

M E S S A G E ,

FROM

HIS EXCELLENCY THE LIEUTENANT GOVERNOR,


OF 30th JANUARY, 1836 :

TRANSMITTING A DESPATCH

FROM

HIS MAJESTY'S GOVERNMENT.

PRINTED BY ORDER OF THE HON. THE LEGISLATIVE COUNCIL.


R. STANTON, PRINTER.

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F. B. HEAD.

The LIEUTENANT GOVERNOR transmits to the Legislative Council the Communication alluded to in his Speech to the two Houses of the Legislature, on the 27th instant.

The Lieutenant Governor was commanded by His Majesty to communicate "the substance" of his Instructions to both Houses of the Provincial Parliament, but considering it would be more satisfactory to them to receive the whole, he accordingly transmits it herewith.

Government House,
30th January, 1836.



DESPATCH, &c.

Downing Street,
5th December, 1835.

SIR,

I have the honor herewith to transmit to you a Commission, under His Majesty's Sign Manual, appointing you Lieutenant Governor of the Province of Upper Canada.

You have been selected for this office at an era of more difficulty and importance than any which has hitherto occurred in the history of that part of His Majesty's dominions. The expression of confidence in your discretion and ability which the choice itself implies, would only be weakened by any more formal assurance which I could convey to you.

In the following instructions I shall pre-suppose your knowledge of many occurrences, the correct understanding of which is essential to the discharge of the duties to which you are called, but which it is unnecessary for me to recapitulate. As, however, a more exact acquaintance with Canadian affairs is indispensable for your guidance in the administration of the Government of Upper Canada, I think it right to refer you to those sources of information on which you will be able most safely to rely. Amongst these, the first place is due to the Journals of the Legislative Council, and the House of General Assembly. The Appendices subjoined to the annual summary of the proceedings of the two Houses contain a fund of information on almost every topic connected with the statistics and political interests of the Province; and to those reports you will be able to resort with far greater confidence than to any other source of similar intelligence. The Report of the Committee of the House of Commons of the year 1828, with the evidence, oral and documentary, to which it refers, will also throw much light on the progress and the actual state of the questions agitated in the Upper Province. The correspondence of my predecessors and myself with the Officers who have successively administered the Provincial Government will of course engage your careful attention.

In Upper Canada, as in all countries which enjoy the blessing of a free Constitution, and of a Legislature composed in part of the Representatives of the people, the discussion of public grievances, whether real or supposed, has always been conducted with an earnestness and freedom of enquiry of which, even

when occasionally carried to exaggeration, no reasonable complaint can be made. The Representatives of the Canadian people, if departing at times from the measured style and exact terms in which the investigation of truth may perhaps be most successfully conducted, have yet, even in the agitation of questions the most deeply affecting the interests of their Constituents, exhibited a studious respect for the person and authority of their Sovereign, and a zealous attachment to the principles of their balanced Constitution. Until the last Session of the Provincial Parliament the remonstrances of the House were chiefly confined to insulated topics of complaint: discussions, indeed, occasionally arose, and discontent was occasionally manifested; but it may be affirmed that, generally, their subsisted a spirit of amicable co-operation between the Executive Government and the Legislature.

The cession by His Majesty of the Revenues raised under the Statute 14th Geo. 3. cap. 88. to the appropriation of the House of Assembly was a gratuitous and unsolicited act, and was accepted by that body in a spirit of grateful cordiality.

I will not pause to recapitulate the events which immediately preceded, if they did not produce the interruption of this mutual good understanding.

It is sufficient for my present object to observe, that the relations which had formerly subsisted between the Executive Government and the Representatives of the people underwent an entire change, immediately after the elections which took place in the autumn of 1834. The supporters of the Local Government now, for the first time, found themselves

in a constant minority on every question controverted between them and their political antagonists. A Committee of Grievances was appointed, by which a report was made impugning the administration of affairs in every department of the public service, and calling for remedial measures of such magnitude and variety as apparently to embrace every conceivable topic of complaint. Having adopted this report, and having directed its publication in an unusual form, the House transmitted, through the Lieutenant Governor, to the King, an address, in which some of the more considerable of the claims of the Committee were urged in terms of no common emphasis. It will be your first duty, on the assumption of the Government, to convey to the House the answer which His Majesty has been advised to return to these representations.

I cannot proceed to explain the terms of that answer without the preliminary remark, with a view to which the preceding statement has been chiefly made. Whatever may be the justness of the complaints now preferred respecting the general principles on which the public affairs of the Province have been conducted, the Representatives of the people of Upper Canada are at least not entitled to impute to the confidential advisers of the King any disregard of their remonstrances. The greater part of the grievances detailed by the Committee and the House are now for the first time brought by them under His Majesty's notice. My predecessor, the Earl of Ripon, in his Despatch of the 3th November, 1832, to Sir John Colborne, was commanded by the King to state that

“ there was no class of the Canadian people, nor any individual amongst them, to whose petitions His Majesty did not require that the most exact and respectful attention should be given.” His Majesty has never ceased to be actuated by the spirit which dictated those instructions, and of course will not deny to the House of General Assembly that careful investigation of the grounds of their complaints which he graciously pledged himself to bestow on the representation of any individual petitioner. I feel myself, therefore, entitled, on behalf of His Majesty’s Government, to object to any resort on the part of the House to that ulterior measure to which they allude, but which they will feel with me is to be justified only by an extreme emergency.

I now proceed to the consideration of the various topics embraced in the seventh Report of the Committee of Grievances, and in the Addresses of the two Houses to His Majesty. And I shall advert to them in the order in which they are pursued in the report itself.

In the following pages, if any subject should appear to be passed over without due regard, you will understand that I have, at least, been guilty of no intentional omission, but have, in obedience to His Majesty’s commands, made it my endeavour to meet every question which the Committee and the House have thought it necessary or proper to raise.

1st. It is stated that “ the almost unlimited extent of the patronage of the Crown, or rather of the Colonial Minister for the time being, and his advisers here, together with the abuse of that patronage, are

“ the chief sources of Colonial discontent. Such (it
 “ is added) is the patronage of the Colonial Office,
 “ that the granting or withholding of Supplies is of no
 “ political importance, unless as an indication of the
 “ opinion of the country concerning the character of
 “ the Government, which is conducted on a system
 “ that admits its officers to take and apply the funds
 “ of the Colonists without any Legislative vote what-
 “ ever.” The Committee then proceed to an enume-
 ration of the various public officers, and the different
 departments and branches of the public service over
 which this patronage is said to extend; and by bring-
 ing the whole into one view, they suggest what must
 be the amount of the authority and influence accruing
 to the Executive Government from these sources.

The statement is substantially this,—that the num-
 ber of public offices in the Colony is too great, and
 that the patronage, instead of being vested, as at
 present, in the Crown, and the local Representative
 of the Crown, should be transferred to other hands.

In the long enumeration of places at the disposal
 of the Executive Government in Upper Canada, the
 Committee have not adverted to one consideration to
 which I think that great prominence might justly be
 assigned. It is perfectly true, as it is quite inevitable,
 that in Upper Canada, as in other new Countries, the
 number of public employments is, and will be, far
 larger, in proportion, than in older and more densely
 peopled States. The general machinery of Govern-
 ment must be the same in a scanty as in a large and
 redundant population. Corresponding Departments
 of the public service, whether Legislative, Judicial, or

Administrative, must exist in both. And in a new country, besides, there will be some Establishments, for which, in the settled States of Europe, no counterpart can be found. Such, for example, are all which relate to the allocation, surveying, and granting of wild lands. Nor is it to be forgotten, that in the early stages of such a society many duties devolve upon the Government, which at a more advanced period are undertaken by the better educated and wealthier classes, as an honorable occupation of their leisure time. Thus in the Canadas, although the mere text of the law would there, as in England, authorise any man to prefer and prosecute an indictment in His Majesty's name, yet, virtually, and in substance, the prosecution of all offences is confided to the Government or its Officers. These causes have inevitably tended to swell the amount of the patronage of the Provincial Government, without supposing any peculiar avidity on their part for the exercise of such power. .

With respect to the patronage of the requisite offices, His Majesty's Government are not solicitous to retain more in their own hands, or in those of the Governor, than is necessary for the general welfare of the people, and the right conduct of public affairs.— I confess myself, however, unable to perceive to whom the choice amongst candidates for public employment could with equal safety be confided. It requires but little foresight or experience to discover that such patronage if exercised in any form of popular election, or if committed to any popular body, would be liable

to be employed for purposes far less defensible, and in a manner less conducive to the general good.— Chosen by irresponsible Patrons the Public Officers would themselves be virtually exempt from responsibility, and all the discipline and subordination which should connect together in one unbroken chain the King and his Representative in the Province, down to the lowest functionary to whom any portion of the power of the State may be confided, would be immediately broken.

I conclude therefore, that as in such a country as Canada, there must exist a number of Public Officers, large in proportion to the present number and wealth of the inhabitants, so the selection of them must for the most part be entrusted to the head of the local Government.

I disclaim, however, on the part of the Ministers of the Crown every wish to urge these general principles beyond their just and necessary limits. There are cases in which, I think, according to the analogy of similar cases in this Country, the patronage now said to be exercised by the Lieutenant Governor might, with perfect safety and propriety, be transferred to others. On this subject, however, it will be more convenient to state the general principle than to attempt the specific and detailed application of it at this distance from the scene of action.

That principle is, to maintain entire, by the nomination and removal of Public Officers, that system of subordination which should connect the head of the Government with every person through whose instru-

mentality he is to exercise the various delegated prerogatives of the Crown.—What is necessary for this end must be retained. Whatever patronage is unnecessary for the maintenance of this principle, should be frankly and at once abandoned.

It is noticed in the report, as an aggravation of the evils of the Government patronage, that almost every Public Officer holds his place at the pleasure of the Crown.

I cannot disguise my opinion, that the public good would be little advanced if the Subordinate Functionaries held their places upon a more certain tenure. In practice indeed, though subject to certain exceptions to be hereafter noticed, no Public Officer is in danger of losing his employment except for misconduct or incompetency. But there are many kinds of misconduct and incompetency which could never be made the subject of judicial investigation, but which yet would be destructive of the usefulness of a Public Officer, and ought, therefore, to be followed by a dismissal from the public service. Nor is it necessary to insist at any length on the evils which would arise in the transaction of business, if the Subordinate Officers were aware that they were entirely independent of the good opinion of their superiors, for their continuance in their employment.

It is not difficult to shew, in reference to any conceivable arrangement on the subject of patronage, that there will be dangers against which it is impossible to take an absolute and perfect security. I know not, however, that any less exceptionable scheme could be devised than that which at present prevails—

of giving to the Head of the local Government the choice of the Subordinate Officers, and of making their places dependent on His Majesty's pleasure. To prevent, however, as far as may be possible, the continuance of any well founded ground of complaint on this head, His Majesty, disclaiming for himself, and for his Representative in the Province, all desire to exercise, with the view merely to patronage, the power of appointing Public Officers, is pleased to prescribe for your guidance the following rules :

FIRST.—You will at the earliest opportunity enter into a diligent review of the Offices in the appointment of the Crown and of the Local Government, as detailed in the report of the Committee and the appendix, with a view to ascertain to what extent they may, without impairing the efficiency of the public service, be reduced immediately and prospectively.

You will report to me the result of your investigation, with such particular information as will enable His Majesty's Government to decide in each case on the expediency of adopting your recommendation.

Secondly.—If during the reference of that report to me any occasion occur for the reduction of Offices, either by abolition or by consolidation, you will exercise your own discretion, as to waiting for fresh instructions, or proceeding at once to the reduction. Any appointment, however, made under such circumstances will be merely provisional. In case of the immediate abolition of any office not required for the efficient discharge of the public service, you will stipulate for such a compensation to the present holders

as the disappointment of their reasonable expectations may entitle them to receive.

Thirdly.—In the prescribed revision of these offices you will make it one of your objects to form a judgment, what share of the patronage of the Crown or the Local Government may safely and wisely be transferred to other hands.

You will report to me on this subject, but will refrain from taking any steps regarding it without further instructions from me.

Fourthly.—In the selection of persons to execute public trusts, you will be guided exclusively by the comparison of the claims which the different candidates may derive from past services, or from personal qualifications.

Fifthly.—In general, you will not select for any public employment in Upper Canada any person who is not either a native or a settled inhabitant of the Province.

To this general rule occasional exceptions may be admitted; as in cases where some peculiar art or science is demanded, which no Provincial candidate may be found to possess in the requisite degree. An exception must also be made in reference to those Officers who are immediately attached to your own person, in the choice of whom His Majesty does not think it right to subject you to any such restriction.

Sixthly.—As often as any office shall be vacant which is not to be suppressed, and of which the annual emolument shall exceed two hundred pounds, you will make the appointment provisional only, and

with the distinct intimation to the party elected, that his confirmation will depend entirely on the estimate which His Majesty may form of his pretensions; and you will on every such occasion signify to me, for His Majesty's information, the grounds on which you have proceeded, and the motives which have directed your choice. If His Majesty should be pleased to issue under his Sign Manual, a warrant authorising you to make a grant of the office under the public seal of the Province, then, and not till then, the appointment must be considered as finally ratified.

I trust, that in these regulations the House of Assembly will perceive a sufficient proof of His Majesty's settled purpose to exercise this branch of his prerogative for no other end than the general good of his Canadian Subjects, and to prevent its being converted into an instrument of promoting any narrow, exclusive, or party designs.

SECOND.—Pursuing the order observed by the Committee, I pass on to the subject of the Provincial Post Office. Adverting to the measures which have already been taken for the redress of the grievances which have been alleged to exist in the conduct of this department, the Committee observe, "That the form of a Law such as the Government would approve is before the Houses, but its provisions (they add) are so inapplicable and absurd that no benefit could be derived from their enactment."

On the measure thus characterized I am not called to give an opinion. It is, however, but fair to those by whom it was recommended to the adoption of the

Local Legislature, to observe, that it had previously undergone a most careful investigation by the Post Master General.

His Majesty's Government cannot have the slightest wish to urge the adoption of any measure to which well founded and sufficient objections may exist: they are content that the bill in question should be withdrawn to make way for any other which the Assembly may be disposed to substitute for it. Perhaps, however, on approaching the question more closely, the Assembly may find it encumbered with unexpected difficulties. I fear that this will be the case, especially in reference to the intercourse by post with all places beyond the limits of the Province itself. You will, however, assent to any judicious and practicable scheme which the House may incorporate in any bill tendered for your acceptance; regarding as of no weight whatever, when opposed to the general convenience of the public, any considerations of patronage or of revenue derivable from this source.

THIRD.—Under the head of salaries and fees the Committee have entered into very copious statements to shew that the emoluments of the Public Officers in Upper Canada are excessive, and out of all just proportion to the value of services rendered.

It is unnecessary for me to enter into these details, because as to the general principles on which it will be your duty to act on questions of this nature, there can be no room for controversy; indeed, those principles will, I think, be most conveniently considered when divested of topics connected with the interests and the services of particular persons.

There is no measure of retrenchment compatible with the just claims of His Majesty's various officers, and with the efficient discharge of the public service and duty, to which the King is not disposed to give a prompt and cheerful assent. To determine what ought to be the scale of remuneration to Public Functionaries of different classes, would require information too minute and exact to be obtained beyond the limits of the Province itself. This would appear a very fit subject for a special enquiry, in which it might be proper to employ Commissioners, to be appointed under the authority of an Act of the Assembly. I have reason to suppose that the subject has never yet undergone a full and fair investigation, and therefore I do not feel myself entitled to assume the non-existence of those abuses which so readily grow up under a system which is not subjected to a careful scrutiny, conducted upon permanent and enlightened views of public economy. Even if the result of the examination should be only to shew that there is no evil of this nature to be remedied, the labour would be amply repaid, by placing so important a fact beyond the reach of all reasonable suspicion.

In dealing with existing interests, the Local Legislature will, I doubt not, be well disposed to adopt the rules which have been uniformly taken by Parliament for the guidance of their discretion in similar cases. The saving of public money which could arise from the unexpected reduction of official incomes would not only subject numerous families to extreme distress, but by impairing general confidence in the pub-

lic credit, would weaken the foundations on which all proprietary right must ultimately repose.

The King confidently relies on his faithful subjects of Upper Canada that they will not reduce His Majesty to the distressing alternative of either abandoning the just interests of any of his servants, or opposing himself to measures having for their object the reduction of public expenditure.

FOURTH.—Next in the order of complaints, is that which relates to the amount of the Pension List.—On this, as on the subject which I have last noticed, I conceive that I shall best discharge my duty by attempting to provide against any future abuse, than by engaging in a minute retrospect of any which may have already occurred. I will not even pause on the comparison, not perhaps very accurately or necessarily instituted, between the conduct of the Central Government of the United States of America, and that which has been pursued in one of the Provinces of the British Empire, respecting the remuneration of Officers for past service. Such pensions as have already been charged upon the revenues which were at the disposal of the Crown, constitute a debt, to the payment of which His Majesty's honour is pledged; nor need I state that there is no consideration so powerful as to induce the King to assent to the violation of any engagement lawfully and advisedly entered into by Himself, or by any of his Royal Predecessors.

On the other hand, His Majesty is content that the most effectual security should be taken against any

improvident increase of the Pension List, by any future grants, and is willing that a limit should be fixed by law to any charge which may hereafter be imposed upon the Provincial Revenues on this account.

I do not anticipate that the Assembly of Upper Canada would wish to withhold from the King the means of rewarding faithful and zealous public services, or would think it desirable that no provision should ever be made by His Majesty to solace the declining years of those who have consumed in laborious public duties in the Colony the larger portion of their lives.

You will, therefore, assent to any law which may be tendered for your acceptance, of which the object shall be to regulate, on a just and reasonable scale, the amount of the future Pension List of Upper Canada, and to prescribe the principles upon which any pensions shall be granted.

FIFTH.—I proceed to the subject of the provision made for Ecclesiastical Establishments, and for the maintenance of the Teachers of Religion of various denominations.

On this head the House of Assembly maintain opinions, from which, in their address to His Majesty of the 13th of April, the Legislative Council have recorded their most entire and earnest dissent. The Report states, that “The House of Assembly in several “successive Parliaments has expressed its entire dis-
“approbation of the Government, in attempting to
“uphold particular religious sects by money grants,
“and in the 10th and 11th Parliaments has declared
“that it recognizes no particular denomination as es-

“tablished in Upper Canada with exclusive claims, “powers or privileges.”

It appears that the four Religious Communities whose funds are aided by grants from the hereditary and territorial Revenue, are those of the Churches of England and Scotland and Rome, and of the Wesleyan Methodist Society, the last being in two divisions, which respectively take the distinct appellation of the “Canadian and the British.”

In the last Session of the Provincial Parliament a bill was passed by the Assembly, the object of which was to enable certain Commissioners to sell the Lands which, under the Constitutional Act of 1791, had been appropriated in Upper Canada to the maintenance of a Protestant Clergy, and to pay over the proceeds to the Receiver General, to be disposed of under the future direction of the Legislature, for the promotion of Education, and for no other purpose whatever.

This bill was rejected by the Legislative Council, on the grounds noticed in the address from that body to His Majesty, and in a report from a Select Committee appointed by them to take the bill into consideration, which report is enclosed in Sir John Colborne’s despatch of the 20th May, No. 20.

Your Predecessor and the Council agree in the opinion, that it is vain to expect the concurrence of the two branches of the Local Legislature in any adjustment of this question, and they, therefore, invoke the interposition of Parliament, which interposition the Assembly, on the other hand, deprecate with equal earnestness.

precaution against the eventual inaptitude of that system to the more advanced stages of a society than in its infant state, and of which no human foresight could divine the more mature and settled judgment.

In the controversy therefore respecting Ecclesiastical endowments which at present divides the Canadian Legislature, I find no unexpected element of agitation, the discovery of which demands a departure from the fixed principles of the Constitution, but merely the fulfilment of the anticipations of Parliament in 1791, in the exhibition of that conflict of opinion for which the Statute of that year may be said to have made a deliberate preparation. In referring the subject to the future Canadian Legislature, the authors of the Constitutional Act must be supposed to have contemplated the crisis at which we have now arrived ; the era of warm and protracted debate, which, in a free government, may be said to be a necessary precursor to the settlement of any great principle of national policy. We must not have recourse to an extreme remedy merely to avoid the embarrassment, which is the present, though temporary result of our own deliberate legislation.

I think, therefore, that to withdraw from the Canadian to the Imperial Legislature the question respecting the Clergy Reserves would be an infringement of that cardinal principle of Colonial government, which forbids Parliamentary interference except in submission to an evident and well established necessity.

Without expressing any further opinion at present on the general objects of the Bill of last Session, I think the effect of that Bill would, as it appears, have

been to constitute the Assembly, not merely the Arbitors respecting the disposal of the funds to be raised by the sale of these lands, but the active and independent Agents in effecting those Sales, and thus to invest them with the appropriate functions of the Executive Government.

SIXTH.—The report of the Committee next proceeds to the subject of the Land granting department.

Admitting that Lord Rippon's Despatch shows that the grievances under this head have been in part removed, it is observed that, the extent of that relief is not very clearly shewn by the documents before the Committee.

It is difficult, or rather impossible, for me to advance further in meeting the views of the Assembly, thus briefly expressed, than by stating, that if any ambiguity can be pointed out in Lord Rippon's Instructions respecting the grant of Lands, it shall be immediately removed; and that if His Majesty's Officers in the Province can be shewn to have disregarded those Instructions, it will be your duty to enforce the most prompt and exact obedience to them, to the full extent of their spirit and intention; in so much that there shall in future be no doubt whether the grievances at which they aimed have or have not been completely removed.

SEVENTH.—Respecting the Collegiate Institutions of the Province, the Assembly express their opinion that, “the Upper Canada College is upheld at great public
“expense, with high Salaries to its Principal Masters,
“but that the Province in general derives very little

“ advantage from it, and that it might be dispensed
“ with.”

His Majesty’s Government can have no wish to retain any charge for this Establishment which may be more than adequate to provide for the effective performance of the duties of the Teachers. Any wise retrenchment of that nature may, subject to the principles already mentioned, be immediately introduced.

That the Province derives little benefit from this College is a fact of which the explanation is to be found not in the principle of the Institution itself, but in some error of management, susceptible as it should seem, of an easy remedy. It is impossible to believe, that in Upper Canada, as in other countries, advantages the most important would not result from a well ordered School for the education, in the elementary branches of Philosophy, Science, and Literature, of young men who aspire to fill the highest offices in society. Nor can I suppose it a light benefit thus to connect together the preparatory and the final studies of youth in one systematic plan, which by rendering the initiatory School a careful preparation for the University may give to their entire education a character of solidity and consistency scarcely attainable by any other method.

I shall, therefore, deeply lament the abolition of a College of which the defects would appear so remediable, and of which it does not seem easy to exaggerate the benefits.

On the subject of King’s College an unfortunate difference of opinion exists, between the Council and

the Assembly, which each of those bodies concurs in pronouncing incurable.

His Majesty commands me to tender through you, his mediation on this subject. With the previous assent of both Houses the King will cheerfully resume the consideration of the question, in what manner a Charter could be most conveniently prepared, so as to promote the interests of Science and Literature, and the study of Theology and Moral Philosophy, with a due regard to the opinions which seem to prevail in the Province, respecting the proper constitution and objects of an University. But after having distinctly referred to the Local Legislature the duty of giving effect to their own wishes on the subject, in the form of an act of General Assembly, His Majesty cannot, at the instance of one only of the two Houses, withdraw it from their cognizance.

EIGHTH.—The Committee complain that a very considerable proportion of the sum, amounting to £31,728. 18s. 11d. expended in aid of emigration from Europe, was for “articles or services not specified, and concerning which a Committee of the House of Assembly could know nothing, unless they were to send for the detailed Accounts and Vouchers, which, if they had, it would be impossible to examine at the late period of the Session at which the Government sent down those statements.” In the appendices to the report, numbered 56 and 57, various items of this expenditure are noticed with apparent dissatisfaction. You will direct the Public Officers who have had the management of this fund,

to communicate to the House of Assembly, with the utmost possible promptitude, the most minute and circumstantial details and explanations connected with it, for which the House may be pleased to call.

NINTH.—Next in order occurs the statement, that the present “system of auditing the public accounts, “is altogether insufficient for ensuring the application “of the Revenue to the purposes for which it is intended to be applied.”

The remedy suggested is that of establishing a Board of Audit, of which the proceedings should be regulated by a well considered Statute under a responsible Government.

Deferring at present any remark on the expression “responsible Government,” to which I shall more conveniently advert hereafter, I must express my agreement in the position that the establishment of a Board of Audit, by law, is the best remedy in this case. His Majesty will gladly concur in the enactment of any law which shall be properly framed for constituting such a Board. With a view to aid the deliberations of the Legislature, I transmit to you various documents explanatory of the constitution and proceedings of the Commission for auditing the public accounts of this Kingdom.

The Assembly express their disbelief that any efficient measure of this kind will obtain the consent of the Legislative Council. I trust that this apprehension will be dispelled by the event. If, unfortunately, it should be confirmed, you will in the exercise of His Majesty’s delegated authority, proceed at once to

constitute a Board of Audit, upon the principles of that which at present exists in this Kingdom, so far as the two cases may be analogous: and although I am aware that, unaided by positive legislation, such a Board would be comparatively inefficient, yet no inconsiderable advance would thus be made towards the introduction of an effective system of audit.

If you should find it necessary to act on this instruction, great care must be used to prevent the new establishment from being converted into the means of any real or seeming abuse in the way of an improvident increase of the patronage of the Crown. Of a Board consisting of five or three Auditors, one alone should at first receive a salary, because the Institution itself would be provisional only, and liable to revision so soon as a proper Act could be passed for the purpose.

I think it highly probable that amongst the Gentlemen of the Province most conversant with its financial interests, a sufficient number would be found who, as honorary and unpaid Commissioners, would complete the Board, and who, though not engaging in the mere ordinary routine of business, would exercise a general superintendence over the more important proceedings of the Commission. Especially it would be requisite to obtain such aid in determining the number and remuneration of the Clerks and other subordinate Officers. But it must not be forgotten, that the effective remedy, as the report observes, is to be found in a Board established by law, and I earnestly hope that a law to that effect may pass both Houses of the Legislature.

TENTH.—The withholding of public accounts from the House of Assembly is the next ground of complaint.

It is proposed that to remedy this evil, a Statute should be passed providing the time and manner of making such returns, and naming the Officers who should render them to the Legislature: “but” add the Committee, “it is well known that such an enactment “would fail in the Council, which has an interest in “preventing the enforcement of practical account-“ability to the people.”

Although I cannot permit myself to believe, that the Council would really oppose themselves to any judicious measure of this kind, I fear that such Legislation would be found to involve many serious, if not insuperable difficulties. I must object to the appointment of individuals for any purpose of this kind, by name, in a statute, or by any authority other than that of the King.

Persons so appointed, would exercise a control over all the functions of the Executive Government, and would have a right of inspecting the records of all public offices, to such an extent, as would leave His Majesty’s Representative, and all other Public Functionaries, little more than a dependent and subordinate authority. Further—Such Officers would be virtually irresponsible and independent.

On this subject, however, His Majesty commands me to state, that there is no information connected with the receipt and expenditure of any part of the Revenue of Upper Canada which he wishes to withhold from the Representatives of the Canadian people.

You will, immediately on your arrival in the Province, apprise the Heads of every public department by which any such funds are received or administered, that they must constantly keep in preparation, to be produced to the Assembly, in compliance with any Addresses which may be presented to you by that House, copies and abstracts of all public accounts; and you will consider in what form these can be drawn up so as to exhibit all material information in the most complete and luminous manner. It will perhaps be possible to concert with the House beforehand some system for preparing such Returns; and as often as they may present to you Addresses for such information, you will promptly accede to their wishes, except in the extreme case, which it is difficult to suppose, of any demand of that nature, being made in such a form, that the compliance with it would endanger some great public interest.

ELEVENTH.—The Report then passes to the consideration of cases in which your Predecessor is charged with having failed to shew respect, even in subordinate matters, to the wishes of the House of Assembly.

I will not encumber this communication, by entering into a review of the particular transactions noticed by the Committee, in illustration of this complaint. I am not indeed sufficiently in possession of the facts to enable me to do so; nor do I think it convenient to combine a personal discussion with a general statement of the principles by which your conduct is to be governed.

The only general direction that I have to give you on this subject is, that you will always receive the Addresses of the Assembly with the most studious attention and courtesy. As far as may be consistent with your duty to the King, you will accede to their wishes cheerfully and frankly. Should that duty ever compel you to differ from their opinion, or to decline compliance with their desires, you will explain in the most direct, and of course in the most conciliatory terms, the grounds of your conduct.

TWELFTH.—The next topic of complaint is, that many of the recommendations contained in Lord Rippon's Despatch of the 8th November, 1832, have not been carried into effect. Amongst these are especially mentioned such as relate to the amendment of the Election Laws; the non-interference of His Majesty's Officers at Elections; the disclosure to the House of the receipt and expenditure of the Crown Revenue; the exclusion of Ministers of Religion from the Legislative and Executive Councils; the reducing the costs of Elections; the Judicial independence, and the limitation of the number of Public Officers who may sit in the Assembly.

Adhering without reserve or qualification to all the instructions issued under His Majesty's commands by Lord Rippon, the King is pleased to direct that you do adopt that Despatch as a rule for the guidance of your own conduct, and that you exert your legitimate authority and influence to the utmost possible extent to carry into effect all such of His Lordship's suggestions as may still continue unfulfilled.

THIRTEENTH.—The selection of Justices of the Peace is said to have been made chiefly from persons of a peculiar bias in politics, and to be the means “of extending the power and influence of the Colonial system.” It is not in my power to verify the accuracy of this opinion; and I am happy to feel myself relieved from the necessity of such an investigation. If any such abuse exists, it cannot be too decisively or promptly remedied. Whenever any increase of the number may appear to you desirable, you will propose to any gentleman in Upper Canada possessing the necessary qualifications of knowledge, property and character, and unquestionable fidelity to the Sovereign, the assumption of the office of Justice of the Peace, without reference to any political consideration.

FOURTEENTH.—A very considerable part of the Report is devoted to the statement and illustration of the fact, that the Executive Government of Upper Canada is virtually irresponsible; and the conclusion drawn from this statement is, that under the present system, there can be no prospect of a good and faithful administration of public affairs.

Without entering on the one hand unnecessarily into a discussion of those general principles, to which my attention is thus invited, or digressing on the other hand into personal topics: it is enough for me to observe on the present occasion, that experience would seem to prove, that the administration of public affairs in Canada is by no means exempt from the control of a sufficient practical responsibility. To His Ma-

jesty and to Parliament, the Governor of Upper Canada is at all times most fully responsible for his official acts. That this responsibility is not merely nominal, but that His Majesty feels the most lively interest in the welfare of his Canadian Subjects, and is ever anxious to devote a patient and laborious attention to any representations which they may address to him, either through their Representatives, or as individuals, is proved not only by the whole tenor of the correspondence of my Predecessors in this office, but by the Despatch which I am now addressing to you. That the Imperial Parliament is not disposed to receive with inattention the representations of their Canadian fellow-subjects, is attested by the labors of the Committees which have been appointed by the House of Commons during the last few years, to enquire into matters relating to those Provinces. It is the duty of the Lieutenant Governor of Upper Canada to vindicate to the King and to Parliament every act of his administration. In the event of any representations being addressed to His Majesty upon the subject of your official conduct, you will have the highest possible claim to a favorable construction; but the presumptions which may reasonably be formed in your behalf will never supersede a close examination, how far they coincide with the real facts of each particular case which may be brought under discussion.

This responsibility to His Majesty and to Parliament is second to none which can be imposed on a public man; and it is one which it is in the power of the House of Assembly at any time, by Address or Petition, to bring into active operation. I further

unreservedly acknowledge, that the principle of effective responsibility should pervade every Department of your Government ; and for this reason, if for no other, I should hold that every Public Officer should depend on His Majesty's pleasure for the tenure of his office. If the Head of any Department should place himself in decided opposition to your policy, whether that opposition be avowed or latent, it will be his duty to resign his office into your hands ; because, the system of Government cannot proceed with safety on any other principle, than that of the cordial co-operation of its various members in the same general plans of promoting the public good.

The inferior members of the different offices should consider neutrality on this great litigated question of Provincial policy, as at once their duty and their privilege.

Diligently obeying all the lawful commands of their superiors they will be exempted from censure, if the course which they have been directed to pursue should issue in any unfortunate results.

Some of the Members of the local Government will also occasionally be Representatives of the people in the Assembly, or will hold seats in the Legislative Council. As members of the local Legislature, they will of course act with fidelity to the public, advocating and supporting no measures which, upon a large view of the general interest they shall not think it incumbent on them to advance. But if any such person shall find himself compelled by his sense of duty to counteract the policy pursued by you, as the head of

the Government, it must be distinctly understood that the immediate resignation of his office is expected of him, and that failing such a resignation he must, as a general rule, be suspended from it. Unless this course be pursued it would be impossible to rescue the head of the Government from the imputation of incincerity, or to conduct the administration of public affairs with the necessary firmness and decision.

I need hardly say, that in the event of any Public Officer being urged into a resignation of his place, by his inability to give a conscientious support to his official superior, the merits of the question would undergo an investigation of more than common exactness by His Majesty's Ministers, and that His Majesty's decision would be pronounced with a perfect impartiality towards those, who had the honor to serve him in the Province, however high or however subordinate might be their respective stations.

By a steadfast adherence to these rules, I trust that an effective system of responsibility would be established throughout the whole body of Public Officers in Upper Canada, from the highest to the lowest, without the introduction of any new and hazardous schemes, and without recourse to any system, of which the prudence and safety have not been sufficiently ascertained by a long course of practical experience.

FIFTEENTH.—I next advert to two subjects of far more importance than any of those to which I have hitherto adverted. I refer to the demand made, partly in the Report of the Committee, and partly in the Address from the Assembly to His Majesty, for changes in the mode of appointing Legislative Councillors,

and for the control by the Assembly of the territorial and casual Revenues of the Crown.

On these subjects I am to a considerable extent relieved from the necessity of any particular investigation, because claims precisely identical have been preferred by the Assembly of Lower Canada, and because in the instructions to the Commissioners of Enquiry, who have visited that Province, I have already had occasion to state the views which have received His Majesty's deliberate sanction. The principles of the Government in the two sister Provinces must, I am well aware, be in every material respect the same. I shall, therefore, annex for your information, as an Appendix to this Despatch, so much of the instructions to the Earl of Gosford and his Colleagues, as applies to these topics.

In the prosecution of the enquiries of the Commissioners in Lower Canada, they will be instructed to enter into full and unreserved communication with you upon these questions, and to frame their report in such a manner as may enable His Majesty to adopt a just and final conclusion upon the course to be pursued respecting them in both the Canadas. For this purpose you will supply the Commissioners with all the information which you may think necessary for them to receive, and with every suggestion which you may think it expedient to make for their assistance in comparing the state of these questions in the two Provinces. If it should ultimately appear desirable, the Commission may, perhaps, be directed to resort to Upper Canada, there to pursue in concurrence with yourself, a more exact enquiry into these subjects

than they could institute at Quebec, in reference to the affairs of the Upper Province. In general, the Earl of Gosford, and his Colleagues, will be directed to enter into unreserved communication with you, not only on the points just mentioned, but on every subject of common interest to the two Provinces.

You, on your part, will conduct yourself towards them in the most cordial spirit of frankness and co-operation.

I have thus in order adverted to every subject to which the Assembly of Upper Canada have called the attention of His Majesty's Government. You will communicate to the Legislative Council, and to that House, the substance of this Despatch, as containing the answer which His Majesty is pleased to make to the addresses and representations which I have had the honor to lay before him from the two Houses in their last Session.

I trust that in this answer they will find sufficient evidence of the earnest desire by which His Majesty's Councils are animated, to provide for the redress of any grievance by which any class of His Majesty's Canadian Subjects are affected.

I close this communication with the expression of my earnest hope, and I trust not too confident belief, that the Representatives of the people of Upper Canada will receive with gratitude and cordiality this renewed proof of His Majesty's paternal solicitude for the welfare of his loyal Subjects in that Province; and that laying aside all groundless distrusts, they will cheerfully co-operate with the King, and with You as

His Majesty's Representative, in advancing the prosperity of that interesting and valuable portion of the British Empire.

I have, &c.

(Signed) GLENELG.



APPENDIX.



Extract from Despatch to the Commissioners for Lower Canada, dated Downing Street, 17th July, 1835.

“ Amongst the most pressing of these is the Financial question, which has given rise to so protracted a controversy.

After the several gradations through which this question has passed, it has at length assumed the following shape : As Representatives of the people of Lower Canada, the House of Assembly claim the right of appropriating to the public service, according to their own discretion, the whole of the Revenues of the Crown accruing within the Province. The claim extends to the proceeds of all Parliamentary and Provincial Statutes, whatever may have been the original conditions of their grants ; to the funds drawn from the sale of Timber, and of the waste Lands of the Crown ; to all fines and forfeitures ; and to the income derived from the Seigniorial rights inherited by the King from his Royal Predecessors. In fine, the au-

thority of the local Legislature over the income and expenditure of the Province is declared to be so extensive, as to embrace every part of that receipt and outlay, and so inalienable as to supersede even the concessions deliberately made in preceding times by the former Representatives of the Canadian people.

Without pausing to discuss the great constitutional questions which these claims involve, I content myself with referring to the undoubted fact, that the Kings of England have at all times been, in right of their Crown, in possession of certain sources of revenue, peculiarly their own, and of which they could not be divested except by their own consent. In modern times, as is well known, the controul of Parliament over this revenue in these Kingdoms, has been established on the accession of each Sovereign to the Throne, by a solemn compact made between the Crown, and the Houses of Lords and Commons. If therefore the King were disposed to insist upon positive law, ancient practice, or constitutional analogy, His Majesty might readily vindicate the right to dispose of the territorial, hereditary, and casual revenue of the Crown, arising in Lower Canada, towards the maintenance of the Civil Government in that part of his dominions. But anxious to render his reign a blessing to his Canadian subjects, His Majesty is prepared to decline taking this ground, and to refer the decision of the question to the single test of the advantage or disadvantage to the Province, with which the proposed cession would be attended. It would be difficult to imagine any pecuniary sacrifice which would not be wisely incurred in purchasing a peaceful settlement of the dissensions of the last fifteen years.

If pecuniary interests alone were at stake, the King would not hesitate to make this cession permanently and without conditions. They must ill indeed have understood the character and policy of the British Government, who may have supposed, that the peace and well-being of this great Empire has been put to hazard in a prolonged contest with the most valuable of its foreign dependencies, for the sake of a sum of money so insignificant as to be scarcely perceptible in the financial operations of Great Britain, and of no considerable amount even in these of Lower Canada. During the progress of this controversy, there have been expended by Parliament, for objects altogether Canadian, sums, compared with which, the utmost demand that has been made on the liberality of the House of Assembly for the support of the Executive Government of the Province, is altogether trivial. The real importance of connecting the surrender of the Hereditary and Territorial Revenue with some reservation or conditions for the support of the Civil Government, and for the administration of Justice, rests upon grounds far higher than any which could be brought to a pecuniary measurement. There are objects, essential, as it would seem, to the welfare of His Majesty's Canadian subjects, which could not probably be secured if that surrender were made unconditionally. In this view of the question, His Majesty is bound not to relinquish the appropriation of funds which the Law and the Constitution have placed at his disposal, without making a stipulation, suggested exclusively by his care, for the common benefit of his people.

Amongst the foremost of the objects which His Majesty is thus bound to rescue from a precarious support, are the Independence of the Judges, and the pure administration of the Law. From the commencement of His Reign, it has been the constant and persevering effort of His Majesty to render the Judges of the Superior Courts in Lower Canada independent alike of the Crown for the tenure of their Offices, and of the Representatives of the people for their annual emoluments. In the various documents already noticed, you will find the history of those attempts, and a full explanation of the causes to which their failure is to be ascribed; yet a view of the Journals of the Assembly will I think convince you that between that House and His Majesty's Government, no real or at least no irreconcilable difference of opinion exists on this subject: on the contrary, you will find that respecting the general principles on which we must proceed, a perfect unanimity has prevailed. It is fully admitted that the Judges ought to hold their offices, not at the pleasure of the King, but during good behaviour, and that their official incomes should be paid, not at the pleasure of the popular branch of the Legislature, but from adequate funds to be irrevocably pledged for that purpose. With respect to the erection of a tribunal for the trial of impeachments preferred against the Judges, no plan has been suggested: Nor consistently with the principles of the Constitution of the Province, could any scheme be devised, excepting that of bringing such Judges to trial before the Legislative Council, or before His Majesty, acting on the advice of the

Judicial Committee of the Privy Council in this Kingdom, impartiality, with a perfect exemption from all local influences, is the first and essential attribute of any Court which may be invested with such powers; and as the King cannot indulge any reasonable hope of finding those qualities combined in any tribunal within the Province itself, (unless perhaps in the Legislative Council) His Majesty is not prepared to assent to any scheme divesting himself, acting upon the constitutional advice of his Privy Council, of the authority which has ever been exercised by the Kings of this Realm, on occasions of the same nature, and since the earliest settlement of the Colonial portion of the British dominions.

This, then, will be one of the subjects of your earliest enquiry; and you will endeavour to suggest the plan of a law, in which there may be good ground to anticipate the concurrence of the House of Assembly, for the security of Judicial independence. If this can be effected, one of the chief difficulties which might otherwise obstruct the cession of the Revenues will be overcome.

The regard which it is His Majesty's duty to maintain for the welfare of the people of Lower Canada, appears to forbid a surrender of the Revenues of the Crown in that Province to the appropriation of the Legislature, unless some condition be further made for the support of the Executive Government by an adequate Civil List.

I pass over without any direct notice the grounds on which the contending parties in the Province have

of society to brave the displeasure of popular leaders. They should therefore be raised above all influence and all suspicion of influence of unworthy fear or favor. The interests of freedom and of good Government require that those, upon whose firmness and constancy the maintenance of order and the authority of the laws mainly depend, should not be looking for their subsistence to the favor of a body which necessarily reflects most of the fluctuating movements of the public mind.

Such are the principal motives, which induce me to conclude, that the King could not consistently with the interests of his Canadian Subjects, relinquish, except in return for an adequate Civil List, the control which His Majesty at present exercises over the hereditary and territorial Revenue.

It will be for you to consider and report what ought to be the precise terms of this stipulation. A temporary cession of the Revenue in return for a provision for the chief Public Officers of the Province, for a corresponding period, would be the most satisfactory arrangement. In the rapid progress of settlement in the Canadian Provinces a few years will probably be productive of changes demanding a corresponding alteration in the terms of any adjustment concluded at the present period; and a decennial revision of the compact now to be made would seem best calculated to secure those public benefits, and avert those public evils, by the hope or fear of which the compact itself is recommended.

If, however, a temporary settlement, to be received from time to time, should prove impracticable, or up-

on a closer consideration of the subject should seem to you inexpedient, you will then consider in what manner the inconveniences inseparable from the permanent adjustment of such a question can be most effectually mitigated or avoided.

The opponents of the claims preferred by the House of Assembly to the control of the Territorial Revenue, insist with peculiar emphasis that the necessary effect of yielding to this claim, would be to transfer from the Executive Government to the popular branch of the Legislature, the management of the uncleared territory ; asserting that the assumption of this duty by the House of Assembly would be most injurious to the Agricultural and Financial interests of Lower Canada. Were the right of appropriating the revenue arising from the Crown Lands, and the charge of their management indissolubly connected, I should admit this reasoning to be correct. The objections to the combination in the same hands of a large share of the Legislative power, with so important a branch of the Executive authority, are too obvious to escape your notice ; and I therefore may, without inconvenience, abstain from a particular explanation of them. It may be sufficient to say, that His Majesty's confidential advisers regard as conclusive and unanswerable, the objections which are made to confiding the management of the uncleared territory of Lower Canada to either, or both of the Houses of General Assembly, or to persons appointed by them and subject to their control. In the distribution of the different powers of the State, the office of

settling and alienating the uncleared territory, properly belongs to the Executive Government.

It is competent to the Legislature upon this, as upon other subjects, to lay down general rules for the guidance of the Executive Authorities ; or either branch of the Legislature, may separately offer its advice to the Crown as to the policy and system of management which it thinks should be pursued ; but the practicable application of such general rules, and the charge of carrying into effect the system of management which may be approved, are functions so strictly of an Executive and Administrative character, that they can only be properly discharged by those in whose hands all similar powers are lodged by the Constitution. Nor am I aware of any ground on which a surrender of that trust could be properly required from His Majesty, or which would justify the resignation of it by the King.”



*Extract of Despatch to the Canada Commissioners,
dated 17th July, 1835.*

“ In the ninety-two Resolutions of the Session of 1834, in the address to His Majesty of that year, and in the address adopted in the Session which closed abruptly in the commencement of the present year, the constitution of the Legislative Council was insisted upon as the chief and prominent grievance in the whole system of Provincial Government. To the discussion of this subject, nearly half of those Resolutions and of those Addresses, is devoted ; and the Assembly, in the most decided language have de-

clared, that all remedial measures will be futile and unsatisfactory, which should stop short of rendering the seats in the Legislative Council dependent on a popular election.

The Petitioners of Quebec and Montreal, on the other hand, deprecate with equal earnestness any departure from the principle on which the appointment of the Members of the Legislative Council is regulated by the Act of 1791, and denounce any such change, as pregnant with the most formidable evils.

The King is most unwilling to admit, as open to debate, the question, whether one of the vital principles of the Provincial Government shall undergo alteration. The solemn pledges so repeatedly given for the maintenance of that system, and every just prepossession derived from Constitutional usage and analogy, are alike opposed to such innovations, and might almost seem to preclude the discussion of them.

But His Majesty cannot forget, that it is the admitted right of all his subjects, to prefer to him, as the King of these Realms, their petitions for the redress of any real or supposed grievances. His Majesty especially recognizes this right in those, who are themselves called to the high office of representing a large and most important class of his people. The acknowledgment of this right appears to the King to imply on his own part, the corresponding duty of investigating the foundations of every such complaint. His Majesty, therefore, will not absolutely close the avenue to enquiry, even on a question respecting which he is bound to declare that he can for the present perceive no reasonable ground of doubt. His Majesty will not refuse

to those who advocate such extensive alterations, an opportunity of proving the existence of the grievances to which so much prominency has been given.

The King is the rather induced to adopt this course, because His Majesty is not prepared to deny, that a statute which has been in effective operation for something less than forty-three years, may be capable of improvement, or that the plan upon which the Legislative Council is constituted may possibly, in some particulars, be usefully modified; or that in the course of those years some practical errors may have been committed by the Council, against the repetition of which adequate security ought to be taken. Yet, if these suppositions should be completely verified, it would yet remain to be shewn by the most conclusive and circumstantial proof, that it is necessary to advance to a change so vital as that which is demanded by the House of Assembly.

It must be recollected, that the form of Provincial Constitution in question is no modern experiment nor plan of Government, in favor of which nothing better than doubtful theory can be urged. A Council nominated by the King and possessing a co-ordinate right of legislation with the Representatives of the people is an invariable part of the British Colonial Constitution in all the transatlantic possessions of the Crown, with the exception of those which still remain liable to the legislative authority of the King in Council. In some of the Colonies it has existed for nearly two centuries. Before the recognition of the United States as an independent Nation, it prevailed over every part of the British Possessions in the North American

Continent not comprized within the limits of Colonies founded by Charters of Incorporation. The consideration ought indeed to be weighty, which should induce a departure from a system recommended by so long and successful a course of historical precedent.

To the proposal made by that body to refer the consideration of this question to Public Conventions, or as they are termed Primary Meetings, to be holden by the people at large in every part of the Province, His Majesty commands me to oppose his direct negative.

Such appeals are utterly foreign to the principles and habits of the British Constitution, as existing either in this Kingdom or in any of the Foreign Dependencies of the Crown.

You will, therefore, apply yourselves to the investigation of this part of the general subject, and endeavouring to ascertain how far the Legislative Council has really answered the original objects of its institution, and considering of what amendments it may be susceptible.

It is His Majesty's most earnest hope and trust, that in the practical working of the Constitution of the Province, there will be found to exist no defects which may not be removed by a judicious exercise of those powers which belong to the Crown, or which Parliament has committed to the Provincial Legislature.

When your reports shall have been received, His Majesty will take into his most serious consideration, the question, whether there are any amendments in

the law on this subject, which it would be fit to propose for the consideration of the Imperial Legislature; and which being founded on the principles and conceived in the spirit of the Act of 1791, may be calculated to render the practical operation of that Statute more conformable to the wishes and intentions of its framers.”

A true copy.

J. JOSEPH.

