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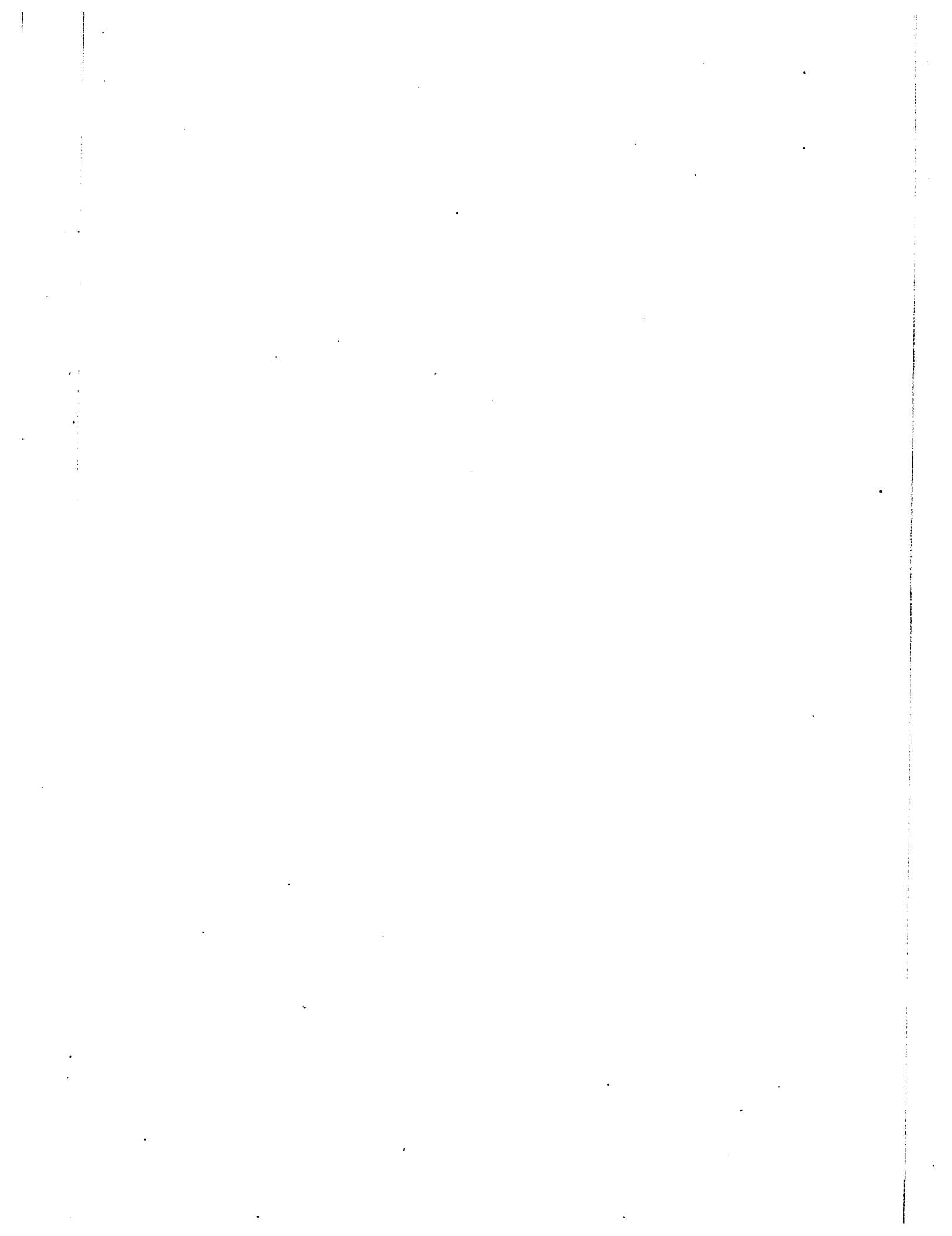
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KING'S ENEMIES:

An Account of the Confiscation and Sale of Enemy  
Property in Canada and the U.S. during Periods of Armed Conflict



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*King's Enemies: An Account of the  
Confiscation and Sale of Enemy Property  
in Canada and the U.S. during Periods of  
Armed Conflict*

par/by

Daniel ARNOLD

Directeur de recherche/Thesis Supervisor  
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Le mardi 18 mai 1993 à 14h30  
Tuesday, May 18, 1993 at 2:30 p.m.

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**King's Enemies: An Account of the  
Confiscation and Sale of Enemy Property  
in Canada and the U.S. during Periods of  
Armed Conflict**

Master's Thesis submitted by  
**Daniel ARNOLD**

*My thesis presents various case studies fashioned along the lines of the "Davis" and "Yoshpe Schools" relating to the confiscation of enemy owned real property during wartime. Featured are discussions of confiscations having taken place in Quebec, Nova Scotia, and Pennsylvania during the American Revolution; Upper Canada (Ontario) during the War of 1812; and British Columbia during WWII. Archival material collected from twenty-eight separate institutional locations in Canada, Great Britain, and the United States was used in the preparation of this thesis.*

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## PREFACE

This thesis presents various case studies relating to the confiscation of enemy property during wartime. Featured are discussions of confiscations having taken place in Quebec, Nova Scotia, and Pennsylvania during the American Revolution; Upper Canada (Ontario) during the War of 1812; and, British Columbia during WWII. Those case studies, taken together with my Chapter on confiscation law, raise most of the issues - past and present - associated with enemy property confiscations in Canada. A case dealing with the confiscation of property in N.Y. State during the American Revolution was only just recently brought before the American Courts. <sup>1</sup>

While years of patient and thorough archives and library research went into my thesis, I only managed to find time to consume myself with an in-depth review of seven distinct cases involving state confiscation of enemy real property during wartime. I feel it appropriate to pass on a few brief comments on the selection of those cases. Three of them occurred during the American Revolution (Messrs. John D. Mercier and John Halsted, Mr. James Boyd, and General Benedict Arnold), a further three took place during the War of 1812 (Messrs. David Kilborn, Matthias Brown and James Lockwood), and the remaining one happened during WWII (Mr. Torazo Iwasaki).

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<sup>1</sup> A) "Loyalist's kin lose claim to seized island", [Toronto Globe & Mail], March 25, 1992, pg. A9 (OOU); referring to, B) Robins Island Preservation Fund vs. Southold Development Corp., 755 F. Supp. 1185 (E.D. N.Y. 1991) (OOU); aff'd 959 F. 2d. 409 (U.S. 2d. Cir. 1992) (OOU).

As incredible as it may seem my thesis evolved from an advertisement I saw in an architectural magazine promoting American marble as a building product through the medium of a picture and commentary on the confiscated home of General Benedict Arnold in Philadelphia.<sup>2</sup> My curiosity led me first to secondary then to primary sources. Needless to say my interest expanded. But since I was doing my research from Ottawa, it made much more sense for me to examine Canada's historic record in the area of wartime property confiscations. However, for various reasons, I didn't want to completely toss aside my research on Pennsylvania's confiscation laws during the American Revolution, particularly as I felt that the overall value of my work on that subject would be greatly enhanced through a discussion of the confiscation laws of both sides of that armed conflict.

I first became aware of the occurrence of real property confiscations in Canada during the American Revolutionary period as a result of having read printed letters and documents in published books.<sup>3</sup> Both cases discussed in those letters and documents became the basis of separate chapters in my thesis. The case of Messrs. Mercier and Halsted was found to be particularly well documented in Canadian and U.S. archives. Unlike any of my other case studies, it involves property which was sequestered by the military as opposed to having undergone formal confiscation by the state. The printed items

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<sup>2</sup> Vermont Marble Co., Advertisement, "Where Lived Arnold the Patriot", in Pencil Points, Stamford, Conn., vol. 10, no. 7 (July 1929), pg. 121 (OCCC). call no. NA1.P4.

<sup>3</sup> A) Manning, William R. (ed.), Diplomatic Correspondence of the United States: Canadian Relations 1784-1860, vol. 1 (Wash.: Carnegie Endowment for Internat. Peace, 1940), pg. 366-67, 482 and 490 (OONL); and B) Lowrie, Walter (ed.), American State Papers: Document, Legislative and Executive of the Congress of the United States, vol. 1 (Wash.: Gales and Seaton, 1833), pg. 97 (OONL).

discussing Mr. Boyd's case both make reference to the location of his land in relation to the St. Croix River. A subject search according to that geographic name led me to a scholarly work published in 1950, which contained several well footnoted pages of text on my subject, which were used as a starting point for my own research. <sup>4</sup>

The story of Mr. David Kilborn's confiscated real property takes center stage in my War of 1812 case studies. I stumbled across his name in one of the index volumes for the CIS U.S. Serial Set. <sup>5</sup> The enemy aliens discussed in my other two War of 1812 case studies had their real property confiscated in the Town of York (Toronto). I came across references to them in an unpublished calendar of state papers at the National Archives of Canada. <sup>6</sup> Both of the Toronto case studies are found in the Appendices. Mr. Edgar Turlington pointed out some time ago that there were no confiscations in the U.S. during the War of 1812. <sup>7</sup>

In reviewing Canadian common law precedent in the area of real property confiscations, I found a reported decision on the confiscated property of Mr. Torazo Iwasaki. <sup>8</sup> Due to the variety and availability of archives records

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<sup>4</sup> A) Davis, Harold A., An International Community on the St. Croix (1604-1930), (Orono, Me.: University of Maine Press, 1950), pg. 33 to 35 (OOU). call no. F27.S2D375 1950; also see, B) Howe, Jonas, "Letters and Documents Relating to the History and Settlement of the Island of Grand Manan, with an Introduction and Notes - Notes on James Boyd of Passamaquaddy", Collections of the New Brunswick Historical Society, Saint John, N.B., vol. 1 (1894), pg. 356 to 358 (OONL). call no. stks. F5240 N4.

<sup>5</sup> CIS US Serial Set Index, Part 1, American State Papers and the 15th-34th Congresses 1789-1857, Subject Index, A-K (Wash.: Congressional Information Service, Inc., 1977), pg. 319 (OONL).

<sup>6</sup> see Finding Aid for RG5 A1, Upr. Cda. Sundries, Civ. Secty. Corres. (OOA).

<sup>7</sup> Turlington, Edgar, "Treatment of Enemy Private Property in the United States before the World War", American Journal of International Law, vol. 22 (1928), pg. 253 to 291 at 290 (OOU).

<sup>8</sup> Iwasaki vs. R [1969], 1 Ex. C.R. 281 (Can.); aff'd [1970] S.C.R. 437 (Can.).

relating to his case - court files, Justice Department working file, Bird Commission transcripts and evidence, and records of the custodian of enemy property - it appeared to me to offer the greatest potential for a WWII study.

The primary aims of my thesis were threefold. It was meant to serve as a treatise on real property confiscation law to members of the legal profession, as an interpretation of new legal history - examining policy and law from archives sources - on the subject of property confiscations to legal historians, and as an introduction to a new school of Canadian economic history to historians.

My secondary aim was to prepare a finding aid on the subject under discussion. Following each footnote entry in round brackets is a library symbol identifying the location of the material cited. With the use of the accompanying Library Symbol Key those symbols can be converted to obtain the name of the lending institution. In most cases, those locations can be cross referenced with information contained in my Selected Bibliography. Printed sources cited in the footnotes not carried back into the Selected Bibliography generally contain the library call number at the point of reference. To decipher the abbreviated words and phrases used in the footnotes and appendices, consult the Abbreviation Key.

## TABLE OF CASES

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2. Beach vs. Woodhull, 1 Peters Reports 2 (U.S. 3d. Cir. 1803)
3. Brown, State Treasurer vs. Daly's Estate, 154 N.W. 602 (Iowa S.C. 1915)
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11. Re Ferdinand, Ex-Tsar of Bulgaria [1921], 1 Ch. D. 107 (C.A.)
12. Higginson vs. Mein, 4 Cranch S.C. Reports 415 (U.S. 1808)
13. Hirabayashi vs. U.S., 63 S. Ct. 1375 (U.S. 1943)
14. Hohri vs. U.S., dism'd 586 F. Supp. 769 (D.C. Dist. Col. 1984); aff'd in part, rev'd and rmnd'd in part 782 F. 2d. 227 (U.S. App. D.C. 1986); reh'g denied 793 F. 2d. 304 (U.S. App. D.C. 1986); rev'd on other grnd's 107 S. Ct. 2246 (U.S. 1987)
15. Hugh Stevenson and Sons, Limited vs. Aktiengesellschaft Fur Carton-Nagen-Industrie [1918] A.C. 239 (H.L.)
16. Iwasaki vs. R [1969], 1 Ex. C.R. 281 (Can.); aff'd [1970] S.C.R. 437 (Can.)
17. Klein vs. Palmer et. al., 18 F. 2d. 932 (U.S. 2d. Cir. 1927)
18. Korematsu vs. U.S., 65 S. Ct. 193 (U.S. 1944)
19. Miller, Alien Property Custodian vs. Lautenburg, 205 N.Y. Supp. 214 (N.Y. S.C. 1924); aff'd 145 N.E. 907 (N.Y. C.A. 1924)

20. Re Moynihan's Estate, 151 N.W. 504; suppl. opinion on reh'g 154 N.W. 904 (Iowa S.C. 1915)
21. Nakashima vs. R. [1947] Ex. C.R. 486 (Can.)
22. Oetjen vs. Central Leather Co., 38 S. Ct. 309 (U.S. 1918)
23. Orser et. al. vs. Hoac, 3 Hill N.Y. Reports 79 (N.Y. S.C. 1842)
24. Pierson vs. Lawler, 161 N.W. 419 (Neb. S.C. 1917)
25. Respublica vs. Samuel Chapman, 1 Dallas Pa. Reports 53 (Pa. S.C. 1781)
26. Re Validity of Orders in Council [1947], 1 D.L.R. 577 (P.C.)
27. R.J. Reuter Co. Ltd. vs. Mulhens [1954] Ch. D. 50 (C.A.)
28. Robins Island Preservation Fund vs. Southold Development Corp., 755 F. Supp. 1185 (E.D. N.Y. 1991); aff'd 959 F. 2d. 409 (U.S. 2d. Cir. 1992)
29. Smith vs. State of Maryland, 6 Cranch S.C. Reports 286 (U.S. 1810)
30. Society for the Propagation of the Gospel in Foreign Parts vs. Town of New Haven et. al., 8 Wheaton S.C. Reports 464 (U.S. 1823)
31. Sullivan vs. Kidd, 254 U.S. 433 (1921)
32. Sutton vs. Sutton (1830), 39 E.R. 255 (Chan. Ct.)
33. Tel-Oren vs. Libyan Arab Republic, 726 F. 2d. 774 (U.S. App. D.C. 1984)
34. Terrazas vs. Donohue et. al., 227 S.W. 206 (Tex. C.A. 1921)
35. Terrazas vs. Holmes et. al., 225 S.W. 848 (Tex. C.A. 1920)
36. Trott vs. State, 171 N.W. 827 (N. Dak. S.C. 1919)
37. Ware vs. Hylton, 3 Dallas S.C. Reports 199 (U.S. 1796)
38. Wolff vs. Oxholm (1817), 6 Maul. & Sel. Reports 92 (K.B.)

## NOTES ON CASES

- 1) Dunham vs. Drake, 1 Coxe's Reports 315 (N.J. S.C. 1795)

In his judgement, Chief Justice Kinsey refers to four New Jersey Statutes in "Wilson's Laws": i) Act of April 18, 1778, section 12; ii) Act of December 11, 1778, section 16; iii) Act of December 10, 1783, section 5; and, iv) Act of December 23, 1783, section 6. That Act which I have referred to in number iii, should have actually read December 16, 1783 and not the 10th. All four are found referenced in Appendix XI, Tab 11 - see items numbered 1 to 4 therein. No copies of "Wilson's Laws" were located by the New Jersey State Library.

- 2) Bare vs. Rhine, 2 Yeate's Reports 286 (Pa. S.C. 1778)

Mr. George Rhine's lawyer, Mr. C. Smith, refers in his argument to two of Pennsylvania's Attainder Acts. By way of clarification for those unfamiliar with the old statute reports, "1 Dall. St. Laws" is an abbreviation for: Laws Of The Commonwealth Of Pennsylvania 1700 - 1781, vol. 1., ed. Alexander James Dallas (Philadelphia; Hall and Sellers, 1791). That book is found in Early American Imprints, 1st Ser., Evans acsn. no. 32655 (OONL). A corrective note is also required. Instead of "1 Dall. St. Laws 756" (Act of 1778), one should look at vol. 1, pg. 750 rather than 756. Also instead of "1b. [vol. 1] 792-4 (March 29, 1779 Supp.)", one should look at vol. 1, pg. 791 to 794. An alternative source for those Acts is found in Appendix IX, Tab 9 - see items numbered 2 and 3 therein.

- 3) Beach vs. Woodhull, 1 Peters Reports 2 (U.S. 3d. Cir. 1803)

Mr. Stockon, the defendant's lawyer, mentions the N.J. Attainder Acts of "December 1778, Wilson's ed. p. 67" and "December 1783, Wilson's ed., p. 384". Mr. Justice Washington also refers to those Acts in his decision. As above stated, no copies of "Wilson's Laws" were located. I would direct you to items numbered 2 and 4 in Appendix XI, Tab 11 for those Acts.

## CHAPTER 1

QUEBEC (Lower Canada)

## 1. Introduction

The facts surrounding the case of Messrs. John D. Mercier and John Halsted, joint owners of 230 feet of harbour front property in Quebec City, Que., sequestered during the American Revolution, are illustrative of a particular instance where confiscated enemy property was restored, in Canada, following an armed conflict, based on a broad interpretation made by the Governor of Canada, of the provisions of the Treaty of Paris (1783) and Jays Treaty (1794). The Province of Quebec did not pass a local Confiscation Act to cover the American Revolution as did the Province of Nova Scotia and the thirteen American states. In addition to examining the circumstances of that case, this Chapter includes some discussion on American Loyalist Claims, looks at official communications and judicial decisions interpreting Treaty of Paris (1783) Articles 5 and 6 dealing with confiscated loyalist property, reviews state laws passed between 1784 and 1788 implementing it, and runs through the obstacles preventing recovery under those articles before and after ratification of the U.S. Constitution (1787) which by Article 6 made treaties the supreme law of the land.

## 2. Background

The formation of a Continental Congress by the American Colonies in 1774 was thought, by General Frederick Haldimand, to have been both a dangerous and illegal combination. <sup>1</sup> Those participating in the proceedings of the Continental Congress in October 1774 - at which time the Articles of Association, Address to the people of Great Britain, and Letter to the Inhabitants of Quebec, were approved - were considered to be criminals and guilty of high treason. <sup>2</sup> The first military encounter of the American Revolution was on April 19, 1775. Pardons were offered almost immediately - and repeatedly - to all those persons participating in the rebellion, save for Messrs. Samuel Adams and John Hancock. <sup>3</sup> The causes of the American Revolution are still subject to a wide degree of interpretation.

"In trying to teach the American Revolution to my high school Juniors, I have been struck time and time again by the profusion and diversity of interpretations of its causes." <sup>4</sup>

<sup>1</sup> A) Letter. Gen. Sir Frederick Haldimand (Com. in Chief, N.Y.) to Gen. Thomas Gage (Com. Brit. forces in N. Amer., and Gov. of Mass.). dtd. July 4, 1774 (french text). found in MG21, vol. B-5, Haldimand Prs., Corres. with Gen. Gage, pg. 282 and 283, mf. H-1428 (transcript copy) (OOA); B) same letter also found in MG21, Addl. MSS 21665, Haldimand Prs., pg. 263 (2 pg.), mf. A-610 (original copy) (OOA); C) Letter. Gen. Sir Frederick Haldimand to Gen. Sir Jeffery Amherst (Gov. of Guernsey). dtd. July 9, 1774 (french text). found in MG21, vol. B-1, Haldimand Prs., Correse. with Gen. Amherst, pg. 335 to 357, mf. H-1428 (transcript copy) (OOA).

<sup>2</sup> A) Letter. Lord [William Legge] Dartmouth (Col. Secty.) to Gen. Thomas Gage (No. 17). dtd. April 15, 1775. found in MG11, C.O. 5, vol. 92, Orig. Corres., Secty. of St., Military Desp., pg. 97 to 109 (25 pg.), mf. B-2966 (OOA); B) that letter mentions these two enclosures; i) Report. Edward Thurlow (Atty. Gen.) and Alexander Wedderburn (Sol. Gen.) to Lord Dartmouth. dtd. February 2, 1775. found in C.O. 5/159, Orig. Corres., Secty. of St., Law Rep., pg. 48 (PRO); ii) Report. same to same. n.d., rec. April 14, 1775. found in C.O. 5/247, Orig. Corres., Secty. of St., In-Letter (domestic), pg. 123 (2 pg.) (PRO); C) Journals of the Continental Congress, Worthington C. Ford (ed.), vol. 1 (Wash.: Govt. Pr. Off., 1904) (OGU).

<sup>3</sup> A) Pennsylvania Packet or the General Advertiser, June 26, 1775, pg. 3, mf. (OONL); B) New York Gazette and Weekly Mercury, March 18, 1776, pg. 4; June 24, 1776, pg. 1; October 14, 1776, pg. 1; and, December 9, 1776, pg. 1, mf. (OONL).

<sup>4</sup> Collier, Christopher, "Recent Interpretations of the Causes of the American Revolution", Social Studies, Philadelphia, vol. 52 (February 1961), pg. 43 to 49 at 43 (OONL). call no. ser. stks. L-678-5-7 storage.

Authors dealing with that general question in the literature I examined, concentrated on the reasons set out in the Declaration of Independence<sup>5</sup> - which among other grievances, took issue with Imperial legislation like the Sugar Act (1764), Currency Act (1764), Stamp Act (1765), Quartering Act (1765), Tea Act (1773), and five Intolerable Acts (1774) - specifically targetted were manorial quit rents charged by proprietary landlords (feudal incident),<sup>6</sup> and the Proclamation of 1763, which imposed restrictions on ownership of land East of the Appalachians (Western boundary of the American colonies).<sup>7</sup> As a consequence of the American Revolution, martial law was declared in the Province of Quebec on June 15, 1775, due to rebel activity in that Province.<sup>8</sup>

The American Revolution was settled by the Treaty of Paris (1783) (Definitive Treaty of Peace), signed September 3, 1783,<sup>9</sup> with ratifications exchanged May 12, 1784.<sup>10</sup> The treaty negotiations had

<sup>5</sup> Spector, Robert M. "The American Revolution: Something Beyond the Causes", Social Studies, Brooklawn, N.J., vol. 62, no. 3 (March 1971), pg. 99 to 105 (OONL). call no. ser. stks. L-678-5-7 storage.

<sup>6</sup> Connolly, Hon. James C., "Quit-Rents in Colonial New Jersey as a Contributing Cause for the American Revolution", New Jersey Historical Society. Proceedings, Newark, n.s., vol. 7, no. 1 (January 1922), pg. 13 to 21 (OOU). call no. ser. stks. H-104-4-5.

<sup>7</sup> Guinness, Ralph B., "Suggestion for a New Synthesis on the Causes of the American Revolution, with Special Reference to Land Speculation in the Ohio Valley", Historical Outlook, Philadelphia, vol. 24, no. 1 (January 1933), pg. 30 to 33 (OLU).

<sup>8</sup> Quebec Gazette, June 15, 1775, pg. 1, mf. (OONL).

<sup>9</sup> A) Definitive Treaty of Peace Between His Britannic Majesty and the United States of America, signed in Paris, September 3, 1783, found in Treaties and Other International Acts of the United States of America, Hunter Miller (ed.), vol. 2 (Wash.: U.S. Govt. Pr. Off., 1931), pg. 151-7 (OOP); B) also relevant is An Act to Enable His Majesty to Conclude a Peace or Truce, With Certain Colonies in North America Therein Mentioned (American Truce Bill), 1782 (U.K.) 22 Geo. 3, c. 46, found in Statutes at Large, Owen Ruffhead (ed.), vol. 14, pg. 207 (OONL). The Treaty of Paris was otherwise not implemented by the Parliament of Great Britain, but was nonetheless applied in the British courts.

<sup>10</sup> A) 1) Letter. David Hartley (Brit. Min. Plenipotentiary in Fr.) to [Francis Godolphin (Osborne)] Marquis of Carmarthen (For. Secty.) (No. 4). dtd. May 13, 1784. MS copy found in Hartley Prs. (4 pg.) (MIU-C); 1i) Transcript copy found in George Bancroft's MS entitled, David Hartley's Negotiations, Letters Between Hartley, Fox and Others (1783-1784), vol. 1, unpub., mf. (CLSU); B) Note. dtd. August 5, 1794. found in MGL6, F.O. 95, vol. 512, Treaty Corres. 1794 (selections), unpub., mf. C-12,906 (transcript copy) (OOA).

partly focused on the restoration of real estate which had been confiscated by the American States, formerly belonging to American loyalists (Treaty Articles 5 and 6, reproduced in Appendix I, Tab 1). The Continental Congress had, almost six years earlier, explicitly recommended that the states confiscate and sell the real estate of traitors in a resolution dated November 27, 1777.<sup>11</sup> The Congress had been initially opposed to the restoration of the confiscated property.<sup>12</sup> The British negotiator had been instructed to include a provision in the treaty providing for the restitution or indemnification of confiscated estates.<sup>13</sup> The American negotiators were advised that the negotiations could not proceed without the inclusion of those stipulations.<sup>14</sup> The prospect of the U.S. acquiring direct sovereignty over Canada was raised by the American negotiators.<sup>15</sup> Congress eventually recommended to the states in January 1784, and March 1787, that they adopt the treaty provisions, and revise their laws.<sup>16</sup>

Hardships were encountered in the form of severe beatings by some

<sup>11</sup> A) supra., footnote 2C, Journals, vol. 9, pub. 1907, pg. 971 (00NL); also see B) Resolution of Congress. dtd. June 24, 1776, ibid., Journals, vol. 5, pub. 1906, pg. 475 (00NL).

<sup>12</sup> Resolution of Congress. dtd. September 10, 1782, supra., footnote 2C, Journals, Gaillard Hunt (ed.), vol. 23, pub. 1909, pg. 563 (NFSM).

<sup>13</sup> Instructions to Richard Oswald (Chief Brit. Negotiator of Peace Treaty). dtd. June 26, 1782. found in MG16, F.O. 95, vol. 511, Treaty Prs., etc., Amer. Negotiations in Paris (selections), unp., mf. C-12,906 (transcript copy) (00A).

<sup>14</sup> A) Letter. Richard Oswald to American Commissioners (John Adams, Benjamin Franklin and John Jay). dtd. November 4, 1782. found in C.O. 5/8, Orig. Corres., Secty. of St., Desp. and Misc. (military), pg. 317 (2 pg.) (PRO); B) Letter. Henry Strachey (Jt. Under Secty. Home Off. and Secty. to the Treas.) to American Commissioners (No. 23). dtd. November 5, 1782. found in Benjamin Franklin Prs., Ser. 1, vol. 8, acsn. no. DM15, 747, pg. 57 and 58, mf. 2 (NIC); C) Letter. Richard Oswald to American Commissioners. dtd. November 11, 1782. id., Franklin Prs., pg. 549 to 552, mf. 3 (NIC).

<sup>15</sup> Letter. Thomas Grenville (Brit. Min. in Paris) to Charles J. Fox (For. Secty.). dtd. June 4, 1782. found in Addl. MSS. 47562, Charles James Fox Prs., pg. 11 to 16 at 14 (10 double pg.) (BL).

<sup>16</sup> A) Resolution of Congress. dtd. January 14, 1784. supra., footnote 2C, Journals, Gaillard Hunt (ed.), vol. 26, pub. 1928, pg. 30 and 31 (00NL); B) Resolution of Congress. dtd. March 21, 1787. id., Journals, Roscoe R. Hill (ed.), vol. 32, pub. 1936, pg. 125 (00NL); C) see Appendix II, Tab 2.

American loyalists who ventured to return to their homes shortly prior to the signing of the Definitive Treaty of Peace.<sup>17</sup> Obstacles to recovering confiscated estates also later arose in the courts. British diplomatic representatives in the U.S. kept the British foreign office informed about judicial decisions relating to the application of the Treaty provisions; particularly in relation to debts (Treaty Article 4).<sup>18</sup> The American loyalists petitioned the British Government in July 1783 regarding Treaty

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<sup>17</sup> Letter. Patrick Tonym (Gov. of E. Florida) to Lord Frederick North (Home Secty.) (No. 4). dtd. August 21, 1783. found in C.O. 5/560, Orig. Corres., Secty. of St., Conn., pg. 239 to 242 (PRO).

<sup>18</sup> see Appendix III, Tab 3.

FIGURE 1



SHUTTERS SACRIFICE

or the recommended Loyalists, a faithful representation of a Tragedy shortly to be performed on the Continent of America

Anonymous British Artist. Published by E. Dashery, St. James Street, February 10, 1783. Engraving. 8 1/4 x 12 1/4. Courtesy The New York Public Library. Special Collections Office, New York, N.Y., classmark MEZ YRK (Anon.).

"Two Red Indians are slaughtering American loyalists, Shelburne looks on with satisfaction and is attacked by Britannia... The peace terms were much and unjustifiably attacked for leaving the loyalists to the mercy of the Americans."

FIGURE 2



*To this a Peace, when Loyalists must bleed?*  
 The SAVAGES let loose, OR  
 The CRUEL FATE of the LOYALISTS. *It is a Bloody Piece of work indeed.*

Unknown Artist. Sold by W. Humphrey No. 227 Strand. March 1783. Engraving (coloured impression). 3 3/8 x 13 1/8 in. Courtesy The Metropolitan Museum of Art, Photograph and Slide Library, New York, N.Y., acsn. no. 83.2.1005, neg. no. MN 80843 B. Gift of William H. Huntington, 1883.

"American loyalists are being murdered by Red Indians... The chief danger to the loyalists was... from penal legislation, confiscation of property, and personal molestation at the hands of Americans, who, however, are perhaps represented by the Indians".

violations which hindered the recovery of their confiscated estates. <sup>19</sup> The Office of American Claims created in July 1783, <sup>20</sup> compensated many American loyalist claimants for losses arising from the confiscation of their property which had been sold by the American States. <sup>21</sup> Awards made to American loyalists residing in Canada were on average only half paid by 1821, and are said to have amounted to only one third of the actual sustained losses. <sup>22</sup>

Files at the National Archives of Canada show that inquiries were made by descendants of American loyalists living in Canada, as recently as 1909 and 1932, concerning their ancestors' confiscated estates. In 1909, Mr. William Wilson of Woodstock, Ontario, had requested information relative to treaty provisions applicable to lands confiscated in the U.S. during the American Revolution in order to assist his attorney in

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<sup>19</sup> A) Petition. Agents of American Loyalists to Charles J. Fox (For. Secty.). dtd. July 1783. found in C.O. 5/43, Orig. Corres., Secty. of St., Misc. Corres., pg. 500 to 501 (4 pg.) (PRO). The document is entitled "General State of the Circumstances of the property belonging to the American loyalists, which has been confiscated by Laws of the American States"; B) Letter. Lord [Francis Godolphin (Osborne)] Carmarthen (For. Secty.) to John Adams (U.S. Min., in London). dtd. February 28, 1786. found in Contin. Cong. Prs., item 84, Letr. John Adams, vol. 6, pg. 151 to 158, mf. 113 (NFSM). A petition entitled "State of the Grievances complained of by Merchants and other British subjects having Estates, Property and Debts due to them in the several states of America", is included with that letter; C) Papers Relative to Great Britain, U.S. Dept. of State Publ. [1792] (OONL). call no. Mic. F. CG-4, no. 39120. This publication consists of printed letters exchanged between Thomas Jefferson (U.S. Secty. of St.) and George Hammond (Brit. Min. Plenipotentiary at Phil.) in 1791 and 1792 dealing with complaints about treaty violations.

<sup>20</sup> A) An Act for Appointing Commissioners to Enquire into the Losses and Services of all Such Persons Who Have Suffered in Their Rights, Properties, and Possessions, During the Late Unhappy Dissentions in America, in Consequence of Their Loyalty to His Majesty, and Attachment to the British Government, 1783 (U.K.), 23 Geo. 3, c. 80, found in Statutes at Large, Owen Ruffhead (ed.), vol. 14, pg. 399 to 401 (OONL); B) that Act was continued by: i) 1785 (U.K.) 25 Geo. 3, c. 76, id., vol. 15, pg. 731 (OONL); ii) 1786 (U.K.) 26 Geo. 3, c. 68, id., vol. 15, pg. 136 to 138 (OONL); iii) 1787 (U.K.) 27 Geo. 3, c. 39, id., vol. 15, pg. 386 (OONL); iv) 1788 (U.K.) 28 Geo. 3, c. 44, id., vol. 15, pg. 479 (OONL); and, v) 1789 (U.K.) 29 Geo. 3, c. 62, id., vol. 15, pg. 582 (OONL); C) Relief was paid pursuant to: i) 1788 (U.K.) 28 Geo. 3, c. 40, id., vol. 15, pg. 475 to 478 (OONL); and, ii) 1790 (U.K.) 30 Geo. 3, c. 34, id., vol. 16, pg. 28 to 30 (OONL).

<sup>21</sup> First Report of the Commissioners of American Claims (John Wilmot, Daniel Parker, Robert Kingston, Thomas Dundas and John Marsh). dtd. August 10, 1784. found in T79/124B, Treas., Amer. Loyalist Claims, Rep. of Comsns. to Treas., pg. 1 to 7 (12 pg.) (PRO).

<sup>22</sup> Upper Canada Gazette, December 10, 1821, pg. 472 (OONL).

Philadelphia.<sup>23</sup> The 1932 matter dealt with the subject of the Edwards estate in New York, which following an investigation, was determined to be mythical. An internal route slip, originating from the British Embassy in Washington, had labelled it a "rainbow-gold" search.<sup>24</sup>

### 3. Mercier/Halsted Confiscation

Messrs. John Dyer Mercier and John Halsted (also seen spelled Halstead) had jointly purchased a parcel of land having 230 French feet (approx. 250 English feet) of frontage on the bank of the St. Lawrence River, in the Champlain quarter (Cape Diamond) of the Town of Quebec - Lower Town area, just below the Heights of Abraham, in the Fief and Seigneurie of Villeray - on June 10, 1774, from the widow Dame Marie Magdelaine Domptail-LaCroix at a price of £1,200 (see plan with notes on following page).<sup>25</sup>

The legal description of the property in the deed conveying ownership to Messrs. Mercier and Halsted is not very legible. The property was also found to have been legally described in two other documents - a subsequent deed and a bond of arbitration, the former is written in French and the later in English. The Fief Villeray is mentioned in both deeds.

<sup>23</sup> see RG25, A3A, Ext. Aff., Central Registry Files, 1939 ser., vol. 1095, file 1909-233, Respecting Claim of U.E. Loyalist to Lands in the U.S., unp. (5 pg.), file box (OOA).

<sup>24</sup> *ibid.*, footnote 23, vol. 1541, file 1929-227, Compensation for U.E. Loyalists, unp., file box (OOA).

<sup>25</sup> A) Deed of Land. dtd. June 10, 1774. Notarized September 9, 1774 (french text). found in Jean-Claude Panet (notary) Prs., CNL-207, Box 55, 3C04-3302B, doc. 895-3/55, pg. 5018 (4 pg.) (QQA); B) the land registry office in Quebec City has no documents dated earlier than 1840. They refer researchers with inquiries prior to that date to the Archives Nationales du Quebec; C) Joseph Gubert LaCroix had purchased four lots in the Fief Villeray between 1754 and 1758. Those deeds are still available (french text). found in P240, Box 49, 3A05-3303B, Villeray, Fief and Seigneurie of, file box (QQA).

*of the Department*

Heights of Abraham

N

Fief Villeray

CITADELLE

17

FIGURE 3



I V E R

St. Lawrence River

The lot owned by Messrs. John Dyer Mercier and John Halstead had 230 french feet of frontage on the Saint Lawrence River falling somewhere within the boundaries of the Fief Villeray, which has been outlined here in yellow. This plan was copied from the Atlas of the City and County of Quebec... by Henry Whitmer Hopkins (Provincial Surveying and Pub. Co., 1879), pg. 14 (QQA). The boundaries of the Fief Villeray transposed onto this plan are more accurately shown on Sections 1 and 2 of the Seigniorial Plan of Quebec, unpublished (QQA).

"deux cent trente pieds de terre de front, sur la profondeur qu'il peut y avoir a prendre - depuis la Capse Maree Jusques a la cime du Cap [Diamand], situes dans le chemin allant a l'ance des Meres; a prendre les dits deux cent trente pieds de font Soignant du Nord est du terrain ci devant concede a Laurent Telson, et au Sud ouest aux terres non concedees." <sup>26</sup>

"bounded and abutted as follows that is to say in front by the River Saint Laurence in the rear by the summit of the Cape [Diamand] on the North East by Land the property of Laurent Telson and on the South West by Lands not conceded, with the Wharf thereon erected then belonging to and being the property of the said John Halsted and John Dyer Mercier..." <sup>27</sup>

Upon that property they had constructed a frame for a three story timber storehouse (40' x 128') and had built a 130' wharf off of the property, which improvements were completed sometime in the Fall of 1775. <sup>28</sup>

On October 28, 1775, Mr. Mercier was arrested on account of an intercepted letter sent to him by Colonel Benedict Arnold, which contained questions about the strength of the British forces in Quebec City. He was, however, it seems, released following the intervention of a group of

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<sup>26</sup> Deed of Land. John Halsted and as Attornies for John Dyer Mercier, William Burns and John William Woolsey to James Glenny. dtd. October 10, 1797 (french text). found in Felix Tetu (notary) Prs., CN1-262. Box 2, 3C08-32-5B, unp. (9 pg.), file box (QQA).

<sup>27</sup> Arrangement Between John Craigie (Cmsry. and Storekeeper Gen.) on Behalf of His Majesty and John Halsted and John Dyer Mercier (Merchants). dtd. October 10, 1797. found in Charles Stewart (notary) Prs., CN301-256, Box 5, 3C10-4305B, unp. (13 pg.), file box (QQA). Includes a Release dtd. October 10, 1797; Bond of Arbitration dtd. October 2, 1797; and, Arbitration Award dtd. October 4, 1797.

<sup>28</sup> see Appendix IV, Tab 4.

concerned citizens owing to a lack of evidence. <sup>29</sup> Both Messrs. Mercier and Halsted were later named in a list, drawn up in May 1777, naming the "principal Leaders of sedition" in Quebec. <sup>30</sup>

The American forces led by General Richard Montgomery and Colonel Benedict Arnold had invaded the Province of Quebec in October 1775, with about 2,000 men. By December 1775 only Quebec City remained under British control. The American forces attacked that City with about 1,000 men on December 31, 1775. The City was successfully defended by Sir Guy Carleton

<sup>29</sup> A) Extracted Letter. unknown English Merchant to ?. dtd. November 9, 1775. printed copy found in Francis Maseres, Additional Papers Concerning the Province of Quebec... (London: W. White, 1776), pg. 100 to 111 at 107-8, mf. (OONL). call no. Mic. F. CC-4 no. 36872; B) Intercepted Letter. Col. Benedict Arnold (an Amer. leader of the Que. invasion) to John Mercier (Merchant). dtd. October 13, 1775. found in MG11, C.O. 42, vol. 34, Orig. Corres., Secty. of St., Que., pg. 241 and 242, mf. B-32 (true copy) (OOA). Extracted Remarks from letter:

"Dead River, about 160 Miles from Quebec  
13th October 1775

Dear Sir:

I am now on my march for Quebec with 2000 Men where I expect to have the pleasure of seeing you soon... I beg the favor of you on receipt of this... that you will immediately write me... of the Disposition of the Canadians, the number of Troops in Quebec, by whom Commanded, and every advice you may have received from General Schayler, and the situation of matter in general, what ships are at Quebec and in short what we have to expect from the Canadians and Merchants in the City..."

C) a copy of that intercepted letter was transmitted to London with the comment:

"... Copies of some affidavits in regard to Mr. Walker and of two intercepted Letters, upon which I took up Mr. Mercier of this town are likewise enclosed."

see Letter. Hector T. Cramahe (Lt. Gov. of Que.) to Lord [William Legge] Dartmouth (Col. Secty.). dtd. November 9, 1775. found in MG11, C.O. 42, vol. 34, Orig. Corres., Secty. of St., Que., pg. 229 to 230, mf. B-32 (OOA); D) an Imperial Act was passed in March 1777, allowing persons suspected of having committed high treason to be detained without bail. The manner in which disloyal persons were treated as prisoners in 1780, was that if they were believed guilty, they were sent to Halifax for detention, and if full proof was available (affidavits of witnesses) they were sent on to England to be tried for high treason, and not as prisoners of war. However, in practise, the crimes of many persons suspected of having committed treason were ignored, and only those whose crimes were publicly known, were imprisoned, in order to discourage others from following their example. see: 1) An Act to Empower His Majesty to Secure and Detain Persons Charged with, or Suspected of, the Crime of High Treason, Committed in any of His Majesty's Colonies or Plantations in America, or on the High Seas, or the Crime of Piracy (American Habeas Corpus Act), 1777 (U.K.), 17 Geo. 3, c. 9, found in Statutes at Large, Owen Ruffhead (ed.), vol. 13, pg. 18 (OONL); 11) Letter. Lord George Germain (Col. Secty.) to Frederick Haldimand (Gov. in Chief and Com. of Cda.) (No. 23). dtd. March 17, 1780. found in MG11, C.O. 42, vol. 40, Orig. Corres., Secty. of St., Que., pg. 35 to 44, mf. B-35 (OOA); and, 111) Letter. Frederick Haldimand to Lord George Germain (No. 67). dtd. October 25, 1780. found in MG11, C.O. 42, vol. 40, id., pg. 176 to 185 at 184B (20 pg.), mf. B-35 (OOA).

<sup>30</sup> A) Letter. Guy Carleton (Gov. in Chief and Com. of Cda.) to Lord George Germain (Col. Secty.) (No. 18). dtd. May 9, 1777. found in MG11, C.O. 42, vol. 36, Orig. Corres., Secty. of St., Que., pg. 82 to 83; 88 and 89, mf. B-33 (OOA); B) same letter found in MG11, "Q" Ser., vol. 13, Corres. Between Gov. Carleton ... and Lord Germain, pg. 96 to 98, 105 and 106, mf. C-11,890 (transcript copy) (OOA).

with about 1,800 civilian militia, seamen, and a few regular troops. In the attack General Montgomery died and Colonel Arnold was wounded. The British won the race to strengthen their forces in the spring with the arrival of a relief squadron in May 1776, and they were able to regain control of Canada by the end of June 1776. <sup>31</sup>

It is apparent that both Messrs. Mercier and Halsted were active participants in Colonel Benedict Arnold's expedition to Quebec in 1775-76. Mr. Halsted had served as the Commissary under Colonel Arnold, <sup>32</sup> and although it would appear that Mr. Mercier had been banished following his release from the Prison Ship upon which he was detained after having been arrested, <sup>33</sup> it seems quite clear that both had joined the U.S. army. <sup>34</sup>

The property of Messrs. Mercier and Halsted was occupied and used by the Crown from around the year 1779. Successive petitions to the Governors of Quebec for the return of the property - which had included claims for rent and damages - were made by Mr. Halsted on August 4 and 25, 1784, and by their legal representative Mr. Pierre-Louis Deschenaux on

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<sup>31</sup> A) Whiteley, W.H., "The British Navy and the Siege of Quebec, 1775-6", Canadian Historical Review, Toronto, vol. 61, no. 1 (March 1980), pg. 3 to 27 (OOU). call no. FC1.C285; and, B) Pearson, Michael, "A Colony Preserved: The Siege of Quebec 1775-1776", American Heritage, N.Y., vol. 23, no. 2 (February 1972), pg. 8 to 15 (OOU). call no. E171.A43.

<sup>32</sup> A) Expense Book of John Halsted (attribution). dtd. 1775-76. found in MG23 B6, John Halsted Prs.. Expense Book (original) (OOA); B) a printed edition (Montreal; C.A. Marchand, 1913) is also available (OONL). call no. FC422 A6 H3.

<sup>33</sup> A) Application of John D. Mercier. dtd. July 22, 1789. printed in The Papers of George Washington, W.W. Abbot (ed.), vol. 3 (Charlottesville; Univ. Press of Virginia, 1989), pg. 262 and 263 (OCC); B) MS copy of that same application found in George Washington Prs., Ser. 7, Applications, pg. 2799 to 2800, mf. 122 (GU).

<sup>34</sup> A) Memorial of John Blake, Joseph Bindon, John Dyer Mercier and Benjamin Thompson.. dtd. April 18, 1783. found in MG23 B3, folder 2, CC-41, Contin. Cong. Prs. (selections), pg. 6 to 8 (typed transcript) (OOA); B) MS copy of that Memorial found in Micro Copy no. 247 (M247), item 41, vol. 2, Contin. Cong. Prs., pg. 134 and 135 (3 pg.), mf. 49 (DNA).

March 9, 1789, May 20, 1791, and May 21, 1795. However, no progress was made in the settlement of this claim until 1797. At the time the petitions were made, both claimants were U.S. residents. Mr. Halsted resided in Perth Amby, New Jersey, and Mr. Mercier in New York City.<sup>35</sup>

The assistance of the U.S. Secretary of State was sought by Mr. Halsted in 1797 to help resolve their unsettled claim. At that time both claimants were Citizens of the U.S. Colonel Timothy Pickering wrote to the British Ambassador in Philadelphia on their behalf in June 1797, drawing his attention to Article 6 of the Treaty of Paris and Article 9 of Jay's Treaty (see Appendix V, Tab 5). In turn Sir Robert Liston wrote to the Governor of Canada, bringing the matter to his attention.<sup>36</sup> That letter was to have been delivered by Mr. Halsted or his agent.<sup>37</sup>

The Attorney General of Lower Canada was directed to prepare a report on that matter for the Governor.<sup>38</sup> That report expressed the

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<sup>35</sup> see Appendix IV, Tab 4.

<sup>36</sup> A) Letter. Sir Robert Liston (Brit. Min. Plenipotentiary at Wash.) to Gen. Robert Prescott (Gov. in Chief of Cda.) (No. 16). dtd. June 22, 1797. found in MG23 GII 17, Ser. 1, vol. 11, Robert Prescott Prs., Letr. fm. Robert Liston, pg. 38 to 43 (includes 4 enclosures including petition of Pierre-Louis Deschenaux to Lord Dorchester, on behalf of Messrs. Mercier and Halsted. dtd. May 21, 1795), bnd. vol. (OOA); B) that letter is also found in RG59, Gen. Rcds. of the Dept. of St., Micro Copy no. 50 (M50), Notes fm. the Brit. Legation in the U.S. to the Dept. of St., unsp. (2 pg.), mf. 3 (DNA) & (NFSM). The enclosures mentioned in that letter are not found with this copy; C) Letter. Col. Timothy Pickering (U.S. Secty. of St.) to Sir Robert Liston (Brit. Min. Plenipotentiary). dtd. June 14, 1797. found in RG59, Gen. Rcds. of Dept. of St., Micro Copy no. 40 (M40), Domestic Letr. of the Dept. of St., pg. 61 (1 pg.), mf. 10 (DNA) & (ICU). This letter is the first of those four enclosures mentioned at the beginning of this footnote.

<sup>37</sup> A) Letter. Col. Timothy Pickering (U.S. Secty. of St.) to John Halsted (Merchant). dtd. June 23, 1797. found in RG59, Gen. Rcds. of the Dept. of St., Micro Copy no. 40 (M40), Domestic Letrs. of the Dept. of St., pg. 68 (1 pg.), mf. 10 (DNA) & (ICU); B) Letter. Sir Robert Liston (Brit. Min. Plenipotentiary at Wash.) to Col. Timothy Pickering. dtd. June 22, 1797. found in RG59, Gen. Rcds. of the Dept. of St., Micro Copy no. 50 (M50), Notes fm. the Brit. Legation in the U.S. to the Dept. of St., unsp. (1 pg.), mf. 3 (DNA) & (NFSM).

<sup>38</sup> A) Letter. Herman W. Ryland (Prov. Secty.) to Jonathan Sewell (Atty. Gen.). dtd. August 9, 1797. found in MG23 GII 17, ser. 1, vol. 9, Robert Prescott Prs., Civ. Secty. Letter Books, pg. 144 and 145, bnd. vol. (OOA); B) that same letter also found in RG7 G15C, vol. 5, Gov. Gen. Off., Civ. Secty. Letter Books, pg. 218, mf. C-922 (OOA); C) a list of the Province of Quebec's Attorney Generals between the years 1764 and 1838 appears in a periodical article cited as follows: Francis J. Audet, "Procureurs Generaux de la Province de Quebec", Bulletin des Recherches Historiques, Levis, Que., vol. 39, no. 5 (May 1933), pg. 276

opinion that the claim was well founded, having regard to Article 9 of Jay's Treaty and that compensation ought to be paid. <sup>39</sup>

"This claim is founded on the ninth Article of the Late Treaty of Amity, Commerce and Navigation, between Great Britain and the United States of America; and under this Article, I am of Opinion, that the Claim is well founded; and that Compensation ought to be made for the Advantages, which Government has derived from the Premises.

This ninth Article of the Treaty stipulates that American Citizens, who now hold Lands in his Majesty's Dominions, shall continue to hold them according to their respective Titles." <sup>40</sup>

He also indicated, in his report, that apart from that treaty, aliens could not own land in Canada at that time. <sup>41</sup> Mr. Halsted was soon after advised by the Provincial Secretary that restoration of his property would be made and that compensation should be settled with the Commissary and Storekeeper General, <sup>42</sup> who was directed to make arrangements with

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and 277 (OOU). call no. PER FC 1.378. .

<sup>39</sup> A) Report. Jonathan Sewell (Atty. Gen.) to Gen. Robert Prescott (Gov. in Chief of Cda.). dtd. August 16, 1797. found in MG23 GII 10, vol. 10, Sewell Prs., Letter Book as Atty. Gen., pg. 4893 to 4895, bnd. vol. (copy) (OOA); B) that same report is also found in RG4 A1, vol. 65, Que. and Lower Cda., "S" Ser., pg. 20955 to 20958, mf. C-3011 (original) (OOA); C) that report is additionally found in MG23 GII 10, vol. 3, Sewell Prs., Corres., pg. 1108 to 1111, file box (rough draft) (OOA).

<sup>40</sup> ibid., Sewell Report.

<sup>41</sup> see Appendix VI, Tab 6.

<sup>42</sup> A) Letter. Gen. Robert Prescott (Gov. in Chief of Cda.) to Sir Robert Liston (Brit. Min. Plenipotentiary at Wash.) (No. 21). dtd. August 24, 1797. found in MG23 GII 17, Ser. 1, vol. 12, Robert Prescott Prs., Entry Book of Letr. to Robert Liston, pg. 39 to 41 (includes an enclosure), bnd. vol. (OOA); B) that enclosure is a letter from Hexman W. Ryland (Prov. Secty.) to John Halsted (Merchant). dtd. August 17, 1797. It is also found in RG7 G1SC, vol. 5, Gov. Gen. Off., Civ. Secty. Letter Books, pg. 221 and 222, mf. C-922 (OOA); C) it is additionally found in MG23 GII 17, Ser. 1, vol. 9, Robert Prescott Prs., Civ. Secty. Letter Books, pg. 148 and 149, bnd. vol. (OOA); D) a further copy was located in RG59, Gen. Rcds. of the Dept. of St., Micro Copy no. 50 (M50), Notes fm. the Brit. Legation in the U.S. to the Dept. of St., unp. (3 pg.), mf. 3 (DNA) & (NFSM); E) a printed copy of that letter and also one previously referred to in

him.<sup>43</sup> All ordinance was directed to be removed from the wharf in August 1797.<sup>44</sup> The keys to the store house were ordered to be handed over to the Storekeeper General when this had been accomplished.<sup>45</sup> An agreement was reached on October 2, 1797, by Mr. John Craigie (Commissary) and Messrs. Mercier and Halsted, to have arbitrators indifferently chosen by them, determine the amount of compensation that should be allowed. The arbitrators named were Messrs. John Blackwood, William Lindsay, Jr., and David Monro (also seen spelled Munroe and Munro). By a decision dated October 4, 1797, they awarded Messrs. Mercier and Halstead £88 - rent for use and occupation of the property from September 1781 to September 1797 was set at £855, from which they deducted £767 for improvements made by the Crown.<sup>46</sup> The keys were eventually handed over to Mr. James Glenny, the new owner of the property, in November 1797.<sup>47</sup> He had purchased the property from Messrs. Mercier and Halstead by deed dated October 10, 1797. The consideration for that transaction was £600.<sup>48</sup>

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footnote 36, as well as covering letters accompanying both of them, sent by Robert Liston to Timothy Pickering, can be found in Diplomatic Correspondence of the United States: Canadian Relations 1784-1860, William R. Manning (ed.), vol. 1, 1975 ed. (Wash.; Carnegie Endowment For Internat. Peace, 1940), acsn. no. 388, pg. 482 and 483, and acsn. no. 392, pg. 490 (OONL).

<sup>43</sup> Letter. Capt. James Green (Military Secty.) to John Craigie (Cmsry. and Storekeeper Gen.). dtd. August 19, 1797. found in MG23 GII 17, Ser. 1, vol. 17, Robert Prescott Prs., Military Secty. Corres., pg. 421, bnd. vol. (OOA).

<sup>44</sup> Letter. Capt. James Green (Military Secty.) to Kenelm Chandler (Ordinance Storekeeper). dtd. August 19, 1797. found in MG23 GII 17, Ser. 1, vol. 17, id., footnote 43, pg. 421, bnd. vol. (OOA).

<sup>45</sup> Letter. Capt. James Green (Military Secty.) to John Craigie (Cmsry. and Storekeeper Gen.). dtd. November 13, 1797. found in MG23 GII 17, Ser. 1, vol. 18, supra., footnote 43, pg. 84 and 85, bnd. vol. (OOA).

<sup>46</sup> Arrangement Between John Craigie (Cmsry. and Storekeeper Gen.) on Behalf of His Majesty and John Halsted and John Dyer Mercier (Merchants). dtd. October 10, 1797. found in Charles Stewart (notary) Prs., CN301-256, Box 5, 3C10-4305B, unp. (13 pg.), file box (QQA). Includes a Release dtd. October 10, 1797; Bond of Arbitration dtd. October 2, 1797; and, Arbitration Award dtd. October 4, 1797.

<sup>47</sup> Letter. John Craigie (Cmsry. and Storekeeper Gen.) to Capt. James Green (Military Secty.). dtd. November 15, 1797. found in RGS 1A, "C" Ser., vol. 105, Corres. of the Military Secty., Cmsry. Rcds., pg. 180 and 180A, mf. C-2676 (OOA).

<sup>48</sup> Deed of Land. John Halsted and as Attornies for John Dyer Mercier, William Burns and John William Woolsey to James Glenny. dtd. October 10, 1797 (French text). found in Felix Tetu (notary) Prs., CNI-262, Box 2, 3C08-32-5B, unp. (9 pg.), file box (QQA).

In exchange for this favour, Lieutenant Governor Robert Prescott requested in August 1797, that Mr. Liston press the American Secretary of State for a settlement of the confiscated loyalist land claims of General Gabriel Christie (Seigneur, Lower Canada), Colonel Henry Caldwell (member Legislative Council and Receiver General of Lower Canada), and Mr. Thomas Dunn (member Legislative and Executive Council, and Judge of the Court of Kings Bench of Lower Canada), all formerly owning lands in the State of Vermont, whose claims had first been brought to the attention of Colonel Pickering in a diplomatic note dated July 1796. A posterior claim made by Mr. William Smith (Clerk, Legislative Council of Lower Canada) in September 1796 for lands confiscated in New York State was added to that list.<sup>49</sup>

In addition to having their confiscated estate in Quebec restored to them, Messrs. Mercier and Halsted both received a reward of land from Congress. By an Act of Congress passed in 1801 each was entitled to receive a grant of 640 acres of land in the refugee tract in Ohio. In fact Mr. Mercier's Ohio grants totalled 690.40 acres while Mr. Halsted's totalled 645.13 acres. Their grants were located on January 12, 1802.<sup>50</sup> Mr. Mercier had previously received a reward of 500 acres of land from New York State, while Mr. Halsted had received 333.5 acres from that State.<sup>51</sup>

<sup>49</sup> A) Letter. Sir Robert Liston (Brit. Min. Plenipotentiary at Wash.) to Col. Timothy Pickering (U.S. Secty. of St.). dtd. July 7, 1796. found in RG59, Gen. Rcds. of the Dept. of St., Micro Copy no. 50 (M50). Notes fm. the Brit. Legation in the U.S. to the Dept. of St., unpag. (2 pg.), mf. 3 (DNA) & (NFSM); B) Letter. William Smith (Claimant) to Sir Robert Liston. dtd. September 4, 1796. found in *ibid.*, RG59, unpag. (4 pg.), mf. 3 (DNA) & (NFSM); C) Letter. Sir Robert Liston to Col. Timothy Pickering. dtd. September 22, 1797. found in *ibid.*, RG59, unpag. (3 pg.), mf. 3 (DNA) & (NFSM); D) Letter. Gen. Robert Prescott (Gov. in Chief of Cda.) to Sir Robert Liston (No. 21). dtd. August 24, 1797. found in *supra.*, footnote 42A.

<sup>50</sup> see Appendix VII, Tab 7.

<sup>51</sup> A) An Act for Granting Certain Lands Promised to be Given as Bounty Lands by Laws of This State, and for Other Purposes Therein Mentioned, 1784 N.Y. Sess. Laws, c. 63. found in Early American Imprints, 1st Ser., Evans acsn. no. 18646, pg. 98 to 101, mf. (OONL). Section 14 deals with New York States Refugee lands; B) also see MG24 I44, List of Canadian and Nova Scotian Refugees Entitled to Lands in New York (OOA). That list indicates that Mr. Mercier was entitled to an 80 acre lot and a 420 acre lot (lot no. 75 and 231), while Mr. Halsted was entitled to a 333.5 acre lot (lot no. 13).

#### 4. Treaty Interpretation

By Article 5 of the Treaty of Paris (1783) it was stipulated that Congress would "earnestly recommend" to the state legislatures that they revise their laws to facilitate the restitution of confiscated estates. A distinction was drawn in that Article (see Appendix I, Tab 1) between those persons who had borne arms and those who had not. Those who had borne arms were only entitled to have their estates restored following payment of the "bona fide price". That portion of Article 5 was commented upon by British Foreign Secretary Charles J. Fox, in April 1783:

"Even that class of men who are put in the worst condition viz those who have borne arms against the United States, are intended as I understand the article to be put into possession of their estates upon repaying to the present possessors the price bona fide paid by the said possessors. Now if this be the regulation where lands have been actually sold in consequence of confiscation it seems to follow the spirit of this regulation, that where they have been confiscated but not yet sold, the old possessor should be reinstated without paying any price at all..."<sup>52</sup>

Mr. Fox was saying that in those cases where property was confiscated but not yet sold, restitution should be made even to those who had borne arms without any payment being required of them.

The American Treaty Commissioners had interpreted Article 6 (see Appendix I, Tab 1) of the Treaty of Paris (1783) - which provided that there should be no "future confiscations" - to relate back to the cessation

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<sup>52</sup> Letter. Charles J. Fox (For. Secty.) to David Hartley (Brit. Min. Plenipotentiary in Fr.) (No. 3). dtd. April 10, 1783. MS copy found in Hartley Prs. (1 pg.) (MLU-C).

of hostilities. <sup>53</sup> The Supreme Court of the United States in 1810, in the case Smith vs. State of Maryland interpreted the meaning of the term "future confiscation" in Article 6 to be applicable to cases where the confiscations were "...not complete before the treaty..." there remaining "...something to be done necessary to..." perfect the title. <sup>54</sup>

Articles 5 and 6 were not prior to the administrative decision respecting Messrs. Mercier and Halsted's claim, considered as having had any application to the claims of American citizens who had land confiscated in Canada. In fact, Mr. Mercier was a signatory of a joint petition to Congress in 1783, which expressed discontent that the Preliminary Articles had not made "...any provision for their returning to settle their affairs [in Canada], and receive restitution of their property." <sup>55</sup>

Official communications can play an important role in the interpretation of treaties. It is evident that a different meaning had been assigned to the term "future confiscations" by the American Treaty

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<sup>53</sup> Letter. American Commissioners to Robert Livingstone (U.S. For. Secty.) (No. 77), dtd. July 1783. found in Benjamin Franklin Prs., Ser. 1, vol. 8, acsn. no. DM15,747, pg. 199 at 205 and 206, mf. 2 (NIC). Extracted remark from letter:

"The 6th Article viz where it declares that no future confiscations shall be made etc., ought to have fixed the time with greater accuracy. We think the most fair and true construction is, that it relates to the date of the cessation of hostilities. That is the time when Peace in fact took place, in consequence of prior informal binding contracts to terminate the war. We consider the Definitive Treaties as only giving the dress of form to those contracts and not as constituting the obligation of them. Had the cessation of hostilities been the effect of a truce and consequently nothing more than a temporary suspension of War another construction would have been the true one."

<sup>54</sup> A) Smith vs. State of Maryland, 6 Cranch S.C. Reports 286 (U.S. 1810) (OOSC); B) that case also added an interpretive twist concerning the application of Article 6 of the Treaty of Paris (1783). By the mere application and construction of the laws of the State of Maryland passed in 1780, confiscations were considered complete notwithstanding the properties of British subjects still remained to be discovered or seized thereby skirting the Treaty provision entirely; C) the State of New York's confiscation laws are considered to have been self-executing upon conviction. see Robins Island Preservation Fund vs. Southold Development Corp., 959 F. 2d. 409 at 416-17 (U.S. 2d. Cir. 1992) (OOU).

<sup>55</sup> ibid., footnote 34, Mercier Memorial, pg. 7 (OOA).

Commissioners then the one which was later arrived at by the U.S. Supreme Court in 1810. The fixed difference in time between the cessation of hostilities and the signing of the Treaty of Peace, may have been significant in those cases where the title remained to be perfected, between those two events.

#### 5. Conclusion

The precedential value of the Governor of Canada's decision in the Mercier/Halsted case may be limited to instances of military sequestrations having taken place in Canada during the American Revolution which fall within the meaning of Article 9 of Jay's Treaty (see Appendix V, Tab 5). In a very limited number of cases an argument for restoration based on that precedent might be advanced if the state had not taken paper title before signing a treaty of peace - notwithstanding it had made an entry -, where the terms of such a treaty and/or municipal legislation were vague or non-existent, and where there was in existence a Real Property Convention between the warring states.

## CHAPTER 2

NOVA SCOTIA

## 1. Introduction

This Chapter discusses the Province of Nova Scotia's legislative scheme for confiscating real property during the American Revolution, with particular emphasis on the case of Mr. James Boyd and his claim to Congress for compensation for losses occasioned during the Revolution, and his resultant reward.

Some of the factors influencing Mr. Boyd's decision to side with the Americans and take refuge in the United States in 1777, can be directly attributed to his loss of a large conditional land grant in 1774, followed by financial hardships in 1775. Incidents occurring in and around Nova Scotia during that period may have also affected his decision.

The first local military encounter found to have been recorded in correspondence passing between the Governor of Nova Scotia and Colonial Secretary, was the attack and capture of the armed British Schooner Margeritta at Mechias (Machias) <sup>1</sup> on June 11-12, 1775. Major-General Eyre Massey was to later describe Mechias as "... the nest of Pirates and Rebels." <sup>2</sup> That incident was followed by the burning of Fort Frederick in Saint John Harbour in October 1775. That fort was at that time without

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<sup>1</sup> Mechias was then located in the Province of Massachussetts Bay, on the North Shore of the Bay of Fundy, about 20 miles from the Nova Scotia border. There were around 700 to 800 inhabitants in the neighborhood of Mechias.

<sup>2</sup> Letter. Maj.-Gen. Eyre Massey (Com. of the Brit. forces at Halifax, N.S.) to Lord George [Sackville] Germain (Col. Secty.), dtd. June 10, 1777. found in MG11, C.O. 217, Nova Scotia "A", vol. 97, Nova Scotia and Cape Breton Orig. Corres., Arbuthnot and Massey, pg. 170 to 173 at 172, mf. C-9132 (00A).

cannon or troops. A general concern had been thrown out a little earlier about the suspected loyalty of the militia around the areas of Passamaquoddy Bay and Saint John River, whose inhabitants were largely from the New England States. October 1775, was also the month the American forces invaded the Province of Quebec. They were not dispersed until June 1776. General Benedict Arnold evacuated Montreal on the 15th of that month. Between November 7-28, 1776, Fort Cumberland (also called Fort Beausejour) <sup>3</sup> was under siege, but it did not fall. That encounter involved about 200 loyal British defenders and between 300 and 400 attackers. The invasion force was comprised of 50 men from Mechias and Sunbury County, N.S., a few Indians, Acadians, and a large group of local inhabitants. In July 1777, Saint John was recaptured. Mechias was attacked for the first time by the British on August 14-15, 1777, with a party of 123 marines, who found themselves at odds with 400 locals, who managed to chase them away long before the destruction of the town was complete. <sup>4</sup>

## 2. Background

Mr. James Boyd received a grant of 1,000 acres - subject to the normal conditions of cultivation and payment of a yearly quit rent - straddling the Bocabec River in the County of Sunbury, Province of Nova

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<sup>3</sup> Fort Cumberland is located upon the Isthmus of Nova Scotia, in the vicinity of the Cumberland Basin, in the Bay of Fundy. It is visible from the VIA Rail Passenger train on the Ocean & Atlantic route when passing between the Sackville, N.B., and Amherst, N.S., station stops.

<sup>4</sup> for MS material covering those aspects of Nova Scotia's history, see generally A) MG11, C.O. 217, Nova Scotia "A", vol. 93-97, Nova Scotia and Cape Breton Orig. Corres., Legge, Arbuthnot, and Massey, 1775-1777 (OOA); and, B) RGI, Part IV, vol. 364, Spec. Subjects, Military Rcds., Transcripts fm. Mass. Pub. Rcds. Relating to the Amer. Invasion of Nova Scotia, 1775-1805 (NSHP).

Scotia, by deed dated March 28, 1767.<sup>5</sup> While the deed mentions the Dickawissett River as a point of reference, that description was later corrected to the Bocabec River,<sup>6</sup> and is properly shown in a survey of the lands dated 1829.<sup>7</sup> Following the division of Nova Scotia in 1784 creating the Province of New Brunswick,<sup>8</sup> his lands formed part of Charlotte County, and are now situated near the present town site of Saint Andrews, N.B.

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<sup>5</sup> A) Crown Grant to James Boyd. dtd. March 28, 1767. found in Nova Scotia Grant Records, vol. 6, pg. 649 to 651 (N.B. Dept. of Natural Resources and Energy, Crown Lands Branch); B) this grant is mentioned in an article published in the Saint Croix Courier, November 3, 1892, pg. 1, mf. (OONL). That article was published in a column entitled "Glimpses of the Past: Contributions to the History of Charlotte County and the Border Towns", article no. XL (40) "Early Grants"; C) the order-in-council approving that grant was passed March 13, 1767. found in MG11, C.O. 220, Nova Scotia "B", vol. 14, Nova Scotia... Sess. Papers, Min. of the Exec. Concl., pg. 104 and 108 (transcript copy), bnd. vol. (OOA). Copies of that minute are not presently available from this archives due to the fragile condition of the collection which awaits microfilming.

<sup>6</sup> Ganong, William F., "A Monograph of Historic Sites in the Province of New Brunswick", Royal Society of Canada: Proceedings and Transactions, Ottawa, 2nd Ser., vol. 5 (1899), Sect. 2, pg. 213 to 357 at 331-2 (OONL). call no. stks. fol. AS42 R6.

<sup>7</sup> A) Charlotte County Grant Plan no. 2/5. dtd. 1829 (N.B. Crown Lands Branch). A seven line historical note concerning the lands surveyed forms part of that document (see plan on following page); B) the Saint Andrews, N.B., Land Registry Office has a plan of survey which shows all Crown grant locations in that area. In that plan James Boyd is misnomered John Boyd (copy of plan follows).

<sup>8</sup> Saint John Gazette, September 9, 1784, pg. 2, mf. (OONL).

FIGURE 4

As the undermentioned have never been surveyed, but were laid out in 1776 in the Parish of Wapamony, in which the grant is made - Mr. Currier who purchased Landon's & Bland's tract & now lives on them - has the original Plan affixed to the grant and can point out the places of Beginnings by which these tracts are to be bounded with care & which would have been done before had not the very great pressure of publick business prevented our attention to private property -

Landon's allotted to it in 1776  
 1776  
 1776

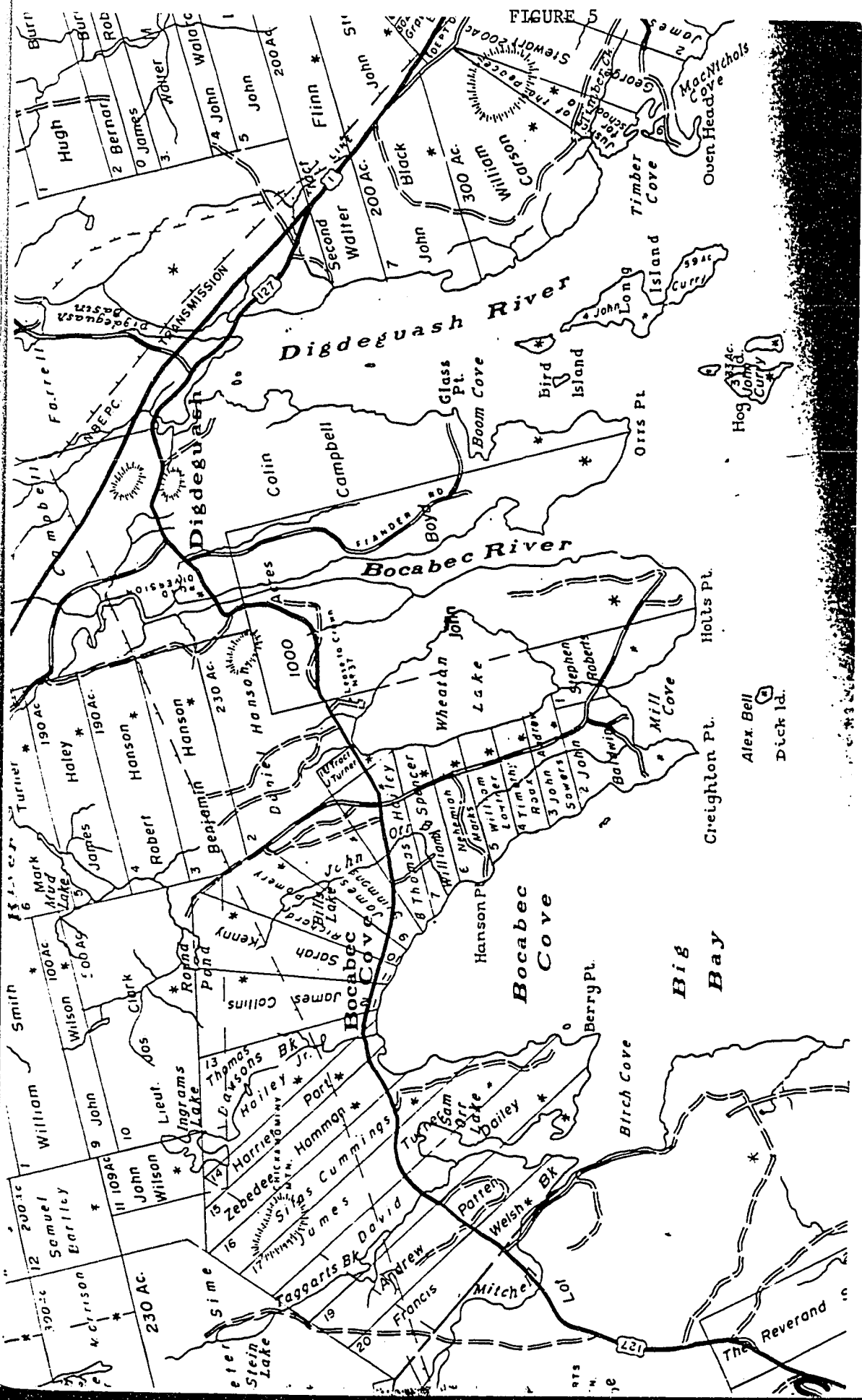
Reserve



Grant Day

1776

Charlotte County, N.B., Grant Plan no. 2/5, dated 1829, showing the 1000 acre parcel granted to James Boyd on the Bocabec River near Saint Andrews, N.B., by deed dated March 28, 1767. The plan was provided courtesy of N.B. Department of Natural Resources and Energy, Crown Lands Branch, Fredericton, N.B.



Plan of Survey showing James Boyd's (misnumbered John Boyd) 1000 acre Crown grant on the Bocabec River near Saint Andrews, N.B. A copy of the Grant Map is on file at the Charlotte County Registry Office, Saint Andrews, N.B.

In addition to that grant, on March 13, 1767, he received a licence of occupation for Lutteral or Fish Island, and a reservation of a further 50,000 acres located near the Eastern head of the Scoodick River (now known as the St. Croix River), for a one year period ending June 1768, given to him subject to settling 50 families thereon, which lands are also located in the Saint Andrews area. <sup>9</sup>

The Nova Scotia Executive Council resolved, on March 13, 1767, to appoint Mr. Boyd a Justice of the Peace for the district starting at the Saint Johns River and ending at the western boundary of the Province (Quebec border). The Commission was issued to Mr. Boyd on March 17, 1767. <sup>10</sup>

A complaint was laid by Mr. John Curry (also seen spelled Currie) in November 1775, before the Nova Scotia Executive Council concerning the conduct of Mr. Boyd who is alleged to have solicited the assistance of the American Rebels located at Mechias, to carry away his own goods following an attachment by the Deputy Provost Marshall, and who is also said to have otherwise prevented due execution of the laws. The Executive Council had resolved to have Commodore Mariot Arbuthnot cause a Man of War to proceed

<sup>9</sup> A) N.S. Executive Council Minute. dtd. March 13, 1767. found in RG1, Part II, vol. 189, Prs. Relating to the Internal Administration of Nova Scotia, Exec. Concl. Min., 1766-1783, pg. 45 and 46, mf. 15289 (NSHP); B) a white print of that same minute is additionally found in George Chalmers Prs., Prs. Relating to Nova Scotia, pg. 34, bnd. vol. (true copy) (NYPL); C) that minute is also found in MG11, C.O. 220, Nova Scotia "B", vol. 14, Nova Scotia... Sess. Prs., Min. of the Exec. Concl., pg. 104, 111 and 112 (transcript copy), bnd. vol. (OOA); D) that minute and the MS letters referenced in footnotes 18A and 33 are also fully printed in Saint Croix Courier, April 12, 1894, pg. 1, "Glimpses of the Past", article no. CXI (140) "James Boyd" (poor copy) (OONL).

<sup>10</sup> A) Order-in-Council. dtd. March 13, 1767. found in MG11, C.O. 220, Nova Scotia "B", vol. 14, Nova Scotia... Sess. Prs., Min. of the Exec. Concl., pg. 107 (transcript copy), bnd. vol. (OOA); B) Commission to James Boyd as Justice of the Peace. dtd. March 17, 1767. found in MG23 D2, vol. 1, Edward Winslow Prs., acsn. no. 1767 (2 pg.), mf. M-145 (OOA).

to the area and return him to Halifax once captured. <sup>11</sup> Several days later, in response to American military activity, the Executive Council resolved to declare martial law in the Province, <sup>12</sup> which was proclaimed on December 5, 1775. <sup>13</sup> Mr. Boyd remained in the Province until 1777, and his family which included 5 sons, remained there until 1778. <sup>14</sup>

<sup>11</sup> A) N.S. Executive Council Minute. dtd. November 21, 1775. found in MG9 B1, vol. 1, Nova Scotia: Exec. Concl., Duplicate Orig. Min. Bk. 1770-75, pg. 375 to 376, file box, (OOA). Extract from Minute:

"Read the Memorial and other papers from John Curry Esq. (of Passamaquoddy) one of His Majesty's Justices of the Peace for the County of Sunbury; setting forth that James Boyd of Passamaquoddy and Justice of the Peace, being indebted to the Memorialist, and his goods being attached, he the said Boyd had applied to the Rebels of Mechias to interpose and to take away the goods attached by the Deputy Provost Marshall. Also that the said Boyd corresponded with the said Rebels, and Solicited one of the Chiefs of them, to come to his relief, and prevent the Execution of the Laws, also alleging several other acts of the same nature against said Boyd."

The Memorial and other papers referred to in that Council Minute were not located at the Public Archives of Nova Scotia; B) I did however manage to locate a letter of acknowledgement to that complaint from the Provincial Secretary which reads in full as follows:

"I have received your letter of the 24th last month [October 1775], which together with your Memorial has been laid before the Governor and Council, and Captain Duddingston of the Senegal is Impover'd by Commission of the Peace to take such measures as shall be necessary for the Public Service. As to your suit in the Court, you have obtained Judgment and you will receive further information from your Attorney."

see Letter. Richard Bulkeley (Prov. Secty.) to John Curry (of Passamaquoddy). dtd. November 28, 1775. found in RG1, Part I, vol. 136, Corres. of the Gov. and Prov. Secty. of Nova Scotia, Inland Letter Book, 1760-1784, pg. 231, mf. 15272 (NSHP). I did not come across any Supreme Court records from that period with John Curry named in a suit against James Boyd; C) what I did find was a record of a Writ of Attachment against him to the value of £12 in the case Benjamin Yoxell vs. James Boyd (N.S. S.C. 1775). dtd. April 25, 1775. served July 15, 1775. items of personal property attached July 17, 1775. found in RG39, ser. "C", vol. 16, file 38, Sup. Ct. Reds., Halifax Co. (NSHP). That action had been commenced to recover interest and principal on a loan.

<sup>12</sup> id., footnote 11A, Minute dtd. November 30, 1775, pg. 383 (OOA). Extract from Minute:

"Resolved that Martial Law be declared and that a Proclamation be issued for that purpose."

<sup>13</sup> Letter. Maj. Francis Legge (Gov.in-Chief of N.S.) to Lord [William Legge] Dartmouth (Col. Secty.) (No. 53). dtd. December 5, 1775. found in MG11, C.O. 217, Nova Scotia "A", vol. 94, Nova Scotia and Cape Breton, Orig. Corres., Legge, pg. 283 to 291 at 285, mf. C-9132 (transcript copy) (OOA). Extracted remarks from letter:

"In consequence of these Hostile invasions [American forces having invaded the Province of Quebec, and American vessels of war cruising for Prizes], I have by the Advice of His Majesty's Council, proclaimed Martial Law, as I judged it was necessary to put the whole Province in Military Array to repel these Invaders, a copy of which Proclamation is herewith enclosed."

Correspondence with persons in arms against the Crown was proclaimed to be a treasonable crime. The Proclamation is in fact found with that letter.

<sup>14</sup> A) Petition of James Boyd to the Senate and House of Representatives of the Commonwealth of Massachusetts. dtd. November 1, 1784. (original) (M-Ar.). Endorsed, report read in Senate and House June 22, 1786; B) that petition is referred to in 1786 Massachusetts Resolves, chap. 87, September Session, found in Early American Imprints, 1st Ser., Evans acsn. no. 19793, pg. 135 and 136 (OONL). The full title of that chapter is "Letter of Instruction to the Delegates At Congress, Respecting James Boyd, To Be Signed And Forwarded By The Governor"; C) an edited version of Mr. Boyd's petition, and another printing of that

The 1,000 acre parcel had been mortgaged by Mr. Boyd to Mr. Curry by registered instrument dated August 20, 1777. Mr. Boyd defaulted in his payments and Mr. Curry exercised his rights as a creditor. The property was offered for sale at public auction in 1780 and Mr. Curry purchased it with the high bid of £32.<sup>15</sup> That parcel of land was later conveyed by Mr. Curry to members of the McMashen family in August 1795. That deed of land includes a recital about the earlier Sheriffs sale.<sup>16</sup>

The 50,000 acre reserve was discontinued at an Executive Council meeting held in August 1774, as only 20 families were settled onto those lands.<sup>17</sup> Ten months prior to the passing of that order-in-council, the Attorney General of Nova Scotia had written a letter to the Earl of Errol in Scotland, asking for his assistance in obtaining Mr. Boyd's grant. The

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Massachusetts Resolve found in American State Papers: Documents, Legislative and Executive of the Congress of the United States, Walter Lowrie (ed.), vol. 1 (Wash.: Gales and Seaton, 1832), pg. 97, mf. (OONL); D) Petition of James Boyd to the U.S. Congress. dtd. November 27, 1789. found in RG59, Gen. Rcds. of the Dept. of St., Entry 820, Misc. MS. Title "Boyd's Case and Papers Relative to Lands on the River St. Croix", unp. (21 pg.) (DNS). Included in that petition is an MS copy of the Massachusetts Resolve.

<sup>15</sup> Sheriffs Deed. William Shaw (Dpty. Provost Marshall) to John Curry (Jus. of the Peace). dtd. April 17, 1780. reg. May 1, 1780. found in RG47, Registry of Deeds, Halifax County, vol. 16, inst. no. 133, pg. 283 and 284, mf. 17873 (NSHP).

<sup>16</sup> A) Deed of Land. John Curry to James, Patrick, John and Daniel McMashen. dtd. August 17, 1795. reg. November 20, 1795. found in Land Bk. B, inst. no. 701, pg. 405 to 407 (Saint Andrews, N.B., Land Registry Office). Reads in part:

"being the same tract formerly granted by the Governor of Nova Scotia to James Boyd Esq. and taken in Execution on my suit against him..."

B) a very useful MS guide to the location of early deed books and court records for Charlotte County is MG9 A10, vol. 3, New Brunswick: Rep. on Archives and Local Rcds., pg. 77, 86, 87 and 137, file box (OOA). Charlotte County records start in 1785. Records prior to that date might be found amongst those of Halifax County, N.S.: C) Petition of John Currie. dtd. 1785. found in MG9 A5, vol. 5, New Brunswick: Crown Lands Dept., Charlotte County Land Petitions 1765-1857, Petition no. 52, pg. 3 (Index) and 5 (petitions) (typed transcript), file box (OOA). This petition provides another account of how Mr. Curry acquired James Boyd's interest in the 1000 acre parcel:

"This property has become his through a regular course of law on account of Boyd's indebtedness to him."

<sup>17</sup> supra; footnote 11A, Minute, dtd. August 23, 1774, pg. 136 and 137 (OOA). The Attorney General had indicated in a letter that the date of the Council meeting was April 7, 1773. That letter is referenced in footnote 18A which follows.

Earl of Errol had earlier recommended Mr. Boyd to Governor William Campbell for a grant of land - possibly sometime between 1763 and 1767. Mr. Boyd is described in the letter as being a "dependent" of the Earl's. Also mentioned is the fact that Mr. Boyd had settled 26 families or 125 persons onto those lands.<sup>18</sup> The matter had also been brought to the attention of the Board of Trade and Plantations at least eighteen months prior to that order-in-council by Mr. William Boyd, a brother and business partner of Mr. James Boyd, who it appears had received a favourable reply.<sup>19</sup> Mr. Boyd had built a house on this land, which he erected on St. Andrews' point near the mouth of the St. Croix River.<sup>20</sup>

### 3. Confiscation Laws Of Nova Scotia

A local Act of Attainder introduced and passed by both the Nova Scotia Legislative Council and House of Assembly in June 1779, received the assent of the Lieutenant Governor on June 28, 1779.<sup>21</sup> Its provisions

<sup>18</sup> A) Letter. William Nesbitt (Atty. Gen.) to [James Boyd (Hay) Earl of Erroll]. dtd. November 12, 1773. found in George Chalmers Prs., Prs. relating to Nova Scotia, pg. 36 (2 pg.), bnd. vol. (NYPL). Only white print copies are available. Mentioned but not found with that letter are copies of Mr. Boyd's memorial to the Executive Council dated 1773, and a reply thereto; B) Doull, Hon. Justice John, "The First Five Attorney-Generals of Nova Scotia", Nova Scotia Historical Society Collections, Halifax, vol. 26 (1945), pg. 33 to 48 at 34 (OOU). call no. FG2301.C645. Includes a list of Nova Scotia's Attorney Generals from 1750 to 1933.

<sup>19</sup> Letter. [Hon. Gen.] William Gordon (of Fyvie Castle) to [William] Boyd. dtd. March 23, 1773. found in George Chalmers Prs., Prs. Relating to Nova Scotia, pg. 35 (1 pg.), bnd. vol. (NYPL). Only white print copies are available.

<sup>20</sup> supra., footnote 14A, Petition of James Boyd.

<sup>21</sup> A) 1) An Act for the More Effectual Securing all the Goods, Chattels, Lands and Tenements, Belonging to Such Persons Who Have Deserted This Province, to Join His Majesty's Rebellious Subjects in the Other Colonies (1779), 19 Geo. 3, c. 17 (N.S.). 1779 Nova Scotia Temporary Acts, found in Canadian Imprints 1751-1800, Tremaine acsn. no. 318, pg. 211 and 212, mf. (OONL). call no. MC-1, reel 6; ii) a copy of the original MS Bill is also extant. found in RG5, Ser. "S", vol. 5, Rcds. of the Legisv. Asmby. of Nova Scotia, Stat., 1775-1779, unp. (6 pg.), file box (NSHP); iii) a different MS copy of that Act, known as MS "Bill 308" is extant. found in MG11, C.O. 219, vol. 15, Nova Scotia Acts, pg. 73 to 76, mf. B-1371 (OOA); iv) the Act was also printed in Nova Scotia Gazette and Weekly Chronicle, July 13, 1779, pg. 1, mf. (OONL); B) 1) An Act in Amendment of an Act Made in the 19th Year of His Present Majesty's Reign, Entitled an Act for the More Effectual Securing all the Goods, Chattels, Lands and Tenements, Belonging to Such Persons Who Have Deserted This Province, to Join His Majesty's Rebellious Subjects in the Other Colonies (1780), 20 Geo. 3, c. 10 (N.S.). Printed in Nova Scotia Gazette and Weekly Chronicle, November 14, 1780, pg. 3, mf. (OONL); ii) a copy of the MS bill is also available. found in RG5, Ser. "S", vol. 6, Rcds. of the Legisv. Asmby. of Nova Scotia, Stat., 1780-1785, unp. (3 pg.), file box (NSHP); iii) a different MS copy of the

applied to persons who had deserted the Province and joined the American rebel cause, and who would have forfeited their property upon conviction under due course of the law. The Commissioners were given the power to seize and immediately sell chattels, but were limited to renting real estate, pending actual conviction or acquittal. All conveyances made three months prior to their departures were deemed fraudulent and void. A copy of that Act was transmitted to London for approval in August 1779.<sup>22</sup> An objection concerning it was raised by the Legal Counsel for the Board of Trade and Plantations to whom it had been referred for review, as in his opinion the three month clause voided voluntary conveyances made to purchasers who had paid fair market value where no color of fraud existed.<sup>23</sup> Notwithstanding that objection, the Lord Commissioners recognized that the Act was well intended, and for that reason did not withhold sending it to

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amended Act, known as MS "Bill 316" survives. found in MG11, C.O. 219, vol. 15, Nova Scotia Acts, pg. 90 to 92, mf. B-1371 (OOA): C) there is evidence to suggest that the Province of Nova Scotia took steps at least one and a half years prior to the passage of that Act to gather information about the estates of persons taking arms against the Crown in support of the American cause. see Letter. Richard Bulkeley (Prov. Secty.) to Maj. Edward Barron (Militia off., Co. of Cumberland). dtd. November 21, 1777. found in RGI, Part I, vol. 136, Corres. of the Gov. and Prov. Secty. of Nova Scotia, Inland Letter Book, 1760-1784, pg. 258, mf. 15272 (NSHP). Reads in full:

"Enclosed you have the Commission for the Coroner. The Lieutenant Governor desires you would send an exact Account of the Lands, goods, Chattles, Cattle and other Effects of the persons who have been in Arms and have since fled or Absconded, and what is become of them and in whose possession they are."

<sup>22</sup> Letter. Sir Richard Hughes (Lt. Gov. of N.S.) to Lord George [Sackville] Germain (Col. Secty.) (No. 15). dtd. August 2, 1779. found in MG11, C.O. 217, Nova Scotia "A", vol. 99, Nova Scotia and Cape Breton. Orig. Corres., Hughes, Franklin and McLean, pg. 96 and 97, mf. C-9133 (OOA).

<sup>23</sup> Report. Richard Jackson (Counsel) to Lord Commissioners of the Board of Trade and Plantations. dtd. November 10, 1779. found in MG11, C.O. 217, vol. 28, Nova Scotia and Cape Breton, Orig. Corres., Board of Trade, pg. 38 to 40 at 38, mf. B-1031 (OOA). Extracted opinion:

"And I conceive that, however well intended, it contains a clause altogether irreconcilable with Justice, namely, that which renders void all Deeds and Sales of Land by Persons who have deserted or shall desert the Province within three Months before their Desertion. It is obvious that such sales may have been made to fair Purchasors, though probably more often otherwise, but a Distinction should certainly be made between cases where a fair Price has truly been paid and where the Conveyance is Voluntary the Consideration being either nothing or only colourable."

the King for approval, but they did recommend that it be amended.<sup>24</sup> There was later found to be no objection to the amended Act which had repealed the offending section.<sup>25</sup> The Lieutenant Governor appointed the members of the Legislative Council Commissioners of the estates subject to forfeiture, pursuant to the provisions of that Act, on August 3, 1779.<sup>26</sup> Neither Newfoundland nor St. John's Island (now known as Prince Edward Island) passed local Acts of Attainder during the American Revolution.

Until such time as all letter books and papers of Attorney-Generals of Nova Scotia holding office during the American Revolution materialize and are made available for study, very little will be known about the operation or effect of Nova Scotia's Confiscation Act. The only manuscript material I managed to locate at the Public Archives of Nova Scotia dealing with that subject-matter, was a letter included in the Provincial Secretary's correspondence suggesting that confiscated lands would not be allocated as compensation to persons suffering injuries or

<sup>24</sup> Letter. Lord Commissioners of the Board of Trade and Plantations to Sir Richard Hughes (Lt. Gov. of N.S.). dtd. December 15, 1779. found in MG11, C.O. 217, Nova Scotia "A", vol. 99, Nova Scotia and Cape Breton, Orig. Corres., Hughes, Franklin and McLean, pg. 219 to 225 at 221-22, mf. C-9133 (OOA). Extracted remark from letter:

"... in tenderness to the general good spirit and purposes of the Act that we abstain from reporting any observations to the Throne but we do seriously recommend to you to take such speedy and prudent measures in concurrence with his Majesty's Council and law servants in the Province as shall induce the Assembly to concur in a mitigation of this clause by an Amending Law, so far as it concerns what we have now stated."

<sup>25</sup> A) Report. Richard Jackson (Counsel) to Lord Commissioners of the Board of Trade and Plantations. dtd. March 5, 1781. found in MG11, C.O. 217, vol. 28, Nova Scotia and Cape Breton, Orig. Corres., Board of Trade, pg. 130 to 131, mf. B-1031 (OOA); B) the amended Act had been transmitted to London on November 7, 1780. Letter. Sir Richard Hughes (Lt. Gov. of N.S.) to Lord George [Sackville] Germain (Col. Secty.). dtd. November 7, 1780. found in MG11, Nova Scotia "A", vol. 100, Nova Scotia and Cape Breton, Orig. Corres., Hughes, Franklin and McLean, pg. 149 to 155, mf. C-9133 (transcript copy) (OOA).

<sup>26</sup> N.S. Executive Council Minute. dtd. August 3, 1779. found in RG1, Part II, vol. 189, Pts. Relating to the Internal Administration of Nova Scotia, Exec. Concl. Min., 1766-1783, pg. 457 and 458, mf. 15289 (NSHP).

losses during the rebellion, <sup>27</sup> and in RGl, Part II, I came across a list of thirty named persons having forfeited a total of 17,500 acres in Barrington Township, Shelburn County, as a consequence of their supporting the American cause, <sup>28</sup> a petition asking that their lands be resettled, <sup>29</sup> another requesting a grant of Mr. Barnabas Baker's 750 acre lot (Lot 57),<sup>30</sup> along with an affidavit indicating that Mr. Baker had abandoned his land and joined the Americans in 1775. <sup>31</sup>

#### 4. James Boyd's Claim For Compensation And Award By Congress

In 1784, Mr. Boyd had petitioned the State of Massachusetts for reinstatement of the 50,000 acre reserve - which he said had been granted to him upon condition of settlement - if it should fall within that State following a proposed boundary settlement, or in the alternative, he had asked to be granted other lands in that State around the same area. Mr. Boyd's petition seems to have somewhat misrepresented the original condition which had been attached to his reserved parcel of land. In his

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<sup>27</sup> Letter. Richard Bulkeley (Prov. Secty.) to Lt.-Col. Joseph Goreham (Brit. army off. at Fort Cumberland). dtd. June 8, 1779. found in RGl, Part I, vol. 136, Corres. of the Gov. and Prov. Secty. of Nova Scotia, Inland Letter Book, 1760-1784, pg. 272 and 273 at 273, mf. 15272 (NSHP). Reads in part:

"The Lieutenant Governor will soon Order an Exact Account to be made of the Effects and Estates of the Absconding Rebels and how they have been disposed of, but it cannot be expected, that any persons whatever shall be rewarded for their Merits, at the expence of others, by giving to them those Lands on which several persons may have legal demands, to make good the injuries and wrongs which have been done to them."

<sup>28</sup> List of Lands Forfeited in Barrington. n.d. found in RGl, Part II, vol. 223, Pps. Relating to the Internal Administration of the Govt. of Nova Scotia, Selections fm. the Files of the Off. of Govt. Officials, 1783-1787, acsn. no. 98, mf. 15329 (NSHP).

<sup>29</sup> Copy of Certificate From Justice of the Peace A. Smith and Others at Barrington Respecting Certain Lands the Proprietors of Which Took Part in the Rebellion. dtd. January 4, 1784. found in id., footnote 28, acsn. no. 99 (NSHP).

<sup>30</sup> Memorial of David Dunscomb to His Excellency John Parr, Praying Leave to Settle on the Land Formerly Owned by Barnabas Baker. dtd. February 14, 1784. found in supra., footnote 28, acsn. no. 101 (NSHP).

<sup>31</sup> Deposition of Josiah Sears Respecting the Land of Barnabas Baker Who Joined the Supporters of Congress in Their Rebellion. dtd. March 4, 1784. found in supra., footnote 28, acsn. no. 100 (NSHP).

petition he used the following words to describe that condition and the manner in which he carried it out:

"...upon condition of introducing 50 persons to work upon and clear up the same... [he] carried thither 19 head of new cattle. He invited and introduced upon the same lands nearly the number of persons required, according to the condition of the tenure by which he possessed the same, and built two saw mills thereon..."<sup>32</sup>

It will be remembered that the original requirement had been to settle 50 families onto that land.

There is no existing documentary evidence save that petition which indicates that those lands were in fact ever granted to Mr. Boyd. His statement may have been self-serving for the purposes of that petition. There does still, however, exist a letter from one of his nephews sent in 1815, to the Board of Trade and Plantations, in which his nephew inquired about the status of the 50,000 acre reserve. His nephew was then under the belief that a favourable answer had much earlier been given by the Board to his father, Mr. William Boyd, but he was uncertain and was asking to be properly advised.<sup>33</sup>

While there is nothing to suggest that any of Mr. Boyd's property interests were ever formerly confiscated by the Crown, his case is interesting from the perspective that his heirs were awarded 2,040 acres in

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<sup>32</sup> supra., footnote 14A, Petition of James Boyd.

<sup>33</sup> Letter. Rev. William Boyd (nephew) to George Chalmers (Secty. to the Board of Trade and Plantations). dtd. January 20, 1815. found in George Chalmers Prs., Prs. Relating to Nova Scotia, pg. 37 (3 pg.) (NYPL). Only white print copies are available. This letter provides a brief historical chronology of the events surrounding the land reserve.

the refugee tract in Ohio in 1812 <sup>34</sup> on account that "He lost fifty thousand acres of land, on which were some valuable improvements, on the east side of what is now known to be the river St. Croix." <sup>35</sup> His heirs located seven lots in 1812 totalling 2,276.04 acres. <sup>36</sup> This was the single largest land grant awarded to a Canadian refugee by Congress on account of losses sustained during the American Revolution.

#### 5. Pardons

All disloyal subjects of Nova Scotia who had sided with the rebels during the American Revolution, and who had as a consequence thereof exposed themselves to the possibility of forfeiting their properties, were offered pardons upon returning to the Province, by an Act passed December 2, 1783, which Act promised a saving of the pains and penalties of forfeiture. <sup>37</sup> That pardon applied to all cases which had not yet been prosecuted, and to cases in which a sentence had not yet been handed down ("future confiscations"). While a Governor was then recognized as having a general power to pardon, that power did not extend to cases of high

<sup>34</sup> A) An Act Making Provision for Certain Persons Claiming Lands Under the Several Acts for the Relief of the Refugees From the British Provinces of Canada and Nova Scotia, 12th Cong. 1st Sess. c. 63 (1812). found in Early American Imprints, 2nd Ser., Shaw-Shoemaker acsn. no. 26940, pg. 120 and 121 (OONL); B) also printed in U.S., Statutes at Large, Richard Peters (ed.), vol. 2 (Boston: Charles C. Little and James Brown, 1845), pg. 712, mf. (OONL).

<sup>35</sup> A) House Report no. 56, entitled "Refugees From Canada And Nova Scotia". dtd. May 8, 1800. found in CIS US Serial Set, American State Papers, class 8 (public lands), serial no. 28, vol. 1, pg. 106 and 107 (OONL). That report includes "A list of [73] Canadian and Nova Scotia refugees who have exhibited claims for bounty in pursuance of an Act of Congress passed the 7th day of April, 1798": B) House Report no. 58. same title. dtd. May 9, 1800. id., U.S. Serial Set, pg. 110 (OONL).

<sup>36</sup> see Appendix VII, Tab 7.

<sup>37</sup> A) An Act for Granting the King's Most Gracious Free Pardon, to all His Subjects in This Province, for all Treasons, Mispriison of Treasons, or Treasonable Correspondence Committed or Done by Them, or any of Them, in Adhering to, Aiding or Assisting, Countenancing or Abetting, His Majesty's Late Subjects in the Thirteen Colonies During Their Rebellion (1783), 23 Geo. 3, c. 3 (N.S.). found in Nova Scotia Statutes at Large, Richard Uniacke (ed.), vol. 1, 1970 ed. (Halifax: John Howe and Son, 1805), pg. 233 (OONL). call no. KA605 N6 fol. v.1.; B) that Act is also printed in Nova Scotia Gazette and Weekly Chronicle, December 23, 1783, pg. 2 and 3, mf. (OONL); C) Notice of the King's confirmation of that Act was published in id., Gazette, August 24, 1784, pg. 3 (OONL).

treason, nor would the King's confirmation of such an Act restore property in cases where forfeitures had already taken place, without a special Act of Parliament. <sup>38</sup>

## 6. Conclusion

While it is apparent from my research that "exact account[s]" were made of the estates of persons residing in Nova Scotia, who supported the American cause, such accounts do not presently form part of the collection of the Public Archives of Nova Scotia, and they may in fact no longer exist. An alternative method of studying that question would be to review Nova Scotia refugee claims papers at the National Archives and Records Administration, in Washington (see Appendix VII, Tab 7, and footnote 35). The Petition of Mr. James Boyd is specifically mentioned in one of their published finding aids (see footnote 14D). <sup>39</sup> Other revolutionary claims petitions exist in other record groups. A comparison of names from a list of claimants reveals that at least nine individuals from Cumberland County charged with High Treason in April 1777, filed claims with Congress for compensation. <sup>40</sup> A thorough review of the Canadian refugee claims papers might help identify other Nova Scotia refugees from amongst the group of claimants. Nova Scotia Supreme Court records and registered title documents should be consulted to supplement the information found in the

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<sup>38</sup> Murdoch, Beamish, Epitome of the Laws of Nova Scotia, vol. 1, 1970 ed. (Halifax: Joseph Howe, 1832-33), pg. 95, and vol. 4, pg. 205 (OONL). call no. KA 631 M8 1971.

<sup>39</sup> A Guide to Pre-Federal Records in the National Archives, Howard H. Wehmann, and Benjamin L. DeWhitt (ed.) (Wash.: National Archives and Records Administration, 1989), pg. 309 (OONL). call no. CD 3045 W44 1989 Ref.

<sup>40</sup> Writ of Summons in the case King vs. Jonathan Eddy et. al. (N.S. S.C. 1777). dtd. April 28, 1777. issued June 14, 1777. found in RG39, Ser. "C", vol. 17, file 30, Sup. Ct. Rcds., Halifax Co. (NSHP). The nine accused persons filing claims were: Jonathan Eddy, William How[e], Samuel Rogers, John Starr, Nathan Reynolds, Lewis F. Delesdernier, Lt. William Maxwell, Ebenezer Gardner, and Simon Chester.

claims papers. While my suggested research approach will fall considerably short of recreating the original record, it would certainly be a step in the right direction.

## CHAPTER 3

THE CONFISCATION OF MOUNT PLEASANT ESTATE IN PENNSYLVANIA,  
HOME OF GENERAL BENEDICT ARNOLD, DURING THE AMERICAN REVOLUTION

## 1. Introduction

The focus of this Chapter is to describe the confiscation and sale of the 100 acre Mount Pleasant estate in Philadelphia County, Pennsylvania, during the American Revolution. That house and land were owned by General Benedict Arnold, an attained traitor in that state. Four depictions of the house (a water color and two sketches, circa 1870's; plus one contemporary photograph) are found on pages 64 through 67.

This Chapter is divided into twelve numbered sections. Various themes are addressed, which relate to the legislative history and provisions of Pennsylvania's confiscation laws ("Attainder Acts"), enacted during the American Revolution, with particular emphasis on the claims procedure, the requirements of which undoubtedly frustrated the claims of many legitimate creditors of attained traitors. Complexities arising in the areas of debts, trusts and marriage settlements are illustrated. A question is raised concerning the validity of mortgages registered on lands confiscated by the state, where there was a failure by those types of creditors to file claims pursuant to the legislative requirements of the Attainder Acts. The resolution of this point of law is one legal philosophers would term a "hard case".

The confiscation laws were targeted at a group of persons called American loyalists. There has been a numbers game going on for quite some time which has left us with a variety of estimates for the size of that group. Professor Wallace Brown has recently thrown out a twist which downsizes the traditional numbers. The "usual estimate" put forward was 100,000 loyalist exiles leaving the U.S., from a group of 500,000 active loyalists, in a population of 2,500,000. Professor Brown's "best educated guess" reduced the number of loyalist exiles to 70,000, from a group of active loyalists numbering between 160,000 and 384,000 in size, of which over half settled in Canada. <sup>1</sup> Mr. Paul H. Smith has estimated that a total of 19,000 loyalists fought in the Provincial Corps during the Revolution. <sup>2</sup> The psychological factors which motivated individuals to be patriots or loyalists is also guesswork. Some factors influencing choice may have been closeness to the proprietor, geographical accident, local conditions, invading armies, or office holding. <sup>3</sup> In total close to 500 persons were announced as being attained in Pennsylvania, of which 113 surrendered, leaving 386 conditional attainders to become absolute. <sup>4</sup> By 1790 the

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<sup>1</sup> A) Brown, Wallace, "The Loyalists and the American Revolution", History Today, vol. 12, no. 3 (March 1962), pg. 149 to 157 (OCC); B) Brown, Wallace, The King's Friends: The Composition and Motives of the American Loyalist Claimants (R.I.: Brown University Press, 1965), pg. 249 and 250 (OOU); C) Brown, Wallace, The Good Americans: The Loyalists in the American Revolution, 2nd printing (N.Y.: William Morrow and Co., Inc., 1973), pg. 192 and 227 (OOU); D) Brown, Wallace and Hereward Senior, Victorias in Defeat: The Loyalists in Canada (Toronto; Methuen, 1984), pg. 11, 31, 32, 38, 39, 40 and 50 (OOU); E) Brown's revisions have been heavily criticized in some camps. Henry J. Young suggests the presence of "methodological weakness", North Callahan speaks of "questionable" conclusions, W.H. Nelson uses the term "vener of mock statistics", while Rena Vassar comments on an "over-reliance on the reports of the claims commission." The Book Reviews from which those remarks were taken are referenced in my Selected Bibliography under the title heading "Loyalists".

<sup>2</sup> Smith, Paul H., "The American Loyalists: Notes on their Organization and Numerical Strength", William and Mary Quarterly, 3rd Ser., vol. 25, no. 4 (October 1968), pg. 259 to 277 at 267 (OOU).

<sup>3</sup> A) Hull, N.E.H., et. al., "Choosing Sides: A Quantitative Study of the Personality Determinants of Loyalist and Revolutionary Political Affiliation in New York", Journal of American History, vol. 65, no. 2 (September 1978), pg. 344 to 366 (OOU); B) Allan, Anne Alden, "Patriots and Loyalists: The Choice of Political Allegiances by the Members of Maryland's Proprietary Elite", Journal of Southern History, vol. 38, no. 2 (May 1972), pg. 283 to 292 (OOU).

<sup>4</sup> Young, Henry J., "Treason and its Punishment in Revolutionary Pennsylvania", Pennsylvania Magazine of History and Biography, vol. 90 (July 1966), pg. 287 to 313 at 306-7 (BVAS).

properties of at least 75 persons, including the property of General Arnold, had been sold pursuant to the provisions of Pennsylvania's confiscation laws. <sup>5</sup>

General Arnold was an American General who was appointed to command Philadelphia on June 19, 1778, <sup>6</sup> immediately following the British evacuation of that city on June 18, 1778. <sup>7</sup> He resigned that Commission on March 18, 1779, following the commencement of court martial proceedings against him. <sup>8</sup> Those proceedings began on December 23, 1779, and a decision was handed down on January 26, 1780, sentencing him to a reprimand by General Washington. <sup>9</sup> The court found he had no right to allow the Schooner Charming Nancy to leave port, and that his use of public wagons for private purposes was improper. General Arnold was later appointed to command West Point Garrison in July 1780, and he deserted that post on September 25, of that same year, following the capture of British Adjutant-

<sup>5</sup> Siebert, Wilbur, H., "The Loyalists of Pennsylvania", Ohio State University Bulletin, vol. 24, no. 23 (April 1920), pg. 93 and 94 (117 pg.) (OKQ).

<sup>6</sup> Letter. George Washington (Com.-in-Chief Contin. Army) to Maj.-Gen. Benedict Arnold. dtd. June 19, 1778. printed in John C. Fitzpatrick (ed.), The Writings of George Washington, vol. 12, 2nd ed. (Westport, Conn.: Greenwood Press, 1970), pg. 94 and 95 (NSWA).

<sup>7</sup> Pennsylvania Packet or the General Advertiser, July 4, 1778, pg. 1, col. 2, mf. (OONL).

<sup>8</sup> Letter. Maj.-Gen. Benedict Arnold to John Jay (Pres. of Cong.). dtd. March 18, 1779. found in Microcopy no. 247 (M247), item 162, Contin. Cong. Prs., Letr. fm. Gen. Off., pg. 169 and 170, mf. 179 (DNA).

<sup>9</sup> A) Proceedings of a General Court Martial... for the Trial of Major General Arnold... (Philadelphia: Francis Bailey, 1780), pg. 55; B) also see supra., footnote 6, Fitzpatrick, vol. 18, pg. 222 to 225. General Orders, April 6, 1780:

"The Commander-in-Chief would have been much happier in an occasion of bestowing commendations on an officer who has rendered such distinguished services to his Country as Major General Arnold; but in the present case, a sense of duty and a regard to candor oblige him to declare that he considers his conduct, in the instance of the permit, as peculiarly reprehensible, both in a civil and military view, and in the affair of the wagons as Imprudent and Improper."

C) it was reported in 1973 that Mary P. Carroll, a direct descendant of General Arnold's, applied to the Army Board for Correction of Military Records to have the court martial case re-examined. The Army Board ruled that insufficient evidence was presented. see New York Times, November 20, 1973, pg. 41, col. 1 (OONL), and Hartford [Connecticut] Courant, June 8, 1973 (CF).

General Major John Andre, with whom he had been secretly corresponding, to surrender that fort. <sup>10</sup> That correspondence had begun around April 1779, shortly following his resignation of the command in Philadelphia. <sup>11</sup> Besides the court martial proceedings, the customary reasons advanced for General Arnold's turncoat activity are past disenchantment over rank, promotion, and back pay, including unsettled accounts remitted following his invasion of Quebec. He died in England on June 14, 1801. <sup>12</sup> An amusing anecdote about the West Point incident appeared in the Daily Universal Register in 1786:

"An American, much celebrated for his gallant services in the cause of liberty and his country was interrogated a few days ago respecting the military character of one Arnold - "Indeed my Lord", answered the American, "his courage is undoubted, he has done good infantry service, but is found upon trial, to be vary want for garrison duty." <sup>13</sup>

General Arnold received some compensation from the British towards the losses he had sustained as a consequence of his defection (see Appendix VIII, Tab 8).

Not all of the biographies about General Arnold have been written in an objective fashion. Amongst his biographers there exists a "pendulum of opinion" swinging between detractors and defenders. <sup>14</sup> One critic went

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<sup>10</sup> Dawson, Henry B. (ed.), Record of the Trial of Joshua Hett Smith, Esq., for Alleged Complicity in the Treason of Benedict Arnold (Morrisania, N.Y.: ?, 1866), pg. 71 (CLU).

<sup>11</sup> Letter. Sir Henry Clinton (Com.-in-Chief Brit. forces in N. Amer.) to Lord George Germain (Col. Secty.). dtd. October 11, 1780. found in C.O. 5, vol. 100, Orig. Corres., Secty. of St., Military Desp., pg. 171 to 182 at 171, mf. B-2971 (OOA).

<sup>12</sup> [London] Times, June 16, 1801, pg. 3, col. 4, mf. (OONL).

<sup>13</sup> [London] Times, May 1, 1786, pg. 2, col. 3, mf. (OONL).

<sup>14</sup> Grant, Charles S., "Book Reviews - Traitorous Hero: The Life and Fortunes of Benedict Arnold by Willard M. Wallace", Journal of American History, vol. 41, no. 2 (September 1954), pg. 320 and 321 (OOU). call no. E171.J87.

as far as to say that General Arnold's treason was "a crime against humanity".<sup>15</sup> Mr. James Thomas Flexner's The Traitor and the Spy (1953) is still said to remain the popular standard biography,<sup>16</sup> notwithstanding the suggestion made by some of his critics that it contains some imaginary material,<sup>17</sup> or "... painfully purple passages...".<sup>18</sup> He may have been the first author permitted to use the John Andre manuscripts located in England and South Australia.<sup>19</sup> Mr. Carl Van Doren caused some controversy with the publication of his book Secret History of the American Revolution (1941), by claiming to be the first author to have examined Sir Henry Clinton's Papers. Those papers shed new light on the Arnold-Andre affair. He later apologized for having made an "unintentional trespass" on the claim of Mr. Robert Langton Douglas, whom he acknowledged to have been the first to use them.<sup>20</sup> Mr. Douglas was given access to those papers in 1894 at Ashley Clinton house, while they were still in the possession of the Clinton family, but he left his article prepared from those manuscripts unpublished for want of making editorial changes.<sup>21</sup> Mr. Edwin Irvine Haines also entered into that debate. He is well known for his book (1938

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<sup>15</sup> "Book Reviews - The Life of Benedict Arnold by Isaac N. Arnold", Nation, vol. 29, no. 755 (December 18, 1879), pg. 425 and 426 (OOU).

<sup>16</sup> Szatmary, David, "Book Reviews - Benedict Arnold: Patriot and Traitor by Willard Sterne Randall", Library Journal, N.Y., vol. 115, no. 12 (July 1990), pg. 106 (OOU). call no. Z671.L7.

<sup>17</sup> Willcox, William B., "Book Reviews - Traitorous Hero: The Life and Fortunes of Benedict Arnold by Willard M. Wallace", American Historical Review, Richmond, Va., vol. 60, no. 1 (October 1954), pg. 121 and 122 (OOU). call no. E171 A57.

<sup>18</sup> Knollenberg, Bernhard, "Book Reviews - The Traitor and the Spy: Benedict Arnold and John Andre by James Thomas Flexner", William and Mary Quarterly, Williamsburg, Va., 3rd Ser., vol. 11, no. 2 (April 1954), pg. 313 to 315 (OOU). call no. F221.W71.

<sup>19</sup> Graff, Henry F., "Book Reviews - The Traitor and the Spy: Benedict Arnold and John Andre by James Thomas Flexner", New York Times Book Review, October 18, 1953, pg. 12 (OOU). call no. Z1035 AlN4.

<sup>20</sup> Van Doren, Carl, "Letters to the Editor - Clinton Papers", New York Times Book Review, November 30, 1941, pg. 38 (OOU).

<sup>21</sup> Douglas, Robert Langton, "Letters to the Editor - The Secret History of the American Revolution by Carl Van Doren", New York Times Book Review, November 9, 1941, pg. 2 and 36 (OOU).

- historical novel) <sup>22</sup> and articles (1932) <sup>23</sup> implicating General Arnold's wife, Mrs. Peggy Shippen, in the complicity to surrender West Point to the British. His claim was that his research had produced transcripts of letters similar in nature to the code letters in the Clinton Papers. <sup>24</sup> In addition he claimed to possess transcripts of letters - unseen by other historians - from the papers of Lieutenant-Colonel Banastre Tarleton, Mrs. Peggy Shippen and Mr. Aaron Burr, proving that Peggy Shippen had a love affair with Major John Andre and was involved in the West Point plot. <sup>25</sup> Mr. Van Doren was at the conclusion of that debate recognized as being the first author - aside from library staff - to use the Clinton Papers at the William L. Clements Library at the University of Michigan. <sup>26</sup> To academic readers I would also recommend Mr. John George Taylor's Some New Light on the Later Life and Last Resting Place of Benedict Arnold (1931), and all of the material referenced in my Selected Bibliography under the title heading "Magazine Articles on General Arnold".

## 2. Confiscation Laws Of Pennsylvania

On June 24, 1776, the Continental Congress resolved that all

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<sup>22</sup> Haines, Edwin Irvine, The Exquisite Siren, the Romance of Peggy Shippen and Major John Andre (Philadelphia: J.B. Lippincott Co., 1938).

<sup>23</sup> A) Haines, Edwin Irvine, "Peggy Shippen: Light on a Tragic Life: Old Letters Hold New Evidence Against the Young Wife of Benedict Arnold in the Famous Treason Episode", New York Times Magazine (January 31, 1932), pg. 4, 5 and 23, mf. (OOU); B) Haines, Edwin Irvine, "The Fatal Web Spun by Peggy Shippen: New Light Thrown on the Role She Played in Bringing About the Downfall of Her Husband, Benedict Arnold", New York Times Magazine (December 4, 1932), pg. 9 and 12, mf. (OOU).

<sup>24</sup> Haines, Edwin Irvine, "Letters to the Editor - Cipher Letters", New York Times Book Review, November 30, 1941, pg. 38 (OOU).

<sup>25</sup> A) Peckham, Howard H., "Letters to the Editor - The Secret History of the American Revolution by Carl Van Doren", New York Times Book Review, December 21, 1941, pg. 2 and 13 (OOU); B) Haines, Edwin Irvine, "Letters to the Editor - Peggy Shippen and Her Treason: Despite History Books She May Have Been Responsible for Benedict Arnold's Transgression", New York Times, January 15, 1933, Section 4, pg. E5, mf. (OOU); C) supra., footnote 23B, Haines pg. 12.

<sup>26</sup> ibid., footnote 25A, Peckham.

persons residing in or passing through the colonies owed allegiance to their laws, and that those joining, assisting or comforting the enemy were guilty of treason. The Congress recommended that the Colonies pass laws to punish such treasons. <sup>27</sup> The President of Congress, Mr. John Hancock, indicated that the resolves were "... calculated to suppress insurrections and to promote good order and obedience to laws in the United Colonies...". <sup>28</sup> Mr. Timothy Pitkin wrote that "In pursuance of this recommendation, the States passed the laws requisite for self-protection, and inflicted the punishment of death, on such as were found guilty of treason." <sup>29</sup> Pennsylvania introduced its Treason Act into the House of Representatives on January 21, 1777, and it was passed into law on February 11, 1777. <sup>30</sup> That Act provided for forfeiture upon conviction of one-half of all real and personal property. The court could order support for the wife and children out of the estate. The Act required that the offender be brought before the court for trial. <sup>31</sup>

The Congress on November 27, 1777, recommended the confiscation

<sup>27</sup> Journals of the Continental Congress, Worthington C. Ford (ed.), vol. 5 (Wash.: Govt. Pr. Off., 1906), pg. 475 (OONL).

<sup>28</sup> Letter. John Hancock to George Washington. dtd. June 25, 1776. printed in Jared Sparks (ed.), Correspondence of the American Revolution; Being Letters of Eminent Men to George Washington..., vol. 1 (Boston: Little, Brown, and Co., 1853), pg. 235 to 237 at 236 (OONL).

<sup>29</sup> Pitkin, Timothy, A Political and Civil History of the United States of America, From the Year 1763 to the Close of the Administration of President Washington, in March, 1797, vol. 1 (New Haven, Conn.: Hezekiah Howe and Durrie & Peck, 1828), pg. 372 (OONL).

<sup>30</sup> Pennsylvania. Journals. found in Early American Imprints, 1st Ser., Evans acsn. no. 17658, pg. 104, 106 and 110, mf. (OONL).

<sup>31</sup> A) An Act Declaring What Shall be Treason..., printed in Statutes at Large of Pennsylvania, vol. 9 (Wm. Stanley Ray, State Printer of Pennsylvania, 1903), pg. 45 to 47 (P). see Appendix IX, Tab 9. Item #1; B) at that time British law provided that persons charged with treason in America could either be prosecuted there under the criminal laws of the American Provinces or be transported to Great Britain for prosecution under the treason statute of King Henry VIII. That Act made provision for forfeiture of all lands "within any of the King's Dominions". There were no support provisions for spouses or children in that statute. see An Act Whereby Offences be Made High Treason, and Taking Away all Sanctuaries for all Manner of High Treasons, 1534 (U.K.), 26 Henry VIII, c. 13, printed in Statutes at Large, Owen Ruffhead (ed.), vol. 2 (London: Mark Baskett, 1770), pg. 215 and 216 (OONL).

and sale of loyalist estates.

"8. Resolved, that it be earnestly recommended to the several states, as soon as may be, to confiscate and make sale of all the real and personal estate therein, of such of their inhabitants and other persons who have forfeited the same, and the right to the protection of their respective states, and to invest the money arising from the sales in continental loan office certificates, to be appropriated in such manner as the respective states shall hereafter direct." <sup>32</sup>

Those measures are said to have been taken to support the War financially. <sup>33</sup>

The Pennsylvania Council of Safety had previously issued a proclamation on October 21, 1777, confiscating the personal property of persons renouncing their allegiance by joining "our unnatural enemies", by giving them either aid, assistance, or provisions. All sales of real estate by such persons were "...declared to be null and void, to all intents and purposes whatsoever." <sup>34</sup>

The Pennsylvania House of Representatives struck a committee on November 27, 1777, comprised of Mr. Whitebill, Colonel Maysteller, and Mr. Irwin, to prepare and introduce into the House a bill for confiscating the estates of persons joining the British forces. The confiscatory resolution

<sup>32</sup> Journals of the Continental Congress, Worthington C. Ford (ed.), vol. 9 (Wash.: Govt. Pr. Off., 1907), pg. 971 (OONL).

<sup>33</sup> Letter. Elbridge Gerry (Mass. Del. Contin. Cong.) to James Warren (Member Mass. Gen. Ct. and Prov. Cong.). dtd. October 28, 1777. printed in Paul H. Smith (ed.), Letters of Delegates to Congress, vol. 8 (Washington: Library of Congress, 1981), pg. 205 to 207 at 206 (OCCC).

<sup>34</sup> A) Pennsylvania. Council of Safety. Proclamation [Confiscation]. dtd. October 21, 1777. found in Early American Imprints, 1st Ser., Evans acsn. no. 15529, mf. (OONL); B) what was the force or effect of the Council of Safety's Proclamation? This question was commented upon by Chief Justice McKean of the Supreme Court of Pennsylvania, in the case Respublica vs. Samuel Chapman, 1 Dallas Pa. Reports 53 at 56-7 (Pa. S.C. 1781). found in Early American Imprints, 2nd Ser., Shaw-Shoemaker acsn. no. 11130, mf. (OONL). He stated in his decision that the powers of the sovereign lay in the Continental Congress, "under whose authority a Council of Safety had been elected by the people to help conduct the revolution". The General Convention elected by the people of Pennsylvania assumed the powers of government from its first meeting on July 15, 1776. The sovereignty of the state was completed by the formation of a new government under the new constitution on November 28, 1776. In other words allegiance was owed to the Council of Safety because it exercised authority as a de facto ruler. The Executive Council of Pennsylvania first met on March 4, 1777.

of Congress was printed in the Pennsylvania House Journals on December 8, 1777. The House resolved on December 12, 1777, that the appointment of the committee to bring in a confiscation bill, "complied with the spirit of this resolve." <sup>35</sup>

Pennsylvania's first Attainder Act was introduced into the House of Representatives on December 23, 1777, and it became law on March 6, 1778. <sup>36</sup> That Act, in addition to setting out general statutory provisions, also named the first offenders. It required thirteen named persons alleged to have joined or assisted the enemy contrary to their allegiance, to surrender themselves by April 20, 1778. If they failed to surrender themselves, they were to stand "convicted and attained of high treason", and upon conviction forfeit all of their property in the State, subject to the provisions of the Act. The Act provided that the Supreme Executive Council of Pennsylvania could issue proclamations naming and requiring suspected persons to surrender by a certain day. The notice period was to be not less than 40 days from the date of the proclamation. Provision was made for satisfying the claims of creditors out of the proceeds of the forfeited estates of their debtors. Registers of forfeited real estates were to be maintained in the Secretary of the Supreme Executive Council's office and by the County Sheriff's. All claims against forfeited estates, including any "charge or encumbrance" were to be filed within six months of entry on the Sheriff's register or in default, the claims were deemed to be "null and void". Claims were to be determined by

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<sup>35</sup> Pennsylvania. Journals. found in Early American Imprints, 1st Ser., Evans acsn. no. 17658, pg. 164, 170, 172, mf. (OONL).

<sup>36</sup> Id., Pennsylvania. Journals, pg. 176, 187 and 193.

a Justice of the Supreme Court. Public notice was to be given in a newspaper 30 days prior to the time and place of sale. Deeds were not to be made out until after full payment had been received. Purchasers were to receive title "... free and clear from all encumbrances and claims whatsoever... excepted, according to the contents of his, her, or their conveyances..."<sup>37</sup>

The proclamation (full text of Act) naming those thirteen individuals was printed in the Pennsylvania Packet or the General Advertiser on April 22, 1778, and their real estates were later advertised for sale by public auction in that newspaper on April 20, 1779. The auction notice was issued by Mr. Timothy Matlack, Secretary, and keeper of the Register of forfeited estates.<sup>38</sup>

A letter from Hon. Thomas McKeate, Chief Justice of Pennsylvania, pointing out defects in the Attainder Act, was read in the House on February 27, 1779. A Supplementary Act was introduced on March 1, 1779, and was ordered into law on March 16, 1779.<sup>39</sup> That Act required that all forfeited estates be sold without further delay. It further provided that newspaper notices announcing sales advise creditors to file claims according to law - within six months of the notice if resident in the state or within twelve months if non-resident - "or be forever barred from the

<sup>37</sup> A) An Act for the Attainder of Divers Traitors if They Render Not Themselves By a Certain Day... printed in Statutes at Large of Pennsylvania, vol. 9 (Wm. Stanley Ray, State Printer of Pennsylvania, 1903), pg. 201 to 215 (P). see Appendix IX, Tab 9, item #2; B) Public Notice. n.d. found in RG27, Rcds. of Pa. Rev. Govt., 6th Ser., vol. 12, Forfeited Estates Invt. and Sales, pg. 850 to 852, frames 0957 to 0958, mf. 54 (Pa. State Archives).

<sup>38</sup> Pennsylvania Packet or the General Advertiser, April 22, 1778, pg. 1 and 4; and, April 20, 1779, pg. 1, col. 1, mf. (OONL).

<sup>39</sup> Pennsylvania. Journals. found in Early American Imprints, 1st Ser., Evans acsn. no. 17658, pg. 324, 326, 327, 330, 337, 338 and 360, mf. (OONL).

recovery thereof." <sup>40</sup>

An Act introduced into the Pennsylvania House of Representatives on February 22, 1779, passing on April 3, 1779, <sup>41</sup> reinforced the requirement that claims be brought according to the legislative scheme.

"...no claims or demands of any creditor or other person whomsoever against any such traitors may or shall be heard, allowed or determined in any other manner than according to the directions of the Act of assembly aforesaid, and the supplement thereto passed this present session of assembly." <sup>42</sup>

The priority of distribution of the proceeds of forfeited estates to creditors was established by an Act introduced into the House of Representatives on February 28, 1785, which passed into law on March 30, 1785. <sup>43</sup>

"...judges of the supreme court who shall thereupon decide according to law and equity in what manner and in what proportion the debts shall be paid out of the assets given, having respect to mortgages, bonds with judgment, obligations and common book debts." <sup>44</sup>

Further discussion of the claims procedure, as it relates to the forfeited estate of General Arnold, and on judicial interpretations of the legislative requirements, follows in sections four and ten of this Chapter.

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<sup>40</sup> A Supplement to an Act, Entitled an Act for the Attainder of Divers Traitors..., printed in Statutes at Large of Pennsylvania, vol. 9 (Wm. Stanley Ray, State Printer of Pennsylvania, 1903), pg. 328 to 332 (P). see Appendix IX, Tab 9, item #3.

<sup>41</sup> Pennsylvania. Journals. found in Early American Imprints, 1st Ser., Evans acsn. no. 17658, pg. 319, 327, 346, 352 and 360, mf. (OONL).

<sup>42</sup> An Act Declaring Replevins, Attachments, Judgments, and Executions in Certain Cases to be Erroneous and Void, printed in Statutes at Large of Pennsylvania, vol. 9 (Wm. Stanley Ray, State Printer of Pennsylvania, 1903), pg. 349 and 350 (P). see Appendix IX, Tab 9, item #4.

<sup>43</sup> Pennsylvania. Journals. found in Early American Imprints, 1st Ser., Evans acsn. no. 18684, pg. 163, 240, 259 and 264, mf. (OONL).

<sup>44</sup> An Act for the Relief of Such Persons as Have Debts Due to Them From the Estates of Persons Attained of Treason and Confiscated in the Late War..., printed in Statutes at Large of Pennsylvania, vol. 11 (Wm. Stanley Ray, State Printer of Pennsylvania, 1903), pg. 530 to 532 (P). see Appendix IX, Tab 9, item #6.

### 3. The Sale Of Benedict Arnold's Forfeited Estate

A proclamation of the Supreme Executive Council issued on October 2, 1780, by Mr. William Moore, Vice-President, required General Arnold to surrender himself for allegedly willingly aiding or assisting the enemy by joining their army, to either a Justice of the Supreme Court or Justice of the Peace by November 13, 1780, to be tried for treason, failing which he would be considered attained of high treason. That Proclamation was printed in the Pennsylvania Packet or the General Advertiser on October 3 and 17, 1780. <sup>45</sup>

On October 26, 1780, the Supreme Executive Council resolved to rent Mount Pleasant to General Baron von Steuben, till April 1, 1781, "for £35 specie, or the exchange of Continental money", reserving therefrom the land presently under lease. <sup>46</sup> This is the same General Baron von Steuben who offered a person with the surname Arnold serving in the American Army, \$2.00 per month during the continuance of the war, to assume the surname Steuben. <sup>47</sup> One observer wrote that it was "uncertain" whether General Baron von Steuben ever lived in the house, "for about the time he leased it, he left for Yorktown." <sup>48</sup> Another account states that "if he took possession of the premises, his tenancy was exceedingly short." <sup>49</sup>

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<sup>45</sup> A) Pennsylvania Packet or the General Advertiser, October 3, 1780, pg. 3, col. 2; and, October 17, 1780, pg. 4, col. 1, mf. (OONL); B) also printed in Minutes of the Supreme Executive Council of Pennsylvania, vol. 12 (Harrisburg, Pa.: Theo. Fenn & Co., 1853), pg. 496 and 497 (OONL).

<sup>46</sup> *id.*, Council Minutes, pg. 519.

<sup>47</sup> Labaree, Leonard W. (ed.), The Public Records of the State of Connecticut for the Years 1783 and 1784, vol. 5 (Hartford, Conn.: Pub. by the State, 1943), pg. 71 and 72 (CE).

<sup>48</sup> Lathrop, Elise, Historic Houses of Early America (N.Y.: Tudor Publishing Co., 1927), pg. 374 (OCC).

<sup>49</sup> Glenn, Thomas A., Some Colonial Mansions, vol. 2 (Philadelphia: H.T. Coates and Co., 1897-1900), pg. 477 and 478 (PHI).

An advertisement placed by Mr. William McMullin, agent for forfeited estates in the County of Philadelphia, first appearing in the Pennsylvania Gazette and Weekly Advertiser on November 15, 1780, listed Mount Pleasant for rent.

"TO BE LETT, That elegant seat called MOUNT-PLEASANT, about four miles from town [Philadelphia], on the Wissahickon Road, with or without the farm belonging thereto. For terms, apply to William McMullin, esq.; in Southwark." <sup>50</sup>

This advertisement would lead one to believe that the Baron von Steuben lease had terminated prematurely, as Mount Pleasant was being offered for rent during the term of his tenancy.

Advertisements later announcing the sale of General Arnold's confiscated estate were placed by Messrs. George Smith and William McMullin, agents for forfeited estates in the County of Philadelphia. They appeared in the Pennsylvania Packet or the General Advertiser in April and May 1781. <sup>51</sup> His forfeited estate was listed for public auction along with the properties of three other individuals, Messrs. Nathan Roberts, John Robertson and John Fox. His property, which was to be sold by public auction on May 30, 1781, was described as follows:

"Four tracts of Land contiguous to each other, containing 99 acres, 97 perches, known by the name of Mount Pleasant, situated on the river Schuylkyl, about four miles from town [Philadelphia]; on which is an elegant Mansion House, Garden, Orchard, Barn, Stables, Out-Houses, and other improvements, late of Benedict

<sup>50</sup> Pennsylvania Gazette and Weekly Advertiser, November 15, 1780, pg. 3, col. 3; November 22, 1780, pg. 1, col. 1; November 29, 1780, pg. 4, col. 1; and, December 6, 1780, pg. 4, col. 4, mf. (OWTU).

<sup>51</sup> A) Pennsylvania Packet or the General Advertiser, April 28, 1781, pg. 3, col. 3; May 8, 1781, pg. 4, col. 2; May 26, 1781, pg. 4, col. 3; and, May 29, 1781, pg. 4, col. 2, mf. (OONL); B) a house built and owned by General Arnold on a one and a half acre lot in New Haven, Connecticut, known for municipal purposes as 155 Water Street, was similarly confiscated by the State of Connecticut, and sold at public auction to John Prout Sloan in 1782. A picture of that house is shown on page 68. Appendix X, Tab 10 provides a schedule of Connecticut's confiscation laws.

Arnold, and to be sold during his life."

Details concerning General Arnold's "life interest" in Mount Pleasant are provided later in this Chapter. That advertisement also carried this notice to creditors:

"And We, the Agents do also, pursuant to law hereby Notify all the claimants of the said premises, or any of them, and creditors of the said... Benedict Arnold, to exhibit their claims and demands to the Justices of the Supreme Court, within the time limited by law or they will be forever barred from the recovery thereof."

The claims made against the estate of General Arnold are discussed in section 4 of this Chapter.

Mount Pleasant estate was purchased on May 30, 1781, by Colonel Richard Humpton, the highest bidder at public auction, for the sum of £850 Pennsylvania money (actually 850 certificates).<sup>52</sup> The deed conveying the property was signed by the President of Pennsylvania on October 6, 1781. A minute of the Supreme Executive Council mentions the sale.

"The following deeds were examined and signed by his Excellency the President, to wit:

To Colonel Richard Humpton, conveying a certain messuage and plantation or tract of land, situate in the Northern Liberties, in the county of Philadelphia, containing ninety-nine acres and ninety-seven perches, be the same more or less: seized and sold agreeable to law, to the said Richard Humpton, as the estate late of Benedict Arnold, an attained traitor, for and during the term of the said Arnold's natural life, for the sum of eight hundred and fifty pounds, which sum the said Richard Humpton hath paid to the Agents of Forfeited Estates in the said county. Deed dated

<sup>52</sup> A) Certificate of Sale. Signed by William McMullin, Agent for Philadelphia County. dtd. September 25, 1781. found in RG27, Rcds. of Pa. Rev. Govt., 6th Ser., vol. 12, Forfeited Estates Invt. and Sales, pg. 598, frame 0828, mf. 54 (Pa. State Archives); B) also see handwritten original in id., RG27, frame 527, mf. 42.

the sixth instant." <sup>53</sup>

The deed conveying the property to Colonel Richard Humpton includes a recital that General Arnold had failed to surrender himself by November 13, 1780, thereby forfeiting his estate, both real and personal, in that State. It further mentions that General Arnold had a life interest in Mount Pleasant and that Colonel Humpton had purchased his life interest. The conveyance was "... subject [only] to the unexpired term of a lease from John Macpherson, Esquire, to [Conrad Alexander Gerard and] John de Mirallis Esquire." <sup>54</sup>

That lease was for a term of six years from October 20, 1778, to October 20, 1784. It was a lease for all of the buildings and grounds at a yearly rent of £400 Pennsylvania money. The lease contained a provision that "... if he, the said John Macpherson, during the term of his Lease as at the expiration thereof, should be inclined to sell the said Plantation or Farm, this Lease shall nevertheless remain in full force." <sup>55</sup>

The best account of Don Juan de Mirallis' tenancy is given in a publication of the Philadelphia Museum of Art, dated 1927. He is said to have occupied it until his death. His widow is said to have remained in possession until the autumn of 1780. <sup>56</sup>

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<sup>53</sup> Minutes of the Supreme Executive Council of Pennsylvania, vol. 13 (Harrisburg, Pa.: Theo. Fenn & Co., 1853), pg. 79 and 80 (OTY).

<sup>54</sup> Deed of Land (Deed Poll). The Commonwealth of Pennsylvania to Col. Richard Humpton. dtd. October 6, 1781. reg. April 29, 1784. Transcript copy found in Deed Book D-9, pg. 321 to 324 (Phil. Dept. of Rcds.). Original deed also available at that location.

<sup>55</sup> Lease of Land (Deed of Lease). John Macpherson to Conrad Alexander Gerard and John de Mirallis. dtd. December 1, 1778. reg. June 3, 1779. Copy found in Deed Book D-1, pg. 447 to 449 (Phil. Dept. of Rcds.).

<sup>56</sup> Philadelphia Museum of Art, Mount Pleasant, Fairmount Park, Philadelphia, Built by John Macpherson, 1761 (Philadelphia: Pennsylvania Museum and School of Industrial Art, 1927), unp. (MWeIC).

A Return of Forfeited Estates in Philadelphia County indicated that the title to Mount Pleasant was "subject to a lease to Jacob Shell, which will expire on the 20th October, 1784 - said Shell to have the use of an Out house, and sundry other privileges." <sup>57</sup>

#### 4. Claims Filed Against General Arnold's Forfeited Estate

Six claims were filed and adjudged in the Pennsylvania Supreme Court against the forfeited estate of General Arnold, particulars of which are set out below. <sup>58</sup>

##### i) Claim no. 343 - Edward Shippen, Jr.

- To the Hon. Thomas McKean, Justice of the Supreme Court of Pennsylvania
- Filed October 17, 1780
- Asking for the return of certain loaned furniture, and the wood stored in the basement of a rented house, plus rent on that house
- Award made October 17, 1780; furniture and wood ordered returned and £15 rent allowed

##### ii) Claim no. 344 - Administrator of Jesse Jordon (Thomas Cooper)

- To the Hon. Thomas McKean, Justice of the Supreme Court of Pennsylvania
- Filed December 6, 1780 and December 10, 1780
- Asking payment of wagon master's account
- Award made October 25, 1781; £222.12 specie allowed

##### iii) Claim no. 350 - John Torrence

- To the Hon. Thomas McKean Esq., Chief Justice of the Supreme Court of Pennsylvania
- Filed December 18, 1780
- Asking payment on contract for hire
- Award £4.10

<sup>57</sup> Return of the Forfeited Estates in the County of Philadelphia Remaining Unsold the 9th day of February 1781 Valued as if Clear of Incumbrances. found in RG27, Rcds. of Pa. Rev. Govt., 6th Ser., vol. 12, Forfeited Estates Invt. and Sales, pg. 858, frame 0961, mf. 54 (Pa. State Archives).

<sup>58</sup> A) see RG33, Rcds. of the Sup. Ct. of Pa. (E. Dist.), Claims Papers (rel. primarily to forfeited estates) 1778-1779 (Pa. State Archives); also see, B) list of "Benedict Arnold's Debts" and "Counsel-General John Holker's Claim Against General Benedict Arnold", printed in Pennsylvania Magazine of History and Biography, vol. 24, no. 3 (1900), pg. 375 and 376 (OONL).

iv) Claim no. 351 - Dr. John Jones

- To the Hon. Thomas McKean, Esq., Associate Justice of the Supreme Court of Pennsylvania
- Filed January 6, 1781 and November 10, 1781
- Asking payment of medical bills
- Award made April 15, 1788; £156 specie allowed

v) Claim no. 355 - Edward Shippen, Joseph Shippen and Samuel Powel, trustees

- To the Hon. Thomas McKean, Esq., Associate Justice of the Supreme Court of Pennsylvania
- John Coxe, attorney for claimants
- Claim dated February 8, 1781
- Asking to confirm marriage settlement vesting the remainder in Mount Pleasant in General Arnold's wife Margaret Shippen, for life, then to the children of their marriage and also to General Arnold's children from his first marriage
- Award made January 15, 1784; "decreed according to the claim"

vi) Claim no. 357 - John Holker

- To his Hon. Thomas McKean, Esq., Chief Justice of the Supreme Court of Pennsylvania
- Undated
- Asking for repayment of loan and interest
- Awards made April 14, 1787 and June 6, 1787; £1,025 specie plus interest allowed.

Further details regarding Claim no. 355, are provided in section 6 of this Chapter.

## 5. Macpherson Sale To Arnold

Mr. John Adams wrote the following remark in his diary after visiting Mount Pleasant on September 25, 1775:

" Rode out of Town and dined with Mr. [John] Macpherson. He has the most elegant Seat in Pennsylvania [Mount Pleasant], a clever Scotch wife and two pretty daughters. His Seat is on the Banks of Schuylkill." <sup>59</sup>

That estate was advertised for sale by its owner John Macpherson in the Pennsylvania Packet or the General Advertiser five times between September

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<sup>59</sup> Butterfield, Lyman Henry (ed.), Diary and Autobiography of John Adams, vol. 2 (Cambridge, Mass.: The Belknap Press, 1961), pg. 183 (OCC).

22 and October 10, 1778. The advertisement described the estate in the following terms:

"To be SOLD by JOHN MACPHERSON, The very healthy and elegant seat called MOUNT PLEASANT, containing about one hundred and twenty acres of land, in the Northern Liberties, upon the river Schuylkill. There is on the place every necessary building, (besides a tenants dwelling house and spring-house at a distance from the other improvements) several stone quarries, some of free stone, a considerable quantity of watered meadow, and a mineral spring near the mansion house. On a part of the land it is believed there is a coal pit: The Gentleman from whom Mr. Macpherson purchased that part, reserves to himself and his heirs one quarter of the profits of the coal, should the pit ever be worked." <sup>60</sup>

The deed transferring title of the lands and premises known as Mount Pleasant from John Macpherson, Gentleman, to the Honorable Benedict Arnold, Major-General, is dated March 22, 1779, and was registered on June 28, 1779. The total consideration for the purchase was £18,000 lawful money of Pennsylvania, of which £16,240 was paid on closing, and a £1,760 mortgage (principal and outstanding interest) in favour of Mr. Phineas Bond, was assumed by the purchaser. Four pieces or parcels of land (38 acres, 106 perches; 31 acres, 151 perches; 26 acres; and, a lane comprising 2 acres) "computed to be about 98 acres" were involved in the purchase. <sup>61</sup>

Several historians have ventured to comment on the purchase price. Mr. Theo B. White stated that "the house was sold, subject to the lease [Don Juan de Mirallis] and a heavy mortgage." <sup>62</sup> Mr. James Flexner

<sup>60</sup> Pennsylvania Packet or the General Advertiser, September 22, 1778, pg. 1, col. 1; September 26, 1778, pg. 1, col. 3; October 1, 1778, pg. 1, col. 2; October 6, 1778, pg. 1, col. 1; and, October 10, 1778, pg. 1, col. 3, mf. (OONL).

<sup>61</sup> Deed of Land. John Macpherson to Benedict Arnold. dtd. March 22, 1779. reg. June 28, 1779. Transcript copy found in Mortgage Book M-1, pg. 194 to 197 (Phil. Dept. of Rcds.).

<sup>62</sup> A) White, Theo. B., Fairmount, Philadelphia's Park: A History (Philadelphia: The Art Alliance Press, 1975), pg. 82 (PP); B) Harry Tillotson also wrote that "...the property was heavily mortgaged". see Tillotson, Harry S., The Exquisite Exile: The Life and Fortunes of Mrs. Benedict Arnold (Boston: Lathrop, Lee and Shepard Co., 1932), pg. 188 (OLU); C) reference that the property was "heavily mortgaged" is additionally made by Richard H. Stetson, in "Colonial Records of Arnold's Estate Seizure Discovered", Autograph Collectors Journal, vol. 3, no. 2 (January 1951), pg. 24 (OONL).

indicated that there existed a mortgage of £70,000 Pennsylvania currency.<sup>63</sup> Mr. Ray Thompson suggested that the sale was for \$70,000 and that the property was "burdened with a heavy mortgage".<sup>64</sup> A letter dated April 1779, quoted by Mr. Oscar Sherwin, left the impression that the estate was worth only £10,000.<sup>65</sup>

The subject of the origin of the funds required by General Arnold to purchase Mount Pleasant from Mr. John Macpherson is an issue which was commented on in nine works. The source of the controversy appears to have originated with a letter written by Judge Richard Peters to a friend.

"I left fifty thousand dollars to the order of Arnold for the payment of clothing and stores. The traitor seized those articles and never paid for them, but converted the greater part of the money to his own use, among others, to buy the country seat of Mr. Macpherson, on the Schuylkill..."<sup>66</sup>

The critics use phrases such as "according to Judge Peters",<sup>67</sup> or "a purchasing agent of General Washington says",<sup>68</sup> when discussing the topic. One source says no evidence exists concerning illegitimate speculations,<sup>69</sup>

<sup>63</sup> Flexner, James T., The Traitor and the Spy: Benedict Arnold and John Andre (N.Y.: Harcourt, Brace and Co., 1953), pg. 252 (OONL).

<sup>64</sup> Thompson, Ray, Benedict Arnold in Philadelphia (Fort Wash., Pa.: Bicentennial Press, 1975), pg. 82 and 83 (PHI).

<sup>65</sup> A) Sherwin, Oscar, Benedict Arnold Patriot and Traitor (N.Y.: The Century Co., 1931), pg. 245 and 246 (OOND); B) the quoted letter is General Nathanael Green to Colonel Jeremiah Wadsworth (Cmsry.-Gen. Contin. forces). dtd. April 14, 1779. printed in Pennsylvania Magazine of History and Biography, vol. 22, no. 2 (1898), pg. 211 to 216 at 213 (OONL).

<sup>66</sup> A) Scharf, J. Thomas and Thompson Westcott, History of Philadelphia 1609-1884, vol. 1 (Philadelphia: L.H. Everts and Co., 1884), pg. 389 and 390 (OTY); B) Extracted version in Tillitson's, The Exquisite Exile, pg. 58 and 59. see footnote 62B for full citation; C) Judge Peters also accused General Arnold of "pilfering the public stores" in another letter. see Letter Richard Peters (Judge U.S. Dist. Ct. of Pa.) to John Jay (ret'd. Gov. N.Y.). dtd. February 14, 1811. printed in Henry P. Johnston's (ed.), The Correspondence and Public Papers of John Jay, vol. 4 (N.Y.: G.P. Putnam's Sons, 1893), pg. 344 to 346 at 345 (OOCC).

<sup>67</sup> supra., footnote 62A, White, pg. 84.

<sup>68</sup> supra., footnote 5, Siebert, pg. 69.

<sup>69</sup> Reed, William B., Life and Correspondence of Joseph Reed, vol. 2, (Philadelphia: Lindsay and Blakiston, 1847), pg. 26 (OONL).

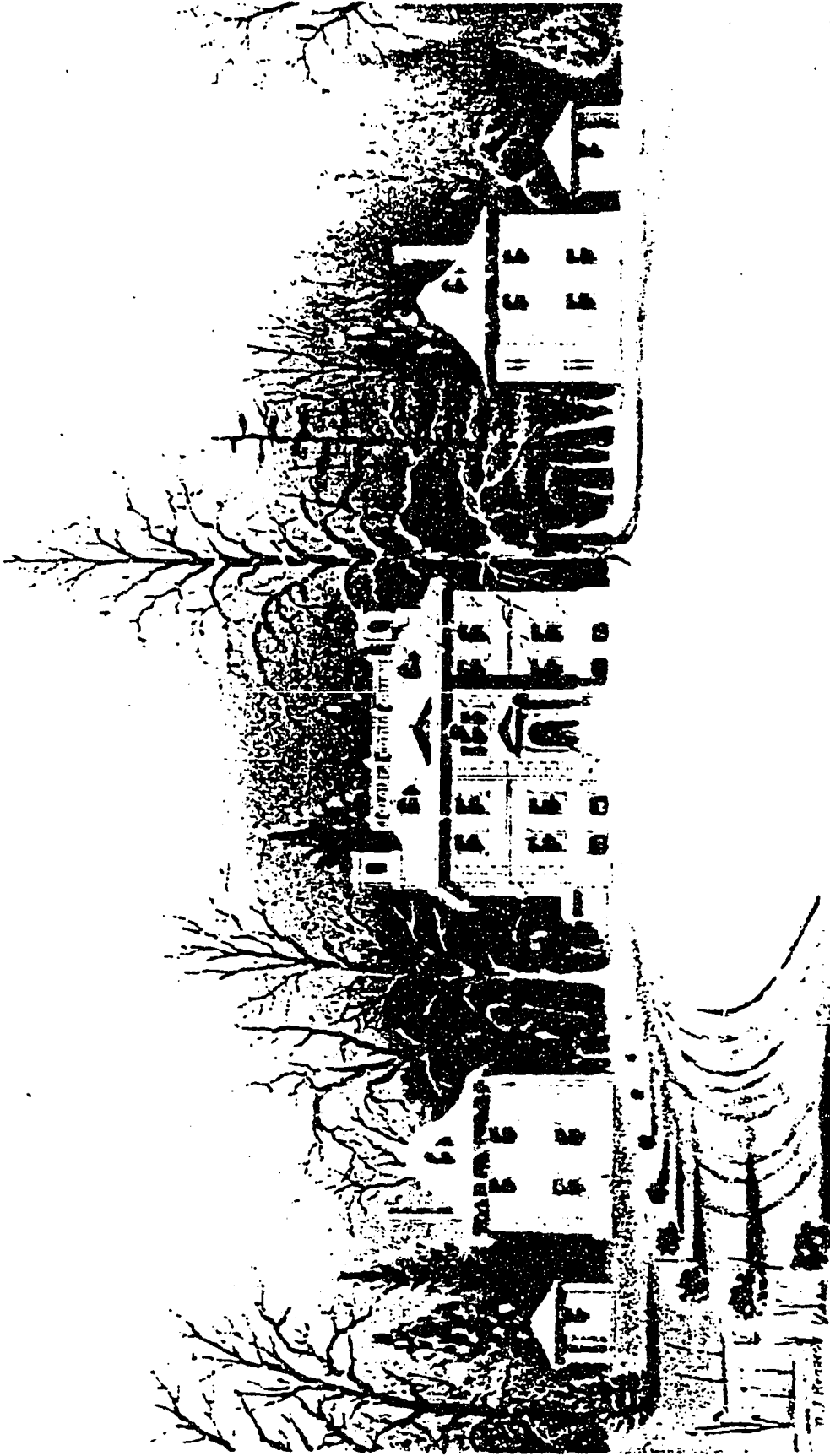
while another added, "if we may believe the excellent Judge Peters, head of the Board of War." <sup>70</sup> The most vigorous skeptic remarked "After Arnold had been proved a traitor, many a man who had harbored vague suspicions translated them in memory to certainties." <sup>71</sup>

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<sup>70</sup> supra., footnote 56, Philadelphia Museum, unp.

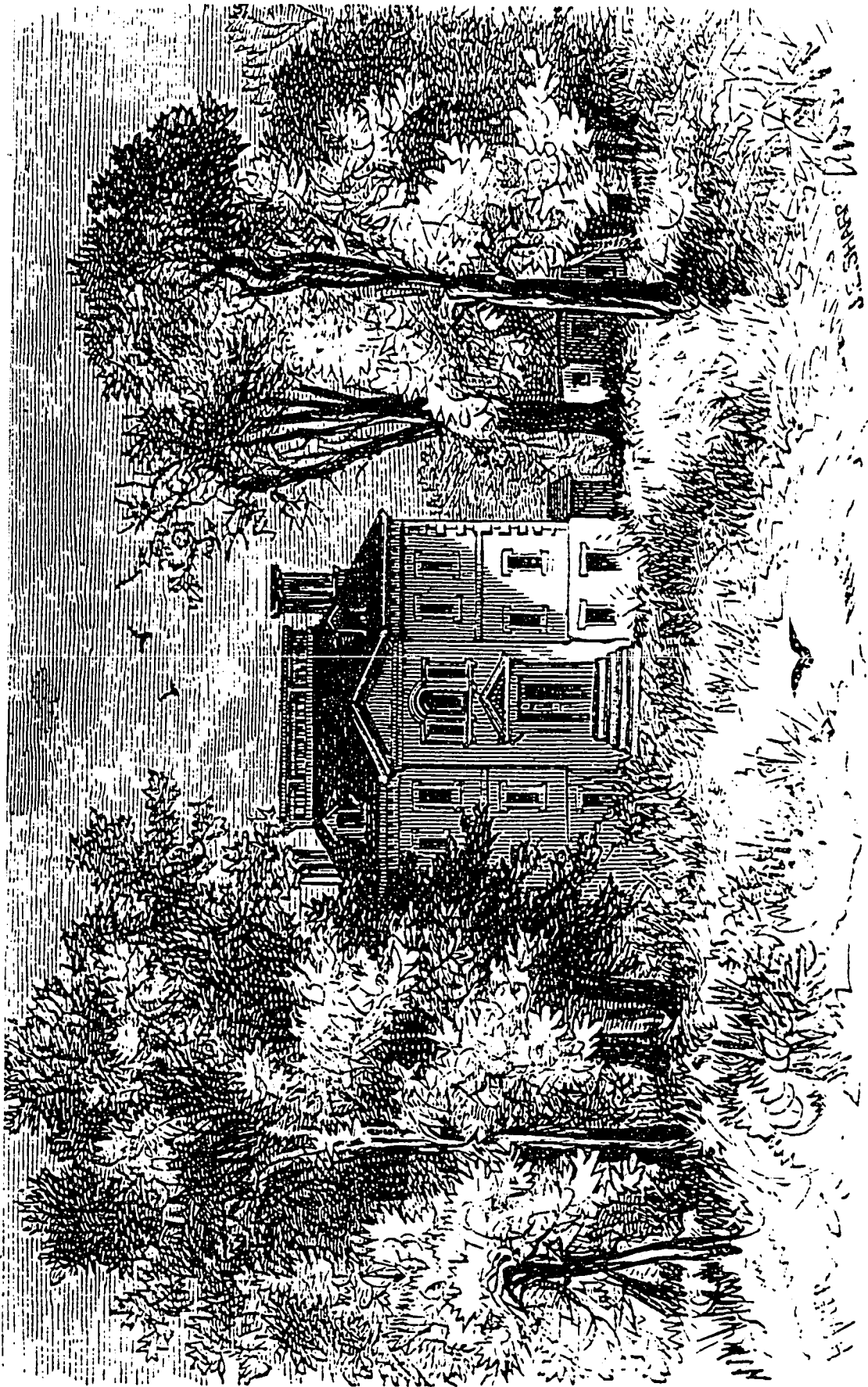
<sup>71</sup> supra., footnote 63, Flexner, pg. 252 and 414.

FIGURE 6



Original watercolor of Mount Pleasant mansion and its Out-Houses, by D. J. Kennedy, circa 1871, in possession of The Historical Society of Pennsylvania, Philadelphia, acsn. no. K:-2:16 and K:5-25 (b & w neg.s on file). A reproduction printed by T. Sinclair and Son, Philadelphia, appears in the Fourth Annual Report of The Commissioners of Fairmount Park (Philadelphia; King and Baird, 1872), pg. facing 14 (PHC). A b & w negative is on file at the National Library of Canada, Ottawa, acsn. no. NL 16820. Also see footnote 107B.

FIGURE 7

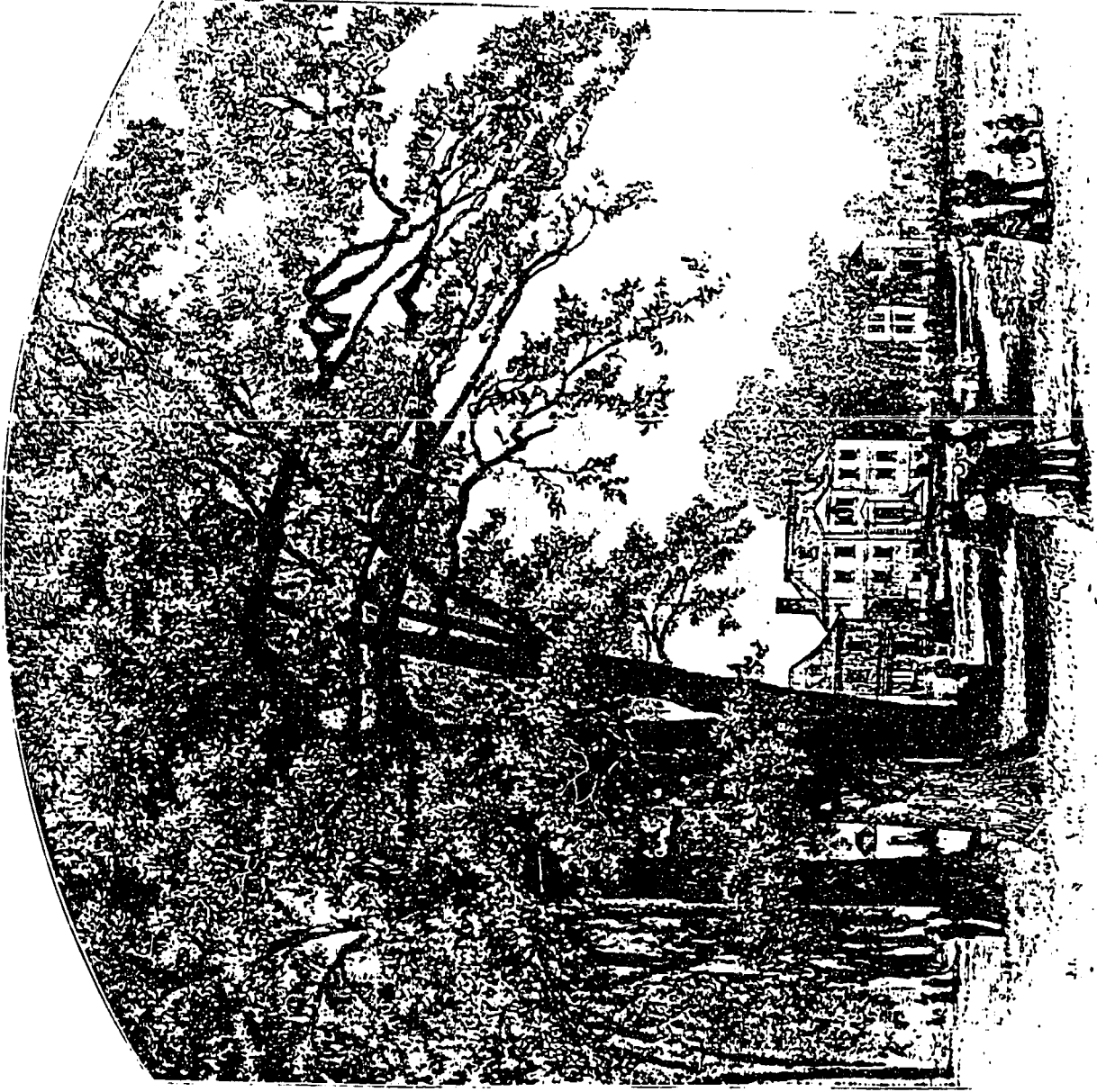


## MOUNT PLEASANT.

Mount Pleasant mansion, by H. Faber and J.E. Sharp, reproduced in Charles S. Keyser, Fairmount Park. Sketches of Its Scenery, Waters, and History, 5th ed. (Philadelphia; Claxton, Remsen, and Haffelfinger, 1872), pg. 71 (MIU-C). A b & w negative is on file at the National Library of Canada, Ottawa, acsn, no. NL16758.

FIGURE 8

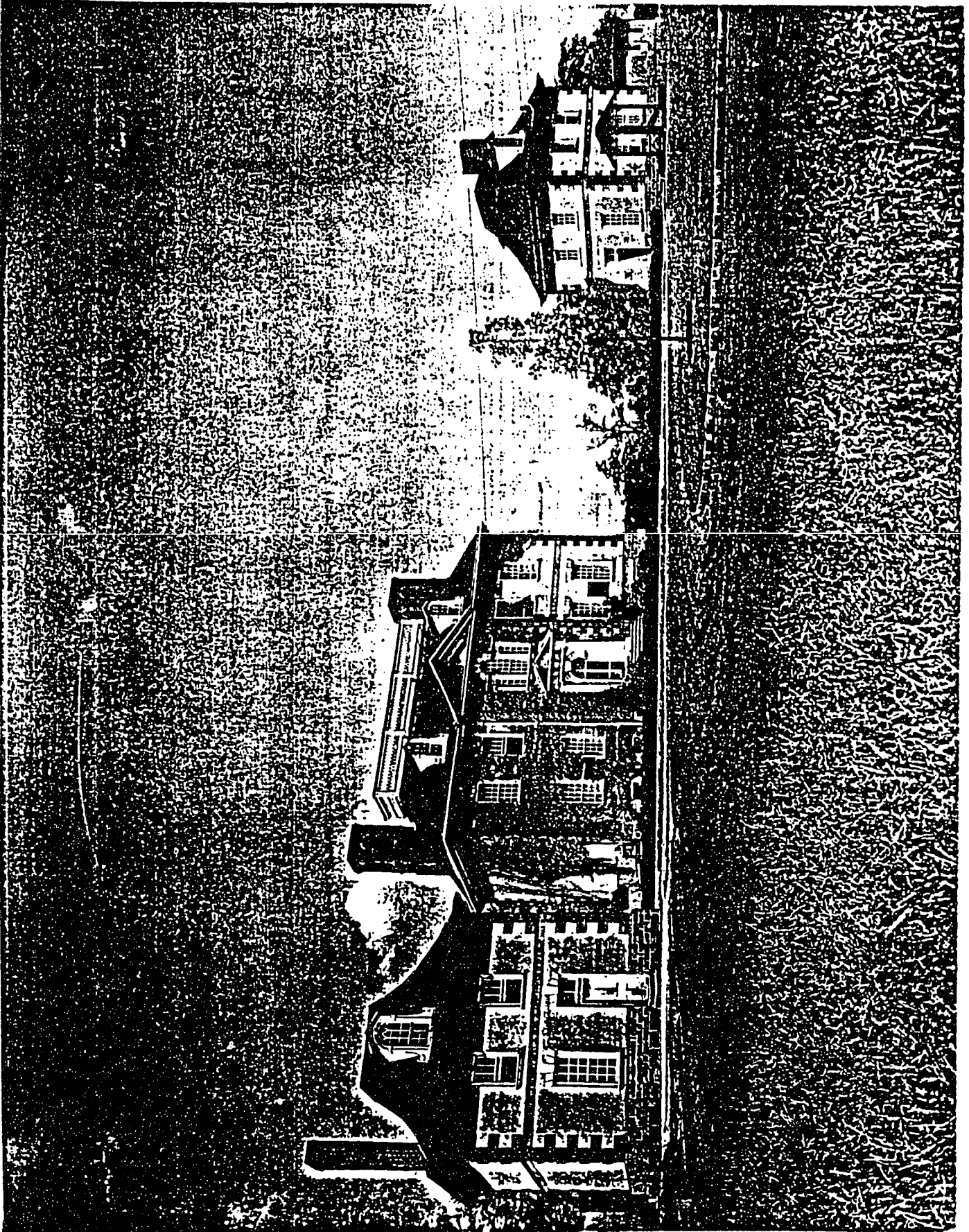
## FAIRMOUNT PARK.



MOUNT PLEASANT—ARNOLD'S HOUSE.

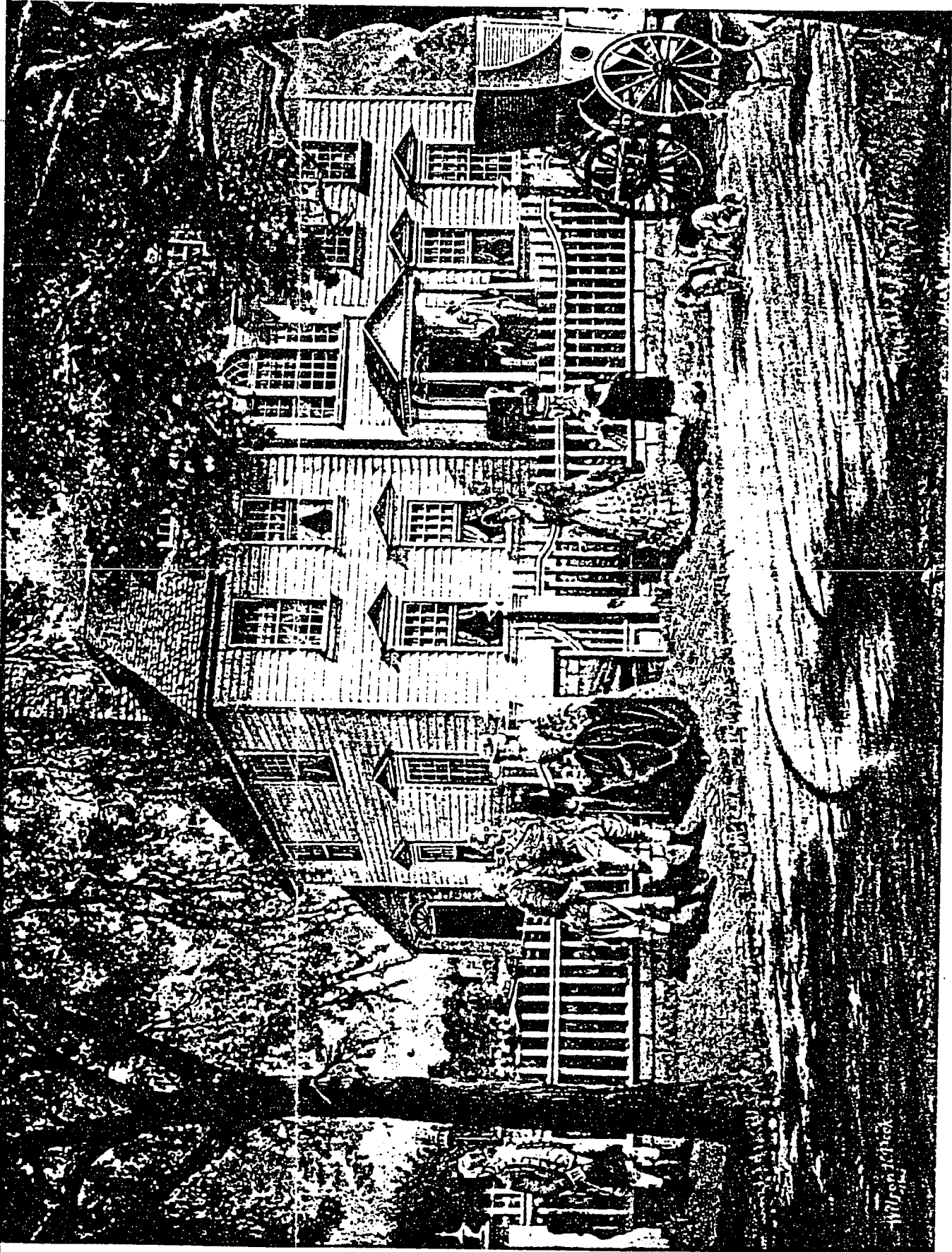
Mount Pleasant mansion, by unknown artist, engraved by Lauderbach, reproduced in Edward Strahan, A Century After: Picturesque Glimpses Of Philadelphia And Pennsylvania... (Philadelphia; Allen, Lane & Scott and J.W. Lauderbach, 1875), pg. 113. A b & w negative is on file at the National Library of Canada, acsn. no. NL15669. Fairmount Park was already a popular picnic ground in 1868. Philadelphia Inquirer (Philadelphia), July 29, 1868, pg. 8, col. 2; mf.

FIGURE 9



Mount Pleasant mansion and its Out-Houses, photographer unknown. Photograph in possession of The Historical Society of Pennsylvania, Philadelphia, acsn. no. Soc. Photo. - Small - Residences - Mt. Pleasant.

FIGURE 10



Painting of General Benedict Arnold's house - known for municipal purposes as 155 Water Street, New Haven Connecticut - by Wilson H. Peck. This house was demolished sometime between 1902 and 1904. A color negative was provided courtesy of Headquarters, Second Company, Governor's Foot Guard, New Haven, Conn.

## 6. Marriage Settlement

General Arnold's marriage to Miss Peggy Shippen was announced in the Pennsylvania Packet or the General Advertiser on April 15, 1779.<sup>72</sup> Six authors have speculated that the house was purchased as a wedding gift for his bride.<sup>73</sup> The date on which General Arnold signed the agreement of purchase and sale for Mount Pleasant is unknown.

He transferred the title of the property on April 3, 1779, to Messrs. Edward Shippen, Joseph Shippen, Jr., and Samuel Powel, In Trust, in consideration of an impending marriage between himself and Miss Margaret Shippen. A life interest in the estate was reserved by General Arnold during his natural life.

"... They shall permit him, the said Benedict Arnold, to receive and enjoy the rents, issues, and profits thereof, for and during his natural life..."

Provision was made to transfer the estate to Miss Margaret Shippen "for and during her natural life", and following her death to their children and his children from a previous marriage. That deed was registered on November 29, 1780.<sup>74</sup>

There exists a considerable difference of opinion concerning General

<sup>72</sup> Pennsylvania Packet or the General Advertiser, April 15, 1779, pg. 3, col. 3, mf. (OONL).

<sup>73</sup> A) supra., footnote 63, Flexner, pg. 252; B) supra., footnote 62B, Tillotson, pg. 56; C) supra., footnote 62A, White, pg. 82 and 83; D) supra., footnote 66A, Scharf/Westcott, pg. 389; E) Klein, Esther M., Fairmount Park a History and a Guidebook (Fairmount Park Commission, 1974), pg. 74 (NFSM); and, F) supra., footnote 64, Thompson, pg. 82.

<sup>74</sup> Deed of Land. Benedict Arnold to Edward Shippen Jr., Joseph Shippen Jr., and Samuel Powel. dtd. April 3, 1779. reg. November 29, 1780 (Phil. Dept. of Rcds.).

Arnold's occupancy of Mount Pleasant. Of the fifteen sources which make a direct statement on that question, five said that he lived there, <sup>75</sup> six said that he never lived there, <sup>76</sup> and four left it open to question. <sup>77</sup>

#### 7. Edward Shippen, As Secret Trustee

The confiscation and sale of General Arnold's life interest in the property, to Colonel Richard Humpton in 1781 has already been discussed. Also discussed was the claim of Messrs. Edward Shippen, Joseph Shippen Jr., and Samuel Powel, trustees, against the forfeited estate of General Arnold, to confirm the marriage settlement of Mrs. Margaret Shippen. The court decided in favour of their claim on January 15, 1784. In the interim period ownership of the property had changed hands two more times. Mr. Matthew Irvine became the owner of the property on December 6, 1781, <sup>78</sup> and Mr. Blair Macclenachan on June 7, 1783. <sup>79</sup> Both transactions were for £850 Pennsylvania money.

<sup>75</sup> A) Lippincott, Horace Mather, Early Philadelphia, it's People, Life and Progress (Philadelphia: J.B. Lippincott Co., 1917), pg. 111 (OOFF); B) supra., footnote 65A, Sherwin, pg. 246; C) Stimson, Fredric J., My Story: Being the Memoirs of Benedict Arnold (N.Y.: Charles Scribners Sons, 1917), pg. 437 (OONL); D) Sullivan, Edward D., Benedict Arnold Military Racketeer (N.Y.: The Vanguard Press, 1932), pg. 253 (OLU); and, E) Todd, Charles B., The Real Benedict Arnold (N.Y.: A.S. Barnes and Co., 1903), pg. 180 (OONL).

<sup>76</sup> A) Downs, Joseph, "Mount Pleasant - An Old Philadelphia House of 1761", Good Housekeeping, vol. 94 (February 1932), pg. 59 (OS); B) supra., footnote 63, Flexner, pg. 252; C) John Andrew Gallery (ed.), Philadelphia Architecture, a Guide to the City (Cambridge, Mass.: MIT Press, 1984), pg. 27 (OOFF); D) Lomask, Milton, Beauty and the Traitor, the Story of Mrs. Benedict Arnold (Philadelphia: Macrae Smith Co., 1967), pg. 71 (NSD); E) Morpurgo, J.E., Treason at West Point: The Arnold Andre Conspiracy (N.Y.: Mason, Charter Pub. Inc., 1975), pg. 86 (OLU); and, F) Snyder, Martin P., City of Independence, Views of Philadelphia Before 1800 (N.Y.: Praeger Pub., 1975), pg. 218 (OOC).

<sup>77</sup> A) supra., footnote 48, Lathrop, pg. 373; B) supra., footnote 56, Philadelphia Museum, unpub.; C) supra., footnote 62B, Tillotson, pg. 60 and 61; and, D) supra., footnote 62A, White, pg. 84.

<sup>78</sup> Deed of Land (Deed Poll). Richard Humpton to Matthew Irvine, Gentlemen. dtd. December 6, 1781. Transcript copy found in Deed Book D-9, pg. 324 (Phil. Dept. of Rcds.). Original deed is also available at that location.

<sup>79</sup> A) Deed of Land (Deed Poll). Matthew Irvine, Merchant to Blair Macclenachan, Merchant. dtd. June 7, 1783. reg. April 29, 1784. Transcript copy found in Deed Book D-9, pg. 325 and 326 (Phil. Dept. of Rcds.). Original deed also found at that location; B) Pennsylvania Packet or the General Advertiser, carried an advertisement on May 17, 20, 22 and 24, 1783 (OONL) for the sale of the property:

"TO BE SOLD, on Saturday, the 24th instant, At 12 o'clock, at the COFFEE HOUSE, THAT elegant country seat, known by the name of MOUNT PLEASANT, situated on the Banks of Schuylkill, about four miles and a half from Philadelphia, containing about 100 acres of land. A more particular description of which, together with the terms, will be mentioned at the time and place of sale. Possession will be given to the purchaser on the first of June next: - JOHN HAYARD, Auctioneer."

Mr. Edward Shippen purchased General Arnold's life interest in the estate from Mr. Blair Macclenachan on March 17, 1784. The consideration was expressed as being £750 gold or silver. The deed was registered on April 28, 1784.<sup>80</sup> An appraisal of Mount Pleasant made by Messrs. Richard Footman and Fench Coxe, Merchants, on September 18, 1784, established the value of the property at £4000 sterling, "the Buildings thereon being large numerous and elegant and the land improved."<sup>81</sup>

Three sources indicate that Mr. Edward Shippen purchased General Arnold's life interest on behalf of his daughter Mrs. Margaret Shippen-Arnold, the General's wife. This suggestion was expressed in the following terms:

"Edward Shippen, eager to protect his daughter's interest, ultimately consolidated the entire ownership by purchase in 1784."<sup>82</sup>

"He disposed of the premises in 1784 to Edward Shippen, Chief Justice of Pennsylvania, the father of Margaret Arnold, possibly with the intention to secure the entire property to her."<sup>83</sup>

"Edward Shippen, to protect his daughters interests, finally purchased it the following year."<sup>84</sup>

Correspondence exchanged between Mrs. Margaret Arnold and her father Mr. Edward Shippen support that conclusion. Although it would appear that

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<sup>80</sup> Deed of Land. Blair Macclenachan, Merchant to Edward Shippen, Esq. dtd. March 17, 1784. reg. April 28, 1784. Transcript copy found in Deed Book D-8, pg. 541 to 543 (Phil. Dept. of Rcds.).

<sup>81</sup> MS Appraisal of Mount Pleasant. dtd. September 18, 1784. Society Collection - Benedict Arnold (1 pg.) (PHI).

<sup>82</sup> supra., footnote 56, Philadelphia Museum, unp.

<sup>83</sup> Fairmount Park Commission, Mt. Pleasant, Macpherson Mansion (Philadelphia: 1909), pg. 32 (PHI).

<sup>84</sup> supra., footnote 48, Lathrop, pg. 373.

the life interest was in fact secretly purchased by General Arnold.

"With respect to Mount Pleasant General Arnold has altered his sentiments, since I wrote in August last, he thinks... that there is a greater sum due on the Mortgages on Mount Pleasant than he first supposed, and that the whole may be lost should it transpire that he was the private purchaser...if you...do not choose to keep the life interest which you have bought, General Arnold desires you will be so good as to sell it for as much as you can, and if it should fall short of the sum which you gave, desires you will be so good as to draw upon him for the balance..."<sup>85</sup>

It would appear from that letter that Mr. Edward Shippen, purchased the life interest in the property, "In Trust" for General Arnold.

#### 8. Mortgages

When General Arnold made his original purchase of Mount Pleasant from Mr. John Macpherson in 1779, he assumed a mortgage in favour of Mr. Phineas Bond. The deed contains express references to the Bond mortgage. That mortgage in favour of Phineas Bond, Esq., Attorney at Law, his executors, administrators or assigns, is dated July 22, 1776, and was registered on July 27, 1776. It provided for a principal sum of £1,600 Pennsylvania money, together "with lawful interest". The two largest parcels of land, one of which included the mansion house were encumbered by it.<sup>86</sup> An assignment of that mortgage was made to Mr. Charles Osborne, Gentleman of the City of London, England, on July 22, 1776.<sup>87</sup>

<sup>85</sup> Letter. Margaret Arnold to Edward Shippen. dtd. July 13, 1785. printed in Pennsylvania Magazine of History and Biography, vol. 25, no. 4 (1901), pg. 452 and 453 (OONL).

<sup>86</sup> Mortgage of Land. John Mcpherson, Esq. to Phineas Bond, Esq., Attorney of Law. dtd. July 22, 1776. reg. July 27, 1776. Transcript copy found in Mortgage Book 6, pg. 23 (4 pg.) (Phil. Dept. of Rcds.).

<sup>87</sup> ibid., Mortgage. The assignment is a one page document attached to the back of the original mortgage. Assignment of Mortgage. Phineas Bond to Charles Osborne. dtd. July 22, 1776. reg. March 5, 1792.

Letters written by Mr. Edward Shippen to Mrs. Margaret Arnold in 1802 and 1803 refer to the Osborne mortgage and to another mortgage in favour of Mr. Thomas Mason. The Mason mortgage, unlike the Bond (Osborne) mortgage, is not mentioned in the deed transferring the title of Mount Pleasant to General Arnold. It would not appear that General Arnold was aware of the existence of that mortgage when he purchased Mount Pleasant.

"[Mount Pleasant was]... subject to a similar Mortgage to one Mason, which I believe neither General Arnold nor myself knew anything of..."<sup>88</sup>

That mortgage was signed by Mr. John Macpherson on May 1, 1776, and was registered on August 10, 1776. It provided for a principal sum of £920 Pennsylvania money, and encumbered a 26 acre parcel of Mount Pleasant. The mansion house was not part of the security for that encumbrance. The mortgage book which includes a copy of that instrument is stamped "SATISFIED", but no entry date is given. A handwritten endorsement on that document states "dischg. by foreclosure - vise S.C. Dec. 7, 1804 #83, Mason v. Macpherson, Liz Pnd".<sup>89</sup>

#### 9. Foreclosure Proceedings

Both the Osborne (Bond) and Mason mortgages became the subject of foreclosure proceedings. The sale proceeds were apparently not adequate to fully discharge them.<sup>90</sup>

It will be recalled that the deed transferring Mount Pleasant to

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<sup>88</sup> Letter. Edward Shippen to Peggy Arnold. dtd. February 7, 1802. printed in Pennsylvania Magazine of History and Biography, vol. 26, no. 2 (1902), pg. 242 to 244 at 243 (OONL).

<sup>89</sup> Mortgage of Land. John Macpherson, Gentleman to Thomas Mason, Merchant. dtd. May 1, 1776. reg. August 10, 1776. Transcript copy found in Mortgage Book X-20, pg. 82 to 84 (Phil. Dept. of Rcds.).

<sup>90</sup> Letter. Edward Shippen to Peggy Arnold. dtd. April 3, 1803. printed in Pennsylvania Magazine of History and Biography, vol. 26, no. 3 (1902), pg. 326 and 327 (OONL).

Colonel Richard Humpton, the high bidder at the public auction in 1781, was subject only to Don Juan de Mirallis' lease. The deed provided that he was:

"TO HAVE AND TO HOLD the said messuage or plantation and premises hereby granted or mentioned to be granted with the Appurtances unto the said Richard Humpton his Executors, Administrators and Assigns to the only proper use benefit and behoof of him, the said Richard Humpton, his Executors, Administrators and Assigns, for and during the term of the natural life of the said Benedict Arnold according to the Tenor Form and Effect of the Acts of our General Assembly in that Case made and provided, subject to the unexpired Term of a lease from John Macpherson Esq. to John de Mirallis Esq." [emphasis added] <sup>91</sup>

Also mentioned earlier was the legislative scheme for determining claims, and the resultant discharge of all encumbrances and claims not expressly mentioned in the States deed, or filed with the Supreme Court. The deed refers to neither the Osborne (Bond) or Mason mortgages. Neither Messrs. Charles Osborne nor Thomas Mason ever filed claims in the Supreme Court against the forfeited estate of General Arnold.

By registered instrument dated February 10, 1791, Mr. Edward Shippen transferred General Arnold's life interest in Mount Pleasant to Mr. Jonathan Williams for the sum of £600 Pennsylvania money. <sup>92</sup> The mortgage in favour of Mr. Charles Osborne was assigned to Mr. Jonathan Williams, by instrument dated March 14, 1792. <sup>93</sup> A Sheriff's deed dated March 29, 1792, signed by Mr. William Will, transferred title to the remainder in fee simple on the two pieces of land encumbered - including the mansion house - to Mr. Jonathan Williams, the high bidder at a public auction held at Mount

<sup>91</sup> supra., footnote 54, Deed of Land.

<sup>92</sup> Deed of Land. Edward Shippen, Esq. to Jonathan Williams, Gentleman. dtd. February 10, 1791. reg. February 22, 1792. Transcript copy found in Deed Book D-32, pg. 355 to 358 (Phil. Dept. of Rcds.).

<sup>93</sup> Assignment of Mortgage. Charles Osborne, Gentleman to Jonathan Williams, Gentleman. dtd. March 14, 1792. reg. May 8, 1792. Transcript copy found in Mortgage Book 8, pg. 298 (6 pg.) (Phil. Dept. of Rcds.).

Pleasant, on March 28, 1792. His friend Mr. Matthias Baldwin, acting as his agent at the auction, bid £2,125 Pennsylvania money. The property had been seized on a writ of Fieri Facias, dated January 21, 1792, for default in payment on that mortgage. The transfer of the remainder is expressed in the following manner:

"... do grant bargain sell and deliver unto the said Jonathan Williams his Heirs and Assigns the Remainder in fee simple expectant on the determination of the life of Benedict Arnold of and in [describes land]..."<sup>94</sup>

An endorsement appears on the deed concerning the approbation of the Supreme Court of Pennsylvania to the sale.

"Acknowledged in open Supreme Court held at Philadelphia on the third day of September A.D. 1792 and entered amongst the records thereof."<sup>95</sup>

As a result of these transactions, Mr. Jonathan Williams became the registered owner of the life interest and remainder in Mount Pleasant, save for the lands mortgaged to Mason.

An entry in the Journals of the Supreme Executive Council of Pennsylvania for January 6, 1789, mentions a letter from Mr. Edward Shippen in relation to a pending lawsuit in the Supreme Court for the recovery of a mortgage debt on General Arnold's estate. It was resolved to have the Attorney General appear on behalf of the State.<sup>96</sup> An article published in 1951 also mentions Mr. Edward Shippens involvement in a mortgage action.

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<sup>94</sup> Sheriff's Deed. William Will, High Sheriff for City and County of Philadelphia to Jonathan Williams, Gentleman. dtd. March 9, 1792. Original deed is in existence (Phil. Dept. of Reds.).

<sup>95</sup> A) *id.*, Sheriff's Deed; B) the Fairmount Park Commissions book (*supra.*, footnote 83) at page 12 includes a 1/2 page summary entitled "Brief of Title: Mt. Pleasant in Fairmount Park", which states "Above Mtg. foreclosed and premises sold by Sheriff under writ of Sup. Ct., Docket 1792, page 556, and bought by Jonathan Williams at Sheriff's sale."

<sup>96</sup> Minutes of the Supreme Executive Council of Pennsylvania, vol. 15 (Harrisburg, Pa.: Theo. Fenn & Co., 1853), pg. 640 (OONL).

"Edward Shippen, Arnold's father-in-law, many years later sued the Commonwealth for recovery of the money due him on the mortgage." <sup>97</sup>

Both these references require further research. Taken by themselves they add nothing to what has already been said, except to invite speculation.

#### 10. Statement On The Law

A question arises as to whether the Bond (Osborne) and Mason mortgages remained valid notwithstanding the failure of those parties to enter a claim against the forfeited estate of General Arnold. The paper now turns to an examination of the case law on that point.

There exist three reported legal decisions involving claims of creditors against persons attained of high treason during the American Revolution (see Table of Cases - Notes on Cases).

The first such case is Dunham vs. Drake (1795). <sup>98</sup> It was heard in the New Jersey Supreme Court. The action was brought to recover a debt on bonds and promissory notes. The defendant's estate in New Jersey was confiscated. The proceeds of the forfeited estate were sufficient to discharge that debt. The Plaintiff did not file a claim against the defendant's forfeited estate. In arriving at a decision the court reviewed four sections of that State's Attainder Acts. Those sections mentioned in the judgement are set out below for the convenience of the reader (also see Appendix XI, Tab 11):

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<sup>97</sup> supra., footnote 62C, Steton, pg. 24.

<sup>98</sup> Dunham vs. Drake, 1 Coxe's Reports 315 (N.J. S.C. 1795). found in Early American Imprints, 2nd Ser., Shaw-Shoemaker acsn. no. 38409, mf. (OONL).

- i) N.J. Sess. Law 1778, Chap. 27, Section 12

"AND To the End that no Person or Persons, having any demand in Law or in equity upon or against the Estate of any Person against whom Inquisition shall have been found and Judgment thereon entered in Favour of the State as aforesaid, may in anywise sustain Loss by any Forfeiture consequent upon such Judgment..."  
[then claims procedure set out]

- ii) N.J. Sess. Law 1778, Chap. 14, Section 16  
[claims procedure set out]

- iii) N.J. Sess. Law 1783, Chap. 15, Section 5  
[Preference in payment given to mortgages]

- iv) N.J. Sess. Law 1783, Chap. 29, Section 6

"And be it further Enacted by the Authority aforesaid, That each and every Person having any Demand as aforesaid against any of the said Estates forfeited as aforesaid, except as is herein after excepted, and who hath not produced the same for Settlement within the Time limited, and in the mode prescribed by the Act herein before mentioned, shall be forever barred from foreclosing any such Mortgage, or commencing, prosecuting or maintaining any Action or Suit thereon, or on any such Specialty, Note or other Demand, or receiving Payment thereof from the State or Premises so mortgaged or encumbered."

The court did not find that the statutory provisions discharged the debtor and held that the defendant was still obligated to pay the debt.

Another such case Beach vs. Woodhull (1803), <sup>99</sup> also considered New Jersey's legislation. It came before the U.S. Third Circuit Court. In that case the owner of a mortgaged property had been attained. The defendant purchased the forfeited property. The creditor holding the mortgage did not file a claim against the forfeited estate and later sought to make the defendant (Woodhull) liable. The proceeds of the forfeited estate were sufficient to pay the debt at the time of sale. The court was evenly divided in its opinion, and no further action was taken. The Dunham

<sup>99</sup> Beach vs. Woodhull, 1 Peters Reports 2 (U.S. 3d. Cir. 1803) (OOSC).

case was not cited as an authority. A case which was cited - Walter vs. Perine, Federal Case no. 17,121 - is not reported, nor now accessible. The question as to whether debtors were discharged from their debt obligations under the New Jersey legislation does not appear to have ever been settled in law.

There also exists a Pennsylvania authority on this matter. The case Bare vs. Rhine (1798)<sup>100</sup> was considered by the Pennsylvania Supreme Court. That case dealt with a bond debt. The debtor was attainted and his estate forfeited. That creditor also did not file a claim against the debtors forfeited estate, which was adequate to pay his debt. The defendant argued that Section 4 of the Attainder Act passed on March 29, 1779 (see Appendix IX, Tab 9):

"... expressly enacts, That persons resident within the State, not entering their claims and demands within six months after public notice given of the intended sales of their debtor's lands, shall be forever barred from the recovery thereof."

That section bars the recovery of claims not brought within the manner and time prescribed by the Act:

- Pa. Stat. 1779, Chap. 832, Section 4

" And be it further enacted, That whenever such intended sales shall be advertised, public notice shall also be given that the creditors of the said traitors, and all claimants upon the said respective estates, exhibit their several claims and demands to the Justices of the Supreme Court for payment or satisfaction, as is by the said Act directed, within six months thereafter, if residents within this state, or within twelve months, if residents in any other of the United States, or be forever barred from the recovery thereof."

<sup>100</sup> Bare vs. Rhine, 2 Yeate's Reports 286 (Pa. S.C. 1798) (AEU) & (OOSC).

Chief Justice Yeates gave judgment in that case to the defendant based on the reasoning that the claim could have been satisfied from the proceeds of the forfeited estate.

"The Chief Justice this term delivered the sentiments of the whole court, that as the defendant's estate sold under his attainder was amply sufficient to discharge all his debts, the plaintiffs were bound to resort to the fund arising from the sale of his property."

There are no provisions found in Pennsylvania's Attainder Acts which would allow claims otherwise barred by the limitation period, to proceed if the proceeds of the confiscated estates were insufficient to satisfy them. The basis for Chief Justice Yeates decision in this case is unclear from the judgement. The adequacy of the proceeds rationale used in this case also conflicts with the reasoning applied in the Dunham vs. Drake decision.

#### 11. Fairmount Park

By an Act of the General Assembly of the State of Pennsylvania, passed in 1867, certain lands were vested in the City of Philadelphia "to be laid out and maintained forever, as an open public place and park." The Fairmount Park Commission was created to manage the Park. If a purchase price could not be negotiated with the property owners, the value of each property was to be "ascertained by a jury of twelve disinterested property holders, to be appointed by the courts of quarter sessions" of Philadelphia, and their reports were to be confirmed by the court.<sup>101</sup> Those proposed boundaries were extended by a Supplementary Act passed in

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<sup>101</sup> A) An Act Appropriating Ground for Public Purposes, in the City of Philadelphia, Pa. Stat. 1867, c. 525, pg. 547 (P); B) "The Park Extension", [Philadelphia] Daily Evening Bulletin, January 25, 1868, pg. 6, col. 3, mf.

1868.<sup>102</sup> The total area proposed to be laid out for the park by those Acts was 2,240 acres. The 1868 Act included within its scope the entire Mount Pleasant property.

By that time, the 100 acre Mount Pleasant estate had been subdivided, and sections of it were owned by different parties. The parcel which included the mansion house was at that time owned by The Granite Land Company. All of the Mount Pleasant land fronting on the Schuylkill River had already been sold off in small lots and was held by six different property owners.<sup>103</sup> The Granite Land Company's remaining 30 acre interest, located immediately behind those water lots, was acquired by the Fairmount Park Commission, by registered instrument dated June 14, 1869, for U.S. \$84,388.00.<sup>104</sup> A 31 acre parcel of Mount Pleasant owned by the estate of Mr. George W. Ford, located behind the Granite Land Company's land, was purchased by the Fairmont Park Commission, by registered instrument dated March 2, 1870, for U.S. \$54,784.20.<sup>105</sup>

The Land Purchases and Damages Committee of the Fairmount Park Commission was chaired by Senator Eli K. Price. His "Briefs of Titles, for

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<sup>102</sup> A Supplement to an Act, Entitled "An Act Appropriating Ground for Public Purposes in the City of Philadelphia...", Pa. Stat. 1868, c. 1020, pg. 1083 (P).

<sup>103</sup> A) Plan of Survey. Fairmount Park. 1868 (Phil. Dept. of Rcds.). The plan shows lot divisions with broken lines, and lists the names of the last registered owners; see entries for Granite Land Co. and Geo. W. Ford's lots on a section of that plan appearing on page 82; B) a copy of that plan accompanies the Second Annual Report of the Commissioners of Fairmount Park (Philadelphia: King and Baird, 1870), pg. front piece (PHC). It is referred to as a "Map of Farms and Lots".

<sup>104</sup> Quit Claim Deed (Deed Poll). Granite Land Company to City of Philadelphia. dtd. June 14, 1869. reg. July 8, 1869 (Phil. Dept. of Rcds.).

<sup>105</sup> Quit Claim Deed (Deed Poll). Sarah, A. Ford and Joseph S. Ford, Executors of the last Will and Testament of George A. Ford, deceased, to City of Philadelphia. dtd. March 2, 1870. reg. December 5, 1870 (Phil. Dept. of Rcds.).

these properties became precious historic records." <sup>106</sup>

Mount Pleasant estate is located on Mount Pleasant Drive in the section of Fairmount Park called East Park. In 1872 the Fairmount Park Commission proposed to store works of Art in portions of Mount Pleasant mansion. By that time it had been restored to its original condition. <sup>107</sup> The house since 1926 has been operated as a public museum by the Philadelphia Museum of Art.

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<sup>106</sup> A) supra., footnote 73E, Klein, pg. 5. At least three separate and distinct "Briefs of Title" for Mount Pleasant were prepared. Some are listed under the name of Henry J. Williams and others under the name of George Ford (Phil. Dept. of Rcds.); B) also see 36 page "Brief of Title of Tract of Land now called Mt. Pleasant" indexed under the name Benedict Arnold (PHI).

<sup>107</sup> A) Commissioners of Fairmount Park, Fourth Annual Report (Philadelphia: King & Baird, Printers, 1872), pg. 26, 27 and 43 (PHC); B) six sheets of architectural drawings of Mount Pleasant by David J. Kennedy (D.J.K.) exist from that period. They are described in James C. Massey (ed.), Two Centuries of Philadelphia Architectural Drawings: Catalogue of the Exhibit Held at the Philadelphia Museum of Art by the Society of Architectural Historians (Philadelphia: Society of Architectural Historians and Philadelphia Museum of Art, 1964), pg. 60 and 61 (OTU).

## FIGURE 11

This Survey Plan of Fairmount Park dated 1868 shows the location of Mount Pleasant estate outlined in yellow. The mansion house is identified with a red arrow. This plan is on file at the City of Philadelphia, Department of Records.



Mount Pleasant Mansions

SERRANO HILL

John Root

MANOR

S. P. Corlies

James S. Spencer

Joseph S. Lawrence

Belmont No. 2

ROAD

BRIDGE ST

WILSON'S

YORK

WATER

STREET

MANOR

CONCORD ST

WENTWORTH ST

CONCORD ST

CONCORD ST

CONCORD ST

CONCORD ST

ANSONIA ST

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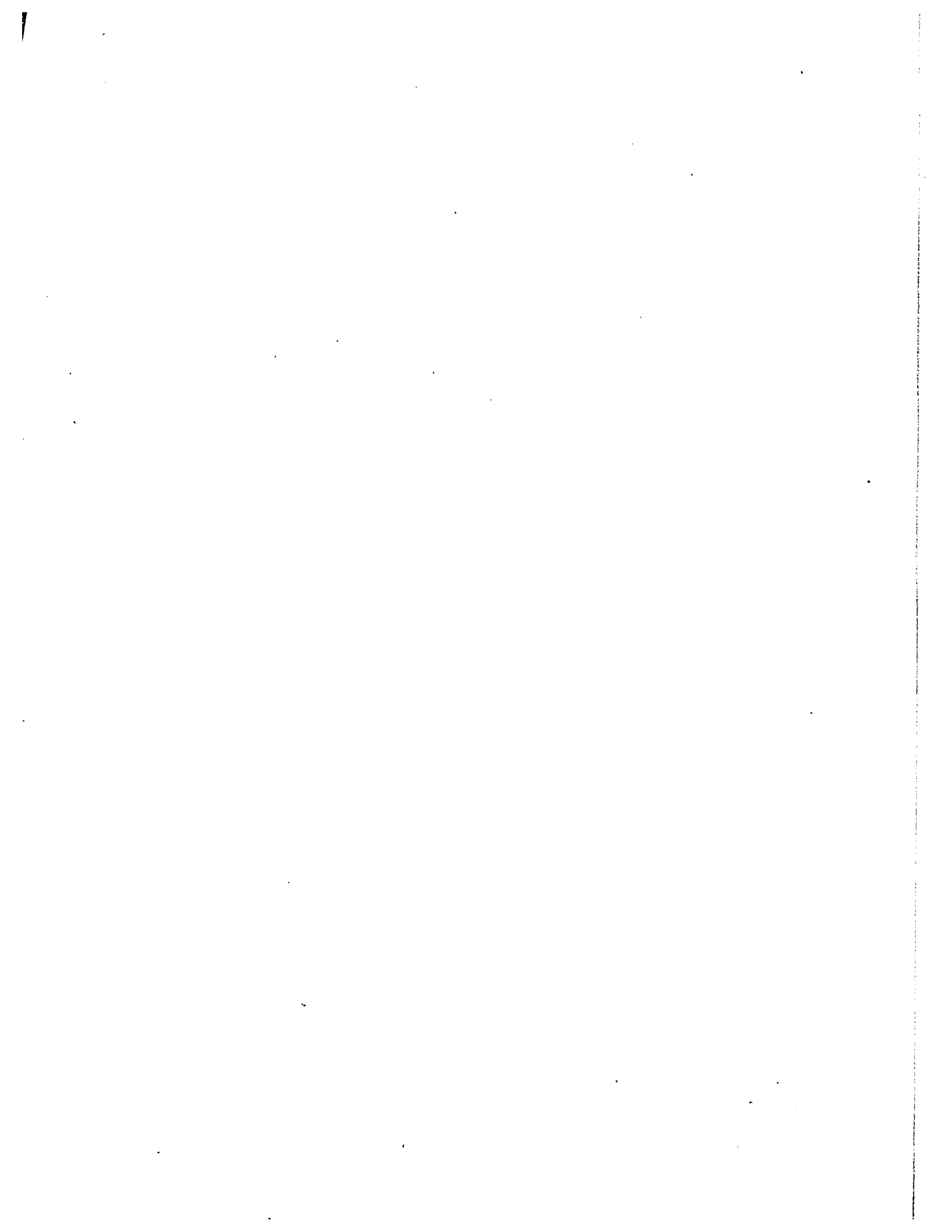
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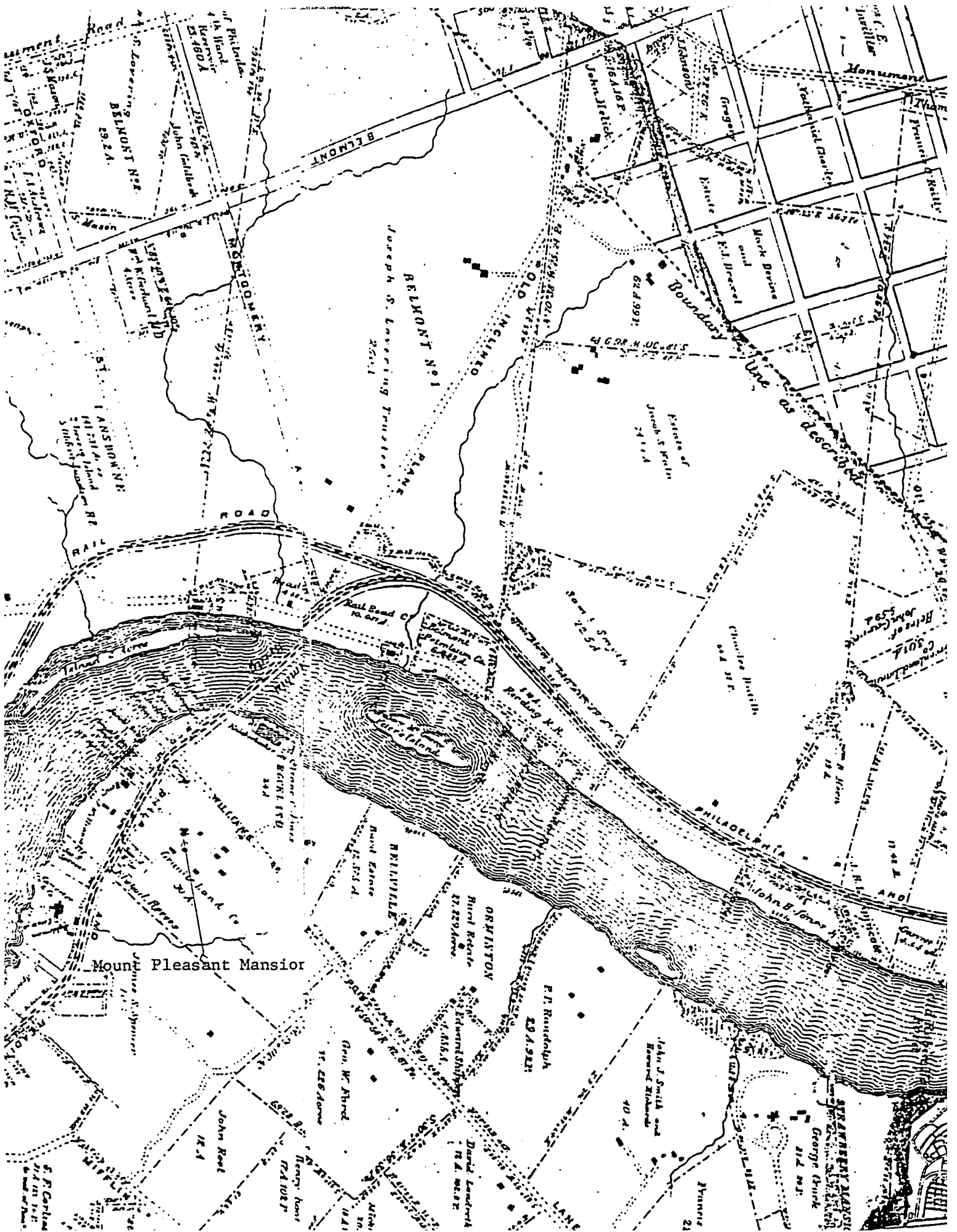
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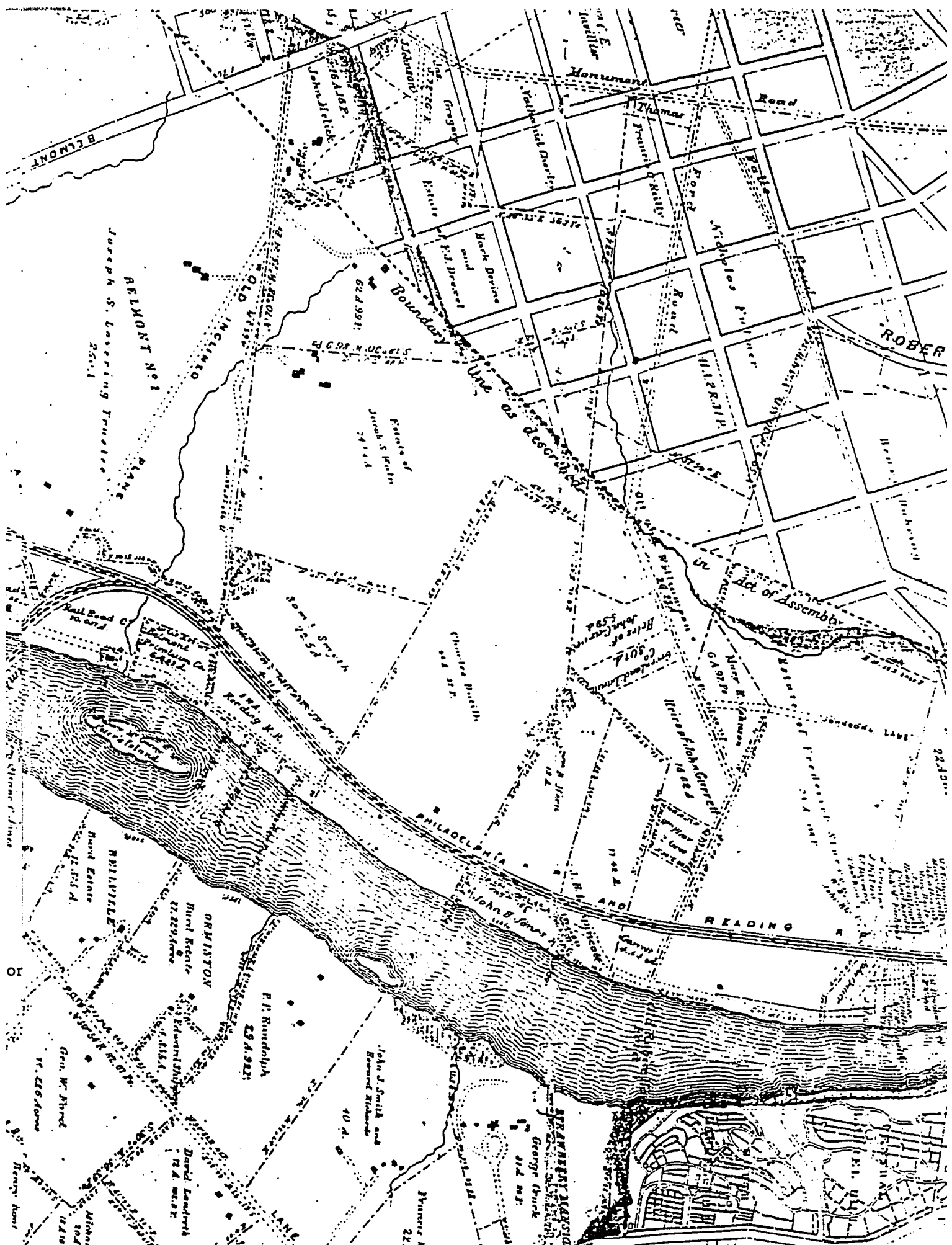
ANSONIA ST

ANSONIA ST









BLMONT

REMONT No 1  
PLANE

Joseph S. Levering Trustee  
2nd fl

OLD INCLINIO

Boundary Line  
of the  
City of Philadelphia

Private of  
Joseph S. Griffin  
2d fl

Monument

Ad of Assembr

ROBER

Ad of Assembr

PHILADELPHIA

READING R

NEVILLE

ORRISTON

P. P. Randolph  
28 A. 922

John J. Smith and  
Bernard Zilkow  
40 A.

George Drake  
312 N.E.

Francis M  
22

Bird Estate  
17-229 Ave

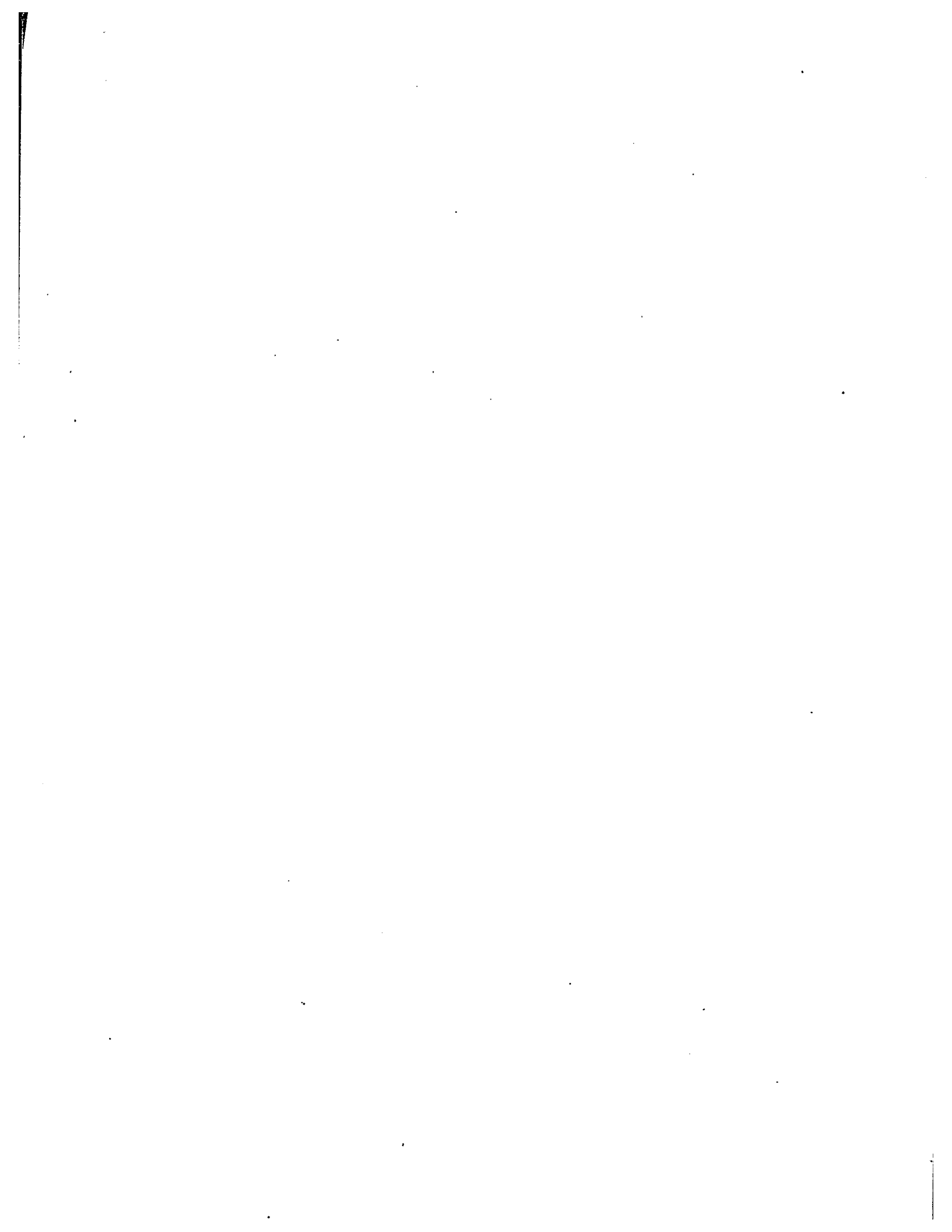
David Landwehr  
78 A. West

Gen. W. Flind  
75-426 Ave

Alison  
302  
1416

Henry Hunt





## 12. Conclusion

One might query the validity of the legal process which divested the interest of Mrs. Margaret Shippen, and that of her children, and of General Arnold's children from his first marriage, in the Mount Pleasant estate. The law on that point is after all unclear. The views of two legal philosophers predominate in the area of "hard cases". Professor Herbert Hart's model for judicial decision-making in "penumbral" cases proposes that judges exercise discretion, and make decisions by reference to social aims. Professor Ronald Dworkin's model proposes that judges exercise judgment by the application of principles or policies. Whatever method is correct, the outcome of this case will remain uncertain until the matter has been judicially considered.

## CHAPTER 4

UPPER CANADA (ONTARIO)

## 1. Introduction

While the primary focus of this Chapter is to examine historical facts dealing with the mechanics, policy and administration of real property confiscations in Upper Canada, occasioned by the War of 1812 - with special emphasis given to the story of a spy named Mr. David Kilborn who had his property located near Brockville, confiscated and sold following the War, along with side comments on confiscations having taken place in the Towns of York (Toronto) and Niagara (Niagara-on-the-Lake) - several other themes are also addressed. One of the predominant themes raised by historians in literature discussing confiscations of loyalist property in the United States, during the American Revolution, pertains to changes in class structure, resulting from the sale of those estates. Historical literature emphasizing that theme can be said to fall within the "Yoshpe School", named after Dr. Harry Beller Yoshpe, the "pioneer" in that field.<sup>1</sup> That theme is not deemed to be applicable to the Upper Canadian situation following the War of 1812 for

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<sup>1</sup> A) Books and articles in the "Yoshpe School" emphasizing the democratization of land holdings theme were written by Harry B. Yoshpe (1936) (1938) (1939), Catherine S. Crary (July 1954), Staughton Lynd (July 1961), Ruth M. Keeseey (October 1961), Richard B. Morris (January 1962), Robert S. Lambert (January 1963), Richard D. Brown (October 1964), Beatrice G. Reubens (July 1965), Michael P. Riccards (Spring 1968), John W. Tyler (1977) and, Dennis P. Ryan (October 1979); B) that theme was also found to have been discussed in Loyalist literature, but it was not the principal focus of those studies. A book review of Claude Halstead Van Tyne's, The Loyalists in the American Revolution (1902) remarked on it in the following manner:

"The effect of the wholesale confiscations was in general to split up the large manors into smaller portions, and make the social structure democratic." NYT 1902

C) Book reviews of John Franklin Jameson's, The American Revolution Considered as a Social Movement (1926) also passed comment on the democratization theme:

"Through confiscations of Tory estates, huge tracts of land passed into state ownership or into the hands of many individuals. And as the population moved westward America gradually became a land of 'peasant proprietors'." NYT 1926

"The work of [Dr. Ernest] Wilder Spaulding and Dr. [Harry B.] Yoshpe's study of the effects of the Revolution on land tenure in New York tend to show that Dr. [John Franklin] Jameson overemphasized the democratic effects of the confiscation of Tory estates, since these frequently fell into the hands of speculators. Dr. [Thomas Perkin] Abernethy's work similarly lays more emphasis on speculation than did Dr. Jameson." J Am Hist 1941

Those books and articles are all referenced in my Selected Bibliography under the title heading "American Confiscation Literature".

three reasons: 1) the freehold titles given by the Crown were not subject to quit rent; 2) Upper Canada was not parcelled out in gigantic estates; and, 3) land was not in scarce supply. However, the call of Professor Richard B. Morris, first made in 1962 and repeated in 1965 and 1967 <sup>2</sup> to examine property confiscations in the U.S. resulting from the American Revolution, state by state and county by county, can also be answered by Canadian Legal Historians seeking to answer other questions about the War of 1812.

"Dr. [Wallace] Brown's records [The King's Friends (1965)] tell us an important part of the Loyalist story, but by no means all of it. The Tory claims cast light upon their background and motives, but we must look elsewhere to learn what happened to their property. We must look to deeds and tax rolls buried in county clerks' offices, as well as to the reports of Commissioners of forfeited estates. There is one nagging question that remains unsettled. Did the confiscation of Tory estates lead to a democratization of landholding or did it offer rich Patriots an opportunity for aggrandizement? To date, the evidence is mixed... The subject is indeed complex and merits the same kind of state-by-state review that Dr. Brown has given us of the Loyalist claims. On paper, confiscation was the most social revolutionary step taken by the American Patriots. A knowledge of how it worked out in practice is essential if we are to understand the Revolution as both a great internal struggle as well as a war of secession from an empire." <sup>3</sup>

Not all residents of Upper Canada remained loyal to the Crown during the War of 1812. Americans who arrived in the Province after the loyalist migration were not considered to be loyal subjects. At least 158 persons residing in Upper Canada were declared Aliens and had their properties confiscated for

<sup>2</sup> A) Morris, Richard B., "Class Struggle and the American Revolution", William and Mary Quarterly, 3rd Ser., vol. 19, no. 1 (January 1962), pg. 1 to 29 at 23 (OCCC); B) Morris, Richard B., "Book Reviews - The King's Friends by Wallace Brown", Saturday Review, vol. 48, no. 51 (December 18, 1965), pg. 30 and 31 (OOU); and, C) Morris, Richard B., The American Revolution Reconsidered (N.Y.: Harper and Row, 1967), at 179 (OCCC); D) while Prof. Morris was not the first historian to make the call, he made it most often and stated it in the most eloquent manner. The call was also made in book reviews written by Oscar Zeichner and Richard L. Morton in 1940 following the publication of Harry B. Yoshpe's 1939 pioneer study. Zeichner said:

"Similar projects for all the states would finally enable the historian to know exactly what happened to the Tory estates and whether the Revolution really helped democratize land ownership in the early Republic." NY Hist 1940

<sup>3</sup> id., footnote 2B.

having absented themselves from the Province during the course of the War. Their property in the Province of Upper Canada totalled about 25,000 acres or upwards. <sup>4</sup> Appendix XII, Tab 12 of my paper provides a breakdown of those confiscations by District, Township, Concession and Lot number. An unknown number of other persons forfeited property as traitors or outlaws. Some were subjected to multiple proceedings.

All titles to confiscated property in the Province could be searched at the appropriate local Land Registry Offices for evidence contained in registered title deeds and title abstract indexes, in order to verify the accuracy of a statement made by Sir Gordon Drummond that there existed a parallel between the disloyalty of those "creeping" in and their acquisition of property titles from individuals as opposed to the Crown. <sup>5</sup> Such a study would likely establish dates of ownership, purchase price, and names and occupations of purchasers. It is perhaps that question which should be addressed in studying the Upper Canadian situation during the War of 1812, rather than becoming solely preoccupied with the occupations or social status of the purchasers of those confiscated estates.

<sup>4</sup> Four persons declared Aliens suffered individual losses in excess of 1,000 acres: i) Benejah Mallory, Esq., a Member of the Legislative Assembly, lost 1,160 acres in the District of London; ii) Frederick Onstine, Yeoman, had 1,600 acres confiscated in the District of London; iii) Andrew Westbrook[e], Yeoman, forfeited 3,240 acres in the District of London, and 1,200 acres in the Home District; and, iv) William Wallace [Wallis], Brewer and Carpenter, lost a 7,000 acre parcel of Indian land on the Grand River, in the Township of Woolwich, District of Gore. A Six Nation Indian Tribe, in exchange for money and labour had sold to William Wallace part of Block no. 3, on the East Side of the Grand River, opposite the forks, around 1803 (see Plans on pages 88 and 89).

<sup>5</sup> Letter. Sir Gordon Drummond (Pres. and Admin.) to Lord Henry Bathurst (Col. Secty.) (No. 2). dtd. March 20, 1814. found in MG11, C.O. 42, vol. 355, Cda.: Orig. Corres., Upr. Cda. Desp., pg. 18 to 35b at 19, mf. B-296 (OOA). Extracted statement:

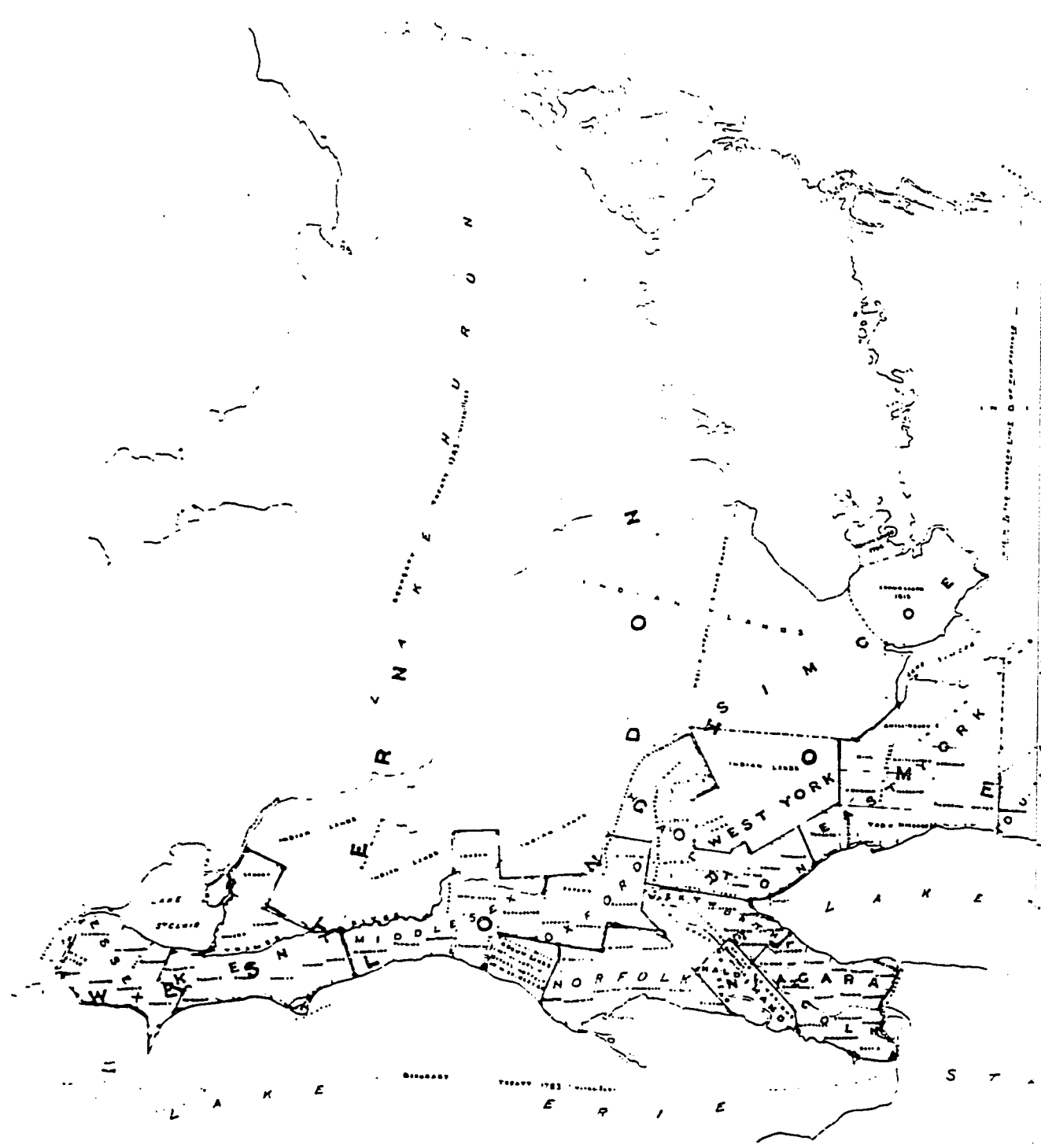
"Those who have shown the opposite disposition [disloyalty], it is satisfactory to know as such have, from time to time crept into the province from the neighbouring states, and settled on lands which they purchased from individuals."

My secondary themes touch upon the subject of rewards paid by Congress for treasonable practises during the War of 1812 and also examine legal opinions from that time period, appertaining to the confiscation and sale of real property, with particular emphasis on the rights and claims of creditors.

In summary, this Chapter starts off by reviewing the legislative authority regulating the confiscation of enemy property in Upper Canada during the War of 1812. It then turns to a discussion of the case of Mr. David Kilborn; identifies the location of his property, describes his arrest and subsequent escape, details the Alien Inquisition held against him leading to the confiscation and sale of his farm, and in conclusion mentions the compensation he received from the U.S. Government. Mixed into that discussion, are three pages of comment on the implementation of the Alien Inquisition process.

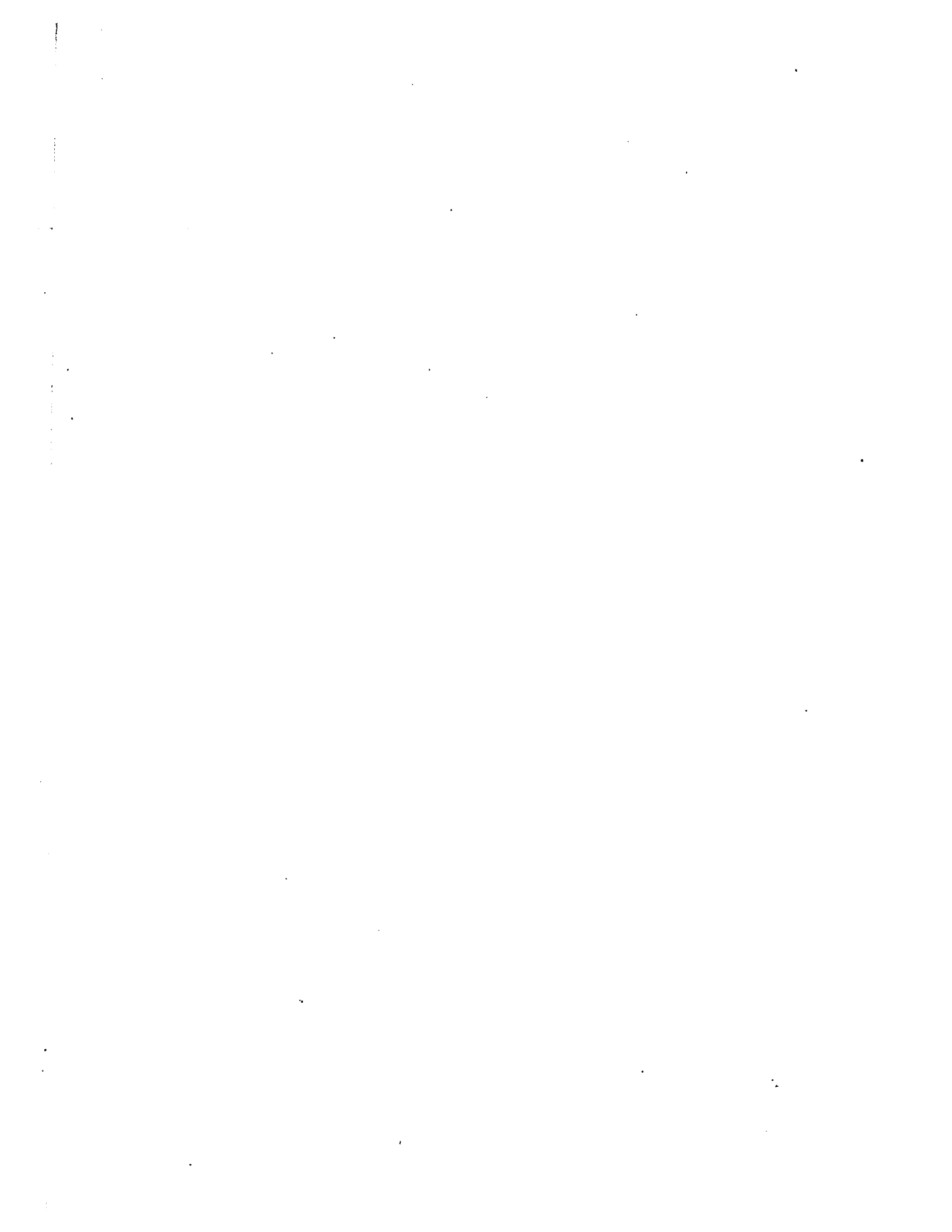
## FIGURE 12

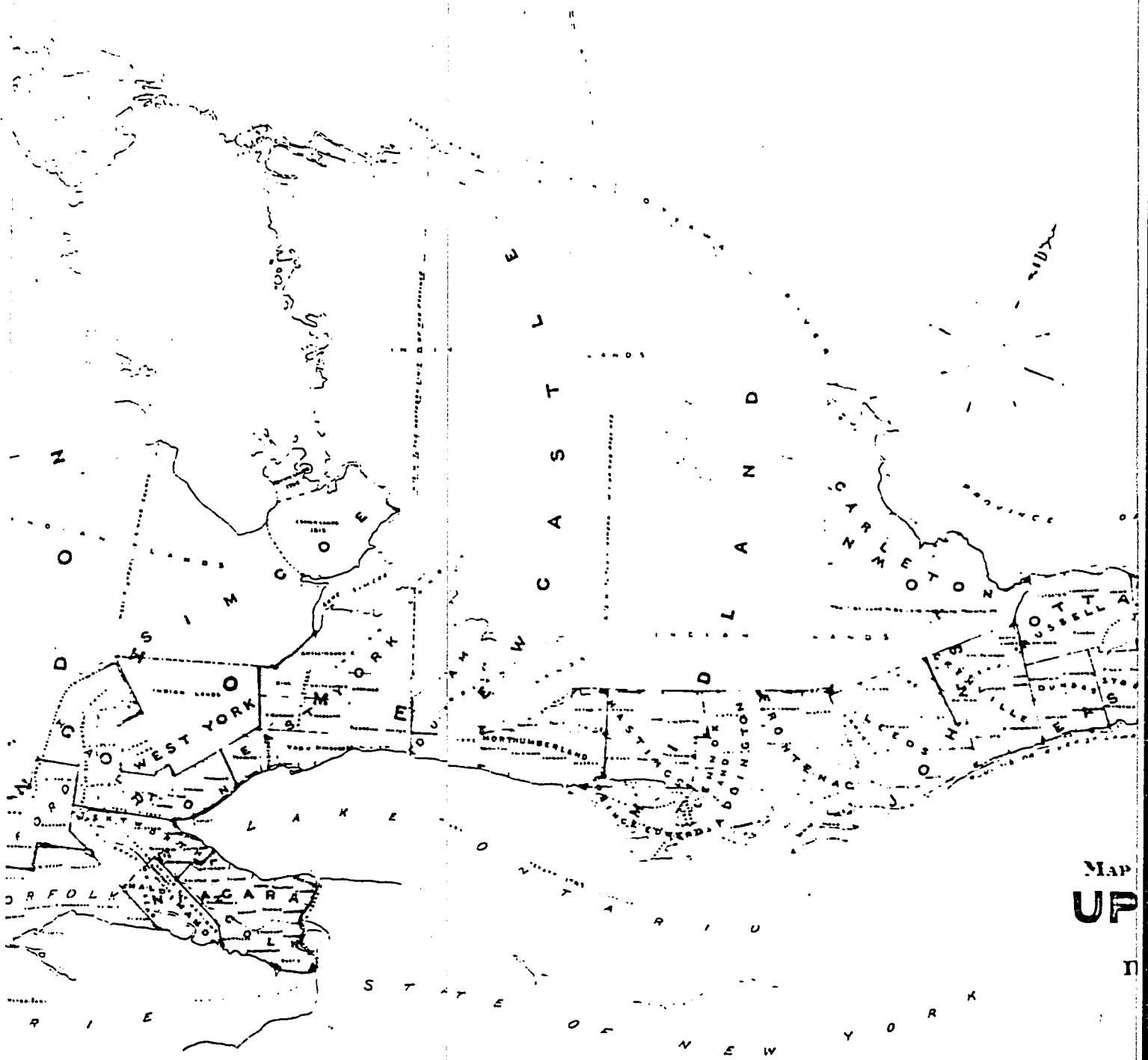
This Map showing Upper Canada in 1816, highlights in yellow the approximate location of William Wallace's 7000 acres, described for legal purposes as Part of Block 3, on the East Side of the Grand River, opposite the forks, in the Township of Woolwich, District of Gore. This Map, reproduced from a book by J.L. Morris, is on file at the National Archives of Canada, Ottawa, acsn. no. NMC 92111.



Revised and Enlarged Edition 1953

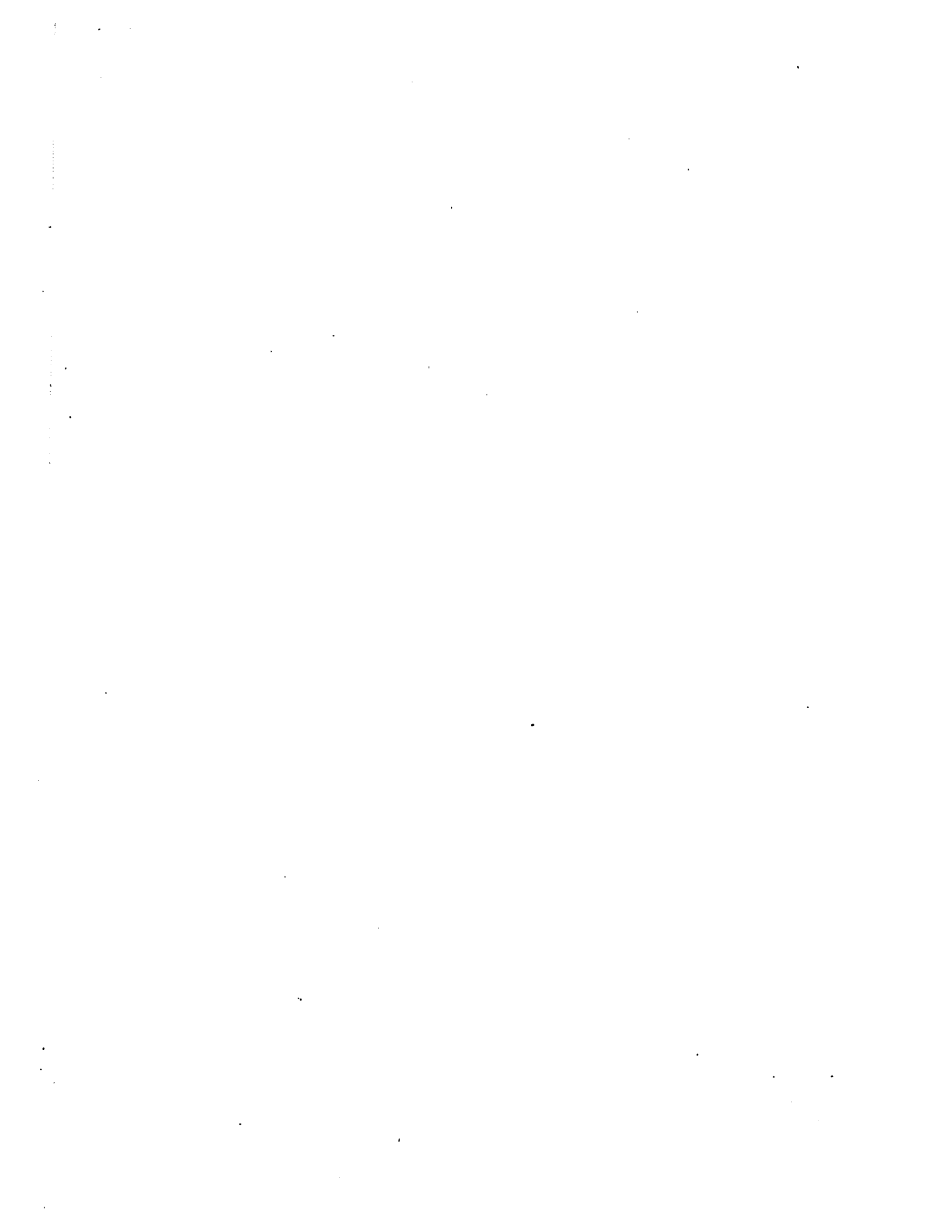
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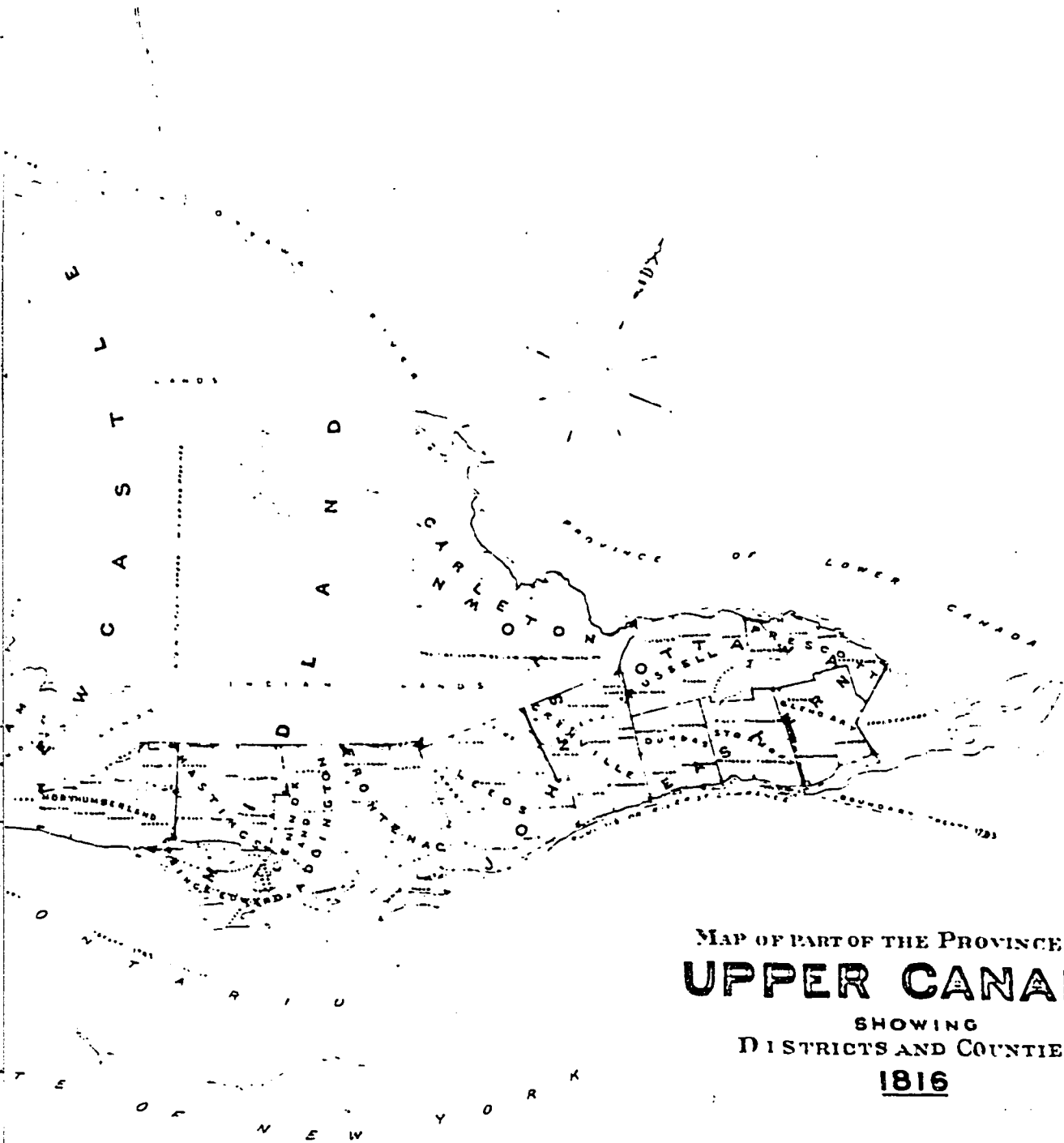




MAP  
UP

11





MAP OF PART OF THE PROVINCE OF  
**UPPER CANADA**  
SHOWING  
DISTRICTS AND COUNTIES  
1816

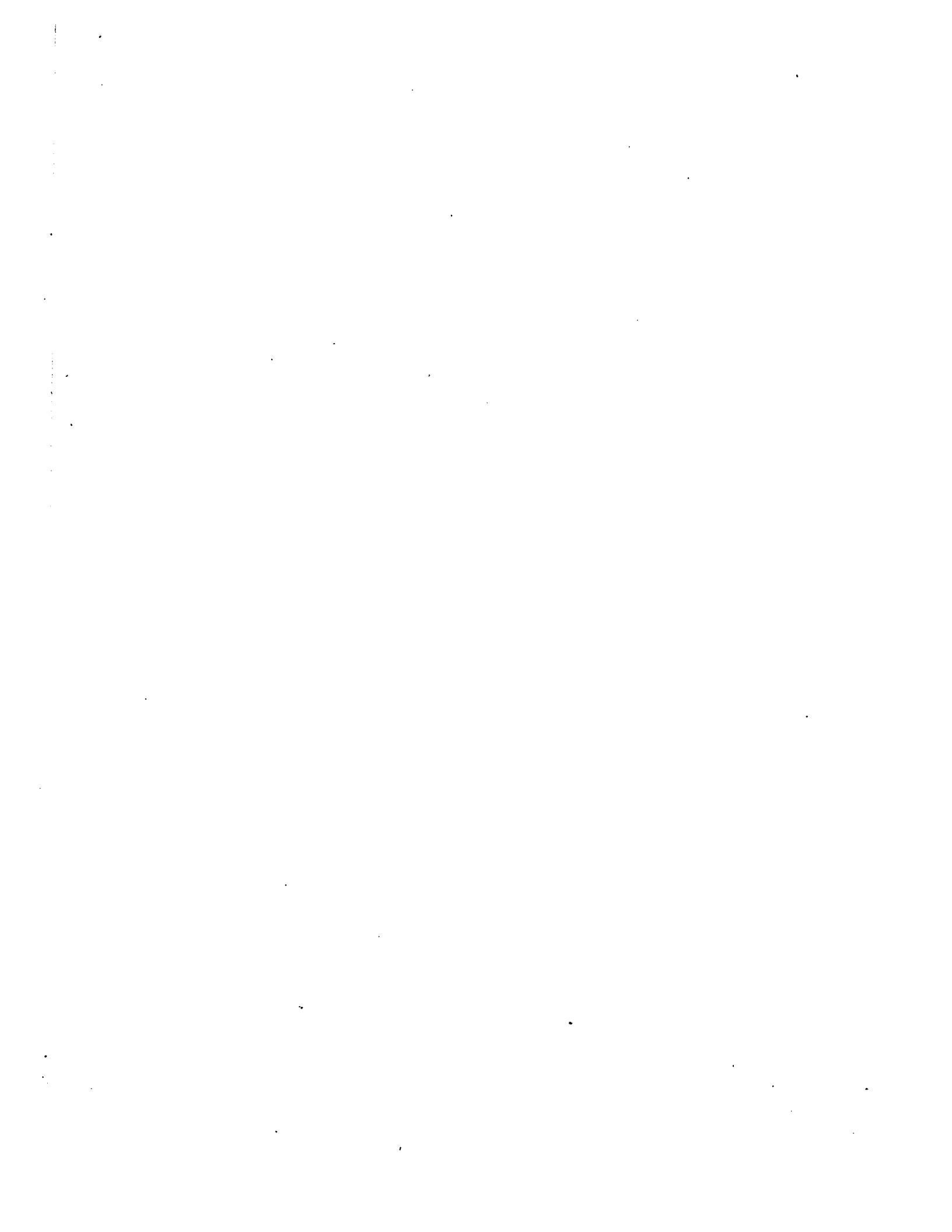
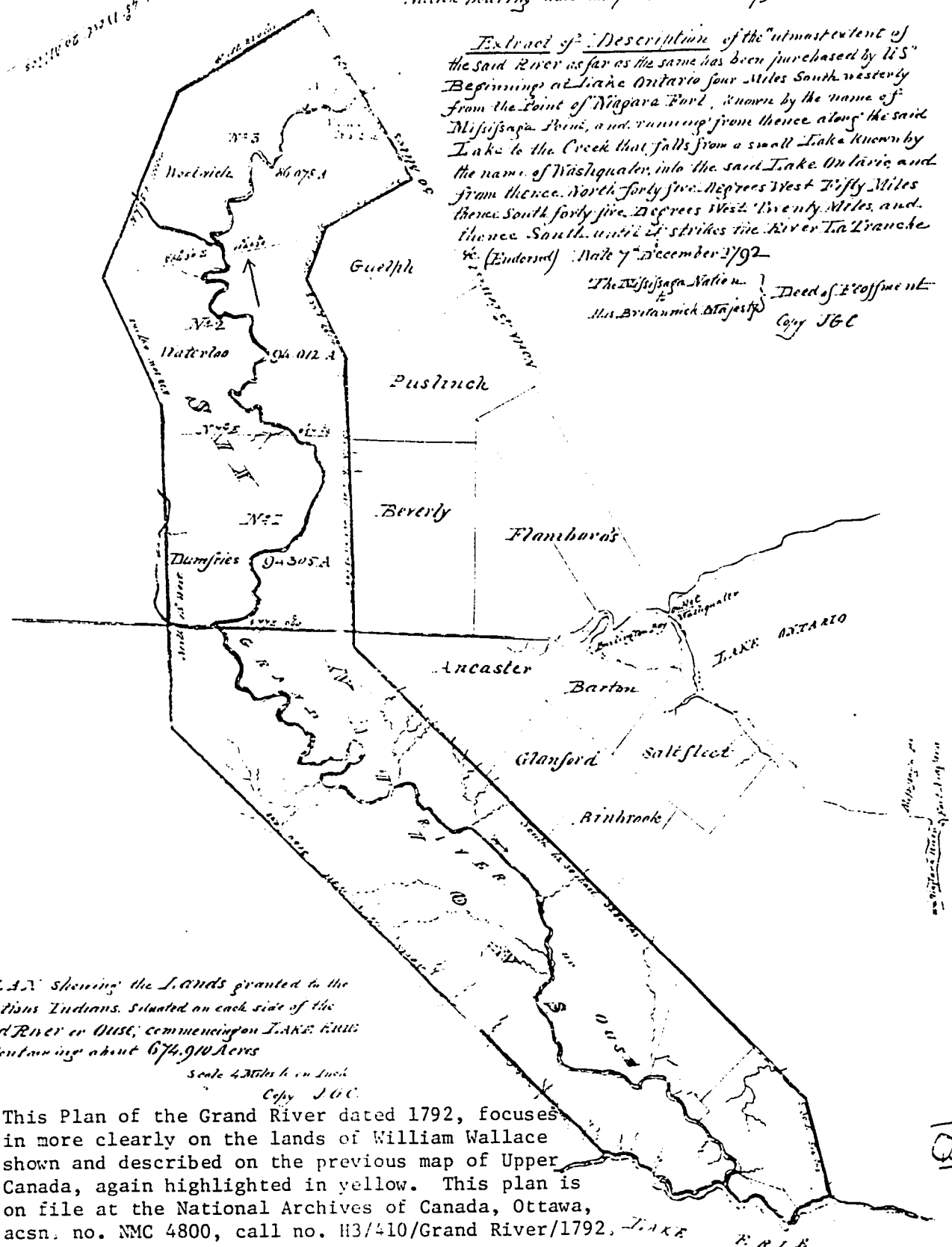


FIGURE 13

The Deed to the Six Nations, confirms to them Six Miles on each side of the Grand River or Ouse, to the remote source of the said River, as far as the same has been purchased in U.S. and as the same is bounded, and limited, in a certain Deed made to US by the Chiefs and People of the Mississauga Nation bearing date the 7<sup>th</sup> December 1792.

Extract of Description of the "utmost extent of the said River as far as the same has been purchased by US" Beginning at Lake Ontario four Miles South westerly from the Point of Niagara Fort, known by the name of Mississauga Point, and running from thence along the said Lake to the Creek that falls from a small Lake known by the name of Wasliqualen, into the said Lake Ontario, and from thence North forty five Degrees West Fifty Miles thence South forty five Degrees West Twenty Miles, and thence South until it strikes the River La Zouche &c. (Entered) Date 7<sup>th</sup> December 1792.

The Mississauga Nation }  
 His Britannick Majesty } Deed of Purchase  
 Copy J6C



Map showing the LANDS granted to the Six Nations, situated on each side of the Grand River or Ouse, commencing on Lake Ontario containing about 674,910 Acres

Scale 4 Miles to an Inch  
 Copy J6C

This Plan of the Grand River dated 1792, focuses in more clearly on the lands of William Wallace shown and described on the previous map of Upper Canada, again highlighted in yellow. This plan is on file at the National Archives of Canada, Ottawa, acsn. no. NMC 4800, call no. H3/410/Grand River/1792.

Q.S. 3

## 2. Background

The War of 1812 officially commenced with the United States declaration of war against Great Britain, approved by Congress on June 12, 1812.<sup>6</sup> Martial law was first authorized by the Executive Council of the Province of Upper Canada on August 4, 1812.<sup>7</sup> War had broken out with the United States as a direct consequence of certain British policies, imposed to straighten their blockade against France, which in the process interfered with American vessels and commerce.<sup>8</sup> The war concluded with the Treaty of Ghent, signed December 24, 1814,<sup>9</sup> with ratifications exchanged February 17, 1815.<sup>10</sup>

Except in cases of military necessity (i.e. harvesting crops in danger of being lost)<sup>11</sup> the Crown was not legally permitted, without specific legislative authority, to confiscate the private property of traitors, without

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<sup>6</sup> An Act Declaring War Between the United Kingdom of Great Britain and Ireland and the Dependencies Thereof and the United States of America and Their Territories, 12 Cong. 1st Sess. c. 102 (1812). found in Early American Imprints, 2nd Ser., Shaw-Shoemaker acsn. no. 26940, pg. 227 and 228, mf. (OONL).

<sup>7</sup> The House of Assembly had authorized a partial exercise of martial law on August 3, 1812. This was unsatisfactory to the Executive Council who thought it expedient to adjourn the House of Assembly and "proclaim Martial law under the powers of the Kings Commission in case of Invasion". Martial law was again proclaimed throughout the Province in April 1814 to allow the gathering of supplies for the army at a price to be fixed by a magistrate. The Lieutenant Governor was vested with the full power to declare martial law, outside of the control of the House of Assembly. The issue of martial law during that period was found to have been fully canvassed in the following periodical article: Weekes, William M., "The War of 1812: Civil Authority and Martial Law in Upper Canada", Ontario History, Toronto, vol. 48, no. 4 (autumn 1956), pg. 147 to 161 (OOU). call no. FC 3052.0535.

<sup>8</sup> A) Gt. Brit. Comms. Debates. Hansard. February 3, 1813, vol. 24, pg. 363 to 377. available on Readex Microprint, mf. (OONL); B) Letters. James Monroe (U.S. Secty. of St.) to Sir John B. Warren (Brit. Min. at Wash.). dtd. October 27, 1812. found in RG7 G6, vol. 1, Cda. Gov. Gen. Off., Desp. fm. Brit. Min. at Wash., mf. C-15,626 (OOA).

<sup>9</sup> Treaty of Peace and Amity Between His Britannic Majesty, and the United States of America, signed at Ghent, December 24, 1814, found in Treaties and Other International Acts of the United States of America, Hunter Miller (ed.), vol. 2 (Wash.: U.S. Govt. Pr. Off., 1931), pg. 574 (OOP).

<sup>10</sup> Letter. Anthony St. John Baker (Brit. Min. at Wash.) to [Robert Stewart] Viscount Castlereagh (For. Secty.) (No. 1). dtd. February 19, 1815. found in MG16, F.O. 5, vol. 106, Gen. Corres., U.S.A., fm. Anthony St. John Baker, pg. 1 to 5, mf. B-2004 (OOA).

<sup>11</sup> In 1813, many farmers in the District of Niagara joined the American army leaving their crops of grain and other produce unharvested, which were in danger of being lost. It was recommended by a Committee of the Executive Council that the grain be harvested and that Commissioners be appointed from amongst the magistrates to receive claims and determine abandonments. It was recommended that action be accomplished by way of military command, to be given by the Commander of the Forces in Upper Canada, in a time of emergency, there being no existing laws of the Province authorizing sequestrations of private property.

first going through a trial process, resulting in conviction.<sup>12</sup> The passage of Bill no's. 228 and 229, on March 14, 1814, provided that authority. Bill no. 228 allowed the Crown to confiscate the property of traitors who had escaped capture, through a process known as outlawry,<sup>13</sup> and Bill no. 229 permitted confiscation of property belonging to persons who had withdrawn from the Province without a license.<sup>14</sup> Those Bills were passed as part of a package of war measures legislation intended to:

"... strengthen the arm of the Executive Government, and to suppress, or keep in awe that spirit of sedition and disaffection, promoted no doubt by the agents of the enemy which I regret to say prevails in some parts of the country..."<sup>15</sup>

Also included within that war measures package were Acts to suspend Habeas Corpus, and punish Treason. My study is restricted in its scope to examining cases of confiscation which arose without trial.

The incidents of forfeiture or confiscation of private property may seem odd today, but during that period of Upper Canada's history, was the

<sup>12</sup> The President of Upper Canada was advised in January 1814, to hold off sequestrating the real and personal property of persons joining the American army, until laws were passed permitting it. The sequestration of unharvested crops in the District of Niagara was authorized to prevent spoilage, not to punish. see, A) Letter. Thomas Scott (Chief Jus.) to Maj.-Gen. Francis de Rottenburg (Admin.). dtd. July 18, 1813. found in RG5 A1, vol. 16, Upr. Cda. Sundries, Civ. Secty. Corres., pg. 6515 and 6516, mf. C-4508 (OOA); B) Letter. Thomas Scott (Chief Jus.) to Edward MacMahon (Act. Civ. Secty.). dtd. July 22, 1813. *id.*, RG5 A1, vol. 16, pg. 6517 to 6522 (OOA); and, C) Letter. John B. Robinson (Act. Atty. Gen.) to Colley Foster (Civ. Secty.). dtd. January 26, 1814, *id.*, RG5 A1, vol. 16, pg. 6704 to 6709 (OOA).

<sup>13</sup> A) An Act to Supply in Certain Cases the Want of County Courts in This Province (1814) 54 Geo. III, c. 13 (4th Sess. 6th Parl. U.C.). MS "Bill 228" found in MG11, C.O. 44, vol. 45, Upr. Cda. Acts 1812-14, pg. 62 (2 pg.), mf. B-966 (OOA); B) amended by An Act to Repeal an Act Passed in the Fifty Fourth Year of His Majesty's Reign, Entitled, 'An Act to Supply in Certain Cases the Want of County Courts in This Province', and to Make Further Provision for Proceeding to Outlawry in Certain Cases Therein Mentioned (1815) 55 Geo. III, c.2 (4th Sess. 6th Parl. U.C.). MS "Bill 249" found in MG11, C.O. 44, vol. 46, Upr. Cda. Acts 1812-14, pg. 24 to 30 (7 pg.), mf. B-966 (OOA); C) William Renwick Riddell wrote three periodical articles which dealt with the process of outlawry during the War of 1812: 1) "The Sad Tale of an Indian Wife", Journal of the American Institute of Criminal Law and Criminology, vol. 13 (May 1922), pg. 82 to 99 (OOU); ii) "An Echo of the War of 1812", Ontario Historical Society: Papers and Records, vol. 23 (1926), pg. 434 to 449 (OOU); and, iii) "Benajah Mallory, Traitor", Ontario Historical Society: Papers and Records, vol. 26 (1930), pg. 573 to 578 (OOU).

<sup>14</sup> see Appendix XIII, Tab 13.

<sup>15</sup> Letter. Sir Gordon Drummond (Pres. and Admin.) to Lord Henry Bathurst (Col. Secty.) (No. 2), dtd. March 20, 1814. found in MG11, C.O. 42, vol: 355, Cda.: Orig. Corres., Upr. Cda. Desp., pg. 18 to 35B at 18B, mf. B-296 (OOA).

usual process which followed convictions on charges for treason. If captured, tried, and convicted for the offence of high treason, an accused was considered attainted, resulting in a forfeiture of all real and personal property.<sup>16</sup> An attainder is also said to take place if a penalty is imposed upon an individual who is without benefit of trial. The Upper Canada Alien Acts, passed between 1814 and 1821, can be included amongst that group of Acts known as Acts of Attainder.

Even prior to the adoption of a local Alien Act, forfeitures of real property are known to have taken place in Upper Canada as early as 1804, following a prolonged absence of a property owner from the Province.<sup>17</sup>

### 3. David Kilborn's Confiscated Property

Mr. David Kilborn (also seen spelled Kilbourn and Kilburn), Yeoman, received approval from the Upper Canada Executive Council for a grant of 200 acres of donation land<sup>18</sup> at a Council meeting held on July 22, 1797.<sup>19</sup> He later received approval for an additional grant of 100 acres of land, which he

<sup>16</sup> Letter. Edward McMahon (Act. Civ. Secty.) to Thomas Merritt (Sheriff). dtd. September 20, 1814. found in MU 8191, vol. 21, Sir Gordon Drummond Prs., Letter Book of the Pres. Off. 1814-15, pg. 115 and 116, bnd. vol. (OTAR).

<sup>17</sup> A) True copy of Upper Canada Executive Council Minute. dtd. May 29, 1804. found in RGI L6D, vol. 2, Cda.: Dept. Rcds., Upr. Cda. Insp. Gen. Rcds. 1795-1815, unp., file box (OOA). Extract from Minute:

"Upon the Motion of the Chief Justice the Board proceeded to investigate the circumstances respecting Frederick, alias Ferdinand Lowenstern's residence in the Province, about whom a Question was raised by the Commissioners for ascertaining titles to Land in the Niagara District, in the year 1803, whether he was or was not an Alien. And the Board was of Opinion, upon the Evidence adduced, that Lowenstern had not resided in the Province seven years, that therefore he was to be considered an Alien, and that the Land known by lot number twenty four in the Second Concession of Ancaster, on which said Lowenstern was located, had in consequence reverted to the King. And the Board further resolved, that such location ought to be erased from the map, and the land declared subject to the future disposition of the Crown."

B) Letter. William Chewitt and Thomas Ridout (Act. Jt. Surveyor Gen.) to John Small (Clerk, Exec. Concl.). dtd. July 2, 1804. found in RGI L6B, vol. 9, Cda.: Dept. Rcds., Upr. Cda., Corres. fm. Clerk of Exec. Concl. to Surveyor Gen. 1803-04, unp., file box (OOA).

<sup>18</sup> Non-military settlers were entitled at that time to between 200 and 1,200 acres of "free land", which was granted subject to conditions and the payment of Provincial officers fees. In 1797, no such fees were required from the United Empire Loyalists.

<sup>19</sup> see RGI L1, vol. 21, Exec. Concl. Off., Upr. Cda. Land Min. Bks., vol. C, pg. 147 and 148. mf. C-101 (OOA).

located near Brockville.<sup>20</sup> A Crown Patent for that 100 acres of land<sup>21</sup> was registered in his name on October 30, 1804. He later acquired an adjacent lot of 100 acres through private purchase sometime between 1809 and 1812.<sup>22</sup> Mr. Kilborn's Brockville property is presently situated near the Ontario Psychiatric Hospital (Brockville), located on King Street East (Highway No. 2), just past Oxford Ave. His property is bounded by the St. Lawrence River to the South and extends a bit past Highway 401 to the North. Riverview Lane (gravel road) running off of Highway No. 2 cuts through the middle of his property (see plan on page 96).

As a result of an affidavit sworn by Mr. Joel Dunbar on January 18, 1813, calling into question Mr. Kilborn's loyalty, Mr. Joel Stone (Justice of the Peace and Commander of the 2nd Leeds Militia Regiment) issued a warrant for Mr. Kilborn's arrest. Mr. Kilborn was later arrested by Mr. Charles McDonald at the alleged subversive meeting house of Mr. Libeous Armstrong, on or about November 27, 1813.<sup>23</sup> In his own words, following the war, Mr. Kilborn admitted to having spied for the Americans in 1813, however following two escape attempts, he managed to regain his freedom - having been held in

<sup>20</sup> see RG1 L7, vol. 60, Cda.: Misc. Rcds., Schedule of Land Patents, signed by John Graves Simcoe and Peter Russell, inspected July 22, 1807, bnd. vol. (OOA). Entries no. 482 and 1624, list the lands granted to David Kilborn.

<sup>21</sup> Ontario Ministry of Government Services, Official Documents Section, W 1/2 Lot 4, Cncsn. 1, Elizabethtown Twp., Liber PD, folio 352, Patent issued September 13, 1804.

<sup>22</sup> A) Twp. of Elizabethtown, Leeds Co. Abstract Index, vol. 1, Cncsn. 1-4. found in RG61. Ser. 28. Rcds. of Propt. Rts. Registration, Leeds Land Registry Off. (No. 28) Rcds., pg. 19 and 26, mf. 6-36 (OTAR); B) true copy also available, bnd. vol. (Leeds Land Registry Off. No. 28, Brockville, Ont.). Both include abstract pages for W 1/2 Lot 4, Cncsn. 1 (Crown grant) and E 1/2 Lot 5, Cncsn. 1 (Private purchase).

<sup>23</sup> see MG23 HII 1, vol. 2, McDonald - Stone Family Prs., pg. 849 and 850 (affidavit), and pg. 886-87 (warrant), file box (OOA). Affidavit of Joel Dunbar reproduced in full:

"On the 18th January 1813, Joel Dunbar of Kitley, on Oath saith, that David Kilborn of Kitley said to him the said Dunbar that there was Private Meetings held amongst them, invited me to one that night, saying he believed it was to be held at Abner Chapins in Bastard. The said Kilborn further added, there was a States Commission in Kitley's. Further added that there was a Role of mens' names kept, so that when the United States came here, they should know their friends."

custody for twelve days - and he thereafter remained in the United States. <sup>24</sup>

The first local Alien Act was passed by both the House of Assembly (Commons) and by the Legislative Council on March 7, 1814, assented to by the acting Lieutenant Governor (President) on March 14, 1814, <sup>25</sup> and later approved by the British Secretary of State. <sup>26</sup> The passage of the Alien Act had originated as a policy in London sometime in 1813, and had been implemented in Upper Canada upon the instruction of the Colonial Secretary. <sup>27</sup>

<sup>24</sup> A) Report on Petition of David Kilborn to House of Representatives. 23rd Cong. 1st Sess. dtd. January 14, 1834. found in CIS US Serial Set, Serial 260, House Report 174 (9 pg.) (OONL); B) Report on Petition of David Kilborn to House of Representatives. dtd. January 7, 1836. found in Early American Imprints, 3rd Ser., Rinderknecht acsn. no. 41395, vol. year 1836, pg. 491, mf. (not yet available) (OONL); C) Claim of David Kilborn. found in RG233, Rcds. of the U.S. House of Rep., 24th Cong., Bill H.R. no. 123, unp. (59 pg.) (DNA). Access to and/or xerox copies of House records, requires written authorization from the Office of the Clerk, U.S. House of Representatives. Included in the Claim papers are: i) MS copies of all supporting documents printed in the House Report referenced in footnote 24A; ii) MS petitions of David Kilborn. dtd. n.d. and November 1832, appearing in different form than the printed petition. Extracted statement from undated petition:

"... your petitioner at the risk of life and property examined every post from Kingston U.C. to Montreal and after having obtained their strength returned with a correct statement and delivered the same to General Wilkinson [the Commander of the American Army on the frontier]..."

iii) printed Bills H.R. no. 190, dtd. January 14, 1834 and H.R. no. 123, dtd. January 12, 1836; and, iv) MS Commission of Inquisition into the case of David Kilborn. dtd. November 24, 1815, and MS Certificate of Inquisition regarding that same case dtd. February 28, 1816. A printed copy of the Commission found in another source is referenced in footnote 43. The Certificate which names the 12 jurors was not otherwise located.

<sup>25</sup> A) Upr. Cda. House of Asmby. Jrnls. printed in Ontario Archives Report, 1912, pg. 151 and 164 (OOA); B) Upr. Cda. Legisv. Concl. Jrnls. printed in Ontario Archives Report, 1910 (OOA).

<sup>26</sup> A) Letter. Lord Henry Bathurst (Col. Secty.) to Francis Gore (Lt. Gov.). dtd. October 31, 1815. found in RG7 G1, vol. 57, Gov. Gen. Off., Desp. fm. Col. Secty. to Lt. Gov., Upr. Cda., pg. 129 to 134, mf. C-142 (OOA). The letter states that no "objection" was taken with respect to the Acts passed in March 1814, and specifically lists the Alien Act; B) Letter. Sir Gordon Drummond (Pres. and Admin.) to Lord Henry Bathurst (Col. Secty.) (No. 16). dtd. June 20, 1814. found in MG11, C.O. 42, vol. 355, Cda.: Orig. Corres., Upr. Cda. Desp., pg. 89 (2 pg.), mf. B-296 (OOA); C) the previously mentioned letter was also found in RG7 G12, vol. 8, Cda.: Gov. Gen. Off., Letter Books of Desp. to C.O., Upr. Cda., unp., mf. H-1101 (OOA); D) the Schedule enclosed in that letter listing accompanying copies of MS Acts passed in March 1814, is found in MG11, C.O. 44, vol. 45, Upr. Cda.: Acts, 1812-14, pg. 50, mf. B-966 (OOA). It was usual for printed copies to follow MS copies; E) Letter. Sir Gordon Drummond (Pres. and Admin.) to Lord Henry Bathurst (Col. Secty.) (No. 2). dtd. March 20, 1814. found in MG11, C.O. 42, vol. 355, Cda.: Orig. Corres., Upr. Cda. Desp., pg. 18 to 35B, mf. B-296 (OOA). The stated purpose of the Act was to punish traitors who would otherwise escape the legal process.

<sup>27</sup> A) 1) Letter. Lord Henry Bathurst (Col. Secty.) to Lt.-Gen. Sir George Prevost (Gov.-in-Chief of Cda.) (No. 39). dtd. August 11, 1813. found in RG7 G1, vol. 6, Cda.: Gov. Gen. Off., Desp. from C.O. to Gov. Prevost, Lower Cda., pg. 20 and 21, mf. C-126 (dft. copy) (OOA); ii) same letter found in MG11, C.O. 42, "Q" Ser., vol. 122, Cda.: Orig. Corres., Desp. to Gov. Sir George Prevost, pg. 50 and 51, mf. C-11,920 (transcript copy) (OOA); B) Letter. Sir Gordon Drummond (Pres. and Admin.) to Sir George Prevost (Gov.-in-Chief of Cda.). dtd. February 19, 1814. found in MG24 A41, Sir Gordon Drummond Letter Book 1814, pg. 57 and 58, mf. C-2226 (OOA).

The 1814 Alien Act declared those persons voluntarily withdrawing from the Province of Upper Canada or from their allegiance between July 1, 1812 and the conclusion of the War, to be Aliens incapable of holding lands in the Province. Each case was required to be examined by an inquisition of twelve jurors presided over by a Commissioner(s). The 1818 Alien Act established the legislative framework governing the sales of those confiscated estates.

SECTION 401  
HIGHWAY 401

96  
FIGURE 14

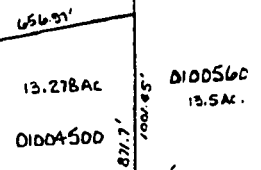
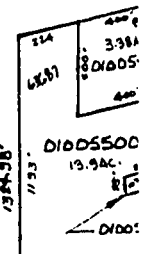
SEE SUB.  
MAP 01-06

SEE SUB.  
MAP 01-05

D1014000

D1009300  
32.1075 AC.

D10.05900  
95.6 AC.



CANADIAN NATIONAL RAILWAY  
1255.85'

LOT 6      LOT 5      LOT 4      LOT 3

Oxford Avenue

ELIZABETHTOWN

Riverview Lane

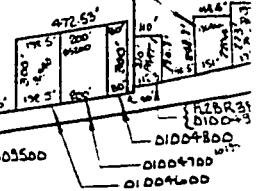
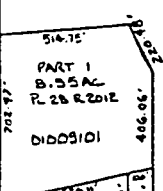
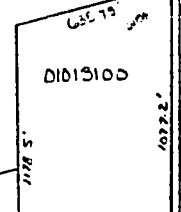
Ontario Psychiatric Hospital  
(Brockville)

D1014000

D1009300  
INCLUDES  
PART 1 P.L. 28 R. 7197  
56.726 AC.

D1004500  
4.1 AC.

22 AC.  
D1004300



King Street East (Highway 60)

SEE SUB MAP 1-01

SEE SUB-MAP 01-04

Assessment Plan of Elizabethtown Twp., by R. Nic dated July 1979, showing W 1/2 Lot 4 and E 1/2 Lot 5, Concession 1, being the lands confiscated from David Kilborn following the War of 1812, pursuant to Upper Canada's Alien Act provisions. A copy of the plan is on file at the offices of the Ontario Ministry of Revenue, Region no. 2, Brockville, Ont.

ST. LAWRENCE

The Attorney General of Upper Canada proposed a scheme in April 1814, for carrying into effect the Alien Act, which included sending a circular letter to the Sheriffs of each district, instructing them to return a list of names of offenders, which was to be followed by the issuance of Commissions to persons to hold inquisitions with a jury in order to gather evidence against them.<sup>28</sup> Approval was given by the President's Office (the acting Lieutenant Governor) in May 1814, to carry the Act into effect on that basis.<sup>29</sup> Circular letters dated May 1814 and October 1814 were sent to all Sheriffs, and to Officers Commanding the Militia, requiring them to return lists of names of persons possessed of lands, who had gone over to the enemy.<sup>30</sup>

The Attorney General's attention then turned to the appointment of Commissioners for each district. A short list of eight candidates was put forward by him in May 1814. His proposed candidate for the Johnstown District (which included Brockville) was Mr. Salomon Jones.<sup>31</sup> The acting Lieutenant Governor had previously instructed him to prepare a list naming three or four

<sup>28</sup> A) 1) Letter. John B. Robinson (Act. Atty. Gen.) to Capt. Robert R. Loring (Civ. Secty.). dtd. April 22, 1814. found in F44, Sir John Beverly Robinson Prs., Letter Book 1812-15, Corres. with the Pres. Off., pg. 78 to 80, mf. 7-409 (OTAR); 11) a draft of that same letter also appears in F44, A-I-1 Sir John B. Robinson Prs., 1814 Corres., unp., mf. 7-409 (OTAR). Both sources produced poor reader printer copies; B) Frederick H. Armstrong, Handbook of Upper Canadian Chronology, Rev. ed. (Toronto: Dundurn Press, 1985), pg. 42 (OONL). call no. NL stks. fol. F5476 A7 1985. This source provides a list of the Attorneys General of Upper Canada between the years 1791 and 1842.

<sup>29</sup> A) Letter. Capt. Robert R. Loring (Civ. Secty.) to John B. Robinson (Act. Atty. Gen.). dtd. May 2, 1814. found in F44, Sir John Beverly Robinson Prs., Letter Book 1812-15, Corres. with the Pres. Off., pg. 85 and 86, mf. 7-409 (OTAR); B) the original version of that same letter also appears in F44, A-I-1, Sir John Beverly Robinson Prs., 1814 Corres., unp., mf. 7-409 (OTAR). The later produced a poorer copy; C) a copy was also found in MU 8191, vol. 21, Sir Gordon Drummond Prs., Letter Book of the Pres. Off. 1814-15, pg. 28 and 29, bnd. vol. (OTAR).

<sup>30</sup> A) Circular Letter. Capt. Robert R. Loring (Civ. Secty.) to Sheriffs. dtd. May 14, 1814. found in MU 8191, vol. 21, Sir Gordon Drummond Prs., Letter Book of the Pres. Off. 1814-15, pg. 36, bnd. vol. (OTAR); B) Circular Letter. Capt. Robert R. Loring (Civ. Secty.) to Commanders of Militia. dtd. May 24, 1814. found in id., MU 8191, vol. 21, pg. 44 and 45 (OTAR); C) Circular Letter. Edward MacMahon (Act. Civ. Secty.) to Commanders of Militia. dtd. October 20, 1814. found in id., MU 8191, vol. 21, pg. 125 (OTAR); D) Circular Letter. Edward MacMahon (Act. Civ. Secty.) to Sheriffs. dtd. October 20, 1814. found in ibid., MU 8191, vol. 21, pg. 125 and 126 (OTAR); E) Letters. Joel Stone (Militia Com.) to Edward MacMahon (Act. Civ. Secty.). dtd. November 24, 1814 and December 30, 1814. found in RG5 A1, vol. 21, Upr. Cda. Sundries, Civ. Secty. Corres., pg. 8990, 8991, 9160 and 9161, mf. C-4544 (OOA).

<sup>31</sup> A) Letter. John B. Robinson (Act. Atty. Gen.) to Capt. Robert R. Loring (Civ. Secty.). dtd. May 13, 1814. found in RG5 A1, vol. 20, Upr. Cda. Sundries, Civ. Secty. Corres., pg. 8329 to 8331, mf. C-4543 (OOA); B) same letter also found in F44, Sir John Beverly Robinson Prs., Letter Book 1812-15, Corres. with the Pres. Off., pg. 96 and 97, mf. 7-409 (OTAR).

Commissioners for each District. The Lieutenant Governor had asked, in March 1814, that Mr. Thomas Markland be appointed a Commissioner in the Midland District,<sup>32</sup> and in April 1814, he asked that Mr. Joseph Edwards be included in the Niagara District, and that Mr. Thomas Osborne be included in both the Niagara and Johnstown Districts, and that Commissions of Inquisition be prepared immediately.<sup>33</sup>

In October 1814, the Attorney General recommended that the Commissions of Inquisition be issued.<sup>34</sup> Final instructions authorizing the issuance of those Commissions were given in November 1814.<sup>35</sup> Part of the delay in issuing Commissions can be directly attributed to the time it took those charged with preparing returns to fully comply with their instructions.<sup>36</sup>

The Executive Council issued a proclamation in April 1815, calling upon all magistrates and subjects "to be active and vigilant in the apprehension of such persons."<sup>37</sup> Executive Council minutes reveal that

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<sup>32</sup> Letter. Capt. Robert R. Loring (Civ. Secty.) to John B. Robinson (Act. Atty. Gen.). dtd. March 31, 1814. found in MU 8191, vol. 21, Sir Gordon Drummond Prs., Letter Book of the Pres. Off. 1814-15, pg. 1 and 2, bnd. vol. (OTAR).

<sup>33</sup> Letter. Capt. Robert R. Loring (Civ. Secty.) to John B. Robinson (Act. Atty. Gen.). dtd. April 22, 1814. found in MU 8191, vol. 21, Sir Gordon Drummond Prs., Letter Book of the Pres. Off. 1814-15, pg. 19 and 20, bnd. vol. (OTAR).

<sup>34</sup> A) Letter. John B. Robinson (Act. Atty. Gen.) to Edward MacMahon (Act. Civ. Secty.). dtd. October 11, 1814. found in F44, Sir John Beverly Robinson Prs., Letter Book 1812-15, Corres. with the Pres. Off., pg. 176 (two pages in that Letter Book are similarly numbered), mf. 7-409 (OTAR); B) same letter also found in RG5 A1, vol. 21, Upr. Cda. Sundries, Civ. Secty. Corres., pg. 8842 to 8844, mf. C-4544 (OOA).

<sup>35</sup> A) Letter. Edward MacMahon (Act. Civ. Secty.) to John B. Robinson (Sol. Gen.). dtd. November 29, 1814. found in MU 8191, vol. 21, Sir Gordon Drummond Prs., Letter Book of the Pres. Off. 1814-15, pg. 141. bnd. vol. (OTAR); B) written in reply to Letter. John B. Robinson (Act. Atty. Gen.) to Edward MacMahon (Act. Civ. Secty.). dtd. November 21, 1814. found in RG5 A1, vol. 21, Upr. Cda. Sundries, Civ. Secty. Corres., pg. 8971 to 8977, mf. C-4544 (OOA).

<sup>36</sup> Letter. Edward MacMahon (Act. Civ. Secty.) to John B. Robinson (Act. Atty. Gen.). dtd. October 16, 1814. found in MU 8191, vol. 21, Sir Gordon Drummond Prs., Letter Book of the Pres. Off. 1814-15, pg. 123. bnd. vol. (OTAR).

<sup>37</sup> Upper Canada Executive Council Minute. dtd. April 10, 1815. found in RG1 E1, vol. 50, Exec. Concl. Off., St. Min. Bks., Upr. Cda., St. Bk., vol. F, pg. 204 and 205, mf. C-98 (OOA).

upwards of 127 Commissions of Inquisition (76 individual and 51 multiple) were contemplated being issued by August 1815. <sup>38</sup>

The Attorney General reported in October 1815 on the progress of the measures which had been taken under the Alien Act, indicating that of the 70 or so individual Commissions prepared by his predecessor in office, Mr. John B. Robinson, that 26 had been completed and issued, but it was at that time unknown to him how many had been acted upon. <sup>39</sup> Mr. D'Arcy Boulton's (Attorney General) proposal to issue, where practicable, Commissions naming 10 to 12 "delinquents" in any one District was soon after approved. <sup>40</sup> However, Mr. Boulton was directed to issue intact the 77 individual Commissions formerly prepared by Mr. Robinson. <sup>41</sup> In 1820, rather than limiting inquisitions to named individuals, General Commissions were issued which permitted inquisitions at large. <sup>42</sup>

The Commission to inquire by inquisition of twelve men into the case of Mr. Kilborn was issued to Messrs. Joel Stone and Charles Jones on November 24, 1815. The Commission of Inquisition listed the names of six other

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<sup>38</sup> A) Upper Canada Executive Council Minute. dtd. August 9, 1815. found in RGI E1, vol. 50, Exec. Concl. Off., St. Min. Bks., Upr. Cda., St. Bk., vol. F, pg. 214 and 215, mf. C-98 (OOA); B) another source indicates that 77 individual commissions had been completed at that time. see Letter. John B. Robinson (Sol. Gen.) to D'Arcy Boulton (Atty. Gen.). dtd. April 5, 1815. found in F44, Sir John Beverly Robinson Prs., Letter Book 1812-15, Corres. with the Pres. Off., pg. 19 (2 pg.), mf. 7-409 (OTAR). General Standing Commissions were considered inappropriate at that time.

<sup>39</sup> Letter. D'Arcy Boulton (Atty. Gen.) to William Halton (Civ. Secty.). dtd. October 11, 1815. found in RG5 A1, vol. 24, Upr. Cda. Sundries, Civ. Secty. Corres., pg. 10715 and 10716, mf. C-4545 (OOA).

<sup>40</sup> A) Letter. Edward MacMahon (Civ. Secty.) to D'Arcy Boulton (Atty. Gen.). dtd. November 6, 1815. found in RG5 A2, vol. 3, Dft. Corres. of the Lt. Gov. Civ. Secty., Upr. Cda., unp. (4 pg.), file box (OOA); B) same letter was also found in RG7 G16C, vol. 7, Cda.: Gov. Gen. Off., Civ. Secty. Letter Books, Upr. Cda., pg. 23, mf. C-10,789 (OOA).

<sup>41</sup> Letter. D'Arcy Boulton (Atty. Gen.) to William M. Jarvis (Civ. Secty.). dtd. November 7, 1815. found in RG5 A1, vol. 25, Upr. Cda. Sundries, Civ. Secty. Corres., pg. 10941 and 10942, mf. C-4545 (OOA).

<sup>42</sup> A) Letter. John B. Robinson (Atty. Gen.) to Joel Stone and Charles Innes (Comsn.). dtd. January 20, 1820. found in F 536, Joel Stone Prs., unp. (2 pg.), mf. 7-536 (OTAR); B) Letter. Joel Stone (Comsn.) to James B. Macaulay (Clerk/Comsn. Confiscated Estates). dtd. February 29, 1820. found in MG 23H II 1, vol. 3, McDonald-Stone Family Prs., pg. 1242, file box (OOA).

individuals who were suspected of having withdrawn from Upper Canada between July 1, 1812 and the conclusion of the war.<sup>43</sup>

The inquisition against Mr. Kilborn was held on February 28, 1816. Three witnesses were called on behalf of the Crown - Mr. Jonathan Mills Church (former neighbour), Brigadier Hamilton and Mr. Solomon Easton. The testimony proved that Mr. Kilborn had gone to the United States in 1813 without a pass, and that he owned 200 acres of land in Brockville, which had been transferred by deed to his son, Mr. Whiting Kilborn on December 6, 1812.<sup>44</sup> The deed was said to have been signed in Morristown, N.Y., for an unknown consideration.<sup>45</sup>

Mr. John Small's (Clerk of the Crown) report on the estates confiscated under the Alien Act, indicates that the inquisition concerning Mr. Kil-

<sup>43</sup> Letters Patent under the Aliens Act (printed form). Granted November 24, 1815. found in RG5 A1, vol. 25, Upr. Cda. Sundries, Civ. Secty. Corres., pg. 11037 and 11038, mf. C-4545 (OOA).

<sup>44</sup> A) Transcript of testimony in the case King vs. David Kilborn. found in MG 23 H11 1, vol. 2, McDonald-Stone Family Prs., pg. 1014 to 1016, file box (OOA); B) Deed of Land. David Kilborn (grantor) to Whiting Kilborn (grantee). dtd. December 6, 1812. reg. February 14, 1815. inst. no. F-145 (Old County), mf. 932 (Leeds Land Registry Off., No. 28, Brockville, Ont.).

<sup>45</sup> The following two reported cases decided in the United States following the American Revolution dealt with the issue of fraudulent transfers made to avoid confiscations: 1) Chews vs. Spark, 1 Cox's N.J. Reports 56 at 69-70 (N.J. S.C. 1791). found in Early American Imprints, 2nd Ser., Shaw-Shoemaker acsn. no. 38409, mf. (OONL). It is said that Jonathan Chews conveyed property to his children in 1776 while in arms against the British to lessen the risk of forfeiture to the Crown should the American States be unsuccessful in their bid for independence. He was later attained of high treason by the State of N.J. in 1779 for turncoating to the British. Extracted statements from judgement:

"I am unable to bring my mind to assent to the proposition that a conveyance intended to prevent a forfeiture to Great Britain, on account of acts arising from a resistance to the usurpations and unjust claims made by that government, can ever in our courts be pronounced fraudulent for that reason."

"In a court deriving all its authority, and its existence from the principles of the revolution, these positions cannot be rendered plainer by language; they are self-evident."

and, 11) Campbell vs. McArthur, 2 Taylor's N.C. Reports (2nd ed.) 552 at 555 (N.C. S.C. 1815). Microfilm edition by Trans-Media Pub. Ser., N.Y., North Carolina State Reports, Pre-NRS, mf. no. 2 (OOSC). Neil McArthur conveyed property to his infant son in July 1777 while on parole as a prisoner of war. He was attained by the State of North Carolina by operation of its confiscation act of 1779. The court was left to decide whether that conveyance was valid in light of that State's Confiscation Acts and whether those Acts applied retroactively. Extracted statement from judgement:

"... we shall evidently perceive the impossibility of the acts having any retrospective operation that is not confined to the property of the enemy. If an estate has been conveyed from one enemy to another enemy, it would still remain within the control of this power [to weaken an opposing adversary]; but whenever it has passed to the hands of those who belong to the sovereign, the property then has the guarantee of the constitution."

born's 200 acre farm, was returned by the Commissioners on January 2, 1817. <sup>46</sup>

A license of occupation (lease at pleasure) for a part of Mr. Kilborn's farm (W 1/2 Lot 4) had been issued sometime prior to September 27, 1817 to Mr. Andrew O'Keiffe, Innkeeper. The entry book for licences of occupation does not specify the date the licence was issued, although it provides particulars of the licensed land and names the forfeiting person. <sup>47</sup> Mr. O'Keiffe apparently experienced some difficulty gaining entry to the farm house, then still occupied by Mr. Kilborn's son, for he petitioned Lieutenant Governor Francis Gore, on that date, for his assistance in gaining possession of the premises, explaining his situation and the plight of his wife and seven children. <sup>48</sup>

The Commissioners on the Estates of Traitors and Aliens appointed to administer the sales and claims against confiscated estates, were sworn in at an Executive Council meeting held on January 28, 1819. The six Commissioners appointed at pleasure, were the Hon. James Baby, and Messrs. James McCaulay, Grant Powell, George Crookshank, William Allan, and Peter Robinson. <sup>49</sup> Later

<sup>46</sup> Alien Return signed by Col. Joel Stone. n.d. Alien Schedule signed by John Small. dtd. June 7, 1817. and, Alien Inquisition Register. dtd. [1819]. all described in Appendix XIV, Tab 14, items 1, 2 and 4. In item 1 it is stated that David Kilborn was a British subject, born in the United States, and that in addition to owning the W 1/2 Lot 4 and E 1/2 Lot 5, Cncsn. 1, Twp. of Elizabethtown, Leeds Co. (see footnote 22) he held a lease to a further 200 acre parcel of land, legally described as Lot 28, Cncsn. 6, Twp. of Ketley.

<sup>47</sup> Entry Book for Licences of Occupation. "Names of Persons who have Received Permission from the Person Administering the Government to Occupy During Pleasure, the undermentioned lots of land forfeited by Persons who have withdrawn from U. Canada to the United States, During the late War". found in RG1 L7, vol. 26, Cda.: Misc. Rcds., 1765-1867, Upr. Cda., Licenses of Occupation 1804-30, unp. (2 pg.), bnd. vol. (OOA).

<sup>48</sup> Letter. Andrew O'Keiffe (Innkeeper) to Edward MacMahon (Civ. Secty.). dtd. September 27, 1816. found in RG5 A1, vol. 30, Upr. Cda. Sundries, Civ. Secty. Corres., pg. 13666 to 13668, mf. C-4547 (OOA).

<sup>49</sup> A) Upper Canada Executive Council Minute. dtd. January 28, 1819. found in RG1 E1, vol. 51, Exec. Concl. Off., St. Min. Bks., Upr. Cda., St. Bk., vol. G, pg. 39, mf. C-98 (OOA); B) Commission appointing Commissioners. dtd. January 13, 1819. found in RG22, Ser. 144, Box 2, Env. 8, Ct. of Kings Bench, Alien Act (1814) Rcds. (OTAR).

named as the official receiver under the Alien Act was Mr. Joseph Walls.<sup>50</sup> The Hon. James Baby was on occasion seen referred to as the "first Commissioner Forfeited Estates", or as the "Senior Commissioner of Forfeited Estates."<sup>51</sup>

Several advertisements announcing the sales of forfeited estates can be found in the Upper Canada Gazette. Those advertisements were placed by Mr. James B. Macaulay (Clerk/Commissioner of forfeited estates). They indicated the auction dates and generally listed the properties by their legal descriptions only.<sup>52</sup>

There is no advertisement surviving in the Upper Canada Gazette announcing the sale of Mr. Kilborn's farm. However, there does still exist a printed notice dated December 16, 1819, which lists auction dates for 150 distinct parcels of land, including Mr. Kilborn's 200 acre farm - then located 1 1/2 miles below Brockville - along with its two-story dwelling house (26'x 35'), barn (32'x 42') and stable (30 sq. ft.) - with 1/4 miles of frontage on the St. Lawrence River - which was announced to be sold at public auction on May 4, 1819.<sup>53</sup>

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<sup>50</sup> Upper Canada Executive Council Minute. dtd. July 28, 1820. found in RG1 E1, vol. 51, Exec. Concl. Off., St. Min. Bks., Upr. Cda., St. Bk., vol. G, pg. 107, mf. C-98 (OOA).

<sup>51</sup> A) Letter. Maj. George Hillier (Act. Civ. Secty.) to Hon. James Baby (Comsn.). dtd. May 29, 1822. found in RG7 G16 C, vol. 12, Cda.: Gov. Gen. Off., Civ. Secty. Letter Books, Upr. Cda., pg. 4, mf. C-10,790 (OOA); B) Letter. George Hillier (Act. Civ. Secty.) to Hon. James Baby (Comsn.). dtd. January 11, 1820. found in RG7 G16 C, vol. 10, Cda.: Gov. Gen. Off., Civ. Secty. Letter Books, Upr. Cda., pg. 25, mf. C-10,790 (OOA).

<sup>52</sup> Upper Canada Gazette, January 4, 1820, pg. 3; October 12, 1820, pg. 163; February 19, 1821, pg. 2; and, May 28, 1821, pg. 1, mf. (OONL). Many issues from that period appear to have been lost.

<sup>53</sup> Notice of Public Sale. dtd. December 16, 1819. Printed by order of James B. Macaulay, Clerk to the Commission of Forfeited Estates. The Notice is fully described in the reference book entitled Upper Canadian Imprints 1801-1841: A Bibliography, Fleming acsn. no. 137B (OONL). call no. Z1365 F64 1988 fol. ref. A copy of the Notice is found in RG1 A-VII, vol. 18, Off. of the Surveyor-Gen., Misc. Rcds., Glebes, Rectories, Goals, Grammar Schools, etc. (Scrap Bk.), 1817-57, acsn. no. 2 1/2, bnd. vol. (OTAR).

Deeds transferring the title to properties sold at auction were not to have been executed until full payment had been received. The terms of sale allowed scheduled payments to be made within the period of one year from the auction date. The legislative requirement was that "...public notice be given for the space of ninety days at least of the time and where they intend to begin to expose to sale any part or parcel thereof, and of the several particulars then and there to be sold."<sup>54</sup> The place of sale was changed in January 1820, from York (Toronto), to be held in the Districts where the lands were located in an effort to increase the number of people in attendance at the sales.<sup>55</sup>

The Commissioners deed transferring Mr. Kilborn's farm to Mr. Samuel Gray, Innkeeper, is dated November 13, 1821.<sup>56</sup> The deed is signed by four of the five Commissioners and was registered on December 4, 1821.<sup>57</sup> Both lots were purchased by Mr. Gray for £475, Upper Canada Currency.

Brockville lies within the boundaries of Elizabethtown Township, in Leeds County, Johnstown District. In addition to the conveyance of Mr. Kilborn's 200 acre farm, the Commissioners of Forfeited Estates transferred by registered deeds dated between 1820 and 1829 title to a further 1,966 acres in that Township, in sixteen separate transactions, to seven individuals, for a

<sup>54</sup> see Appendix XV, Tab 15.

<sup>55</sup> Letter. Hon. James Baby (Comsn.) to Maj. George Hillier (Civ. Secty.). dtd. January 14, 1820. found in RG5 A1, vol. 46, Upr. Cda. Sundries, Civ. Secty. Corres., pg. 22596 and 22597, mf. C-4604 (OOA).

<sup>56</sup> Deed of Land. Hon. James Baby, James Macaulay, Grant Powell and William Allen (Comsns. of Estates of Alien Traitors) (grantors) to Samuel Gray (grantee). inst. no. H-309 (Old County), mf. 933 (Leeds Land Registry Off., No. 28, Brockville, Ont.).

<sup>57</sup> The Attorney General provided an opinion in December 1820, in which he set out his concern that as the legislation then stood, deeds conveying forfeited estates had to be signed by "all the Commissioners in whom the forfeited estates are vested". An amendment made to the Alien Act in April 1821 (see Appendix XIII, Tab 13, item 5), purported to correct all such irregularities retroactively. see Letter. John B. Robinson (Atty. Gen.) to Maj. George Hillier (Civ. Secty.). dtd. December 27, 1820. found in RG5 A1, vol. 54, Upr. Cda. Sundries, Civ. Secty. Corres., pg. 27588 and 27589, mf. C-4607 (OOA).

total consideration of £1,191. That property had been confiscated from fourteen other persons declared Aliens pursuant to the provisions of the 1814 Alien Act. Mr. Billa Flint, Merchant, was the single largest purchaser of confiscated lots in that Township, having acquired 830 acres through five conveyances for £667. In fact he was found to have acquired 1,999 out of the 4,296 confiscated acres in that County. An office holder named Mr. Henry John Boulton bought 950 of those acres, making him the second largest purchaser in Leeds County. <sup>58</sup>

The proceeds from the sales and leases of confiscated estates (less administrative costs) formed a fund to compensate creditors <sup>59</sup> who could establish valid claims against individual estates, and any residue arising therefrom was to be applied towards compensating those who had filed general claims with the Commissioners for losses occasioned during the War of 1812. No relief was available to creditors before an income was derived from the properties of their respective debtors. <sup>60</sup>

Persons who had lived in the Province of Canada, and who were citizens of the United States prior to the War of 1812, and who had fought for a term of six months (up from one week by amendment made after the Act had been in force for one year) as volunteers in the United States Forces during the War of 1812, were compensated by the U.S. Congress with unsold lands (reduced by amendment to between 160 to 480 acres per claimant, according to

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<sup>58</sup> Abstract of Conveyances by Commissioners in Leeds County. found in Appendix IXX, Part III, Tab 19.

<sup>59</sup> see Appendix XVI, Tab 16.

<sup>60</sup> see Appendix XVII, Tab 17.

rank) in Indiana Territory, and three extra months pay. <sup>61</sup> These measures were said in part to provide relief to those persons who had suffered loss of property as a result of the War. <sup>62</sup>

After the War, Mr. Kilborn petitioned <sup>63</sup> the United States Government for compensation for his losses arising from the confiscation proceedings taken against him in Upper Canada and Mr. John Thompson, from the Committee on Military Affairs, introduced A Bill for the Relief of David Kilbourn <sup>64</sup> into the House of Representatives on January 14, 1834, <sup>65</sup> which was set aside. Another Bill authorizing compensation for losses in the amount of \$2,500 was introduced by Mr. Thompson on January 12, 1836. <sup>66</sup> That Bill was passed by the House on February 4, 1837 and by the Senate on March 2, 1837. <sup>67</sup> Mr. Kilborn had earlier received a payment in the amount of \$1,000 for his services during the War. <sup>68</sup>

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<sup>61</sup> A) An Act Granting Bounties in Land and Extra Pay to Certain Canadian Volunteers, 14th Cong. 1st Sess. c. 25 (1816). found in Early American Imprints, 2nd Ser., Shaw-Shoemaker acsn. no. 39172, pg. 13 and 14, mf. (OONL); B) An Act to Amend the Act, Entitled... (see above title), 14th Cong. 2nd Sess. c. 106 (1817). found in Early American Imprints, 2nd Ser., Shaw-Shoemaker acsn. no. 42353, pg. 280 and 281, mf. (OONL); C) for further amendments see U.S., Statutes at Large, Richard Peters (ed.), vol. 3 (Boston: Charles C. Little and James Brown, 1848), pg. 301 and 641, mf. (OONL).

<sup>62</sup> Report. "Revision of the Act Granting Bounties in Land and Extra Pay to Certain Canadian Volunteers". dtd. January 11, 1817. found in CIS US Serial Set, American State Papers, Class 9 (claims), vol. 1, Report no. 328, pg. 498 and 499, mf. (OONL).

<sup>63</sup> supra., footnote 24C, Kilborn Claim.

<sup>64</sup> A) Kilborn Relief Bill. H.R. no. 190. found in Early American Imprints, 3rd. Ser., Rinderknecht-Bruntjen acsn. no. 27348, vol. year 1834, pg. 386, mf. (not yet available) (OONL); B) supra., footnote 24C (iii).

<sup>65</sup> Congressional Globe, 23rd Cong. 1st Sess., vol. 1 (Wash.; Blair and Rives, 1834), pg. 102 and 103 (OONL). call no. F1OP/U.S. Congress/Congressional Globe.

<sup>66</sup> supra., footnote 24C (iii), Kilborn Relief Bill, H.R. No. 123.

<sup>67</sup> A) Congressional Globe, 24th Cong. 1st Sess., vol. 2-3 (Wash.; Blair and Rives, 1836), pg. 94 and 95 (OONL); B) Congressional Globe, 24th Cong. 2nd Sess., vol. 4 (Wash.; Blair and Rives, 1837), pg. 154, 157 and 274 (OONL).

<sup>68</sup> Kilborn Relief Bill. H.R. no. 143. dtd. December 27, 1831. found in Early American Imprints, 3rd Ser., Bruntjen acsn. no. 9609, vol. year 1831, pg. 319, mf. (not yet available) (OONL).

#### 4. Confiscations In The Town Of York (Toronto)

My research turned up only two cases in which real property was confiscated in the Town of York <sup>69</sup> following the War of 1812. One of those cases concerned the property of Mr. Matthias Brown (see Appendix XVIII, Tab 18) and the other dealt with the property of Mr. James Lockwood (see Appendix XX, Tab 20). Available evidence would seem to indicate that no other properties were confiscated in the Town of York, as a consequence of the War of 1812.

Mr. Matthias Brown, Yeoman, was charged with treason and attained by Judgment of outlawry for having joined the American forces. That process was followed by an Inquisition of Forfeiture.

A historian in the "Yoshpe School" studying the confiscation of Mr. Brown's forfeited estate would be looking for evidence of change in class structure resulting from the auction sales of his farm. Registered deeds transferring title to Mr. Brown's property from the Commissioners of Forfeited Estates indicate that parts or parcels of his 270 acre farm were purchased by two Esquires, three Merchants, two Butchers, one Yeoman, three Masons, and one person of unknown occupation (see Appendix IXX, Part I, Tab 19; also see Figures 15 and 16 at pages 180-81, Tab 18). On the surface it would appear that his estate was subdivided among persons of mixed social status, although there is evidence to suggest that an office holder might have used influence to obtain a licence of occupation. With only one exception, persons in the Esquire and Merchant classes purchased the most expensive parcels.

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<sup>69</sup> The total population of York in 1813 was only about 625 persons. York was briefly occupied by an American force between April 27, 1813 and May 2, 1813. A scholarly examination of that incident which uses the War of 1812 claims for losses to analyze looting during the occupation, may be of interest to readers wanting to know how funds from the sales of confiscated estates were applied; see, Humphries, Charles W., "The Capture of York", Ontario History, Toronto, vol. 51, no. 1 (winter 1959), pg. 1 to 21 (OOU). call no. FC 3052.0535.

Mr. James Lockwood, Tinsmith, had 1/4 acre of property confiscated - through the same process as Mr. David Kilborn - following an Alien Inquisition which found that he had withdrawn from the Province between July 1, 1812, and the conclusion of the War.

#### 5. Confiscations In Niagara Town (Niagara-On-The-Lake) And Township

Seven lots ranging in size between one-half acre and one acre were subject to confiscation or forfeiture, in the Town of Niagara (Newark).<sup>70</sup> The town lots of Messrs. William Wallace, Brewer and Carpenter (Lots 9, 10, 11, & 12),<sup>71</sup> John Wagstaff, Yeoman (Lot 20),<sup>72</sup> and Samuel Thompson, Merchant (Lots 69 & 251)<sup>73</sup> were affected (see plan on page 109). In Niagara Township Mr. Aaron Stevens, Yeoman, forfeited 250 acres (Lots 78 N 1/2, 107, & 108),<sup>74</sup>

<sup>70</sup> There were around 800 inhabitants in the Town of Niagara in the War of 1812 period. The Town was attacked by the American forces on May 25, 1813, surrendered by the British on May 27, 1813, and burnt at the time of the American withdrawal on December 8, 1813.

<sup>71</sup> A) Abstract of Alien Inquisition held on May 27, 1816, entered in Register described in Appendix XIV, Tab 14, item 4, pg. 19 to 22; B) it will be recalled that William Wallace also had a 7,000 acre parcel of land confiscated on the Grand River.

<sup>72</sup> A) Abstract of Alien Inquisition held on June 9, 1817, entered in Register described in Appendix XIV, Tab 14, item 4, pg. 31 to 34; B) Alien Inquisition in the case King vs. John Wagstaff. dtd. December 30, 1816. found in RG22, Ser. 144, Box 1, Env. 1, Ct. of Kings Bench, Alien Act (1814) Rcds., Gore District, unp., file box (OTAR). The jurors at the Inquisition found that he "... voluntarily withdrew ... without Licence granted ..."; C) Traverse of Office Application in the case John Wagstaff vs. King. dtd. November 30, 1820. found in RG22, Ser. 144, Box 2, Env. 1, Ct. of Kings Bench, Alien Act (1814) Rcds., Traverse Case Files, unp., file box (OTAR). Affidavits in support of that Application stated that he did not voluntarily withdraw, but was forced to enter the U.S. as a prisoner of war. Judgement was for the Crown.

<sup>73</sup> A) Inquisition of Forfeiture in the case King vs. Samuel Thompson. dtd. March 1, 1824. found in RG22, Ser. 143, Box 2, Env. 16, Ct. of Kings Bench, High Treason (1814) Rcds., unp., file box (OTAR). He was indicted for having aided and comforted the enemy, spying, and bearing arms. His failure to appear at trial after the third demand, resulted in his being convicted of Outlawry on October 14, 1818; B) Petitions of John Clark to Occupy Samuel Thompson's Lot in the Town of Niagara. dtd. June 24, 1817. found in RG5 A1, vol. 32, Upr. Cda. Sundries, Civ. Secty. Corres., pg. 15608 and 15609, mf. C-4549 (OOA). dtd. August 4, 1817. found in id., RG5 A1, vol. 33, pg. 15844 and 15845, mf. C-4600 (OOA).

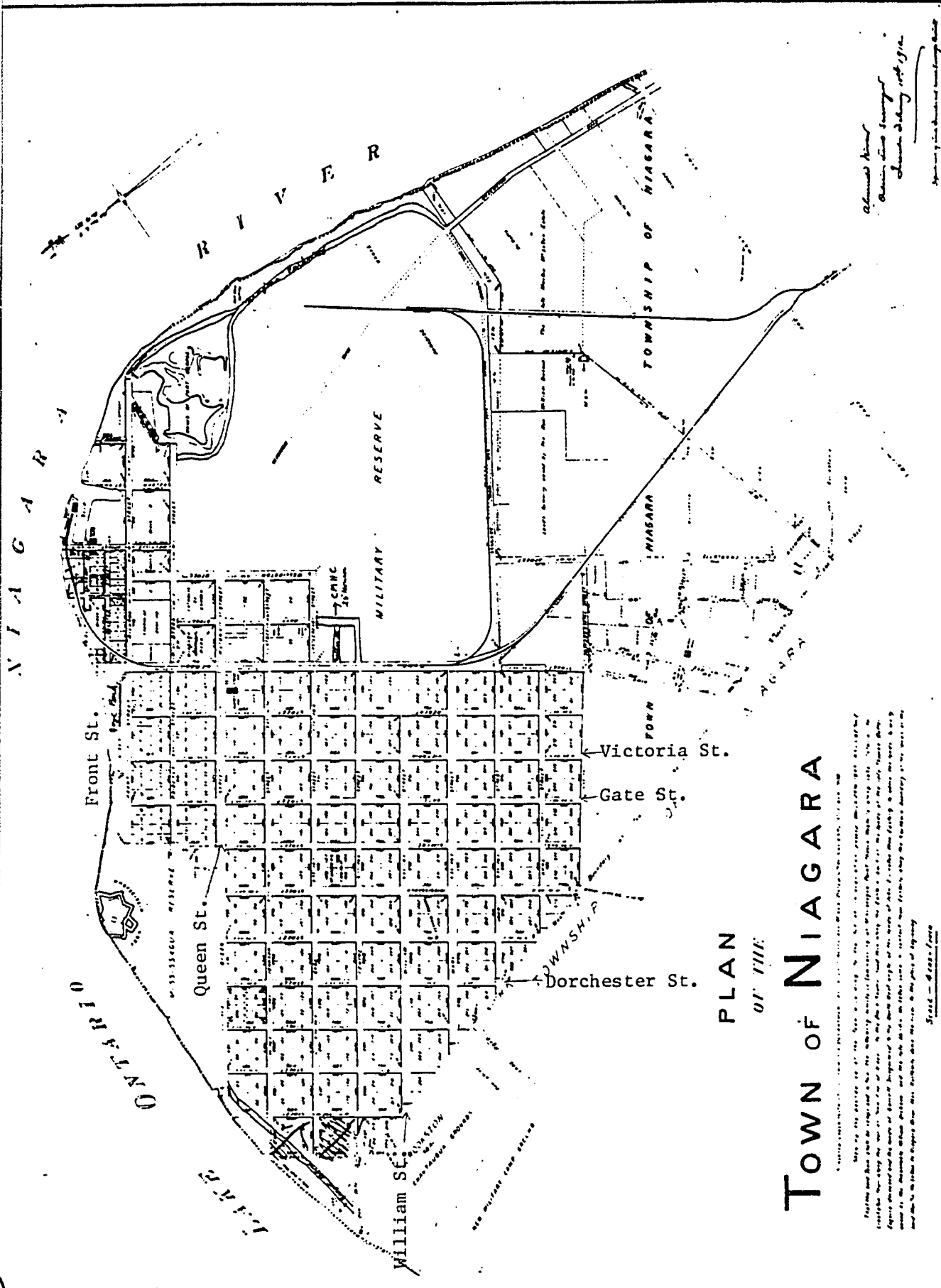
<sup>74</sup> A) Inquisition of Forfeiture in the case King vs. Aaron Stevens. dtd. January 27, 1818. found in RG22, Ser. 143, Box 2, Env. 5, Ct. of Kings Bench, High Treason (1814) Rcds., unp., file box (OTAR). He was convicted of High Treason on May 22, 1814, and ordered executed by hanging and dismemberment. The record states that he aided and comforted the enemy, acted as a spy from October 25, 1812, and served as a soldier in their army (Joseph Willcox's Corps.) during the invasion; B) Traverse of Office Application in the case John P. Clement vs. King. dtd. December 11, 1824. found in RG22, Ser. 144, Box 2, Env. 7, Ct. of Kings Bench, Alien Act (1814) Rcds., Schedule of Judgments Entered on the Traverse of Alien Inquisitions, 1817-1825, unp., file box (OTAR).

and Mr. Samuel Tompkins, Yeoman, had 200 acres confiscated (Lots 170, 171 E 1/2, & 172 E 1/2). <sup>75</sup> One of those named persons forfeited his property as a consequence of having been convicted of outlawry, another because he was convicted on a charge of High Treason, while the remaining three had their properties confiscated pursuant to the provisions of the 1814 Alien Act.

For details about the sales of their lands by the Commissioners of Forfeited Estates turn to Appendix IXX, Part II, Tab 19. The town lots were purchased by two persons described as Esquires, three Merchants, and a Silversmith, for a total consideration of £354.45, while the township lots were acquired by two Esquires, a Widow, a Blacksmith, and three Yeoman for £342.15. Amongst this group of individuals, the Silversmith was found to have purchased the most expensive parcel (£200), followed by a Yeoman (£139), two members of the Legislative Council (£100), a Blacksmith (£75), and a Merchant (£62). The other seven transactions were less significant financially, with one being for no consideration at all.

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<sup>75</sup> A) Abstracts of Alien Inquisitions held on August 2, 1817, April 12, 1820, and April 14, 1825, entered in Register described in Appendix XIV, Tab 14, item 4, pg. 23 to 26, 83 to 86, and 111 to 114; B) Petition of Isaac Swazze for a License to Occupy Lots Forfeited by Samuel Tompkins, a Traitor in Niagara Township. dtd. March 2, 1816. found in RG5'AL, vol. 27, Upr. Cda. Sundries, Civ. Secty. Corres., pg. 12164 and 12165, mf. C-4546 (OOA). endorsed "Granted".



PLAN  
 OF THE

# TOWN OF NIAGARA

This plan of the Town of Niagara (Niagara-On-The-Lake) by Alexander Riven, O.L.S., dated 1910, highlights in yellow the lots confiscated from William Wallace (Lots 9, 10, 11, & 12), John Wagstaff (Lot 20), and Samuel Thompson (Lots 69 & 251) following the War of 1812. This plan is on file at the National Archives of Canada, Ottawa, acsn. no. NMC 135240, call no. F/440/Niagara/1910.

## 6. Query Regarding Jay's Treaty

An unsettled question of law exists as to whether Article 9 of Jay's Treaty <sup>76</sup> - signed November 19, 1794 by Great Britain and the United States providing in part for an exemption of the Alien laws applying to American citizens then holding lands in British Dominions - could have applied to reverse certain confiscations <sup>77</sup> made during the War of 1812 in Upper Canada in a fashion similar to the Mercier/Halsted precedent discussed in Chapter 1. It has already been decided at common law that Article 9 was permanent in nature and not affected by the War of 1812. <sup>78</sup> This query regarding Jay's Treaty should be read in context with my comments found in Chapter 6 entitled Restatement of the Law.

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<sup>76</sup> see Appendix V, Tab 5.

<sup>77</sup> A) Relevant cases may be limited to those where the property was acquired before the signing of Jay's Treaty, and which continued to be held subsequent thereto, by that same title holder or by his or her heirs by devise, at the time of confiscation. This point is best illustrated in the case Orser et. al. vs. Hoac, 3 Hill N.Y. Reports 79 at 85 (N.Y. S.C. 1842). Available on Trans-Media Pub. Co., New York State Reports, pre-NRS, S.R. 1841-43, mf. 52 (OOSC). Extracted statement from judgement:

"It has been frequently decided that these treaties [Definitive Treaty of Peace (1783) and Jay's Treaty (1794)] only provide for titles existing at the time they were entered into between the two governments, and not for titles subsequently acquired. The parties claiming lands under either of them must show title in themselves or their ancestors at the very time the treaty was made."

also see, B) Doe d Thomas vs. Acklam (1824), 107 E.R. 572 at 579 (K.B.) (OOSC). Extracted statement from judgement:

"Now it is impossible to extend the effect of these two articles [Definitive Treaty of Peace (1783), Articles 5 & 6] beyond the particular lands that might be restored, recovered, or retained in virtue of them; and their effect, even as to such lands, with the future residence of their owners, and the rights of descent are not clearly defined. Then, as to the subsequent treaty [Jays Treaty (1794)]; it provides only that British subjects who then held lands in the territory of the United States, and American citizens, who then held lands in the dominions of His Majesty, should continue to hold them, and might grant, sell or devise them, as if they were natives, and that neither they nor their heirs or assigns should, so far as might respect the said lands, and the legal remedies incident thereto, be considered as aliens. This article is therefore, in terms, confined to lands then held..."

<sup>78</sup> A) Society for the Propagation of the Gospel in Foreign Parts vs. Town of New Haven et. al., 8 Wheaton S.C. Reports 464 at 494-95 (U.S. 1823) (OOSC); and, B) Sutton vs. Sutton (1830), 39 E.R. 255 at 259 (Chan. Ct.) (OOSC).

## 7. Conclusion

The District of Upper Canada seemingly having the highest total acreage confiscated pursuant to the provisions of the 1814 Alien Act would appear to be London District (see Appendix XII, Tab 12, item 5). Up to sixty-three whole or part lots totalling 9,200 acres may have been confiscated in twelve of that District's townships. Were settlement patterns alone responsible for that result or did other factors influence the outcome? An analysis of registered land title documents is one of the keys to the determination of that question in all of Upper Canada's Districts and Counties.

From the onset of my study my intention was only to open this area of research for others to follow. The sampling presented in this Chapter is felt to be too narrow to conclusively test the accuracy of Sir Gordon Drummond's statement tying disloyalty to land acquisition from individuals as opposed to the Crown (see footnote 5, page 86). We know that Mr. Matthias Brown inherited land purchased from the Crown by his father in 1804, that Mr. James Lockwood acquired property by private purchase in 1811, and that Mr. David Kilborn bought land from the Crown in 1804 and privately between 1809 and 1812. My research relating to confiscations and forfeitures in Niagara Town and Township indicates that three people had purchased their lands solely from other individuals, while two had made mixed purchases, having acquired land from the Crown and by way of private purchase. In Johnstown District twenty-five persons acquired land from other individuals, five received Crown grants, and one made a mixed purchase.

A compilation of that data shows that twenty-nine persons had bought land strictly from other individuals, five obtained land directly from the

Crown, four purchased land from both the Crown as well as in the private market place, while only one inherited land. Although the final result still awaits discovery, my sampling based on a review of land title documents at local Land Registry Offices used in conjunction with the 1819 Alien Register, does tend to show strong support thus far for Sir Gordon Drummond's statement. The fact that a high percentage of the deeds transferring property to those forfeiting parties - prior to confiscation - do not appear to have ever been registered on title, will make it next to impossible to establish purchase dates in all cases.

## CHAPTER 5

A CASE COMMENT ON IWASAKI vs. R. [1969] 1 Ex. C.R. 281 (Can.)  
aff'd [1970] S.C.R. 437 (Can.)

## 1. Introduction

Following the Japanese attack upon the U.S. Naval base at Pearl Harbor in Hawaii on the morning of December 7, 1941, the Government of Canada took measures directed against persons of the Japanese race residing in the Province of British Columbia. Those measures included exclusionary orders, curfews, and restrictions that remained in force until March 31, 1949.

The first exclusionary order dated February 5, 1942, required all male "enemy aliens" 18 to 45 years of age to leave the protected area of B.C.,<sup>1</sup> but that was soon after extended on February 26, 1942, to include all persons of the Japanese race.<sup>2</sup> On account of those exclusionary orders a total of 20,881 Japanese Canadians were resettled by the British Columbia Security Commission, of which 12,177 were sent to detention camps in the B.C. interior. At the conclusion of the war 3,965 Japanese Canadians were voluntarily repatriated to Japan.

Mrs. Ann Gomer Sunahara's The Politics of Racism (1981),<sup>3</sup> has been

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<sup>1</sup> A) Order-in-Council P.C. 365. dtd. January 16, 1942. found in Canada Gazette (Extra), vol. 75, no. 168 (OOU). call no. CAL YX99.G192; B) Government Notice. dtd. February 5, 1942. found in Canada Gazette (Extra), vol. 75, no. 180 (OOU).

<sup>2</sup> A) Order-in-Council P.C. 1486. dtd. February 24, 1942. found in Canada Gazette (Extra), vol. 75, no. 2112 (OOU); B) Department of Justice Notice. dtd. February 26, 1942. found in Canada Gazette, vol. 75, no. 36, pg. 3487-88 (OOU); and, C) Government Notice. dtd. August 18, 1942. found in Canada Gazette (Extra), vol. 76, no. 96 (OOU).

<sup>3</sup> Sunahara, Ann Gomer, The Politics of Racism: The Uprooting of Japanese Canadians During the Second World War (Toronto: James Lorimer & Co. Pub., 1981) (OOU).

credited "...as the definitive work on the uprooting of Japanese Canadians during the Second World War." <sup>4</sup> Her use of fresh archival records provided new insights on an old topic. Her thesis attempted to prove that the treatment of Japanese Canadians was motivated solely by racism. My Chapter uses a comparably narrower range of archival records - some previously out of reach due to privacy restrictions, made available only as a result of formal and informal Access to Information Requests - but evidence was turned up which tends to refute her thesis.

The focus of this Chapter deals with the confiscation of real property owned by persons of the Japanese race in the protected area of B.C., with particular emphasis on the case of Mr. Torazo Iwasaki. Aside from the legality of the sales of confiscated property and right of restoration, foremost at issue is the appraisal and sale procedure. Comments on the Government of Canada's Japanese Redress Program and on WWII records of the Custodian of Enemy Property are also featured.

## 2. Background

Both a legal and a political precedent exist in the case of the confiscation of Japanese property in Canada during WWII, which shed light on contemporary Canadian Government policies in this area. A protected area was established in 1942, on the Coast of British Columbia, West of the Cascade Mountains, and all persons living there, being of Japanese race, had their real property confiscated by the Custodian of Enemy Property, who subsequently

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<sup>4</sup> Tribivencius, Algis, "Book Reviews - The Politics of Racism by Ann Gomer Sunahara", CM: Canadian Materials for Schools and Libraries, vol. 10, no. 2 (1982), pg. 102 (OOU).

sold those lands, either by public tender or directly to the director of the Veterans Land Act, who purchased 769 farms in the Fraser Valley. In total more than 1,700 parcels of real property in the protected area vested in the Custodian. The confiscated properties were required to be sold for their appraised values.<sup>5</sup> The Custodian liquidated the properties, pursuant to the recommendations of two Advisory Committees. One Committee dealt with property in the Greater Vancouver area, and the other with rural property in B.C. Those committees were chaired respectively by his Hon. Justice Sydney A. Smith (District Judge in Admiralty and Judge B.C. Supreme Court), and his Hon. Judge David Whiteside (Judge, Westminster County, B.C.).<sup>6</sup> It had been contemplated, as early as July 1943, to pay the proceeds arising from the sales of confiscated estates to their former owners, except in those cases where there was evidence of collaboration or assistance given to the enemy during the War.<sup>7</sup>

In the U.S. during WWII, the government did not confiscate the real property of persons of the Japanese race as was done in Canada, although protected areas were similarly established in which curfews and later exclusion orders were put into force. However, as a consequence of the exclusion orders many Japanese Americans did find it necessary to sell their

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<sup>5</sup> see Appendix XXI, Tab 21.

<sup>6</sup> A) Memo. Ephraim H. Coleman (Under Secty. of St.) to [Norman A. Robertson] Under Secty. of St. for Ext. Aff. dtd. March 11, 1943. found in RG25, A3B, Ext. Aff., Central Registry Files, 1940 ser., vol. 3121, file 4606-C-13-40, Treatment of Assets and Propt. of Jap. Natl. in Cda., unpub. (1 pg.), file box (OOA): B) Memo. same to same. dtd. April 17, 1943. found in id., unpub. (1 pg.) (OOA).

<sup>7</sup> A) Letter. Norman A. Robertson (Under-Secty. of St. for Ext. Aff.) to Pedro E. Schwartz (Consul Gen. of Spain) (No. J-118). dtd. July 12, 1943. found in RG25, A3B, Ext. Aff., Central Registry Files, 1940 ser., vol. 3121, file 4606-C-13-40, pt. 1, Treatment of Assets and Propt. of Jap. Natl. in Cda., unpub. (3 pg.) (OOA): B) Memo. K.W. Wright (Chairman and Chief Counsel of Admin. Board, Dept. of Secty. of St.) to [Jules Leger] Under-Secty. of St. for Ext. Aff. dtd. July 23, 1956. found in RG25, A3B, Ext. Aff., Central Registry Files, 1940 ser., acsn. no. 86-87/336, file no. 4606-C-13-40, pt. 2, Treatment of Assets and Propt. of Jap. Natl. in Cda., unpub. (1 pg.), file box (OOA).

properties for an amount considerably less than fair market value, or lost them while in detention because they couldn't make their mortgage or tax payments. The validity of the curfew and exclusion orders were upheld by the U.S. Supreme court in the Hirabayashi (1943) <sup>8</sup> and Korematsu (1944) <sup>9</sup> cases. That pair of cases were later reviewed in the Hohri (1984-87) <sup>10</sup> case . It would now appear that once the doctrine of "military necessity" has been refuted by the government, civil actions are maintainable, and that the initial concealment of evidence will toll the statute of limitations.

A pair of Canadian cases also dealt with the validity of War Measures legislation. The Co-Operative Committee on Japanese Canadians (1946) <sup>11</sup> case, upheld deportation orders, and the Nakashima (1947) <sup>12</sup> case upheld the sales of property by the custodian.

Over 1,000 claims for compensation were filed by the owners of those confiscated estates following both public and private notices given in 1947, and they were formally reviewed by his Hon. Justice Henry Irvine Bird's (Justice B.C. Court of Appeal) Royal Commission, which made recommendations for compensation, based on fair market valuations. The claims hearings opened in Vancouver on December 3, 1947. The Bird Commission was only authorized to inquire into "claims of persons of the Japanese race who are resident in

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<sup>8</sup> Hirabayashi vs. U.S., 63 S. Ct. 1375 (U.S. 1943).

<sup>9</sup> Korematsu vs. U.S., 65 S. Ct. 193 (U.S. 1944).

<sup>10</sup> Hohri vs. U.S., dism'd 586 F. Supp. 769 (D.C. Dist. Col. 1984); aff'd in part, rev'd and rem'd in part 782 F. 2d. 227 (U.S. App. D.C. 1986); rev'd on other grnd's 107 S. Ct. 2246 (U.S. 1987).

<sup>11</sup> Re Validity of Orders in Council [1947], 1 D.L.R. 577 (P.C.).

<sup>12</sup> Nakashima vs. R. [1947] Ex. C.R. 486 (Can.).

Canada at the date of this Order [July 18, 1947]." The Commission submitted its Report in April 1950. The Custodian made supplementary payments to claimants based on the Bird Commission's recommendations. By March 1952, 1,296 awards had been paid (\$1,254,121) - on account of real and personal property claims - to eligible claimants, still leaving 28 unpaid claims (\$60,327). The sale of properties in the protected area was discontinued in 1949. At that time there remained only 21 parcels of unsold land. <sup>13</sup>

### 3. Iwasaki Case

One such claimant, Mr. Torazo Iwasaki, at 87 years of age (born April 15, 1879 - died August 1, 1971), commenced an action in the Federal Court of Canada on September 5, 1967, which was heard in 1968. He had owned 598.85 acres on North Salt Spring Island, B.C., in the Strait of Georgia - today considered prime recreational property - which included approximately 1 1/4 miles of ocean frontage on Satellite Channel. The property was sold by the Custodian for \$5,250 to Salt Spring Lands Limited by deed dated March 1, 1945. <sup>14</sup> Two other parties had shown an interest in purchasing the property but their offers had been rejected as they were both less than the accepted offer. <sup>15</sup>

The following description of Mr. Iwasaki's property is given in a

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<sup>13</sup> see Appendix XXII, Tab 22.

<sup>14</sup> A) Deed of Land. Secretary of State to Salt Spring Lands, Limited. dtd. March 1, 1945. reg. April 9, 1945. inst. no. 150954 (Vic. Land Titles Off.); B) Certificate of Vesting. dtd. March 31, 1943. reg. May 11, 1943. inst. no. 50930 (Vic. Land Titles Off.); C) Deposit. dtd. March 12, 1945. reg. April 9, 1945. inst. no. 150953 (Vic. Land Titles Off.).

<sup>15</sup> see RG117 C1, Off. of the Cstdn. of Enemy Propt., Corres. in Reply to Tenders, catalogue no. 552, unp. (9 pg.), mf. C-9475 (OOA). Nine items of correspondence relating to the tenders dated between June 27, 1944 and September 1, 1944 are found at this reference.

Department of Justice (Canada) Memorandum, dated July 5, 1968:

"His farm was located about ten miles from Ganges (the largest town on the Island) and about three miles from Vesuvius Bay. There was only a gravel road wide enough for one vehicle from Ganges to the property. There were no electricity, telephone or water services. The whole property consisted of about 650 acres of which 70 acres were cleared. The nearest neighbour was Gavin Mouat whose house was about 2 miles away and there were a couple of other neighbours also about 2 miles away in different directions. The populated area at Vesuvius Bay consisted of a hotel and about twelve private homes.

The land was very scenic and the waterfront portion included seven small bays or harbours and a high point from which one could see Tacoma Mountain..."<sup>16</sup>

The source of that information is Mr. Isawaki's examination for discovery.

The 650 acre description is not in accord with other evidence.

Mr. Iwasaki's claim was well publicized in the press. At least 12 articles concerning his case appeared in newspapers or magazines.<sup>17</sup> Between June 1967 and October 1968 Mr. Iwasaki's story became part of the theme run in Canada's journalistic press. In addition, he was featured on a television programme carried by the CBC.<sup>18</sup>

There had, at one time, existed discrepancies between appraisals

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<sup>16</sup> Memo. Norman D. Mullins (Dept. of Jus., Cda., Van., B.C., Off.) to C.R.O. Munro (Asst. Dpty. Atty. Gen. of Cda.). dtd. July 5, 1968. Iwasaki file, pg. 160 to 163 at 161. Obtained through an Access to Information Request made to the Dept. of Jus., Cda. in 1992. Their Access file no. A91-00096.

<sup>17</sup> see Appendix XXIII, Tab 23.

<sup>18</sup> Letter. Edwin E. Pearlman, Q.C. (Pearlman & Lindholm, Barr. and Sol., Vict., B.C.) to D.S. Maxwell, Q.C. (Dpty. Atty. Gen. of Cda.). dtd. December 20, 1967. Iwasaki file, pg. 385 to 387 at 387. Obtained through an Access to Information Request made to the Dept. of Jus., Cda. in 1992. Their Access file no. A91-00096. Extracted comment:

"...our clients also have a tape of the program carried by the Canadian Broadcasting Corporation on their Sunday program..."

establishing the valuation of Mr. Iwasaki's property; but the Bird Commission had accepted Mr. Iwasaki's over the Custodian's, and it recommended payment of his claim based on his evaluation. The appraisal done for the Custodian in August 1944 estimated the value of the property to be \$5,000. The appraisal prepared for Mr. Iwasaki in June 1949 estimated the value at the time of sale to be \$12,000. <sup>19</sup>

Mr. Iwasaki signed a document in October 1950, releasing all claims relating to the Custodian's sale of his property, in consideration of receiving an additional payment, from the Custodian, in the amount of \$8,083.50 - on account of real and personal property - paid to him pursuant to the Bird Commission's recommendation. <sup>20</sup> A payment in the amount of \$4,933.99 representing the net proceeds of the sale following adjustments had already been paid to Mr. Iwasaki in August 1947. <sup>21</sup>

Mr. Iwasaki had asked the Federal Court to order a return of his

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<sup>19</sup> A) see RG33/69, vol. 13, case 252 (Torazo Iwasaki), Ryl. Comm. (Bird) Rep. on Jap. Propt. Claims. dtd. November 15, 1947, unpub. (3 pg.) (OOA); i) included is an extract of the Appraisal made by D. Keith Wilson for the Custodian, dtd. August 5, 1944, unpub. (1 pg.); and, ii) also included is a copy of the Appraisal made by H.M. Hall for Mr. Iwasaki, dtd. June 15, 1949, unpub. (2 pg.); B) a full copy of the Wilson Appraisal, dtd. August 5, 1944 was found in RG117 Cl, Off. of the Cstdn. of Enemy Propt., Van. Off. files, catalogue no. 552 (Torazo Iwasaki), unpub. (1 pg.), mf. C-9467 (OOA). Both versions of the appraisal are identically worded. This item also includes notes on other persons' properties under different catalogue numbers; C) Decision of Bird Commission on Torazo Iwasaki's claim. dtd. March 2, 1950. found in RG117 Cl, Off. of the Cstdn. of Enemy Propt., Van. Off. files, enemy file no. 3271, claim no. 252, pg. 79 to 83 (5 pg.), mf. C-9466 (OOA).

<sup>20</sup> A) Release of Claims. dtd. October 28, 1950. found in RG117 Cl, Off. of the Cstdn. of Enemy Propt., Van. Off. Files, Release of Torazo Iwasaki, case no. 252, unpub. (2 pg.), mf. C-9467 (OOA); B) Report of the Custodian for the Year 1950. dtd. March 19, 1951. Report no. 5. House of Commons, Sess. Papers, Sess. 1951, 4th Sess., 21st Parl., Unpub. Sess. Paper no. 104, pg. 5 and 6 (20 pg.) (OOP). call no. \*JX 5313 C2 A1 1950. This Report states that:

"Claimants were required to sign a general release before receiving payment of the [Bird Commissions] awards."

<sup>21</sup> A) Iwasaki vs. R. Supreme Court of Canada. MS file no. 11367, mf. 1918; i) Letter. R.G. Bell (Cstdn. Off.) to Torazo Iwasaki (Claimant). dtd. August 28, 1947. Appellants Factum, pg. 150, Exhibit 61; and, ii) Letter. W.J. Johnston (Cstdn. Off.) to Torazo Iwasaki (Claimant). dtd. October 5, 1948. Appellants Factum, pg. 157, Exhibit 66; B) the Supreme Court of Canada allows public access to its files and will provide reader printer copies for a fee. The cited file includes all court documents relating to that action.

property and he alternatively claimed damages in the amount of \$1,500,000 - the supposed present day value of his land. Because of the absence of the current owners as parties to the proceedings, the Court held in a judgment dated October 29, 1968, that the issue of rescission could not succeed. The issue of the applicability of the Statute of Limitations was considered, but not decided. The Federal Court also denied Mr. Iwasaki's alternative claim for damages. It decided that the Custodian was not a trustee of the lands vested in him, that there was no breach of trust committed in conveying the lands, and that the sale of confiscated property was within his discretionary powers. The Court also found that the release Mr. Iwasaki signed was valid and binding. That decision was upheld, on appeal, to the Supreme Court of Canada. The judgment of the Supreme Court does not comment on the issue of restoration.<sup>22</sup> The Federal and Supreme Courts together allowed the Crown taxed costs in the amount of \$6,845.15, which were thought to be uncollectible as Mr. Iwasaki was considered to be "judgment proof".<sup>23</sup>

Mr. Iwasaki's lawyer felt prior to the court proceedings that it would be difficult to restore the property since it had been subdivided following the confiscation proceedings.<sup>24</sup> In fact even Salt Spring Lands Ltd. was not made a party to the action.

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<sup>22</sup> A) 1) Iwasaki vs. R. [1969], 1 Ex. C.R. 281 (Can.) (action dismissed) (00U); ii) Federal Court of Canada MS file no. B-2027 can be viewed in the court registry office. It includes all court documents relating to that action; and, B) [1970] S.C.R. 437 (Can.) (affirming dismissal) (00U).

<sup>23</sup> A) Letter. M. Robitaille (Asst. Dpty. Cstn. and Counsel, Dept. of Consumer and Corp. Aff.) to R.W. Law (Civ. Litigation Sect., Dept. of Jus., Cda.) dtd. November 4, 1970. Iwasaki file, pg. 10. Obtained through an Access to Information Request made to the Dept. of Jus., Cda. in 1992. Access file no. A91-00096; B) Letter. Norman D. Mullins (Dept. of Jus., Cda., Van., B.C., Off.) to R.W. Law (Civ. Litigation Sect., Dept. of Jus., Cda.) dtd. January 8, 1969. Iwasaki file, pg. 44. id., Access file no. A91-00096.

<sup>24</sup> A) Letter. J. Raymond MacLeod (MacLeod & Small, Barr. & Sol., Van., B.C.) to Hon. Judy LaMarsh (Secty. of St., Cda.) dtd. May 18, 1967. Iwasaki file, pg. 298 and 299. id., Access file no. A91-00096; B) "Wartime land seizure actions claimed invalid", [Vancouver] Province, October 4, 1968, pg. 16, mf. (AEU).

"I was informed by Rod Pringle, the Manager of Salt Springs Lands Ltd. this month [September 1968] that no notice of any kind has been served upon the Company nor, to his knowledge, on any of the subsequent purchasers from the Company. Consequently, none of the present owners of the lands whose interests would be affected if the court made an order for restitution has been given an opportunity to defend the claim of Iwasaki." <sup>25</sup>

If notice had been given to all subsequent title holders, it is still not clear whether the case would have been decided any differently. That point is still unsettled law.

#### 4. Redress

The National Association of Japanese Canadians prepared a report entitled Democracy Betrayed, released in November 1984, calling for redress. <sup>26</sup> Archives material was used to show that war time policies affecting Japanese Canadians were unjustified. Footnote references in their report include citations to Prime Minister W.L.M. King's papers, Departmental papers (External and National Defense), Cabinet minutes, and the Hon. Ian Alister MacKenzie's papers (Minister of Pensions and National Health, and later Veterans Affairs). There existed an unfounded concern on the parts of the Canadian and U.S. governments during the War about the loyalties of Japanese

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<sup>25</sup> Memo. Norman D. Mullins (Dept. of Jus., Cda., Van., B.C., Off.) to C.R.O. Munro (Asst. Dpty. Atty. Gen. of Cda.). dtd. September 20, 1968. Iwasaki file. pg. 193 to 207 at 205. id., Access file no. A91-00096.

<sup>26</sup> National Association of Japanese Canadians, Democracy Betrayed: The Case for Redress: A Submission to the Government of Canada on the Violation of Rights and Freedoms of Japanese Canadians During and After World War II, 2nd ed. (January 1985) (26 pg.) (OONL). call no. stks. fol. FC106 J3 D45 1984.

dual citizens, which sparked discriminatory governmental policies.<sup>27</sup>

In response to the Japanese communities petition for redress an order-in-council was passed on October 31, 1988, which provided \$21,000 payments to all Japanese persons still alive on September 22, 1988, who were in any way affected by the wartime policies.<sup>28</sup> To date, the Public Accounts of Canada show payments having been made to 17,302 persons for a total program expenditure (Japanese Redress Program) of \$363,342,000.<sup>29</sup>

#### 5. Custodians Records

Confiscations of real property during WWII also took place outside of the protected area on the coast of British Columbia. The Custodians records dealing with those confiscations are now either in the process of being catalogued by the National Archives of Canada or remain to be transferred from the Federal Records Center to the National Archives. The only such case that I came across in my research concerned a 156 acre farm, located 3 miles from Middle Lake, Saskatchewan. Documentation on that case was found in an Unpublished Sessional Paper of the House of Commons, dated December 1945.<sup>30</sup>

It is evident that real property confiscations also took place in Canada during WWI, however, it would appear that most records dealing with individual

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<sup>27</sup> A) *supra.*, footnote 8, Hirabayashi case, pg. 1381 and 1384; B) Letter. E. Griffith (unknown position) to Lord [(Athlone, Earl of) (Alexander Augustus Frederick William Alfred George)] (Gov. Gen. of Cda.). dtd. July 15, 1942. found in RG25, A3B, Ext. Aff., Central Registry Files, 1940 ser., vol. 3004, file 3464-J-40, pt. 1, Evacuation of Jap. from B.C. Coastal Areas, unp. (1 pg.), file box (OOA). That letter has been reproduced almost in its entirety in Appendix XXIV, Tab 24 due to its historic significance.

<sup>28</sup> Order-in-Council P.C. 1988-9/2552 (Japanese Redress). dtd. October 31, 1988 (T.B. Rec. 809730). Released under Access to Information Act. Not printed in Canada Gazette.

<sup>29</sup> Public Accounts of Canada, vol. 2, pt. 2, Additional Information and Analyses. 1988/89, pg. 9.17 to 9.40; 1989/90, pg. 9.18 to 9.114; and, 1990/91, pg. 9.19 to 9.32 (OOU). call no. CA1 P51 P71.

<sup>30</sup> Copy of Corres. Re. Sale of Confiscated Land in Saskatchewan. found in RG14 D2, House of Commons, Sess. Papers, Sess. 1945, 1st Sess., 20th Parl., Unpub. Sess. Paper no. 238 (43 pg.), mf. T-3523 (OOA).

cases from that period are no longer in existence. The only solid example I found deals with a farm located near Rosser, Manitoba. <sup>31</sup>

## 6. Conclusion

Racism may have played a role in the minds of some individuals who promoted the wartime policies which affected the lives of Japanese Canadians, but it stretches the point beyond reason to say that those policies were motivated solely by racism. To illustrate this point it is inconceivable to imply that the motives of a man who took a Japanese wife and who lived in Japan for sixteen years were solely those of a racist (see Appendix XXIV, Tab 24). In the minds of many decision makers there was probably genuine concern - although justification never materialized - for the safety of Canada.

While determining the fair market value of real property is always an issue even in peace time, it would not be an understatement to say that demand during WWII for confiscated real property formerly owned by persons of the Japanese race was low. Statements made in newspaper articles published by the Vancouver Sun in June and July 1943, confirm that point (see Appendix XXI, Tab 21, item 5). <sup>32</sup> The pleading in Mr. Iwasaki's case shows what can happen to property values in some areas as a result of rapid postwar price escalation, a factor certainly not taken into account by the Bird Commission or the Japanese Redress Program.

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<sup>31</sup> see RG13 A2, Jus., Central Registry Files, vol. 2184, file 649/1925, Method of Enforcing Agreement for Sale of Propt. Held by the Cstdn. (Reith farm case), file contents, unp. (OOA). In particular Memo in that file to Thomas Mulvey (Under Secty. of St.). dtd. April 17, 1925.

<sup>32</sup> A) June 23, 1943, "Demand for Japanese owned real estate... has been very light so far..."; B) July 2, 1943, "Vancouver citizens are not in a hurry to buy Japanese city property..."; and, C) July 14, 1943, "while bidding has been slow, many inquiries are being made..."

A lesson from that chapter of Canadian history which should never be forgotten is that regardless of intentions, wartime policies which tear apart and upset the lives of Canadian citizens will produce ill will for generations.

## CHAPTER 6

RESTATEMENT OF THE LAW

## 1. Introduction

In contrast to previous Chapters, this Chapter deals only with the law. Featured is an examination of municipal and international law touching on the subject of enemy real property confiscations during periods of armed conflict. The three sources of international law are custom (highest level), treaties (intermediate level), and decisions of international bodies (lowest level). In addition to identifying and commenting upon the present day sources and status of international law, dealing with that subject, an effort is made to explain how customary international law fits into Canada's legal system. Having practised real property law in the Province of Ontario for several years, as the need arose I felt more prone to pass comment on that Province's legislation.

## 2. What The Law Is

There are several aspects for a lawyer to consider when reviewing a real property title search which contains a confiscated title in its chain. First of all there is the question of determining marketable title in domestic or municipal law, then secondly one must consider the application of international law. To certify marketable title a lawyer must be satisfied that the Custodian or Commissioners obtained and transferred title in a manner provided by legislation. <sup>1</sup> Aside from the legislative requirement, the title

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<sup>1</sup> A) Daimler Company, Limited vs. Continental Tyre and Rubber Company (Great Britain), Limited [1916], 2 A.C. 307 at 347 (H.L.), "Subject to any legislation to the contrary or anything to the contrary contained in the treaty of peace when peace comes, enemy property in this country will be restored to its owners after the war just as property in enemy countries belonging to His Majesty's subjects will or ought to be restored

to a confiscated property may still be opened to challenge by a forfeiting party or his heirs, using the remedy of equitable rescission.<sup>2</sup> However in the Province of Ontario the statutory 40 year title search period in place since 1929 may protect purchasers of confiscated property from such contingent claims, if the Custodian or Commissioners deed falls outside of the statutory search period.<sup>3</sup> Ontario's Statute of Limitations may similarly prevent recovery.<sup>4</sup>

In reviewing international law, both treaties and custom must be considered. The Hague Convention Respecting Laws and Customs of War on Land,

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to them after the war"; B) Hugh Stevenson and Sons, Limited vs. Aktiengesellschaft Fur Carton-Nagen-Industrie [1918] A.C. 239 at 258 (H.L.), "I concur in the opinion expressed by Lord Parker in Daimler Co. vs. Continental Tyre and Rubber Co. that..." [repeats Daimler case quotation]; C) Re Ferdinand, Ex-Tsar of Bulgaria [1921], 1 Ch. D. 107 at 148 (C.A.), "I cannot doubt that the effect of the Act, the King's prerogative being in suspense, is to bring about the realization, so far as this country is concerned, of Lord Parker's statement in the Daimler Case, that, ..." [repeats Daimler case quotation]; D) Miller, Alien Property Custodian vs. Lautenburg, 205 N.Y. Supp. 214 at 217 (N.Y. S.C. 1924), "... the recording and indexing of the notice [served on attorney of owner and registered in New York county registry office] as aforesaid had the effect of a deed to the Alien Property Custodian by the record owner of the property": aff'd 145 N.E. 907 at 907-8 (N.Y. C.A. 1924), "The question is whether by force of the demand or of the seizure he became authorized to sell ... power to sell is to be derived from the seizure of the property. We hold that such seizure was made, and that it is the equivalent of notice"; E) R. J. Reuter Co. Ltd. vs. Mulhens [1954] Ch. D. 50 at 93 (C.A.), "In Daimler Co. Ltd. vs. Continental Tyre and Rubber Co. (Great Britain) Ltd. Lord Parker said ..." [repeats Daimler case quotation]; F) Craig vs. Bohack, 244 N.Y. Supp. 2d. 737 at 739 (N.Y. S.C. 1963), "Moreover, there appears to be no prohibition in the Trading with the Enemy Act against the recovery by purchase for an ex-enemy alien after termination of a state of war."

<sup>2</sup> A) Klein vs. Palmer et. al, 18 F. 2d. 932 at 933 (U.S. 2d. Cir. 1927), "Moreover, the provisions of the Treaty of Versailles, art. 297 (d), (1), and annex 1, copied in the margin, and incorporated in the Treaty of Berlin (42 Stat. 1939) by article 1, and article 2, subdivision 1, of the latter Treaty, clearly justify the denial of relief in equity for the recovery of the property"; B) Iwasaki vs. R [1969], 1 Ex. C.R. 281 at 288 (Can.), "As to the prayer for return of the lands the suppliant cannot succeed on the suppliant's own pleading. The return of the lands involves more than a simple action in ejectment, but involves also rescission of the title issued to the Custodian and any subsequent title, also the certificate of vesting and the deed from the Custodian to Salt Spring Lands Ltd. The remedy of rescission is a remedy to be obtained in equity (Richard vs. Collins, excepting the Ontario Statutes not here applicable) and in equity a decree will not be made in the absence of a person who will be affected thereby": aff'd [1970] S.C.R. 437 (Can.).

<sup>3</sup> A) Re Battison et. al. vs. Ferrel et. al. (1990), 72 O.R. (2d.) 655 (Ont. Dist. Ct.); but also see. B) Re Kinross Mortgage Corporation and Central Mortgage & Housing Corporation (1979), 22 O.R. (2d.) 713 (Ont. H. Ct. Just.).

<sup>4</sup> Courts have prolonged fixed periods for bringing claims under a treaty, but delays must be accounted for. The expression tolling the Statute of Limitations also comes to mind. see: A) Higginson vs. Mein, 4 Cranch S.C. Reports 415 at 420 (U.S. 1808); B) Pierson vs. Lawler, 161 N.W. 419 at 421 (Neb. S.C. 1917); and, C) Robins Island Preservation Fund vs. Southold Development Corp., 959 F. 2d. 409 at 421-25 (U.S. 2d. Cir. 1992).

1907<sup>5</sup> (Article 46), the Universal Declaration of Human Rights, 1948<sup>6</sup> (Article 17 (2)), and the International Covenant on Civil and Political Rights, in force 1976<sup>7</sup> (Article 17 (1)), all include provisions concerning confiscations or arbitrary deprivations of private property.<sup>8</sup> The latter two instruments are now considered part of customary international law,<sup>9</sup> which confer private rights of action on individuals - but customary law yields to unambiguous domestic legislation.<sup>10</sup> The Hague Convention has been determined by American courts to confer no private rights of action nor be applicable in cases of civil warfare.<sup>11</sup> However, since 1939 the Hague

<sup>5</sup> Three sources were identified for the Hague Convention. 1) Final Act at the Second Peace Conference Held at The Hague in 1907, and Conventions and Declaration Annexed Thereto, Gt. Brit. Misc. no. 6 (1908) [Cd. 4175], pg. 46 to 61 (OONL), call no. F10P/Gt. Brit./Parliament/Papers by Cmnd. no. 4175 (both French and English texts are included) (OONL); 11) Treaties and Other International Agreements of the United States of America 1776-1949, Charles I. Bevans (ed.), vol. 1 (Wash.: Dept. of State-Publ., 1968), pg. 631 at 651 (OWA); and, 111) A. Pearce Higgins, The Hague Peace Conferences and Other International Conferences Concerning the Laws and Usages of War: Texts of Conventions With Commentaries (Cambridge: University Press, 1909), pg. 207 (OOU).

<sup>6</sup> A) Universal Declaration of Human Rights, G.A. Res. 217A, U.N. Doc. A/810 at 71 (1948) (OOU); B) also found in the following two official publications; 1) The International Bill of Human Rights, Minister of Supply and Services Canada 1983, Cat. No. S2-90/1980 E (OONL), call no. F10P ST/HR/Rev.1, 1978; and, 11) Human Rights: A Compilation of International Instruments of the United Nations (1973), U.N. Publications, Sales no. E73. XIV. 2.

<sup>7</sup> A) International Covenant on Civil and Political Rights [1976], Can. T.S. No. 47 (OONL), call no. COP CA.1.43; B) also found in G.A. Res. 2200, 21 U.N. GAOR Supp. (no. 16) at 49, 52, U.N. Doc. A/6316 (1966) (OOU); also see, C) Cda. Order-in-Council P.C. 1976-1156 of May 18, 1976 (OOA). Order-in-Council reproduced in full:

"HIS EXCELLENCY THE GOVERNOR IN COUNCIL is pleased hereby to authorize the Secretary of State for External Affairs to execute and issue, on behalf of the Government of Canada, Instruments of Accession to the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol to the International Covenant on Civil and Political Rights."

<sup>8</sup> see Appendix XXV, Tab 25.

<sup>9</sup> see Appendix XXVI, Tab 26.

<sup>10</sup> see Appendix XXVII, Tab 27.

<sup>11</sup> A) Oetjen vs. Central Leather Co., 38 S. Ct. 309 at 310 (U.S. 1918), "It would, perhaps, be sufficient answer to this contention to say that the Hague Conventions are international in character, designed and adapted to regulate international warfare, and that they do not, in terms or in purpose, apply to a civil war"; B) Terrazas vs. Holmes et. al., 225 S.W. 848 at 852 (Tex. C.A. 1920), "The sixth [proposition] asserts that the Hague treaty (36 Stat. 2307) applies, and that under it the confiscation of private property or land is prohibited. This does not apply to civil warfare"; C) Terrazas vs. Donahue et. al., 227 S.W. 206 at 210 (Tex. C.A. 1921), "The Hague Conventions are international in character, designed and adapted to regulate international warfare, and do not, in terms or in purpose, apply to a civil war"; D) Dreyfus vs. Von Finck, 534 F. 2d. 24 at 30 (U.S. 2d. Cir. 1976), "... none [of the treaties] conferred any private rights with regard to such property [in Germany] which were enforceable in American courts. The Hague Convention attempted to impose standards of conduct for belligerent nations"; E) Tel-Oren vs. Libvan Arab Republic, 726 F. 2d. 774 at 810 (U.S. App. D.C. 1984), "The Hague Conventions similarly cannot be construed to afford individuals the right to judicial enforcement. Although the Conventions contain no language calling for implementing legislation, they have never been regarded as law private parties could enforce."

Convention has been considered part of customary international law,<sup>12</sup> which may ultimately require the courts to re-examine existing precedent.<sup>13</sup> Treaties of Peace must also be reviewed,<sup>14</sup> as should Real Property Conventions between warring states.

It would still appear that the right to receive restoration of property confiscated in a State's own territory, during wartime, or during a state of Martial Law, is a moral right which depends on the will of Parliament, and not a legal one, which is otherwise enforceable in the Courts. The right to receive restitution is now a legal right in Canada. The Emergencies Act, assented to on July 21, 1988, replaced the War Measures Act. Part 5 of this

<sup>12</sup> A) Meron, Theodor, "The Geneva Conventions as Customary Law", American Journal of International Law, Wash., vol. 81, no. 2 (April 1987), pp. 348 to 370 at 358-60 (OOU). call no. FA-PER. He reviews the military manuals on armed conflict of the United States and the United Kingdom and decisions of the Nuremberg and Far East Military Tribunals; B) Yearbook of the United Nations 1946-47 (Lake Success, N.Y.: U.N. Department of Public Information, 1947), pg. 254 (OOU). December 11, 1946 General Assembly resolution, "THEREFORE, AFFIRMS the principles of international law recognized by the Charter of the Nuremberg Tribunal and the judgment of the Tribunal..."; C) Canadian Forces Law of Armed Conflict Manual (Second Draft), pp. 1-14 to 1-19 at 1-14 and 1-15, "It should be pointed out that although not all the great powers ratified or formally accepted these Declarations, the general view is that they are expressive of rules of customary law", and "Many of the Hague Convention provisions are now, however, declaratory of customary law, that is, they are binding even on non-parties to the treaty".

<sup>13</sup> A) Trendtex Trading Corporation vs. Central Bank of Nigeria [1977] Q.B. 529 at 553 and 579 (C.A.), "Under the doctrine of incorporation, when the rules of international law change, our English law changes with them," and "I would adopt what Lord Denning, M.R. said, ante, p. 554H, namely that 'international law knows no rule of stare decisis'"; B) Filartiga vs. Pena-Irala, 630 F. 2d. 876 at 881 (U.S. 2d. Cir. 1980), "Thus it is clear that courts must interpret international law not as it was in 1789, but as it has evolved and exists among the nations of the world today."

<sup>14</sup> A) The following memorandum comments on WWII Peace Treaty provisions relating to the disposition of confiscated enemy property: see, Restricted Memo. Norman A. Robertson (Under Secty. of St.) to (Hon. Howard C. Green, Secty. of St.) Minister. dtd. January 20, 1960. found in RG25, A3B, Ext. Aff., Central Registry Files, 1940 ser., acsn. no. 86-87/336, file no. 4606-C-13-40, pt. 2, Treatment of Assets and Propt. of Jap. Natl. in Cda., unpub. (2 pg.) (OOA). Extracted remark:

"Shortly after the outbreak of the Pacific War the Canadian Custodian under the authority of the Trading with the Enemy Regulations, started to seize Japanese owned property in Canada... Under Article 14 of the Treaty of Peace with Japan Canada exercised her right, as did the other Allied Powers, to retain the bulk of such property, or the proceeds as reparation... In accordance with the same Article 14 property has been returned in restricted classes of cases (mainly diplomatic or consular property or property owned by religious bodies or private charitable institutions)."

B) there is now a treaty in place which regulates the treatment of consular property during periods of armed conflict: see, Convention on Consular Relations, signed April 24, 1963, entered into force for Canada August 17, 1974, [1974], Can. T.S. No. 25 (OONL). call no. COP CA.1.43. Article 27 (1) provides as follows:

1. "In the event of the severance of consular relations between two States:
  - (a) the receiving State shall, even in case of armed conflict, respect and protect the consular premises, together with the property of the consular post and the consular archives."

new Act provides a scheme for compensating eligible persons, but does not address the issue of restoration of real property. The Act continues to allow the confiscation and disposition of real property in times of "International Emergency".<sup>15</sup>

### 3. What The Law Ought To Be

Two confidential discussion papers printed by the Canadian Government following WWI include legal opinions dealing with the confiscation of property in Canada. The first such paper, dated 1922, arguing for restitution, touches on the issues of morality and international honour, citing as legal authority Section 41 of the Magna Charta, the case Wolff vs. Oxholm, 1817 (6 Maule and Selwyn Reports, 92 at 106), and Professor Alphonse Rivier's 1896 work on international law entitled Principes du Droit des Gens (vol. 2, pg. 232).<sup>16</sup>

The second such paper, dated 1929, makes the following statement:

"Since the time of Magna Charta, England and Great Britain have followed unswervingly the policy of returning private property to the enemy on the conclusion of peace. All civilized nations have adopted that policy since the time of Grotius." [Hugo Grotius, b. 1583 - d. 1645]<sup>17</sup>

Canada's historic record shows that it has not always lived up to those high ideals. The traditional modern argument advanced by the Government of Canada for confiscating and liquidating enemy alien real property is to preserve it

<sup>15</sup> Emergencies Act, 1988, S.C. 1988, c.29 (OOU).

<sup>16</sup> Confidential Print. Memorandum Respecting Sequestered German Property and the Disposal Thereof (Ottawa: F.A. Ackland, 1922), pg. 1, 9 and 10. found in RG25, A3A, Ext. Aff., Central Registry Files, 1939 ser., vol. 1578, file 1931-25-C, Disposition of Former Enemy Sequestered Propt. in Cda., file box (OOA).

<sup>17</sup> Confidential Print. German Sequestered Property (Ottawa: Dept. of the Secty. of St., February 5, 1929), pg. 3 (8 pg.). Three locations were identified for this report: 1) RG25, A3A, Ext. Aff., Central Registry Files, 1939 ser., vol. 1578, file 1931-25-C, Disposition of Former Enemy Sequestered Propt. in Cda., file box (OOA); 11) RG19 E2E, Dept. of Finance, Central Registry Files, vol. 544, file 135-8, pt. 3, Alien Propt., file box (OOA); and, 111) Library stacks (OONL). call no. COP CA. S 566.

from being sold for taxes or falling into ruin.<sup>18</sup> Perhaps it is time for Canada to re-evaluate its own policy, and for the world to set out, in an international covenant, specific acceptable standards of conduct for confiscating alien enemy property in a state's own territory, which provide for a physical return of that property following the period of armed conflict.

#### 4. Conclusion

Professor Hans Kelson has often stated in his written work that a decision concerning the applicability of national or international law is not a question which can be decided by the science of law but one which is determined by non-scientific political considerations. This means that the application of international law is different in each country.

If Canada's Members of Parliament decide to allow the confiscation and sale of enemy real property during wartime, by enacting legislation contrary to international law, that is a decision which is motivated by political considerations.

By the same token, if a Canadian Court decides that an international agreement has the status of customary international law and applies its provisions to the extent that they do not conflict with domestic law, or makes a finding that a domestic statute is ambiguous, allowing recourse to an international agreement as an interpretative aid, it can also be said that

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<sup>18</sup> A) Letter. Thomas Mulvey (Under Secty. of St. and Dpty. Cstdn.) to Edwin M. Borchard (Prof. Yale Univ. Law School). dtd. November 27, 1928. found in RG25, A3A, Ext. Aff., Central Registry Files, 1939 ser., vol. 1505, file 1928-25-H, Enemy Propt. Sequestered in Cda., unpag. (7 pg.), file box (OOA); and, B) Letter. Norman A. Robertson (Under-Secty. of St. for Ext. Aff.) to Pedro E. Schwartz (Consul Gen. of Spain) (No. J-118). dtd. July 12, 1943. found in RG25, A3B, Ext. Aff., Central Registry Files, 1940 ser., vol. 3121, file 4606-C-13-40, pt. 1, Treatment of Assets and Propt. of Jap. Natl. in Cda., unpag. (3 pg.) (OOA).

those decisions are motivated by political considerations.

The fault which is inherent in a political system which has turned its back on international law, by allowing the confiscation and sale of private property during wartime, without benefit of trial leading to conviction, lies not with the judicial branch but with the legislative branch of government to which it is subordinate.

It merely begs the question to say that there has been no confiscation if the proceeds from the sale of confiscated enemy real property are held in trust pending the final disposition of the war (see Appendix XXV, Tab 25, item 3).

## AFTERWORD

There are certain obvious conclusions which can be drawn from the material which I have presented in my thesis. It can be safely said that the confiscation of enemy real property has taken place in Canada during the American Revolution, War of 1812, WWI, and WWII. The magnitude or extent of those confiscations still remains to be discovered. Also apparent is the fact that the confiscation policy is implemented through legislative Act or Regulation as a security measure, method of punishment, fiscal device, or combination of those factors, often arrived at without benefit of trial, or at a proceeding taking place in the absence of the property owner; i.e. process of outlawry, alien inquisition, or vesting order. When Canada's historic record in that area is put into proper perspective, the policy in of itself, cannot be said to be racist, but some may choose to label it that way when the individuals affected by the policy are of a different race than Canada's major ethnic groups.

By today's standards, the fault in the policy of outright confiscation and sale lies in the punishment of persons convicted of no crime, who may not have even given cause to call their loyalty into question by having fled to the enemy in time of war. Would it not accomplish the same goals if the policy were simply implemented as a security measure without the need for wholesale liquidation, allowing the property to be returned at the end of the war, if no evidence existed of treasonous activity on the part of the property owner warranting punishment?

A limited amount of published material discussing the strict legal aspects of enemy property confiscations in the U.S. during the American Revolution can be found on library shelves. Literature dealing with that subject matter can be said to fall within the "Davis School", named after Andrew McFarland Davis (Mass. bar 1859),<sup>1</sup> the first author who in my opinion was to make a lasting impression in that field of study. His school does not deal with the democratization of land holdings theme which prevails in the "Yoshpe School" (see footnote 1A, page 84), although there is often considerable overlap in the approach taken between the two. Authors in the "Davis School" tend to limit themselves to a review of state laws under which confiscations were made. Some of the authors in that school have made use of the case study approach to illustrate the application of the law in a particular state.<sup>2</sup> Anyone wishing to pursue research in this area should first look at Professor James Westfall Thompson's article which reviews confiscation laws enacted during the American Revolution on a state by state basis.

Most of the literature in those schools concentrates on the confiscation laws of individual states. To date seven of the thirteen states have been the focus of studies along those lines. Half of the literature in the "Yoshpe School" deals with confiscations having taken place in New York State. Massachusetts and New York States are the most examined states in the "Davis

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<sup>1</sup> Thayer, William Roscoe, "Memoir of Andrew McFarland Davis", Massachusetts Historical Society Proceedings, Boston, 3rd Ser., vol. 54 (1922), pg. 204 to 211 (OONL). call no. ser. stks. L-382-1-7 storage.

<sup>2</sup> Contributions to the literature in the "Davis School" have been made by Andrew M. Davis (1903 - case study) (1906), James W. Thompson (1908), Samuel E. Morison (1912 - case study), Editors (1913 - case study), Samuel E. Morison (1913 - case study), Wilbur H. Siebert (1920), Mary G. Nye (1941), Alison Reppy (1948-49), Ruth M. Kessey (1961), Henry J. Young (1966), and Dwight Holbrook (1986 - case study). Full citations for those authors publications are found referenced in my Selected Bibliography under the title heading "American Confiscation Literature".

School".<sup>3</sup> The most recent contribution to the literature in the "Davis School" was made by Mr. Dwight Holbrook, who authored a book published in 1986 dealing with the confiscation of Robins Island in Suffolk County, N.Y., in 1784. Recent court proceedings upheld the State's actions in that case.

The first author to write about property confiscations in Canada during the War of 1812 was the Hon. Justice William Renwick Riddell (Supreme Court of Ontario). He is probably best described as a follower of the "Davis School". His articles were of great assistance in the early stages of my research.<sup>4</sup>

Rather than commenting on the confiscation literature in the body of my thesis, I have opted to provide brief descriptions in my Selected Bibliography under select title entries. After I had formulated a direction for my research, the significance of those articles diminished. Needless to say they will always remain indispensable as beacons to guide researchers further down the path in a field which has no visible boundaries.

My thesis utilized the case study method followed by the "Davis School" in the presentation of my research centered in and around the American Revolution and WWII periods. In contrast, I made use of the "Yoshpe School" approach to develop my principal War of 1812 case studies. The primary

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<sup>3</sup> Literature in the "Davis" and "Yoshpe Schools" deal specifically with the following States: Connecticut - Tyler (1977); Georgia - Lambert (1963); Massachusetts - Davis (1903) (1906), Morison (1912), Brown (1964); New Jersey - Keeseey (1961) (1961), Riccards (1968), Ryan (1979); New York - Yoshpe (1936) (1938) (1939), Nye (1941) [Vermont], Reppy (1948-49), Crary (1954), Lynd (1961), Reubens (1965), Holbrook (1986); North Carolina - Editors (1913); and, Pennsylvania - Siebert (1920), Young (1966). Full citations for those authors' publications are found referenced in my Selected Bibliography under the title heading "American Confiscation Literature".

<sup>4</sup> W.R. Riddell's articles - case studies - dealing with confiscations in Upper Canada during the War of 1812 are described in my Selected Bibliography under the title heading "Canadian and British Confiscation Literature".

distinction which exists between those two schools lies in the degree of analysis made of registered land title documents.

A common theme found to recur in most of my case studies is the issue of compensation paid to the forfeiting parties or their heirs for losses arising from the confiscation of their properties. In the Mercier/Halsted case diplomatic channels were successfully used to facilitate a return of their property sequestered in Quebec during the American Revolution, and arbitrators were used to determine the amount of compensation to be paid to them, for the use and occupation of the property by the Crown. They were also awarded land in Ohio and New York States. Compensation for Property confiscated from persons of the Japanese race in the protected area of British Columbia following WWII was widespread. The Custodian of Enemy Property and Bird Commission were both involved in that process. A fundamental distinction which exists in the circumstances of those two cases is that while there is evidence to suggest that Messrs. Mercier and Halsted were both involved in military and subversive activity against the confiscating state, the later group were for the most part merely victims of geography.

My case study featuring General Arnold examined his "life interest" in a property confiscated in Pennsylvania during the American Revolution. The remainder in that property held in trust for his wife and children was not confiscated. He received financial compensation from the British for the loss of his "life interest" and was later granted land in Upper Canada. Mr. James Boyd was compensated by the Americans with land in Ohio for the loss of his property in Nova Scotia during the American Revolution. There exists some

controversy in his case as to whether his land was in fact ever confiscated. Mr. David Kilborn was compensated financially by the Americans for his property confiscated in Upper Canada during the War of 1812. In measuring financial loss in real terms the compensation factor should always be taken into account.

A lot of people assisted me in the preparation of my thesis. I would be remiss if I didn't add a few words of acknowledgement. Miss Patricia Kennedy of the National Archives of Canada walked me through their collection of pre-confederation archives when I was still wet behind the ears. The advice of Mr. Pierre-Louis Lapointe at the Archives nationales du Quebec allowed me to make productive use of my time. Research was also done on site at the Archives of Ontario and Public Archives of Nova Scotia. The contributions of the staff of those four institutions cannot be overlooked. They guided me through their collections, retrieved material for me from closed stacks, and collectively, duplicated thousands of pages of material found on microfilm and in file boxes. Land Registry Office employees in Prescott, Brockville, Toronto, and St. Catharines were always extremely co-operative and friendly. In addition to hands-on research, a great deal of material was obtained by correspondence. In that regard, I would like to extend a special thanks to the archivists, librarians, and officials, from over forty institutions, in three countries, for taking the time to answer my inquiries. The overall content and structure of my thesis was influenced by the suggestions of Professors Peter J. King, J. Barry Wright and my thesis supervisor William Kaplan. My collection of research materials comprised of photocopies of MS and printed sources, plus the aforementioned private correspondence, all

arranged according to subject area in 144 labelled file folders, stored in six file boxes, will be offered as a gift to the University of Ottawa for the use of other scholars.

DANIEL GEORGE ARNOLD

Rockcliffe Park, Ontario

January 1993

## APPENDIX I

## TREATY OF PARIS (1783) - ARTICLES 5 AND 6

Reproduced in this Appendix are Articles 5 and 6 of the Treaty of Paris (1783), which deal with confiscated real property belonging to real British subjects in the United States and future confiscations of private property by the United States or Great Britain.

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## ARTICLE V

"It is agreed that the Congress shall earnestly recommend it to the legislatures of the respective states, to provide for the restitution of all estates, rights and properties, which have been confiscated, belonging to real British subjects, and also of the estates, rights and properties of persons resident in districts in the possession of his Majesty's arms, and who have not borne arms against the said United States. And that persons of any other description shall have free liberty to go to any part or parts of any of the thirteen United States, and therein to remain twelve months, unmolested in their endeavours to obtain the restitution of such of their estates, rights and properties, as may have been confiscated; and that Congress shall also earnestly recommend to the several states a reconsideration and revision of all acts or laws regarding the premises, so as to render the said laws or acts perfectly consistent, not only with justice and equity, but with that spirit of conciliation, which on the return of the blessings of peace should universally prevail. And that Congress shall also earnestly recommend to the several states, that the estates, rights and properties of such last mentioned persons, shall be restored to them, they refunding to any persons who may be now in possession, the bona fide price (where any has been given) which such persons may have paid on purchasing any of the said lands, rights, or properties, since the confiscation. And it is agreed, that all persons who have any interest in confiscated lands, either by debts, marriage settlements, or otherwise, shall meet with no lawful impediment in the prosecution of their just rights.

## ARTICLE VI

That there shall be no future confiscations made, nor any prosecutions commenced against any person or persons for, or by reason of the part which he or they may have taken in the present war; and that no person shall, on that account, suffer any future loss or damage, either in his person, liberty or property; and that those who may be in confinement on such charges, at the time of the ratification of the treaty in America, shall be immediately set at liberty, and the prosecutions so commenced be discontinued."

## APPENDIX II

## STATE LAWS IMPLEMENTING THE TREATY OF PARIS (1783) PROVISIONS

This Appendix provides a summary list of State laws implementing the Treaty of Paris (1783). All of the Acts mentioned are reproduced on the Readex Microprint, Early American Imprints collection. The accession numbers (Evans or 1st series) corresponding to those Acts have also been provided. Twelve of the thirteen original American States who were signatories to the Treaty of Paris, implemented it, either wholly or partially, by legislative enactment, in the following chronological order:

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- 1) South Carolina, Act no. 1343, passed March 26, 1784, entitled An Act for restoring to certain persons therein mentioned their Estates, both real and personal, and for permitting the said Persons to return to this State, and for other Purposes therein mentioned. found in Evans acsn. no. 22897, pg. 347 to 349, mf. (OONL);
  - 2) Virginia, chap. 53, passed December 1784, entitled An Act respecting future CONFISCATIONS. found in Evans acsn. no. 19348 (OONL);
  - 3) Georgia, i) Act no. 300, passed February 7, 1785, entitled An Act for amercing certain persons therein named, and admitting others to the rights of citizenship, and for other purposes therein mentioned. ii) also Act no. 376, passed February 10, 1787, entitled An Act for taking certain persons out of the act of confiscation and banishment...; and, iii) Act no. 395, passed February 1, 1788, entitled An Act for repealing certain parts of the act of confiscation and banishment. all three acts found in Evans acsn. no. 37505, pg. 306, 307, 361, 362, 378 and 379 (OONL);
  - 4) Massachusetts, Act no. 5, passed April 30, 1787, entitled An Act for Repealing any Acts, or parts of Acts heretofore passed ... which may militate with, or infringe the Treaty of Peace... found in Evans acsn. no. 21245, pg. 297 (OONL);
  - 5) Maryland, chap. 25, passed May 5, 1787, entitled An Act declaring the treaty of peace between the United States and his Britannic majesty the Supreme law within this State. found in Evans acsn. no. 20485, unp. (1 pg.) (OONL). also found in Quebec Gazette, July 19, 1787, pg. 1 (OONL);
  - 6) Connecticut, passed May 1787, titled in the margin note, "Acts repugnant to the Treaty repealed". found in Evans acsn. no. 20289, pg. 351 (OONL);
  - 7) New Jersey, chap. 202, passed June 5, 1787, entitled An ACT to repeal such Acts, or Parts of Acts, as may be in force in this State, that are repugnant to the Treaty of Peace... found in Evans acsn. no. 20564, pg. 411 and 412 (OONL);

- 8) New Hampshire, passed June 21. 1787, entitled AN ACT to repeal all Acts, resolves and clauses of Acts, repugnant to the treaty of peace.... found in Evans acsn. no. 20549, pg. 443 (OONL);
- 9) Rhode Island, passed September 1787, titled in the margin note, "Treaty of Peace with Great Britain confirmed". found in Evans acsn. no. 20684, pg. 9 and 10 (OONL);
- 10) North Carolina, chap. 1, passed December 22, 1787, entitled An Act declaring the treaty of Peace... to be part of the law of the land. found in Evans acsn. no. 21340, pg. 1 (OONL);
- 11) Delaware, chap. 168 B, passed February 2, 1788, entitled An Act for repealing all acts, or parts of acts, repugnant to the treaty of peace... or any article thereof. found in Evans acsn. no. 32030, vol. 2, pg. 917 and 918 (OONL);
- 12) New York, chap. 41, passed February 22, 1788, entitled An Act in the form of the Act recommended by the Resolution of the United States in Congress Assembled, of March 21, 1787... relative to the Treaty of Peace.... found in Evans acsn. no. 21316, pg. 78 and 79 (OONL);
- 13) Only Pennsylvania resisted passing an Act confirming any part or parts of the Treaty. The debates of the General Assembly of Pennsylvania for March 3, 1788, indicate that Messrs. Lewis, Lilley and Findley, a committee appointed to review the matter, reported that no declaratory act was required, as no acts were repugnant to the Treaty. see Pennsylvania, General Assembly Journals. 1788. found in Evans acsn. no. 45328, pg. 104, 106, 120 and 121 (OONL);
- 14) The notes in Appendix III, Tab 3 are meant to inform the reader on the development of jurisprudence between 1793 and 1796, wherein the U.S. Constitutional provision making treaties the supreme law was held to apply retrospectively.

## APPENDIX III

## INTELLIGENCE REPORTS ON JUDICIAL DECISIONS CONCERNING DEBTS

This Appendix focuses in on remarks made by British Consul's posted in Pennsylvania and Virginia on the subject of debts and the Treaty of Paris.

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- 1) Letter. Phineas Bond (Brit. Consul in Phil.) to Lord William Grenville (For. Secty.) (No. 3). dtd. June 20, 1793. found in MGL6, F.O. 5, vol. 2, Gen. Corres. U.S.A., Letr. fm. and dft. to Bond et. al., pg. 112 and 113 (3 pg), mf. B-1622 (OOA).

This letter comments on a case in South Carolina concerning interest on debts during the Revolution and another in Virginia, concerning payments made by a debtor to the State loan office during the Revolution pursuant to a legislative requirement, in exchange for a discharge certificate. Both cases were heard in the Federal Circuit Court.

- 2) Letter. Phineas Bond to Lord William Grenville (No. 4). dtd. June 25, 1793. found in MGL6, F.O. 5, vol. 2, *id.*, pg. 114 and 115, mf. B-1622 (OOA).

Mr. Bond further comments on the Virginia case which was decided in favour of the debtor.

- 3) Letter. George Hammond (Brit. Min. at Phil. and Lansdown, Pa.) to Lord William Grenville (No. 16), dtd. July 7, 1793. found in MGL6, F.O. 5, vol. 1, Gen. Corres. U.S.A., Letr. fm. and dft. to Hammond, pg. 193 to 204 at 201 (23 pg.), mf. B-1621 (OOA).

Mr. Hammond remarks on the decision of the Federal Court in Virginia which considered the question of British debts. The court had ruled that payments to the loan office during the Revolution discharged the debt. Debts not so discharged were otherwise recoverable.

- 4) Letter. John Hamilton (Brit. Consul in Norfolk, Va.) to Lord William Grenville. dtd. December 11, 1793. found in MGL6, F.O. 5, vol. 2, Gen. Corres. U.S.A., Letr. fm. and dft. to Hamilton et. al., pg. 254 to 256, mf. B-1622 (OOA).

Mr. Hamilton discusses a case in the Virginia Federal Court which dealt with the plea of the Act of Limitations. He expresses doubts about a favourable decision and recommends a political solution.

- 5) Letter. Phineas Bond (Brit. Consul Gen. and Charge d'affaires at Phil.) to Lord William Grenville (No. 13). dtd. March 8, 1796. found in MGL6, F.O. 5, vol. 13, Gen. Corres. U.S.A., Letr. and Papers fm. and dft. to Bond, pg. 183 to 185, mf. B-1772 (OOA).

Mr. Bond indicated that the U.S. Supreme Court had held that payments to the loan office were held not to discharge the debts, as the Treaty of Peace prevailed retrospectively over State laws. The case being discussed was Ware vs. Hylton, 3 Dallas S.C. Reports 199 (U.S. 1796)(OOSC).

## APPENDIX IV

## DOCUMENTS RELATING TO THE CLAIM OF MESSRS. MERCIER AND HALSTED

This appendix describes certain MS documents which provide facts about the property and claim of Messrs. Mercier and Halsted.

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- 1) State Minutes and Petitions of Mercier and Halstead found in RG4 A1, vol. 49, Que. and Lower Cda., "S" ser., pg. 16631, and vol. 50, ibid., pg. 16638 to 16672 (36 pg.), mf. C-3007 (OOA).
- 2) Certain of those documents are duplicated in other record groups; i) Quebec Executive Council Minute. dtd. June 8, 1791. also found in RG1 E1, vol. 29, Lower Cda., Exec. Concl., St. Bk. A, pg. 126 and 148, mf. C-90 (OOA); ii) Memorial of John Halsted. dtd. August 4, 1784. also found in MG21, Addl. MSS 21,877, vol. B-217, Haldimand Prs., Memorials fm. Civilians, pg. 417 and 418, mf. H-1744 (transcript copy) (OOA).
- 3) A calender of twenty-five original manuscripts relating to the sequestered property of Messrs. Mercier and Halsted was published in 1906 by the Literary and Historical Society of Quebec. That file was subsequently transferred to the Archives of Quebec, and has long since been "misplaced". The following six documents are printed therein in full: i) An Agreement for a Frame of a Store, dtd. January 16, 1775; ii) Memorial of John Halsted to Frederic Haldimand, dtd. August 4, 1784; iii) Letter of John Halsted to Colonel Pickering, dtd. June 3, 1797; iv) Letter of Colonel Pickering to John Halsted, dtd. June 23, 1797; v) Bond of Arbitration, dtd. October 2, 1797, and; vi) Award of Arbitration, dtd. October 4, 1797: see "Halsted-Mercier Papers", Literary and Historical Society of Quebec, Historical Documents, ser. 8 (vol. 8) (Quebec; Daily Telegraph Job Printing House, 1906), pg. 4-7 and 113-126 (OOU). Sixteen of those twenty-five calendered manuscripts were not otherwise located, two of which however are printed in full.

## APPENDIX V

## JAY'S TREATY

Jay's Treaty was signed on November 19, 1794<sup>1</sup> ratifications were exchanged on October 28, 1795,<sup>2</sup> and the Treaty was implemented in Great Britain by a statute passed on July 4, 1797.<sup>3</sup> This Appendix reproduces both Treaty Article 9 and U.K. Statute Article 24, dealing with land tenure.

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## TREATY ARTICLE IX

"It is agreed that British subjects who now hold lands in the territories of the United States, and American citizens who now hold lands in the dominions of His Majesty, shall continue to hold them according to the nature and tenure of their respective estates and titles therein; and may grant, sell or devise the same to whom they please, in like manner as if they were natives; and that neither they nor their heirs or assigns shall, so far as may respect the said lands and the legal remedies incident thereto, be regarded as aliens."

## U.K. STATUTE ARTICLE XXIV

"And whereas, by the ninth Article of the said Treaty, it was agreed that British Subjects who then held Lands in the Territories of the said United States, and American Citizens, who then held Lands in the Dominions of his Majesty, should continue to hold them according to the Nature and Tenure of their respective States and Titles therein, and might grant, sell, or devise the same to whom they should please, in like Manner as if they were Natives, and that neither they nor their Heirs or Assigns should so far as might respect the said Lands and the legal Remedies incident

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<sup>1</sup> Treaty of Amity, Commerce, and Navigation, found in Treaties and other International Acts of the United States of America, Hunter Miller (ed.), vol. 2 (Wash.: U.S. Gov. Pr. Off., 1931), pg. 245 (OOP).

<sup>2</sup> Letter. Lord William W. Grenville (For. Secty.) to Phineas Bond (Brit. Consul Gen., Charge d'Affaires at Phil.). dtd. November 4, 1795. found in MG16, F.O. 5, vol. 10, Gen. Corres., U.S.A., fm. and to Phineas Bond, pg. 17, mf. B-1771 (OOA).

<sup>3</sup> Article 9 of Jay's Treaty was implemented into domestic law by Article 24 statute (1797) 37 Geo. 3. c. 97 (U.K.), An Act for Carrying into Execution the Treaty of Amity, Commerce and Navigation, Concluded Between His Majesty and the United States of America, found in Gt. Brit., Statutes at Large, Owen Ruffhead (ed.), vol. 17 (London: Mark Baskett, 1798), pg. 585 to 590 (OONL).

thereto, be regarded as Aliens, be it therefore enacted by the Authority aforesaid, That all Lands, Tenements, and Hereditaments, in the Kingdom of Great Britain, or the Territories and Dependencies thereto belonging, which on the twenty-eight Day of October one thousand seven hundred and ninety-five (being the Day of the Exchange of the Ratification of the said Treaty between his Majesty and the said United States) were held by American Citizens, shall be held and enjoyed, granted, sold, and devised, according to the Stipulations and Agreements contained in the said Article; any Law, Custom, or Usage, to the contrary notwithstanding."

## APPENDIX VI

## REAL AND PERSONAL PROPERTY CONVENTIONS

This Appendix comments on the real and Personal Property Conventions entered into between the U.K. and U.S. in 1899 and 1921.

The first local Naturalization Act passed by the Dominion of Canada allowing aliens to acquire, hold and inherit property in Canada on the same footing as natural born British subjects was passed in 1881.<sup>1</sup> A Convention between the U.K. and U.S. dealing with the succession of real and personal property in those countries owned by each others citizens, was signed on March 2, 1899,<sup>2</sup> with ratifications exchanged July 28, 1900. The Colonial Office advised Canada in September 1900, that Article 4 of that Convention required it to give notice within one year of the ratification date for it to apply to Canada.<sup>3</sup> That date was later extended by another year.<sup>4</sup> Canada notified the Colonial Office that it did not wish to adhere to that Convention because

<sup>1</sup> A) An Act Respecting Naturalization and Aliens, 1881, S.C. 1880-81, c. 13, s. 5 (OONL); B) Contemporary Federal Government policy statements on alien land ownership in Canada under provincial and federal legislation were located in: 1) Letter. Gilles Sicotte (Under Secty. of St. for Ext. Aff.) to Embassy of the United Arab Republic (No. 30) dtd. September 8, 1961. found in RG25 A3B, Ext. Aff., Central Registry Files, 1940 ser., acsn. no. 84-85/019, Box 375, file 10616-X-1-40, Propt. Rights of Aliens in Cda., unp. (3 pg.) (OOA); and, 11) Letter. Frederick P. Varcoe (Dpty. Min., Jus.) to [Arnold D. P. Heeney] Under Secty. of St. for Ext. Aff. dtd. March 14, 1950. found in id., RG25 A3B, unp. (2 pg.) (OOA). Extracted remark:

"I might say that I am inclined to the view that the limitations on the acquisition of property by aliens contained in the Real Property Act of Prince Edward Island and the Crown Lands Act of British Columbia may be overridden by Section 29 of the Canadian Citizenship Act..."

<sup>2</sup> A) Convention Between the United Kingdom and the United States of America Relative to the Disposal of Real and Personal Property, signed March 2, 1899., Gr. Brit. T.S. 1900, No. 17 (Cd. 356) (OONL). call no. F10P/ Gt. Brit./Parliament/ Papers by Cmnd. no. 356; B) a signed handwritten MS copy of that Convention dtd. March 2, 1899, found in F.O. 93/8, Protocols of Treaties, USA, file 90, Tenure and Disposal of Real and Personal Propt., whole file (13 pg.) (PRO). That file includes a signed typed MS copy of the Protocol of Exchange dtd. July 28, 1900; C) a signed handwritten copy of the American Ratification of that Convention dtd. July 16, 1900, found in F.O. 94, Ratification of Treaties, file 806, Tenure and Disposal of Real and Personal Propt., whole file (14 pg.) (PRO).

<sup>3</sup> Circular Letter. Rt: Hon. Joseph Chamberlain (Col. Secty.) to [(Gilbert John) Lord Minto] Officer Administering the Gov't of Cda. dtd. September 20, 1900. found in RG7 G21, vol. 414, Gov. Gen. Off., file 10811A, Real and Personal Propt. Convention, pg. 2, mf. T-2298 (OOA).

<sup>4</sup> A) Convention Between the United Kingdom and the United States of America Extending the Period for Accession of British Colonies and Possessions to the Convention of March 2, 1899, signed January 13, 1902, Gt. Brit. T.S. 1902, No. 11 (Cd. 1073) (OONL). Loose pages in poor condition. call no. F10P/ Gt. Brit./ Parliament/ Papers by Cmnd. no. 1073; B) a signed handwritten copy of that Convention dtd. January 13, 1902, found in F.O. 93/8, Protocols of Treaties, USA, file 94, Ext. of Time for Accession of Colonies to Real and Personal Propt. Convention, whole file (4 pg.) (PRO). That file includes a signed typed MS copy of the Protocol of Exchange dtd. April 2, 1902; C) a signed handwritten copy of the American Ratification of that convention dtd. March 7, 1902, found in F.O. 94, Ratification of Treaties, file 827, Ext. of Time for Accession of Colonies to Real Propt. Convention, whole file (4 pg.) (PRO).

of the views expressed by the Province of New Brunswick, which felt that there existed a conflict with its own succession duty legislation, which imposed double duties on non-residents. Canada did not then wish to coerce that Province against its wishes. <sup>5</sup> Following a decision of the U.S. Supreme Court in January 1921 (Sullivan vs. Kidd, 254 U.S. 433), Canada felt that New Brunswick should no longer prevent its becoming a party to that Convention. <sup>6</sup> That case held that Canadians could not inherit real or personal property in the U.S. under the existing treaty between the U.K. and the U.S. Aliens are incapable of inheriting property in the U.S. by the laws of some States. A Supplementary Convention <sup>7</sup> making Canada a party to that existing Treaty thereby removing all existing disabilities under State laws, was signed on October 21, 1921, with ratifications exchanged June 17, 1922. <sup>8</sup>

<sup>5</sup> A) Extracted Privy Council Report. dtd. July 30, 1901. found in supra., footnote 3, RG7 G21, pg. 12 to 14 (OOA); B) Order-in-Council. aprv. June 15, 1901. Desp. no. 680-L. Rep. no. 358-D. found in RG2 A1A, vol. 824, Privy Concl. Off., Min. and Orders-in-Concl., unsp. (8 pg.), file box (OOA).

<sup>6</sup> A) Memo. Sir Joseph Pope (Under Secty. of St. for Ext. Aff.) to Rt. Hon. Arthur Meighen (Prime Min. and Secty. of St. for Ext. Aff.) dtd. January 14, 1921. found in RG25 A3A, Ext. Aff., Central Registry Files, 1939 ser., vol. 1263, file 1920-390, pt. 1, Real and Personal Propt. Convention, unsp. (3 pg.), file box (OOA); B) same memo found in MG26 I, vol. 42, Meighen Prs., ser. 2, pg. 24420 to 24422, mf. C-3429 (OOA); C) that memo also found in RG13 A2, Jus., Central Registry Files, vol. 2013, file 991/1933, Adhesion of Cda. to the Real and Personal Propt. Convention of March 2, 1899, unsp. (3 pg.) (OOA); D) reported U.S. legal decisions considering the Gt. Brit./Cda.-U.S. Real and Personal Propt. Convention are discussed in these 3 letters: 1) Letter. Hanford MacNider (U.S. Min. to Cda., Ott.) to Richard B. Bennett (Prime Min. and Secty. of St. for Ext. Aff.) (No. 201). dtd. April 11, 1931. found in RG25 A3A, Ext. Aff., Central Registry Files, 1939 ser., vol. 1263, file 1920-390, pt. 2, Real and Personal Propt. Convention, unsp. (6 pg.) (OOA). referring to: i) Re Moynihan's Estate, 151 N.W. 504; suppl. opinion on reh'g 154 N.W. 904 (Iowa S.C. 1915); ii) Brown State Treasure vs. Daly's Estate, 154 N.W. 602 (Iowa S.C. 1915); iii) Trott vs. State, 171 N.W. 827 (N. Dak. S.C. 1919); 2) Reply to above endorsed "not sent". see Letter. [Richard B. Bennett (Prime Min.)] Secty. of St. for Ext. Aff. to Hanford MacNider. dtd. April 28, 1931. found in id., RG25 A3A, unsp. (6 pg.) (OOA); 3) Letter. Canadian Legation, Wash. to [William L. Mackenzie King (Prime Min.)] Secty. of St. for Ext. Aff. (No. 407). dtd. May 1, 1937. found in RG25 A3B, Ext. Aff., Central Registry Files, 1940 ser., vol. 2645, file 2990-40, pt. 1, Convention With the U.S. Relative to the Disposal of Real and Personal Propt., unsp. (2 pg.) (OOA). This letter includes as an enclosure a typed article written by William R. Vallance, "Enforcement of International Law by the Courts in the United States", n.d., see pg. 1, 2 and Appendix C therein. The Appendix includes a list of 15 U.S. Federal and State Court decisions dated between 1903 and 1934 which considered the Real and Personal Property Convention.

<sup>7</sup> A) Supplementary Convention Between the United Kingdom and the United States of America Providing for the Accession of Canada to the Real and Personal Property Convention of March 2, 1899, signed October 21, 1921, Gt. Brit. T.S. 1922, No. 10 (Cd. 1728) (OONL). call no. F10P/ Gt. Brit./ Parliament/ Papers by Cmnd. no. 1728; B) a signed typed MS copy of that Convention dtd. October 21, 1921, found in F.O. 93/8, Protocols of Treaties, USA, file 145, Supp. Real and Personal Propt. Convention, Acnsn. of Cda., whole file (2 pg.) (PRO); C) a signed typed MS copy of the American Ratification of that Convention dtd. November 12, 1921, found in F.O. 94, Ratification of Treaties, file 993, Supp. Real and Personal Propt. Convention, Acnsn. of Cda., whole file (4 pg.) (PRO). That file includes a signed typed MS copy of the Protocol of Exchange dtd. June 17, 1921.

<sup>8</sup> Letter. Rt. Hon. Winston Churchill (Col. Secty.) to Lord Julian H.G. Byng of Vimy (Gov. Gen. and Com.-in-Chief of Cda.) (No. 352). dtd. July 15, 1922. found in RG7 G21, vol. 414, supra., footnote 3, pg. 94 (OOA).

## APPENDIX VII

## MESSRS. MERCIER AND HALSTED'S REWARD - OHIO LANDS

This Appendix provides information on the Ohio land grants given to John D. Mercier, John Halsted, and James Boyd. Included are references to Acts, Land Warrants, lot descriptions, a subdivision plan, and published literature.

- 1) An Act regulating the grants of land appropriated for the refugees from the British provinces of Canada and Nova Scotia, 6th Cong. 2nd Sess. c. 5 (1801). found in U.S., Statutes at Large, ed. Richard Peters (Boston; Charles C. Little and James Brown, 1845), vol. 2, pg. 190 and 191, mf. (OONL).

This statute lists various claimants entitled to the quantities of land specified.

- 2) An Act for the relief of the Refugees from the British Provinces of Canada and Nova-Scotia, 5th Cong. 2nd Sess. c. 43 (1798). found in Early American Imprints, 2nd Ser., Shaw-Shoemaker acsn. no. 49166, pg. 86 to 88, mf. (OONL).

The initial claims procedure is set out in this Act.

- 3) Land Warrants. U.S. Treasury Department to John D. Mercier. dtd. January 12, 1802. found in RG49, Rcds. of the Bureau of Land Management, Entry 8, Cda. Refugees. Range 21, Twp. 12, Lot 38 (321.51 acres) and Range 19, Twp. 17, Lot 3 (368.89 acres) (DNA). Both endorsed "Patent Issued February 24, 1802".

The Warrants for the heirs of James Boyd were not located and those for John Halsted were not searched. The Patents are registered in various Ohio Recorders Offices, depending on the location of the land and may be found using their Grantee-Grantor indexes. For more information contact the Offices of the State Auditor, Columbus, Ohio.

- 4) Marie Taylor Clark, Ohio Lands Chillicothe Land Office: Entries encompassing the lands of Congress Lands, Refugee Tract, United States Military District and French Grants... 1800-1829, 1st ed. (Chillicothe, Ohio; the author, June 1984).

The Ohio Auditor of State's Office provided me with xerox copies of some pages. The book is listed on the National Library of Canada's computerized data base (Dobis), but no locations have yet been provided.

- 5) William E. Peters, "Chapter 25, The Refugee Tract", Ohio Lands and Their Subdivision, 2nd ed. (Athens, Ohio; the author, 1918), pg. 284 to 292 (DNA).
- 6) MS Tract Book-Entries - U.S. Military District - Refugee - West of Miami and Between the Miamis - Congress Lands - Reverted Lands - Original Proprietors Ohio Company Purchase - Auditor of State. Titled "A List of Lands Located for the Refugees of Canada and Nova Scotia by an act of Congress passed the 1st day of February 1801, entitled 'An Act regulating the grants of Land appropriated for the Refugees from the British Provinces of Canada and Nova Scotia", pg. 91 to 97 (Offices of the State Auditor, Columbus, Ohio).
- John D. Mercier shown located on Range 21, Twp. 12, Lot 38 and Range 19, Twp. 17, Lot 3. John Halsted shown located on Range 22, Twp. 5, Lot 9 and Range 21, Twp. 12, Lot 24. The heirs of James Boyd shown located on Range 18, Twp. 17, Lot 16; Range 18, Twp. 17, Lot 54; Range 19, Twp. 17, Lot 26; Range 19, Twp. 17, Lot 29; Range 20, Twp. 16, Lot 23; Range 21, Twp. 12, Lot 4; and, Range 21, Twp. 12, Lot 21.
- 7) Map. Ohio Refugee Land. Copy of survey and Map made by Elnathan Scofield in 1801. By order of Ohio Canal Commission, May 1903 (Offices of the State Auditor, Columbus, Ohio).

This map shows the lots located by John D. Mercier, John Halsted and the heirs of James Boyd.

## APPENDIX VIII

SUMMARY OF THE COMPENSATION/REWARD  
RECEIVED BY GENERAL ARNOLD FROM THE BRITISH  
FOLLOWING HIS DEFECTION

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An analysis of the financial benefits conferred on General Arnold and his family by the British following his betrayal is a frequented topic of discussion. Milton Lomask went as far as to say that "the traitor made more money out of the Revolutionary War than any other American General."<sup>1</sup> General Arnold's losses are set out in a memorial to the Commissioners of American Claims, dated March 1784.<sup>2</sup> The Commissioners invited applications from persons who sustained losses during the American Revolution by way of memorial. Claimants were to specify the testimony their case was intended to substantiate, together with the names and addresses of all witnesses.<sup>3</sup> General Arnold's memorial contains depositions of witnesses and a personal account of his losses. He valued Mount Pleasant estate at £5,000 sterling, mentioning that it was subject to a £1,200 sterling mortgage. His total losses were valued at £16,125 sterling. The claim is said to have been withdrawn because of expense, time, and the partial compensation already received.<sup>4</sup>

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<sup>1</sup> Lomask, Milton, Beauty and the Traitor, the Story of Mrs. Benedict Arnold (Philadelphia, Pa.: Macrae Smith Co., 1967), pg. 161-2.

<sup>2</sup> Memorial of Brig.-Gen. Benedict Arnold to the Commissioners of American Claims (Claim #799). dtd. March 1784. found in A.O. 13, vol. 96, pt. 1, Audit Off., Amer. Loyalist Claims, pg. 74 to 84, mf. B-2199 (OOA).

<sup>3</sup> Nova Scotia Gazette and the Weekly Chronicle, November 4, 1783, pg. 1, col. 3, mf. (OONL).

<sup>4</sup> supra., footnote 2, Memorial.

As his initial price for betrayal General Arnold wanted his property valued at £10,000 sterling secured, and a further £20,000 sterling for surrendering West Point:

"... the following preliminaries be settled previous to cooperation. First, that Sir Henry secure to me my property, valued at ten thousand pounds sterling... if I point out a plan of cooperation by which Sir Henry shall possess himself of West Point, the garrison, etc., twenty thousand pounds sterling..."<sup>5</sup>

General Arnold received £6,315 sterling from Sir Henry Clinton in October 1780:

"... paid to that officer the sum of £6,315 Sterling, as a compensation for the losses he informs me he has sustained by coming over to us..."<sup>6</sup>

Years later, the sufficiency of that payment was raised by Sir Henry Clinton:

"... General Arnold never received an Adequate reward for services actually rendered ... sum of £6,000, was not given in full compensation for all the losses the General had sustained..."<sup>7</sup>

Two intercepted letters, written by an agent for the British army early in 1781, detail a stock transaction in which General Arnold had invested

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<sup>5</sup> A) Code Letter. Moore [Benedict Arnold] to Anderson [John Andre (Adj.-Gen. Brit. Army)]. dtd. July 15, 1780. found in Sir Henry Clinton Prs. (MIU-C); B) Facsimile found in J.W. Edwards (ed.), Edwards Lithoprinted Facsimiles From Original Manuscripts in the Clements Library, University of Michigan, Series 4, Documents of the American Revolution, vol. 3 (pt. 3) (Ann Arbor, Mich.; J.W. Edwards, 1945), unp. (MIU-C).

<sup>6</sup> A) Letter. Sir Henry Clinton (Com.-in-Chief Brit. forces in N. Amer.) to Lord George [Sackville] Germain (Col. Secty.). dtd. October 30, 1780. found in MG11, C.O. 5, vol. 100, Orig. Corres., Secty. of St., pg. 292, mf. B-2971 (OOA); B) printed in Pennsylvania Magazine of History and Biography, vol. 22, no. 4 (1898), pg. 422 (OONL).

<sup>7</sup> A) Letter. Sir Henry Clinton (M.P. for Launceston) to William Pitt (P.M.). dtd. December 2, 1792. found in MG11, "Q" Ser., vol. 57, pt. 1, Cda., Prmscs. Prs., pg. 208 and 209, mf. C-11,905 (OOA); B) an undated draft of that same letter also exists. found in Sir Henry Clinton Prs. (MIU-C).

£5,000 through Samuel and William Scholey Stock Brokers in London.<sup>8</sup> This sum was described by Thomas McKean, President of Congress as "probably the certain reward for his treasons."<sup>9</sup>

General Arnold had additionally been granted the half pay of a Colonel,<sup>10</sup> having served in the American Legion as a colonel of infantry,<sup>11</sup> with the rank of Brigadier-General of Provincial Forces.<sup>12</sup>

A £500 per annum pension was granted to his wife, Margaret Arnold, at pleasure, in March 1782,<sup>13</sup> and £100 per annum "additional pension" was granted on behalf of his daughter Sophia Arnold, at pleasure, in favour of Thomas Morrison, in June 1805.<sup>14</sup> Different accounts have been given about

<sup>8</sup> A) Duplicate Letter. James Meyrick to Maj.-Gen. Benedict Arnold. dtd. January 30, 1781. found in M247, r65, i51, v2, pg. 165 and 166 (DNA); B) printed copy found in William T. Franklin, Memoirs of the Life and Writings of Benjamin Franklin, 2nd ed., vol. 2 (London: Henry Colburn, 1818), pg. 100 and 101 (OONL); also see, C) Duplicate Letter. James Meyrick to Gen. Robertson. dtd. February 7, 1781. found in M247, r65, i51, v1, pg. 781 and 782 (DNA).

<sup>9</sup> A) Letter. Thomas McKean (Pres. of Cong.) to Gen. George Washington (Com.-in-Chief Contin. Army). dtd. July 17, 1781. found in George Washington Prs., ser. 4, vol. 180, pg. 25 to 27, mf. 79 (DLC); B) Extracted Letter with notes and comments printed in Edmund C. Burnett (ed.), Letters of Members of the Continental Congress, reprint, vol. 6 (Gloucester, Mass.: Peter Smith, 1963), pg. 147 (OCCC).

<sup>10</sup> Letter. Gen. Benedict Arnold to Sir Henry Clinton (M.P. Launceston). dtd. July 23, 1792. found in Sir Henry Clinton Prs. (MIU-C).

<sup>11</sup> Paylist - American Legion, commanded by Brig.-Gen. B. Arnold, from August 25, 1782 to October 24, 1782. found in MG23 B1, vol. 52, Headquarters Prs. of the Brit. Army in Amer., Document no. 5965 (1) to 5966 (4), mf. M-358 (OOA).

<sup>12</sup> Letter. Sir Henry Clinton (Com.-in-Chief Brit. forces in N. Amer.) to Lord George [Sackville] Germain (Col. Secty.). dtd. October 11, 1780. found in MG11, C.O. 5, vol. 100, Orig. Corres., Secty. of St., Military Desp., pg. 171 to 176, mf. B-2971 (OOA).

<sup>13</sup> A) Pension Warrant. Margaret Arnold. dtd. March 19, 1782. found in T52/70, Treas. Prs., Ryl. War., pg. 401 (PRO); also see, B) Letter. Lord [Frederick] North [Earl of Guildford] (1st Lord of the Treas.) to King George III. dtd. March 26, 1782. printed in Sir John Fortescue (ed.), The Correspondence of King George the Third from 1760 to December 1783, vol. 5 (London: Frank Cass & Co. Ltd., 1967), pg. 413 to 416 (OONL).  
Extract from letter:

"Lord North has the honour of sending to His Majesty a set of Warrants for his Royal signature, if approved ... P.S. The Warrant for Mrs. Arnold's pension, which is enclosed, has been drawn in pursuance of His Majesty's orders received from Mr. Ellis."

<sup>14</sup> Pension Warrant. Sophia Arnold. dtd. June 19, 1805. found in T52/89, Treas. Prs., Ryl. War., pg. 14 (PRO).

the actual value of the pensions received by his family. By General Arnold's own account, his wife had been granted a pension of about £360 per annum, and each of her four children about £80 per annum.<sup>15</sup> A £360 per annum pension to Margaret Arnold was mentioned by John George Taylor.<sup>16</sup> Four other historians have stated that his wife's pension was £500 per annum,<sup>17</sup> of which three further indicated that each of her children were granted pensions of £100 per annum.<sup>18</sup> Only one of them mentioned an £80 per annum pension to each of his wife's children.<sup>19</sup> Another historian describes a pension warrant dated July 20, 1783, allowing £100 per annum pensions to each of his wife's four children.<sup>20</sup> That warrant was not found in the Public Record Office.

My research uncovered fifty-nine individual MS items - exclusive of enclosures - dealing with General Arnold's family land grants in Upper Canada. Bounty lands were given as a matter of course in Upper Canada following the American Revolution to persons serving in any Provincial Regiment of the British forces during the conflict.<sup>21</sup> However, it is

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<sup>15</sup> Schedule. "Estimate of Brig.-General Arnold's losses or/and what he has received from Government." dtd. July 1797. found in MG11, "Q" Ser., vol. 283, Act. Gov., Pres. P. Russell and Misc., pg. 327 and 328, mf. C-12,600 (OOA).

<sup>16</sup> Taylor, John George, Some New Light on the Later Life and Last Resting Place of Benedict Arnold and of His Wife Margaret Shippen (London: George White, 1931), pg. 23 (DLC).

<sup>17</sup> A) Arnold, Isaac N., The Life of Benedict Arnold, reprint (N.Y.: Arno Press, 1979), pg. 363 (OOU); B) Lomask, Milton, "Benedict Arnold: the Aftermath of Treason", American Heritage, vol. 18 (October 1967), pg. 83 to 92 at 87 (OOC); C) Todd, Charles B., The Real Benedict Arnold (N.Y.: A.S. Barnes and Co., 1903), pg. 229 (OONL); D) Whitton, Frederick E., Service Trials and Tragedies (London: Hutchinson & Co., 1930), pg. 104 (OOND).

<sup>18</sup> ibid., Arnold, Todd and Whitton.

<sup>19</sup> supra., footnote 17B, Lomask.

<sup>20</sup> supra., footnote 8B, Franklin, pg. 101.

<sup>21</sup> Proclamation of Sir Henry Clinton (Com.-in-Chief). dtd. May 7, 1781. printed in Halifax Gazette, July 10, 1781, pg. 3, col. 3, mf. (OONL).

apparent from the record that the intervention of high office holders in Great Britain was required to secure his family's privileged land grants.

A petition by General Arnold and his sons, Lieutenant Richard Arnold, Lieutenant Henry Arnold and Ensign Edward Arnold - half pay reduced officers - for a grant of a Township of Land, was made to Governor John Graves Simcoe in January 1794. It was turned down because of non-residence. <sup>22</sup> A second petition was made by an agent for General Arnold, to Governor Simcoe in May 1796, and it was similarly turned down for want of residence. <sup>23</sup>

General Arnold petitioned King George III directly in July 1797, for a grant of 45,000 acres for himself and family, mentioning therein the losses he had sustained during the American Revolution. <sup>24</sup> Later that same month he reduced his request to 14,600 acres - more in line with established land granting precedents in Upper Canada. <sup>25</sup> In November 1797,

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<sup>22</sup> Petition for Land to John Graves Simcoe (Lt. Gov. Upr. Cda.). dtd. January 10, 1794. found in RG1 L3, vol. 1, Upr. Cda., Petitions for Land Grants, Petition no. 45, Bundle A1, mf. C-1609 ((OOA)). Intention of petitioners to settle 45 or 50 settlers on those lands. Endorsement reads:

"When those officers appear and incline to settle in this Province the Lands they are entitled to will be granted."

<sup>23</sup> Petition for Land to John Graves Simcoe (Lt. Gov. Upr. Cda.). dtd. May 24, 1796. found in RG1 L3, vol. 1, Upr. Cda., Petitions for Land Grants, Petition no. 29, Bundle A1, mf. C-1609 (OOA). Endorsement reads:

"granted provided he becomes a resident in the Province."

<sup>24</sup> Petition for Land to the King. dtd. July 1797. found in MG11, "Q" Ser., vol. 283, Act. Gov., Pres. P. Russell and Misc., pg. 325 to 328, mf. C-12,600 (OOA). Marked "rec. 12th July, 1797".

<sup>25</sup> A) Letter. Gen. Benedict Arnold to John King. dtd. July 27, 1797. found in MG11, "Q" Ser., vol. 283, Act. Gov., Pres. P. Russell, pg. 331 and 332, mf. C-12,600 (OOA). Extracted statements from letter:

"The Duke of Portland having requested you to state to him the mode etc., of granting lands in Canada, and as you may not be informed how the discretionary Orders to the Govrns have been executed, I take the liberty to observe that I have received the following information on the subject from Judge Powell of Canada."

"That all Field Officers who served in the late American War, have on application received 5,000 Acres for themselves, and 1,200 for each Person of their Families ..."

B) It had been explained that three Upper Canada Council members' children had each received 1,200 acre grants. see Letter. John Graves Simcoe (Lt. Gov. Upr. Cda.) to John King. dtd. May 17, 1798. found in MG 11, "Q" Ser., vol. 285, Act. Gov., Pres. Peter Russell, pg. 444 and 445, mf. C-12,600 (OOA). Reads in part:

"In regard to so large an Allotment for his [General Arnold's] children I know but of

he asked to be excused from the "hard condition" of residence because of his age and due to the need of his young family for an education. <sup>26</sup> It would appear that the Duke of Portland had agreed to exempt him from the residence requirement by January 1798. <sup>27</sup> Lord Cornwallis expressed the opinion in June 1798, that General Arnold's conduct at Guadeloupe entitled him to a larger than normal grant. He also recommended that the residence requirement be dispensed with. <sup>28</sup> Several days later the Duke of Portland sent a dispatch to the Governor of Upper Canada instructing him to grant General Arnold and his family 13,400 acres (5,000 acres for the General and 1,200 acres each for his wife and six children - his sons Richard and Henry received separate grants, and did not participate in this grant) exempt from the residence requirement "in consequence of his late gallant and meritorious services in Guadeloupe." <sup>29</sup>

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three Precedents, which were made in favor of the Children of three Old Officers who are of the Council."

C) Ernest A. Cruikshank indicated that 1,200 acre grants to the wives and children of the elite were not uncommon in Upper Canada. see his comments in "Petitions for Grants of Land in Upper Canada, Second Series, 1796-99", Ontario Historical Society: Papers and Records, vol. 26 (1930), pg. 97 and 98 (OW). call no. R971.3 OHS.

<sup>26</sup> Letter. Gen. Benedict Arnold to [William Henry Cavendish (Bentinck)] Duke of Portland (Home Secty.). dtd. November 6, 1797. found in MG11, "Q" Ser., vol. 283, Act. Gov., Pres. P. Russell, pg. 338 to 340, mf. C-12,600 (OOA).

<sup>27</sup> Letter. Gen. Benedict Arnold to Duke of Portland (Home Secty.). dtd. January 2, 1798. found in MG11, "Q" Ser., vol. 79, pt. 2, Lt. Gov. R. Prescott, pg. 426 and 427, mf. C-11,912 (OOA).

<sup>28</sup> Letter. Lord [Charles] Cornwallis (Lord Lt. and Com. Off. in Ireland) to John King. dtd. June 5, 1798. found in MG11, "Q" Ser., vol. 285, Act. Gov., Pres. Peter Russell, pg. 446, mf. C-12,600 (OOA).

<sup>29</sup> A) Letter (extracted summary). Duke of Portland (Home Secty.) to Peter Russell (Admin. of Upr. Cda.). dtd. June 12, 1798. found in MG11, "Q" Ser., vol. 57, pt. 2, Cda. Prmscs. Prs., pg. 491, mf. C-11,906 (OOA). This version is found extracted in a letter written by General Arnold to John King; B) a full copy of Portland's letter is found in RGI L3, vol. 4, Upr. Cda., Petitions for Land Grants, pg. 56 (2 pg.) (handwritten), Petition no. 5, Bundle A7, mf. C-1609 (OOA); C) that letter was read at a meeting of the Upper Canada Executive Council held on November 22, 1798. Extracted minute:

"Read a letter from His Grace the Duke of Portland to President Russell dated 12th June 1798, signifying it be His Majesty's pleasure that a grant of 13,400 acres of land may be made to General Arnold and his family out of the waste lands of the Crown in Upper Canada on the usual Terms and Conditions that of residence alone excepted. ORDERED, accordingly whenever General Arnold's Agent appears to take up the Warrant of Survey."

see Council Minute. dtd. November 22, 1798. found in RGI E1, vol. B, Upr. Cda., Exec. Concl., St. Min. Bk., pg. 243 to 246, mf. C-97 (OOA). The letter is not found with that minute.

The Upper Canada Executive Council approved General Arnold's land grant in October 1799, subject to the payment of "full fees under the new Regulations." <sup>30</sup> In June 1800, General Arnold asked that all 13,400 acres be granted as military lands according to the fees under the old regulations. <sup>31</sup> The Duke of Portland favoured this request in July 1800. <sup>32</sup> Lot descriptions in East and North Gwillimbury Townships were approved by the Upper Canada Executive Council for the General's 5,000 acres in June 1804, <sup>33</sup> three years following his death.

Two very misleading newspaper articles were uncovered which sought to deny that General Arnold had ever been granted land in Upper Canada. One appeared in the New York Times in 1892, and the other in the [Toronto Daily Mail and Empire] in 1933. <sup>34</sup> The title deeds for his grants are a matter of public record. The land patents for General Arnold's 5,000 acres were issued to his executor on November 7, 1822. By two land patents, twenty-five 200 acre lots were granted to Daniel Cox as executor, in North and East Gwillimbury Townships, near Cook's Bay, Lake Simcoe.

<sup>30</sup> Council Minute. dtd. October 29, 1799. found in MG11, "Q" Ser., vol. 295, Lt. Gov. Peter Hunter, pg. 211 to 213, mf. C-10,229 (OOA). That minute reads in part:

"Recommended that 5,000 acres be granted to Benedict Arnold as Military Lands, and 1,200 acres to his wife and each of his children, except Richard and Henry on full fees under the new Regulations."

<sup>31</sup> Letter. Gen. Benedict Arnold to John King. dtd. June 19, 1800. found in MG11, "Q" Ser., vol. 57, pt. 2, Cda. Prmscs. Prs., pg. 491 to 496, mf. C-11,906 (OOA).

<sup>32</sup> A) Letter. Duke of Portland to Peter Hunter (Lt. Gov. Upr. Cda.). dtd. July 24, 1800. found in RG1 E3, vol. 60, Upr. Cda. St. Submissions, pg. 129, mf. C-1197 (OOA); B) also found in MG11, "Q" Ser., vol. 287, pt. 1, Lt. Gov. P. Hunter, pg. 119, mf. C-12,601 (OOA); C) additionally copied into an Upper Canada Council Minute dated December 2, 1800. see MG11, "Q" Ser., vol. 290, pt. 2, Lt. Gov. P. Hunter, pg. 276 to 280, mf. C-12,601 (OOA).

<sup>33</sup> 1) Council Minute. dtd. June 29, 1804. found in RG1 L5, vol. 79A, Unbrd. Orders-In-Concl. for Issuance of Surveyors Gen. Desc., pg. 617, mf. H-1147 (OOA); B) also found in RG1 L5, vol. 40, Upr. Cda., Heir and Devisee Comm., Home Dist., Orders-In-Concl. for the Issuance of Surveyor Gen. Desc. on Land Claims Recommended by the Comm., pg. 9, 9A, 9B and 9C, mf. H-1141 (OOA).

<sup>34</sup> A) "Greedy Benedict Arnold", New York Times, June 13, 1892, pg. 3, col. 4, mf. (OONL); B) Fred Williams, "Simcoe Refused Land to Arnold", [Toronto Daily Mail and Empire], October 23, 1933, pg. 8, mf. (OONL).

"Know Ye, That We, of our special Grace, certain knowledge, and mere Motion, have Given and Granted, and by these Presents do Give and Grant unto Daniel Cox of Barnor Terrace, Surrey, England, Esq. as surviving Executor of the Wills of Brigadier-General Benedict Arnold and Margaret Arnold his wife deceased, dated respectively 30 August 1800, and 26 January 1804, his heirs and assigns forever in trust for the heirs of the Will of the said Margaret Arnold dated 26 January 1804." <sup>35</sup>

It had taken almost 28 years of waiting, from the time General Arnold had made his first petition for a grant of land in Upper Canada, to the actual issuance of the Crown land patents.

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<sup>35</sup> A) Land Patent. Province of Upper Canada to Daniel Cox (executor). dtd. November 7, 1822. Granting 15 lots totalling 3,000 acres in North Gwillimbury Township; B) Land Patent. Province of Upper Canada to Daniel Cox (executor). dtd. November 7, 1822. Granting 10 lots totalling 2,000 acres in East Gwillimbury Township; C) both Land Patent documents are available from the Ontario Government's Official Documents office. The following information is required to assist in obtaining the documents:

1) Name: Daniel Cox  
 Lot: 5  
 Concession: 4  
 Township: North Gwillimbury  
 Date: November 7, 1822  
 Liber: BG  
 Folio: 380

11) Name: Daniel Cox  
 Lot: 27  
 Concession: 5  
 Township: East Gwillimbury  
 Date: November 7, 1822  
 Liber: BG  
 Folio: 379

D) the Wills of Benedict Arnold and Margaret Arnold are registered in the York Land Registry Office (No. 65), Newmarket, Ontario, as instrument no's., EG84912 and EG84913, both registered on September 11, 1862, mf.

## APPENDIX IX

SCHEDULE OF GENERAL ATTAINDER ACTS  
PASSED BY THE STATE OF PENNSYLVANIA

- 1) An Act Declaring What Shall Be Treason and What Other Crimes and Practises Against the State Shall be Misprison of Treason, Act of February 11, 1777, c. 740, Pa. Statutes at Large, vol. 9, pg. 45 to 47 (P).

1st reading of the Act in the House of Representatives of Pennsylvania on January 21, 1777; 2nd reading January 28, 1777; 3rd reading February 8, 1777; 4th reading and passed into law February 11, 1777. see Pennsylvania Journals. found in Early American Imprints, 1st Ser., Evans acsn. no. 17658, pg. 104, 106 and 110 (OONL).

- 2) An Act for the Attainder of Divers Traitors if they Render Not Themselves by a Certain Day, and for Vesting Their Estates in this Commonwealth, and for More Effectually Discovering the Same and for Ascertaining and Satisfying the Lawful Debts and Claims Thereupon, Act of March 6, 1778, c. 784, Pa. Statutes At Large, vol. 9, pg. 201 to 215 (P).

Act also printed in Pennsylvania Packet or the General Advertiser, April 22, 1778, pg. 1 and 4 (OONL).

1st and 2nd readings of the Act in the House of Representatives of Pennsylvania on December 23, 1777; also said to have had 2nd reading February 27, 1778; 3rd reading and ordered into law March 6, 1778. see Pennsylvania Journals. found in Early American Imprints, 1st Ser., Evans acsn. no. 17658, pg. 176, 187 and 193 (OONL).

- 3) A Supplement To An Act, Entitled An Act For the Attainder of Divers Traitors..., Act of March 29, 1779, c. 832, Pa. Statutes At Large, vol. 9, pg. 328 to 332. (P).

1st reading March 1, 1779; 2nd reading March 4, 1779; 3rd reading March 15, 1779; ordered into law March 16, 1779; reported into law April 15, 1779. see Pennsylvania Journals. found in Early American Imprints, 1st Ser., Evans acsn. no. 17658, pg. 326, 327, 330, 337, and 360 (OONL).

- 4) An Act Declaring Replevins, Attachments, Judgements, And Executions In Certain Cases to be Erroneous and Void, Act of April 3, 1779, c.837, Pa. Statutes At Large, vol. 9, pg. 349 and 350 (P).

1st reading February 22, 1779; 2nd reading March 1, 1779; 3rd reading March 27, 1779; enacted into law March 31, 1779; reported into law April 5, 1779. see Pennsylvania Journals. found in Early American Imprints, 1st Ser., Evans acsn. no. 17658, pg. 319, 327, 346, 352 and 360 (OONL).

- 5) An Act For the Attainder of Harry Gordon Unless He Surrender Himself and For Other Purposes Therein Mentioned, Act of January 31, 1783, c. 1004, Pa. Statutes At Large, vol. 11, pg. 26 to 29 (P).

1st reading November 9, 1782; 2nd reading November 13, 1782; 3rd reading January 24, 1783; engrossed January 29, 1783; entered into law January 31, 1783. see Pennsylvania Journals. found in Early American Imprints, 1st Ser., Evans acsn. no. 17663, pg. 730, 735, 792, 801 and 805 (OONL).

- 6) An Act for the Relief of Such Persons as Have Debts Due to Them From the Estates of Persons Attained of Treason and Confiscated in the Late War, and For Other Purposes Therein Mentioned, Act of March 30, 1785, c. 1149, Pa. Statutes At Large, vol. 11, pg. 530 to 532 (P).

1st reading February 28, 1785; 2nd reading March 22, 1785; 3rd reading March 29, 1785; ordered into law March 30, 1785. see Pennsylvania Journals (Minutes). found in Early American Imprints, 1st Ser., Evans acsn. no. 18684, pg. 163, 240, 259 and 264 (OONL).

Note: The above referenced Pennsylvania Statutes At Large is cited in the "Government Documents (Acts and Journals)" section of my Selected Bibliography - see item numbered 96 therein.

## APPENDIX X

SCHEDULE OF GENERAL ATTAINDER ACTS  
PASSED BY THE STATE OF CONNECTICUT

- 
- 1) An Act for restraining and punishing Persons, who are inimical to the Liberties of this, and the rest of the United Colonies, and for directing Proceedings therein, 1775 Conn. Pub. Acts. found in Early American Imprints, 1st Ser., Evans acsn. no. 13876, unp. (OTU).
  - 2) An Act concerning the real Estates of Aliens, and Persons inimical to the United States of America, 1777 Conn. Pub. Acts. found in Early American Imprints, 1st Ser., Evans acsn. no. 15261, pg. 475 to 476 (OONL).
  - 3) An Act for confiscating the Estates of Persons inimical to the Independence and Liberties of the United States, within this State, and for Payment of their Debts, and directing Proceedings therein, 1778 Conn. Pub. Acts. found in Early American Imprints, 1st Ser., Evans acsn. no. 15762, pg. 495 to 498 (OONL).
  - 4) An Act in addition to an Act, entitled, An Act for confiscating the Estates of Persons inimical to the Independence and Liberties of the United States, within this State, and for Payment of their Debts, and directing Proceedings therein, 1779 Conn. Pub. Acts. found in Early American Imprints, 1st Ser., Evans acsn. no. 16233, pg. 528 (OONL).
  - 5) An Act for supplying the Treasury and for providing a Fund for calling in and sinking the Remainder of the Bills of Credit emitted by this State since the first of January last, and for paying the Bounties of the Recruits ordered to be raised up for filling up the Continental Army, 1780 Conn. Pub. Acts. found in Early American Imprints, 1st Ser., Evans acsn. no. 43786, unp. (OONL).
  - 6) An Act directing certain confiscated Estates to be sold, 1782 Conn. Pub. Acts. found in Early American Imprints, 1st Ser., Evans acsn. no. 17494, pg. 608 to 609 (OONL).

## APPENDIX XI

SCHEDULE OF GENERAL ATTAINDER ACTS  
PASSED BY THE STATE OF NEW JERSEY

- 
- 1) An Act for Taking Charge of and Leasing the Real Estates, and for Forfeiting the Personal Estates of Certain Fugitives and Offenders, and for Enlarging and Continuing the Powers of Commissioners Appointed to Seize and Dispose of Such Personal Estates, and for Ascertaining and Discharging the Lawful Debts and Claims Thereon, 1778 N.J. Sess. Laws, c. 27. found in Early American Imprints, 1st Ser., Evans acsn. no. 15927, pg. 73 to 82 (OONL).
  
  - 2) An Act for Forfeiting To, and Vesting In, the State of New Jersey, the Real Estates of Certain Fugitives and Offenders, and for Directing the Mode of Determining and Satisfying the Lawful Debts and Demands Which May Be Due From, or Made Against, such Fugitives and Offenders; and for Other Purposes Therein Mentioned, 1778 N.J. Sess. Laws, c. 14. found in Early American Imprints, 1st Ser., Evans acsn. no. 16393, pg. 31 to 40 (OONL).  
  
A consolidated version printed in 1880 also exists. see Early American Imprints, 1st Ser., Evans acsn. no. 38063 (OONL).
  
  - 3) An Act to Direct the Agents of Forfeited Estates in the Respective Counties in This State, to Proceed to the Sale of Said Estates; and to Repeal an Act to Suspend the Sales of Real Estates which Have, or Hereafter May, Become Forfeited To, and Vested In, This State, 1783 N.J. Sess. Laws, c. 15. found in Early American Imprints, 1st Ser., Evans acsn. no. 18633, pg. 28 to 30 (OONL).
  
  - 4) An Act for Ascertaining the Value of Debts Due From the Forfeited Estates of Certain Fugitives and Offenders, and For Directing the Payment of the Same, 1783 N.J. Sess. Laws, c. 29. found in Early American Imprints, 1st Ser., Evans acsn. no. 18633, pg. 67 to 70 (OONL).
  
  - 5) A Supplement to an Act, Entitled An Act to Amend and Explain an Act, Entitled An Act for Ascertaining the Value of Debts Due..., 1785 N.J. Sess. Laws, c. 99. found in Early American Imprints, 1st Ser., Evans acsn. no. 19121, pg. 206 and 207 (OONL).

- 6) An Act for Further Suspending the Sales of Forfeited Estates in This State, 1785 N.J. Sess. Laws, c. 112. found in Early American Imprints, 1st Ser., Evans acsn. no. 19121, pg. 228 (OONL).
- 7) An Act for Selling the Properties, Shares of Propriety, and Rights to Unlocated Lands of Persons Whose Estates Have Become Forfeited to, and Vested In This State, 1786 N.J. Sess. Laws, c. 151. found in Early American Imprints, 1st Ser., Evans acsn. no. 19834, pg. 324 and 325 (OONL).
- 8) A Supplement to an Act, Entitled, An Act to Direct the Agents of Forfeited Estates...and to Repeal the Act, Entitled, an Act for Further Suspending the Sales of Forfeited Estates in this State, 1786 N.J. Sess. Laws, c. 157. found in Early American Imprints, 1st Ser., Evans acsn. no. 19834, pg. 332 and 333 (OONL).
- 9) An Act to Authorize Persons Whose Estates Have Been Confiscated, or Their Legal Representatives to Demand and Receive all Debts or Sums of Money Which are Due to This State in Virtue of Such Confiscations, 1789 N.J. Sess. Laws, c. 274. found in Early American Imprints, 1st Ser., Evans acsn. no. 22003, pg. 545 to 548 (OONL).
- 10) A Supplement to an Act to Authorize Persons Whose Estates Have Been Confiscated...., 1792 N.J. Sess. Laws, c. 403. found in Early American Imprints, 1st Ser., Evans acsn. no. 24592, pg. 803 and 804 (OONL).

## APPENDIX XII

## LIST OF CONFISCATED ESTATES

This Appendix provides lot descriptions of real property confiscated from persons declared Aliens pursuant to the provisions of Upper Canada's 1814 Alien Act. The division is by District and Township.

This information was collected from a register prepared by the Crown Office for the Commissioners on the Estates of Traitors and Aliens circa 1819 (see Appendix XIV, Tab 14, item 4). The data, in most cases, has not been checked against registered documents or abstract indexes and may contain some errors and omissions.

In the cases where that data was checked against records maintained by the appropriate local Land Registry Office - for the Town of York, Johnstown District, Gore District, as well as Niagara Town and Township - a significant number of the properties listed in the 1819 Alien Register were not found to have been formerly confiscated by the Crown.

Particulars concerning actual transfers of confiscated property in Niagara Town and Township, and Johnstown District are provided in Appendix IXX, Parts II, III and IV, Tab 19. Gore District is covered in Addendums I & II.

The placement of a dash in the "Total Acres" column of this list signifies that I came across no registered deed transferring title to that property by the Commissioners of Forfeited Estates. Traverse of Office Applications were found to have been responsible for some of those cases. Where there was evidence of such, an asterisk (\*) was used in place of a dash.

## 1) EASTERN DISTRICT

Township	Legal Description	Total Acres (if known)
Matilda	Lot 28, Concession 1	6
"	Lot 2, Cons. 5	175
Osnabruck	Lot 14, Cons. 1	200
"	Lot 17, Cons. 1	160
"	Lot 22, Cons. 1	4
"	Lot 33, Cons. 5	100
Williamsburg	Lot 31, Cons. 5	120
"	Lot 33, Cons. 5	200
District sub-total		965

## 2) GORE DISTRICT

Ancaster	Lot 41, Cons. 1	100
"	Lot 41, Cons. 2	200
"	Lot 42, Cons. 2	50
"	Lot 46, Cons. 2	.5
"	Lot 46, Cons. 2 (with share in Union Mills)	112
"	Lot 36, Cons. 3	200
"	Lot 41, Cons. 3	200
"	Lot 42, Cons. 3	200
Barton	Lot 16, broken front	33
Flamborough W.	Lot 21 & 22, Cons. 1	280
Nelson	Lot 1, Cons. 1, N. Dundas St.	100
"	Lot 3, Cons. 1, N. Dundas St.	-
"	Lot 6, Cons. 1, S. Dundas St.	-
"	Lots 17, 18 & 19, Cons. 1, S. Dundas St.	*
"	Lot 5, Cons. 2, S. Dundas St. (lease)	-
"	Lot 5, Cons. 3, ? Dundas St. (N. & S. checked)	-
"	Lot 7, Cons. 3, S. Dundas St.	200
"	Lot 11, Cons. 3, ? Dundas St. (N. & S. checked)	-
"	Part of Brandts Military Block	-
Trafalgar	Lot 12, Cons. 3	140
"	Broken Lot 11, Cons. 11	?
Woolwich	Block 3, Grand River area (belonging to William Wallace)	7,000

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District sub-total (solid figure) 8,815.5

## 3) HOME DISTRICT

Etobicoke	Lot 32, Cons. 2	100
Gwillimbury, E.	Lot 4, Cons. 3	100
"	Lot 7, Cons. 3	50
Gwillimbury, N.	Lot 3, Cons. 7	200
Pickering	Lot 16, Cons. 2	100
"	Lot 35, Cons. 6	200
"	Lot 19, Cons. 9	200
"	Lot 20, Cons. 9	200
Scott	Lot 24, Cons. 1	200
Whitby	Lot 18, Cons. 1	200
"	Lot 23, Cons. 1	100
"	Lot 24, Cons. 1	200
"	Lot 18, Cons. 3	200
"	Lot 23, Cons. 3	100
"	Lot 4, Cons. 6	200
"	Lot 6, Cons. 7	200

"	Lot 7, Cons. 7	200
"	Lot 18 & 19, broken front	230
"	Lot 24, broken front (subject to Dower or Thirds and remainder)	200
unknown (Andrew Westbrook)		1,200
York, Town of	Lot 1, West side George St. (belonging to James Lockwood)	.25

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 District sub-total

4,380.25

## 4) JOHNSTOWN DISTRICT

Augusta	Lot 18, Cons. 5	200
"	Lot 19, Cons. 6	-
"	Lot 14, Cons. 7	100
"	Lot 18, Cons. 7	-
Bastard	Lot 18, Cons. 6	100
"	Lot 13, Cons. 7	-
"	Lot 14, Cons. 7	-
"	Lot 3, Cons. 9	-
"	Lot 6 & 7, Cons. 9 (with share in Grist Mill)	100
"	Lot 8, Cons. 9	-
"	Lot 12, Cons. 9	-
"	Lot 22, Cons. 10	-
Crosby, South	Lot 13, Cons. 1	-
"	Lot 13, Cons. 2	-
"	Lot 13, Cons. 3	*
"	Lot 12, Cons. 7	200
Elizabethtown	Lot 4 & 5, Cons. 1	200
"	(belonging to David Kilborn)	
"	Lot 18, Cons. 2	200
"	Lot 28 & 29, Cons. 3	-
"	Lot 30, Cons. 3	-
"	Lot 1, Cons. 4	-
"	Lot 2, Cons. 4	200
"	Lot 15, Cons. 4	134
"	Lot 25, Cons. 4	100
"	(unregistered confiscation deed mentioned in Abstract Index)	
"	Lot 30, Cons. 4	50
"	Lot 32, Cons. 4	2
"	Lot 38, Cons. 4	-
"	Lot 26, Cons. 5	-
"	Lot 30, Cons. 5	*
"	Lot 5, Cons. 6	100
"	Lot 12, Cons. 6	100
"	Lot 26, Cons. 6	200
"	Lot 30, Cons. 6	*
"	Lot 5, Cons. 7	-
"	Lot 6, Cons. 7	-

"	Lot 15, Cons. 7	100
"	Lot 33, Cons. 7	200
"	Lot 34, Cons. 7	130
"	Lot 30, Cons. 8	100
"	Lot 33 & 34, Cons. 8	200
"	Lot 26, Cons. 9	150
"	Lot 28, Cons. 9	100
Kitley	Lot 24, Cons. 7	100
"	Lot 19, Cons. 9	-
"	Lot 28, Cons. 9	50
"	Lot 24, Cons. 10	50
"	Lot 29, Cons. 10	-
Lansdown	Lot 11, Cons. 1	50
"	Lot 1, Cons. 9	-
"	Lot 1, Cons. 10	*
"	Lot 2, Cons. 10	*
"	Lot 8, Cons. 12	200
"	Lot 9, Cons. 12	169
Leeds	Lot 4, Cons. 7	-
"	Lot 5, Cons. 7	200
"	Lot 6, Cons. 7	-
"	Lot 13, Cons. 10	-
"	Lot 16, Cons. 10	200
Oxford	Lot 11, Cons. 1	100
South Gower	Lot 1 & 2, Cons. 2	300
Wolford	Lot 26, broken Cons. A	-
"	Lot 25, broken Cons. B	-
Yonge	Lot 7, Cons. 1 (included a saw mill)	*
"	Lot 10, Cons. 1	-
"	Lot 7, Cons. 2	-
"	Lot 18, Cons. 2	100
"	Lot 19, Cons. 2	-
"	Lot 21, Cons. 2	-
"	Lot 17, Cons. 3	*
"	Lot 22, Cons. 3	-
"	Lot 24, Cons. 3	100
"	Lot 2, Cons. 4	-
"	Lot 5, Cons. 4	200
"	Lot 24, Cons. 5	-
"	Lot 8, Cons. 9	-
"	Lot 9 & 10, Cons. 9	300
"	Lot 5, Cons. 11	147
"	Lot 6, Cons. 11	63.75

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District sub-total (solid figure) 5,295.75

#### 5) LONDON DISTRICT

Blenheim	Lot 4, Cons. 1	100
"	Lot 6, Cons. 1	200
"	Lot 7, Cons. 1	50

Blenheim	Lot 9, Cons. 1	200
"	Lot 15, Cons. 1	25
"	Lot 8, Cons. 4	98
"	Lot 7, Cons. 6	150
"	Lot 11, Cons. 10	200
"	Lot 12, Cons. 10	200
"	Lot 13, Cons. 10	200
"	Lot 14, Cons. 10	200
"	Lot 12, Cons. 11	200
"	Lot 13, Cons. 11	125
Burford	Lot 1, Cons. 1	85
"	Lot 13, Cons. 1	100
"	Lot 1, Cons. 4	50
"	Lot 2, Cons. 4	200
"	Lot 2, Cons. 5	200
"	Lot 20, Cons. 5	200
"	Lot 6, Cons. 6	200
"	Lot 7, Cons. 6	160
Charlotteville	Lot 19, Cons. 10	52
Delaware	Lot 1, Cons. 1	200
"	Lot 10, Cons. 1	200
"	Lot 1, broken front, Cons. 1	120
"	Lot 11, Cons. 2	200
"	Lot 21, Cons. 2	200
"	Lot 1, broken front	125
"	Lot AE, in the Gore	200
"	Lot 1, in the Gore	75
Dorchester	Lot 19, broken Cons. A&B SO Div.	150
"	Lot 20, front Cons. A, SO Div.	200
Oldborough	Lot 5, front Cons.	240
Oxford	Lot 7, Cons. 1, East. Div.	200
"	Lot 12, Cons. 1, West. Div.	50
"	Lot 6, broken front, West. Div. (life estate only)	50
"	Lot 13, broken front, West. Div.	80
"	Lot 15, broken front, West. Div.	80
Rainham	Lot 9, Cons. 2	200
"	Lot 21, Cons. 2	200
"	Lot 19, Cons. 3	200
"	Lot 20, Cons. 3	100
"	Lot 17, front Cons.	200
"	Lot 21, front Cons.	200
"	Lot 22, front Cons.	200
"	Lot 24, front Cons.	200
Townsend	Lot 1, Cons. 10	200
"	Lot 7, Cons. 14	18
Walpole	Lot 18, Cons. 1	200
"	Lot 24, Cons. 1 (life estate only)	100
"	Lot 23, Cons. 2	200
"	Lot 17, Cons. 5	200
"	Lot 4, Cons. 6	200
"	Lot 12, Cons. 7	200

Walpole	Lot 13, Cons. 7	200
"	Lot 17, Cons. 7	200
Walsingham	Lot 11, front Cons.	100
Woodhouse	Lot 8, Cons. 2 & 3	100
"	Lot 6, Cons. 3	17.5
"	Lot 1, Cons. 6 (with share in Union Mills)	?
"	Lot 15, in the Gore	200
"	McGill Lot	?
District sub-total		<hr/> 9,200.5
6) MIDLAND DISTRICT		
Marysburgh	Lot 25, SO. Side Black River	200
Richmond	Lot 15, Cons. 1	200
District sub-total		<hr/> 400
7) NEWCASTLE DISTRICT		
Cramahe	Lot 14, Cons. 1	50
"	Lot 22, Cons. 1	100
"	Lot 24, Cons. 1	100
Darlington	Lot 6, Cons. 1	120
Haldimand	Lot 19, Cons. 1	50
"	Lot 22, Cons. 1	120
Hamilton	Lot 9, Cons. 1	200
"	Lot 10, Cons. 1	190
"	Lot 23, Cons. 7	200
Hope	Lot 22, Cons. 2	100
"	Lot 18, Cons. 3	?
"	Lot 23, Cons. 3	200
District sub-total		<hr/> 1,430
8) NIAGARA DISTRICT		
Bertie	Lot 4, Cons. 5	100
Binbrook	Lot 3, Block 2, Cons. 3	200
Clinton	metes and bounds	100
Grantham	Lot 13, Cons. 3	50
"	Lot 8, Cons. 4	100
"	Lot 14, Cons. 5	*
"	Lot 11, Cons. 7	75

Grantham	Lot 19 & 20, Cons. 9	150
"	Lot 12, Cons. 10	?
"	Lot 18, Cons. 10	100
"	Lot 19 & 20, Cons. 10	200
Niagara	Lot 104 (belonging to Alexander Allen)	*
"	Lot 170, 171 & 172 (belonging to Samuel Tompkins)	200
Niagara, Town of	Lot 9, 10, 11 & 12 (belonging to William Wallace)	2
"	Lot 20 (belonging to John Wagstaff)	.5
"	Lot 30 (said to belong to Phineas Howell; found to have been sold by him in 1806)	-
Rainham	Lot 13 or 17, Cons. 3	200
Stamford	Lot 142, 147 & 158	144
Thorold	Lot 40, Gore	11
"	Lot 59, 60, 61, Cons. 1	350
Wainfleet	Lot 18 & 19, Cons. 4	200

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District sub-total 2,182.5

## 9) WESTERN DISTRICT

Howard	Lot 11, Cons. 1	100
"	Lot ?, Cons. 2 (near Arnolds Mill)	50
Sandwich	Lot 40 & 41, Cons. 1	240

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District sub-total 390

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- Sub-total all districts	33,059.5
- Total land with undiscernible legal descriptions not otherwise referenced in my list	755
- Total land confiscated in all districts	33,814.5

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## APPENDIX XIII

## UPPER CANADA'S ALIEN ACTS

Summary list of Upper Canada's Alien Acts and amendments, passed, reserved or disallowed between 1814 and 1821.

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- 1) An Act to declare certain Persons, therein described, Aliens, and to vest their Estates in His Majesty, (1814) 54 Geo. 3, c. 9 (3rd Sess., 6th Parl. U.C.);
  - A) printed copy found on mf. (OONL). call no. C.O.P. YP24 FM.3;
  - B) handwritten copy referred to as MS "Bill 229" found in MG11, C.O. 44, vol. 45, Upr. Cda. Acts 1812-14, pg. 63L and 63R (2 pg.), mf. B-966 (OOA).
  
- 2) An Act to punish persons who have violated their Allegiance to His Majesty during the late War with the United States of America, and to declare certain persons resident therein to be Aliens (1816). This Bill does not appear to have received the Lieutenant Governor's assent;
  - A) a handwritten copy still survives in F 44, Sir John Beverly Robinson Prs. 1815-17, unpr. (6 pg.), mf. 7-409 (OTAR);
  - B) i) the Lieutenant Governor requested the Attorney General's opinion on the Bill the day it was passed by the Legislative Council. see Letter. William Halton (Civ. Secty.) to D'Arcy Boulton (Atty. Gen.). dtd. March 25, 1816. found in RG5 A2, vol. 3, Dft. Corres. of the Lt. Gov. Civ. Secty., Upr. Cda., unpr. (2 pg.), file box (OOA); ii) same letter also found in RG7 G16C, vol. 7, Cda: Gov. Gen. Off., Civ. Secty. Letter Book, Upr. Cda., pg. 111, mf. C-10,789 (OOA); iii) no reply or report was located, and the Bill does not appear to have been printed. The draft Bill is endorsed "A singular Bill passed in 1816 respecting aliens and (as I suppose) not assented to."
  
- 3) An Act for vesting in Commissioners the ESTATES of certain TRAITORS, and also the ESTATES of persons declared ALIENS, (1818) 59 Geo. 3, c. 12 (3rd Sess., 7th Parl., U.C.);
  - A) printed copy found on mf. (OONL). call no. C.O.P. YP214 FM.3;
  - B) handwritten copy referred to as MS "Bill 335" found in MG11, C.O. 44, vol. 47, Upr. Cda. Acts 1817-18, pg. 65 to 73 (17 pg.), mf. B-1010 (OOA).

- 4) An Act to amend an Act passed in the 59th year of His Majesty's reign entitled An Act for vesting in Commissioners the Estates of certain Persons declared Aliens..., (1820) (5th Sess., 7th Parl. U.C.) This Act was disallowed;
- A) handwritten copy referred to as MS "Bill 368" found in MG11, C.O. 44, vol. 48, Upr. Cda. Acts 1819-21, pg. 56 to 57 (3 pg.), mf. B-1010 (OOA);
- B) no printed copy found;
- C) it is still possible to follow the chain of correspondence relating to the disallowance of this Bill. see: i) Letter. Sir Peregrine Maitland (Lt. Gov.) to Lord Henry Bathurst (Col. Secty.). dtd. March 8, 1820. found in MG11, C.O. 42, vol. 365, Cda. Orig. Corres., Upr. Cda. Desps., pg. 53 to 57 and 73, mf. B-301 (OOA); ii) a transcript of the same letter is found in MG11, C.O. 42, "Q" Ser., vol. 328, pt. 1, Cda. Orig. Corres., Lt. Gov. Sir P. Maitland, pg. 56 to 61 and 80 to 82, mf. C-10,764 (OOA); iii) the Crown's decision to disallow the Bill was based on the recommendation of the Lords of the Committee for Trade, to whom the matter had been referred. Letter. Lord Henry Bathurst (Col. Secty.) to Sir Peregrine Maitland (Lt. Gov.). dtd. July 23, 1821. found in RG7 G2, vol. 1, Cda. Gov. Gen. Off., Desp. from the C.O., Upr. Cda., Supp., pg. 21 to 22 (4 pg.), mf. C-15,619 (OOA).
- 5) An Act to amend An Act for vesting in Commissioners..., (1821) 1 & 2 Geo. 4, c. 6 (1st Sess., 8th Parl., U.C.);
- A) printed copy found in Upper Canada Gazette, April 30, 1821, pg. 8, mf. (OONL);
- B) handwritten copy referred to as MS "Bill 381", found in MG11, C.O. 44, vol. 48, Upr. Cda. Acts 1819-21, pg. 85 to 87 (4 pg.), mf. B-1010 (OOA).

## NOTES

- The Ontario Legislative Library has printed and microfilmed copies of Upper Canada's Statutes. However it does not have any copies of the Acts mentioned as having been reserved in 1816 and 1820. The Legislative Library is a library of last resort only. They generally refer inquiries for copies of Acts to the Archives of Ontario.
- The reader is directed to the following periodical article written by William Renwick Riddell on the subject of the Alien Act: "Ester Phelps", University Magazine, vol. 12 (1913), pg. 466 to 471 (OONL).

## APPENDIX XIV

## MS ENTRY BOOKS (REGISTERS) AND RETURNS

Listed chronologically in this Appendix are six MS documents which provide lists of names of persons suspected or declared Aliens pursuant to the provisions of the Aliens Act, 1814, or extracts of Inquisitions of Attainder for High Treason. The information provided in each case includes the title of the document, record group, location, provenance, and total number of pages.

- 
- 1) "General Return of [369] Persons possessed of Lands in Upper Canada who have Fled to the United States from the District of [Newcastle, London, Home, Midland, Niagara, Johnstown and Eastern] since 1st July 1812".  
 dtd. November 29, 1814, December 13, 1814, December 23, 1814, and undated. signed by Sheriffs and Militia Commanders.  
 RG7 G16C, vol. 5, Civ. Secty. Letter Book, mf. C-10,789, unp. (16 pg.) (OOA).
  
  - 2) "A Schedule of [53] Names embraced in Divers Commissions issued under the authority of an act passed A.D. 1814, entitled 'an act to declare certain persons therein described Aliens and to vest their Estates in His Majesty'."  
 dtd. June 7, 1817. signed by John Small, Clerk of the Crown.  
 RG5 A1, vol. 32, Civ. Secty. Corres., Upr. Cda., Upr. Cda. Sundries, mf. C-4549, pg. 15431 to 15437 (6 pg.) (OOA).
  
  - 3) "A Schedule of [9] Names embraced in Divers Commissions issued under the authority of an Act passed A.D. 1814, entitled 'an act to declare certain persons therein described Aliens, and to vest their Estates in His Majesty'. Niagara district continued".  
 dtd. September 26, 1817. signed by John Small, Clerk of the Crown.  
 RG5 A1, vol. 33, Civ. Secty. Corres., Upr. Cda., Upr. Cda. Sundries, mf. C-4600, pg. 16028 to 16029 (2 pg.) (OOA).
  
  - 4) "Additional Extracts of Inquisitions heretofore made and taken under the provisions of an Act of the Parliament of the Province passed in the 54th year of his late Majesty's Reign (George the third) entitled "An Act to declare certain persons therein described Aliens and to vest their Estates in his Majesty".  
 n.d. [1819]. unsigned.

RG1 A-IV, vol. 16, Off. of the Surveyor-Gen., Schedules and Land Rolls, All Dist., Aliens 1819, mf. MS400, reels 7 and 8, unp. (114 pg.)(OTAR).

This is a copy of the extracted Inquisitions delivered to the Commissioners on the Estates of Traitors and Aliens by the Clerk of the Crown. It includes a typed nominal index, naming 158 persons declared Aliens. The last entries were made in 1833.

- 5) "Reference to the following [14] Inquisitions and other Documents and Estates of Aliens. Extra Minutes thereon".

dtd. June 24, 1819. unsigned.

RG22, Ser. 144, Box 1, Env. 14, Ct. of Kings Bench, Alien Act (1814) Rcds., doc. no. 4, Schedule of Inquisitions, unp. (4 pg.) (OTAR).

This document was delivered to James B. Macaulay, Clerk to the Commissioners.

- 6 a) "Duplicate of Certified Extracts of all [13] Inquisitions heretofore made and taken under the provisions of an Act of the Parliament of this province passed in the fifty-fourth year of his Majesty's Reign entitled 'an act to declare certain persons therein described Aliens and to vest their Estates in his Majesty', whereby any Real Estate or Estates have been vested in his Majesty situated in the Home District".

dtd. March 23, 1819. signed by James B. Macaulay, Clerk to the Commissioners.

- b) "Extract from the Registry of Certified Extracts of all [1] Inquisitions whereby any Real or Personal Estate of any kind whatsoever has been Returned as forfeited to His Majesty by the Attainder of any Person or Persons of any High Treason Committed during the War lately terminated between his Majesty and the United States of America".

dtd. December 31, 1819. signed by James B. Macaulay, Clerk to the Commissioners.

- c) "Additional Extracts of [7] Inquisitions made and taken under the provisions of an Act of the Parliament of this Province passed in the fifty-fourth year of his late Majesty's Reign entitled 'An Act to declare certain persons therein described Aliens and to vest their Estates in his Majesty', Whereby certain real Estate or Estates have been vested in his Majesty".

n.d. signed by James B. Macaulay, Clerk to the Commissioners Forfeited Estates.

- d) "Extract from the Register of Commissioners appointed for the disposal of forfeited Estates of an [1] Amended Extract of an inquisition heretofore made and taken under the Provisions of an Act of the Parliament of this Province passed in the 54th Year of His late Majesty's Reign (George the Third) Entitled "An Act to declare certain persons therein described Aliens, and to vest their Estates in his Majesty' whereby any real Estates or Estates have been vested in His Majesty'.

dtd. January 16, 1826. signed by James B. Macaulay, Clerk to the Commissioners.

RG8, Ser. 1-6-A, vol. 6, Dept. of Prov. Secty., Stephen Howard, Home Dist., 1803-1830, mf. 6-468, unp. (10 pg.) (OTAR).

These extracts are all said to be certified true copies of entries found in the Registry Books of the Commissioners on the Estates of Traitors and Aliens.

## APPENDIX XV

## SALE PROCEDURE

Legislation passed in Upper Canada on November 27, 1818, imposed the requirement that confiscated estates be sold at public auction (sec. 13). One of the aims of that legislation was to limit the time in which creditors could advance claims (sec. 7). Patronage may have played a role in the distribution of those estates, both prior to, and following the passage of that legislation.

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- 1) (1818) 59 Geo. 3, c. 12 (U.C.), sec. 13. see Appendix XIII, Tab 13, item 3.
- 2) The following legal opinion concerning the sale of forfeited lands - with specific reference to the claims of creditors - was written by the Attorney General in June 1818:

"Upon a general consideration of the present situation of the forfeited estates, as well those vested in the Crown by Inquisitions returned under the Alien Act as by attainder for high treason, I have, in compliance with your requests, under the direction of His Honor the Administrator, to state to you my opinion what steps can be at present taken to make them of immediate value to the Crown, and how far you can, by virtue of the powers vested in you by your Commission, as Receiver General, which I have carefully inspected be instrumental in any measure that can be adapted to that end.

All the estates returned by Inquisitions, of which the Clerk of the Crown can furnish you with a Schedule, are in my opinion completely vested in the Crown, so that they may be immediately granted to any subject, in the same manner by patent under the Great Seal, as the Crown Lands of this Province are ordinarily granted. The King may sell them by private or public sale, that for many obvious reasons I take it for granted the latter mode would be adopted, may give them away, or may lease them. I apprehend there can be no doubt on this head, and as little question about the power of the Crown to appoint such Commissioners as may be convenient for carrying into effect the sales, or managing the disposal of them, as may be thought expedient.

The difficulty, and, as it strikes me, the only important reason for requiring legislative aid in the

final adjustment and settlement of these estates arise from the saving in the Alien Act of all just claims of bona fide Creditors having any just lien or security upon the Lands vested in the Crown by the operation of that Act, which saving of the claims of Creditors being without any limitation of them in point of time, the Lands must remain at all times liable to the liquidations of such claims into whatever hands they may devolve, and it is to be presumed that under these circumstances they cannot be disposed of for their intrinsic value which made it extremely desirable that the Legislature should have interposed, and by provisions similar to those made by the British Parliament respecting the forfeited estates in Scotland, have facilitated the speedy and satisfactory adjustment of all just claims of Creditors, and limited a period, at which if such claims were not advanced the estates were to be forever discharged from them - nothing but an Act of Parliament can obtain this last object."

Extracted paragraphs taken from Letter. John B. Robinson (Atty. Gen.) to [John McGill] Receiver General. dtd. June 8, 1818. found enclosed in Letter. John McGill (Receiver Gen.) to Samuel Smith (Admin.). dtd. June 26, 1818. found in RG1 E14, vol. 10, Exec. Concl. Off., Corres. and Rcds. of the Clerk, Upr. Cda., 1775-1841, pg. 440 to 444, file box (OOA).

- 3) Petitions exist wherein requests were made for the legal titles to confiscated estates, which had not yet been offered for sale at public auction; see i) Letter. Edward Pilkington (Quarter Master 100th Reg.) to Edward MacMahon (Civ. Secty.). dtd. May 7, 1815. found in RG5 A1, vol. 23, Upr. Cda. Sundries, Civ. Secty. Corres., pg. 9823, 9829 and 9830, mf. C-4544 (OOA); and, ii) Letter. Sgt. George Brown (late of the 43rd. Reg.) to Henry Goulburn (Col. Under-Secty.). dtd. August 11, 1818. found in MG11, C.O. 42, vol. 361, Cda.: Orig. Corres., Upr. Cda. Misc., pg. 289, 291 and 292, mf. B-300 (OOA).
- 4) Evidence exists suggesting that Mrs. Abigail Stone (wife of the Joel Stone mentioned in the text) had at one time expressed an interest in purchasing certain forfeited lands; see i) Letter. Maj. George Hillier (Civ. Secty.) to John Small (Clerk, Exec. Concl.). dtd. December 20, 1818. found in RG7 G16 C, vol. 9, Cda.: Gov. Gen. Off., Civ. Secty. Letter Books, Upr. Cda., pg. 72, mf. C-10,789 (OOA); and ii) Letter. John Small (Clerk, Exec. Concl.) to Mrs. Abigail Stone. dtd. December 26, 1818. found in RG1 E14, vol. 31, Exec. Concl. Off., Corres. and Rcds. of the Clerk, Upr. Cda., Letter Book to indiv. 1808-40, unpag. (1 pg.), file box (OOA). The incidence of patronage, although apparently evident, was not the focus of this study, and was therefore not pursued.

## APPENDIX XVI

## RIGHTS OF PERSONS HOLDING MORTGAGES ON PROPERTIES CONFISCATED BY THE CROWN

This Appendix deals with the statutory limitation period permitted for filing claims, pursuant to the provisions of the Aliens Act, and with the rights of mortgagee's to take possession of property confiscated by the Crown.

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- 1) Mortgage holders were required by legislation [(1813) 59 Geo. 3, c. 12 (U.C.), sec. 7 (see Appendix XIII, Tab 13)] to file claims within the 8 month period provided by the Aliens Act, failing which, the charge was deemed "to be null and void".
- 2) The Attorney General provided an opinion in March 1817, to the effect that once the Crown had entered into possession and issued a licence of occupation (lease at pleasure) pursuant to legislative authority, that a mortgagee holding a mortgage on the property could not go into possession and interfere with the Crown's tenant, without first obtaining a judgment for ejectment:

"Case for the opinion of the Attorney General as to the Title of Lot No. 15 in Woodhouse Gore in the District of London.

This Land was purchased by one [Eliakin] Crosby who mortgaged it to Mr. Durand. Crosby joined the Enemy during the late War, and the said Land was confiscated to the Crown. Afterwards the Lieutenant Governor issued a Licence of occupation to Colonel Bostwich of the same Lot, who took charge of the same on the part of the Crown, and continued in possession till his death, and his representatives have ever since continued in possession.

Query. Can Mr. Durand the mortgagee of Crosby enter upon and take possession of the said Lot without bringing an Ejectment, the representatives of the appointee of the Crown being in possession.

Opinion. I am of opinion that the King's Tenant, being in possession by rightful authority, cannot be turned out by the supposed mortgagees without Judgment of Law. If the King be seized of Lands by matter of Record, he cannot be disseized or ejected, and should any one enter, he will be an intruder upon the King's possession. As the King takes only by matter of Record, he cannot be ousted of his possession but by matter of Record. If Mr. Durand presumes to oust the King an information of intrusion lies."

D'Arcy Boulton (Atty. Gen.) opinion dated March 26, 1817 relative to the legality of Mr. Durand's occupation of land forfeited by Eliakim Crosby, found in RG5 A1, vol. 31, Upr. Cda. Sundries, Civ. Secty. Corres., pg. 14853 and 14854, mf. C-4548 (OOA).

- 3) The Attorney General rendered an opinion in January 1820 in relation to the statutory 8 month period permitted for filing claims against real estate provided by section 7 of the Aliens Act, 1818:

"Smith has never applied to the Commissioners of Forfeited Estates. No notice of any claim by him has ever been communicate to one, and the Clerk says he has made none. If he had fear they could have done nothing for him, now they certainly cannot, the 8 months having expired. All he can possibly do is be the purchaser of this land at auction when the Commissioners sell it, unless the Legislature will relieve him, or the Executive Government endure him in some other manner."

That opinion found in Letter. John B. Robinson (Atty. Gen.) to Maj. George Hillier (Civ. Secty.). dtd. January 19, 1820. found in RG5 A1, vol. 46, Upr. Cda. Sundries, Civ. Secty. Corres., pg. 22633, mf. C-4604 (OOA).

- 4) Mortgagees were at liberty to petition the Crown for a license of occupation to preserve their security interest:

"The land which formerly belonged to Nathaniel Brown Junior in Elizabethtown being Lot number Thirty-three [33] in the Seventh [7] Concession has been lately returned by the Commissioners for the District as confiscated to the Crown. I take the liberty by the advice of Levis P. Sherwood Esquire to inform you that I hold a mortgage given by Brown on that land upon which mortgage there is still due to me the sum of One hundred and Sixteen Pounds fourteen shillings principle. Under these circumstances I am very desirous of obtaining a licence of occupation of the said lot number thirty-three and if you will obtain it for me and send it down to Mr. Sherwood he will pay you any demand you think proper to make. Please let me know at your convenience what can be done for me as I have reason to suppose several other applications will be made for the lot."

Transcript of Letter. Jonathan Fulford (mortgagee) to D'Arcy Boulton (Att. Gen.). dtd. June 26, 1817. found in RG5 A1, vol. 32, Upr. Cda. Sundries, Civ. Secty. Corres., pg. 15620 to 15622, mf. C-4549 (OOA). Endorsed "Yes".

## APPENDIX XVII

## DISTRIBUTION OF SALE PROCEEDS

This Appendix provides citations to manuscript material dealing with the distribution of proceeds arising from the sale of confiscated estates. The material deals with compensation for general losses sustained by invasion and the claims of creditors.

- 
- 1) Upper Canada Executive Council Minute. dtd. December 21, 1816. found in RG1 E1, vol. 50, Exec. Concl. Off., St. Min. Bks., Upr. Cda., St. Bk., vol. F, pg. 301, mf. C-98 (OOA). The minute says "Read the following minutes relative to Forfeited Estates". Later endorsed "minutes not found."
  - 2) Upper Canada Executive Council Minute. dtd. January 2, 1817. found in RG1 E3, vol. 25, Upr. Cda. St. Submissions, pg. 147 (2 pg.), mf. C-1191 (OOA). The misplaced Council minute was submitted to the Lieutenant Governor, who agreed with the proposals made in it, but required instructions from London.
  - 3) Letter. Francis Gore (Lt. Gov.) to Lord Henry Bathurst (Col. Secty.) (No. 49). dtd. January 4, 1817. found in MG11, C.O. 42, vol. 359, Cda.: Orig. Corres., Upr. Cda. Desp., pg. 3 to 5, mf. B-298 (OOA). Above stated misplaced Council Minute found under cover of this letter. The Minute sets out a scheme for converting confiscated estates and distributing the proceeds thereof.
  - 4) Letter. Sir George Harrison (Assist. Secty., Treas. Dept.) to Henry Goulburn (Col. Under-Secty.). dtd. July 9, 1817. found in MG11, C.O. 42, vol. 360, Cda.: Orig. Corres., Upr. Cda. Pub. Off., pg. 35 and 36, mf. B-299 (OOA). In Agreement that net proceeds should be used to indemnify losses.
  - 5) Letter. Henry Goulburn (Col. Under-Secty.) to Francis Gore (Lt. Gov.). dtd. August 10, 1817. found in RG5 A1, vol. 33, Upr. Cda. Sundries, Civ. Secty. Corres., pg. 15869 and 15870, mf. C-4600 (OOA). Transmitting a copy of Sir George Harrison's letter concerning the application of proceeds (copy not found with this letter).
  - 6) Letter. John B. Robinson (Atty. Gen.) to William M. Jarvis (Civ. Secty.). dtd. June 8, 1818. found in RG5 A1, vol. 39, Upr. Cda. Sundries, Civ. Secty. Corres., pg. 18524 to 18526, mf. C-4601 (OOA). Concerning creditors petitions for claims, and their relief. Transcript of letter:

"In answer to your reference to me on the accompanying petitions, I beg to recommend that the Petitioners should be informed that as any claims they may have,

the kind stated in their petition can only be upon the estate, and not upon the Crown generally, His Honor can order nothing for their relief until the estates are made to produce a fund either by sales or leases, and that steps will be taken for that purpose as soon as it is practicable under the circumstances. That nevertheless in all cases it will be necessary that the petitions should be supported by proofs of the claims, regularly established on oath, and by the production of the proper documents, and that His Honor cannot himself receive such proofs, but that they must be made in the proper manner of which the petitioners must be advised."

- 7) Letter. Barry Geale (unknown) to George Ridout (unknown). dtd. June 10, 1818. found in RG7 G16 C, vol. 8, Cda.: Gov. Gen. Off., Civ. Secty. Letter Books, Upr. Cda., pg. 226 and 227, mf. C-10,789 (OOA). Also concerning relief for creditors.
- 8) Upper Canada Executive Council Minute. dtd. April 13, 1820. found in RG1 E1, vol. 51, Exec. Concl. Off., St. Min. Bks., Upr. Cda., St. Bk., vol. G, pg. 95, mf. C-98 (OOA). Administration of claims for losses under direction of Commissioners of forfeited estates.
- 9) 1819 Memorandum Book re. Forfeited Estates. found in F 44, Sir John B. Robinson Prs., mf. 7-409 (OTAR). This item contains notes on various claims made against forfeited estates. The notes are arranged by claim number.
- 10) see RG19 E5A, Dept. of Finance, Board of Claims for War of 1812 losses (OOA). Includes claim papers.

## APPENDIX XVIII

## MATTHIAS BROWN'S CONFISCATED PROPERTY IN YORK, UPPER CANADA

The property forfeited by Mr. Matthias Brown, Yeoman, is legally described as Lot 13, including the broken front, 1st Concession, Town of York. It was a water lot (or Bay lot) bordering on a marsh situate adjacent to Toronto Harbour (see Plans on following pages). Today, Queen Street runs across the property and Carlow Avenue runs along the East side of it. That property legally described as Lot 13, Concession 1, contains about 200 acres, while the part described as Lot 13, broken front, contains approximately 70 acres. The 270 acre figure is mentioned in Mr. Brown's Inquisition Return <sup>1</sup>, an extract taken from the Commissioners Attainder Registry, <sup>2</sup> and in two advertisements placed in the Upper Canada Gazette. <sup>3</sup> A Mr. Frederick Brown received the Crown Grant for those lands on October 15, 1804. Mr. Matthias Brown's name does not appear in the abstract indexes for those lots. <sup>4</sup> It would appear that Mr. Frederick Brown had died sometime prior to May 1815, and that Mr. Matthias Brown was his heir. <sup>5</sup>

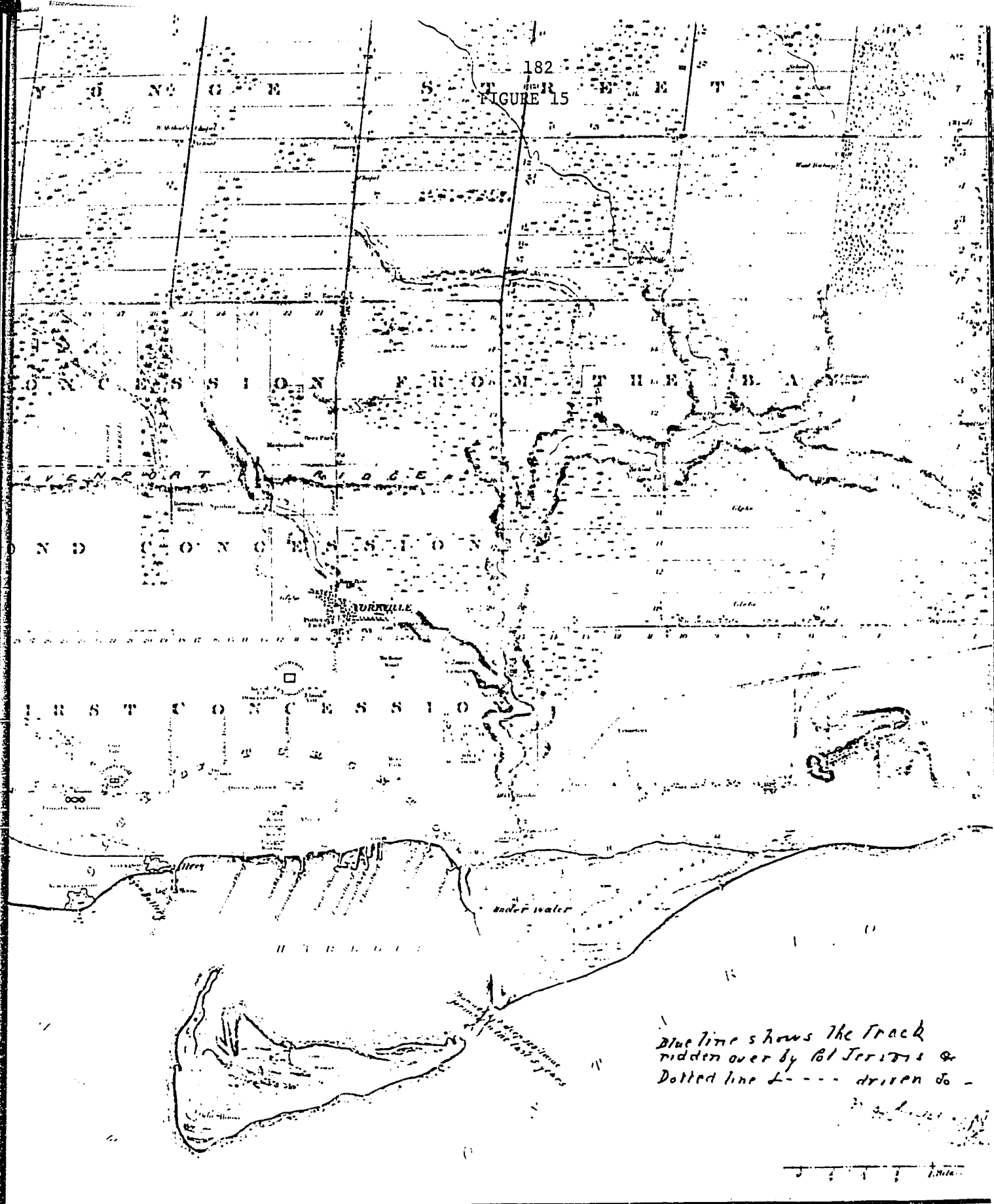
<sup>1</sup> Inquisition of Forfeiture in the case King vs. Matthias Brown. dtd. July 15, 1816. found in RG22, Ser. 143, Box 1, Env. 2, Ct. of Kings Bench, Alien Act (1814) Rcds., unp., file box (OTAR). The Inquisition was signed by Sheriff Samuel Ridout and the following 12 jurors: Thomas Hamilton, Benjamin Mosley, Jordon Post, Jr., Levi Bigilow, Jarvis Ashley, John Munhism, George Duggard, Joseph Rogers, Thomas Bright, Robert Bright, Thomas Stoyell, and Alexander Burnside.

<sup>2</sup> Abstract of Inquisition of Forfeiture held on July 15, 1816, entered in Register described in Appendix XIV, Tab 14, item 6b, pg. 5 and 6.

<sup>3</sup> Upper Canada Gazette, January 4, 1820, pg. 3; and, October 12, 1820, pg. 163.

<sup>4</sup> A) Abstract Index, vol. 675, Broken front Lots, Lot 13, broken front; and, B) Abstract Index, vol. 486A, Plan 568A (both found at Tor. City, Land Registry Off. No. 63).

<sup>5</sup> Petition of John Thompson to Remain on Brown's Lot. dtd. July 15, 1816. found in RG5 A1, vol. 29, Upr. Cda. Sundries, Civ. Secty. Corres., pg. 13285 to 13287, mf. C-4547 (OOA).



This Map of York Township dated 1852, highlights in yellow the location of Matthias Brown's 270 acre property, described for legal purposes as Lot 13, including the broken front, 1st concession, Town of York. This map is on file at the National Archives of Canada, Ottawa, acsn no. NMC 0026683, call no. H2/430/York/1852.

## FIGURE 16

This survey of Matthias Brown's 270 acre property known as plan 568A at the Toronto Land Registry Office, is dated 1884. Typed entries overlying the twenty-four subdivided lots detail the sale transactions conducted by the Commissioners of Forfeited Estates between 1822 and 1826. See Appendix IXX, Part I (Tab 19) for a chronological listing of the Commissioners sales.

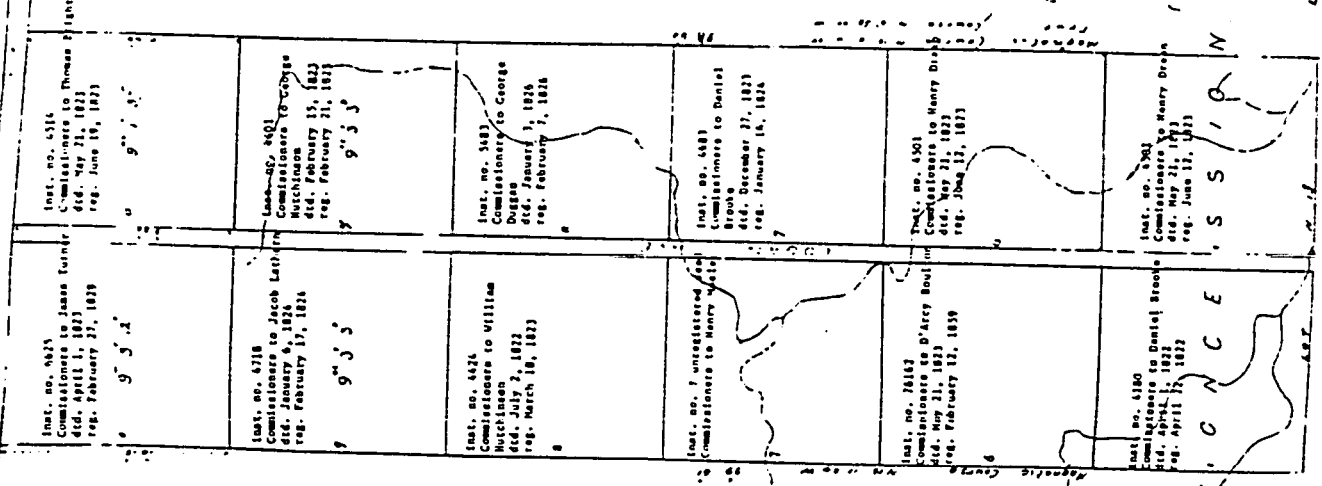
568 A

Figure 16  
Special Office of State  
Survey and filed Feb 26<sup>th</sup> Albany 1894 at 11 50

*Wm. M. Alden*  
*John C. Wright*

PLAN OF SURVEY  
OF LOT 13 AND BARNLEY FRONT  
IN THE FIRST CONCESSION  
OF THE TOWNSHIP OF  
YORK

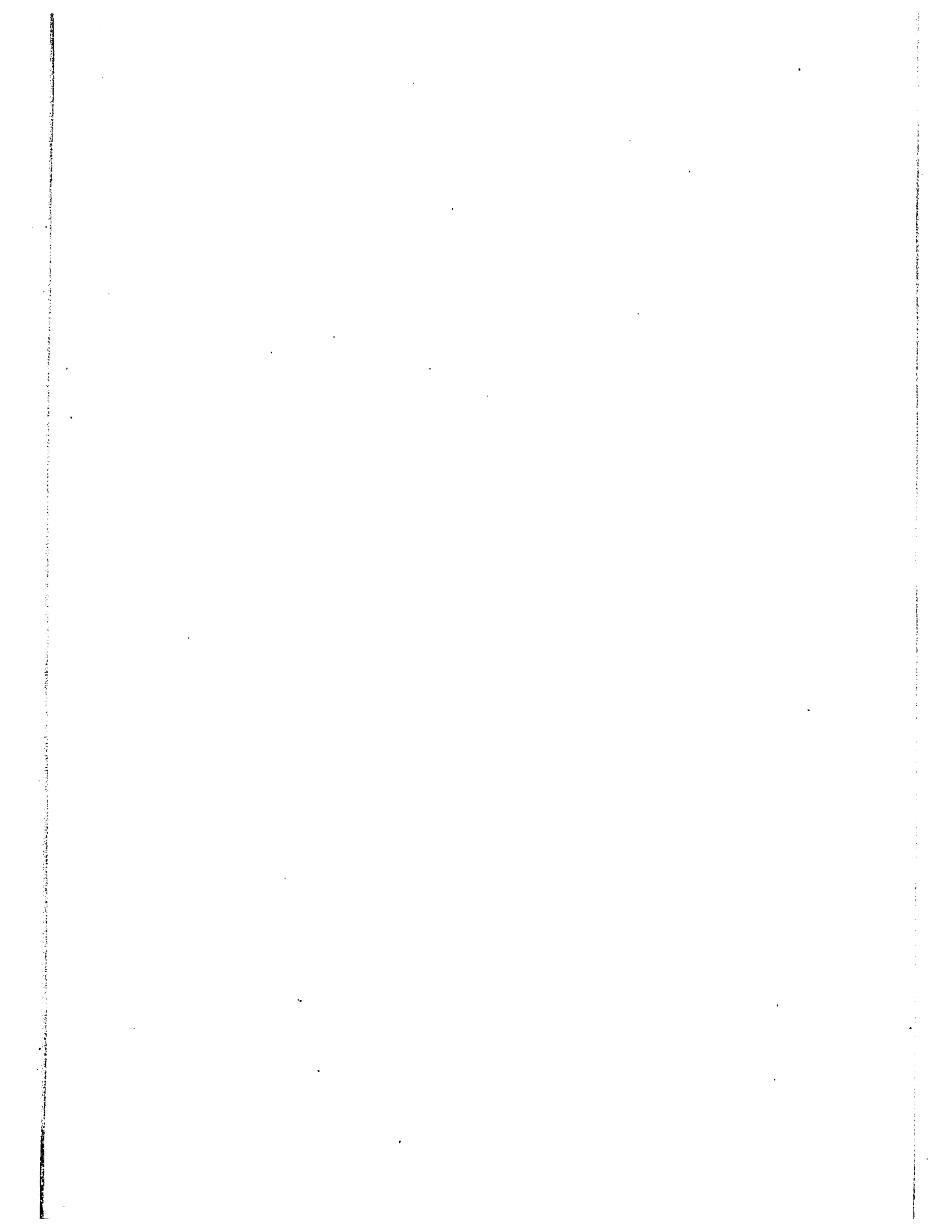
Scale remaining 1 inch

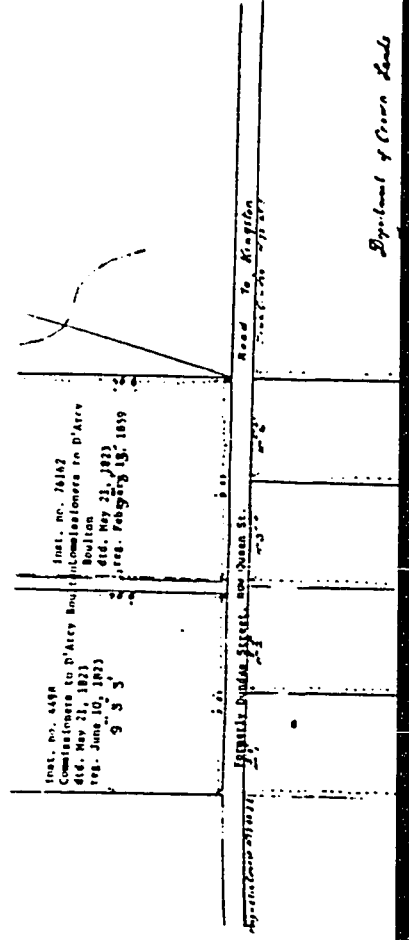
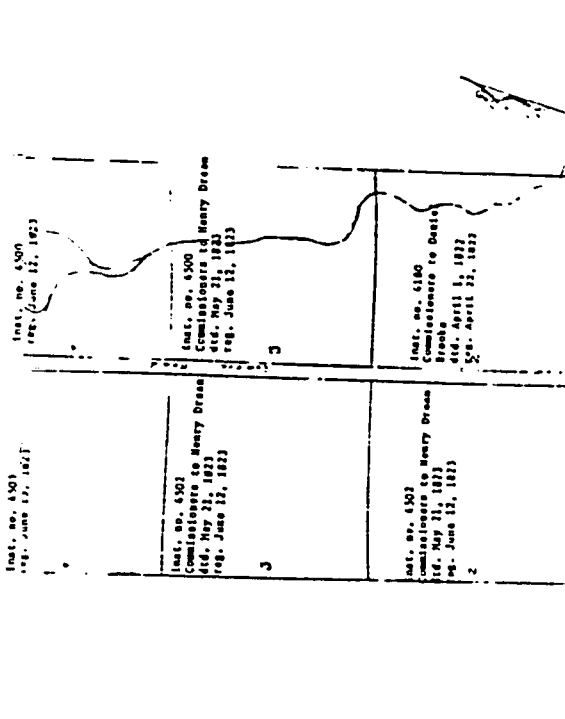
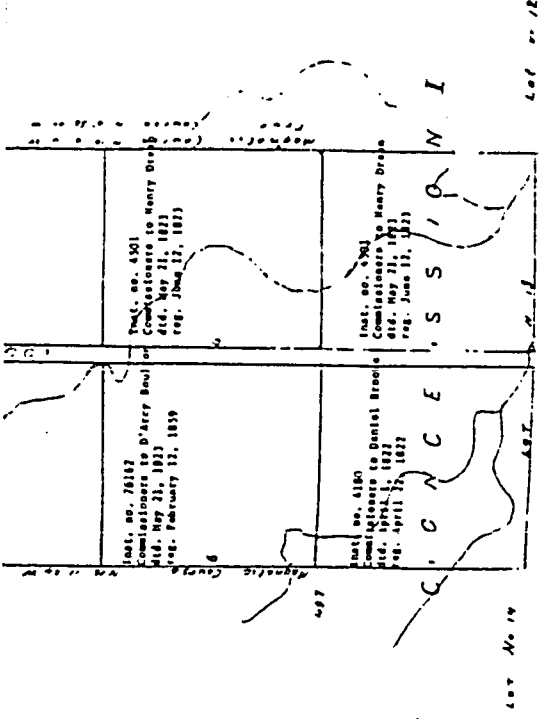


Lot No. 14

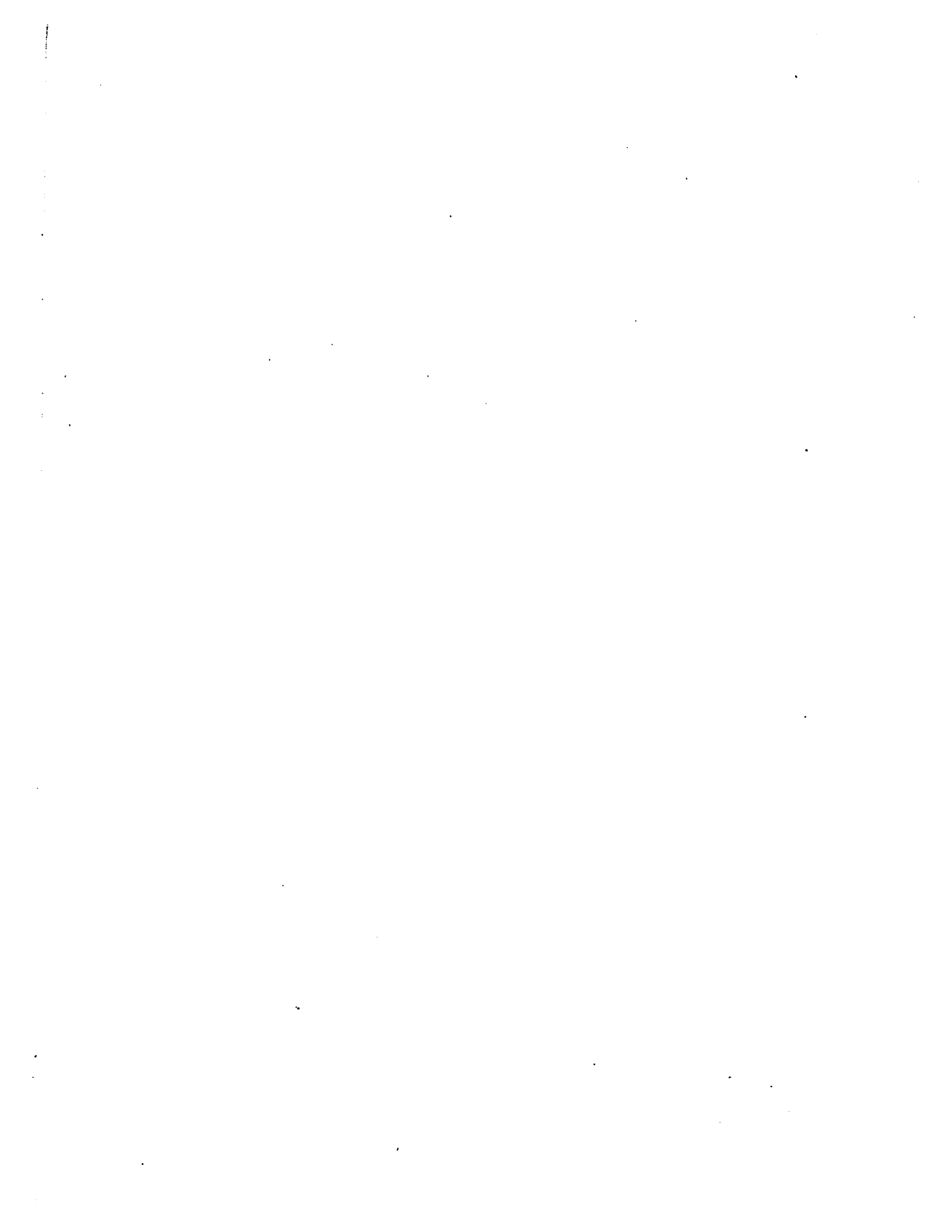
Inst. no. 4591

Lot no. 12





Department of Crown Lands



Inst. no. 4501  
reg. June 12, 1823

Inst. no. 4502  
reg. June 12, 1823

Inst. no. 4502  
Commissioners to Henry Drem  
did. May 21, 1823  
reg. June 12, 1823

Inst. no. 4502  
Commissioners to Henry Drem  
did. May 21, 1823  
reg. June 12, 1823

Inst. no. 4180  
Commissioners to Denis  
did. April 1, 1822  
reg. April 21, 1822

Inst. no. 4180  
Commissioners to Denis  
did. April 1, 1822  
reg. April 21, 1822

Inst. no. 76102  
Commissioners to D'Arcy Boulton  
did. May 21, 1823  
reg. February 13, 1819

Inst. no. 76102  
Commissioners to D'Arcy Boulton  
did. May 21, 1823  
reg. February 13, 1819

B R O K E N F R O N T

Inst. no. 4457  
did. December 5, 1822  
reg. October 16, 1823  
Commissioners to Daniel Brooke  
did. May 21, 1823  
reg. August 6, 1823  
Commissioners to John Blakey

Inst. no. 4445  
did. April 1, 1823  
reg. April 5, 1823  
Commissioners to Henry John Boulton

Inst. no. 4498  
did. May 21, 1823  
reg. June 10, 1823  
Commissioners to D'Arcy Boulton

*Department of Ocean Levels  
Towards January 1870  
Invented and published by  
The Hydrographic Office*

Inst. no. 4501  
reg. June 12, 1823



Mr. Matthias Brown was charged with Treason in 1816. He was accused of having aided and comforted the American army in the Township of Stamford, District of Niagara, and having joined their army there on or about July 18, 1812. His failure to appear at trial in 1816, following three demands or notices, made in the months of January, April and July, resulted in his being declared an outlaw. <sup>6</sup> A Writ of Inquisition was issued on July 10, 1816, to gather evidence about his real and personal property, <sup>7</sup> and an Inquisition of Forfeiture was held on July 15, 1816, before twelve jurors. <sup>8</sup> His lands are described as follows in the Inquisition of Forfeiture:

"... a certain lot of land with its appurtenances known and described as lot thirteen with the broken front in the first concession of the Township of York in the District aforesaid [Home] containing by estimation two hundred and seventy acres more or less." <sup>9</sup>

In searching the title to the property at the Toronto Land Registry Office, one must be sure to look at both the Abstract Indexes for Lot 13, Broken Front

<sup>6</sup> Writ of Summons in the case King vs. Matthias Brown. dtd. January 1, 1816. found in RG22, Ser. 143, Box 1, Env. 2, Ct. of Kings Bench, Alien Act (1814) Rcds., unp., file box (OTAR). Extracted statement:

"To the Sheriff of the Home District - Greeting. We command you that you cause Matthias Brown late of the Township of York to be demanded from General Quarter Sessions to General Quarter Sessions, in your District, until according to the Law of this Province he be outlawed, if he doth not appear, and if he doth appear, then that you take him and cause him to be safely kept so that you may have his Body before us on the first day of Easter Term, which will be in the year of our Lord one thousand eight hundred and seventeen, whenever we shall then be in Upper Canada, to answer to a certain Bill of Indictment found against him for High Treason..." signed by John Small, Clerk of the Crown.

<sup>7</sup> Writ of Inquisition in the case King vs. Matthias Brown. dtd. July 10, 1816. found in RG22, Ser. 143, Box 1, Env. 2, Ct. of Kings Bench, Alien Act (1814) Rcds., unp., file box (OTAR). Extract:

"To the Sheriff of the Home District. Greeting. We command you that you omit not by reason of any liberty within your Bailiwick, but by the Oath of good and lawful Men of your District, you diligently enquire what Goods and Chattels, lands and Tenements Matthias Brown late of the Township of York in said District Yeoman hath or had in your District..." signed by John Small, Clerk of the Crown.

<sup>8</sup> id., footnote 1, Inquisition of Forfeiture.

<sup>9</sup> ibid.

and Lot 13, Concession 1. The above legal description may mislead an uninitiated title searcher.

Mr. Matthias Brown is mentioned in a return for the Home District, naming persons who had fled to the enemy, signed by Sheriff John Beikie on December 23, 1814. He is said to have been born in the U.S., and to possess lands in York.<sup>10</sup> He is also listed in an extract for the Home District made from the Commissioners Attainder Register, dated December 3, 1819, signed by Mr. James B. Macaulay. The species of treason for which he was attained was "adhering to, aiding and comforting the King's enemies and compassing the King's Death." It further indicated that he was "Attained by judgement of outlawry..."<sup>11</sup>

At least three persons petitioned for licences of occupation and one for a ticket of location for Mr. Matthias Brown's forfeited property. Mr. D'Arcy Boulton's (Attorney General) petition was granted at least three days prior to the issuance of the Writ of Inquisition, and two days prior to the 3rd demand to appear at trial. However, by letter dated July 7, 1816, he relinquished all claim to that licence.<sup>12</sup> There is an entry for Mr. Boulton, in the Entry Book for Licences of Occupation of confiscated lands, for Mr. Brown's lot.

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<sup>10</sup> Alien Return signed by Sheriff John Beikie. dtd. December 23, 1816. described in Appendix XIV. Tab 14, item 1.

<sup>11</sup> supra, footnote 2, Inquisition Abstract.

<sup>12</sup> Letter. D'Arcy Boulton (Atty. Gen.) to Edward McMahon (Act. Secty.). dtd. July 7, 1816. found in RG5 A1, vol. 29, Upr. Cda. Sundries, Civ. Secty. Corres., pg. 13334, mF. C-4547 (OOA).

However, the word "cancelled" was also written in.<sup>13</sup> The second petition for a licence of occupation was made by Mr. John Thompson. His petition is dated July 15, 1816, the date of the Inquisition of Forfeiture. He was already in possession of the farm, having rented it from Mr. Frederick Brown's son-in-law in May 1815, and he wanted to remain in possession until harvest time. There is no endorsement on the petition which suggests its outcome.<sup>14</sup> The third petition for a licence of occupation was made by Mr. George Beard. It is dated July 17, 1816, two days following the Inquisition of Forfeiture. That petition bears the endorsement "not granted".<sup>15</sup> Mr. Thomas Arnold petitioned on May 4, 1816, on behalf of his father, for a ticket of location for Mr. Matthias Brown's farm. That petition also is not endorsed.<sup>16</sup> Of the four only Mr. Boulton purchased any part of the property when it came up for public auction (see Appendix IXX, Part I, Tab 19).

There exist three advertisements announcing the sale of Mr. Matthias Brown's confiscated property printed in the Upper Canada Gazette. They appeared on January 4, 1820, October 12, 1820, and May 28, 1821.<sup>17</sup> Full reprints of those advertisements follow.

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<sup>13</sup> Entry Book for Licences of Occupation. "Names of Persons who have Received Permission from the Person Administering the Government to Occupy During Pleasure the Undermentioned Lots of Land forfeited by Persons who have withdrawn from U. Canada to the United States, During the late War." found in RG1 L7, vol. 26, Cda.: Misc. Rcds., 1765-1867, Upr. Cda., Licences of Occupation 1804-30, unp. (2 pg.), bnd. vol. (OOA).

<sup>14</sup> id., footnote 5, Thompson Petition.

<sup>15</sup> Petition of George Beard for a Licence of Occupation for Land in York Township Forfeited to the Crown by Matthias Brown. dtd. July 17, 1816. found in RG5, A1, vol. 29, Upr. Cda. Sundries, Civ. Secty. Corres., pg. 13332 and 13333, mf. C-4547 (OOA).

<sup>16</sup> Petition of Thomas Arnold for a Ticket of Location for the Confiscated Farm of Brown Near the Don River. dtd. May 4, 1816. found in RG5, A1, vol. 28, Upr. Cda. Sundries, Civ. Secty. Corres., pg. 12743 to 12746, mf. C-4547 (OOA).

<sup>17</sup> Upper Canada Gazette, January 4, 1820, pg. 3; October 12, 1820, pg. 163; and, May 28, 1821, pg. 1 (OONL).

January 4, 1820

## "FORFEITED ESTATES

Further Notice is hereby given that on the eleventh inst. the Commissioners for the disposal of Forfeited Estates will expose Lot No. Thirteen with the Broken Front, in the first Concession of the Township of York, containing about two hundred and seventy Acres to Public Sale at the Court House in the Town of York, in parcels of about Twenty Acres each, conformable to a plan thereof to be seen at the Auction Room of Mr. Thomas Mosley, in the Town of York.

By order of the Commissioners. J.B. Macaulay, C.F.E. York, 2d Jan. 1821."

October 12, 1820

## "FORFEITED ESTATES

Notice is hereby given, that Lot Number Thirteen, with the Broken Front, in the first Concession of the Township of York, in the Home District, containing about 270 acres, and lately in the seizin of Matthias Brown, attained of High Treason, will be exposed to public sale, (in one or several parcels, to be hereafter notified) at the Court House in the Town of York, on Thursday the Eleventh day of January next.

By order of the Commissioners. J.B. Macaulay. Clk. C.F.E."

May 28, 1821

## "FORFEITED ESTATES

Notice is hereby given, that the undermentioned Land will be exposed to Public Sale at the Court House, in the Town of York, by the Commissioners for the disposal of Forfeited Estates, on Saturday the 25th day of August next, at 12 o'clock.

District	Township	Concessions	Lots	Acres
Home	York	1	Broken Front new Survey of Lot No. 13. 1st Con. York	17

By order of the Commissioners. J.B. Macaulay. Cl'k. Com. F.E."

The fact that Lot 13, with broken front, was listed for sale by public auction on at least three different occasions, over a sixteen month period,

suggests that purchasers were not readily forthcoming. The property was eventually sold in 24 lots to twelve different purchasers in eighteen separate transactions - lot sizes ranged between 9.3 acres and 16 acres (see Appendix IXX, Part I, Tab 19). Three persons acquired more than one lot: Mr. Henry Drean bought approximately 70 acres; Mr. Daniel Brooke obtained approximately 45 acres; and, Hon. D'Arcy Boulton together with his two sons picked up approximately 43 acres. The total consideration received by the Commissioners for Mr. Brown's land was about £1000.

On April 7, 1820, Mr. Matthias Brown petitioned for a pardon and permission to return to settle in Upper Canada with his wife Mrs. Mary Kuck.<sup>18</sup> That petition was read at an Executive Council meeting on April 19, 1820.<sup>19</sup> The outcome of that petition is not known.

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<sup>18</sup> Petition of Matthias Brown. dtd. April 7, 1820. found in RG1 E3, vol. 48, Upr. Cda. St. Submissions, pg. 7 to 12, mf. C-1195 (OOA).

<sup>19</sup> Upper Canada Executive Council Minute. dtd. April 19, 1820. found in RG1 E1, vol. 51, Exec. Concl. Off., St. Min. Bks., Upr. Cda., St. Bk, vol. G, pg. 96, mf. C-98 (OOA).

## APPENDIX IXX, PART I

## ABSTRACT OF CONVEYANCES BY COMMISSIONERS OF MATTHIAS BROWN'S CONFISCATED LANDS

This Appendix lists chronologically all of the transfers or deeds of land from the Commissioners of Forfeited Estates to the purchasers of Matthias Brown's lands. Those transactions took place between 1822 and 1826. The Appendix has been divided into two parts, Broken Front Lots and Lot 13, Concession 1 Lots. That division corresponds with the Abstract Book arrangement at the Toronto City, Land Registry Office (No. 63). Item 4 includes lands in both parts. All deeds found on microfilm were in the "County Series".

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 Broken Front Lots - Abstract Index vol. 675

- 1) Commissioners of Forfeited Estates to Daniel Brooke, merchant.  
 dtd. November 5, 1822. reg. October 16, 1823. Lot 1 in the broken front, new survey of lot 13, concession 1, Township of York. containing 17 acres. consideration £85. instrument no. 4453, mf. 19-038.
- 2) Commissioners of Forfeited Estates to Henry John Boulton, Esq.  
 dtd. April 1, 1823. reg. April 5, 1823. Lot 3 in the broken front, new survey of lot 13, concession 1, Township of York. containing 16 acres and 17 perches. consideration £120. instrument no. 4445, mf. 19-038.
- 3) Commissioners of Forfeited Estates to John Bishop, butcher.  
 dtd. May 21, 1823. reg. August 6, 1823. Lot 2 in the broken front, new survey of lot 13, concession 1, Township of York, containing 16 acres. consideration £120. instrument no. 4567, mf. 19-038.
- 4) Commissioners of Forfeited Estates to Hon. D'Arcy Boulton, Esq.  
 dtd. May 21, 1823. reg. June 10, 1823. Lot 4, broken front, and Lot 1, West of Center Rd., new survey of Lot 13, concession 1, Township of York. containing 9 acres, 2 roods and 3 perches. consideration £199. instrument no. 4498, mf. 19-038.

## Lot 13, Cons. 1 Lots - Abstract Index vol. 486A, Plan 568A

- 5) Commissioners of Forfeited Estates to Daniel Brooke, Jr., merchant.  
 dtd. April 1, 1822. reg. April 22, 1822. Lot 2 East of Center Rd., and Lot 5 West of Center Rd., new survey lot 13, concession 1, Township of York. containing 18 acres. consideration £60. instrument no. 4180, mf. 19-037.

- 6) Commissioners of Forfeited Estates to William Hutchinson, mason.  
dtd. July 2, 1822. reg. March 18, 1823. Lot 8 West of Center Rd., new survey lot 13, concession 1, Township of York. containing 9 acres. consideration £16. instrument no. 4424, mf. 19-038.
- 7) Commissioners of Forfeited Estates to George Hutchinson, mason.  
dtd. February 15, 1823. reg. February 21, 1823. Lot 9 East of Center Rd., new survey lot 13, concession 1, Township of York. containing 9 acres, 3 roods and 3 perches. consideration £15. instrument no. 4401, mf. 19-038.
- 8) Commissioners of Forfeited Estates to James Turner, yeoman.  
dtd. April 1, 1823. reg. February 27, 1829. Lot 10 West of Center Rd., new survey lot 13, concession 1, Township of York. containing 9 acres, 3 roods and 3 perches. consideration £26. instrument no. 6625, mf. 19-040.
- 9) Commissioners of Forfeited Estates to Henry Drean, merchant.  
dtd. May 21, 1823. reg. June 12, 1823. Lots 3 and 4 East of Center Rd., new survey lot 13, concession 1, Township of York. containing 18 acres, 6 roods and 6 perches. consideration £68. instrument no. 4500, mf. 19-038.
- 10) Commissioners of Forfeited Estates to Henry Drean, merchant.  
dtd. May 21, 1823. reg. June 12, 1823. Lots 5 and 6 East of Center Rd., new survey lot 13, concession 1, Township of York. containing 18 acres, 6 roods and 6 perches. consideration £79. instrument no. 4501, mf. 19-038.
- 11) Commissioners of Forfeited Estates to Henry Drean, merchant.  
dtd. May 21, 1823. reg. June 12, 1823. Lots 2 and 3 West of Center Rd., new survey lot 13, concession 1, Township of York. containing 18 acres, 6 roods and 6 perches. consideration £64. instrument no. 4502, mf. 19-038.
- 12) Commissioners of Forfeited Estates to Henry Drean, merchant.  
dtd. May 21, 1823. reg. June 13, 1823. Lot 4 West of Center Rd., new survey lot 13, concession 1, Township of York. containing 9 acres, 3 roods and 3 perches. consideration £30. instrument no. 4503, mf. 19-038.

- 13) Commissioners of Forfeited Estates to Thomas Bright, butcher.  
dtd. May 21, 1823. reg. June 19, 1823. Lot 10 East of Center Rd., new survey lot 13, concession 1, Township of York. containing 9 acres, 3 roods and 37 perches. consideration £30. instrument no. 4514, mf. 19-038.
- 14) Commissioners of Forfeited Estates to D'Arcy Boulton, Jr., Esq.  
dtd. May 21, 1823. reg. February 12, 1859. Lot 1 East of Center Rd., and Lot 6 West of Center Rd., new survey lot 13, concession 1, Township of York. containing 18 acres, 6 roods and 6 perches. consideration £90. instrument no. 76162, mf. 19-109.
- 15) Commissioners of Forfeited Estates to Daniel Brooke, Jr., merchant.  
dtd. December 27, 1823. reg. January 16, 1824. Lot 7 East of Center Rd., new survey lot 13, concession 1, Township of York. containing 9 acres, 3 roods and 3 perches. consideration £20. instrument no. 4683, mf. 19-038.
- 16) Commissioners of Forfeited Estates to Jacob Lathern, mason.  
dtd. January 6, 1824. reg. February 17, 1824. Lot 9 West of Center Rd., new survey lot 13, concession 1, Township of York. containing 9 acres, 3 roods and 3 perches. consideration £25. instrument no. 4718, mf. 19-038.
- 17) Commissioners of Forfeited Estates to George Duggan, merchant.  
dtd. January 3, 1826. reg. February 7, 1826. Lot 8 East of Center Rd., new survey lot 13, concession 1, Township of York. containing 9 acres, 3 roods and 3 perches. consideration £19. instrument no. 5483, mf. 19-038.
- 18) Commissioners of Forfeited Estates to Henry Mosley.  
This deed was not abstracted in the abstract index nor otherwise located. Lot 7 West of Center Rd., new survey lot 13, concession 1, Township of York. containing 9 acres, 3 roods and 3 perches.

## APPENDIX IXX, PART II

## ABSTRACT OF CONVEYANCES BY COMMISSIONERS IN NIAGARA TOWN AND TOWNSHIP

This Appendix lists chronologically all registered deeds transferring title to land confiscated following the War of 1812 in Niagara Town and Township. The Abstract Index, labelled "Niagara Town & Twp. Bk. 1", at the Niagara North Land Registry Office (No. 30) in St. Catharines, was my guide for this compilation. I requested and examined all registered deeds abstracted in that book showing the Commissioners of Forfeited Estates as grantors.

Only the deed noted in item 3 below provided the name of the forfeiting party. Other sources sometimes provided that some information, i.e. Alien Registers or Court of Kings Bench Records, but not in every case. Assumptions about prior ownership drawn from abstracted deeds alone were not always found to be conclusive in determining the name of a forfeiting party. That comment has general application. Unregistered deeds are the source of that confusion.

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Niagara Town

- 1) Commissioners of Forfeited Estates to John Crooks, Esq.  
 dtd. October 15, 1821. reg. November 8, 1821. Lot 20, North side of Prideaux Street, Town of Niagara. containing 1/2 acre.  
 consideration £5.10. instrument no. 6013 (1821), mf. Memorial roll no. 2.  
 confiscated from John Wagstaff, yeoman. Alien Inquisition held June 9, 1817. land described as "... the Lot or Lots in the Town of Niagara, in the District of Niagara, opposite to Alexander Rogers Hotel, on which said Wagstaff now lives."
- 2) Commissioners of Forfeited Estates to Thomas McCormick, Esq.  
 dtd. January 11, 1822. reg. March 9, 1822. Lots 10 and 11, South side of Front Street, Town of Niagara. containing 1 acre.  
 consideration £62.10. instrument no. 6062 (1822), mf. Memorial roll no. 2.  
 confiscated from William Wallace, brewer. Alien Inquisition held May 27, 1816. land described as "Lots Numbers, Nine, Ten, Eleven and Twelve in the Town of Niagara, Containing Two Acres..."

- 3) Commissioners of Forfeited Estates to William Chisholm, merchant.  
 dtd. April 2, 1822. reg. June 29, 1830. Lot 9, South side of Front Street, Town of Niagara. containing 1/2 acre. consideration £37.10. instrument no. 7965 (1830), mf. Memorial roll no. 4.

"... late in the seizin of one William Wallace as in the said Indenture Mentioned."

see note in item 2 above.

- 4) Commissioners of Forfeited Estates to Ralfe Morden Chysler, merchant.  
 dtd. April 30, 1822. reg. October 27, 1824. Lot 12, South side of Front Street, Town of Niagara. containing 1/2 acre. consideration £38.15. instrument no. 6546 (1824), mf. Memorial roll no. 2.

see note in item 2 above.

- 5) Commissioners of Forfeited Estates to Jacob Canniff, silversmith.  
 dtd. May 29, 1827. reg. June 20, 1827. Lot 69, South side of Queen Street, Town of Niagara. containing 1 acre. consideration £200. instrument no. 7051 (1827), mf. Memorial roll no. 3.

confiscated from Samuel Thompson, merchant. convicted of outlawry October 14, 1818. Inquisition of Forfeiture held March 1, 1824. land described as "... Town Lot in Niagara No. 69, containing 1 acre on the South side of Queen Street... also Town Lot No. 251, containing 1 acre..."

- 6) Commissioners of Forfeited Estates to George Monro, merchant.  
 dtd. August 30, 1831. reg. September 8, 1831. Lot 251, South side William Street, Town of Niagara. containing 1 acre. consideration £12. instrument no. 8367 (1831), mf. Memorial roll no. 4.

see note in item 5 above.

#### Niagara Township

- 7) Commissioners of Forfeited Estates to Mary Stevens, widow.  
 dtd. April 16, 1821. reg. May 25, 1821. Lot 78 N 1/2, Township of Niagara. containing 50 acres. consideration £11.5. instrument no. 5950 (1821), mf. Memorial roll no. 2.
- confiscated from Aaron Stevens, yeoman. convicted of High Treason May 22, 1814, and ordered executed and dismembered. Inquisition of Forfeiture held January 27, 1818. lands wrongly described as "...Lot 70 in the said Township of Niagara containing about 50 acres."

- 8) Commissioners of Forfeited Estates to Daniel Stevens, yeoman.  
 dtd. April 16, 1821. reg. May 25, 1821. Lot 107, Township of  
 Niagara. containing 100 acres. consideration £16.5 instrument no.  
 5951 (1821), mf. Memorial roll no. 2.  
 confiscated from Aaron Stevens. see note in item 7 above and item 11  
 following.
- 9) Commissioners of Forfeited Estates to Hons. William Dickson and  
 Thomas Clark, Esq's.  
 dtd. April 16, 1821. reg. May 25, 1821. Lot 108, Township of  
 Niagara. containing 100 acres. consideration £100. instrument no.  
 5949 (1821), mf. Memorial roll no. 2.  
 believed confiscated from Aaron Stevens. see note in item 7 above.
- 10) Commissioners of Forfeited Estates to Simon Walsh, blacksmith.  
 dtd. October 15, 1821. reg. November 10, 1821. Lot 172, Township of  
 Niagara. containing 100 acres. consideration £75. instrument no.  
 6014 (1821), mf. Memorial roll no. 2.  
 confiscated from Samuel Tompkins, yeoman. Alien Inquisitions held  
 August 2, 1817, April 12, 1820, and April 14, 1825. see note in item  
 12 following.
- 11) Commissioners of Forfeited Estates to John Putman Clement, yeoman.  
 dtd. May 29, 1827. reg. July 11, 1827. Lot 107 S 1/2, Township of  
 Niagara. containing 50 acres. consideration nil. instrument no.  
 7080 (1827), mf. Memorial roll no. 3.  
 confiscated from Aaron Stevens, yeoman. confiscation set aside at a  
 Traverse of Office Application held December 11, 1824. some overlap  
 with land granted in item 8 above.
- 12) Commissioners of Forfeited Estates to John Martindale, yeoman.  
 dtd. November 23, 1829. reg. May 9, 1832. Lots 170, 171 E 1/2, and  
 172 E 1/2, Township of Niagara. containing 200 acres. consideration  
 £139.15. instrument no. 8604 (1832), mf. Memorial roll no. 4.  
 confiscated from Samuel Tompkins, yeoman. Alien Inquisition held  
 April 14, 1825. lands described as "Lot numbers one hundred &  
 seventy [170] & the east halves of Lots one hundred & seventy one  
 [171 E 1/2] and one seventy two [172 E 1/2] in the said township of  
 Niagara containing about two hundred Acres." some overlap with land  
 granted in item 10 above.

## APPENDIX IXX, PART III

## ABSTRACT OF CONVEYANCES BY COMMISSIONERS IN LEEDS COUNTY

This Appendix lists chronologically all registered deeds - except for David Kilborn's property - transferring title to land confiscated following the War of 1812, township by township, in Leeds County, Johnstown District. Abstract Indexes and microfilmed title deeds in the "Old County" series kept at the Leeds Land Registry Office (No. 28) in Brockville, were my primary sources of reference.

Only the deeds referred to in items 11, 13 and 18 directly mentioned the name of the forfeiting party. Names of all forfeiting parties together with a description of their confiscated lands were however included in the 1819 Alien Register.

## Elizabethtown Township

- 1) Commissioners of Forfeited Estates to Richard Osborne, yeoman.  
 dtd. November 6, 1820. reg. July 15, 1826. Lot 34 S 1/2, concession 7, Township of Elizabethtown. containing 100 acres. consideration £51. instrument no. K-114, mf. 935.  
 confiscated from Isaac Coon, yeoman. Alien Inquisition held February 28, 1816. land described as "Front half of Lot Number Thirty four [34] in the Seventh [7] Concession of the Township of Elizabethtown Containing One hundred Acres."
- 2) Commissioners of Forfeited Estates to Billa Flint, merchant.  
 dtd. February 22, 1821. reg. September 1, 1821. Lot 33, concession 7, Township of Elizabethtown. containing 200 acres. consideration £295. instrument no. H-259, mf. 933.  
 confiscated from Nathaniel Brown, Jr., yeoman. Alien Inquisition held June 17, 1817. land described as "Lot Number Thirty Three [33] in the Seventh [7] Concession of the Township of Elizabethtown, containing about Two hundred Acres of Lands."
- 3) Commissioners of Forfeited Estates to Billa Flint, merchant.  
 dtd. February 22, 1821. reg. September 1, 1821. Lot 18, concession 2, Township of Elizabethtown. containing 200 acres. consideration £215. instrument no. H-260, mf. 933.  
 confiscated from Jesse Holmes, yeoman. Alien Inquisition held June 16, 1817. land described as "Lot Number Eighteen [18] in the Second [2] Concession of the Township of Elizabethtown, Containing about Two Hundred Acres."

- 4) Commissioners of Forfeited Estates to Billa Flint, merchant.  
 dtd. February 22, 1821. reg. September 10, 1821. Lot 2, concession 4, Township of Elizabethtown. containing 200 acres. consideration £50. instrument no. H-266, mf. 933.  
 confiscated from Matthew Franklin, yeoman. Alien Inquisition held January 24, 1818. land described as "Lot Number Two [2] in the fourth [4] Concession of the Township of Elizabethtown, Containing about Two hundred Acres, more or less."
- 5) Commissioners of Forfeited Estates to Billa Flint, merchant.  
 dtd. February 22, 1821. reg. September 7, 1821. Lot 26, concession 6, Township of Elizabethtown. containing 200 acres. consideration £55. instrument no. H-268, mf. 933.  
 confiscated from Ichabod King, yeoman. Alien Inquisition held November 17, 1817. land described as "... Lot Number Twenty Six [26] in the Sixth [6] Concession of the Township of Elizabethtown, Containing about two hundred Acres."
- 6) Commissioners of Forfeited Estates to Stephen Beach, yeoman.  
 dtd. February 22, 1821. reg. September 17, 1821. Lot 15 N Pt., concession 4, Township of Elizabethtown. containing 134 acres. consideration £76. instrument no. H-276, mf. 933.  
 confiscated from David Stevenson, carpenter. Alien Inquisitions held June 16, 1817, and January 22, 1818. land described as "The Rear part in the 4th Concession of No. 15 of the Township of Elizabethtown, 134 Acres Land..."
- 7) Commissioners of Forfeited Estates to Rufus Henderson, Esq.  
 dtd. March 31, 1821. reg. September 30, 1828. Lots 33 S 1/2, and 34 S 1/2, concession 8, Township of Elizabethtown. containing 200 acres. consideration £168. instrument no. L-247, mf. 935.  
 confiscated from John Closson, yeoman. Alien Inquisition held February 28, 1816. land described as "Front halves of Lots Number 33 and 34 in the Eight [8] Concession of the Township of Elizabethtown containing about Two hundred Acres..."

- 8) Commissioners of Forfeited Estates to Billa Flint, merchant.

dtd. July 16, 1821. reg. September 11, 1821. Lot 34 Pt., Concession 7, Township of Elizabethtown. containing 30 acres. consideration £52. instrument no. H-267, mf. 933.

confiscated from John Closson, yeoman. Alien Inquisition held February 28, 1816. land described as "...part of Lot Number 34 in the Seventh [7] Concession [of the Township of Elizabethtown] consisting of Thirty Acres..."

- 9) Commissioners of Forfeited Estates to Levis P. Sherwood, Esq.

dtd. October 15, 1821. reg. January 31, 1822. Lot 30 E 1/2 of W 1/2, concession 4, Township of Elizabethtown. containing 50 acres. consideration £20. instrument no. H-335, mf. 933.

confiscated from Isaiah Keeler, Jr., yeoman. Alien Inquisition held September 4, 1818. land described as "And also Fifty Acres of Land being one quarter part of Lot Number Thirty [30], in the fourth [4] Concession of Elizabethtown aforesaid, and being the East half of the West hundred Acres of the said Lot."

- 10) Commissioners of Forfeited Estates to Levis P. Sherwood, Esq.

dtd. October 15, 1821. reg. January 31, 1822. Lot 12 W 1/2, concession 6, Township of Elizabethtown. containing 100 acres. consideration £46. instrument no. H-336, mf. 933.

confiscated from Joseph Randolph, yeoman. Alien Inquisition held July 3, 1817. land described as "West half of Lot Number twelve [12], in the Sixth [6] Concession of the Township of Elizabethtown, Containing about one hundred Acres, more or less."

- 11) Commissioners of Forfeited Estates to Charles Jones, Esq.

dtd. April 2, 1822. reg. November 8, 1828. Lot 30 E 1/2, concession 8, Township of Elizabethtown. containing 100 acres. consideration £25. instrument no. L-263, mf. 935.

"... late in the seizin of one Willard C. Conkey as in the said indenture Mentioned."

confiscated from Willard C. Conkey, yeoman. Alien Inquisition held June 10, 1817. land described as "East half of Lot No. 30 in the 8th Concession of the Township of Elizabethtown containing one hundred Acres..."

- 12) Commissioners of Forfeited Estates to Levis P. Sherwood, Esq.  
 dtd. April 20, 1822. reg. April 30, 1822. Lot 32 Pt. E 1/2,  
 concession 4, Township of Elizabethtown. containing 2 acres.  
 consideration £26. instrument no. H-384, mf. 933.  
 confiscated from Beniah Carpenter, yeoman. Alien Inquisition held  
 February 28, 1816. land described as "Part of Lot Number Thirty Two  
 [32], in the Fourth [4] Concession of the Township of Elizabethtown  
 containing about Two Acres."
- 13) Commissioners of Forfeited Estates to Henry John Boulton, Esq.  
 dtd. July 5, 1825. reg. September 14, 1830. Lot 28 N 1/2,  
 concession 9, Township of Elizabethtown. containing 100 acres.  
 consideration £31. instrument no. L-661, mf. 936.  
 "... in the seizin of the therein named John Blanchard on the first  
 day of July in the year of our Lord one thousand eight hundred and  
 twelve..."  
 confiscated from John Blanchard, yeoman. Alien Inquisition held June  
 17, 1817. land described as "The One half of Lot Number Twenty Eight  
 [28] in the Ninth [9] Concession of the Township of Elizabethtown  
 Containing about One hundred Acres."
- 14) Commissioners of Forfeited Estates to Henry John Boulton, Esq.  
 dtd. May 29, 1827. reg. March 13, 1828. Lot 5 S 1/2, concession 6,  
 Township of Elizabethtown. containing 100 acres. consideration £22.  
 instrument no. L-97, mf. 935.  
 confiscated from Isaac Coon, yeoman. Alien Inquisition held May 18,  
 1821. land described as "Lot number Five [5] in the Sixth [6]  
 concession of the Township of Elizabethtown in the Johnstown District  
 containing about one hundred Acres, more or less. The front half of  
 the said Lot."
- 15) Commissioners of Forfeited Estates to Henry John Boulton, Esq.  
 dtd. May 29, 1827. reg. July 5, 1843. Lot 26 E 1/2 & NW 1/4,  
 concession 9, Township of Elizabethtown. containing 150 acres.  
 consideration £32. instrument no. S-92, mf. 942.  
 confiscated from Sala Blanchar, yeoman. Alien Inquisition held July  
 3, 1817. land described as "The East half of Lot Number 26 in the  
 Ninth [9] Concession and the rear half of the West half of said Lot  
 in the Township of Elizabethtown Containing about One hundred and  
 fifty Acres."

- 16) Commissioners of Forfeited Estates to Henry John Boulton, Esq.

dtd. November 22, 1828. reg. March 29, 1832. Lot 15 W 1/2, concession 7, Township of Elizabethtown. containing 100 acres. consideration £27. instrument no. M-331, mf. 936.

confiscated from Guy Carlton, farmer. Alien Inquisition held May 22, 1823. land described as "The West half of Lot Number Fifteen [15] in the Seventh [7] Concession of the Township of Elizabethtown in the District of Johnstown, Containing about one hundred Acres."

#### Bastard Township

- 17) Commissioners of Forfeited Estates to William Tackaberry, yeoman.

dtd. October 15, 1821. reg. July 24, 1824. Lot 7 SW 1/2, concession 9, Township of Bastard. containing 100 acres. consideration £28. instrument no. I-265, mf. 935.

confiscated from Anson Hennan, yeoman. Alien Inquisition held September 16, 1818. land described as "The West half of Lot Number Seven [7] in the Ninth [9] concession of Bastard containing one hundred acres, together with an undivided moiety of the Mill Seat situate on the other half of the same Lot."

- 18) Commissioners of Forfeited Estates to James Boulton, Esq.

dtd. July 17, 1827. reg. July 7, 1829. Lot 18 Pt., concession 6, Township of Bastard. containing 100 acres. consideration £39. instrument no. L-409, mf. 935.

"... being that part of the said lot number eighteen [18] owned by the said Israel Elsworth."

confiscated from Israel Elsworth, yeoman. Alien Inquisition held September 16, 1818. land described as "The North East side of Lot Number Eighteen [18] in the Sixth [6] Concession of the Township of Bastard, District of Johnstown."

#### Kitley Township

- 19) Commissioners of Forfeited Estates to Billa Flint, merchant.

dtd. February 22, 1821. reg. September 7, 1821. Lot 28 NW 1/4, concession 9, Township of Kitley. containing 50 acres. consideration £12.10. instrument no. H-264, mf. 933.

confiscated from Henry Kellark, yeoman. Alien Inquisition held September 16, 1818. land described as "The North West Quarter of Lot Number Twenty Eight [28] in the Ninth [9] Concession of the Township of Kitley, containing Fifty Acres of Land, more or less."

- 20) Commissioners of Forfeited Estates to Billa Flint, merchant.  
 dtd. June 18, 1821. reg. September 8, 1821. Lot 24 SE 1/4, concession 10, Township of Kitley. containing 50 acres. consideration £8. instrument no. H-265, mf. 933.  
 confiscated from Samuel Blanchard, yeoman. Alien Inquisition held September 16, 1818. land described as "Being Fifty Acres of a certain Lot of Land granted by the Crown to John Kincaid, and situate in the Tenth [10] Concession of the Township of Kitley."
- 21) Commissioners of Forfeited Estates to Elnathan Hubbell, Esq.  
 dtd. October 15, 1821. reg. May 9, 1857. Lot 24 S 1/2, concession 7, Township of Kitley. containing 100 acres. consideration £11.15. instrument no. ALL-267, mf. 707.  
 confiscated from Martin Lilly, yeoman. Alien Inquisition held September 16, 1818. land described as "Rear half of Lot Number Twenty four [24] in the Seventh [7] Concession of the Township of Kitley. Containing Fifty Acres."

#### Lansdown Township

- 22) Commissioners of Forfeited Estates to Billa Flint, merchant.  
 dtd. March 5, 1821. reg. September 12, 1821. Lot 8 & 9, concession 12, Township of Lansdown. containing 369 acres. consideration £300. instrument no. H-269, mf. 933.  
 confiscated from Nathan Galpin, yeoman. Alien Inquisition held June 16, 1817. land described as "Lot Number Eight [8] in the Twelfth [12] Concession containing about Two hundred Acres, and Lot Nine [9] in the Twelfth [12] Concession containing about Two Hundred Acres, situated in the Township of Lansdown."
- 23) Commissioners of Forfeited Estates to Joel Stone, Esq.  
 dtd. July 6, 1824. reg. February 27, 1856. Lot 11 Pt. S 1/2, concession 1, Township of Lansdown. containing 50 acres. consideration £7.10. instrument no. AF-353, mf. 767.  
 confiscated from Luther Landon, yeoman. Alien Inquisition held November 19, 1817. land described as "part of Lot Number Eleven [11], in the first [1] Concession of the Township of Lansdown, Containing about Fifty Acres of Land, more or less."

## Leeds Township

- 24) Commissioners of Forfeited Estates to Billa Flint, merchant.  
 dtd. February 22, 1821. reg. September 4, 1821. Lot 5, concession 7, Township of Leeds. containing 200 acres. consideration £70. instrument no. H-261, mf. 933.  
 confiscated from Ishael Mitchell, yeoman. Alien Inquisition held March 5, 1816. land described as "Lot Number Five [5] in the Seventh [7] Concession of the said Township [of Leeds]. Containing about Two Hundred Acres."
- 25) Commissioners of Forfeited Estates to Henry John Boulton, Esq.  
 dtd. November 23, 1829. reg. August 4, 1830. Lot 16, concession 10, Township of Leeds. containing 200 acres. consideration £30. instrument no. L-641, mf. 936.  
 confiscated from Ishael Mitchell, yeoman. Alien Inquisition held September 14, 1821. land described as "Lot Number Sixteen [16] in the Tenth [10] Concession of the Township of Leeds, District of Johnstown containing Two hundred Acres, more or less."

## South Crosby Township

- 26) Commissioners of Forfeited Estates to Henry John Boulton, Esq.  
 dtd. November 23, 1829. reg. August 3, 1830. Lot 12, concession 7, Township of South Crosby. containing 200 acres. consideration £25. instrument no. L-640, mf. 936.  
 confiscated from Elias Champin, farmer. Alien Inquisition held May 23, 1821. land described as "Lot Number Twelve [12] in the Seventh [7] Concession of the Township of South Crosby, in the Johnstown District containing about Two hundred Acres."

## Yonge Township

- 27) Commissioners of Forfeited Estates to Billa Flint, merchant.  
 dtd. February 22, 1821. reg. September 5, 1821. Lot 9 W 1/2 & 10, concession 9, Township of Yonge. containing 300 acres. consideration £185. instrument no. H-262, mf. 933.  
 confiscated from William Slack, yeoman. Alien Inquisition held September 15, 1818. land described as "Lot Number Ten [10] in the Ninth [9] Concession, and the West half of Nine [9] in the Township of Yonge, Containing Three hundred Acres."

- 28) Commissioners of Forfeited Estates to Billa Flint, merchant.  
 dtd. February 22, 1821. reg. September 6, 1821. Lot 5, concession 4, Township of Yonge. containing 200 acres. consideration £50. instrument no. H-263, mf. 933.  
 confiscated from Jonathan Brown, yeoman. Alien Inquisition held November 19, 1817. land described as "Lot Number Five [5] in the Fourth [4] Concession of the Township of Yonge, Containing about Two hundred Acres."
- 29) Commissioners of Forfeited Estates to Antoine Malderet, yeoman.  
 dtd. October 12, 1821. reg. October 29, 1821. Lot 5, concession 11, Township of Yonge. containing 147 acres. consideration £20.5. instrument no. H-293, mf. 933.  
 confiscated from Willard C. Conkey, yeoman. Alien Inquisition held June 10, 1817. land described as "... And Lot No. 5 in the 11th Concession of Yonge Containing One hundred and forty seven Acres."
- 30) Commissioners of Forfeited Estates to Abraham Dayton, Esq.  
 dtd. January 11, 1822. reg. February 1, 1822. Lot 18 E 1/2, concession 2, Township of Yonge. containing 100 acres. consideration £65. instrument no. H-337, mf. 933.  
 confiscated from Elias Hutchinson, yeoman. Alien Inquisitions held November 24, and June 17, 1817. land described as "... part of Lot Number 18 East half in the Second [2] Concession or third Range of the Township of Yonge. about Eighty nine Acres."
- 31) Commissioners of Forfeited Estates to Richard Holmes, yeoman.  
 dtd. April 6, 1824. reg. March 22, 1831. Lot 6 Pt. N of Gt. Rd., concession 11, Township of Yonge. containing 63 3/4 acres. consideration £26. instrument no. M-35, mf. 936.  
 confiscated from Stephen Scovill, yeoman. Alien Inquisition held November 17, 1817. land described as "Part of Lot Number Six [6] in the Eleventh [11] Concession of the Township of Yonge, Containing about sixty three and three quarters Acres of Lands."
- 32) Commissioners of Forfeited Estates to Henry John Boulton, Esq.  
 dtd. November 23, 1829. reg. September 26, 1833. Lot 24 E 1/2, concession 3, Township of Yonge. containing 100 acres. consideration £42. instrument no. N-190, mf. 936.  
 confiscated from James Patterson, yeoman. Alien Inquisition held April 12, 1820. land described as "Half of Lot number Twenty four [24] East half in the Third [3] Concession of Yonge. One hundred Acres..."

## APPENDIX· IXX, PART IV

## ABSTRACT OF CONVEYANCES BY COMMISSIONERS IN GRENVILLE COUNTY

This Appendix lists chronologically all registered deeds transferring title to land confiscated following the War of 1812, township by township, in Grenville County, Johnstown District. Abstract Indexes and microfilmed title deeds in the "Old County" and "Old Brockville" series, housed at the Grenville Land Registry Office (No. 15) in Prescott, were my primary sources of reference. The later series was identified as "Brock." in the instrument number columns of the Abstract Indexes.

Only the deed referred to in item 4 directly mentioned the name of the forfeiting party. Names of all forfeiting parties together with a description of their confiscated lands were however included in the 1819 Alien Register.

## Augusta Township

- 1) Commissioners of Forfeited Estates to Levis P. Sherwood, Esq.  
 dtd. October 15, 1821. reg. January 30, 1822. Lot 14 N 1/2, concession 7, Township of Augusta. containing 100 acres. consideration £?, unreadable due to tear. instrument no. Brock. H-333, mf. 1220.  
 confiscated from Aaron Baldwin, yeoman. Alien Inquisition held March 2, 1816. land described as "Rear half of Lot Number Fourteen [14] in the Seventh [7] Concession of the Township of Augusta Containing about One Hundred Acres."
- 2) Commissioners of Forfeited Estates to Henry John Boulton, Esq.  
 dtd. July 5, 1825. reg. March 19, 1829. Lot 18, concession 5, Township of Augusta. containing 200 acres. consideration £40. instrument no. C-15, mf. 1213.  
 confiscated from Joseph Throop, ?. Alien Inquisition held April 12, 1820. land described as "Lot Number Eighteen [18] in the fifth [5] Concession of the Township of Augusta in the Johnstown District Containing about, Two hundred Acres."

**Oxford Township**

- 3) Commissioners of Forfeited Estates to Billa Flint, merchant.

dtd. February 22, 1821. reg. September 13, 1821. Lot 11 N 1/2, concession 1, Township of Oxford. containing 100 acres. consideration £33. instrument no. Brock. H-270, mf. 1220.

confiscated from William Slocum, yeoman. Alien Inquisition held June 17, 1817. land described as "Front half Lot Number Eleven [11] in the first [1] Concession of the Township of Oxford Containing about One hundred Acres of Land more or less."

**South Gower Township**

- 4) Commissioners of Forfeited Estates to Levius P. Sherwood, Esq.

dtd. April 3, 1822. reg. July 8, 1822. Lot 1 & 2 N 1/2, concession 2, Township of South Gower. containing 300 acres. consideration £52. instrument no. A-51, mf. 1213.

"And late in the seizin of one David Stevenson as in the said indenture mentioned."

confiscated from David Stevenson, carpenter. Alien Inquisition held January 22, 1818. land described as "Lot Number [1] and the Rear half of Lot Number Two [2] in the Second [2] Concession [of the Township] of South Gower Containing Three hundred Acres."

## APPENDIX XX

## JAMES LOCKWOOD'S CONFISCATED PROPERTY IN YORK, UPPER CANADA

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The outcome in the case of Mr. James Lockwood is similar to that of Mr. Matthias Brown (discussed in Appendix XVIII, Tab 18), in that both had their properties confiscated. However, a distinction does exist in the process which facilitated those confiscations. While Mr. Brown was charged with treason and attained by judgment of outlawry, Mr. Lockwood's fate was determined solely pursuant to the provisions of the Aliens Act, 1814.

Mr. James Lockwood, Tinsmith, by private purchase, bought part of Lot 1 on the West side of George Street and North side of Duke Street (now Adelaide Street), in the Town of York, containing 1/4 acre, by deed dated May 23, 1811. That land is situated in the downtown core area of present day Toronto, adjacent to the St. James Cathedral Park block (see plan on following page):<sup>1</sup>

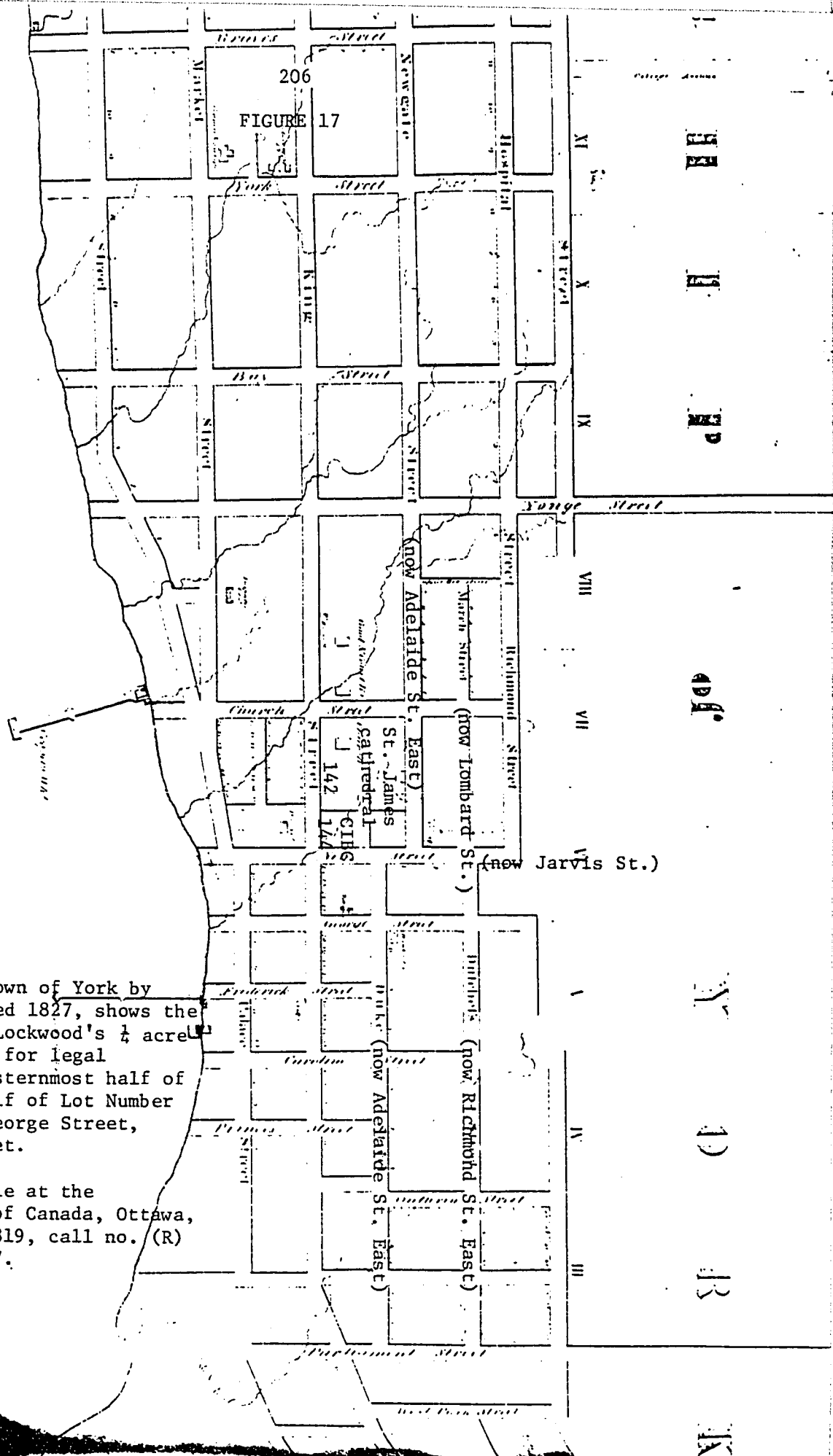
He is found mentioned in the same return as Mr. Brown for the Home District, signed by Sheriff John Beikie, dated December 23, 1814. He is said to have been a son of a United Empire Loyalist. His lands in York are not mentioned in that return.<sup>2</sup> Three other entries were located for him in the Extracts made from the Commissioners Alien Register for the Home District, dated March 23, 1819, undated, and January 16, 1826. The legal description of his property is not consistently stated in those entries.<sup>3</sup> A correction note

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<sup>1</sup> Registration particulars are found in Abstract Index vol. 671, Town Lots 1 to 4, West side of George Street (Tor. City, Land Registry Off. No. 63).

<sup>2</sup> Alien Return signed by Sheriff John Beikie. dtd. December 23, 1816. described in Appendix XIV, Tab 14, item 1.

<sup>3</sup> Abstract of Alien Inquisition held on February 15, 1816, and May 18, 1822, entered in Register described in Appendix XIV, Tab 14, items 6a, c and d.



This Plan of the Town of York by J. G. Chewett, dated 1827, shows the location of James Lockwood's  $\frac{1}{4}$  acre property described for legal purposes as the Westernmost half of the Easternmost half of Lot Number one West side of George Street, fronting Duke Street.

This Plan is on file at the National Archives of Canada, Ottawa, acsn. no. NMC 0016819, call no. (R) H1/440/Toronto/1827.

is found with one of the two additional entries mentioning the property in the 1819 Alien Return.

"The \* Northernmost half of the Easternmost half of Lot Number one west side of George Street, fronting Duke Street, containing one Quarter of An Acre in the Town of York.

\* By an Amended Extract of this Inquisition dated 29 Dec. 1825 to Mr. McAulay Clk. of Commsrs. it appearing this was wrong extracted. It should be the Westernmost half instead of the Northernmost." <sup>4</sup>

I had no trouble locating the Abstract Index for this lot at the Toronto Land Registry Office.

An Alien Inquisition was held against Mr. James Lockwood in the Town of York on May 18, 1822. Two witnesses appeared for the Crown, Mr. Stephen Jarvis and Mr. Andrew Mercier. Both gave evidence about his lot of land situated on the West side of George Street. A jury of twelve men found that he had withdrawn from the Province without a licence. The two Commissioners, Mr. Alexander McDonell and Mr. Stephen Howard returned the Inquisition to the Clerk's office. <sup>5</sup> Mr. Lockwood had been previously named in another Alien Inquisition held in the District of Niagara on February 15, 1816. The

<sup>4</sup> Abstract of Alien Inquisition held on May 18, 1822, entered in Register described in Appendix XIV, Tab 14, item 4, pg. 103 to 106.

<sup>5</sup> Alien Inquisition in the case King vs. James Lockwood. dtd. Saturday, May 18, 1822. found in RG22, Ser. 144, Box 1, Env. 13, Ct. of Kings Bench, Alien Act (1814) Rcds., unp., file box (OTAR). Jammie Smith, Samuel Smith, John Nosi, William Smith, William W. Pattison, Thomas Bright, William Pain, Levi Fairbanks, Thomas Connor, William Knot, Peter Patifrom and Robert Johnston, were the 12 jurors. Extracted statement:

"The Jury having considered the Evidence were of opinion that the said James Lockwood... withdrew himself from the Province without Licence having been granted to him to that effect, under the authority of the Person Administering the Government thereof."

Commissioner at that Inquisition was Mr. William Allan. Evidence about his land in York was also taken at that Inquisition. <sup>6</sup>

Two persons applied for a licence of occupation to occupy Mr. Lockwood's property in the Town of York. Mr. Ezekiel Benson's petition dated May 1, 1816, is endorsed "Yes". <sup>7</sup> Mr. Jordon Post's petition dated April 23, 1817, does not indicate the outcome of his application. <sup>8</sup> The Entry Book for Licences of Occupation contains no entry for Mr. Lockwood's land. <sup>9</sup>

A printed Notice dated December 16, 1819, announced the sale of Mr. Lockwood's property. That portion of the Notice which pertains to his property has been reproduced.

"Districts	Townships	Lots Concessions	Acres	Date of sale
Home	Town of York	West part of No. 1 North side of Duke Street	1/2	Mon. 15 May 1820

By Order, James B. Macaulay, Clerk to the Commission." <sup>10</sup>

<sup>6</sup> Abstract of Alien Inquisition held on February 15, 1816, entered in Register described in Appendix XIV, Tab 14, item 4, pg. 15 to 18.

<sup>7</sup> Petition of Ezekiel Benson for a Licence of Occupation for Land in York Occupied by James Lockwood. dtd. May 1, 1816. found in RG5, A1, vol. 28, Upr. Cda. Sundries, Civ. Secty. Corres., pg. 12728 and 12729, mf. C-4547 (OOA).

<sup>8</sup> Petition of Jordon Post for a Licence of Occupation for Land in York Forfeited by James Lockwood. dtd. April 23, 1817. found in RG5, A1, vol. 32, Upr. Cda. Sundries, Civ. Secty. Corres., pg. 15040 to 15042, mf. C-4548 (OOA).

<sup>9</sup> Entry Book for Licences of Occupation. "Names of Persons who have Received Permission from the Person Administering the Government to Occupy during Pleasure the Undermentioned Lots of Land forfeited by Persons who have withdrawn from U. Canada to the United States, During the late War." found in RG1 L7, vol. 26, Cda.: Misc. Rcds., 1765-1867, Upr. Cda., Licenses of Occupation 1804-30, unpub. (2 pg.), bnd. vol. (OOA).

<sup>10</sup> Notice of Public Sale. dtd. December 16, 1819. Printed by Order of James B. Macaulay, Clerk of the Commission of Forfeited Estates. found in RG1, A-VII, vol. 18, Off. of the Surveyor Gen., Misc. Rcds., Glebes, Rectories, Goals, Grammer Schools, etc. (Scrap Bk.), 1817-57, acsn. no. 2 1/2, bnd. vol. (OTAR).

The property is described in the Notice as containing 1/2 acre which is incorrect. The Inquisition found that it only contained 1/4 acre. The deed from the Commissioners also mentions 1/4 acre.

The property was purchased by Simon Washburn, Esquire, for £205, by deed dated March 25, 1830. That transaction took place more than ten years following the announcement of the sale. <sup>11</sup>

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<sup>11</sup> Deed of Land. "County Series". Commissioners of Forfeited Estates to Simon Washburn. dtd. March 25, 1830. reg. July 13, 1830. inst. no. 7457, mF. 19-040 (Tor. City, Land Registry Off. No. 63).

## APPENDIX XXI

## CONFISCATION AND SALE OF JAPANESE PROPERTY

This Appendix cites all Regulations found to have had bearing on the sale of Japanese property - including the establishment of a Protected Area, vesting order, and the valuation and sale of lands. Also listed are newspaper articles and advertisements printed in the Vancouver Sun, dealing with the confiscation and sale of Japanese property. Correspondence between Government officials dealing with that subject matter are also noted.

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- 1) i) Canada Gazette, vol. 74, September 7, 1940, pg. 757 to 775 (Regulations Respecting Trading with the Enemy-Custodian); ii) Gazette, vol. 75, January 29, 1942, pg. 2956 and 2957 (protected area established); iii) Gazette, vol. 75, March 21, 1942, pg. 3628 to 3630 (vesting lands in Custodian) [MS copy of P.C. 1665, dtd. March 4, 1942, found in RG2 A1B, vol. 4546, Rcds. of the Privy Concl. Off., Rcds. for Orders-in-Concl., Rcd. no. 2516G, pg. 1 (13 pg.), file box (OOA)]; iv) Gazette, vol. 76, July 11, 1942, pg. 175 to 177 (valuation of lands) [MS copy of P.C. 5523, dtd. June 29, 1942, found in RG2 A1B, vol. 4339, Rcds. of the Privy Concl. Off., Rcds. for Orders-in-Concl. Rcd. no. 2591G, pg. 8 (3 pg.), file box (OOA)]; v) Gazette, vol. 77, June 26, 1943, pg. 2673 (sale of lands) [also see MS copy of P.C. 469, dtd. January 19, 1943, found in RG2 A1B, vol. 4365, Rcds. of the Privy Concl. Off., Rcds. for Orders-in-Concl., Rcd. no. 2710G, pg. 141 (2 pg.), file box (OOA)] (OOU).
- 2) Advertisements announcing public tenders for the sale of confiscated estates appeared in the Vancouver Sun, June 25, 1943, pg. 4; July 5, 1943, pg. 4; and, May 29, 1944, pg. 8, mf. (OONL).
- 3) Copies of the property catalogues are found in RG117 C1, Off. of the Cstdn. of Enemy Propt., Van. Off. files, unsp., mf. C-9466 (OOA).
- 4) Two letters in particular provide useful background information, see: i) Secret Letter. A.H. Mathieu (Asst. Dpty. Cstdn., Dept. of Secty. of St.) to K.J. Burbridge (Legal Div., Dept. of Ext. Aff.). dtd. May 30, 1950. found in RG25 A3B, Ext. Aff., Central Registry Files, 1940 ser., vol. 3121, file 4606-C-13-40, Treatment of Assets and Propt. of Jap. Natl. in Cda., unsp. (3 pg.), file box (OOA); and, ii) Memo. M. Robitaille (Asst. Dpty. Cstdn. and Counsel, Dept. of Consumer and Corp. Aff.) to Walter Zyla (Spec. Asst., Min. of Consumer and Corp. Aff.). dtd. January 16, 1969. found in RG117 C1, Off. of the Cstdn. of Enemy Propt., Van. Off. files, vol. 1, file 2, pt. 4, Treatment of Jap. Evacuees, unsp. (2 pg.), file box (OOA).

- 5) Newspaper articles appearing in the Vancouver Sun discussed the confiscation issue: i) "Enemy Aliens Out Of All B.C. Zones April 1", February 10, 1942, pg. 13; ii) "Sale of Jap Farms Put Under Gov't Control; Ottawa Makes Appraisal of All Property", July 6, 1942, pg. 13; iii) "769 Jap Farms Bought For B.C. War Veterans", June 19, 1943, pg. 3; iv) "Fight Sale of Property; Japs Seek Funds for Test Case", June 22, 1943, pg. 20; v) "Demand for Jap Real Estate Light", June 23, 1943, pg. 8; vi) "Jap Farm Transfer Battled; Valley Resettlement To Be Fought In Courts", June 29, 1943, pg. 1; vii) "No Rush for Jap Property", July 2, 1943, pg. 30; viii) "Rent Act Hits Sale of Former Jap Property", July 14, 1943, pg. 26; ix) "Court Battle Looms Over Jap Property", July 16, 1943, pg. 5, mf. (OONL); and, x) "Pain inflicted on Japanese Canadians lingers after 45 years", [Toronto] Globe and Mail, February 26, 1986, pg. A2, mf. (OOU).
- 6) Letter. Ephraim H. Coleman (Under Secty. of St.) to [Frederick P. Varcoe] (Dpty. Min., Jus.). dtd. July 22, 1942. found in RG13 A2, Jus., Central Registry Files, acsn. no. 1990-91/006, Box 160, file 143992, Jap. Propt. in Protected Area, Proposed Amendment to Order-In-Concl. P.C. 2483 Limiting Liability to Assets Vested in any Specific Area, unp. (1 pg.) (OOA).
- 7) Canada. Journals of the House of Commons. Sess. 1947. 3rd Sess., 20th Parl., vol. LXXXVIII (88), pg. 535 to 539 at 536 (OONL). The Fourth Report of the Standing Committee on Public Accounts discusses the confiscation of Japanese Property in B.C.
- 8) British Columbia Security Commission Order no. 41 to 46 deal with the evacuation of persons of the Japanese race from the protected area in B.C. see Canadian War Orders and Regulations, 1942 (Ottawa; Edmond Cloutier, 1943), vol. 1 to 13, pg. 606 to 610 (OONL). Also see id., Regulations, 1943, vol. 3, no. 1 to 13, pg. 52 (OONL).

## APPENDIX XXII

## BIRD COMMISSION

This Appendix in addition to citing the Bird Commission Report dated April 6, 1950, also makes reference to Orders-in-Council, a newspaper article, Reports of the Office of the Custodian for the years 1948, 1949, 1950 and 1952, and House of Commons Debates for the year 1950, all of which provide useful information about the Bird Commission.

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- 1) i) Order-in-Council P.C. 1810 (creating the Bird Commission). dtd. July 18, 1947 (as subsequently amended by P.C. 3737), found in RG13 A2, vol. 2123, file 152189, Dept. of Jus., Central Registry files, Jap. Propt. Claims Comm., unpub. (2 pg.), file box (OOA); ii) Printed copies were not located in the Canada Gazette; iii) MS copy of P.C. 1810 found in RG2 ALB, vol. 4546, Rcds. of the Privy Concl. Off., Rcds. for Orders-in-Concl., Rcd. no. 3653G, pg. 2 (17 pg.), file box (OOA); iv) MS copy of P.C. 3737 found in RG2 ALB, vol. 4554, *id.*, Rcd. no. 3676G, pg. 1 (4 pg.), file box (OOA).
  - 2) Order-in-Council P.C. 1810 (Bird Commission). dtd. July 18, 1947 and Order-in-Council P.C. 3737 (amending P.C. 1810). dtd. September 17, 1947. These were also located in RG14 D2, House of Commons, Sess. Papers, Sess. 1947-48, 4th Sess., 20th Parl., Unpub. Sess. Paper no. 180A, unpub. (3 pg.), mf. T-3541 (OOA).
  - 3) i) Department of the Secretary of State; Office of the Custodian; General Report to the Minister. dtd. March 22, 1948. Report no. 2. found in RG14 D2, House of Commons, Sess. Papers, Sess. 1947-48, 4th Sess., 20th Parl., Unpub. Sess. Paper no. 111B, pg. 25 to 30 (40 pg.), mf. T-3537 (OOA). This report lists 17 different newspapers in which public notices were printed between September 26, 1947 and October 11, 1947; ii) Department of the Secretary of State; Office of the Custodian; Annual Report to the Minister. dtd. March 4, 1949. Rep. no. 3. House of Commons, Sess. Papers, Sess. 1949, 5th Sess., 20th Parl., Unpub. Sess. Paper no. 103, pg. 17 to 22 (23 pg.) (OOP). call no. \*JX 5313 C2 A1 1948. This library's collection includes incomplete holdings of the Reports of the Custodian. They are individually bound with black press board binders or blue cardboard covers. They begin with Report no. 3. Their holdings include reports covering these years, 1948-52/ 56-63/ 65-70. This Report provides a breakdown of real property claims brought before the Bird Commission. The claims fall into these categories 1) to the director of the Veterans Land Act; 2) Greater Vancouver; 3) other than Vancouver; and, 4) corporate property. All categories totalled 1,028 claims. Note: - The report is marked "missing" on mf. T-3546 (OOA).

- 4) Memo. K.W. Wright to Under-Secty. of St. for Ext. Aff. dtd. June 3, 1958. found in RG25 A3B, Ext. Aff., Central Registry Files, 1940 ser., acsn. no. 86-87/336, file no. 4606-C-13-40, pt. 2, Treatment of Assets and Propt. of Jap. Natl. in Cda., unpub. (1 pg.) (OOA).
- 5) "Inquiry into Jap Property Claims: Complaints of Canadian-Japanese Citizens will be Probed by Commission", Halifax Chronicle, December 3, 1947, pg. 2, mf., (OONL).
- 6) Report of the Custodian for the Calendar year 1951. dtd. March 27, 1952. Rep. no. 6. House of Commons, Sess. Papers, Sess. 1952, 6th Sess., 21st Parl., Unpub. Sess. Paper no. 115, pg. 5 and 6 (21 pg.), mf. (OONL). call no. C.O.P. CA.4 FM.2. This report summarizes the total number of claims brought before the Bird Commission, and total awards paid by the Custodian to date, pursuant to the Commissions recommendations.
- 7) i) Bird Commission Report. dtd. April 6, 1950. House of Commons, Sess. Papers, Sess. 1950, 2nd Sess. 21st Parl., Unpub. Sess. Paper no. 185A (66 pg.) mf. (OONL). call no. C.O.P. CA.4 FM.2; ii) also see comments made upon tabling Report. Cda. Debates, House of Commons. Sess. 1950. 2nd Sess., 21st Parl. vol. 4, 1950, pg. 3533 and 3534 (OONL).
- 8) Department of the Secretary of State: Office of the Custodian: Annual Report to the Minister. dtd. March 10, 1950. Rep. no. 4. found in RG14 D2, House of Commons, Sess. Papers, Sess. 1950, 2nd Sess., 21st Parl., Unpub. Sess. Paper no. 104, pg. 8 to 10 (20 pg.), mf. T-3553 (OOA). This report includes particulars regarding the cessation of sales of real property and raises the issue of persons refusing cheques pending final settlements of their claims.

## APPENDIX XXIII

## NEWS ITEMS ON MR. TORAZO IWASAKI'S CLAIM

This appendix lists eleven newspaper and one magazine article discussing Mr. Torazo Iwasaki's claim.

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- 1) George Dobie, "Appeal To Canada's Conscience: Couple Asks for \$1.5 Million", Vancouver Sun, June 23, 1967, pg. 1 \*\*\*\*, mf. (OONL).
- 2) Jon Ruddy and Barry Broadfoot, "Canada's day of infamy on Salt Spring Island", Maclean's Magazine, vol. 80, no. 9 (September 1967), pg. 1, mf. (OOU).
- 3) "Suit filed against Queen: Row Over Sale of Land", Windsor Daily Star, February 1, 1968, pg. 28, mf.
- 4) "Judge Criticizes Confiscation Case", Vancouver Sun, February 9, 1968, pg. 59 \*\*\*\*, mf. (OONL).
- 5) "Lawyer Claims Land Deal 'Breach of Trust, Fraud'," Vancouver Sun, October 1, 1968, pg. 2 \*\*\*, mf. (OONL).
- 6) "\$1,5 million claim before court today", [Vancouver] Province, October 1, 1968, pg. 12, mf. (AEU).
- 7) "Parallel case: 1947 decision cited in \$1.5 million claim", [Vancouver] Province, October 2, 1968, pg. 7, mf. (AEU).
- 8) "War restitution claim refuted", [Vancouver] Province, October 3, 1968, pg. 16, mf. (AEU).
- 9) "Wartime land seizure actions claimed invalid", [Vancouver] Province, October 4, 1968, pg. 16, mf. (AEU).
- 10) "Confiscated Land: Japanese Bid Fails", Vancouver Sun, October 29, 1968, pg. 2 \*\*\*\*\*, mf. (OONL).
- 11) "Land Case Ruling to be Appealed", Vancouver Sun, October 30, 1968, pg. 14 \*\*\*, mf. (OONL).
- 12) "\$1.5 million claim lost by Japanese-Canadian", [Vancouver] Province, October 30, 1968, pg. 1 and 2, mf. (AEU).

## APPENDIX XXIV

## REMOVAL OF JAPANESE CANADIANS FROM THE PACIFIC COAST

A letter from E. Griffith to the Earl of Athlone (Governor General of Canada), dated July 15, 1942, concerning the removal of Japanese Canadians from the Pacific coast has been reproduced in this Appendix.

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"STRICTLY CONFIDENTIAL"

My Lord,

I have the honour to present for your Lordship's consideration the following facts on the Japanese question in this Province [B.C.] which, although their implications do not appear to be fully understood in Canada, are nevertheless potentially extremely dangerous and well understood by those who, like myself, know Japan very thoroughly.

As your Lordship is doubtless aware, there is undue delay in removing Japanese from the Pacific coast for the reason, ostensibly, that they are unwelcome elsewhere. Considerable numbers, indeed, still remain in Vancouver. I can state definitely that all able-bodied Canadian-born Japanese of military age are registered by the Japanese Consulate in Vancouver for military service here in the event of a Japanese landing. Furthermore, nearly all, if not all, Japanese here, irrespective of Canadian citizenship, are registered in Japan as Japanese and recognised by Japan only as such.

This information has been given by Japanese here to my wife who is herself of Japanese birth, though now a British subject by marriage and specifically exempt from all operations of the Defence of Canada Act relating to those of Japanese origin. My wife has from time to time supplied me, while I was engaged at the British Embassy at Tokyo and at the Consulate-General at Yokohama, with information which I have passed on to His Excellency Sir Robert L. Craigie and to the Consul-General.

[One paragraph on Japanese arms' production not reproduced].

I have lived for 16 years in Japan among the people, speaking Japanese, and was employed for about five years at the British Embassy under Sir John Tilley and Sir Robert L. Craigie. If it seems of sufficient importance information can be obtained from Mr. Charles Ramsay at the British Embassy, Washington.

I have the honour to be, My Lord,

Your Lordship's most obedient servant,

E. GRIFFITH.

P.S. In view of possible reprisals on my return to Japan the utmost secrecy as to identity is, of course, essential."

## APPENDIX XXV

STATEMENTS BY OFFICERS OF THE CROWN  
ON THE CONFISCATION OF PROPERTY DURING WWI AND WWII

This Appendix contains statements made by the Canadian Deputy Minister of Justice during WWI, and by the British Foreign Office's 1st Secretary and 3rd Legal Adviser during WWII, relevant to the confiscation of both public and private property within both occupied territory and a State's own territory.

- 1) The following statement relating to the treatment of confiscated real property in international law was made by the Canadian Deputy Minister of Justice in 1914:

"I am not prepared to say that under certain circumstances the Crown cannot confiscate the property of alien enemies. The subject is a difficult one and the rules of international law concerning it are perhaps not definitely settled. Practically, however, it is I think now generally conceded that the private property in the country of alien enemies is not a proper subject of confiscation."

That quotation taken from: i) Letter. Edmund L. Newcombe (Dpty. Min., Jus.) to Col. Eugene Fiset (Dpty. Min., Militia and Defence). dtd. October 27, 1914. found in RG13 A3, vol. 714, Dept. of Jus., Letter Books, pg. 273, mf. C-14,412 (OOA); and, ii) that same letter also found in RG13 A2, Jus., Central Registry Files, vol. 2143, file 1508/1914, If Land of German Reservist who has gone to the War may be Confiscated, file contents (3 pg.) (OOA).

- 2) A more recent statement on this subject in relation to the confiscation of property in occupied territory was made by the British Foreign Offices 1st Secretary in September 1943:

- 13 "As regards occupied territory, the rules are stated in the Land Warfare Regulations attached to The Hague Convention IV, to which Japan is party, and so far as relevant can be stated as follows:-

"Unless and until an occupation is turned into a conquest by the final outcome of the war, a military occupation is in law a purely temporary position not involving sovereignty over the occupied territory or the right to exercise any powers there except for actual military purposes. Those rights in respect of private property in the occupied territory are stated in Articles 46, 47, 52 and 53 of these Regulations [Hague Convention]. With the exception of certain kinds of property, e.g. means of transport

and actual arms and munitions which can be seized 'even though belonging to private persons' but which 'must be restored and indemnities for them regulated at the peace' (Article 53), all other kinds of private property can only be requisitioned 'for the necessities of the army of occupation' and then only 'in proportion to the resources of the country' (Article 52). Private property cannot be confiscated and must be respected. Pillage is prohibited. As regards Government property in the occupied territory, cash, funds and realizable securities, transport, arms, stores, etc., the property of the State, can be appropriated (Article 53). But as regards 'public building', immovable property, forests and agricultural undertakings belonging to the local State, the occupying power is to 'regard itself only as administrator and usufructuary' (Article 55)."

Extracted paragraph taken from Circular Memo. George Peregrine Young (Act. 1st Secty., For. Off.). dtd. September 27, 1943. found in F.O. 371/35944, 1943, file 4670, Treatment of Brit. Propt. in Jap. and Jap. Propt. in Brit. Empire, pg. 189 to 195 at 193 (PRO).

- 3) A comment made in January 1943 by a Foreign Office Legal Adviser on the theoretical and practical aspects of the confiscation of enemy property in a state's own territory are also noteworthy:

"Public enemy property situated in or found on a belligerent's own territory is confiscable outright. Private enemy property is not, but may be taken over to await and be dealt with under the peace treaty... In theory such private property should not be realized unless this is necessary but ought to be preserved in rem so far as possible. In practice it is often realized, and the proceeds held in lieu of it... as they propose to hold the resultant proceeds "in trust" there is no outright or final confiscation; the matter awaits the terms of the peace treaty and it would be difficult to allege any direct breach of international law."

Extracted comments taken from Memo. [Gerald Gray] Fitzmaurice (3rd Legal Adviser, For. Off.; seconded to Ministry of Economic Warfare) to Sir [Herbert] William Malkin (Legal Adviser, For. Off.). dtd. January 6, 1943. found in F.O. 371/35944, 1943, file 210, Treatment of Brit. Propt. in Jap. and Jap. Occupied Territory, pg. 42 (2 pg.) (PRO).

## APPENDIX XXVI

EVIDENCE OF THE CUSTOMARY INTERNATIONAL LAW STATUS  
OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND  
INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

This Appendix sets out comments made by an American court, the Canadian Department of External Affairs, jurists, and an international organization, on the customary status of the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights. Customary international law is part of the law of Canada <sup>1</sup>, Great Britain <sup>2</sup>, and the United States.<sup>3</sup>

## 1) AMERICAN COURT DECISION

Filartiga vs. Pena-Irala, 630 F. 2d. 876 at 882-83 (U.S. 2d. Cir. 1980).

"This prohibition [the right to be free from torture] has become part of customary international law, as evidenced and defined by the Universal Declaration of Human Rights... The General Assembly has declared that the Chapter precepts embodied in this Universal Declaration 'constitute basic principles of international law'... Indeed, several commentators have concluded that the Universal Declaration has become, in toto, a part of binding, customary international law."

## 2) CANADIAN DEPARTMENT OF EXTERNAL AFFAIRS

Unpublished letter dated May 19, 1989, from Robert J. Rochon (Director, Legal Operations Division, Department of External Affairs). Reproduced in its entirety:

"Your letter of May 1, 1989 requesting information on the Universal Declaration of Human Rights has been passed to this Division for reply.

As requested, we enclose copies of four human rights instruments, which have come to be known as the International Bill of Human Rights. These instruments

<sup>1</sup> A) Newfoundland Reference Re Continental Shelf (1984), 51 N.R. 362 at 379 (S.C.C.); B) Re Regina and Palacios (1984), 7 D.L.R. (4th) 112 at 118-19 (Ont. C.A.); and, C) Re Public Service Employee Relations Act (Alta.) (1987), 38 D.L.R. (4th) 161 at 184 (S.C.C.).

<sup>2</sup> A) Compania Naviera Vascongado vs. Steamship "Cristina" [1938] A.C. 485 at 497 (H.L.); and, B) Trendtex Trading Corporation vs. Central Bank of Nigeria [1977] Q.B. 529 at 552-54 (C.A.).

<sup>3</sup> A) Paquete Habana, 175 U.S. 677 at 700 (1899); and, B) Committee of U.S. Citizens in Nicaragua vs. Reagan, 859 F. 2d. 929 at 935, 938-39 (U.S. App. D.C. 1988).

comprise the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR) and the Optional Protocol to the ICCPR.

The Universal Declaration was adopted by the United Nations in 1948 and, as a declaration, it is not open to signature or ratification by states. However, since it is so widely accepted and is so fundamentally important to the inherent dignity of humankind, it is generally considered part of customary international law, binding on all states.

The two Covenants and the Optional Protocol were adopted by the UN in 1966 and entered into force in 1976. In that same year, Canada ratified all three instruments following consultations with the provinces. As party to these instruments, Canada (including the provinces and territories) is bound by all of their provisions."

### 3) STATEMENTS BY JURISTS

- a) 1976 - John P. Humphrey, LL.D. (McGill), Director, Division of Human Rights, U.N. Secretariat, 1946-66.

"The International Bill of Rights: Scope and Implementation", William and Mary Law Review, Williamsburg, Va., vol. 17, no. 3 (Spring 1976), pg. 527 to 541 at 529. University of Ottawa. call no. FA-PER.

"In the more than a quarter of a century since its adoption, however, the [Universal] Declaration [of Human Rights] has been invoked so many times both within and without the United Nations that lawyers now are saying that, whatever the intention of its authors may have been, the Declaration is now part of the customary law of nations and therefore is binding on all states." (also see footnote 13 therein)

- b) 1978 - John P. Humphrey, LL.D. (McGill)

"The Implementation of International Human Rights Law", New York Law School Law Review, NY, vol. 24, no. 1 (1978), pg. 31 to 61 at 32-33. University of Ottawa. call no. FA-PER.

"This new standard is set forth in the Universal Declaration of Human Rights which, whatever its drafters may have intended in 1948, is now part of the customary law of nations - not because it was adopted as a resolution of the General Assembly but because of juridical consensus resulting from its invocation as

law on countless occasions since 1948 both within and outside the United Nations."

- c) 1981 - John Claydon, Professor Queen's University Law School

"The International Law of Human Rights and Canadian Courts", Canadian Council on International Law, Proceedings, Ottawa (October 1981), pg. 2 to 21 at 4. University of Ottawa. call no. K7033.C287 1981.

"But the argument for according it [Universal Declaration of Human Rights] customary status is strong though not entirely without weakness; as Professor Humphrey has pointed out, this status rests not on its source as a General Assembly Resolution but because of the 'juridical consensus' that has developed through countless invocations in practice, in other General Assembly Resolutions, in decisions of the International Court of Justice, and in numerous post-war constitutions. Although domestic courts rarely consider the U.D.H.R. to be customary law, it is certainly possible, both theoretically and practically, to accord it that status." (also see footnotes 19 and 20 therein)

- d) 1985 - Richard B. Lillich, J.S.D., New York University School of Law, Professor of Law, Oberlin College.

"Invoking International Human Rights Law in Domestic Courts", University of Cincinnati Law Review, Ohio, vol. 54, no. 2 (1985), pg. 367 to 415 at 394. University of Ottawa. call no. FA-PER.

"According to Professor Humphrey, who was one of the Declaration's drafters, in the three decades since its adoption 'the Declaration has been invoked so many times both within and without the United Nations that lawyers now are saying that, whatever the intention of its authors may have been, the Declaration is now part of the customary law of nations and therefore is binding on all states.' This view, first advanced solely by legal scholars, but subsequently supported by the resolutions of international conferences, state practice, and even court decisions, now appears to have achieved widespread acceptance. Indeed, the suggestion has been made that the Declaration has 'the attributes of ius cogens,' certainly an overly enthusiastic assertion in the opinion of the present writer if it is intended to imply that all the rights enumerated in the Declaration now constitute peremptory norms of international law." (also see footnotes 54, 133-135, and 155 therein)

- e) 1985-86 - Donald F. Woloshyn, LL.M. Candidate, McGill University

"To What Extent can Canadian Courts be Expected to Enforce International Human Rights Law in Civil Litigation?", Saskatchewan Law Review, Saskatoon, Sask., vol. 50, no. 1 (1985-86), pg. 1 to 12 at 2-3 and 7. University of Ottawa. call no. FA-PER.

"The [Optional] Protocol, the Covenant [International Covenant on Civil and Political Rights] and the International Covenant on Economic, Social and Cultural Rights are treaties having the force of law among the states which have ratified them, including Canada (and arguably have the force of customary international law as against those which have not)."

"... it was declared that the Universal Declaration of Human Rights was not to have the force of law, but it has been referred to and cited so often, and adopted in whole or in part into so many national constitutions, that it may now be considered to have the force of customary international law, or at least to enunciate 'general principles of law recognized by civilized nations'."

- f) 1987 - Sharon A. Williams, D. Jur., Professor Osgoode Hall Law School, York University, and Armand L.C. de Mestral, LL.M., Professor, Faculty of Law, McGill University

An Introduction to International Law: Chiefly as Interpreted and Applied in Canada, 2nd ed. (Toronto; Butterworths, 1987), pg. 309. University of Ottawa. call no. JX 3185. W54157 reserve

"Initially, the Universal Declaration [of Human Rights] had only high moral and political status, but over the years, it has become possible to maintain that it is declaratory of customary international law. When the subsequent practice of the United Nations is reviewed, in particular the extent to which the Universal Declaration has been used as a guide to Charter interpretation, or to the extent to which it has provided a blueprint for subsequent treaty instruments on a wide range of human rights issues, and finally, when one considers the degree to which states have invoked its provisions as reflecting general principles of law, there is a sound basis for designating it as declaratory of international law, or at the very least, as 'a part of the law of the United Nations'. The view of a number of distinguished Canadian experts is that it is declaratory of international law."

g) 1990 - Earl Moulton

"Domestic Application of International Human Rights", Saskatchewan Law Review, Saskatoon, Sask. vol. 54, no. 1 (1990), pg. 31 to 44 at 39. University of Ottawa. call no. FA-PER.

"Alternatively, it can be argued that the subsequent use made of human rights instruments, such as incorporation into national constitutions, has resulted in the absorption of those instruments into the customary international law. This can occur notwithstanding the original non-binding nature of the obligation. Both of these approaches appear to be accepted in Canada."

#### 4) INTERNATIONAL ORGANIZATION

Statement made at a Conference held in Montreal in March 1968 by the Assembly for Human Rights, printed in Journal of the International Commission of Jurists, Geneva, Switz., vol. 9, no. 1 (June 1968), pg. 94 at 95. University of Ottawa. call no. FA-PER.

"The Universal Declaration of Human Rights constitutes an authoritative interpretation of the [U.N] Charter of the highest order, and has over the years become a part of customary international law."

## APPENDIX XXVII

## AMBIGUITY RULE

In this Appendix, one will find Canadian and British judicial statements in relation to ambiguities in domestic statutes as well as the Canadian Charter of Rights and Freedoms, which indicate that in those circumstances, recourse may be made to international agreements as interpretive aids.

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1. Salomon vs. Commissioners of Customs and Excise [1967], 2 Q.B. 116 at 143-44 (C.A.).

"If the terms of the legislation are clear and unambiguous, they must be given effect to, whether or not they carry out Her Majesty's treaty obligations... But if the terms of the legislation are not clear but are reasonably capable of more than one meaning, the treaty itself becomes relevant... Thus, in case of lack of clarity in the words used in the legislation, the terms of the treaty are relevant to enable the court to make its choice between the possible meanings of these words by applying this presumption."

2. Daniels vs. R. [1968] S.C.R. 517 at 541 (Can.).

"I wish to add that, in my view, this is a case for the application of the rule of construction that Parliament is not presumed to legislate in breach of a treaty or in any manner inconsistent with the comity of nations and the established rules of international law. It is a rule that is not often applied, because if a statute is unambiguous, its provisions must be followed even if they are contrary to international law..."

3. Schavernoeh vs. Foreign Claims Commission et. al. [1982], 1 S.C.R. 1092 at 1098 (Can.).

"If one could assert an ambiguity, either patent or latent, in the Regulations it might be that a court could find support for making reference to matters external to the Regulations in order to interpret its terms. Because, however, there is in my view no ambiguity arising from the above quoted excerpt from these Regulations, there is no authority and none was drawn to our attention in argument entitling a court to take recourse either to an underlying international agreement or to textbooks on international law with

reference to the negotiation of agreements or to take recourse to reports made to the Government of Canada by persons engaged in the negotiation referred to in the Regulations."

4. Re Warren, Klagsbrun, Boyle and Costigan (1983), 35 C.R. (3d.) 173 at 177 (Ont. H. Ct. Just.).

"Canada's international obligations also are of assistance in determining the meaning of s. 11(a) of the Charter. Although legislation has not been enacted to incorporate the United Nations International Covenant on Civil and Political Rights into the domestic law of Canada, the Covenant can be used to help construe ambiguous provisions of a domestic statute, if there are no provisions of the domestic statute contrary to the portions of the Covenant being relied upon."

5. Re Mitchell and the Queen (1983), 42 O.R. (2d.) 481 at 493 (Ont. H. Ct. Just.); also reported (1984) 150 D.L.R. (3d.) 449 at 461-62; and 6 C.C.C. (3d.) 193 at 205.

"The Covenant [International Covenant on Civil and Political Rights] may, however, be used to assist a court to interpret ambiguous provisions of a domestic statute, notwithstanding the fact that the Covenant has not been formally incorporated into the law of Canada, provided that the domestic statute does not contain express provisions contrary to or inconsistent with the Covenant. If such contrary provisions exist, the Covenant cannot prevail... This rule of construction is based on the presumption that Parliament does not intend to act in violation of Canada's international obligations."

6. Nat. Corn Growers Assn. vs. Canada (Import Trib.) (1990), 114 N.R. 81 at 108-09 (S.C.C.).

"Indeed where the text of the domestic law lends itself to it, one should also strive to expound an interpretation which is consonant with the relevant international obligations... Second, and more specifically, it is reasonable to make reference to an international agreement at the very outset of the inquiry to determine if there is any ambiguity, even latent, in the domestic legislation... The suggestion that recourse can be had to an underlying international agreement where a latent ambiguity can be asserted implies that there is no need to find a patent ambiguity before consultation of the agreement is possible."

## ART HISTORY NOTES

Two prints expressing sentiments about the perceived abandonment of the Loyalists by the British during the Peace negotiations, are found catalogued in the following sources.

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- 1) Catalogue Of Political And Personal Satires Preserved In The Department Of Prints And Drawings In The British Museum, Mary Dorothy George (ed.), vol. 5, Photolitho ed. (London; British Museum Pub. Ltd., 1978), pg. 673, acsn. no. 6171 and pg. 679 and 680, acsn. no. 6182 (OONG). call no. NC 1470 L84 1968 P&D [London. British Museum (BM). Department of Prints and Drawings]. acsn. no. BM 6171 describes 'Shelb - NS Sacrifice', and acsn. no. BM 6182 describes 'The Savages Let Loose, Or The Cruel Fate of the Loyalists'.

- 2) Impolitical Prints: An Exhibition Of Contemporary English Cartoons Relating To The American Revolution; Catalogue Of The Exhibition, R. T. Haines Halsey (ed.) (NY; The New York Public Library, 1939), pg. 36 (BM 6171) and pg. 37 (BM 6182) (OTMCL). call no. 973.3.H122.

Those two catalogue sources only include descriptive text. They do not provide pictures of the prints, which can be found in the following microfilm series, by the BM catalogue numbers.

- 3) English Cartoons and Satirical Prints 1320 - 1820 in the British Museum, (London; Chadwyck-Healey Ltd., 1978), mf. 9, acsn. no. 6171 and 6182 (OONG). call no. NE55 L7A3 1870 P&D. [London. British Museum (BM). Department of Prints and Drawings]. Other location (OCC). call no. NE55. G7L72 1978 M.

## ABBREVIATIONS KEY

With the exception of the Library Symbols and recognized archival references, all abbreviations used in this work were derived consulting this source:

Abbreviations: The Comprehensive Dictionary of Abbreviations and Letter Symbols for the Computer Era, C. Edward Wall (ed.), 2 vol. (Ann Arbor, Mich.; Pierian Press, 1984) (OOU). call no. PE 1693 W34 1984 fol. ref.

This list of abbreviations does not include citations to case law reports or library symbols. The latter are set out following Tab 29, and the former may be determined by consulting a law library reference librarian.

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acsn - accession	Col - Colonel
act - acting	col - colonial
addl - additional	col - column
Adjt - Adjutant	Com - Commander
admin - administrator	comm - commission
admin - administrative	Comns - Commons
aff - affairs	Comsn - Commissioner(s)
al - others	concl - council
Amer - America	Cong - Congress
anon - anonymous	Conn - Connecticut
AO - Audit Office	cons - concession
apr - approve	contin - continental
asmby - assembly	COP - Canadian Official Publ
asst - assistant	corp - corporate
atty - attorney	corres - correspondence
b - black	cstdn - custodian
barr - barristers	ct - court
BC - British Columbia	DC - District of Columbia
bk(s) - book(s)	del - delegate
BM - British Museum	dept - department
bnd - bound	desc - description
Brig - Brigadier	desp - despatche
Brit - Britain	dft - draft
Brit - British	dist - district(s)
c - chapter	div - division
Can - Canada	doc - document
Capt - Captain	dpty - deputy
cat - catalogue	dtd - dated
cd - command	E - Eastern
Cda - Canada	ed - edition
chap - chapter	ed - edited
civ - civil	Eng - England
cmnd - command	env - envelope
cmsry - commissary	Esq - Esquire
cncsn - concession	et - and
Co - County	exec - executive
co - company	ext - extension
CO - Colonial Office	ext - external

FIOP - Foreign Internat Official Publ	misc - miscellaneous
fm - from	Mo - Missouri
FO - Foreign Office	MP - Member of Parliament
for - foreign	MS - Manuscript
Fr - France	MSS - Manuscripts
GA - General Assembly	Mt - Mount
GAOR - General Assembly Official Record	mtg - mortgage
Gen - General	N - North
Geo - George	natl - national
Gov - Governor	NB - New Brunswick
govt - government	nd - no date
Gt - Great	neg - negative
Hon - Honorable	NJ - New Jersey
HR - House Report	NM - New Mexico
in - inches	no - number
inc - incorporated	ns - new series
Ind - Indiana	NS - Nova Scotia
insp - inspector	NW - North West
inst - instrument	NY - New York
internat - international	NY Hist - New York History
invt - inventories	NYT - New York Times
J Am Hist - Journal of American History	off - office
Jap - Japanese	off - officer
jrnls - journals	Ont - Ontario
jt - joint	orig - original
jus - justice	Ott - Ottawa
Kan - Kansas	Pa - Pennsylvania
La - Louisiana	parl - parliament
legisv - legislative	PC - Privy Council
letr - letter	pg - page
Lt - Lieutenant	Phil - Philadelphia
ltd - limited	pr - printing
Maj - Major	Pres - President
Mass - Massachusetts	prmscs - promiscuous
Me - Maine	Prof - Professor
memo - memorandum	Propt - property
Messrs - Messieurs	prov - provincial
mf - microfilm	prs - papers
MG - Manuscript Group	pt - part
Mich - Michigan	pub - published
Min - Minister	pub - publishers
min - minute	pub - public
	publ - publications

QC - Queens Counsel	st - state
Que - Quebec	st - street
rcd(s) - record(s)	stat - statute
rd - road	stks - stacks
re - regarding	sup - supreme
rec - record	supp - supplement
rec - receive	SW - South West
reg - registered	Switz - Switzerland
reg - regiment	TB - Treasury Board
rel - relative	Theo - Theodore
rep - report	Tor - Toronto
rep - representatives	Treas - Treasury
res - resolution	TS - Treaty Series
ret'd - retired	Twp - Township
Rev - Reverend	UC - Upper Canada
rev - revolutionary	UE - United Empire
RG - Record Group	UK - United Kingdom
RI - Rhode Island	UN - United Nations
Rt - Right(s)	Univ - University
ryl - royal	unnbrd - unnumbered
S - South	unp - unpagged
Sask - Saskatchewan	unpub - unpublished
SC - Statutes of Canada	Upr - Upper
SE - South East	US - United States
sect - section	USA - United States of America
secty - secretary	Va - Virginia
ser - series	Van - Vancouver
sess - session	Vict - Victoria
Sgt - Sergeant	vol - volume
SO - South	Vt - Vermont
soc - society	W - West
sol - solicitor	w - white
spec - special	war - warrant
	Wash - Washington

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Am Ref Bks Ann - American Reference Books Annual, Littleton, Colo.  
 Wr Am Hist - Writings on American History, Millwood, NY

## GLOSSARY OF TERMS

All of the words and terms explained in this Glossary were used in my thesis.

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- abstract index - an official book of entry kept by a local registry or land titles office which lists all deeds, mortgages and other registered instruments and plans bearing on the title of real property, entered chronologically by lot and plan number
- acre - a parcel of land measuring 43,560 square feet or 10 perches x 16 perches
- agreement of purchase and sale - a written agreement entered into between a property owner and buyer for the conveyance of real property
- assignment of mortgage - the assignment of a debt obligation secured by real property
- attainder - legislative penalty resulting in the forfeiture of real property, imposed without trial or in absentia.
- broken front lot - a division used to describe a lot measuring less than 200 acres, broken by natural barriers such as a lake
- certificate of vesting - an instrument vesting confiscated real property in the Custodian of Enemy Property
- circular letter - a typed or written form letter sent to more than one individual
- concession - a division used to describe an area of land
- confiscated estate - real property forfeited to the State by way of penalty
- consideration - monetary or other value paid by a buyer to a seller to purchase real property
- convention - an agreement entered into between two or more states
- conveyance - transfer of real property from one party to another
- Crown grant/patent - conveyance of Crown lands

- deed - a written instrument transferring real property from one party to another with warranty of title
- deposit - a type of registered instrument
- foreclosure - action taken by a lender following default by a borrower to realize on security given for a loan on real property
- forfeited - a criminal penalty resulting in the confiscation of real property
- grant - a conveyance of real property by deed from one party to another
- grantee - the person who receives a grant or conveyance of real property by deed
- grantor - the person who makes a grant or conveyance of real property by deed
- ibid - same source and same page number as the previous footnote
- id - same source but different page number than the previous footnote
- inquisition - official inquiry
- instrument - any written document recorded at a registry or land titles office
- land registry/titles office - a government office maintained for the purposes of recording and filing registered instruments and plans bearing on the title of real property
- lease - an agreement giving a party the right to use and occupy real property for a specific period of time
- licence of occupation - a lease given by the Crown, at pleasure
- mortgage - money advanced by a lender on the security of a borrower's real property
- perch[e] - a rod used for measuring land equal to 16 1/2 feet or 5 1/2 yards in length; a square perch (16 1/2 x 16 1/2) is a fraction of an acre equal to 1/160 of that measure
- quit claim deed - a deed which conveys a grantor's interest in real property without warranty of title
- real property - real estate or land
- remainder - the residual interest remaining in an estate conveyed for life

- rescission - the action of annulling a conveyance of land
- rood - fraction of an acre of land containing 40 square perches
- sequestered - the confiscation of real property by the military during a period of armed conflict
- specie - gold or silver coin money
- supra - same source as an earlier footnote
- ticket of location - gave an individual the right to a conveyance of the Crown lands described subject to conditions
- title deeds - deeds falling within the chain of title
- transcript - a typed or written copy
- treaty - a contract entered into between two or more states
- white print - a photographic reproduction of a document
- writ of fieri facias - writ of execution to obtain possession of land recovered by a judgment

## LIBRARY SYMBOL KEY

The archival locations noted below which include complete mailing addresses responded to written requests for xerox or reader printer copies of MS material. The other locations co-operated through inter-library loans. The symbols in this key appear in parentheses ( ) following most footnote references. Six of the 211 items (excludes all MS material) listed in the Selected Bibliography do not provide library locations and consequently no symbol appears in their respective footnote reference.

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<u>Symbol</u>	<u>Location</u>
AAP	Auburn University, Alabama
AEU	University of Alberta, Edmonton
BL	British Library, The Manuscript Collections, Great Russell St., London, England, UK, WC1B 3DG
BVAS	Simon Fraser University, Burnaby, BC
CF	Connecticut State Library, Hartford
CLSU	University of Southern California, Los Angeles
CLU	University of California, Los Angeles
DGU	Georgetown University, Washington
DLC	Library of Congress, Washington
DNA	National Archives and Records Administration, Civil Reference Branch, Washington, DC, USA, 20408
DSI	Smithsonian Institute, Washington
GU	University of Georgia, Athens
ICU	University of Chicago, Illinois
M-Ar	Massachusetts State Archives, Office of the Secretary of State, 220 Morrissey Boulevard, Boston, Mass., USA, 02125
MiU-C	University of Michigan, William L. Clements Library, S. University Ave., Ann Arbor, Mich. USA, 48109

MNBedf	New Bedford, Free Public Library, Mass.
MShM	Mount Holyoke College, South Hadley, Mass.
MU	University of Massachusetts, Amherst, Mass.
MWelC	Wellesley College, Wellesley, Mass.
NBS	Saint John Regional Library, NB
NBSAM	Mount Allison University, Sackville, NB
NBu	Buffalo and Erie County Public Library, Buffalo, NY
NFSM	Memorial University of Newfoundland, St. John's
NIC	Cornell University, Ithaca, NY
NmU	University of New Mexico, Albuquerque, NM
Nottm. Univ.	University of Nottingham, Department of Manuscripts, University Park, Nottingham, England, UK, NG7 2RD
NSbsU	State University of New York at Stony Brook
NSD	Dartmouth, NS Regional Library
NSHP	Nova Scotia Public Archives, Manuscripts Division, 6016 University Ave., Halifax, NS, B3H 1W4
NSWA	Acadia University, Wolfville, NS
NYPL	New York Public Library, Manuscripts and Archives Section, Fifth Ave. at 42nd St., New York, NY, USA, 10018-2788
OKQ	Queens University, Kingston, Ont.
OGU	University of Guelph, Guelph, Ont.
OLU	University of Western Ontario, London
OOA	National Archives of Canada, Manuscripts Division, 395 Wellington St., Ottawa, Ont., K1A 0N3
OOCC	Carleton University, Ottawa
OOFF	Environment Canada, Ottawa

OOND	Department of National Defense, Ottawa
OONG	National Gallery of Canada, Ottawa
OONL	National Library of Canada, Ottawa
OOP	Library of Parliament, Ottawa
OOSC	Supreme Court of Canada, Ottawa
OOU	University of Ottawa, Ont.
OS	Lambton County Library, Sarnia Branch, Sarnia, Ont.
OTAR	Ministry of Culture and Communications, Archives of Ontario, 77 Grenville St., Toronto, Ont., M7A 2R9
OTMCL	Metropolitan Toronto Reference Library, Toronto
OTNY	North York Public Library, Willowdale, Ont.
OTU	University of Toronto, Ont.
OTY	York University, Toronto, Ont.
OW	Windsor Public Library, Ont.
OWA	University of Windsor, Ont.
OWTU	University of Waterloo, Ont.
P	Pennsylvania State Library, Harrisburg
Pa. State Archives	Pennsylvania (State) Historical and Museum Commission, Bureau of Archives and History, William Penn Memorial Museum and Archives Building, Box 1026 (corner of Third and Forster Sts.), Harrisburg, Pa., USA, 17120
PEL	Lafayette College, Easton, Pa.
PHC	Haverford College, Haverford, Pa.
PHi	Historical Society of Pennsylvania, 1300 Locust St., Philadelphia, Pa., USA, 19107
Phil. Dept. of Recds.	City of Philadelphia, Department of Records 401 N. Broad Street, Room 942, Philadelphia, Pa., USA, 19108

PP	Free Library of Philadelphia, Pa.
PRO	Public Record Office, Ruskin Ave., Kew, Richmond, Surrey, England, UK, TW9 4DU
PSt	Pennsylvania State University, University Park
QMML	McGill University, Law Library, Montreal, Que.
QQA	Archives Nationales du Quebec, 1210 avenue du Seminaire, Pavillon Louis-Jacques Casault, 3rd floor, C.P. 10450, Sainte-Foy, Que., G1V 4N1
QQL	L'Assemblee nationale de Quebec, Que.
SRU	University of Regina, Sask.
SSU	University of Saskatchewan, Saskatoon
Suff. Rcd. Off.	Suffolk Record Office, Ipswich Branch, County Hall, Ipswich, England, UK, IP4 2JS

## ADDRESSES OF GOVERNMENT OFFICES

These Government offices all assisted my research by providing information. Most are identified in the Selected Bibliography.

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- 1) Federal Court of Canada, Registrar's Office, Appeal Division, Annex Building, 1st floor, Kent and Wellington St., Ottawa, Ont., K1A 0H9
- 2) Headquarters, Second Company, Governor's Foot Guard, P.O. Box 9670, New Haven, Conn., 06536
- 3) Land Records Supervisor, Department of Natural Resources and Energy, Crown Lands Branch, Room 250, Fredericton, NB, P.O. Box 6000, E3B 5H1
- 4) Ministry of Attorney General, Victoria Land Title Office, 850 Burdett Ave., Victoria, BC, V8W 1B4
- 5) Ministry of Consumer and Commercial Relations, Grenville Land Registry Office (No. 15), 499 Centre St., Prescott, Ont. KOE 1T0
- 6) Ministry of Consumer and Commercial Relations, Leeds Land Registry Office (No. 28), 7 King St. West, Brockville, Ont., K6V 3P7
- 7) Ministry of Consumer and Commercial Relations, Niagara North Land Registry Office (No. 30), 59 Church St., St. Catharines, Ont., L2R 3C3
- 8) Ministry of Consumer and Commercial Relations, Toronto City Land Registry Office (No. 63), 20 Dundas St. West, 2nd floor, Toronto, Ont., M5G 2C2
- 9) Ministry of Consumer and Commercial Relations, York Land Registry Office (No. 65), 50 Eagle St. West, Newmarket, Ont., L3Y 6B1
- 10) Ministry of Government Services, Official Documents Offices, 3rd floor, Hearst Blk., 900 Bay St., Toronto, Ont., M7A 1N3
- 11) Office of the Clerk, U.S. House of Representatives, Washington, DC, USA, 20515-6601
- 12) Offices of the State Auditor, Auditor of States Land Office, 88 East Broad St., P.O. Box 1140, Columbus, Ohio, USA, 43266-0040
- 13) Ontario Legislative Library, Information and Reference Services, Legislative Building, Queen's Park, Toronto, Ont., M7A 1A2
- 14) Registrar of Deeds, Charlotte County Registry Office, 45 King St., Saint Andrews, NB, E0G 2X0

Note: Their letterhead reads Geographic Information Corporation of New Brunswick.

- 15) Saint John Land Registry Office, P.O. Box 5001, 110 Charlotte St., Saint John, NB, E2L 4Y9
- 16) Supreme Court of Canada, Clerk of Process, Room 166, Supreme Court Building, Wellington St., Ottawa, Ont., K1A 0J1
- 17) Supreme Court of Pennsylvania (Eastern District), Prothonotary Office, 468 City Hill, Philadelphia, Pa., USA, 19107
- 18) Treasurer of Ontario, Ministry of Revenue, Region #2, Brockville Office, 2479 Parkedale Ave., Brockville, Ont., K6V 3H2

## SELECTED BIBLIOGRAPHY

## Index of title headings:-

- (i) Books about General Arnold, containing references to Mount Pleasant and/or his reward
- (ii) American Confiscation Literature
- (iii) Canadian and British Confiscation Literature
- (iv) Confiscation of Japanese Canadian property in B.C. during WWII
- (v) Government Documents (Acts and Journals)
- (vi) Land Grants in Upper Canada, "donation" lands in Pennsylvania, and Canadian Refugee Lands
- (vii) Loyalists
- (viii) Magazine Articles on General Arnold
- (ix) Mount Pleasant
- (x) MS Sources
- (xi) Newspapers consulted
- (xii) Printed Letters and Documents
- (xiii) Trial Proceedings relating to General Arnold's conduct at West Point (Inquiries, Court Martials, etc...)

## (i) Books about Gen. Arnold containing references to Mount Pleasant and/or his reward

- 1) Arnold, Hon. Isaac Newton, The Life of Benedict Arnold, 2nd ed. (NY; Arno Press, 1979). University of Ottawa. call no. E278. A7 1979
- 2) Decker, Malcolm, Benedict Arnold Son of the Havens (NY; Antiquarian Press, Ltd., 1961). National Library of Canada. call no. E278 A7 D42. 1961. preservation collection
- 3) Flexner, James T., The Traitor and the Spy: Benedict Arnold and John Andre (NY; Harcourt, Brace and Co., 1953). National Library of Canada. call no. stks. E278. A7 F5
- 4) Haight, Charles S., Benedict Arnold - The Man: A Character Study (NY; ?, 1903). Georgetown University Library. call no. E278. A7 H14
- 5) Lomask, Milton, Beauty and the Traitor, the Story of Mrs. Benedict Arnold (Philadelphia; Macrae Smith Co., 1967). Dartmouth, NS, Regional Library. call no. 921 Arn.
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- 7) Randall, Willard Sterne, Benedict Arnold: Patriot and Traitor, 1st ed. (NY; William Morrow and Co., 1990). Carleton University. call no. E278.A7R36
- 8) Reed, William B., Life and Correspondence of Joseph Reed, vol. 2 (Philadelphia; Lindsay and Blakiston, 1847). National Library of Canada. call no. PAAP E302.6 R4R4 v.2
- 9) Sherwin, Oscar, Benedict Arnold Patriot and Traitor (NY; The Century Co., 1931). Department of National Defense Library. call no. E278. A7555

- 10) Sparks, Jared, The Library of American Biography, vol. 3, 1st ser., The Life and Treason of Benedict Arnold (Boston; Hillard Gray and Co., 1848). Saint John, NB, Public Library
- 11) Stimson, Fredric J., My Story: Being the Memoirs of Benedict Arnold (NY; Charles Scribners Sons, 1917). National Library of Canada. call no. PS2922 M9. 1917
- 12) Sullivan, Edward D., Benedict Arnold Military Racketeer (NY; The Vanguard Press, 1932). University of Western Ontario. call no. DBWSTK E278. A7 59
- 13) Taylor, John George, Some New Light on the Later Life and Last Resting Place of Benedict Arnold and of His Wife Margaret Shippen (London; George White, 1931). Library of Congress
- 14) Thompson, Ray, Benedict Arnold in Philadelphia (Fort Washington, Pa.; Bicentennial Press, 1975). Historical Society of Pennsylvania
- 15) Tillotson, Harry S., The Exquisite Exile: The Life and Fortunes of Mrs. Benedict Arnold (Boston; Lothrop, Lee and Shepard Co., 1932). University of Western Ontario. call no. E278. A72T6
- 16) Todd, Charles Burr, The Real Benedict Arnold (NY; A.S. Barnes and Co., 1903). National Library of Canada. call no. E278 A7 T6
- 17) Whitton, Frederick Ernest, Service Trails and Tragedies (London; Hutchinson and Co., 1930). Department of National Defense Library. call no. DA 28.4 W5 1930

## (ii) American Confiscation Literature

- 18) "Book Reviews - The American Revolution Considered as a Social Movement by J. Franklin Jameson", New York Times Book Review, NY, May 9, 1926, pg. 21. University of Ottawa. call no. MO-PER Z1035.A1N4
- 19) "Book Reviews - The Confiscation of John Chandler's Estate by Andrew McFarland Davis", New York Times Book Review, NY, May 23, 1903, pg. 352. University of Ottawa. call no. MO-PER Z1035.A1N4
- 20) "Book Reviews - The Loyalists in the American Revolution by Claude Halstead Van Tyne", New York Times Book Review, NY, December 20, 1902, pg. 921. University of Ottawa. call no. MO-PER Z1035.A1N4
- 21) Brown, Richard D., "The Confiscation and Disposition of Loyalists' Estates in Suffolk County, Massachusetts", William and Mary Quarterly, Williamsburg, Va., 3rd Ser., vol. 21, no. 4 (October 1964), pg. 534 to 550. University of Ottawa. call no. MO-PER F221.W71
- 22) Crary, Catherine Snell, "Forfeited Loyalist Lands in the Western District of New York - Albany and Tryon Counties", New York History, Cooperstown, NY, vol. 35, no. 3 (July 1954), pg. 239 to 258. University of Ottawa. call no. MO-PER F116.N86
- 23) Curti, Merle Eugene, "Book Reviews - The American Revolution Considered as a Social Movement by J. Franklin Jameson", Journal of American History, Abilene, Kan., vol. 28, no. 2 (September 1941), pg. 257 and 258. University of Ottawa. call no. MO-PER E171.J86
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- 28) East, Robert Abraham, Connecticut's Loyalists, Connecticut Bicentennial Series 6, (Chester, Conn.; Pequot Press, 1974), 54 pg. University of Toronto. call no. E277 E34
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- "Selected from a collection of manuscripts in the New York public library relating to the efforts of the heirs of Samuel Cornell to recover debts due his estate. The letters are dated 1797 and 1798."  
Wr Am Hist 1913
- 30) Evans, Emory G., "Private Indebtedness and the Revolution in Virginia, 1776 to 1796", William and Mary Quarterly, Williamsburg, Va., 3rd Ser., vol. 28, no. 3 (July 1971), pg. 349 to 374. University of Ottawa. call no. MO-PER F221.W71
- 31) Flick, Alexander Clarence, "Chapter 7, Confiscation and Sale of the Property of Loyalists" in Loyalism in New York during the American Revolution, 1st ed. (NY; Columbia University Press, 1901), pg. 135 to 160. Thesis (Ph.D.), Columbia University, 1901. University of Ottawa. call no. H31.C7 no. 37 1970
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- 33) Holbrook, Dwight, The Wickham Claim [Robins Island, NY]: Being an Inquiry into the Attainder of Parker Wickham (Riverhead, NY; Suffolk County Historical Society, 1986), 195 pg. Auburn University. call no. KFN 5078.W52 H65 1986
- 34) Jameson, John Franklin, The American Revolution Considered as a Social Movement, 1st ed. (Princeton; Princeton University Press, 1926), 158 pg. University of Ottawa. call no. E209 J35A5 1956
- "CONTENTS.- The revolution and the status of persons. The revolution and the land. Industry and commerce. Thought and feeling." Wr Am Hist 1926
- 35) Keesey, Ruth M., "Loyalism in Bergen County, New Jersey", William and Mary Quarterly, Williamsburg, Va., 3rd Ser., vol. 18, no. 4 (October 1961), pg. 558 to 576. University of Ottawa. call no. MO-PER F221.W71
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- 38) Lynd, Staughton, "Who should Rule at Home? Dutchess County, New York, in the American Revoltuion", William and Mary Quarterly, Williamsburg, Va., 3rd Ser., vol. 18, no. 3 (July 1961), pg. 330 to 359. University of Ottawa. call no. MO-PER F221.W71
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 3rd floor  
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 G1V 4N1

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 M7A 2R9

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 220 Morrissey Boulevard  
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- MG23 B1, British Headquarters Papers
- MG23 B3, Continental Congress Papers
- MG23 B6, John Halsted (Halstead) Papers
- MG23 D2, Edward Winslow Papers
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 P.O. Box 6000  
 Fredericton, NB  
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 Fifth Ave. at 42nd St.  
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 59 Church St.  
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 3rd floor  
 Hearst Building  
 900 Bay St.  
 Toronto, Ont.  
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 Box 1026  
 Harrisburg, Pa.  
 USA, 17120

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 6016 University Ave.  
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 B3H 1W4

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 Kew, Richmond, Surrey, England  
 UK, TW9 4DU

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45 King St.  
Saint Andrews, NB  
EOG 2X0
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20 Dundas St. West  
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M5G 2C2
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Department of Manuscripts  
University Park  
Nottingham, England  
UK, NG7 2RD
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850 Burdett Ave.  
Victoria, BC  
V8W 1B4
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S. University Ave.  
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50 Eagle St. West  
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## ADDENDUM I

## APPENDIX IXX (Tab 19) new Part V

## ABSTRACT OF CONVEYANCES BY COMMISSIONERS IN WENTWORTH COUNTY

This addendum lists chronologically all registered deeds transferring title to lands confiscated following the War of 1812, township by township, in Wentworth County, Gore District. Abstract Indexes and microfilmed title deeds situate at the Wentworth Land Registry Office (No. 62) in Hamilton were my primary sources of reference.

Only the deed noted in item 4 provided the name of the forfeiting party. The lot mentioned in item 6 is not described in the 1819 Alien Register.

## Ancaster Township

- 1) Commissioners of Forfeited Estates to William Terriberry, yeoman.  

dtd. October 15, 1821. reg. October 19, 1825. Lot 36, concession 3, Township of Ancaster. containing 200 acres. consideration £189.10. instrument no. C-351, mf. 2 Co.

confiscated from Abraham Markle, Esq. Alien Inquisition held May 16, 1816. land described as "Lot Number ...Thirty-six [36]... in the Third [3] concession of the said Township [Ancaster]."
- 2) Commissioners of Forfeited Estates to Samuel Andress and Samuel Tisdale.?  

dtd. November 13, 1821. reg. February 20, 1822. Lot 46 Pt., concession 2, Township of Ancaster. containing 112 acres. consideration £42.13. instrument no. B-760, mf. 2 Co.

confiscated from Abraham Markle, Esq. Alien Inquisition held May 16, 1816. land described as "an equal fourteenth part share of that certain messuage or tenement called Union Mills with about One Hundred and Nine Acres of and thereunto appertaining, being part of Lot Number Forty Six [46] in the said Second [2] Concession of the Township of Ancaster aforesaid."
- 3) Commissioners of Forfeited Estates to Samuel Hesse, yeoman.  

dtd. November 13, 1821. reg. April 14, 1824. Town Lot 5 being Pt. Lot 46, concession 2, Township of Ancaster. containing 1/2 acre. consideration £17.5. instrument no. C-101 [or C-102?], mf. 2 Co. confiscated from Eleazer Daggett, saddler. Alien Inquisition held May 16, 1816. land described as "Half an acre of Land being part or parcel of Lot Number Forty Six [46], in the Second [2] Concession of the Township of Ancaster."

- 4) Commissioners of Forfeited Estates to George Chapman, blacksmith.  
 dtd. April 30, 1822. reg. January 1, 1834. Lot 42 Pt., concession 2,  
 Township of Ancaster. containing 25 acres. consideration £12.5.  
 instrument no. G-714, mf. 4 Co.

"called the McGill Farm and so found to have been in the seizen of  
 Eliakin Crosby."

confiscated from Eliakin Crosby, physician. Alien Inquisition held  
 October 1, 1816. land described as "...and part of a Farm Lot in said  
 Township [Ancaster] known by the name of the McGill Lot..."

- 5) Commissioners of Forfeited Estates to Ewing Ritchie, Esq., executor of  
 Alexander Ritchie deceased.

dtd. January 4, 1825. reg. January 1, 1831. Lot 41, concession 2, Lot  
 41, concession 3, Lot 42 N 1/2, concession 3, Township of Ancaster.  
 containing 700 acres. consideration £555. instrument no. G-188, mf. 3  
 Co.

confiscated from Abraham Markle, Esq. Alien Inquisition held May 16,  
 1816. land described as "Lot Number Forty-One [41] in the Second [2]  
 Concession of the Township of Ancaster, Lots Number Forty-one [41]...  
 and the North half of Lot Number Forty-Two [42] in the Third [3]  
 Concession of the said Township containing about Seven Hundred Acres..."

- 6) Commissioners of Forfeited Estates to Reverend George Sheed, minister.

dtd. January 19, 1830. reg. February 9, 1830. Lot 41 S.E. 1/2,  
 concession 1, Township of Ancaster. containing 100 acres. considertion  
 £85. instrument no. G-73, mf. 3 Co.

- 7) Commissioners of Forfeited Estates to George Chapman. blacksmith.

dtd. January 3, 1826. reg. January 1, 1834. Lot 42 Pt., concession 2,  
 Township of Ancaster. containing 25 acres. consideration £76.  
 instrument no. G-715, mf. 4 Co.

see note in item 4 above.

#### Barton Township

- 8) Commissioners of Forfeited Estates to Richard Beaseley, Esq.

dtd. October 15, 1821. reg. September 9, 1824. Lot 16 Pt., Broken  
 Front concession, Township of Barton. containing 33 acres.  
 consideration £27. instrument no. C-171, mf. 2 Co.

confiscated from John Wagstaff, yeoman. Alien Inquisition held June 9,  
 1817. land described as "Part of Lot Number 16 in the broken front in  
 the Township of Barton containing about Thirty Acres..."

## ADDENDUM II

## APPENDIX IXX (Tab 19), new Part VI

## ABSTRACT OF CONVEYANCES BY COMMISSIONERS IN HALTON COUNTY

This addendum lists chronologically all registered deeds to land confiscated following the War of 1812, township by township, in Halton County, Gore District. Abstract Indexes and microfilmed title deeds held at the Halton Land Registry Office (No. 20) in Milton, Waterloo Land Registry Office (No. 58) in Kitchener, and Wentworth Land Registry Office (No. 62) in Hamilton were my primary sources of reference.

Only the deed referred to in item 5 mentioned the name of the forfeiting party,

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**Flamborough West Township**

- 1) Commissioners of Forfeited Estates to Harken Lyons, yeoman.

dtd. December 6, 1820. reg. April 5, 1821. Lots 21 and 22, concession 1, Township of Flamborough West. containing 280 acres. consideration £496.05. instrument no. B-641, mf. 2 Halton.

confiscated from John Mills, yeoman. Alien Inquisition held March 23, 1816. land described as "Lot Number Twenty-One [21] and Twenty-Two [22], in the first Concession of the Township of Flamborough West, Containing about Two hundred and Eighty Acres."

**Nelson Township**

- 2) Commissioners of Forfeited Estates to William Crooks, Esq.

dtd. November 6, 1821. reg. January 20, 1849. Lot 1 Pt., concession 1, North Dundas Street, Township of Nelson. containing 100 acres. consideration £96.05. instrument no. A-94, mf. BL-4-NEL.

confiscated from Joshua Wilder, yeoman. Alien Inquisition held April 10, 1816. land described as "Lot Number One [1] in the first [1] Concession of the Township of Nelson, Containing about Two Hundred Acres. North of Dundas Street."

- 3) Commissioners of Forfeited Estates to Peter Adamson, Esq.

dtd. December 27, 1823. reg. March 5, 1824. Lot 7, concession 3, South Dundas Street, Township of Nelson. containing 200 acres. consideration £101. instrument no. C-61, mf. BL-1-NEL.

confiscated from Bela Stevens, yeoman. Alien Inquisition held April 10, 1816. land described as "Lot number Seven [7] in the Third [3] concession of the Township of Nelson, containing about Two hundred Acres, South of Dundas Street."

#### Trafalgar Township

- 4) Commissioners of Forfeited Estates to Charles Anderson, inn keeper.

dtd. March 31, 1821. reg. February 9, 1830. Lot 12, concession 3, South Dundas Street, Township of Trafalgar. containing 140 acres. consideration £75. instrument no. J-166, mf. BL-1-TRAF.

confiscated from Samuel Fraser, yeoman. Alien Inquisition held January 10, 1816. land described as "Lot Number Twelve [12] in the Third [3] Concession. South Dundas Street, [Township of Trafalgar]."

#### Woolwich Township

- 5-A) Commissioners of Forfeited Estates to William Crooks, Esq.

dtd. November 6, 1821. reg. July 13, 1822. A triangular block on the East side of the Grand River opposite to the forks [Crooks Tract] in the said Township of Woolwich, formerly Block No. Three [3]. containing 7,000 acres. consideration £1,225. instrument no. B-753, Halton Records, mf. CB-58-5 (see vol. Z-10 therein, pg. 9 to 11).

confiscated from William Wallace, brewer. Alien Inquisition held May 27, 1816. land described as "...also seven thousand Acres, being part or parcel of Block Number Three [3] of the Indian Land on the Grand River, being a triangular Block lying on the East side of the said River opposite the Forks thereof in Block Number Three [3]."

- 5-B) William Crooks, Esq. to Hon. William Allan, Esq.

dtd. November 7, 1821. reg. August 18, 1830. A triangular block on the East side of the Grand River [same land as described above], in the Township of Woolwich. containing 7,048 acres. consideration £1,225. instrument no. F-352, Halton Records, mf. CB-58-5 (see vol. Z-10 therein, pg. 53 to 55).

"formerly belonging to William Wallace"

This instrument provides evidence of insider trading with confiscated property. Hon. William Allan was one of the six Commissioners of Forfeited Estates.