

To His Excellency, The Right
Honorable John, Baron Lisgar, of
Lisgar and Baillicborough, one of
Her Majesty's most Honorable Privy
Council, Knight Grand Cross of the
Most Honorable Order of the Bath,
Knight Grand Cross of the Most
Distinguished Order of St. Michael
and St. George, Governor General
of Canada &c &c &c.

I, the undersigned Special Com-
missioner, appointed by instrument
under the Great Seal of Canada,
bearing date at Ottawa, the third
of September 1870, to proceed to
Fort Garry and investigate, inquire,
and report as therein directed,
have the honor to make the
following Report.

I was required by my
Commission

Commission to ascertain and
report 1st

The State of the Laws, regulations
and institutions or ordinances
lawfully in force in Manitoba
up to the 15th July 1870;

2nd

The mode of administering
Justice in Manitoba, the
organization of courts, the number
and mode of appointment of
Justices of the Peace, and Police
arrangements, together with the
means employed, for the admin-
istration of Justice hereunder
and the measures adopted for
keeping the Peace;

3rd

To transmit copies of Laws,
institutions, ordinances or
regulations having the force or
effect of Law up to the date
afore said

You may have this copy

Manitoba Library

Saskatchewan Legislative Library

2-
as
es
n
ber
e
or

as
said, whether made by the
Hudson's Bay Company or by any
other lawfully constituted
authority, on that behalf.

4th

To report what measures it might
be expedient to adopt for the
introduction into the Province of
Manitoba of the System of Criminal
Law and Criminal Procedure
now in force in the other provinces
of the Dominion of Canada.

5th

To make similar enquiry and
report with respect to the North
West Territories, suggesting such
amendments as I might judge
proper to facilitate the Admini-
-stration of Civil as well as
Criminal Justice in those
Territories.

These several subjects will
now be noticed Seriatim:-

The State of the Laws in force at
Manitoba up to 15th of July 1870.

King Charles the Second in the
year One thousand six hundred
and seventy granted to the Hudson
Bay Company under the name of
The Governor and Company of
Adventurers of England trading
into Hudson's Bay, a Charter of
Incorporation with very extensive
privileges and powers, the whole
or even the greater part of which
it is not necessary for the purpose
of this report to describe.

The Charter ordained
amongst other things that the
Territory granted to the Company
was to be reckoned one of His
Majesty's Plantations, or Colonies
in America, and called Rupert's
Land, and that the Company were
to be absolute Lords proprietors
of

of the same forever.
With respect to the power of making
Laws, the language used in the
Charter seems to contemplate
in the first instance, merely the
power of making and enforcing
such regulations, and imposing
such penalties and punishments
not repugnant to the Laws of England
as the Company might deem
necessary, for the good government
of the Territory in respect to their
own Officers and Servants, and
the protection of their trade.

These powers are conferred
in the following words of the
Charter "and further We do by
these presents, for Us, our heirs
and Successors, make, create, and
constitute the said Governor, and
Company for the time being, and
their Successors, the true and
absolute

" absolute Lords and proprietors
 " of the same Territory, limits and
 " places aforesaid, and of all other
 " the premises, saving always the
 " faith, allegiance and Sovereign
 " dominion due to Us, our heirs and
 " Successors, for the same, to have, hold,
 " possess and enjoy the said Territory,
 " limits, and places, and all and
 " singular other the premises hereby
 " granted, as aforesaid, with their and
 " every of their rights, members, juris-
 " dictions, prerogatives, royalties, and
 " appurtenances whatsoever, to their
 " the said Governor and Company and
 " their Successors for ever, to be holden
 " of Us, our heirs, and Successors, as
 " of our Manor of East Greenwich,
 " in our County of Kent in free and
 " common socage, and not in
 " capite, or by Knight's service,
 " yielding and paying yearly to Us
 " our

" our heirs and Successors for the
" same, Two elves and Two Black
" Beavers, whenever and as often
" as he, our heirs and Successors
" shall happen to enter into the said
" Countries, Territories and Regions
" hereby granted: And further our
" will and pleasure is, and by these
" presents for us, our heirs and
" Successors, we do grant unto the said
" Governor and Company and to their
" Successors that it shall and may
" be lawful to and for the said
" Governor and Company and their
" Successors from time to time to
" assemble themselves for or about
" any the matters, causes, affairs or
" businesses of the said Trade, in any
" place or places for the same cause
" ment within our dominions, or
" elsewhere, and there to hold Court
" for the said Company, and the affairs
" thereof;

thereof; and that also it shall and
may be lawful to and for them and
the greater part of them, being so
assembled, and that shall then and
there be present in any such place
or places whereof the Governor or
his Deputy for the time being to be
one, to make, ordain and constitute
such and so many reasonable laws,
constitutions, orders and ordi-
nances, as to them or the greater
part of them being then and there
present shall seem necessary and
convenient for the good Government
of the said Company, and of all
Governours of Colonies, forts and
Plantations, factors, Masters,
Mariners, and other officers
employed or to be employed in any
of the Territories and lands
aforesaid, and in any of their
voyages: and for the better
advancement

and advancement and continuance
of the said trade or traffic and
plantations, and the same laws
constitutions, orders and ordi-
nances to make to put in use
and execute accordingly, and at
their pleasure to revoke and alter
the same or any of them as the
occasion shall require; And that
the said Governor and Company,
so often as they shall make, or
make or establish any such laws,
constitutions, orders, and ordinances,
in such form as aforesaid; shall
and may lawfully enforce, ordain,
limit and provide such pains
punishments and penalties upon
all offenders contrary to such laws,
constitutions, orders and ordinances,
or any of them, as to the said
Governor and Company for the
time being, or the greater part of
them

"them, then and there being present, the
"said Governor or his Deputy being
"always one, shall seem necessary,
" requisite or convenient for the Execu-
"tion of the same laws, constitutions,
"orders and ordinances, and the same
"fines and amercements, shall and
"may, by their officers and servants
"from time to time to be appointed for
"that purpose, buy, take, and have to
"the use of the said Governor and
"Company and their Successors,
"without the impediment of us, our
"Heirs, or Successors, or of any the
"Officers or Ministers of Us, our Heirs,
"or Successors, or of any the Officers
"or Ministers of Us, our Heirs, or
"Successors, and without any account
"therefore to Us, our Heirs, or Successors
"to be made; all and singular which
"Laws, constitutions, orders, and
"Ordinances, so as aforesaid, to be
"made

"made, we will to be duly observed
"and kept under the pains and
"penalties therein to be contained,
"so always as the said laws, customs,
"statutes, orders, and ordinances,
"pines and amerciaments be
"reasonable, and not contrary, or
"repugnant, but as near as may be,
"agreeable to the laws, Statutes or
"Customs of this our Realm."

The powers and privileges
granted with such amplitude of
expression, seem nevertheless to
apply more particularly to the
Government of the Company's
Officers and Servants, as far as our
object rule of the Charter was
concerned: viz. that of the extension
of trade, and the regulations necessary
for carrying it on at Forts, factories,
and other places, where a large
number of persons of different

ranks

rank in the service were employed.
Accordingly, in a subsequent part
of the instrument, as if in contem-
-plation of a future when, as a
-natural consequence of the Estab-
-lishment of forts and factories,
and of the employment of numerous
officers and servants, Settlements
should come to be formed, as well
of persons who had ceased to be
in the service, as of their descendants
and others, powers to legislate and
to administer Justice Civil and
Criminal, as regards all other
persons living within the Territories
are expressly conferred, in the
following terms: "And further
"of our special grace, certain
"Knowledge and mere motion, We
"do for Us, Our heirs and Successors
"grant to and with the said
"Governor and Company of
Adventurers

" Adventurers of England
" trading into Hudson's Bay, that
" all lands, Islands, Territories
" Plantations, ports, fortifications
" factories or Colonies, where the
" said Company's factories and
" trade are or shall be, within any
" the ports or places afore-mentioned,
" shall be immediately and from
" henceforth under the power and
" Command of the said Governor
" and Company, their successors
" and assigns; saving the faith
" and allegiance due to be performed
" to us, our heirs and Successors
" as aforesaid; and that the said
" Governor and Company shall
" have liberty, full power and
" authority to appoint and establish
" Governors, and all other Officers
" to govern them and that the Governor
" and his Council of the several
and

" and respective places where the
 " said Company shall have
 " plantations, ports, factories, Colonies
 " or places of trade within any the
 " Countries, lands or territories
 " hereby granted, may have power
 " to judge all persons belonging
 " to the said Governor and Company,
 " or that shall live under them
 " in all causes whether civil or
 " Criminal, according to the Laws
 " of this Kingdom, and to execute
 " justice accordingly; and in case
 " any crime or misdemeanour
 " shall be committed in any of the
 " said Company's plantations,
 " ports, factories, or places of trade
 " within the limits afore-said, where
 " Judicature cannot be executed,
 " for want of a Governor and
 " Council there, then in such case
 " it shall and may be lawful for
 " the

"the Chief Factor of that place,
"and his Council to transmit
"the party together with the offence
"to such other Plantation, factory,
"or Fort where there shall be a
"Governor and Council, where
"Justice may be executed, or into
"this Kingdom of England as
"shall be thought most convenient,
"there to receive such punishment
"as the nature of his offence shall
"deserve."

I assume that what
is required of me in this Report
is a Statement of the Laws and
institutions de facto existing
and administered up to the
15th of July 1870; I therefore pur-
pose to abstain from offering
any remarks upon a question
which but for recent events
would have been one of great
interest and importance,
that

79
that is to say the question of
the geographical limits and
extent of Rupert's Land, within
which the rights and powers of
the Hudson's Bay Company were
to be exercised.

That question, depend-
ing as it did, upon historical
facts, treaties and Statutes
for the determination of what
extent of Country was occupied
by the Subjects of the King of
France at the time the Charter
of Charles the Second was granted,
and also upon the effect of the
Acts of Parliament of 1774 and
1791, in fixing the boundaries
of Canada, was one of great
importance in its time; but is
not embraced in the objects
of this Commission.

Whatever interest may formerly
have

have attached to that question,
has, of course been superseded
by the recent public acts of the
Executive, both in England
and in Canada, and by the
authority of Imperial and
Canadian legislation.

It is enacted in the
Act, 1868 (Imperial) that for
the purposes of that act "the
" term 'Rupert's Land' shall
" include the whole of the Lands
" and Territories held or claimed
" to be held by the said Governor
" and Company; and the 5th section
provides that "until otherwise
" enacted by the Parliament of
" Canada, all the powers, authority
" and jurisdiction of the several
" Courts of Justice, now established
" in Rupert's Land, and of the several
officers

eston,
cessed
ts of the
land
the
and
the
ts land
t for
the
all
lands
claimed
error
5th section
therwise
ent of
authority
Several
Established
Several
Officers

"Officers thereof and of all
Magistrates and Officers thereof
and of all Magistrates and
Justices now acting within the
said limits shall continue in
force and effect therein."

"The act of the Canadian
Parliament 32 and 33^d Vict.
Cap. III (1869) provides that all
existing laws are to remain in
force until otherwise ordered
by the Lieutenant Governor
under the authority of that act;
and Public Officers and func-
tionaries are to retain their
offices and continue to exercise
their functions."

The Statute of the Canadian
Parliament to amend and continue
the last mentioned act, and to
establish and provide for the
Government of the Province of
Saskatchewan,

"Manitoba," creates a Province
consisting for the greater part
of the former District of Assin-
-boia, the principal Settlement
or colony under the Government
of the Hudson's Bay Company in
that part of the Country, and
which the opponents of their
Rights had formerly maintained
to be within the limits of Canada;
And finally, the Parliament of
Canada and the local Parliament
of the Province of Manitoba have,
both of them, in various Statu-
-tory enactments, recognized
and continued throughout the
entire Province, the Authority of
the Laws passed by the Governor
and Council of Assinboia,
and of the Courts of Justice
formerly existing in that Dis-
-trict under their authority.

Without

-11
Without, therefore, expressing
any opinion upon the merits of
a former controversy, it seems
clear that at the present time
the Dominion of Canada has
established the Province of
Saskatchewan upon the recognition
of the Company's title which is
involved in the Surrender to
the Crown of the whole Territory
that was occupied by them,
and which was the basis of the
order in Council of Her Majesty
admitting the Country into the
Union or Dominion of Canada.

By Royal Charter then,
Rupert's Land was constituted
one of His Majesty's Colonies
or Plantations in America,
and by the words of the Charter
above quoted, power was given
to the Company to administer
Justice

Justice Civil and Criminal
according to the Laws of this
Kingdom. Even if the Charter
had been silent on this sub-
ject, there is no doubt that
in the case of an English
Colony of this kind, as contra-
distinguished from Colonies
acquired by conquest, cession,
or descent, the English Laws
so far as they were applicable
to the condition of an infant
settlement, are, ipso facto in
force, "for the reason that there
can at first be no existing
Laws to contest the Superiority."
A.

Under the authority of the
Charter^B also, The Hudson's Bay
Company

A. Clark's Colonial Law,
Berge's Col^y & Foreign Law.

B. Charter Hudson Bay Co.

Company from the time they re-acquired that portion of the country from the Earl of Selkirk (1821) to whom they had made a grant of it in 1811, made some regulations suited to the State of the Country, through a Governor and Council, for the Government of the Settlers in the Selkirk or Red River Settlement - the only Settlement then existing in their Territories, where any considerable number of Persons had their abode.

This State of things continued up to the year 1839.

On the 13th of March of that year at a General Court held at the Hudson's Bay House in London, by the Governor and Committee, the District of Assinibora was erected and was

13
was to be co-extensive with
" such portion of the Territory
" granted to the late Thomas,
" Earl of Selkirk on the 12th day
" of June 1811, as is now within
" the dominions of Her Britan-
" nic Majesty. C.

" At the same time and
by the same Authority, a
" Governor and Council of
" Assiniboia were appointed,
and also a judicial officer
in the style of "Recorder" who
there-after administered Justice
at regular quarterly Courts, in
all cases Civil and Criminal
as nearly as possible in ac-
cordance with English Law,
and with the aid of a Jury. D.

-
- C. The grant by the Company to Lord Selkirk
had included a considerable portion of what
is now the State of Minnesota and the
Territory of Dakota.
- D. Extract of proceedings of General Court of
Hudson Bay Company in London.
See Appendix.

The

The Governor and Council of Assinibouia soon recognized the necessity of adopting the alterations and improvements that had been made in the Laws of England since the time of King Charles II. and desired to introduce as far as they could, be made applicable to the circumstances of the Country, the English Law as it existed at the time of Her present Majesty's accession, and subsequently they wished to extend the modern Law still farther, by introducing the existing law of England "for the time being."

With this view they passed the 53^d Article of the Laws of the Governor and Council of Assinibouia as revised on the 11th April 1862, and afterwards
 the

the amendment of the 7th January
1864.

The first of these enactments
was in the following words,
"In place of the Laws of England
"of the date of the Hudson's Bay
"Company's Charter, the Laws of
"England of Her Majesty's
"accession, so far as they may
"be applicable to the condition
"of the Colony, shall regulate the
"proceedings of the General Court,
"till some higher authority or
"this Council itself shall have
"expressly provided either in
"whole or in part to the contrary."

The amendment is in the
language following: "To remove
"all doubts as to the true con-
"struction of the 53^d Article of
"the Code of the 11th April 1862,
"the proceedings of the General
Court

11th January
inattentive
words,
England
is May
Laws of
step's
they may
dition
ulate the
ral Court,
only or
ll have
ter in
contrary."
is in the
To remove
in con-
title of
1862
General
Court

" Court shall be regulated by the
" existing Laws of England for the
" time being, in as far as the same
" are known to the Court, and are
" applicable to the condition of
" the Colony". F.

It is obvious that the lan-
-guage of either and both of
these inattentive is inadequate
to extend the Laws of England
of either of the periods therein
mentioned to the rights and
obligations of the inhabitants;
the express terms both of the one
and of the other being restricted
to the regulation of the proceedings
of the Court. Contemporaneous
English Law was nevertheless
deemed to have been introduced
and was considered to be applied

Ei. Revised Laws of Governor and Council
of New South Wales Act 53. 11 January 1862.

by

by the Court to the cases that came before it.^{F.}

The general principles of English Law as understood, to have been modified as above by the action of the Governor and Council of Assiniboia, together with such local regulations as that body made from time to time, constituted the body of law existing in the District of Assiniboia.

These Laws of the Governor and Council were re-registered in a book as they were passed and were in the form of resolutions until the year 1862. On the 11th of April of that year they were revised; that is

^{F.} The Supreme Court Bill, passed by the Parliament of Assiniboia has regulated the subject. amended Jan^y 1864. see sections 30 & 38.

to say

that came
principles
understood
as above
error and
together
tions as
time to
body of
be strict
of the
cit were
as they
in the form
the year
of that
ed; that is

Say, all local enactments that
were in force on the 15th of March
1862, were repealed, and the
revised Laws of Assiniboa
were enacted. Subsequently to
that time, amendments and
alterations of the revised Laws
continued to be made by the
Governor and Council. The
whole of these Laws are com-
prised in the appendix to this
report under the 3^d head of
Enquiry indicated by my
Commission and directing
me to furnish copies of all
Laws in force up to the 15th
July 1870.

I should observe that the
revision of 1862, though it repealed
the laws in force on the 15th March
of that year, and re-enacted
most of them, omitted to re-enact
a Law

and 13th Jan^r 1866
30 & 38
to say

16

Law of the Governor and Council of
the 4th of July 1839. by which trial by
Jury in all Criminal Cases, and in
civil cases for more than Ten
Pounds Sterling was established.

The qualification of Petty Jurors had
been also fixed, and the mode of
making the Lists defined by regula-
-tions of the same date (4th July 1839.)

These regulations remained in
force and were acted upon up to the
date of the revision (11th of April
1862). They were then repealed, but
no other regulations on those
subjects were made. From the 11th
of April 1862 up to the 15th of July
1870. Petty Jurors were summoned
either under the assumed author-
-ity of the old Law, or under the
Common Law of England, as
understood to prevail, and there
never was in the Laws of

Assiniboia

16
a Council of
which trial by
cases, and in
than ten
established.
old jurors had
the mode of
ried by regula-
(14th July 1859.)
remained in
d upon up to the
(11th of April
repealed, but
on those.
From the 11th
the 15th of July
are summoned
summed author-
or under the
glaid as
il, and their
ws of
Assiniboa

Assiniboa, any laws whatever
respecting Grand Jurors, their
qualifications, or the mode of
swearing the Jurors.

In the year 1867 the
British North America Act was
passed by the Imperial Parliament
which so far affected the laws in
force in that part of the Territory
which is now the Province of
Manitoba, that, amongst other
things it made provision for the
eventual admission into the
union of other parts of British
America besides Canada, Nova
Scotia and New Brunswick; and
in execution of that purpose,
the Rupert's Land Act of 1868
(Imperial) was enacted and
in

C. The Supreme Court Bill of the Manitoba
Parliament has supplied their deficiencies
and empowered the General Quarterly Court, to
exercise its usual sittings, the authority of the
Supreme Court, until a Chief Justice shall be
appointed by the Government of Canada.

17
in express terms contained in
full force and effect, "until
" otherwise enacted by the Parliament
" of Canada, all the powers, au-
" thorities and jurisdiction of the
" several Courts of Justice now
" established in Rupert's Land, and
" of the several officers thereof, and
" of all Magistrates and Justices
" now acting within the said lands."

The Parliament of
Canada on the 22^d June 1869
enacted the Statute 32 and 33^d
Vic. ch. 3. "for the temporary
" Government of Rupert's Land, and
" the North Western Territory, when
" united with Canada", which con-
tained similar provisions
recognizing and continuing
established institutions and
existing offices.

Besides The
General

General body of Law existing as above described up to the 15th July 1870, some Imperial legislation from time to time took place, which though it can hardly be said to have had any practical effect in the country now constituting Manitoba, nevertheless extended to it.

This legislation is comprised (1803) in the Imperial Statutes 4th Geo III. ch. 138, 1st and 2nd Geo IV. ch. 66. (1821) and the 22^d and 25th Vict. ch. 26. (1859).

The first of these Statutes enacted that all offences committed within any of the Indian Territories, or parts of America not within the limits of either, of the Provinces of Upper or Lower Canada, or of any civil Government of the United States

of

ed in
tel
distant
s, see =
w. of the
row
at, and
of, and
notices
d kind.
i. of
869
e 33^d
ary
ed, and
y, when
ch. con-
ions
ing
and
e
veral

of America, shall be, and be
deemed to be offences of the same
nature, and shall be tried in
the same manner, and subject to
the same Punishment as if the
same had been committed within
the Provinces of Lower or Upper
Canada. It also gave power to
the Governor of the then Province
of Lower Canada to appoint
persons to act as Justices for the
Indian Territories, for the purpose
merely of hearing and committing
for trial in Lower Canada, whereof
the Governor if the circumstances
of the case made it more convenient
to have the trial in Upper Canada
could send the offender to that
Province, and by instrument
under the seal of the Province of
Lower Canada, cause him to be
tried in the Upper Province.

The

18

Sec 5.

Sec 6.

Sec 8.

Sec 10.

and be
the same
field in
subject to
of the
ed within
Upper
lower to
Province
such
for the
purpose
settling
a, whereof
instances
convenient
Canada
to that
means
peace of
in to be
ce.

18

Sec 5.

Sec 6.

Sec 8.

Sec 10.

The second Statute (11th & 12th Geo IV. c. 66) enacted that the act of the 43^d of Geo III. should be extended to and be in full force in and through all the Territories of the Hudson's Bay Company.

It further gave jurisdiction in Civil cases in these Territories to the Courts of Upper Canada.

It also conferred power on the Governor of Lower Canada to name Commissioners in the Territories for the execution of the processes of the Canadian Courts.

It gave power to the Crown to appoint Justices of the Peace in these Territories in special terms, including the Territories granted to the Hudson's Bay Company, with power to such Justices to take evidence in the Country

The

Country to be used in the Courts in
Upper Canada.

Sec. 11

It gave further power to the Crown
to issue Commissions under the
Great Seal empowering Justices
to hold Courts of Record for the trial
of Criminal offences and
their misdemeanors, and also of
Civil causes, notwithstanding
anything contained in the Hudson's
Bay Company's Charter.

Such courts, as to the number
of Justices, and as to the times
and places of holding them either
within, or beyond the Territories
of the Company were to be consti-
tuted as his His Majesty should
direct, but their power was not to
extend to the trial of Capital
offences nor to Civil actions
wherein the amount in issue
exceeded Two hundred Pounds.

184.

19.
Sec. 14.

Courts in
to the Crown
under the
Justices
in the trial
and
acts of
lauding
the Hudson's
the number
the times
them either
Territories
be consti-
gesty should
was not to
capital
otions
in issue
Pounds.
By,

Sec. 14.

By the last Section, all the rights, privileges, authorities and jurisdictions which the Hudson's Bay Company could by Law claim and exercise under their Charter were to remain in as full force, virtue and effect as if the act had never been made.

The third in this series of Imperial Statutes is the 22^d and 23^d Vict. cap. 26.

This act recites the main provisions of the 4th Geo. III. and of the 1st and 2^d Geo IV. and empowers the Crown either by Commissions appointing Justices under the latter Statute, or by subsequent Commission or by order in Council to authorize such Justices to try in a summary way all crimes, misdemeanours and offences.

what was

70
whatssoever, and to punish
by fine or imprisonment or
both. In cases punishable
by death, or in which in the
Justice's opinion fine and
imprisonment were inadequate
to the offence, they might either
try the offender in the ordinary
way, or send him to Upper
Canada to be tried there under
the act of Geo IV. or if they saw
fit, to British Columbia to be
tried by any Court having
cognizance of a like offence
committed there. This last
mentioned act, however in the
final section is declared not to
extend to the Territories granted
to the Hudson's Bay Company;
The reason of this exception is
apparent in the preamble of the
Statute, which recites that
although

70

perish
subject or
mistake
ish in the
line and
re in-adequate
might either
the ordinary
to Upper
there under
r if they saw
ubia to be
t having
reference
his last
ever in the
elated not to
one's granted
Company;
exception is
caused of the
tes that
although

although the acts of 1808 and
of 1821, had been passed the
Crown had never given effect
to those Laws. No justices had
been appointed, and no courts
of record established by the
Crown; nor had the Governor
of Lower Canada ever appoint-
ed any coroners, or
execute the processes of the
Canadian Courts; and, therefore
it became necessary to make
provision for the Indian
Territories, that were not
included in the limits of the
Charter, leaving to the Courts
established by the Hudson's
Bay Company in their Territories
the authority and jurisdiction
that belonged to them.

II.

221

The mode of Administering Justice in the General Quarterly Court has been indicated under the preceding head of this report.

It is proper however to observe, that the authority to administer Justice, under the Charter, was conferred upon the Governor and his Council and they in their own persons in the early history of the Colony, administered Justice without the aid of a Judicial Officer.

On the 12th of February 1835, it was resolved by the Governor and Council of Assiniboa,
"That a general Court of the Governor and Council shall
"be held at the Governor's residence
"on the last Thursday of every quarter,

tering
Quarterly
ited
ad of
er to
only to
nder the
upon
ouncil
persons
the
Justice
Judicial
1845, in
Governor
bora
of the
shall
is residence
of every
quarter,

"quarter, at which the Magistrates
"shall attend, where cases of
"a more serious nature, cases
"of debt, exceeding forty shillings
"and all appeal cases from the
"decisions of Justices of the
"Peace shall be examined into,
"such Court to be adjourned from
"day to day until all the cases
"in hand be disposed of, and as
"a check on frivolous and
"repetitious litigation, that the
"prosecutor shall pay into
"Court a fee of three shillings
"before any warrant shall be
"issued, and in cases of appeal
"from the Justice of Peace Court
"to the Court of the Governor and
"Council, a fee of five shillings
"be paid into Court by the Appellant
after the appointment
of a Recorder (1839) the
administration

administration of Justice in
the General Quarterly Court
practically devolved upon that
officer.

Although the provisions
of the 1st & 2nd Geo IV, ch. 66 -
Section 12, limited the jurisdiction
of the Courts to be created under
that Statute, in criminal cases
to non-capital offences, and
in civil cases to the amount
of two hundred pounds, no such
limit had ever been imposed
upon the Courts existing under
the Royal Charter, and they
exercised civil and criminal
jurisdiction without any
limitation as to the amount
demanded, or the character of
the offence. The form of trial
was in accordance with English
practice, viz - with the aid of a
Jury

Jury, and either Party might
make the other a witness.

These courts also had under
the Charter, the power to try
offenders who were sent to them
from the distant parts of the
Country where there might be
no Governor and Council to
try them. The words of the Charter
that gave this power are as
follows "That the Governor
and his Council of the several
and respective places where the
said Company shall have
Plantations, ports, Factories, Colonies,
or places of trade, within any the
Countries, Lands or territories hereby
granted may have power to judge
all persons belonging to the said
Governor and Company, or that
shall live under them, in all causes
whether civil or criminal, according

To

Justice in
Court
upon that
provision
of ch. 66 -
the jurisdiction
created under
civil cases
cases, and
amongst
others, no such
unfounded
thing under
it. they
criminal
of any
manner
character of
of trial
with English
aid of a
Jury

" to the laws of this Kingdom, and
 " to execute justice accordingly:
 " and in case any crime or misde-
 " meanour shall be committed in
 " any of the said Company's Mau-
 " tations, forts, factories, or places
 " of trade within the limits aforesaid
 " where judicature cannot be
 " executed for want of a Governor
 " and Council there, then in such
 " case, it shall and may be lawful
 " for the Chief Factor of that place
 " and his Council to transmit
 " the party together with the offence
 " to such other Mautation, factory
 " or Fort, where there shall be a
 " Governor and Council where
 " Justice may be executed, or into
 " this Kingdom of England as
 " shall be thought most convenient
 " By the local laws of a
 " States to the number of twelve
 " holding

tion, and
tightly:
or misde-
mitted in
ing, Mau-
or places
to aforesaid
not be
Governor
in such
be lawful.
that place
must not
the offence
in factory
all be a
e where
ted, or into
and as
convenience
and Pa-
of twelve
holding

holding office for three years,
and at an annual salary of
Twenty Pounds Sterling were
appointed by the Magistrates who
assembled once in each year
(on the last Thursday) for the
purpose of appointing to vacan-
cies and considering complaints.

The constables were liable for
misconduct to be suspended by
the Petty Courts or by any Magis-
trate, and to be dismissed by the
General Court.

2.

Petty Courts were constituted
under the authority of the same
Laws, having cognizance of
debts (except those due to the
Public Revenue) not exceeding
Five Pounds Sterling, and also
of all petty offences punishable
by not more than Forty Shillings
fine

24

fine or penalty, and had special jurisdiction of cases arising from breach of the Liquor Laws and of the Laws respecting the supplying of intoxicating drinks to the Indians.

For the purposes of these Petty Courts the District was divided into three sections defined in the Law, for each of which a presiding and three other magistrates were assigned to the extent of the duty to be performed in each section.

The President and two magistrates constituted a Quorum, and there was an appeal to the General Court given from their judgements where they exceeded two Pounds.

The Petty Court of each section had jurisdiction co-ec-
-tensive

and had special
in making
Liquor Laws
lecting the
lecting
us.
es of these
ick was
sections defined
k of which to
ree other
signed to
ty to be
h section.
d two judges:
a Quorum,
appeal to the
w from their
they exceeded
t of each
ction co-ec=
-Tensche

co-extensive with the limits
of such section only, and in
these as in the General Court
either party to a suit might be
made a witnesses by the other.

III.

Copies of Laws in force up
to 15th July 1870. - to be furnished.

Under this head I have the
honor to append to this report
the documents numbered
1. 2. 3. 4. 5. and 6. viz:
No 1.

Charter of Incorporation
granted by King Charles II. to
the Governor and Company of
adventurers of England trading
into Hudson's Bay.

2 May 1870

No 2.

No 2.

Statute of Imperial Parliament
(1809) 49th Geo III chap 158.

No 3.

Statute of Imperial Parliament
(1821) and 2nd Geo IV. ch. 66.

No. 4.

Statute of Imperial Parliament
(1859) 22nd and 23rd Vict ch. 26.

No 5.

Extract from proceedings
of a "General Court" held by
the Governor and Committee
of the Hudson's Bay Company
in London 17 March 1839.

No 6.

Minutes of the Governor and
Council of Assiniboia as
revised 4 April 1864. and
continued afterwards to the
latest session of that body.

Parliament
1858.

Parliament
V. ch. 66.

Parliament
1859 ch. 26.

Committee
1859.

and
as
and
wards to the
that body.

IV.

Measures expedient for
introduction into Province of
Manitoba of the Criminal
Law in force in the other
Provinces of Canada -

On the 4th January 1871, I
had the honor to make a
preliminary report under this
head of my Commission and
to recommend first, that the
System of Criminal Law and
Criminal Procedure existing
throughout the rest of the
Province under the Statutes
of Canada of 1869 should be
extended with all convenient
celerity to the Province of
Manitoba, to the extent, and
with the amendments which
I then suggested, that is to say,
that

that the thirteen consecutive
chapters of the Statutes of the
Parliament of Canada of the
32^d and 33^d Vict. from
Chapter 18, to Chapter 30,
inclusively,
shall

That the General Court now
existing and any Court that
might be constituted by the
Local Legislature to supersede
it, should be empowered to
take cognizance of all crim-
inal offences committed
either in the Province of
Manitoba, or in any part
of the North West Territories.
y^dly

That in the circumstances
of this Country, the right
possessed by the Queen's
Subjects in the Province of
Quebec,

recourse
of the
of the
from
40.

with now
Court that
by the
superse-
ered to
all crim-
mitted
of
part -
ritories.

stances
right
necess
ince of
uebec.

Quebec, speaking either the English or the French language to elect to be tried by a jury composed one half of persons speaking the language of the defence should be extended to the inhabitants of Manitoba and the rest of the Territories.

As these suggestions and amendments have been adopted by the Parliament of Canada since I had the honor of making that report, it becomes unnecessary that I should now repeat the reasons of law, and expediency upon which they were based.

V.

North West Territories.

I had the honor to mention in my preliminary report, that in Rupert's Land and the North West Territories lying beyond the late District of Assiniboia no written laws existed up to the 15th July 1870: by which it was meant to convey that no local legislation had ever taken place in those countries.

Some important provisions however having the authority of law, and specially applicable to the remote parts of the North West Territories are derived from two sources, First, the Royal Charter; Secondly, Legislation by the Imperial Parliament.

The Charter, as already mentioned, contained the
Provision

provision, that the Governor and Council of any Colony established by the Hudson's Bay Company should have power to administer Justice Civil and Criminal in all cases; and further, that in case of any crime or misdemeanour being committed in any part of the Territories, where Judicature could not be executed, for want of a Governor and Council there, the Chief Factor at such place should transmit the party accused and the offence to some other Plantation, where Justice could be executed, or to the Kingdom of England as might be found most convenient.

The Imperial Statutes cited in a previous part of this Report contained provisions specially designed

2
Governor and
Colony establish-
ing the Company
er to administer
d Criminal in
urther, that in
ce or misde-
committed in
Territories, where
d not be execu-
a Governor
re, the Chief Factor
could transmit
d and the offence
autation, where
e executed or to
England as
most course =

Statutes cited in
of this Report
isions specially
designed

designed for the remote parts
of the Territory; and these
Statutes are still legally in
force, although the Crown has
not seen fit to exercise the
powers taken under their
numerous and important
provisions. The last of these
Statutes especially, viz: the
22^d and 23^d Vic chap 26. requires
particular notice, as it applies
in express terms and exclu-
sively to the Indian Territories
beyond the Jurisdiction of the
Hudson's Bay Company and is
in fact, the only law under which
Justice can at present be
executed in cases arising in
those Countries.

Any legislation respecting
the North West Territories which
now by law comprise as well
The

the Territories formerly belonging
to the Hudson's Bay Company,
as the Countries beyond them,
must necessarily, and for
obvious reasons, connected
with the probable progress of
Colonization, be of an essential-
ly temporary character.

In my judgement it should,
for the present, be restricted to
three points, 1st - the modern
criminal Law should be ex-
tended to the North West Terri-
-tories in the same manner
as it has been already exten-
-ded to the Province of Manitoba
2nd Local Justices of the
Peace should be appointed at
every settlement and every
Hudson's Bay Post in the Interi-
-or with the same power of
sending offenders for Trial
to

ly belonging
 Company
 and for
 unacted
 progress of
 in essential
 character.
 it should
 restricted to
 a modern
 into be ex-
 west Terri-
 manner
 edly extend
 to Manitoba
 s of the
 pointed at
 and every
 in the Inter-
 power of
 for Trial
 to

to Manitoba as was conferred
 on Chief Factors by the Charter.
 3^d The Governor and Council
 of the North West Territories
 should make provision for the
 local Administration of
 Justice at the few points in the
 Interior where any considera-
 -ble numbers of persons resi-
 -de, such provision to comprise
 merely the power of summary
 trial by the Local Magistrates
 in Civil Cases not exceeding
 Fifty Dollars in value, and
 also a similar power of
 Summary Trial in offences
 of small magnitude, such as
 petty thefts and assaults,
 leaving Civil Cases of a
 larger amount, and Crimi-
 -nal Cases of a serious
 nature to be dealt with by

by the Courts of the Province
of Manitoba.

Montreal 15th September

1871.

J. A. M.
Commissioner