LETTER

TO

VISCOUNT MELBOURNE

ON THE

ORDINANCE

OF THE

EARL OF DURHAM.

By A COMMONER.

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LETTER.

My Lord,

The proceedings in the House of Lords at the close of the last Session, and the Act of your Lordship's Government in which those proceedings ended, have not ceased to be matter of importance, though other events have succeeded, and other questions arisen, to divert the feelings of the public, and for a time, perhaps, to engross its attention.

Having watched those proceedings from the beginning, and having a distinct recollection of all that took place, I have chosen the opening of the present Session as a fit opportunity for recalling your Lordship's attention to the subject; and I do so, because I find that a question which so materially affects the character of your Lordship's administration is still very imperfectly understood.

Only a few months before the debate upon the Ordinance, the Earl of Durham had been invested with powers which we have heard described in

the House of Lords as "enormous, despotic, and even hideous and portentous in their nature."

"The extraordinary jurisdiction and authority conferred by the Bill," said Lord Brougham, "was intended to supply the absence of the suspended constitutional power by—I will not call it—although it has been called—dictatorial power, but power of a very extraordinary nature." In fact, the legislative and executive powers of the Province were for a time concentrated in the Governor-General.

Objections were urged in both Houses to the creation of such a power, and those objections were answered, and the creation of the power justified, by the distracted state of the colony, and the dangers which still threatened. At the same time the supporters of your Lordship's Government, who viewed with jealousy the suspension of all constitutional power, were reconciled to a temporary dictatorship by the personal confidence which they felt in Lord Durham.

Invested, then, with this extraordinary power, the Governor-General proceeded to Canada, and the first difficulty he had to encounter upon his arrival in the Colony, was the disposal of the state prisoners. This was a preliminary step to the attainment of the objects for which his powers had been created; a matter quite foreign to his mission, but left on his hands by his predecessor in the government.

Some of the rebels had fled, others were in custody; the former had placed themselves beyond the reach

of the law; the latter, to avoid a trial, had consented to leave the country under sentence of transportation. Against those who had fled, he passed an Act of temporary Banishment; as to those who had consented to leave the country without trial or arraignment, he named Bermuda as the place to which they were to be conveyed.

In this way Lord Durham endeavoured to accomplish the first object he had in view of securing the peace and tranquillity of the Province, against the leaders of the late rebellion—"to provide," as he himself said, "for the present security of the Province by removing the most dangerous disturbers of its peace." Not a drop of blood was shed, but the rebel chiefs were banished: and it was made a treasonable act to be at large within the Province without the permission of the Government. Such was the Ordinance of the Earl of Durham.

And what, my Lord, was the success of this measure in the Colony? Why, general acquiescence and approval; it was approved even by those who had most suffered in their persons and property during the recent troubles; and Lord Glenelg might well say, in the debate upon this Ordinance, "that it had given *universal satisfaction to all the parties concerned.*"

The policy and justice of this exercise of "the extraordinary jurisdiction and authority conferred by the Bill," have been so fully and ably shown by a

writer in the London and Westminster Review, that I shall abstain from adding a word upon the subject.

The success, then, corresponding with the spirit in which it was conceived, the Ordinance was transmitted for the approbation of the Queen's Government at home; but even before it reaches this country, a violent outcry is raised in your Lordship's House against the "monstrous injustice and illegality" of this proceeding.

It was described by Lord Brougham in the House of Lords "*as an act which proved the desire to make a most wanton display of power.*" And having done this justice to the motives of Lord Durham, the noble Baron proceeded thus:—

"It is a Proclamation which if the Noble Earl presumes to carry into effect he will be guilty of *no less a crime than murder. So outrageous a violation of the law,—so abominable a violation of the law,—ought not to be suffered to continue for an hour; I cannot conceive anything more monstrous than this,* —a Proclamation by which the Governor-General pronounces that he is, under certain circumstances, prepared to commit a capital felony;—the whole proceeding is utterly at variance with the established law of this country.—The Noble Lord is running in the very teeth of the Act, and of every known law and usage in England."*

* Mirror of Parliament, Sess. 1838, p. 6121. This report of the Debates is referred to throughout.

This was the first introduction of the Ordinance to the House of Lords; and what said Her Majesty's Government in its defence?

"I have only to observe," said the Secretary of State for the Colonies, "that it is premature to come to a conclusion that the Earl of Durham has acted improperly." Your Lordship, declining the responsibility of defending an absent functionary, contented yourself with referring to the difficulties of Lord Durham's position, and the inconvenience of such a discussion.

This was the support Lord Durham received from the Ministers of the Crown, when the first act of his government was denounced as "a most wanton display of power—an outrageous violation of the law—so abominable a violation of the law, that it ought not to be suffered to continue for an hour."

Encouraged by such a reception, Lord Brougham returned to the attack on the following week, repeating, with his usual confidence, even on questions of law, that the Ordinance was altogether illegal; and he then went on to prove very elaborately, that he did not understand the Imperial Statute from which Lord Durham derived his power, and on which the whole question of the legality depended. But having given his own construction of that Statute, he assured the House that any assertion opposed to that construction he must regard "as a mere quibble." "It is no fault of mine," said the Noble Lord, "that I feel it neces-

sary to call your Lordships' attention to this matter. *But such a proceeding as this was never before known, even in the worst times of this country.*"

Upon this occasion your Lordship's Government ventured to state their firm conviction, "that the more the subject was discussed, the more would Lord Durham's conduct be applauded;" and in opposition to the authority of Lord Brougham, Lord Glenelg denied the illegality of the Ordinance.

The ex-Chancellor, still confounding in his own mind a legislative with a judicial power, and still unable to distinguish a legislative from a judicial act, proceeded to tell the House, that "he had consulted some of the best lawyers in Westminster Hall, and they were all agreed.—If, indeed, the Chancellor would declare the proceedings legal, why he would be ready to reconsider his opinion;" but in the meantime "*not one particle of law, justice, or equity, could be pleaded.*" He added, from his own peculiar sources of colonial information, that "if any man were to rack his brain for the purpose of distracting a colony, and undoing all he was commissioned to do, he could not have hit upon a more effectual scheme."

What support does Lord Durham now receive from the Government, when even a "particle of law, justice, or equity," is denied to his Ordinance?

The Chancellor said nothing. Your Lordship implores the House to consider the difficulties he had to encounter; that being on the spot, he is the best

judge of the matter; that anomalies and discrepancies in the administration of justice ought not to surprise them; and then follow some general observations on the *ingenitia vitia* of governments, and of the English Constitution in particular, which place you at the mercy of a foe, who never loses an opportunity of attack, nor ever spares a former colleague.

Two days elapse, and Lord Brougham, in the performance of his "painful duty," reappears with a Bill which, as an "honest member of Parliament, good subject, and patriotic citizen of the empire," he feels himself called upon to introduce. To this Bill I shall presently revert. It professed to have two objects; first, to declare the law, and then to indemnify those who had infringed it. At the same time it declared that the Ordinance, though not justified by law, was "*so much for the service of the public that it ought to be justified by an Act of Parliament.*"*

In proving the necessity for such a Bill, the Learned Lord who introduced it showed, by various quotations and references, the depth of his legal knowledge, and the extent of his well-digested reading; the quotation most to the purpose was from a work of very high legal authority, Chief Baron Comyn's Digest of the Laws of England.

Now if he had quoted this book in good faith, and as an "honest member of Parliament," he would at least have added that, in the section immediately following that to which he referred, and which treats of

* Mirror of Parliament, Sess. 1838, p. 6158.

'Attainder against absent offenders,' the Chief Baron lays down the law thus:—

"So the Parliament sometimes makes an Act for the Banishment of a person, though he be not before convicted of any offence."

"So the Parliament, by an Act, may impose fine or imprisonment on a person without a Trial by the law."*

This, I say, he would have added, if he had been treating the *legal* question as an honest member of Parliament, but this he omitted to do.

Again Lord Glenelg maintained the legality of the Ordinance, except as to the nomination of Bermuda; and in an excellent reply to the speeches on the other side he contended, that "*if means had not been taken to exclude the return of the rebels, the principal duty of the Government would not have been performed.*"

The Lord Chancellor also, upon this occasion, maintained the legality, with the same reservation as to the disposal of the prisoners in Bermuda, which he stated to be an *excess* in the execution of Lord Durham's powers. And in defending the Act of Banishment, he showed that the imperial Parliament had delegated to the Governor-General the power of passing such an Act.

And what was your Lordship's answer to those who then urged you to abandon the Ordinance? "*When I consider,*" said Viscount Melbourne, "*that*

* Com. Dig. Tit. Parliament. (H. 7, 8.)

the disallowance of the Ordinance would be destructive of the moral effect of the Noble Earl's Government, and almost the same as pronouncing the termination of his connexion with the Colony, and throwing every thing loose to every chance of confusion; I cannot, with my regard to the prosperity of the country, be a party to that course, especially as any part of the Ordinance which is unauthorized by the law would, as a matter of course, become itself inoperative and without effect."*

These were your Lordship's words on the 9th of August, and they are well remembered as the conclusion of that speech in which you compared the aristocracy of English Peers to "a low and truculent Democracy," and read them a wholesome lesson on the factious character of their proceedings.

Twenty-four hours had not elapsed after the delivery of this speech, when you announced to the same Peers, that you had determined to disallow the Ordinance altogether, and to advise the Queen to set it aside.

Every body asked what had happened in the mean time?—Whether the Law Officers of the Crown had pronounced it illegal? Two or three days pass, and the Attorney-General repeats in the House of Commons what the Lord Chancellor had said in the Lords, —that the Ordinance was legal in all but one point, and as to that, it would be *inoperative*, notwithstand-

* Mirror of Parliament, Sess. 1838, p. 6167.

ing the confirmation of the Crown. And here let me observe, that it was in the House of Commons, and by the Attorney-General, that the real nature and legal character of the Ordinance was first fully explained to the country. In the House of Lords it was never fully and clearly explained; and it may perhaps be doubted whether it was ever understood in that judicial assembly, except by the Lord Chancellor.

The case then stood thus:—The Law Officers had pronounced the Ordinance legal, except as to one part, where it would be inoperative, though confirmed by the Crown. The Minister had declared that to disallow it would strike at the root of all authority in the Colony; and yet, forsooth, because it must be inoperative in one part, and that an unimportant part, the whole was to be disallowed, and the first act of the Canadian Government set aside.

To this hour there has been no rational explanation of its disallowance. We have yet to learn from your Lordship what peculiar "cogency" you discovered in the observations of Lord Ripon, to which you were pleased to refer, in announcing the determination of the Cabinet; and how it happened that such "cogency" produced no effect, either upon yourself or the Lord Chancellor on the night those observations were made. In the meantime I may be allowed to say, that others are unable to discover in them even a shadow of argument either as to the law or policy of such a proceeding. It was not pretended that any

injustice had been done by sending the prisoners to Bermuda. Even Lord Brougham was compelled to allow that they went of their own free will and consent, and had no right to complain; so that the legal objection to the Ordinance was reduced to a mere question as to the effect of *surplusage* in an instrument otherwise valid.

Now, I say, my Lord, that the course which your Lordship took under the plea of illegality, to say nothing of state policy, was totally inconsistent with the established maxims, principles, and practice of English law. I say that in no Court of Law in England would the execution of a legal power be set aside on such grounds.

Let me take a case where no public policy intervenes,—a mere question between man and man, in which private interests alone are concerned;—what is the law of England where a power is given to an individual, who, in the execution of that power, exceeds the prescribed bounds?

Is the law doubtful on the point? Is it not familiar to every lawyer who took part in those debates? Is there any maxim of our jurisprudence better established than this—*Utile per inutile non vitiatur?* Ask any lawyer in Westminster Hall whether an English Court of Justice would set aside the execution of a power for mere excess! Ask the lawyers in the House of Lords what they would do in such a case? Would Lord Lyndhurst—nay, would Lord Brougham, sitting as

Chancellor, have set aside the execution on account of the excess, where that excess was clearly distinguishable? Let me refer your Lordship to an authority which those Learned Lords will not dispute.

"The execution of a power may be good in part and bad in part, and *even in law an irregular execution of a power will be supported,* and not amount to no execution at all, and in many cases only the excess of a power will be void, the residue good.

"The grounds and principle of all this is, that where there is a complete execution of a power, and something *ex abundanti* added, which is improper, there *the execution shall be good, and only the excess void;* but where not a complete execution of a power, where the boundaries between the excess and execution are not *distinguishable,* it will be void.

"If the Court can see the boundaries, it will be good for the execution of the power, and void as to the excess."*

This, my Lord, is the law of England, as it was laid down by a Master of the Rolls in the reign of Queen Anne. He was sitting at the time for Lord Hardwick; and the judgment he then delivered has been considered a ruling authority ever since.

* Alexander *v.* Alexander, ii. Ves. p. 640.—In arguing this case, that of Lord Conway was referred to, who had a power to make certain grants by one instrument, and he made several, some of which were not within the power; and though all were within the same instrument, they were treated as distinct, and separated by the Court.

That learned Judge, with reference to the case before him, instead of setting aside the instrument by which the power had been executed, proceeded to consider *if there was no other way to make it good,* "because the Court," he observed, "will strongly lean in favour of that side, if it can."

What the Master of the Rolls in the reign of our present Gracious Queen might do, I will not venture to predict. His Lordship, while a Commoner, was wont to discourse much on state questions and the duties of Legislation. As a Peer, with hereditary privileges, his Lordship I observe, is silent; and he maintained his usual silence when this Ordinance was under discussion. His friends regret that, having now an opportunity of speaking with more authority, and therefore with more effect, he should be so absorbed in the business of his Court, as to find no leisure for attending to his Parliamentary duties. Let us hope that, in his judicial capacity, he makes amends for this apparent neglect of duties which he knew so well how to describe.

So uniform in its application is the maxim of English law to which I have referred, that there is no act, public or private, which it cannot reach, however tainted such act may be with illegality. Whether it be the execution of a power, or the grant of property;*

* "Where a good thing and a void thing are put together in the same grant, the Common Law makes such a construction that the grant shall be good for that which is good, and void for that which is void."—Ley's Rep. p. 79.

the act of a subject, or the act of the Sovereign; the order of a Justice of the Peace, or a judgment of the Queen's Bench—the maxim is equally applicable, and the law the same; and while with a careful hand the law separates and rejects all that is added *ex abundanti*, it confirms and gives full effect to all that is legal.

Strange indeed would it be, if a different principle prevailed where a power is conferred for public purposes, under the authority of the State.

Suppose a Magistrate in issuing an order exceeds the limits of his jurisdiction,—a case that has frequently occurred,—how is the order treated by those who have power to review it on appeal? Is it set aside altogether as illegal, or is it enforced so far as it is legal? Ask the Chief Justice of the Queen's Bench; and the same learned Judge will tell you, that if a judgment of his own Court were found erroneous for an excess of jurisdiction, and carried before a Court of Error, it would be treated on the same principle; and in no case would a judgment be wholly set aside, where the Court of Error had the means of separating the excess.

Upon this principle the House of Lords must have acted, if they had been sitting as a judicial assembly, to review the acts of the fifteen Judges; but, sitting as a deliberative assembly, to review the acts of Lord Durham, with much talk of justice and law, neither law nor justice prevailed.

If your Lordship should desire any further illustra-

tions of the legal principles which ought to have guided you on this occasion, and which would have averted all the mischief you predicted, I refer you to those books of constitutional law which treat of the Prerogative of the Crown. There you may see what is the legal operation of the Prerogative, where the Sovereign exceeds the limits of his powers: and should the Queen be ever advised, in the exercise of her Prerogative, to go beyond the strict confines of Constitutional Law, your Lordship will learn that the Courts of Law will do that which the Minister omitted to do; and, setting aside the excess, will enforce all that is legal.

What, then, are the reflections which naturally suggest themselves on recalling these proceedings in Parliament? In what light do they present the Peers of England—whether we consider them collectively as a deliberative assembly, or individually as public men? In what light must the leaders of the two great parties in the State appear to the country? And what judgment will the country pass upon your Lordship as a Minister?

Whether your Lordship was justified in comparing the Peers to "a low and truculent Democracy," may be doubtful; but certainly the worst enemies of our aristocratic institutions could scarcely desire a stronger argument against their utility than may be found in the history of these proceedings. The only institution of the country which unites legislative and judicial

functions is unable, on a great occasion, to distinguish between a legislative and a judicial power; and, throughout a long deliberation, confounds a legislative Act with a judicial proceeding. The highest Court of Appeal in the country is unable to understand a law which, in its legislative capacity, it passed but a few months before.

In this unhappy state of ignorance as to the meaning of the law they had so recently passed, they proceed to investigate an alleged act of tyranny, perpetrated under the authority of that law, of which nobody but themselves complain. I repeat—an act of which nobody but themselves complain. After many discussions, in which the illegality of the act is prejudged, and the exercise of the authority is designated as a wanton display of power, without a particle of law, justice, or equity, and one which could not be carried into effect without "being guilty of no less a crime than murder,"—they record, as their own deliberate opinion, that the act in question, "though it cannot be justified by law, is so much for the service of the Public that it ought to be justified by Act of Parliament;" and, after declaring the law to be what the highest judicial, and I will add, the highest legal authority in the country, says it is not, they proceed, first, to take away from those who had been sufferers by an illegal act all legal redress, and, then, to take away from the Governor of a distracted colony the power which he had exercised "so much for the service of the Public."

Such was the declaratory Act as it was framed by one of the ex-Chancellors, after the most approved legal precedents, and adopted by the other, as the organ of his party. Its professed object was a "warning to Lord Durham;" and the avowed intention of its author was "a sort of rap at the Governor-General." * Well might the Lord Chief-Justice of England exclaim with warmth, when he saw this Bill,—You are doing here the very thing you complain of in Lord Durham. Absent and unheard, he is condemned for a violation of the law; and those who have suffered from his illegal acts are, at the same time, deprived of legal redress. "I think," said Lord Denman, "that if the Earl of Durham were present he would object to this Bill, and enter on his justification. That Noble Earl is not aware of what has passed on this subject, nor are your Lordships aware of what defence he will be able to offer; yet you are prepared to say to him by Act of Parliament, 'You have done that which is not justified by law.' I do not know that such is the fact. At all events, those who have infringed the law ought to answer for the infraction; and the parties injured ought not to be deprived of their remedy."

Even Lord Brougham was staggered by this just and noble rebuke; and he was driven to defend himself under a maxim of English law, which was forgotten when he attacked Lord Durham, and only remembered to cover the inconsistencies of his Bill.

* Mirror of Parliament, Sess. 1838, p. 6192.

The transportation to Bermuda, he said, had taken place with the consent of the prisoners, and they had "no right to complain of this stretch of power. They had gone of their own free will—*volenti non fit injuria.*"

But, though staggered for a moment, Lord Brougham does "not care so long as he gets an Indemnity Act." The indemnity was the sting.

I will not attempt to follow this Bill through all the phases it presented. One day it was a mere Indemnity Act, without any declaratory clause; the next day it was not so much an Act of Indemnity as a Declaratory Act; and, at the last moment, its author endeavoured to throw on the Minister the odium of demanding an indemnity, nor would he have hesitated to do so, had he not received a check from the Duke of Wellington. After all, when the Bill came out of his hands, there was no indemnity for the officers who had acted under the Ordinance. No means were taken to prevent the return of the rebels, which Lord Glenelg had declared to be "the first duty of the Government;" and the Governor of a disturbed Province was denied the power that was conceded to the Governor of an adjoining Province, then in a state of comparative tranquillity. The Bill was in every respect worthy of the House, whose peculiar function it is to correct the crude legislation of the Commons.

Unmoved by its inconsistencies, caring for none of

these things, Lord Lyndhurst pressed the Bill upon the Minister.

The part which that Noble and Learned Baron took in these discussions was very characteristic of the man. Acquitting Lord Durham, whom he was "proud to call his friend," he traced all "the mischief" of the Ordinance to the composition of the Special Council, which Lord Durham had himself appointed. It should have been composed, said the Learned Peer, of "men conversant with the laws and institutions of the country,"—and then the mischief would have been avoided.

Well, suppose it had been composed of men conversant with the laws and institutions of the country—suppose it composed of the Lord High Chancellor of England, the Lord Chief Justice of England, the Learned Baron himself, and his Learned Friend who succeeded him on the Woolsack—suppose them assembled in council to assist and advise Lord Durham in matters of constitutional law;—we may form some opinion of the assistance they would have rendered him by the Debates on the Canada Bill. "In the course of the debates, last night," said the Duke of Wellington, "various opinions were given by high legal authorities on the construction of the Canada Government Bill. One opinion was given by the Noble and Learned Lord opposite, and my Noble and Learned Friend behind me; another opinion was given by the Noble and Learned Lord on the Woolsack." A third, differing from both, was after-

wards given by the Noble and Learned Lord who presides over the Court of Queen's Bench, upon which the Duke further observed :—" I am surprised that the Noble and Learned Lord (Denman) should have intimated a doubt whether the Governor-General of Canada has or has not the power to transport these individuals to the Bermudas."

Lord Lyndhurst's attack on the Council was at once generous and safe. The day, he knew, must come when Lord Durham would re-appear in the House of Lords ;—not so the Members of the Council. It was like his attack on a former occasion upon the absent Municipal Commissioners, who, if I recollect aright, were defended by the Government with equal spirit.

But to return to the Bill which Lord Lyndhurst had adopted, and to which a majority of the Peers assented.—Your Lordship had to elect between a ministerial defeat in the House of Lords and the abandonment of the Ordinance by the Cabinet. You could resist no longer—the Ordinance was annulled, and its object entirely defeated.

The Bill ultimately passed without any provision, either with respect to the disposal of the prisoners at Bermuda, or with respect to the ringleaders of the insurrection who had fled. It was the British Parliament which first proclaimed to the Colony that no impediment existed to the return of the rebels.

And now, my Lord, what are we to think of the Minister ?

That the Duke of Wellington, unable to see his way through the mazes of an Act of Parliament, should place himself under the guidance of a Learned Peer "conversant with the laws and institutions of the country," was excusable. That Lord Lyndhurst, after expressing "the pride he felt in calling Lord Durham his friend," should compliment Lord Brougham on "the excellent way in which he had treated the question," and then attack Lord Durham's nominees, might create some surprise among those who are not much acquainted with his Lordship. That Lord Brougham, under covert of justice and convenient seeming, should attack the Earl of Durham in his absence, created no surprise at all. He remembered the Edinburgh Banquet. It was Lord Durham who withstood the Chancellor, face to face, when he appeared in the pride of office to tax the people with their impatience for reform. That the same Noble Baron, no longer Chancellor, should pronounce Lord Durham's Ordinance illegal, was a mere harmless opinion. And when the loudest of the advocates of the Irish Coercion Bill denounced the Ordinance as tyrannical, it was felt to be perfectly consistent with his character.

But that no Minister of the Crown should have explained in the first instance to the House and the Country the real nature of Lord Durham's acts, which were denounced as a wanton display of power, contrary to the first principles of justice, and without a particle of law, justice, or equity—that no

Minister of the Crown should have stood up to expose the noisy declaimer, and shame the vindictive slanderer of the absent—and that the Government should have abandoned the Ordinance at the very moment when it was justified by the Peers as "of so much service to the State"—this, my Lord, was neither harmless nor excusable; and, if not matter of surprise to those who have watched your Lordship's course of late, was indeed a heavy blow and great discouragement to all the friends and supporters of your Lordship's administration.

You, my Lord, were bound, as First Minister of the Crown, to throw the whole protection of the Government around a Governor-General, not only acting under the Crown, but upon whom you had forced the Colonial Government. I say nothing of private friendship or party connexion; but you were especially bound, as the present head of the Liberal party, to protect Lord Durham in his absence against all unfair Parliamentary attacks.

It is a poor excuse to say, that the matter originated with the Tories. Nobody believes that the Duke of Wellington, at the head of the Government, would have given way upon such grounds. Nobody, for a moment, believes that the Duke of Wellington, under the same circumstances, would have sacrificed the Governor of a distracted colony, or have abandoned his own views of State policy to a faction in either House. Nor does any one believe that Lord Lyndhurst, under the responsibility of office, would

have allowed such legal objections to be started and argued, night after night, without a full exposure of their fallacies.

Can your Lordship expect your friends to defend this act of your Government? Can you expect them to justify a measure of concession to opponents, which is characterized by those very opponents as an act of pusillanimity? Hard work it is, my Lord, to palliate your other concessions in the course of the same Session.

Will you forgive me if I here remind you that your administration was originally based on a fixed and definite Principle. Resistance to that Principle had displaced your opponents, and restored you to place and power. To that Principle you publicly and emphatically pledged yourself, when you first announced to Parliament the formation of your present Cabinet. That Principle you have since abandoned; and after your abandonment of that, it was perhaps too much to expect that your resistance would hold out long on behalf of an absent officer of the Crown, though he happened to be your personal friend, and his accusers your political enemies.

Whether you were betrayed into the first concession by too firm a reliance on the purity of your motives, and the conscious utility of your public character, I do not stop to inquire; but your own friends are beginning to ask where these concessions are to end: they may soon ask whether there can be safety in a

Minister who is neither bound by his public pledges, nor by the ties of private friendship.

I am told that you have expressed surprise at Lord Durham's abrupt resignation and return to this country, and that you even complain that he did not make sufficient allowance for the difficulties of your position. Surprise, my Lord! Why what did your Lordship tell the Peers when they called upon you to disallow the Ordinance? Did you not tell them, "that the disallowance of the Ordinance would be destructive of the moral effect of the Noble Earl's Government, and *almost the same as pronouncing the termination of his connexion with the colony?*"

And what, I would ask, were the difficulties of your position? Recall for a moment what that position really was: on the one side threatened with all the dangers which must ensue in a colony, from "striking at the root of all authority," and "throwing every thing loose to every chance of confusion." On the other side, you were threatened—with what? With the displeasure of that House, which, from the first hour of your administration, has thwarted every purpose of your Government. And this displeasure was embodied in a Bill which the House of Commons would instantly have thrown out, without waiting for the exercise of the Prerogative.

This, my Lord, was your position when, acting in the spirit of the whole Session, and so far we may

give you credit for consistency, you determined to give way to the Lords. The renewed convulsion of a colony could not alarm your firm mind; the displeasure of a factious assembly was more than your mind could bear. The spirit of the Minister was seen in boldly encountering dangers abroad, in order to escape a momentary defeat by his own Order, at home.

On other occasions you have been ready enough to resort to the Commons as the rock of your administration; and unless my memory fails me, you have more than once declared to the Lords, that whatever opposition you might meet with in higher quarters, you would not resign the Government, as long as you retained that support. When your own power is in question, you fly from the Lords to the Commons: when the interests of a Colony, and the character of a friend are at stake, you desert the Commons for the Lords.

Something indeed was said, in the way of excuse, about the late period of the Session, and the thinness of the House. Many of your Lordship's obsequious supporters had, no doubt, retired to their country sports; but a Treasury note would have brought them back. I have no right, however, to suppose, and I might be doing you great injustice in supposing, that you could adopt such an excuse, or allow it to be put forth under your authority. We all remember the challenge given to the Ministerial leader

in the House of Commons.—" I see no reason," said Lord Stanley, " why the Session should not be prolonged. Parliament has often been assembled on less important occasions; and it is no answer to say that the Session is near an end—that the Members are wearied out."

Where, then, I again ask, were the difficulties of your position? No, my Lord, we must seek elsewhere for the cause of all this.

It may be, that after so great a sacrifice on your own part, at the commencement of the Session, you thought you might fairly expect a similar sacrifice on the part of others, and especially of those who held power under your Government. You may have thought, notwithstanding your declaration to the Peers, that even Lord Durham would consent to retain a sovereign power on any conditions which the House of Lords or the Minister might impose. You may have thought that Lord Durham was equally indifferent with yourself, as to the moral effect of his Government in the Colony.

Some, indeed, in their search for the hidden cause, have suspected a lurking treachery in this desertion of one with whom you had been long connected, both in public and private life;—one who never yet abandoned a principle to which he was pledged, and whose greatest fault, as a public man, is the tenacity with which he clings to a private friend.

This, my Lord, I disbelieve, and so do the great majority of your supporters, both in and out of Parliament; but may we not be driven to justify our disbelief by an admission that your Lordship is of too easy a nature, and, I fear that I must add, too deficient in firmness of purpose and moral energy, to conduct the affairs of a great nation at a critical period. I do not deny that your Government has its merit;—your own existence as a Minister may still have its utility. But do not set too great a value upon either. Trust not too far, my Lord, either to the consciousness of your own rectitude, or to the smiles of a Court, which are said to be somewhat lavishly bestowed on your Lordship. Believe me, the favour of the Crown cannot long uphold a Minister who is driven from every position that he takes up.—Nor will the support of the Commons of England be long given to an administration which has no fixed principle of action, and which may be pointed at in English history as a proof and illustration of THE TRIUMPH OF FACTION OVER PUSILLANIMITY.

And now, my Lord, I have done. I rejoice that Lord Durham at once resigned his authority in the Colony when the authorities at home had struck a blow which they knew "*would be destructive of the moral effect of the Noble Earl's Government.*" I rejoice that he resigned a power which no high-minded man could any longer retain,—a power so ill-defined by Parliament, that "men conversant with the laws and institutions of the country" could

not agree upon its limits,—a power so ill supported by the Minister, that no reliance could be placed on the acts and declarations of his Government for the short space of four-and-twenty hours.

I have the honour to be,

MY LORD,

Your Lordship's most obedient humble servant,

A COMMONER.

London, 16*th February*, 1839.

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