

ADDRESS TO HIS MAJESTY, On the subject of the Civil Rights of certain Inhabitants of this Province.

TO THE KING'S MOST EXCELLENT MAJESTY.

MOST GRACIOUS SOVEREIGN,

We Your Majesty's dutiful and loyal Subjects, the Commons of Upper-Canada, in Provincial Parliament assembled, humbly beg leave to approach Your Majesty upon a subject of the most vital importance to this Province, and to represent to Your Majesty, that a large portion of its inhabitants consists of persons who were born, or whose Fathers or paternal Grandfathers were born, within the allegiance of the British Crown, but who were resident in the United States of America at and after the Treaty of 1783.

From the earliest settlement of Upper-Canada, which commenced immediately after the peace of 1783, these persons, with the knowledge and approbation of Your Majesty's Government, came in great numbers to this Province, and were immediately admitted and uniformly considered to be entitled (with no other restrictions than those imposed by the Provincial Legislature, by which they were disqualified from electing or being elected to the House of Assembly until they had resided seven years continually in the Province) to all the rights and privileges, and subject to all the duties, responsibilities, and obligations of natural born British Subjects.

We would further most humbly represent, that the 30th Geo. 3d, cap. 27, was passed for the avowed purpose of encouraging such persons to come and settle in the Province of Quebec, and Your Majesty's other North American Territories, and evidently contemplated their settling as Freeholders, which, if they were Aliens, they could not do without being naturalized: and that as the said Statute contains no provision for the naturalization of such persons, and as there was no law for the naturalization of persons who were born in the King's allegiance, as those were, whom it was principally the object of that Statute to invite into these provinces, the said Statute, according to a fair and liberal construction, implies that their natural allegiance had never been in anywise destroyed, forfeited or dissolved, but that on the contrary, according to the common law principle of perpetual and double allegiance, as laid down by Bracton and other ancient authorities, and applied to the people of Normandy and other Territories in France, recognized by the Court in Calvin's case, in the Reign of James the First, and subsequently recognized by the Judges in the Exchequer Chamber, in the decision of the case of Marryatt and Wilson, notwithstanding they had been Subjects of the United States of America, they still remained natural born British Subjects.

We would also most humbly represent that, as the 31st Geo. 3d, cap. 31st, was passed in the ensuing year, by the same Parliament, and dictated by the same spirit and policy for the improvement and benefit of this colony as the aforesaid 30th Geo. 3d, cap. 27, the said Statutes should be considered in connection, and so construed, as most to reconcile and promote the objects and provisions of each; and that, therefore, the term "*natural born subjects of His Majesty*," used in the said 31st Geo. 3d, cap. 31st, should be regarded as having been intended to include persons of the same description as those who, by the Statute of the preceding year, had been invited into these provinces as settlers, and that this construction is strengthened by the consideration, that if this had not been the intention, while it was the avowed policy of the Imperial Parliament to hold out peculiar encouragement to such persons to come into and settle in these Provinces, they nevertheless were by the very same Parliament absolutely and for ever debarred from enjoying the most valuable and important rights of British subjects, which, at the same time, were freely and fully granted to Aliens by birth, upon their compliance with certain forms and conditions prescribed by the Naturalization Laws: That this construction is conformable not only to the spirit of these Statutes, and the avowed object in particular of the said 30th Geo. 3d, cap. 27, but also to the uniform practice both of Your Majesty's Government and of the Provincial Legislature; that such persons have been encouraged by Your Majesty's Government to come and settle in this Province, have received grants of Land from Your Majesty, have been appointed to various offices of trust and honour, have been required to serve in the Militia, as well during the late war with the United States of America, as in peace; and to perform various other duties as British Subjects; and have continually held seats in the Legislature; and that various Provincial Statutes have been passed upon the principle that they were, to all intents and purposes, British Subjects.

That the meritorious and loyal conduct, in defence of this Province, of such persons of this description as were called into actual service during the late contest with the United States of America, the gallantry with which they encountered the dangers, and the patience and cheerfulness with which they endured the privations of War, prove that they justly appreciate the rights which they have so long enjoyed, and are fully entitled to the confidence, protection, and paternal care of Your Majesty's Government; and that no danger need be apprehended to the Province from the aforesaid construction of the Law, with respect to them.

That in all civil transactions in the Province, they have invariably been considered as British Subjects; that as such they have taken by grant, purchase, devise, marriage and inheritance, and have held, conveyed, and disposed of Land; that many of them have deceased, leaving Land in the Province to others; that a very large portion of all the cultivated Land in the Province, either is now holden or has been held and transferred by them, without any question until lately as to their legal capacity to do so; and that now to regard them as Aliens, contrary to the former construction of Law, which for so long a period has universally prevailed, and been acted upon, would, in this respect as well as others, be attended with great inconvenience, and produce incalculable confusion and trouble through the Province.

That as these persons have become connected in all the relations of social and domestic life with the other Inhabitants of the Province, have for so long a period been invariably considered as British Subjects, and have contributed by their industry and good order to the tranquillity and welfare, and by their bravery and loyalty to the security and defence of the Province, to reverse at this time the said construction of the Law, with respect to them, would excite great dissatisfaction and alarm through the Province, and would tend to destroy all confidence in the security of civil rights, and in the certainty of the Laws in general.

That as this construction of the Law has, from the earliest Settlement of this Province, been solemnly and repeatedly sanctioned by the practice of Your Majesty's Government, and by Acts of the Provincial Legislature, which although submitted to Your Majesty's Government in England according to the Provisions of the 31st Geo. 3, Cap. 31st, have not been disallowed, it would be inconsistent with the honor and good Faith which have always characterized Your Majesty's Government, and an Act of Manifest Impolicy and Injustice now to adopt a new and different construction, whereby they would be regarded as Aliens.

That during the present Session, His Excellency the Lieutenant-Governor has, by Message, informed the two Houses of the Provincial Parliament, that, in consequence of the construction put upon the Law in a recent decision by one of the Courts of Law in England, such Persons would hereafter be exposed to the inconvenience of finding those rights denied which they have hitherto enjoyed; and that in the persuasion that they might be safely received and acknowledged as Subjects, with no other qualifications than those which the Legislature of this Province has from time to time thought it expedient to impose, having earnestly pressed the subject upon the consideration of Your Majesty's Government, he has received Your Majesty's express sanction to assent to an Enactment which may afford relief to such Persons; and has also been pleased to transmit an extract of a letter from the Right Honourable the Earl Bathurst, Your Majesty's Principal Secretary of State for the Colonies, containing the opinion of Your Majesty's Government, that it would be advisable to secure to such Persons, the rights and privileges of British Subjects.

That a Bill has been sent down to Your Majesty's faithful Commons, from the Honourable the Legislative Council, referring to said Message, predicated upon the principle that such persons were Aliens, and conferring upon them certain rights and privileges; but not according to the obvious intention of Your Majesty's Government, as expressed in said Message and Extract, all the rights and privileges of British Subjects, to wit, the rights of voting at any Election of a Member to serve in the House of Assembly, and of being elected at such Election; which Bill Your Majesty's faithful Commons, after mature and solemn consideration of the law and justice of the case, have returned to the Honourable the Legislative Council, with an amendment, by which it is declared and enacted, according to the former uniform construction of the Law in this Province, that such persons have been, are, and shall be considered to be, to all intents and purposes, natural born British Subjects.

That as it is uncertain whether such Bill, so amended, will pass the other branches of the Legislature, and as it is the duty of Your Majesty's faithful Commons, whenever the rights of the people may be in danger, to omit no precautions for their security, they most humbly represent that some further measures should be adopted to prevent this new and alarming construction of the Law from being enforced, to the prejudice, terror and disfranchisement of a large portion of the inhabitants of this Province, who have quietly and loyally confided in the security and certainty of the Laws, as uniformly construed and administered for more than thirty years, and in the honour, good faith, and paternal care of Your Majesty's Government.

We would further most humbly represent to Your Majesty, that there are also in this Province, various other persons, not natural born British Subjects, who have not strictly complied with the provisions of those British Statutes, under which they might have been entitled to the privileges of British Subjects, and to whom, as their well known loyalty and good conduct satisfactorily prove, it would be not only safe, but just and expedient, according to the recommendation of Your Majesty's Government, that all the rights and privileges of British Subjects should be effectually secured.

That Your Majesty's faithful Commons, anxious to extend to such persons all the rights and privileges which the Provincial Legislature is authorized constitutionally to confer, have passed a Bill to secure to all persons domiciled in this Province, all the rights and privileges of natural born British Subjects, subject nevertheless to the qualifications imposed by the Laws of this Province, with respect to the right of voting and being elected, and have sent the said Bill to the Honourable the Legislative Council.

And that Your Majesty's faithful Commons have felt it to be their duty to take some measures without delay, to obtain for such Persons all the rights and privileges of British Subjects, without restriction, which can effectually be done, only by an Enactment of the Imperial Parliament.

Wherefore we humbly pray Your Majesty to take these matters into Your most Gracious consideration, and to recommend to your Parliament the adoption of such measures as may effectually prevent the denial, by a new construction of the Law, to the Persons first mentioned, of rights which they have so long enjoyed, without being questioned, and with the sanction of Your Majesty's Government, and the evils which would result from the application of this new construction to Persons, who, having owned Land in this Province, are now deceased, or resident in a foreign Country; and as may secure beyond doubt, to all Persons resident in this Province, fully and absolutely, all the rights and privileges of Natural Born British Subjects.

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The Attorney General, seconded by Mr. Jones of Grenville, moves in amendment, that after the word "Sovereign," the whole of the Address be expunged, and the following substituted :

"We, your Majesty's most dutiful and loyal Subjects, the Commons of Upper Canada in Provincial Parliament assembled, humbly beg leave to represent to Your Majesty, that a very considerable portion of the population of this Province consists of persons who have come from the United States of America, since the acknowledgment of the independence of those States by treaty, in the year 1783.

"That of these persons, many who were born before the year 1783, had adhered to the British Crown during the contest which preceded, and had, of course, preserved with their allegiance their character of British Subjects : That there were others, who having from their tender years, or other cause, taken no active part in the said contest, remained in the United States, after its conclusion, but who, neither by abjuring allegiance to the British Crown, nor in any other manner, particularly manifested their election to become subjects thereof, and that among those who have so removed into this Province, there were also some who, during the said contest, were actively opposed to His Majesty's arms, or who, since its termination, and before their removal into this Province, had, either by oaths, or acceptance of office, or otherwise, unequivocally declared themselves to be subjects of the Government of the said United States.

"We further beg leave humbly to represent to Your Majesty, that among those who have so removed into this Province from the said United States of America, there were also many who were born in the said States since the acknowledgment of their independence, of parents who came within some one of the descriptions of persons already mentioned.

"That a great proportion of the inhabitants of the United States of America, who have thus removed into this Province, have become settled in the same with the sanction of the Government, and have received grants of land therein from the Crown, and others have become possessed of real estate, which they claim to hold by purchase or inheritance ; and that there are likewise in this Province, many persons born in other foreign countries, who have also received grants of land from the Crown, or become otherwise possessed of real estate therein.

"We beg leave further to represent to Your Majesty, that of these different descriptions of persons, such as were Aliens at the time of their coming into this Province and might have become entitled to the privileges of British Subjects by observing all the provisions of the Statutes of Great Britain, made for naturalizing foreign Protestants in the Colonies, have nevertheless omitted to avail themselves of such provisions, by reason whereof their rights and privileges of Subjects, which they have hitherto been allowed to exercise and enjoy, are liable to be impeached, unless relief is afforded by legislative enactment.

"We do not feel, may it please Your Majesty, that we are called upon to express our opinion as to the right which several classes of persons above enumerated may respectively have to be regarded as Natural Born Subjects of Great Britain ; nor do we desire to anticipate the decisions which the constitutional tribunals may pronounce whenever their civil rights may be called in question. We will only avow to Your Majesty, that with respect to those persons who gave proofs of their adherence to the Crown of Great Britain during the American Rebellion, as well as their immediate descendants, we have never considered that their rights as British Subjects can be questioned, or that they can stand in need of any enactment for conferring them.

"With respect to those who have removed to this Province, without establishing, or pretending to establish, any right to be regarded otherwise than as independent subjects of the United States at the time of their arrival, as well as those who, having either in the Rebellion, or in the war more recently terminated, shown themselves hostile to the British arms, have since become inhabitants of this Province, we desire only to assure Your Majesty, that our confidence in their general good conduct, from past experience, and our assurance of their disposition to support the government of which they have become subjects, leave us no ground for apprehension from their being admitted to equal rights with Your Majesty's natural born subjects in this Province.

"We are by no means inclined to recognize, in those who opposed and in those who maintained the British cause in times of danger and trial, an equal claim to the enjoyment of these rights, nor could we, without violence to our feelings as subjects of Your Majesty, acknowledge it ; but a desire to protect the interests of all Your Majesty's subjects in this Province from being made the object of perplexing litigation, and to leave no ground of uneasiness to any class of the inhabitants of this Province, has led us, hitherto, to look with solicitude for a period to those doubts which have for some time prevailed ; and we are now most happy to find that Your Majesty has been graciously pleased to recommend that all persons now resident in this Province should be admitted to every civil right of subjects, with no other exceptions than the Statutes of this Province have provided.

"We beg to inform Your Majesty that we should cheerfully have given our concurrence to an enactment which should have given effect to Your Majesty's most gracious intentions ; but as it did not appear to us that we could, consistently with the provisions of the Statute, by which the Legislature of the Province is created, confer certain rights and privileges of natural born subjects upon any who were not entitled to them, we humbly pray Your Majesty to recommend to your Imperial Parliament to pass such an act as may confer upon all persons now resident in this Province, all those rights and privileges which Your Majesty's natural born Subjects enjoy in this Province, with such limitations only as have been heretofore imposed by Provincial enactments."

