembly.

Christopher Robinson (father of Sir John Beverley Robinson, just mentioned) who was member for Addington and Ontario, died, November 2, 1798; and a writ was issued, November 20, for an election to fill the vacancy. Lieutenant-Governor Peter Hunter was not on the best of terms with Gray, the Solicitor-General, who was in the Assembly as Member for Stormont; and he wanted White in the House, having great confidence in his abilities and learning. He accordingly induced White to stand for the vacant seat, promising to pay his expenses. White was nominated but went down to defeat at the Polls, William Fairfield being elected. The election expenses of White were paid out of the public chest, i.e., out of the money of the British taxpayer, the amount not being very alarming, indeed, but only £23 10s 3d, Halifax Currency, (say \$94). Hunter reported the whole matter in an official despatch to the Duke of Portland from York, June 1, 1799: *Can. Arch.*, Q 287, 1, pp. 1, sqq. See also 6 *Ont. Arch. Rep.*, (1909), pp. 97, 98.

<sup>(16)</sup>The story is told that after the Revolutionary Wars, his mother came from the United States with negro slaves to bring him

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a bag of gold supposed to be the produce of a family division of property. Booth served in the War of 1812-14 as Captain, and his two sons were also soldiers. The mother, a daughter of Daniel Fraser, U.E.L., on being condoled with on the absence of her sons, said: "Indeed, and I wish I had more to serve."

Booth's death was tragic; soldier as he was, he could not bear the sight of blood. During an engagement he was thrown into a cataleptic state and died, October 31, 1813. Some have the gruesome story that he was buried alive by mistake in the hurry of the affray: *absit omen*. See Dr. James' Paper *Trans. R. S. Can.*, Sec. II, (1902), pp. 104, 105.

(17) *Ante*, Cap. XII., p. 174.

(18) Philip Dorland took a very high and creditable stand, and one much more honorable than that of the noted Charles Bradlaugh in the Imperial House of Commons in 1882. Dorland signed and sealed a Declaration in the presence of John Peters, the Returning Officer, in which he recited the election and stated that since the election he had read the Act "whereby it is enacted that no member either of the Legislative Council or Assembly shall be permitted to sit or vote therein until he have taken and subscribed a certain oath therein set forth. *And Whereas* from the religious principles I profess (being one of the persons commonly called Quakers) I do not feel myself at liberty nor can I conscientiously take an oath in the form and manner usually prescribed although I would readily affirm and subscribe a declaration to the purport and effect therein set forth. . . ." He requested the Returning Officer to attach the Declaration to the Return to avoid all question and "in order that if an affirmation cannot be accepted of in lieu of the form of the oath that the said House of Assembly may direct a new Writ to be issued . . . or to take such steps in the premises as to their wisdom seem meet": *6 Ont. Arch. Rep.*, (1909), p. 4. The House had no power to vary the express terms of the Act; and a new Writ was ordered. It will be remembered that Charles Bradlaugh, the noted Freethinker, being elected M.P. for Nottingham in 1880, refused to take the required oath "on the true faith of a Christian" because he was not a Christian; but later when he found that he could not sit without taking the oath, he in 1882 appeared in the House, pulled a Testament out of his pocket and administered the oath to himself.

There were certain difficulties later on, arising from the express provisions of the Canada Act of 1791, which, of course, the Provincial Parliament could not change. For example, Section 21 of the

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Act provided that "no person shall be capable of being elected as a Member . . . . of the Assembly who shall be a Minister of the Church of England, Priest, Ecclesiastic or Teacher either according to the rites of the Church of Rome or under any other form or profession of religious faith or worship". In 1806, Samuel Ryerse of Woodhouse in the District of London, Esquire, complained to the House that Benajah Mallory, returned as a Member for Norfolk, Oxford and Middlesex, had been illegally returned "having both before and since been a preacher and teacher of the religious society or sect called Methodists". Mallory was a local preacher and had in the election beaten Samuel Ryerse, brother of Col. Joseph Ryerson (father of Rev. Dr. Egerton Ryerson) and, like him, a High Churchman and High Tory: Mallory was acquitted by a vote of 6 to 4.

In the next Parliament, 1810, James Wilson, returned Member for Prince Edward (except Amherstburgh), and John Roblin for Lennox and Addington were petitioned against on the ground that "they then were and for many years before and still are, public preachers and teachers in that society or community of people called Methodists". Wilson was unseated by a vote 11 to 6 and Roblin by a vote 12 to 6. See my article: *Methodist Preachers in the Early Parliaments of Canada*, Christian Guardian, March 26, 1913.

<sup>(19)</sup>The name is thus spelled in the official record; but before the Loyalist Commissioners at St. Johns, 1785, the spelling is Van Alstine. The former has been adopted by those members of the family with whom I have had acquaintance.

<sup>(20)</sup>Dr. Canniff in his *History of the Settlement of Upper Canada*, Toronto, 1869, (pp. 448, 449,) in speaking of the settlement of the Fourth Township, i.e., Adolphustown, says: "In the year 1783, a party of Loyalists sailed from New York. They were under the command of Capt. Van Alstine with a fleet of seven sail and protected by the Brig *Hope* of forty guns. Some of the band had served in the army in an irregular way; more had been in New York as refugees. Van Alstine, although commissioned to lead this company, it would seem, had not been in the service—was not a military man but a prominent Loyalist of the Knickerbockers." The "irregular service" was, I presume, that of the "Batteaux men", much like that of the Canadian boatmen in the Nile Expedition to free General Gordon. There can, however, be no doubt that Major Van Alstine was a military man and had earned his title.

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Mr. J. A. Macdonell, *Sketches, &c.*, p. 86, is unnecessarily puzzled by the designation of Vanalstine in Dorchester's list as "Captain".

(<sup>21</sup>) Most of the facts in this short biography are taken from Vanalstine's evidence before the Loyalist Commissioners at Montreal, February 27, 1788, 1 *Ont. Arch. Rep.*, (1903), pp. 445, 446; he is more than once styled "Major" by other witnesses: Dr. James' *Paper Trans. R. S. Can.*, Sec. II. (1902), pp. 106, 107; Dr. Canniff, *op. cit.*, pp. 448, sqq.

(<sup>22</sup>) Dr. James, *op. cit.*, p. 104, calls this farm a "grant"; but Spencer in his evidence before the Loyalist Commissioners of Montreal, February 20, 1788, says: "His father purchased this of John Henry Lidias about the year 1769 when they were wild lands . . . thinks it would have been sold for £3,000 curcy. . . . It has been sold under confiscation to one Eli Hugh Smith . . . . in 1788": 1 *Ont. Arch. Rep.*, (1903), p. 421.

The "grant" was for 500 acres also in Durham County, but it was a New York grant and the title was disputed, consequently it remained unimproved. Benjamin had also 132 acres on Otter Creek and other lands in Vermont, *do. do.*, p. 422.

(<sup>23</sup>) All the family did not adhere to the Crown and come to Canada. Abel the 2nd, and John the 5th son remained in Vermont as did Sarah, the eldest daughter, who married there. The 3rd son, Barnabas, was in the States in 1788, but drew land in New Johnstown, while the 4th son, August, "drew land near the Bay of Kquenty". *do. do.*, p. 421.

(<sup>24</sup>) From the return made on the reduction in 1802 of the Second (Upper Canada) Battalion of the Royal Canadian Volunteer Regiment of Foot, I extract the following as the military service of Major Hazelton Spencer: "12 years and 6 months: 11 months with the incorporated Loyalists; 3 years 5 months and 2 days as Volunteer, K.R.R., N.Y.; 2 years 9 months and 4 days as Lieutenant in said Corps, and 5 years and 7 months in the 2nd Battalion Royal Canadian Volunteers."

(<sup>25</sup>) For some of his activities as Magistrate, see my article *The First Years of the Quarter Sessions in and for the Newcastle District*, 33 *Canadian Law Times* (June, 1913), pp. 465, sqq., esp., p. 471.

(<sup>26</sup>) There was a curious mistake made in this Court. It had been intended to appoint Benjamin Pawling, Col. John Butler and Robert Hamilton the three Judges, but by a slip the name of Jesse

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Pawling was, in the original Commission of July 24, 1788, used instead of Benjamin's. The Commission of Jesse was revoked and, October 22, 1788, Benjamin Pawling, Peter Tenbrook (Ten Broeck) and Nathaniel Petit were added as Judges. See my Article, *The Early Courts of the Province*, 35 *Canadian Law Times* (1915), pp. 879, sqq., esp., p. 890.

<sup>(27)</sup>See *ante*, Cap. IX, note 5: *Can. Arch.*, Q 45, 2, p. 486. On Dorchester's List of Loyalists he is given as "an active Loyalist".

<sup>(28)</sup>While I do not find his name in the first census of Niagara taken by Col. John Butler, August 25, 1792, in the census for 1783 his name appears. He is credited with having cleared 8 acres, Niagara Historical Society's Publications, No. 27, *Names Only but Much More*, by Miss Janet Carnochan.

The birthplace of Benjamin Pawling is given as Philadelphia, his length of service as 7 years and his occupation as a Farmer in the "Return of the Officers of the Corps of Rangers commanded by Lieut.-Colonel John Butler". Pringle's *Lunenburg*, p. 364: *Can. Arch.*, Hald. Papers, B 167, pp. 322, sqq.

<sup>(29)</sup>Dr. Canniff, *op. cit.*, p. 534: Mr. J. A. Macdonell, *Sketches, &c.*, pp. 85, 88: Dr. James, *Trans. R. S. Can.*, Sec. II, (1902), pp. 110, 111: Wolf. I, 8, 249.

<sup>(30)</sup>See, *inter alia*, my Article *Some Early Legislation and Legislators in Upper Canada*, 33 *Canadian Law Times*, (1913), pp. 22, 96, 180.

<sup>(31)</sup>The name is differently spelled "Swayze", "Swayzie", "Swayzy", "Swazie", "Suayze". I have followed his own orthography.

<sup>(32)</sup>Thorold—See Miss Carnochan's Paper in No. 27 of the Niagara Historical Society's publications at p. 5.

<sup>(33)</sup>See the proceedings in the *King's Bench Term Books*, also my Article, *Some Early Legislation, &c.*, *ut suprâ*, p. 28, note 1. It would seem that the alleged treason was simply alcoholic vaporizing; Swayze was wholly loyal at all times.

<sup>(34)</sup>See the Proceedings of the House of Assembly, February 24, 27, March 3, 5, 1807, and February 24, 1811. 8 *Ont. Arch. Rep.*, (1911), pp. 152, 153, 159, 160, 166, 172, 434, 435.

Contemporary letters indicate that great doubt was expressed in some quarters, it would seem unjustly, of the reality of the robbery. At all events Swayze made good the loss and his constituents had confidence in his integrity. However, he received a clean sheet

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in 1816 by the Statute (1815), 55 George III, c. 7, (U.C.) which completely exonerated him.

<sup>(35)</sup>See my *Life of . . . . Gourlay*, pp. 42, *sqq.*

<sup>(36)</sup>His mother was Anne, daughter of William Waylen of Rowde Hill and Devizes, Wiltshire. The son was born in England before the 5th came to America.

<sup>(37)</sup>There has been the greatest confusion as to the constituencies represented in the First Parliament by Smith and Baby. Smith nowhere in his voluminous extant papers states his constituency and it has been variously given as Kent, Essex, and Suffolk and Essex. The official return of Jarvis, Wolf. I, 8, 249, places the matter beyond question and fixes Suffolk and Essex as the true constituency of Smith.

He seems after his choice to have doubted its wisdom. Writing to his friend and election agent, John Askin, from Niagara, August 14, 1792, I *Correspondence*, p. 195, he says: "Perhaps I should have done better to have set up for one of the seats in Detroit (i.e., Kent) as I hear only of Mr. Macomb who is to be proposed but I did not then know they would be entitled to vote." His instructions to his friends as to canvassing, &c., are amusing: "If boats are necessary you can hire them and they must not want beef or rum. Let them have plenty—and in case of success, I leave it to you which you think will be best to give my friends a public dinner and the ladies a dance either now or when I go up; if you think the moment is the best time you will throw open Forsyth's Tavern and call for the best he can supply. I trust you will feel very young on the occasion in the dance and I wish that you and Leith should push about the bottle. . . . The more broken heads and bloody noses there is, the more election-like, and in case of success (damn that 'if') let the white Ribbon favor be plentifully distributed to the Old, the Young, the Gay, the lame, the crippled and the blind—half a score cords of wood piled hollow with a tar barrel in the middle on the commons, some powder *pour tirer* and plenty of rum. . . . There must be no want and I am sure you will have everything handsome and plentiful. Elliott I am sure will give you a large red flag to be hoisted on a pole near the Bonfire and some blue coloured tape may be sewed on in large letters *Essex* . . . . Have proper booths erected for my friends at the hustlings, employ Forsyth to make large plum cakes with plenty of fruit, &c. Let the peasants have a fiddle, some beverage and beef. . . . I have quite an election fever." He could not himself go to Detroit at the time,

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owing to the expected visit of Prince Edward, Duke of Kent: "He is to be here about the 25th—my fate is to be determined on the 28th." Dr. C. C. James' Paper, *David William Smith*, Trans. R. S. Can., 2nd Section (1913), pp. 57, sqq.

In a previous letter from Niagara, July 26, 1792, to Askin he said: "Should I be returned without an undue election or the appearance of party or bribery, I beg an ox to be roasted whole on the common and a barrel of rum to be given to the mob to wash down the beef. . . . I have begun the canvass. . . . Should candidates to represent this county (Kent) go a-begging and you find I have no chance for Essex, I shall be proud to be returned for this County, but as the French people know little of me I have not any hopes on that score." Dr. James, *op. cit.*, (1913), p. 58.

Smith's method of celebrating a successful election was not unlike John White's, but somewhat more generous. White's Diary, under date Friday, August 10, 1792, says:—"The election came on this morning, no other candidate appearing, my election became unanimous, after which they dragged me about in a chair to the diversion of the mob (Smith's 'mob') and my inconvenience. Gave 2 Barrels of porter and bread and cheese."

John Askin's account for the celebration, &c., amounted to £233.4.5, N.Y. Currency (say \$583.05). Dr. James, *ut supra*, p. 64.

<sup>(38)</sup>The Law Society of Upper Canada was not yet in existence; it was born in 1797. There were only two regular lawyers in the Province, John White and Walter Roe of Detroit, but the practice of the Courts of Common Pleas was simple and not unlike that of our present Division Courts, so that a law-suit could be carried on by the litigants themselves or lay agents. But in 1794, these Courts came to an end and a Court of King's Bench with technical and complicated practice was instituted. The Legislature by the Act (1794), 34 George III, c. 4, (U.C.), authorised the Lieutenant-Governor to license not more than sixteen British subjects to act as advocates and attornies in the conduct of all legal business in this Province. Smith's Licence is copied at the back of the *King's Bench Term Book*, No. 2.

<sup>(39)</sup>The Act of (1797), 37 George III, C. 13, (U.C.), authorised all those "admitted to practise in the law and practising at the Bar" in the Province to form themselves into the Law Society of Upper Canada. Most of them did so and were "Called to the Bar", the degree of Barrister-at-Law being conferred on fifteen; but Smith was one of four (the others being Richard Barnes Tickell, Daven-



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port Phelps and Charles J. Peters) who were not at the time practising and who never thereafter applied for admission and consequently never were "Called to the Bar" or became "Barristers-at-Law". See *Rules of the Law Society of Upper Canada . . .* York, U.C., Hilary Term, 1833, Appendix No. 10. Dr. James, *op. cit.*, (1902), p. 115, is in error in saying that Smith was called to the Bar. The same error appears in a Monograph on Smith, an Appendix to the *Proceedings of the Association of Ontario Land Surveyors* for 1894, pp. 144-147.

(40) He was granted a pension charged on the Civil List voted for Upper Canada, much to the disgust of Upper Canadians of the time. He says that it was "a pension settled for my services" (May 10, 1804); but fails to say what the services were, and no one has yet found out.

(41) Edited *meá curâ* and published by the Ontario Archives in 1917 as the Thirteenth Report.

(42) *Can. Arch., Haldimand Papers*, B 172, Alex. & Wm. Macomb, 1776, Aug. 10, supplied money and goods to Governor Henry Hamilton of Detroit, amounting to £8,742.9.10 1/4 N.Y. Cy. (say \$21,856) and even larger amounts in following years. Macomb, Edgar & Macomb furnished Arent Schuyler de Peyster of Michillimackinac over \$250,000 in money and goods.

(43) Alexander, his brother, who was born at Belfast, Ireland, (which is believed to be the birthplace of William also) seems to have adhered to the Revolutionary cause. He was the father of the somewhat celebrated General Alexander Macomb, who defeated Prevost at the Battle of Plattsburg, September 11, 1814. The volumes of the *Michigan Pioneer and Historical Collections* contain many references to the Macombs.

(44) See *ante*, Cap. XXVI, pp. 386, *sqq.*

(45) Letter, David William Smith to John Askin from Niagara, August 6, 1792, 1 *Correspondence*, p. 187: Dr. James, *loc. cit.*, (1913), p. 60.

### GENERAL NOTE.

It may be interesting to give the constituencies of this Parliament.

I. GLENGARRY.—*First Riding*.—The Township of Charlottenburg.  
Member—HUGH MACDONELL.

*Second Riding*.—The remainder of the County of Glengarry, bounded on the east by the dividing line between the

## MEMBERS LEGISLATIVE ASSEMBLY

Provinces; on the south by the River St. Lawrence; on the west by the eastern boundary of the Township of Cornwall running N 24° W to the Ottawa—also islands on front.

Member—JOHN MACDONELL.

2. STORMONT.—Bounded on the east by Glengarry, on the south by the River St. Lawrence; on the west by the Township of Williamsburg running N 24° to the Ottawa—also islands on front.

Member—JEREMIAH FRENCH.

3. DUNDAS.—Bounded on east by Stormont; on the south by the River St. Lawrence; on the west by the Township of Edwardsburg, running N 24° W to the Ottawa—also Islands on front.

Member—ALEXANDER CAMPBELL.

4. GRENVILLE.—Bounded on east by Dundas; on the south by the River St. Lawrence; on the west by Township of Elizabethtown running N 24° to the Ottawa—also islands on front.

Member—EPHRAIM JONES.

5. LEEDS.—Bounded on east by Grenville; on the south by the River St. Lawrence; on the west by the Township of Pittsburg running north till it intersects the Ottawa—also islands on front.

6. FRONTENAC.—Bounded on the east by Leeds; on the south by Lake Ontario; on the west by the Township of Ernestown, running N 24° W to the Ottawa. Leeds and Frontenac formed one constituency.

Member—JOHN WHITE.

7. ONTARIO.—Amherst Island, Gage Island, Wolfe Island, Howe Island and all the St. Lawrence Islands from Point Pleasant to the mouth of the Gananoque.

(This County of Ontario had no relation to the present County of Ontario which was then part of the County of York).

8. ADDINGTON.—Bounded on the east by Frontenac; on the south by Lake Ontario; on the west by the Township of Fredericksburg running N 31° W to the Ottawa. Ontario and Addington formed one constituency.

Member—JOSHUA BOOTH.

9. LENNOX.—Bounded on the east by Addington; on the south by the Bay of Quinte, to the eastern line of the Mohawk

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Village then along western line of the Township of Richmond N 16° W, 12 miles, then N 74° E to Addington.

10. **PRINCE EDWARD.**—Bounded on the south by Lake Ontario; on the west to the Carrying Place; on the north by the Bay of Quinte—also the islands fronting.  
Prince Edward and the Township of Adolphustown in the County of Lennox formed one constituency.  
Members—**PHILIP DORLAND** and **PETER VANALSTINE**.
11. **HASTINGS.**—Bounded on the east by Lennox; on the south by the Bay of Quinte to the River Trent then along the Trent to the rear of the 9th concession then N 16° W to the Ottawa, down the Ottawa to Addington—also the islands on front.
12. **NORTHUMBERLAND.**—Bounded on the east by Hastings; on the south by Lake Ontario to the western point of Little Bay, then N 16° W to the Mississague Indian territory then east parallel to Lake Ontario to Hastings.  
Lennox (less Adolphustown), Hastings and Northumberland formed one constituency.  
Member—**HAZELTON SPENCER**.
13. **DURHAM.**—Bounded on east by Northumberland; on the south by Lake Ontario to the western point of Long Beach; then N 16° W to the Mississague Territory thence east parallel to Lake Ontario to Northumberland.
14. **YORK.**—*East Riding.*—Bounded on east by Durham, on south by Lake Ontario to the Mississague Indian Tract, then N 16° W 28 miles then N 74° E 14 miles, then S 16° E 16 miles to the southern limit of Indian Tract, then parallel to Lake Ontario to Durham.  
*West Riding.*—Bounded on east by Mississague Indian Tract running N 45° W to the River Thames: on the south by Burlington Bay to the Carrying Place through the Mohawk Village to the River Thames, and along the Thames to the Mississague Indian Tract.
15. **LINCOLN.**—*First Riding.*—Bounded on the west by York; on the south by the Grand River to the Indian Road leading to the Forks of Chippewa Creek (to be called the Welland) down the Creek to the continuation of the eastern boundary of Township No. 5, then north along that boundary to Lake Ontario and along Lake Ontario to York.

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Durham, York and the First Riding of Lincoln formed one constituency.

Member—NATHANIEL PETTIT.

*Second Riding.*—Bounded on the west by the First Riding; on the east by the River Niagara, on the south by Townships Nos. 2, 9 and 10.

Member—BENJAMIN PAWLING.

*Third Riding.*—Bounded on the east by the River Niagara; on the south by the Chippewa (Welland) on the west by the First Riding and on the north by the Second Riding.

Member—ISAAC SWAYZE.

*Fourth Riding.*—Bounded on the east by the River Niagara, on the south by Lake Erie to the mouth of the Grand River then up the River to the road leading from the Grand River to the Forks of the Chippewa (Welland); on the north by the road until it strikes the Forks then down the Welland to the Niagara River.

16. NORFOLK.—Bounded on north and east by Lincoln and the River Thames, on the south by Lake Erie to the Barbue (Orwell) River, then N 16° W to the Thames; then up the Thames to York.

The Fourth Riding of Lincoln and Norfolk formed one constituency.

Member—PARSHALL TERRY.

17. SUFFOLK.—Bounded on the east by Norfolk, on the south by Lake Erie to the Carrying Place from Pointe aux Pins to the Thames; on the west by the Carrying Place then up the Thames to Norfolk.

(This County has disappeared).

18. ESSEX.—Bounded on the east by Suffolk; on the south by Lake Erie; on the west by the River Detroit and Lake St. Clair at a distance of four miles to the Thames and up the Thames to Suffolk.

Suffolk and Essex formed one constituency.

Member—DAVID WILLIAM SMITH.

19. KENT.—All the territory (not being Indian territory) not included in other Counties.

Kent sent two members.

Members—WILLIAM MACOMB and FRANÇOIS BABY.

## CHAPTER XXIX.

### Simcoe as a Freemason

THERE is a persistent and widespread tradition in the Craft of this Province that our first Lieutenant-Governor was a Freemason, and that he took part in the Masonic celebration of St. John's Day, December 27, 1792, in the Freemasons' Hall, Newark, and the opening meeting of the Provincial Grand Lodge of Upper Canada, August 26, 1795. That Simcoe was a Freemason is certain; but he neither did nor could attend either meeting, as a Freemason.

When, in 1773, he was made a Mason, Masonry was in England in a state of flux and transition. The original discrete and individualistic Lodges were practically extinct, although there were some of the Craft who contended that, as of yore, a competent number of Brethren had the inherent right to make Masons without a Warrant from any authority<sup>(1)</sup>.

Most—indeed, practically all—of the Lodges gave their allegiance to a Grand Lodge; but there were more than one Grand Lodge in England. On June 24, 1717, was established the Premier Grand Lodge of England of Free and Accepted Masons<sup>(2)</sup>, which is admittedly the mother of all regular Masonic Lodges of the three Craft Degrees in the English-speaking world.

But the Lodges of the York Rite formed a Grand Lodge, December 27, 1725, calling itself the Grand Lodge of All England<sup>(3)</sup>. This organization was reconstituted in 1761; and, although constantly losing strength, continued in existence until 1792, when it collapsed and joined the Grand Lodge of England.

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Before this time, however, had occurred the great schism of 1751 by which a part of the Premier Grand Lodge of England had formed a Grand Lodge of England of Ancient, Free and Accepted Masons—commonly called the Atholl or Ancient Grand Lodge. Thereafter, the common name for those owing allegiance to the Premier Grand Lodge was “Modern” Masons or Lodges and to the Atholl Grand Lodge, “Ancient” Masons or Lodges<sup>(4)</sup>.

The Atholl branch was in full vigor in Simcoe’s time and until 1813, when it coalesced with the Premier Grand Lodge, and the schism was healed<sup>(5)</sup>.

In Simcoe’s time, each of the bodies considered the others irregular and schismatic, and scarcely considered the subjects of the others, Freemasons at all. No “Ancient” could visit a “Modern” Lodge, and *vice versâ*: to enable an “Ancient” to enter a “Modern” Lodge, he must be reinitiated<sup>(6)</sup>.

Of the Premier or “Modern” Grand Lodge in 1766, Lord Blaney was Grand Master. As such, in 1766, he delivered to R.W.P.G.M. Brooke as Provincial Grand Master, a “Constitution” or Warrant to constitute a Lodge at the “Globe Tavern,”<sup>(7)</sup> Exeter; and Brooke met with eleven other “Modern” Masons at the Globe Tavern, October 6, 1766, and there and then, Union Lodge was duly constituted.

This was the Lodge in which Simcoe was made a Mason,—a Lodge just, perfect and regular—and consequently he could, were he now living, claim Masonic fellowship with every Ontario Mason and entrance into every regular Ontario Lodge. But he was a Free and Accepted Mason, never an Ancient, Free and Accepted Mason.

To anticipate a little—William Jarvis, first Provincial Secretary of Upper Canada, and the governing head

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of the first Provincial Grand Lodge of Upper Canada, was initiated, February 7, 1792, in the Grand Master's Lodge, over which His Grace the Duke of Atholl presided, and on March 7, he was created Provincial Grand Master of the Grand Lodge of Upper Canada by His Grace as Grand Master of the "Ancient" or Atholl Grand Lodge—not the Grand Lodge to which Union Lodge at Exeter owed fealty; and it would be impossible for a "Modern" to have taken part with what his branch of Masonry looked upon as a schismatic and irregular body<sup>(8)</sup>.

To return to Simcoe's Lodge. The Union Lodge was from the beginning a Lodge of gentlemen, clergymen of the Church of England forming a considerable percentage of its membership. There were also officers in the army, students at the University and the Inns of Court, and a large proportion of country gentlemen<sup>(9)</sup>.

Occasionally when gentlemen were made Masons, their servants were also made at the same time—a distinction, however, was always observed—servants did not become Members of the Lodge<sup>(10)</sup>.

This at the present time would seem an anomaly, but not so then. There was full power in a regular Lodge to make Masons without admitting those so made into the Society or Lodge which made them, and we find many instances of the kind<sup>(11)</sup>.

To make Union Lodge still more exclusive, the number of Members was by By-law limited to twenty-four<sup>(12)</sup>, although thereby it lost one of its original, most active and useful Members.

Until comparatively recently, the only sources of information concerning Union Lodge were uncertain and unreliable tradition with the addition of a few references in old publications. In Robert John Trewman's *Freemasonry Delineated*, published at Exeter in 1777,

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are to be found many Odes, Songs, Prologues and Epilogues, "Spoken at Plays performed at Exeter by the desire of the Union Lodge,"<sup>(13)</sup>. Simcoe's name is to be found in Robert John Trewman's *Rules and Regulations of the Provincial Grand Lodge of Devon*, 1847. In a return made by Union Lodge of its members appears, "December 7, 1773, John Graves Simcoe of Exeter, Esq.; age 22;" and again in a list, "The following brethren were initiated or joined the Lodge during its existence," for the year 1773 are given several names, one of which is "John Graves Simcoe, Joined"<sup>(14)</sup>.

It had long been thought that the original records had been destroyed but some of the older Brethren maintained that a Minute Book covering the years in question should be in existence. Diligent and persistent search was at length rewarded in 1907, when Bro. John Stocker, P.A.G.D.C. (England), found in the safe of a bank in Exeter the long-lost volume. The book was in a box which belonged to the estate of a Brother who had passed away more than half a century before. The record is in a good state of preservation and tells the story of Union Lodge from its first meeting, October 6, 1766, till September 1, 1778<sup>(15)</sup>. From this record, it is possible to reconstitute the Lodge and determine its character and proceedings. Clearly it was the aristocratic and most influential Lodge in Exeter and its relations with the other Lodges in Exeter of the same allegiance at "The Swan" and "The Bear", while fraternal, were not cordial.

The standing dispute in the Craft, not yet fully and finally settled, whether to celebrate St. John's Day on the Festival of St. John the Evangelist, December 27, or that of St. John the Baptist, June 24, this Lodge solved by celebrating both<sup>(16)</sup>. The day was properly celebrated, too, generally, although not always on the day fixed by the Church Calendar<sup>(17)</sup>. At the Lodge immediately be-



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fore the day upon which the celebration was to be held, a Master was elected for the half-year following. Not infrequently, the sitting Master was asked to continue for another term; if not, the Senior Warden was elected unless he "waived his right," in which case some one who had filled the Warden's Chair was elected.

On "the Day," there was a dinner. One instance will suffice; December 18, 1770, it was "Resolved unanimously that the following advertisement be inserted in both the Exeter newspapers on Friday next. Thursday next being the 27th day of this Instant December, and the Anniversary of St. John the Evangelist, the Brethren of the Union Lodge<sup>(18)</sup> held at the Globe Tavern in Exeter will celebrate the Festival as usual. Dinner on table precisely at two o'clock. Admittance for Visiting Brethren five shillings each. N.B.—A collection for charitable purposes will be made after dinner." At the same Lodge, it was "Agreed and ordered 20 ordinarys for St. John's Day at 2s 6d. each ordinary, and that dinner be on the table at two o'clock,"—so it is clear that the Lodge would not lose by having visitors at 5s.<sup>(19)</sup> The Collection taken up for charitable purposes at the dinner or supper was sometimes substantial, e.g., £3 13s. 6d. on one occasion<sup>(20)</sup>.

The Lodge caused to be played from time to time for its amusement, Farces, Comedies, etc., with recitation of Odes, Prologues, Epilogues, etc.<sup>(21)</sup>. Care was taken to publish these; and Trewman's book, *Freemasonry Delineated*, already mentioned as published in 1777, was the result<sup>(22)</sup>.

The charity of the Lodge was generous but discriminating, not being limited to members of the Lodge or even to members of the Craft. Children and widows of deceased Masons were assisted, as were living members of the Craft afflicted with illness or poverty. "Bro. Bart-

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lett," who was a rather frequent object of benevolence, received "Seven shillings to buy a shirt;" a distressed brother, a guinea "to defray his expenses to London;" but also poor prisoners were helped, and "a poor Scot in the hospital who was scorched in the late fire on the Exeter Bridge was ordered to be relieved with ten shillings and sixpence"—although it is true that having afterwards heard that he had been amply provided for by the City Corporation, the Lodge suppressed the contribution<sup>(23)</sup>.

The Lodge insisted on regular attendance; probably the smallness of its membership made this strictness necessary; at all events, we frequently find Members fined one shilling for non-attendance; and on one occasion, October 17, 1769, "the Master (Coppelstone), and several other Members being absent, it was proposed and unanimously agreed to that some or one of the Brethren now present do at the next Lodge Night represent the inconvenience and impropriety of the Members absenting themselves on Lodge nights, and that the Master be particularly reminded of his obligation to a constant attendance."<sup>(24)</sup>

One curious feature was that in addition to the fees paid to the Treasurer (generally two guineas but sometimes more as in Simcoe's case), half a crown, 2/6, was paid to the Tyler. This officer was not always a credit to the Lodge. We find, October 19, 1773, "The Tyler behaving improperly in the Lodge, it was moved that it should be considered the next regular Lodge Night whether for his misconduct, he should be discharged or not": and this "was unanimously agreed to." At the next regular Lodge, November 21, 1773, "The Tyler was reprimanded in the accustomed place and on his promising strict attention and care for the future was continued in his office." He broke out again; and, July 19, 1774, the "W.P.M. took the Chair and gave the Tyler a very

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proper reprimand for his past conduct and advice for his future behaviour and in case of any future complaint, he is to be dismissed from the service of the Lodge." Early next year, he had to be dismissed; but he petitioned, acknowledged his faults, and, February, 7, 1775, the Brethren compassionately reinstated him "as Tyler. . . after being properly reprimanded between the Wardens' Chairs, but is to be dismissed without any further consideration for the next offence."<sup>(25)</sup>

We are not told what the offence of this Tyler was but can fairly well guess. Perhaps it was not wholly unconnected with circumstances like the following which occurred more than once; we find, June 16, 1772, "The Lodge being truly sensible of the honour and punctuality with which the R.W.M. has discharged his office, drank his health."

This Lodge became the real Mother of the Provincial Grand Lodge of Devon, and one of its Members, the first P.G.M.

Such then was the Lodge into which Simcoe, a young man in his twenty-second year, sought admission; he was then an Ensign in the 35th Foot. We have no means of knowing what induced him to take this step; but the record shows that several military men were made Masons in this Lodge about this time, and it is not unlikely that he was influenced by their example.

However that may be, at a regular meeting of the Lodge held on November 2, 1773, with Bro. Codrington, R.W.M., presiding, and attended by thirteen Members of the Lodge and three visiting Brethren, "Brother Cholwich proposed Mr. John Graves Simcoe, and Bro. Rous proposed Sir Wilmot Prideaux, Bart., to be made Masons in this Lodge. They were balloted for and no negative appearing they were approved of to be made at the first Lodge they shall severally attend."

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Neither appeared at the next Lodge, November 5, 1773; but that was a Master Masons' (Extra) Lodge. At the next Lodge, November 16, Sir Wilmot Prideaux, Bart., was made an Entered Apprentice, and afterwards raised to the degree of Fellow Craft, at the same time being admitted a Member.

At the Lodge holden at the Globe Tavern, December 7, 1773, "Mr. Jno. Graves Simcoe before propos'd and unanimously approv'd of as a proper person to be a member of this Society of Masons, was made a Mason & initiated into the two first degrees, vizt., an enter'd Apprentice & Fellow Craft." "N.B.—Brother Simcoe paid his fees for admittance to the Treasurer £2 7s., and to the Tyler 2/6."

January 18, 1774, Simcoe attended a Lodge at the Globe Tavern when "A Master Masons' Lodge was open'd. Brother Chubb was propos'd & accepted. Bro. Rawleigh Gilbert, Br. . . . Simcoe & Bro. Chubb were raised to the Degree of Masters and paid their usual fees."<sup>(26)</sup>

Neither Simcoe nor Rawleigh Gilbert became a Member; and this Lodge is the only Lodge at which his name appears in the list as one of the Masons present<sup>(27)</sup>.

So far as is known, Simcoe never attended a Lodge after he was made a Master: and I cannot find a word in all his voluminous correspondence and manuscripts indicating that he took any interest in the Craft.

Nevertheless he was a Mason and must needs be acknowledged as such by all owing allegiance to or in fellowship with the Premier Grand Lodge of England, the original Grand Lodge which, by what at first sight seems an anomaly, was commonly called the "Modern" Grand Lodge. The explanation, however, is very simple. In 1751, a large body of Masons claimed that the existing Grand Lodge was departing from the "ancient land-

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marks" and they separated in the "Great Schism", forming an independent Grand Lodge on what were claimed to be the true and ancient principles. This Lodge, therefore, claimed the appellation "Ancient", while the Premier body was called "Modern"<sup>(28)</sup>.

Simcoe came to this Province in the summer of 1792. There was at that time a Provincial Grand Master of the Province of Quebec, Sir John Johnson, appointed in 1788 by the Earl of Effingham, Acting Grand Master of the "Modern" branch. The "Ancients" having no Grand Lodge although there were in the Province three Lodges of that allegiance, these Lodges urged the "Ancient" Grand Lodge to appoint a Provincial Grand Master and, March 7, 1792, Prince Edward, (father of Queen Victoria), was appointed Grand Master for the Province of Lower Canada<sup>(29)</sup>. On the same day, William Jarvis was appointed Grand Master for the Province of Upper Canada; he, however, had no power given him to issue Warrants but only to grant Dispensations for Lodges to be afterwards warranted by the Grand Lodge of England.

There were in the country certain "Modern" Lodges—two in Detroit (then and until 1796, *de facto* if not *de jure*, part of the Province); one, the "Rawdon" or the "Lodge between the Three Lakes," at Toronto; another had been warranted at Catarauqui (Kingston); one also at Michillimackinac; one, the Union Lodge at New Johnstown (Cornwall), and one, the St. John's Lodge, at Niagara.

We have not full particulars of the inside history of Masonry for some years; but the first Provincial Grand Lodge was formed, August 26, 1795, by "five Lodges constituted under the sanction of the Warrant of the Grand Lodge of England to the Rt. W. Wm. Jarvis, Esq., Provincial Grand Master of Upper Canada . . .";

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and it seems reasonable to suppose that these were formed in 1793 and 1794.

However that may be, these Lodges and the Grand Lodge were "Ancient;" and Simcoe would have no more right in them than a Priest of the Greek Orthodox Church would have to say mass at a Roman Catholic altar. If there were any doubt about the matter of his attendance at the Grand Lodge, it would be set at rest by the facts appearing in Mrs. Simcoe's Diary. Tuesday, August, 25, 1795, Simcoe with his wife and infant child, Frank, went to Fort Chippawa, where the Governor was very ill, and they slept in the Block House. Next day, August 26, Mrs. Simcoe set off in a boat, while the Governor set out on horseback. Finding himself very ill he made signs for his boat to come to land at "at a very good farm house he stayed the whole of the day till six in the evening," when he "proceeded in the barge to Fort Erie." He that night "slept in an indifferent house two miles beyond the Fort, kept by very dirty people"<sup>(30)</sup>. So that he could not have been at Newark at the Grand Lodge.

It may be added concerning Simcoe's Lodge that it was—if not the origin at least—the cause of the formation of the Provincial Grand Lodge of Devonshire, and furnished the first Provincial Grand Master, Charles Warwick Bampfylde, Esq., of Poltimore.

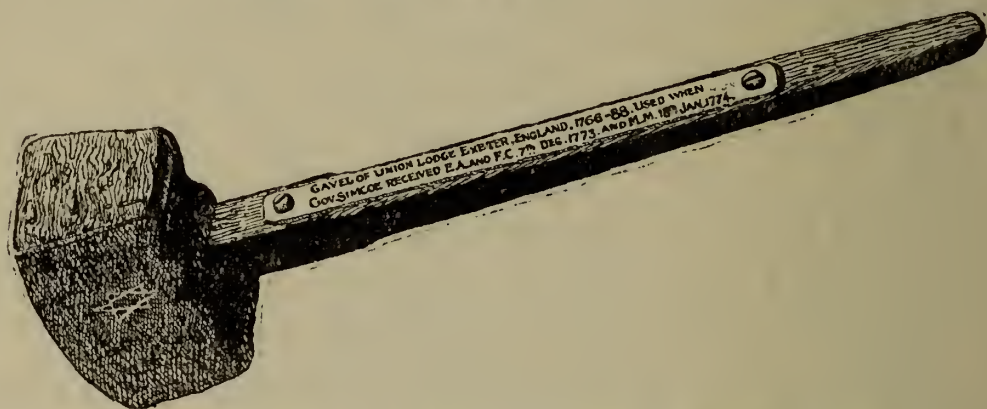
Some of those made Masons in this Lodge may be named from their later eminence.

In 1769, Henry Bathurst, afterwards Bishop of Norwich, was initiated, and in 1773, Sir Wilmot Prideaux, Bart., and John Graves Simcoe. In 1774, Charles Warwick Bampfylde, already mentioned, afterwards Sir Charles, the fifth Baronet and father of the first Lord Poltimore; in 1785, Thomas Herbert Marsh, afterwards Bishop of Peterborough, passed through the portals of

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“Union.” Many others of note sought the privilege of Masonic brotherhood in this honoured Lodge.

What is of special interest to a Canadian Mason is that the late Mr. John Ross Robertson in 1908, obtained through the courtesy of Bros. Andrew Hope and John Stocker of Exeter, the gavel used by the W.M. when Simcoe was made a Mason. The gavel is of unpolished mahogany, and although sound and intact, bears evidence of having on more than one occasion brought the brethren to order. It is somewhat of a coincidence that the Grand



GAVEL USED IN UNION LODGE, EXETER, 1766.

Lodge of Canada in Communication at Niagara in 1908 was called to order with this old-time relic. Mr. Robertson, at the request of M.W. Bro. A. T. Freed, Grand Master, gave its history, thus entwining Masonry in the Mother Land with that of Canada through one who in the latter part of the eighteenth century opened Upper Canada's first Parliament, a few miles distant.

As to the genuineness of this gavel, the following is interesting:

“Freemasons’ Hall, Exeter, England,

14th April, 1908.

This is to certify that the mahogany gavel to which this is attached, is believed to be the one used by the Master of Union Lodge of Freemasons, No. 370, Exeter, Devonshire, England, when it met in the old Globe Tavern—now the Globe Hotel, in St. Mary Major’s Churchyard, near Exeter Cathedral, 1766-1789, and in

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which John Graves Simcoe, Esq., of Exeter, was initiated in 1773. The Union Lodge began and ended its existence in the Globe Tavern and never met anywhere else, except at Berlon's Coffee House, 1767-70.

This gavel was found in an old unused desk in the house, by the present proprietor of the hotel, Bro. William Densham, a Past Master of 'Semper Fidelis' Lodge, Exeter.

William Densham, P.M. 1254,  
Proprietor of the Globe Hotel,  
Exeter.

Andrew Hope, P.M. 39,  
P. Prov. G.D., Devonshire,

John Stocker, P.M. No. 39,  
P.A.G.D.C. England, Prov. G.  
Secty., Devonshire."

### NOTES.

(1) Even a single Mason sometimes claimed and exercised this right. For example, in the Records of Simcoe's Lodge—Union Lodge at Exeter—mentioned and quoted in the text, is to be found the following entry under date, March 7, 1775: "It is likewise ordered by the Grand Lodge that Richard Bennet of Harwich, Brazier, be expelled from the Society for making Masons without any Constitution or authority from the Grand Lodge, and that William Hearn, Draper; Richard Newman, Barber; Samuel Hart, Cordwainer; William Wood, Brazier; John Pegge, Victualler, and Arthur Hill, Cordwainer, all of Harwich, had been initiated by him. Resolved by the Grand Lodge that none of these persons above mentioned be admitted into any regular Lodge as Visitors or otherwise." There is a Record, the property of our own Grand Lodge, of a Private Lodge held at Scarborough, England, July 10, 1705, at which the President, "William Thompson, Esquire, and several other brethren, freemasons" were present, and six gentlemen (named) "were then admitted into the said fraternity."

(2) Note the name "Free and Accepted Masons," F.A.M., not "Ancient, Free and Accepted Masons," A.F. & A.M. The former is the terminology in use in certain jurisdictions south of the inter-



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national line, for historical reasons. The Lodges fraternally visited by members of Union Lodge were all of "Free and Accepted Masons" without the prefix of "Ancient." See Note 28, post.

(3) Perhaps in revenge for the superiority claimed by the Archbishop of Canterbury as Primate of All England over the Archbishop of York who is Primate of England. This Grand Lodge warranted many Lodges in America, and some York Grand Lodges were formed on this Continent.

(4) Mr. John Ross Robertson in his *History of Freemasonry in Canada*, Toronto, 1899, uses the convenient terminology of First, Second and Third Grand Lodge for the Premier Grand Lodge of England, the (York) Grand Lodge of All England and the Atholl Grand Lodge of England. "Atholl" and "Athol" seem to have been used indifferently, but the former is preferable and is now universally employed.

(5) Ontario Masons well remember the unhappy division in the Province when the Grand Lodge of Ontario was formed, and for some years was an active rival to the Grand Lodge of Canada now united as the Grand Lodge of Canada in the Province of Ontario.

(6) He might, indeed, be let in at reduced rates, or his fees remitted altogether, except the half crown to be paid to the Tyler; for example, we read in the Records of Union Lodge, under date, November 18, 1766: "At the same time came John Cleave, John Perkins and Ambrose Penny with a Constitution directed to Brother Brooke as P.G.M., to constitute a Lodge at White Hart Inn in this city. And after having been solemnly admonished never to act contrary to the Constitution, and a letter read to them, received by Bro. Brooke from Bro. Spencer, which they all promised never to do. They then desired to be made Masons and were accordingly made Entered Apprentices and Fellow Crafts and paid the usual Fees of Two Guineas each; but in consideration of their having paid Fees to be made Antient Masons, this Lodge has thought proper to return their Four Guineas." At the next Lodge, November 21, 1766, these three "were raised to the Degree of Master Mason; and after the Master's Lecture was gone through, the Lodge was closed and adjourned in good order." So, too, we read that at an Extra Lodge holden December 6, 1768, at Berlon's Tavern, "Bro. Ellicombe paid five shillings in consideration of his being raised to the Degree of Fellow Craft, having been made an Entered Apprentice in Edinburgh, but remade this night."

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(7) In St. Mary Major Churchyard—it was later known at the Globe Hotel.

(8) See Mr. John Ross Robertson's *History of Freemasonry in Canada*, pp. 459, sqq.

(9) The only instance (with the exception of servants of gentlemen mentioned in the Text) in which one not of the rank of gentleman was made in this Lodge so far as I can find, was Berlon of the Berlon's Tavern Coffee House or Inn (later the Royal Clarence Hotel, and said to have been the first Inn in England to be called a Hotel) in St. Peter's Churchyard, Exeter, in which the Union Lodge met from March 3, 1767, to June 5, 1770, when the old quarters at the Globe were taken up again. Berlon was proposed, July 21, 1767, and made a Mason, September 15, 1767, when he "paid the usual Fees." But he never became a Member of the Lodge. Possibly "William Tickell of Tawton, Apothecary," who "was made an Entered Apprentice and afterwards raised to the Degree of a Fellow Craft and paid the Treasurer Two Guineas, and Two Shillings and Sixpence to the Tyler," July 21, 1770, may also be an exception. He does not seem to have become a Master Mason.

(10) June 7, 1768, "Charles Warwick Bampfylde, Esq., Oldfield Bowles, Esq., and their servants, Edward Stringer, Joseph Stamp and John Snow, were ballotted for and duly accepted." At the next Lodge, June 14, 1768, "Oldfield Bowles, Esq., Charles Warwick Bampfylde, Esq., and their servants, Edward Stringer, Joseph Stamp and John Snow were made Entered Apprentices and afterwards raised to the Degree of Fellow Craft. Bro. Bowles and Bro. Bampfylde were admitted subscribing Members." The servants were not.

(11) For example, September 15, 1767, "Messrs. Smith, Mace and Berlon were made Masons and paid the usual Fees. At the same time Bros. Smith and Mace were proposed to be admitted Members of this Lodge"—Berlon, the Inn Keeper, was not so honored.

(12) December 20, 1768, a Committee was appointed to consider the revision of By-Laws, Bros. Langdon, Triggs, Lock, Coplestone, Lynch, Cordington and Jones: January 3, 1769, the Committee reported, and, January 17, the amendments were approved. February 6, a Special Summons was sent out, particularly requesting the members to attend to consider a "Law proposed for limiting the number of members to twenty-four." February 21, 1769, "the By-Laws as altered and amended and agreed to . . . were read

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over and signed by all the members present except Mr. P. Triggs, S.W., who refused on account of the 28th law limiting the number of members to 24." June 20, 1769, the Lodge proceeded to an election of a Master, "when Bro. Triggs, the Senior Warden, waiving his privilege (i.e., to be elected Master), declaring that he intended to remain no longer a member of this Lodge. . . ."

(13)Trewman and these Odes, etc., will be referred to later in the Text.

(14)This we shall see is a mistake.

(15)Mr. John Ross Robertson had a typewritten copy made through the courtesy of Bro. Andrew Hope of Exeter. He also obtained photostat copies of the entries concerning Simcoe, and these will be here used. The photostat shows that in the copy, the original record has not been strictly followed in its contractions, etc., although the substance has not been tampered with.

(16)Well within the half century, I have listened to and have been amused by long, learned, animated and almost acrimonious discussions as to the right St. John and his Day, by Masons of the olden time who made a principle, almost a religion, of the matter.

(17)"The Festival of St. John" was celebrated Tuesday, December 20, 1767: "The Day was celebrated in good order," June 24, 1768; December 27, 1768, was "Ye Festival of St. John the Evangelist;" June 24, 1769, the "Festival of St. John the Baptist;" December 27, 1769, the "Festival of St. John the Evangelist," etc., etc.

(18)In Lane's *Records*, 2nd Edition, it is said that the Lodge being warranted in 1766 was named "Union" in 1769; but this must be a mistake; the Lodge is in the Record called Union Lodge from the beginning of the Record, October 6, 1766, throughout.

(19)The Lodge was very careful to keep the caterer down to 2s. 6d. a plate: See, e.g., the entries for June 20, 1774; December 20, 1774, "Mrs. Cornish to provide dinner for fifteen at 2s. 6d. each, to be on the table at three o'clock." Same, June 6, 1775. June 21, 1776, "Mrs. Cornish provides fifteen ordinarys at 2s. 6d., supper to be on the table precisely at nine o'clock . . . . Visiting brethren . . . . pay 3s. 6d." Same, June 20, 1777. The sum, 5s., charged to Visiting Brethren, was fixed by By-law, August 1, 1769.

(20)December 27, 1774.

(21)E.g., the Play, "The Fashionable Lover," with the Entertainment, "The Way to Keep Him in," on December 23, 1772; the Comedy, "A Word to the Wise," with Prologue and Epilogue at the Theatre at Exeter which was ordered to "be printed for the use of

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members of this Lodge," February 16, 1773, the author (apparently Trewman), giving his consent: the Comedy of "The Wonder" with the Entertainment, "Lethe," and Prologue and Epilogue then read in the Lodge "to be spoke by Bro. Foote and Mrs. Hudson, and that the Songs, "Wake the Lute," and "Arise and Blow thy Trumpet, Fame," be sung at the same time, and that the same be inserted in the bills "By desire of the Union Lodge," March 1, 1774; Bro. Foote was "desired to perform the play of 'The Inflexible Captain,' the time and other entertainments to be fixed on at another meeting." December 13, 1774: December 27, 1774, the day was fixed on Wednesday, January 11, 1775, "With the Farce of Ye Liar" if "it be convenient to Mr. Foote." December 27, 1775, it was "Resolved, *nem. con.*, that the Union Lodge desire a Play and Farce and that Bro. Foot, joint manager of the theatre, be desired to attend the next Lodge night." At the next meeting, January 2, 1776, "Bro. Foot not being in Exeter, it was resolved that Bro. Partridge wait on Mr. Wolfe, the other manager, and acquaint him that the Union Lodge have fixed on 'Cymbeline' and 'Bon Ton' as a Play and Farce, to be represented by the desire of the Lodge on Friday, the 24th . . . instant, together with a Prologue and Epilogue and a Masonic Song." January 14, 1777, it was ordered that the Play of "The Fashionable Lover," with the Farce of "The Mayor of Garret," be desired by the Lodge to be performed on Monday senight," and, February 4, 1777, the thanks of the Lodge were "given to the managers of the Exeter Theatre for their attention to the performance of the Play and Farce acted the 27th Jan. last, with universal applause by desire of this Lodge."

(22) February 7, 1775, it was "Ordered that Bro. Trewman be desired to publish the Prologues and Epilogues immediately," (Trewman was not a member or a product of Union Lodge—June 24, 1777, Bro. "Trueman" is given as one of five Visiting Brethren). January 20, 1776, "Bro. Trueman be desired to print the usual number of impressions of the last Prologue and Epilogue which were spoken at the Theatre by desire of this Lodge, and that the Treasurer pay him for the same." Trewman must have been a printer, for we find him employed to "print five hundred summonses for this Lodge," April 7, 1778.

All the above of course was quite apart from his book; but the book comes in for notice, December 27, 1776: "The Deputy Provincial Grand Master of the Provincial Grand Lodge visited the Lodge and recommended a subscription in favour of a Book to be

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published by Bro. Trueman on the subject of Masonry, and that a list of the Subscribers lie on the table every Lodge Night to be signed by such as choose to promote so laudable an undertaking till ordered to the contrary."

(23) July 22, 1772; April 16, 1770; December 27, 1775; January 16, 1776.

(24) At this Lodge, only five Brethren were present (two of them after 7 p.m.), and nine absent, including the W.M.

(25) Bad as the Tyler (unnamed and certainly not a Member of the Lodge) was, he did not fall so low as a former "Tyler of the Lodge held at the Black Bull, Cambridge;" this man, William Brand by name, was expelled from the Society, and Union Lodge "Unanimously agreed that he shall never be admitted into this Lodge," March 22, 1774.

(26) I find no entry of Simcoe's having been proposed to be raised to the Degree of Master Mason. Rawleigh Gilbert, raised with him, had been proposed and accepted at a Master Masons' Lodge, December 23, 1773. I think, however, that "Brown" is a mistake for "Simcoe" in the minutes of the same Lodge when it is said "Bro. Copplestone proposed Bro. Brown to be raised to the Degree of Master Mason, which passed in the affirmative." Henry Brown, of the 20th Regiment, had just been initiated and advanced to Fellow Craft. There is no account of his becoming a Master Mason and I presume the word "Brown" is a *lapsus pennae*. At all events, Simcoe must have been proposed at this, the only Masters' Lodge since his initiation and before his Mastership. The entry proceeds: "and they are both to be raised at the next regular Lodge Night."

(27) In a report sent to the Grand Secretary, February, 1775, by Bro. Cooke, Secretary of Union Lodge, Simcoe's name does not appear in the list of 16 members; but in the list of 18 "Masons made in the Union Lodge" there appears among the 18: "1773, December 7th, John Graves Simcoe of Exeter, Esq.:, (age) 22, (paid) s.5, o."

(28) These names, although apt to mislead, are too firmly fixed in Masonic History now to be questioned.

I have used the word "Ancient" for the sake of convenience. The full and official name was: "The Grand Lodge of the Most Ancient and Honorable Fraternity of Free and Accepted Masons of England."

Perhaps the claim of the "Ancient" or Atholl branch of the Craft may not unfairly be compared with that of the Church of England

# SIMCOE AS A FREE MASON

at the Reformation which claimed that the Church of Rome had abandoned the ancient and apostolic ways and therefore severed connection with her. I do not here express any opinion on the merits of either controversy. In Mr. Robertson's *History of Freemasonry in Canada*, Vol. I, p. 72, appears another account of the reason for the adoption of the appellation, "Ancient."

(29) It would seem that Prince Edward was a "Modern" Mason, having been P.G.M. of the Premier Grand Lodge. How his "healing" and fealty to the "Ancients" came about, we cannot be sure. Mr. Robertson has said all that can be said of this in his *History of Freemasonry*, Vol. I, p. 347.

(30) See *Diary* on the dates, August 25, 26, 1795.

The *Diary* is silent as to December 27, 1792, but that was an "Ancient" celebration.

In a work *The Freemasons' Monitor or Illustrations of Masonry in Two Parts . . . . a New and Improved Edition*, Salem. Published by Cushing and Appleton, Joshua Cushing, Printer, 1812, at p. 289 we find—

## "Chapter XIX.

Grand Lodge of Upper Canada—W.M. William Jarvis, Esq., Grand Master; R.W. Robert Kerr, Esq., Deputy Grand Master.

- No. 1. Newark, Niagara.
- No. 2. Queenstown.
- No. 3. York.
- No. 4. Newark, Niagara.
- No. 5. . . . .
- No. 6. . . . .
- No. 7. . . . .
- No. 8. . . . .
- No. 9. Bertie, Fort Erie.
- No. 10. Barton.
- No. 11. Mohawk Village.
- No. 12. Stamford.

The Grand Lodge meets at Newark, Niagara."

From Mr. Robertson's *History of Freemasonry*, and other sources, it is seen that No. 5 met at Edwardsburg, No. 6 at Kingston, No. 7 at Fredericksburg, and No. 8 at York, (Toronto.) The first five were represented at the first Grand Lodge; although No. 6 was notified, its warrant of Constitution is dated, November 20, 1795.



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