



CANADAS.

RETURN to an ADDRESS of the Honourable The House of Commons,  
dated 14 March 1836;—for,

COPY of the INSTRUCTIONS given to the Earl of *Gosford*, and the Commissioners  
appointed to inquire into the GRIEVANCES complained of in *Lower Canada*:—  
also, COPY of the INSTRUCTIONS given to Sir *F. B. Head*, Lieutenant-  
Governor of *Upper Canada*.

(*Sir George Grey.*)

Colonial Office, Downing-street, }  
17 March 1836.

GEO. GREY.

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*22 March 1836.*]

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## SCHEDULE.

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- No. 1.—Copy of a Despatch from Lord Glenelg to the Earl of Gosford, the Right Hon. Sir C. E. Grey and Sir G. Gipps, His Majesty's Commissioners of Inquiry in Lower Canada, dated Downing-street, 17 July 1835 (with Enclosures) - - p. 3
- No. 2.—Ditto - - ditto, dated Downing-street, 17 July 1835 - - - p. 43
- No. 3.—Copy of a Despatch from Lord Glenelg to the Earl of Gosford, dated Downing-street, 17 July 1835 - - - - - p. 45
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- No. 5.—Copy of a Despatch from Lord Glenelg to Sir F. B. Head, dated Downing-street, 5 December 1835 - - - - - p. 54

COPY of the INSTRUCTIONS given to the Earl of *Gosford*, and the Commissioners appointed to inquire into the GRIEVANCES complained of in *Lower Canada*:—also, COPY of the INSTRUCTIONS given to Sir *F. B. Head*, Lieutenant-Governor of *Upper Canada*.

— No. 1. —

COPY of a DESPATCH from Lord *Glenelg* to the Earl of *Gosford*, the Right Hon. Sir *C. E. Grey* and Sir *G. Gipps*, His Majesty's Commissioners of Inquiry in *Lower Canada*.

No. 1.  
Despatch from Lord  
Glenelg to Commis-  
sioners of Inquiry,  
17 July 1835.

My Lord and Gentlemen,

Downing-street, 17 July 1835.

1. I HAVE the honour of transmitting to you a Commission under the Great Seal, by which the King has been pleased to appoint you to be His Majesty's Commissioners of Inquiry in the Province of Lower Canada.

2. In obedience to His Majesty's commands, I now proceed to put you in possession of the instructions by which it is His Majesty's pleasure that you should be guided in the discharge of the trust committed to you. The personal acquaintance which His Majesty possesses with the important part of his dominions in which your inquiries are to be prosecuted, and the peculiar interest which he has ever felt in the prosperity of the inhabitants of Lower Canada, have induced the King to bestow upon the mission with which he has pleased to entrust you a more than common measure of his attention.

3. A correct acquaintance with the history of Lower Canada, especially during the last 20 years, is indispensable to the accomplishment of the duties with which you are charged. I do not, however, propose to engage in any consecutive review, far less in any narration of past events. Such an addition to the length of my present communication would be at once inconvenient and unnecessary.

4. From documents, which will be accessible to you both in this country and in Lower Canada, you will be able to elicit the most ample information respecting all occurrences, explanatory or illustrative of the following instructions. I would especially refer you to the Journals of the Legislative Council and of the House of Assembly, and the many valuable Reports constituting the Annual Supplement to those volumes; to the Reports of the House of Commons' Committees on Canadian Affairs in 1828 and 1834; to the evidence taken before the former of those Committees, and to the correspondence between my predecessors in this department and the successive governors of the province. In the following pages, a familiarity with all the more important facts to be collected from this series of documents is presupposed. I have the honour herewith to enclose, for your information, copies of various documents connected with this subject, of which you might not be able readily to procure transcripts in the province, and of which a list will be found in the margin.

- No. 1. Petition from the Inhabitants of Lower Canada, 5 Feb. 1835.
- No. 2. Ditto, District of Montreal, 1835.
- No. 3. Ditto, House of Assembly of Lower Canada to the House of Commons, Dec. 1834.  
Report of a Committee of the House of Commons on Canada, 1828.—*Vide* Parliamentary Papers, No. 569, Session 1828.  
Ditto ditto, 1834.—*Vide* Parl. Papers, No. 449, Session 1834.
- No. 4. Letter from Mr. Neilson, 17 June 1835.
- No. 5. Ditto ditto, 10 July 1835.
- No. 6. Ditto Mr. Walker, 17 June 1835.
- No. 7. Minute, No. 2, in Lord Aberdeen's Despatch to Lord Amherst, of 2 April 1835.

5. Before I approach more closely to the discussion of the questions which will principally engage your attention, it is necessary that I should explain the motives by which His Majesty has been induced to issue the commission which you are about to execute.

6. The dissensions which commenced in Lower Canada in the year 1820, have since that time, with some transient intermissions, been continually increasing in violence and animosity. They have at length advanced to such a height as not only to invade the peace of society, but nearly to paralyse the activity of the executive government, threatening with the most fatal confusion a country exempt beyond the common lot of nations from the influence of the ordinary causes of social evil.

7. This state of affairs in a portion of the King's dominions so valuable, and otherwise so prosperous, has engaged His Majesty's most anxious and deliberate attention. To heal the disorders by which the province is distracted, and to

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restore internal peace and union, it has appeared to His Majesty necessary to adopt some well-digested and comprehensive plan of adjustment. But the foundation of such a plan must be laid in a complete knowledge of the condition of the people in all its bearings, moral, social and political.

8. Notwithstanding the variety and amount of the intelligence on this subject which has been collected during the last few years, there is yet a deficiency of adequate information upon many questions of the greatest moment to the correct apprehension of the state of Canadian affairs. The seven years which have elapsed since the first Parliamentary Report have given birth to numerous changes, to new wants, new interests, and new combinations of interests. The very removal of some grievances has, in some instances, aggravated those which remain, or altered their relation to each other. The general balance of society has also been constantly and rapidly affected by the infusion of new masses of inhabitants, bringing with them new views and prepossessions. In order to appreciate the actual wants and wishes of a country developing its resources and undergoing internal changes with such extreme rapidity, it is necessary that a new and careful survey should be made, by impartial and intelligent observers, of the state and prospects of society in the province. The crisis cannot be met by effective measures, unless those measures be founded on the results of such an inquiry. His Majesty has been induced to sanction your mission to Lower Canada, in the hope that you will be able to conduct this investigation to a satisfactory and successful issue.

9. It is His Majesty's earnest injunction, that in the discharge of this duty you avail yourselves of every opportunity to impress the minds of the people of Lower Canada with a just sense of the warmth and honesty of feeling with which their interests are regarded by all orders of society in this kingdom; that you consult with equal kindness the claims and wishes of every class of His Majesty's Canadian subjects; and that by applying to the consideration of every question which shall come before you the maxims of an enlightened policy, you endeavour to unite the inhabitants of the province in mutual concord, and to strengthen the bonds by which they are connected with the other members of the British empire.

10. Proceeding in this spirit to Lower Canada, you will there make universally known His Majesty's deep solicitude to redress, to the utmost extent of his lawful authority, every real grievance under which his Canadian subjects may labour. You will listen with the most respectful attention to every complaint, and investigate by all accessible evidence, oral or documentary, the merits of every question which shall be brought before you. You will ascertain by personal inspection what are the real points in which, in practice, the existing system presses most severely; and in consultation with each other, you will mature such plans as may appear to you best adapted to place the affairs of the province on a permanent basis of order and of well-regulated liberty.

11. His Majesty has thought it proper that the Commission should consist of more than one member, because the proposed range of inquiry will embrace so many topics, legislative, judicial, fiscal, moral and social, that it is not to be imagined that the studies or previous habits of any single mind, however gifted, would be sufficient to compass them all.

12. With the actual administration of the provincial government the Commissioners, as such, will have no concern. Although the Earl of Gosford, the Governor-general of all His Majesty's Colonies in British North America, has been placed at the head of the Commission, his Lordship's functions as Commissioner are totally distinct from those which he will discharge as head of the government. The duty of the Commissioners is limited, with the utmost strictness, to inquiry, to mutual deliberations, and to reporting, for His Majesty's information, the conclusions which they may be led to adopt. The Governor will alone exercise the powers which have been vested in his predecessors under the Constitutional Act of 1791.

13. But although your duty as Commissioners be exclusively to inquire, to deliberate, and to report; yet, within the sphere of that duty you are placed under no restrictions, excepting such as the necessity of the case or your own judgment may prescribe. You will lay before His Majesty a faithful statement of all matters entrusted to your investigation, and of your matured sentiments regarding them. It will then remain for the King, on the advice of his confidential servants, to determine on the course of action to be pursued. Your counsels and those measures will have for their common object the advancement of the welfare and prosperity

prosperity of Lower Canada by all methods compatible with the integrity of the empire, and with the authority of the King as supreme in all parts of the British dominions.

14. You will ever bear in mind that you are sent on a mission of peace and conciliation. You will therefore proceed in a spirit not of distrust, but of confidence; remembering that much of your success will depend, not only on the zeal, ability and fairness of your inquiries, but also on your perfect separation from all local and party disputes, and on the unquestionable frankness and impartiality of your general conduct.

15. I must not omit to observe, that the legislature of Lower Canada must ultimately be the instrument through which any benefits resulting from your mission must, to a very great extent, be accomplished. His Majesty disclaims the intention of provoking any unnecessary Parliamentary interference in the internal affairs of the province. To mediate between adverse parties, with an entire respect for the constitutional rights common to them all, is the high office appropriate to his Royal station, and this function the King, aided by your inquiries and advice, is anxious on the present occasion to perform.

16. With these preliminary remarks on the motives in which your mission has originated, and on the spirit in which your duties as Commissioners are to be discharged, I proceed to advert to some of the more prominent subjects of claim and complaint on the part of the House of Assembly.

17. Among the most pressing of these is the Financial Question which has given rise to so protracted a controversy.

18. 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 these 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 Seigneurial rights inherited by the King from his royal predecessors. In fine, the authority 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.

19. 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 control 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 his 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.

20. 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 moment even in those 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

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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.

21. 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 review 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.

22. This, then, will be one of the subjects of your earliest inquiry; 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 securing of judicial independence. If this can be effected, one of the chief difficulties which might otherwise obstruct the cession of the revenues, would be overcome.

23. 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.

24. I pass over, without any direct notice, the grounds on which the contending parties in the province have, on the one hand, urged the necessity of such a stipulation, and, on the other hand, denied that it could be safely or constitutionally admitted. You will readily learn from various public documents, which will be pressed upon your attention, in the province itself, what are the arguments to which I refer. I cannot, however, abstain from recording in this place, the principal considerations which appear to make it necessary, that the concession about to be made to the provincial legislature should be qualified by the demand of a proper civil list.

25. A constant altercation between the House of Assembly and the executive government, on the subject of the official emoluments of the chief officers of the Crown, would be derogatory to the character of those officers, and especially of the Governor, representing the person and clothed with the delegated prerogatives of the King. The tendency of such controversies would unavoidably be, to induce a dis-esteem for those functionaries, by exhibiting them in the light of pensioners on the reluctant bounty of the representatives of the people; although the common welfare of society evidently requires that they should rather be respected as the ministers of the King; exercising, under a just responsibility indeed, but yet with freedom and independence, the powers confided to them for the public good.

26. The continued agitation of a subject so capable of being placed in an invidious light, could scarcely be compatible with the tranquil and steady progress of those most important branches of the public business, with which the higher functionaries of the government are charged. It would also be directly injurious to them, and therefore to the society at the head of which they are placed, thus to give an habitual and offensive prominence to the remuneration they were receiving, and in the same degree to divert public attention from the services by which that pecuniary reward was earned.

27. The

27. The security which the Governor and his principal officers would derive from the grant of a civil list, would strengthen the connexion subsisting between Canada and the other members of the British empire. It would be a distinct recognition of the principle, that the administration of the affairs of the province, by a Governor and officers appointed by the King, is a substantive and essential part of the provincial constitution. To debate from year to year whether grants shall or shall not be made for the support of such functionaries, might almost seem to involve a tacit assumption, that the existence of such offices was itself a question open to annual revision. In so remote a part of His Majesty's dominions, it is especially necessary that the Royal authority, as represented by His Majesty's officers, should be most distinctly admitted as one of the component and inseparable principles of the social system.

28. Nor are the motives by which the independence of the judges has been recommended by the King, and admitted by the Assembly, inapplicable to the case of the principle officers of the local government. They have frequently unpopular duties to perform; they are not seldom called to oppose the passions and emotions of the day; and, for the permanent well-being of society, to brave the displeasure of the popular leaders. They should therefore be raised above all influence, and all suspicion of influence, of unworthy fear or favour. 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 favour of a body, which necessarily reflects most of the fluctuating movements of the public mind.

29. Such are the principle 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.

30. 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.

31. If however a temporary settlement, to be renewed from time to time, should prove impracticable, or upon 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.

32. Respecting the amount of the civil list to be demanded, the very moderate proposal of the Earl of Ripon might perhaps be taken as the basis. But as his Lordship proposed to retain for the Crown, the control of the territorial and hereditary revenue, it would be in perfect consistency with his principle to advance beyond the limit of his demands. It will be for you to consider what part of the public revenue ought thus to be withdrawn from the annual appropriation of the provincial legislature. In attempting to draw this line, you will judge what are those services in the performance of which the common good requires that the officers of the Crown should be elevated above the reach of popular prepossessions and prejudices. Other considerations will probably claim a place in deciding on the amount of the civil list to be demanded; but to maintain the proper freedom of action in the chief organs of the executive government, will be the principal object to be borne in view.

33. 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.

34. 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,



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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 to both of the Houses of General Assembly, or to persons appointed by them and subject to their control.

35. 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.

36. 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 practical 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.

37. Wishing to meet the whole subject frankly and without reserve, I am not disposed to deny, that at a period which perhaps can hardly be called remote, large grants of land were improvidently made to persons who had no legitimate title to that advantage ; but this I believe to have been the necessary consequence of a system of management which, though faulty in itself, was consonant with opinions prevalent at the time of its establishment ; and I am entitled, on behalf of the executive government, as administered by Lord Ripon and by his Lordship's successors, to assert, that they gave conclusive evidence both of the disposition to originate, and of the ability to effect, a complete reform in this department of the public service. Lord Ripon took the most effectual security against the recurrence of such abuses, by establishing the rule, that no waste lands should be disposed of except by public auction, and at such an upset price as should effectually prevent fictitious sales. I am aware that complaint has been made of the infringement of this rule ; but after the most careful search into all the documents within my reach, I am able to declare that I find no evidence of a solitary deviation from it. The cases mentioned as exceptions, are all to be explained by the same simple statement. Persons who, before the date of Lord Ripon's regulations, had entered into contracts, or had received from the government promises for the grant of lands upon different terms, insisted afterwards on their earlier titles ; against which, of course, it would have been unjust to plead a subsequent and retrospective rule.

38. But while claiming for His Majesty, and for the public officers appointed by him, the right and duty to regulate the settlement and alienation of the wild lands of the Crown, I am not only ready, but anxious that every proper security should be taken for the intelligent, faithful, and punctual execution of that duty ; nor does it seem to me that it would necessarily be incompatible with these objects, to place the territorial revenue at the disposal of the legislature.

39. In considering this subject, it will be, in the first place, necessary to determine the principles upon which the uncleared territory could be most advantageously brought into settlement. This inquiry has engaged the serious attention both of speculative observers and of persons practically engaged in such affairs. Lord Ripon evidently devoted to it much time and thought ; and his Instructions to Lord Aylmer on this head rest on principles which certainly underwent a very close investigation. Aware, as I am, how many are the sources of error to which speculations of this kind are liable, and how necessary it is for the correction of such fallacies, to possess an intimate acquaintance with the scene in which such abstract principles are reduced to practice, I express my concurrence in the general views of my predecessor, with the same self-distrust by which he appears to have been actuated. It was under the influence of that feeling, as well as from respect for the local authorities, that Lord Ripon took the wise course of soliciting the advice of the House of Assembly for the guidance of the local government in maturing his scheme, and in the discharge of the duties connected with it. The House has not, as yet, acted on that request.

40. This silence may, I trust, be understood to imply an approbation of the system so fully explained by Lord Ripon ; but as it is of the greatest importance that

that some permanent rules should be prescribed upon this subject, which cannot with propriety be left to the arbitrary discretion of any functionaries, however eminent in character or station, it will be part of your duty to inquire and ascertain what are the principles and the rules which could be most conveniently adopted for this purpose. The existing regulations, if not perfect, seem at least sufficiently accurate to form the basis of a legislative enactment on the subject. You will, however, have an opportunity of learning how far Lord Ripon's plan has really been productive of the beneficial effects which his Lordship anticipated, and how far any unforeseen difficulties may have embarrassed its operation. You will thus be enabled to judge to what extent it may demand or admit of amendment.

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41. But it will be necessary not merely to determine the general system of management which should be adopted, but likewise to provide adequate machinery by which that system may be practically applied. In your inquiries upon this head, your attention will naturally be drawn to the course of proceeding followed in this country, in a case which, however distinguishable, is not dissimilar from that of the management of the wild lands in Lower Canada. The land revenue of the Crown in England, is placed under the direction of a Board, of which all the members are appointed by the King.

42. The Commissioners of Woods and Forests, under the direction of the Treasury, receive the rents and profits which arise from the estates of the Crown; apply such portions of the receipts, as in their discretion they think expedient, in the improvement of the property, and in defraying the various expenses of management; and transfer the balance which may remain to the public account, under the compact entered into at the commencement of the reign. As a check upon any abuse in the discharge of these duties, and more especially in the application out of the gross revenue of the sums required for the management and improvement of the estates, the Board is placed under the obligation of presenting, annually, to both Houses of Parliament a full report of its proceedings, including an account, in detail, of all receipts and disbursements within the preceding year.

43. You will consider whether any obstacles exist to the adoption, in Lower Canada, of a similar arrangement, which, if practicable, would remove the principal difficulty in making over to the legislature the right of appropriating the territorial revenue, by securing to the executive government that free action in the management of the wild lands of the Crown which it is absolutely essential to preserve.

44. It remains to notice one other topic, which must be considered in connection with the proposed financial arrangements. The cession of the hereditary and territorial revenue to the appropriation of the provincial legislature, would deprive the King of the means of paying the pensions and compensation allowances which have been charged upon that fund, in the exercise of His Majesty's lawful and undoubted authority. It is almost superfluous to say, that any violation of the pledged faith of the Crown cannot, in the prospect of any advantage whatever, be admitted even as the subject of debate. The total charge under this head is of no formidable amount; and, as far as I can ascertain, there is no single case in which such a grant has been charged upon the Crown revenues of the province, without a substantial and adequate ground of personal desert or public policy.

45. You will ascertain what are all the liabilities to which this revenue is legally subject. His Majesty will not consent to abandon the cause of any claimant whose title may rest upon a legal foundation. No plan of surrendering to the provincial legislature the appropriation of these funds will be submitted by yourselves to the King, or proposed by His Majesty to the Assembly, which does not comprise, as an essential part of its basis, the maintenance of such legal titles.

46. I will not allow myself to suppose that, on this subject, any difference of opinion can arise between the executive government and the representatives of the Canadian people. The charge for pensions and compensation allowances will be continually diminishing; nor will it be forgotten that, by the proposed arrangement, His Majesty would surrender the exercise of the most grateful of the Royal functions, reserving to himself no funds for the reward of merit, however distinguished, but devolving entirely on the local legislature, the means of dispensing public favour, and of testifying public gratitude. But although His Majesty abstains from demanding a control over any part of the revenue of the province, for the purpose either of relieving faithful public servants when labouring under the pressure of old age or sickness, and incapable of performing their accustomed duties, or even of rewarding eminent merit, yet, as often as such cases may arise,

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His Majesty will lay his commands on the Governors of the province to prefer the claims of such persons to the justice and liberality of the House of Assembly. Nor does His Majesty doubt that to such applications the representatives of the people of Lower Canada will accord a cheerful assent.

47. I have now enumerated the various subjects which, I think, may fairly enter as conditions into any arrangement for the cession of the Crown revenue. They are, the independence of the judges; the settlement of a civil list; the management of the waste lands; and the continuance of existing pensions. If on these topics a satisfactory adjustment can be made, I am not aware that there will remain any further difficulty in the way of a compliance with the wishes of the House of Assembly on the subject of the appropriation of the provincial revenues.

48. I am not, however, insensible to the danger of overlooking, at this distance from the scene, some conditions which, on closer observation, it might seem necessary to embrace in the final settlement of a plan, at once so comprehensive and so important to the best interests of the province. During your residence in Lower Canada, some topics kindred to those to which I have adverted may present themselves to your notice; and you will not exclude from your consideration any question which may appear to you to have a material bearing on the decision to be ultimately adopted by the King. To place the financial affairs of the province on some safe and permanent basis, and thus to relieve the executive government and the two Houses of General Assembly from the unhappy distractions of the last 15 years, may be truly stated to be the main object of your mission. It will, therefore, receive your first and most careful attention.

49. I next proceed to the consideration of a subject which has given rise to long and embarrassing discussions between the executive government and the House of General Assembly; I refer to the tenures on which lands in the Province of Lower Canada are holden. Much controversy has prevailed, not only respecting the legal incidents of soccage tenure in that province, but also respecting the comparative advantages of holding land in fief and seigniorie, or in soccage, and a question has arisen whether these controversies would be more properly adjusted by Parliamentary or by provincial enactments. Convinced of the propriety of referring the whole subject to the provincial legislature, Lord Ripon embodied that principle in an Act which was passed in 1831. It has been since maintained that the language of that statute is not sufficiently precise or copious to effect the real design of its author; and it has been strongly pressed on His Majesty's Government that Parliament should be advised to repeal the Canada Tenures Act of 1825.

50. On the whole of this subject I am well convinced that the Imperial Legislature will adopt any measure distinctly recommended to them by the legislature of Lower Canada. To advance any further, except at the instance of that legislature, and with a perfect assurance of its approbation, would be to disregard every lesson to be derived from the experience of past years. No security less than the distinct declaration by the local legislature, of their wish for such a proceeding, could rescue the authors of a new Parliamentary enactment respecting Canadian tenures from the reproach of invading, in violation of the most solemn pledges, one of the admitted privileges of the Governor, Council, and Assembly. The law as it at present stands, invests the local legislature completely with the right of dealing with Acts of the Imperial Parliament relating to tenures of land in the province, and it does so, as it appears to me, in terms as ample as could possibly be selected. The principle of avoiding all unnecessary interference is, I think, more effectually respected by this delegation to the provincial legislature of the right to repeal all or any of the provisions of British Acts respecting tenures, than by a repeal of such Acts directly, or in the first instance by the British Parliament itself.

51. The more material inquiry, however, is, whether there be sufficient reason for commuting the existing feudal tenures into the tenure in free and common soccage; or for subjecting the soccage lands to any of the incidents of the tenure in fief and seigniorie; and under what tenure those lands which yet remain a part of the demesne of the Crown should hereafter be granted. Ample materials exist from which a correct judgment on this question might be drawn by persons resident in the province.

52. You will ascertain what have been the real consequences of the two different kinds of tenure on the prosperity of the different portions of the province in which they have respectively prevailed.

53. It

53. It is stated that the pernicious effects of the feudal liabilities are to be discovered in an imperfect cultivation of the soil ; in the general poverty of the inhabitants ; and in a comparatively infrequent accession of new settlers. On the other hand, it is maintained that the erection of seigniories in Canada has had the effect of concentrating the inhabitants, and of thus increasing the value and effectiveness of agricultural and every other species of labour. The occupation of land in free and common soccage, again, is denounced as productive of the opposite evils of dispersion, and of opening in detached parts of the wilderness settlements, the communication between which is so difficult as to reduce each family to the embarrassments and poverty of a solitary and insulated condition. The advocates for the French tenures insist on the greater facility with which, under that system of law, land was alienated, and on the superior equity and wisdom of the rules according to which it is distributed on the death of the proprietor. The advocates for soccage tenure not only combat these statements, but proceed to insist in their turn that the feudal laws, as existing in Lower Canada, authorize a mode of conveyancing the most favourable to the fraudulent seller, and the most dangerous to the honest purchaser of land in the province. They complain that the selfish interests of particular classes have been consulted at the expense of the general good, and that in Lower Canada alone has the legislature refused to establish that open registry of all instruments affecting the title to land, which forms a part of the code of every other British colony.

54. This debate has been conducted with peculiar earnestness in reference to the tenure of property in the city and suburbs of Montreal. The seigniorial rights claimed by the ecclesiastics of the Seminary of St. Sulpice were denounced as utterly incompatible with the improvement of a great commercial city. It was alleged that during the prevalence of the feudal system in Europe all towns largely engaged in trade were emancipated from that bondage, either by Royal charter or by the silent growth of legal customs of an opposite character. Whatever may be the effect of the mutual obligation of the seigneur and the censitaire in the agricultural districts, those obligations are declared to be at variance with the spirit, and destructive to the prosperity of commerce. They are represented not only as establishing a species of servile dependence especially irksome to those who have imbibed the sentiments generated in every part of the world by extensive mercantile transactions, but as forbidding all public improvements for the extension of such dealings, and as preventing all enlargements of private buildings, to meet the progressive demands of an increasing commerce.

55. Possessing local advantages, second to those of no city on the North American continent, and formed to be the emporium of some of the wealthiest and most industrious regions of the earth, Montreal is said to have been debarred from availing herself of those advantages, and to have been depressed into comparative insignificance by the prejudicial adherence to a narrow and antiquated policy.

56. The authors of these remonstrances enforced them by the assertion that the pretended feudal rights had no legal existence, and that the seigneurie, though claimed by the Seminary of St. Sulpice, was in reality the property of the King, who was not only entitled, but bound to emancipate his tenants from this thralldom ; and the exercise on the part of His Majesty of that right was invoked with the more earnestness, because a majority of the inhabitants of Montreal, and almost the entire body of those directly interested in the question, are of English origin, and utterly opposed to the opinions or prejudices entertained by their neighbours in favour of the feudal tenure. In proof of the title of the Crown, the remonstrants referred to a long series of opinions coming from all the highest authorities to whom the question could be referred.

57. It was under such circumstances that my predecessors in office entered into a negociation with the ecclesiastics of St. Sulpice for the amicable adjustment of this dispute. By some unfortunate misconception, the local government thought themselves bound to conceal from the public at large the correspondence which had taken place on this subject. This error is much to be regretted, and cannot be too speedily redressed. The effect of a complete disclosure of every word which has passed, whether orally or in writing, respecting the rights of the Crown to the seigneurie of Montreal, would be to show that Lord Ripon, anxious as he was to give every scope to the growing prosperity of the city, was yet even laboriously careful, by not advancing his demands beyond the limits which that prosperity required, to protect from all danger the great religious objects of the Seminary of St. Sulpice, and the personal welfare of the ecclesiastics by whom that

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establishment is at present represented. I do not perceive that it would be possible to add anything to the moderation or liberality of his proposals, and certainly I have no disposition to subtract anything from them. I have reason to believe that all parties are sincerely inclined to come to a just and reasonable settlement of this question, and I trust that under your auspices such a settlement may speedily be effected.

58. On the general subject of the tenures of land, whether rural or municipal, in Lower Canada, you will therefore direct your careful attention to the various topics to which I have thus cursorily adverted. The expediency, under the actual circumstances of the province, of introducing any change in the tenures either of the seigneurial or of the soccage lands; the terms on which the yet ungranted lands could be most conveniently alienated; the right of the Crown to the seigneurie of Montreal, and the propriety of enforcing that right; these are general topics which will diverge into many collateral inquiries, upon the whole of which it is necessary for the peace of the country that a comprehensive, and if possible a conclusive, investigation should take place.

59. Before I quit the subject of the Crown lands it is necessary to advert to the complaints which have been made respecting the establishment of the North American Land Company. The interposition of Parliament for this purpose is censured as an unnecessary interference with the authority of the local legislature over the internal affairs of the province.

60. Without undertaking to defend that proceeding from censure altogether, I may yet observe, that if any incorporated society is to exist in this kingdom for the settlement of lands in any of the British colonies, Parliamentary sanction is indispensable to some at least of the minor arrangements necessary for giving effect to such a purpose. Whether such companies should in any case be constituted, is therefore the real point at issue. In the province they may be established by Acts of Assembly; in Great Britain by Acts of Parliament; and either in Great Britain or in the province by Royal charter. His Majesty can have no wish to reserve to himself the exercise of this power, or to claim it for Parliament, unless it shall appear to be on the whole conducive to the general welfare of his Canadian subjects. That is a question which it is scarcely possible to solve conclusively without inquiries conducted on the spot, and by the aid of such evidence and suggestions as are not to be procured elsewhere.

61. It is an obvious objection to such schemes that they in reality delegate to private persons the office of settling the uncleared lands of the province, which office, it is said, could not be safely confided except to the government or to commissioners such as have been already described. A still more popular objection, of which I do not stop to discuss the justice, is, that the absent company withdraws from the province, in the form of profits, funds urgently required for the increase of the capital which should be devoted to local improvements. Perhaps too, some dread may be excited in the province by the effect of land companies in multiplying the number of new settlers with a far greater rapidity than would be consistent with the natural progress of immigration.

62. On the other hand it is denied that any legal impediment could be justly raised to the influx of British capital and British population; or that His Majesty could properly be advised to abstain from the exercise of the powers which the constitution has confided to him for that purpose; the right of erecting corporations by Royal charter, having been exercised in Lower Canada from its first settlement to the present day, should not, it is said, be relinquished merely because the legitimate exercise of it may be distasteful to a portion of the community. Every class of the King's subjects has an equal title to invoke the aid of His Majesty's prerogative, either for their protection or for their benefit.

63. I do not attempt to pursue any further the statement of this question. What I have already written may be sufficient to explain my motives for calling on you for a report whether it would be fit that the King should be advised to refrain from the exercise in future of the right of establishing such societies by Royal charter; and whether any pledge ought to be given against any future application to Parliament for their assistance in accomplishing such a purpose. If you should be of opinion that the power ought to be maintained, you will then consider and report whether any pledge can be judiciously given against the possible abuse of it, and whether any, and if any, what conditions can be prescribed as essential to such Royal grant hereafter.

64. The importance of the topics to which I have hitherto adverted would be very imperfectly understood, unless they were viewed in their connection with another

another question to which the majority of the House of Assembly would seem to attach a yet higher interest. In the 92 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 declared 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.

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65. 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.

66. 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.

67. But His Majesty cannot forget that it is the admitted right of all his subjects to prefer to him, as King of these realms, their petitions for the redress of any real or supposed grievances. His Majesty especially recognises 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 that 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 inquiry, 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 prominence has been given.

68. The King is 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 shown, 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.

69. It must be recollected that the form of provincial constitution in question is no modern experiment nor plan of government, in favour 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 these 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 comprised within the limits of colonies founded by charters of incorporation. The considerations ought indeed to be weighty which should induce a departure from a system recommended by so long and successful a course of historical precedent.

70. 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.

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71. You will therefore apply yourselves to the investigation of this part of the general subject, 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.

72. When your report 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.

73. There is one complaint closely connected with the topic referred to, of which I do not find any notice in the Resolutions of the Assembly. The constitution of Lower Canada consists of various branches or members, to each of which Parliament has assigned such functions as were thought necessary to counterbalance the danger of abuse in the other organs of government.

If the balance be disturbed, a counterpoise would be required to rectify the disturbance. It is earnestly maintained by many, that the House of Assembly does not supply a fair representation of the Canadian people; that the constituencies throughout the province are so arranged as to insure the return of a much larger proportion of members in the interest of the Canadians of French descent, than is warranted either by their numbers or their property; and that neither the commercial interest, nor the landholders in the townships, are protected in the popular branch of the legislature with any just regard to their importance, or to the wealth and number of the persons embraced in those classes. The Canadians of British descent have been therefore, it is said, accustomed to look to the Legislative Council for defence against the partiality which they ascribe to the members of the House of Assembly.

74. On the truth and justice of these representations, it is not for me here to pronounce an opinion. But assuming them to be true, it is clear that the existence of such a state of things would throw additional difficulties round an attempt to modify the Legislative Council.

75. It will be necessary for you to inquire into the truth of these allegations. This duty indeed you are bound to perform, with a view to the general interests of the colony, even independently of any reference to its bearing on the construction of the Legislative Council. The number of persons of British or of French birth or origin actually sitting in the Assembly will of course afford a most imperfect criterion of the influence by which their seats may have been obtained, and of the course of policy to which they will habitually incline. The material question respects the national character and prepossessions rather of the several constituencies, than of the different members. Lower Canada must also be viewed as a country in which the limits of settlement and cultivation are continually widening. It requires therefore an elective system, resting on a principle such as shall accommodate itself to changes which are taking place in the circumstances of the electors, with a magnitude and rapidity to which there is no parallel in the communities of Europe.

76. If your inquiries should lead you to the conclusion, that a change in the Law of Election in Lower Canada is necessary or desirable, it will be right that the change should, if possible, be effected, not by an Act of Parliament, but by an Act of the local legislature.

77. The composition of the executive council has also been made the subject of censure. It is maintained that the members of the body are incompetent to the judicial duty with which they are charged, and unfit to act as the confidential advisers of the Governor in their more appropriate office of aiding in the execution of his administrative authority. Hence, it is said, has arisen the habit of appealing, with inconvenient frequency, to the Secretary of State, on many questions which might more advantageously have been disposed of in the province itself. To this practice



practice is ascribed not only much needless delay in the dispatch of public business, but the mischief inseparable from bringing the ultimate and supreme executive authority into needless collision with individuals and with the two Houses of Legislature.

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78. So far as these complaints refer to the appellate jurisdiction of the executive councillors, there appears an unanimity so entire amongst all the parties concerned, that the only subject of inquiry is, by what means that jurisdiction can be most speedily and advantageously transferred to a more appropriate tribunal. But, on the other branch of the subject, there is a wider scope for investigation.

79. I am disposed to doubt whether the number of the members of the executive council might not be reduced with advantage to the community. In the Indian presidencies, as well as in all the new British colonies, the number is limited to three or four. A much larger number would seem scarcely compatible either with promptitude, secrecy, and a due sense of personal responsibility; or with calmness of deliberation, freedom from party dissensions, and exemption from the danger of inconvenient compromise. If three members only had seats at the board, it might at once be reasonable to impose, and possible to enforce, the observance of the rule, that on all questions of importance the Governor should be bound to explain to the board his own opinions, and to receive from them, in return, an explanation of theirs. This, however, is a subject on which His Majesty is not, at the present moment, disposed to act without the aid of your judgment and report.

80. I would not, however, exclude from your consideration any proposal of which it is the professed object to render the Executive Council a more effective instrument of good government. You will therefore report whether there are any practicable amendments which, on the whole, it would be desirable to adopt, either in the mode of convening, of consulting, or of remunerating the members of this body, or regarding the tenures of their seats.

81. The state of education in Lower Canada must engage your most serious attention, with a view to the best means of promoting the more general diffusion of sound learning, religious knowledge, and Christian principle. Of His Majesty's anxiety in regard to these paramount objects, it would be difficult to speak in terms sufficiently emphatic. But the earnest endeavours of my predecessors on this subject have been so repeatedly frustrated, that I suspect the existence of some obstacles of which the Home Government is not aware. Amidst the heat of contention on questions comparatively of slight temporary concern, this momentous and permanent interest of the whole Canadian people may have been overlooked. Sufficient attention, perhaps, has not been given to the essential distinctions between the state of society in this kingdom and in the province. It may have been forgotten that in a new country, pressing forward in the career of agricultural and commercial enterprise, it is far more impolitic than in this kingdom to calculate on the voluntary exertions of those who combine the advantages of wealth and leisure with practical experience in public affairs. If His Majesty's Government have not hitherto addressed themselves with sufficient promptitude to the duty of devising and recommending well-considered plans, for an object so nearly touching the moral and intellectual no less than the social benefit of the Canadian people, it is an error which cannot be too frankly confessed nor too zealously redeemed.

82. You will therefore apply yourselves to the collection of all such intelligence as may be necessary for framing a general system of provincial education, embracing not the mere rudiments of literature, but all that relates to the culture of the minds and the development of the moral and religious principles of youth in the different ranks of society. This is a task, the due performance of which requires so intimate an acquaintance with the character and wants of the people, that I doubt whether, within the time of your residence in Canada, it will be possible for you to be completely prepared to form a deliberate conclusion on a question thus comprehensive. It will, however, be of great value if a commencement can be made, resting on a solid basis, on which, aided by the co-operation of the Governor, a more complete structure may hereafter be erected by the Legislative Council and Assembly. I am sanguine in the hope that such will be the result of your inquiries and your report.

83. The last topic to which I shall refer in my present communication is, the distribution between the Provinces of Lower and Upper Canada of duties, levied



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under Acts of Parliament or Statutes of the Lower Province, at the ports in the River St. Lawrence. The interposition of Parliament to apportion these funds was dictated and justified by necessity. Between two great dependencies of the empire, at variance on a question of the deepest interest to both, Parliament assumed an authority to mediate, not with a view to any interest exclusively or principally British, but for the sake of objects altogether Canadian. Still it has never been disputed or concealed, that this intervention was accompanied by the exercise of an extreme right, nor have His Majesty's Government ever been slow to seize every opportunity for remitting the decision of this dispute to the legislatures, within whose cognizance the question properly falls. You will make it your business to inquire whether such an adjustment of the rights of the two provinces, satisfactory to them both, can be devised, as would justify the repeal of the Canada Trade Act. If any such project can be matured, His Majesty's Government would be happy to introduce into Parliament the necessary measure for accomplishing that repeal.

84. It appears from the records of this office that my immediate predecessor, the Earl of Aberdeen, investigated with great diligence the question whether the recommendations of the House of Commons' Committee of 1828, on Canadian Affairs, had been completely executed. The result of those inquiries his Lordship embodied in a Minute of which I have the honour to enclose a copy for your information. In reliance on the habitual accuracy of Lord Aberdeen, I think myself entitled confidently to maintain with him, that to each of the recommendations of that Committee, the King has given complete effect to the utmost extent of His Majesty's constitutional authority; that in obedience to His Majesty's commands, the most pressing instances have been made to the Legislative Council and Assembly to accomplish every other part of the designs of that Committee to which legislative aid was indispensable; and further, that so frank and cordial was the spirit in which those concessions were made, that on every one of the principal topics included in the Report of 1828, His Majesty spontaneously advanced considerably beyond the limits recommended by its authors.

85. This, however, is a general conclusion of so much importance, and enters so largely into the justification of the policy observed by the King, from the commencement of his reign, towards his Canadian people, that His Majesty is not satisfied that it should rest merely on the revision undertaken by his own confidential servants, of the events of the last seven years. Desiring that it should be brought to the test of the most rigid and impartial inquiry, His Majesty commands me to instruct you, on your arrival in Lower Canada, to ascertain and to report whether the recommendations of the Canada Committee of 1828 have, to the full extent of His Majesty's authority and legitimate influence, been carried into complete effect; or whether there is any, and if any, what part of their advice which it yet remains with his Majesty to execute.

86. I have now adverted to all the topics which it is necessary to comprise in the present communication; I have accompanied them with such observations as the occasion seemed to require. In offering those observations I must again disclaim the remotest intention of fettering your discretion or of restricting in any degree the exercise of your own judgement, either as to the subjects of inquiry or the opinions at which you may arrive. In the course of your investigations new topics will occur to you, and new views of topics already familiar will present themselves. You will not on any occasion, or for any reason, shrink from the explicit declaration of your sentiments. You will not decline any inquiry, the prosecution of which may promise benefit to the colony or the mother country. You cannot err, either in the selection or in the treating of questions, if you steadily bear in view the purpose for which His Majesty has been induced to entrust you with the execution of this commission, and the obligation under which you are placed to contribute, by every means in your power, to the accomplishment of that gracious purpose.

I have, &c.

(signed) *Glenelg.*

Enclosure 1,  
in No. 1.

Petition of  
Inhabitants of  
Lower Canada.

Enclosure 1, in No. 1.

To the KING's most Excellent MAJESTY.

The Petition of the undersigned Inhabitants of *Lower Canada*,

Humbly sheweth,

THAT your Petitioners, deeply sensible of their obligations as subjects of Your Majesty, and of the many and important advantages which they enjoy in common with their fellow subjects in this province, are devoted to the maintenance of its connexion with Great Britain and Ireland, and the empire of which it is their pride and happiness to form a part.

That among the advantages to be derived from this connexion, there is none which they more highly prize than that settled government, constitutional freedom, and security of person and property, which the experience of ages has proved pre-eminently to distinguish the British constitution of government, firmly supported as it has been, by the intelligence and wisdom of a public-spirited and patriotic people.

That the gratitude of your petitioners is justly due to the British Parliament for the Act passed in the thirty-first year of the reign of his late Majesty George the Third, for making further provision for the government of this province.

That it was manifestly intended by the said Act, to secure to all Your Majesty's subjects therein, the benefits of the British constitution of government, in so far as the circumstances of the Colony would permit, and as was consistent with its dependence on the parent state, and a just subordination to its authority.

That it is with the deepest regret your petitioners have perceived, by the experience of the forty-two years during which the said Act has been in force, that various causes have come into operation, which have materially diminished, and now threaten to destroy, the benefits intended.

When Canada was ceded to the British Crown by the Treaty of Paris in 1763, it contained a population of about sixty thousand souls who had been subjects of His most Christian Majesty.

In virtue of the capitulation of Canada, in 1760, this population became British subjects, and were maintained in their property, and by the Act of the British Parliament of the fourteenth George the Third, chapter eighty-three, the laws usages and customs of Canada were continued to them; and in other respects they have become entitled to the enjoyment of all rights, liberties and franchises which belong to or have been granted to the inhabitants of this province.

That the said inhabitants, formerly subjects of His most Christian Majesty, and their descendants, under the protection of the said laws and privileges, have since increased to the number of four hundred thousand souls, and retained every characteristic of a distinct people; while those of Your Majesty's subjects who have come into and settled in this province from other parts of Your Majesty's dominions, as well as their descendants, now amounting to about one hundred and fifty thousand souls, have retained a character equally distinct.

In such circumstances, your petitioners humbly conceive, that under whatever form of government the colony might have been placed, the utmost discretion, liberality and mutual forbearance, were necessary to prevent the ordinary competitions of life from disturbing the harmony of society, endangering the public peace, and injuriously affecting the general welfare.

Your petitioners cheerfully bear testimony to the excellent character of the great body of their fellow subjects of French origin; to their tried fidelity to the British Government, and their just claims to Your Majesty's gracious favour and protection: but when to the unavoidable sources of collision aforementioned, were added those inseparable from the contentions of popular assemblies, and the ambition of their leading members, depending for their political existence, personal importance, and the effecting of their views, on the suffrages of the majority of the people, the danger of excitements and collisions between the two populations before mentioned became imminent.

It had besides unfortunately happened that the French colonists of Canada had no share or influence in its legislation and government while it belonged to France. Their descendants were not therefore trained by experience, education and habits, for a government of a more popular form. They were without a sufficient number of men of enlarged and liberal views, embracing all interests in the colony and its relations with the parent state, to discharge the high and important functions of legislators; and the events of war had left among the people feelings and prejudices, apprehensions and jealousies, not easily to be eradicated under the government of a people with whom they had so frequently been involved in hostilities.

In consequence of these circumstances, and the liberal provisions of the aforementioned Acts of the British Parliament, the constitution of the representative branch of the government of the province entirely depended upon the majority of the population of French origin, and the whole powers of that branch inevitably fell into their hands, or rather into the hands of the leading men amongst them, who, in many instances, participated in the popular prejudices, jealousies and suspicious against the population not of their origin.

The evils arising from this state of things, have been greatly increased and aggravated by the Act of the Imperial Parliament placing at the disposal of the Assembly, absolutely and unconditionally, as it is understood by that body, the important revenue by means of which

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the civil expenditure of the province was previously defrayed. By this increase to the power derived from great numerical superiority in the Assembly, have been superadded the irresistible weight and influence necessarily conjoined with the exclusive power of appropriating the revenues indispensably requisite for defraying the civil expenditure of the province, by means of which the executive government has been rendered entirely dependent on the will and pleasure of the leaders in the Assembly for its very existence, and public authority, both administrative and judicial, from the Governor-in-Chief and the Chief Justice of the province to the most humble individual in the scale of office, has been subjected to their interested, partial, vindictive or capricious control.

Your petitioners have seen with sincere regret and alarm, that the powers of the Assembly have been exercised by the leaders in that body, with a spirit of decided hostility to Your Majesty's Government, of disregard for the peace and welfare of the province, and with ill-disguised projects of exclusion and proscription against Your Majesty's subjects not of their national origin, and even against those of their own origin who were not disposed to support them in their unjust and pernicious views.

Your petitioners humbly represent, that at the late general election this spirit of exclusion and proscription has been carried to the extent, that although the population not of French origin amounts to more than one-fourth of the population, it has not been able to return more than fourteen members of the choice of the electors, or representing their views and interests, out of a House composed of eighty-eight members, and that the whole of the population not of French origin in the cities and counties of Quebec and Montreal, although they nearly equal the French population in number, have not been able to return one member of their choice out of twelve.

This result, which in fact leaves a population having great and permanent interests in the province, and contributing a very large proportion of the public revenue, without even the power of being heard in the legislature of the country by any person of their choice or responsible to them, has been facilitated by an unjust and faulty distribution of the elective franchise; by including the new and growing settlements of persons not of French origin in counties where that origin predominates, and where their votes are lost; and by the incessant and systematic efforts of the leading characters in the House of Assembly of French origin, to depress and vilify the population not of their origin, with a manifest tendency to subject their persons and property, and the whole country, to the arbitrary rule and control of these characters, through the instrumentality of a majority acting and held together under the impulses of national prejudices and feelings.

It is with the deepest regret and alarm that your petitioners have witnessed the progress of the various attempts made in the House of Assembly, tending to the aforementioned purposes, as recorded in the Journals of that House. They have refused or neglected to co-operate in the gracious and beneficent intentions of Your Majesty's Government, for the redress of grievances, the remedy of abuses, and for the advancement of the public prosperity; they have vilified and endeavoured to destroy another and co-ordinate branch of the legislature, established under and in virtue of the authority of the aforementioned Act of the British Parliament; promoted and countenanced tumultuous and riotous assemblies and proceedings; endeavoured to bring the administration of justice into contempt; diverted the privileges of the Assembly entrusted to them for the protection of popular rights, to the destruction of these rights; they have, avowedly, in their legislative capacity, acted upon distinctions of national origin among Your Majesty's subjects; have sanctioned these distinctions by their resolutions of the 21st of February 1834; invited the formation of committees and conventions; authorized them to contract loans on the eve of a general election; pledged the honour of the representatives of the people to pay the expenditures of these committees and conventions out of the public monies; and publicly threatened to apply elsewhere, than to the constituted authorities in the province and to the supreme authority of the British Parliament, for a remedy of alleged grievances.

Your petitioners further represent that these proceedings have already entailed heavy losses on your petitioners and the country, by the diminution of confidence in the security of property and its consequent depreciation in value; by the interruption of useful undertakings; the suspension of public improvements; the decrease of employment; the continuance of various abuses; and the spreading of hatred and ill will; threatening long and fatal dissensions, dangerous to the peace, freedom and prosperity of the province, and prejudicial to the interests and character of the British Nation and Government.

Suffering under and exposed to so many evils, your petitioners cannot even look for consolation and protection to an independent and well-organized administration of justice, which is so essential to the well-being of every society. The judges are held in a state of dependence on the House of Assembly for their subsistence, notwithstanding Your Majesty's gracious concession that their commissions should be held during good behaviour, on their salaries being permanently provided for. The system of judicature established by Act of the Provincial Legislature, in 1794, is still maintained, although it has become manifestly unsuited to the present state and condition of the province. From the extension of the settlements and the increase of the population, the courts of original jurisdiction have become inaccessible to the inhabitants at a distance from them, otherwise than at a ruinous expense, involving in many cases, a denial or failure of justice; while the Court of Appeals, from its peculiar constitution, is unfit for the exercise of the powers with which it is entrusted.

Your petitioners observe with regret, in the present state of the province, that the Executive Council, both as respects the number of its members and its composition, is too defective to answer the purposes of its institution. In every well-regulated government, your  
petitioners

petitioners most humbly conceive, that the executive authority should be aided by the advice of able and well-informed individuals acting together in a body, by which sound discretion, uniformity, consistency and system are imparted to its measures; and that among colonial governments, which are generally administered by persons labouring under the disadvantage of a deficiency of local information, assistance of this nature is indispensable to the ends of good government.

Whilst the greatest importance ought to be attached to the selection of fit persons for seats in the Legislative Council, it is indispensably necessary for the stability of the government and the security of His Majesty's subjects within the province, that the power of appointing members to that branch of the legislature, should continue to reside, exclusively, in the Crown, but subject to such regulations as may be deemed proper for ensuring the appointment of fully qualified persons.

Your petitioners, confiding in Your Majesty's wisdom and paternal regard for all Your Majesty's subjects,

Humbly pray:

That Your Majesty would be graciously pleased to take the premises into consideration, that justice be done therein; and, particularly, that they be secured in their just right of a fair and equitable representation in the Provincial Assembly, and otherwise protected in their rights as British subjects, and in the full enjoyment of constitutional government.

And your Petitioners, as in duty bound, will ever pray.

Province of Lower Canada, }  
5 February, 1835.

Enclosure 2, in No. 1.

To the KING's Most Excellent MAJESTY.

The Petition of the undersigned Inhabitants of *Lower Canada*, resident in the District of *Montreal*,

Humbly sheweth,

That your Petitioners, deeply sensible of their obligations as subjects of Your Majesty, and of the many and important advantages which they enjoy in common with their fellow-subjects in this province, are devoted to the maintenance of its connexion with Great Britain and Ireland, and the empire of which it is their pride and happiness to form a part.

That among the advantages to be derived from this connexion, there is none which they more highly prize than that settled government, constitutional freedom, and security of person and property, which the experience of ages has proved pre-eminently to distinguish the British constitution of government, firmly supported, as it has been, by the intelligence and wisdom of a public-spirited and patriotic people.

That the gratitude of your petitioners is justly due to the British Parliament for the Act passed in the 31st year of the reign of his late Majesty George the Third, for making further provision for the government of this province.

That it was manifestly intended by the said Act to secure to all Your Majesty's subjects therein the benefits of the British constitution of government, in so far as the circumstances of the Colony would permit, and as was consistent with its dependence on the parent state, and a just subordination to its authority.

That it is with the deepest regret your petitioners have perceived, by the experience of the 42 years during which the said Act has been in force, that various causes have come into operation which have materially diminished, and now threaten to destroy, the benefits intended.

When Canada was ceded to the British Crown by the Treaty of Paris in 1763, it contained a population of about 60,000 souls, who had been subjects of His most Christian Majesty.

In virtue of the capitulation of Canada, in 1760, this population became British subjects, and were maintained in their property, and by the Act of the British Parliament of the 14th Geo. III. cap. 83, the laws, usages and customs of Canada were continued to them, and in other respects they have become entitled to the enjoyment of all rights, liberties and franchises which belong to, or have been granted to, the inhabitants of this province.

That the said inhabitants, formerly subjects of His most Christian Majesty, and their descendants, under the protection of the said laws and privileges, have since increased to the number of 400,000 souls, and retained every characteristic, of a distinct people, while those of Your Majesty's subjects who have come into and settled in this province from other parts of His Majesty's dominions, as well as their descendants, now amounting to about 150,000 souls, have retained a character equally distinct.

In such circumstances your petitioners humbly conceive that, under whatever form of government the Colony might have been placed, the utmost discretion, liberality and mutual forbearance were necessary to prevent the ordinary competitions of life from disturbing the harmony of society, endangering the public peace, and injuriously affecting the general welfare.

Your petitioners cheerfully bear testimony to the excellent character of the great body of their fellow subjects of French origin, to their tried fidelity to the British Government, and

Enclosure 1, in No. 1.

Petition of Inhabitants of Lower Canada.

Enclosure 2, in No. 1.

Petition of Inhabitants of Lower Canada, resident in Montreal.

Enclosure 2,  
in No. 1.

Petition of  
Inhabitants of  
Lower Canada,  
resident in  
Montreal.

their just claims to Your Majesty's gracious favour and protection; but when, to the unavoidable sources of collision aforementioned, were added those inseparable from the contentions of popular assemblies, and the ambition of their leading members, depending for their political existence, personal importance, and the effecting of their views, on the suffrages of the majority of the people, the danger of excitements and collisions between the two populations beforementioned became imminent.

It had besides fortunately happened that the French colonists of Canada had no share or influence in its legislation and government while it belonged to France. Their descendants were not therefore trained by experience, education and habits, for a government of a more popular form. They were without a sufficient number of men of enlarged and liberal views, embracing all interests in the colony and its relations with the parent state, to discharge the high and important functions of legislators; and the events of war had left among the people feelings and prejudices, apprehensions and jealousies, not easily to be eradicated under the government of a people with whom they had so frequently been involved in hostilities.

In consequence of these circumstances, and the liberal provisions of the aforementioned Acts of the British Parliament, the constitution of the representative branch of the government of the province entirely depended upon the majority of the population of French origin, and the whole powers of that branch inevitably fell into their hands. or rather into the hands of the leading men among them, who in many instances participated in the popular prejudices, jealousies and suspicions, against the population not of their origin.

The evils arising from this state of things have been greatly increased and aggravated by the Act of the Imperial Parliament placing at the disposal of the Assembly, absolutely and unconditionally, as it is understood by that body, the important revenue by means of which the civil expenditure of the province was previously defrayed. By this increase to the power derived from great numerical superiority in the Assembly, have been superadded, by the irresistible weight and influence necessarily conjoined with the exclusive power of appropriating the revenues indispensably requisite for defraying the civil expenditure of the province, by means of which the executive government has been rendered entirely dependent on the will and pleasure of the leaders in the Assembly for its very existence; and public authority, both administrative and judicial, from the Governor-in-Chief and the Chief Justice of the province to the most humble individual in the scale of office, has been subjected to their interested, partial, vindictive or capricious control.

Your petitioners have seen with sincere regret and alarm that the powers of the Assembly have been exercised by the leaders in that body with a spirit of decided hostility to Your Majesty's Government, of disregard for the peace and welfare of the province, and with ill-disguised projects of exclusion and proscription against Your Majesty's subjects not of their national origin, and even against those of their own origin who were not disposed to support them in their unjust and pernicious views.

Your petitioners humbly represent, that at the late general election this spirit of exclusion and proscription has been carried to the extent that, although the population not of French origin amounts to more than one-fourth of the population, it has not been able to return more than 14 members of the choice of the electors, or representing their views and interests, out of a House composed of 88 members, and that the whole of the population not of French origin in the cities and counties of Quebec and Montreal, although they nearly equal the French population in number, have not been able to return one member of their choice out of twelve.

This result, which in fact leaves a population having great and permanent interests in the province, and contributing a very large proportion of the public revenue, without even the power of being heard in the legislature of the country by any person of their choice, or responsible to them, has been facilitated by an unjust and faulty distribution of the elective franchise, by including the new and growing settlements of persons not of French origin in counties where that origin predominates, and where their votes are lost; and by the incessant and systematic efforts of the leading characters in the House of Assembly of French origin to depress and vilify the population not of their origin, with a manifest tendency to subject their persons and property, and the whole country, to the arbitrary rule and control of these characters, through the instrumentality of a majority acting and held together under the impulses of national prejudices and feelings.

It is with the deepest regret and alarm that your petitioners have witnessed the progress of the various attempts made in the House of Assembly, tending to the aforementioned purposes, as recorded in the Journals of that House. They have refused or neglected to co-operate in the gracious and beneficent intentions of Your Majesty's Government for the redress of grievances, the remedy of abuses, and for the advancement of public prosperity; they have vilified and endeavoured to destroy another and co-ordinate branch of the legislature, established under and in virtue of the authority of the aforementioned Act of the British Parliament; promoted and encouraged tumultuous and riotous assemblies and proceedings; endeavoured to bring the administration of justice into contempt; diverted the privileges of the Assembly, entrusted to them for the protection of popular rights, to the destruction of these rights; they have avowedly, in their legislative capacity, acted upon distinctions of national origin among Your Majesty's subjects; have sanctioned these distinctions by their resolutions of the 21st of February 1834; invited the formation of committees and conventions; authorized them to contract loans on the eve of a general election; pledged the honour of the representatives of the people to pay the expenditures of these committees and conventions out of the public monies; and publicly threatened to apply elsewhere

elsewhere than to the constituted authorities in the province, and to the supreme authority of the British Parliament, for a remedy of alleged grievances.

Your petitioners further represent, that these proceedings have already entailed heavy losses on your petitioners and the country, by the diminution of confidence in the security of property, and its consequent depreciation in value; by the interruption of useful undertakings, the suspension of public improvements, the decrease of employment, the continuance of various abuses, and the spreading of hatred and ill-will, threatening long and fatal dissensions, dangerous to the peace, freedom and prosperity of the province, and prejudicial to the interests and character of the British nation and government.

Suffering under and exposed to so many evils, your petitioners cannot even look for consolation and protection to an independent and well-organized administration of justice, which is so essential to the well-being of every society. The judges are held in a state of dependence on the House of Assembly for their subsistence, notwithstanding Your Majesty's gracious concession, that their commissions should be held during good behaviour, on their salaries being permanently provided for. The system of judicature established by Act of the Provincial Legislature in 1794 is still maintained, although it has become manifestly unsuited to the present state and condition of the province. From the extension of the settlements, and the increase of the population, the courts of original jurisdiction have become inaccessible to the inhabitants at a distance from them, otherwise than at a ruinous expense, involving in many cases a denial or failure of justice, while the Court of Appeals, from its peculiar constitution, is unfit for the exercise of the powers with which it is entrusted. Although for a period of 42 years the Provincial Legislature has been engaged in legislating for the internal affairs of the province, and is invested with ample powers to advance the social and political prosperity of the country, your petitioners remain subject to a system of feudal law, derived from France, which has been found to impede the progress of improvement, is oppressive in its character, and not in accordance with the wants of the age. Throughout the seigneuries of Lower Canada, within the limits of which are comprised the populous and commercial cities of Quebec and Montreal, upon the sale of real property, the feudal lord exacts from the purchaser a fine equal to one-twelfth part of the price, a claim which recurs with each successive sale; thus every person who clears or otherwise improves a farm, or erects a building either in town or country, bestows one-twelfth part of his outlay on the seigneur whenever the property is brought to sale. From the want of an Act for the registration of real property, the validity of a title cannot be ascertained except by a course of expensive proceedings through the courts of law, but secret incumbrances may still exist, unaffected by that procedure, for whose discovery no means are afforded; hence the difficulty of borrowing money on mortgage, and the frequent seizure and forced sale of real estates.

The right assumed by the House of Assembly (and tacitly acknowledged by Your Majesty's Government) to prefer charges against persons in authority for crimes and misdemeanors in office, is essential to the due administration of public trusts, and the enforcement of the responsibility of public officers; but the acknowledgment of such right proves the necessity of a tribunal within the province before which persons accused may have the benefit of a prompt and full investigation of the charges preferred against them, without which the right to accuse is pregnant with evil, tending to render public functionaries timid in the discharge of their official duties, and thereby to sap the very foundation of order and good government.

Your petitioners observe with regret, in the present state of the province, that the Executive Council, both as it respects the number of its members and its composition, is too defective to answer the purposes of its institution. In every well-regulated government, your petitioners most humbly conceive that the executive authority should be aided by the advice of able and well-informed individuals acting together in a body, by which sound discretion, uniformity, consistency and system are imparted to its measures, and that among colonial governments, which are generally administered by persons labouring under the disadvantage of a deficiency of local information, assistance of this nature is indispensable to the ends of good government.

Whilst the greatest importance ought to be attached to the selection of fit persons for seats in the Legislative Council, it is indispensably necessary for the stability of Government and the security of His Majesty's subjects within the province, that the power of appointing members to that branch of the Legislature should continue to reside exclusively in the Crown, but subject to such regulations as may be deemed proper for ensuring the appointment of fully qualified persons.

Your petitioners, confiding in Your Majesty's wisdom and paternal regard for all Your Majesty's subjects,

Humbly pray,

That Your Majesty would be graciously pleased to take the premises into consideration, that justice be done therein, and particularly that they be secured in their just right of a fair and equitable representation in the Provincial Assembly, and otherwise protected in their rights as British subjects, and in the full enjoyment of constitutional government.

And your petitioners, as in duty bound, will ever pray.

Montreal, Province of Lower Canada, 1835.

Enclosure 2,  
in No. 1.

Petition of  
Inhabitants of  
Lower Canada,  
resident in  
Montreal.



Enclosure 3,  
in No. 1.

Enclosure 3, in No. 1.

Petition of  
Members serving  
in the Assembly of  
Lower Canada.

50. The humble Petition of the Members elected to serve in the Assembly of Lower Canada, and of the Members forming the minority of the Legislative Council, who partake the opinions of the people,

Sheweth,

That during the Session of the Imperial Parliament the Commons of the Province of Lower Canada, in the name of the people whom they represent, approached your honourable House by petition, dated from Quebec, on the 1st day of March 1834; setting forth the grievances which the people of the said province suffered, arising out of the vicious principles upon which their political institutions are based, aggravated by a series of arbitrary administrations to which the province has been subjected.

That the inquiry which was instituted before a Select Committee appointed by your Honourable House, upon Canada affairs, on the 15th April 1834, induced the people of Lower Canada to hope that not only would the prayer of their petition be listened to, but that the grievances therein set forth, which your petitioners have reason to believe were fully supported, would be immediately redressed.

That this hope, which your petitioners cannot deem unreasonable, was still further strengthened by the retirement of His Majesty's late Secretary of State for the Colonies, the Right honourable E. G. Stanley, and the subsequent appointment of the Right honourable T. Spring Rice; the more especially after the repeated declarations of the Right honourable the Secretary of State for the Colonies, that His Majesty's Government was actuated by the strongest desire to render justice to the people of this province, by removing the various abuses under which they suffer, and affording to them security against the recurrence thereof.

That your petitioners, however, regret to state, that not only does the said petition of the Commons of Lower Canada to your honourable House seem to have been totally neglected, but that new abuses have been inflicted upon the people of this province, which, if not speedily removed, will tend to increase to an alarming degree the discontents which have so long prevailed, and will ultimately alienate the affections of the people even from the Government of England itself.

That among the additional grievances of which the people of this province have to complain, your petitioners would invite the attention of your honourable House to the fact, that his Excellency Matthew Lord Aylmer is still continued in the government of this province, after having been formally accused in the aforesaid petition of "illegal, unjust and unconstitutional conduct," and after having borne himself towards the representatives of the people of Lower Canada in a manner insulting to a body intrusted with legislative functions, and destructive of the respect which should be due to His Majesty's representative.

That the acts of the Governor-in-Chief, of which the people of this province still have to complain, were for the most part enumerated in the aforesaid petition to your honourable House; that since that time the vindictive and bitter feelings, together with the arbitrary and unbecoming conduct which his Excellency has displayed towards the people of this province, have created an universal feeling of discontent towards his Excellency's administration.

That among the just subjects of complaint against the present administration of this province, the system which is exhibited in the distribution of offices necessarily holds a conspicuous place; that the chief recommendation to office continues to be a display of marked and bitter animosity towards the majority of the people of this province; that it is seldom men of French-Canadian origin find their way into office under any circumstances; but when they are appointed, it is not until they have alienated themselves from the sympathies of the people, and allied themselves with the factious minority opposed to the wishes and interests of the country; and that even the sacred character of justice has again been recently polluted in its source by the appointing to the high office of Judge of the King's Bench for the district of Montreal a man who was a violent and decided partisan of the administration of the Earl of Dalhousie, and the declared enemy of the laws which he is sworn to administer; and also by the appointment of a great number of commissioners for the trial of small causes in different parts of the country, intentionally selected on the eve of a general election, from among the notorious partisans of the present administration.

That another cause of complaint, which has arisen since the aforesaid petition of the Commons of Lower Canada to your honourable House, is the culpable indifference betrayed by the Governor-in-Chief on the subject of the frightful ravages committed by the Asiatic cholera during the last summer; that a few days after the existence of the dreadful scourge in the city of Montreal was ascertained, the corporation of the said city, in accordance with its strict line of duty, passed a series of resolutions, authorizing an application to the Governor-in-Chief for an extension of the quarantine regulations to the port of Montreal, and for an aid, for the purpose of forwarding the destitute emigrants to their destination; that the answer of the Governor was more than a bare refusal; it was marked by coldness and insult; that your petitioners are firmly of opinion that the virulence which the disease subsequently assumed in the said city of Montreal would have been considerably mitigated had the head of the administration complied with the prayer of the corporation; and that the people of the country generally, and more especially the surviving relatives of the one thousand three hundred victims who died in Montreal, and of the thousands in the province who have fallen victims to the disease, look upon the conduct of his Excellency as one of the principal causes of their sufferings and bereavement.

That

That since the aforesaid petition of the Commons of Lower Canada, your honourable House, in whose deliberations be it remembered the people of this province have no voice, have sanctioned the sale of lands belonging to this province to several individuals using the title of "The British North American Land Company," and thereby have taxed this colony, contrary to the most important and indisputable of the birthrights of British subjects, which were more particularly acknowledged and confirmed to colonies with local legislatures, by the faith and honour of the British Parliament, pledged by the declaratory Act of 1778, the violation of which principle, recognised in said Act, led to the rightful and successful resistance of the former British colonies and dismemberment of the British empire; that your petitioners, viewing with alarm such an encroachment upon their political privileges, would fain believe that it has been made without duly considering their constitutional rights and the provisions of the said declaratory Act; that your petitioners nevertheless solemnly protest against this violation of the most sacred rights of the people of Lower Canada, and pray for the immediate repeal of the Act passed in favour of the said Land Company; that your petitioners have reason to believe that the said tax is now being paid into the colonial chest of this province for the disposal of the Executive, without the sanction, and in defiance of the expressed will of the Commons of Lower Canada; that your petitioners anticipate with fear, as a consequence thereof, a frightful increase of corruption in this province; that in addition to the fears generated by this unconstitutional taxation, and the equally unconstitutional application of the said tax, your petitioners foresee, as arising out of the peculiar powers conferred on the company in question, the destruction of the political independence of the people who may unfortunately become subject to its control, and who will be rendered basely subservient to the said company.

That the continued dilapidations of the revenues of the province, in direct violation of the constitution, are another source of alarm to His Majesty's Canadian subjects; that after the abandonment of the late Colonial Secretary's project, to seize upon the said revenues, by suspending an Act which did no more than confirm to the Commons of Lower Canada a right previously recognised, without conferring any new privileges, His Majesty's Canadian subjects did not expect to be so soon called upon to resist similar unconstitutional encroachments and dilapidations; yet very recently the indisputable privileges of the Assembly have been again violated by the payment of the public servants, without the sanction or cognizance of the only body authorized to give such sanction.

That the people of the old colonies, now the United States of North America, however much they were aggrieved by attempts at unconstitutional taxation, had much less to complain of, on the score of executive usurpations than the people of this province, the Assembly having repeatedly declared its fixed determination not to sanction that which it must ever consider a tyrannical violation of its rights, and which the people of this province regard as a virtual dissolution of the constitution, and for the consequences of which your petitioners cannot answer.

That, under these circumstances, your petitioners claim for His Majesty's Canadian subjects the protection of your honourable House against these and similar acts of pillage; that your honourable House may, and ought at once to ascertain, in order to bring to just punishment those who authorized so criminal an assumption of power.

That, inasmuch as no session of the Provincial Parliament has intervened since the date of the aforesaid petition of the Commons of this province to your honourable House, your petitioners abstain from alluding at any length to the insuperable differences and the ever-widening breach between the House of Assembly and the Legislative Council of this province, differences springing out of the very constitution of the latter body; nevertheless, your petitioners cannot avoid reminding your honourable House, that the aforesaid petition contained a prayer that the Legislative Council, as at present constituted, be abolished, and that the people of this province be empowered to elect a second branch of the Legislature in future, as the only means of producing that harmony, without which internal peace and good government cannot exist.

That as an evidence that the people at large fully participate in the opinions of the majority of the House of Assembly, your petitioners take leave to refer your honourable House to the result of the recent elections in the said province of Lower Canada, which avowedly turned upon the approval or the disapproval of the elective principle, and which result is almost unanimously in favour of the said principle.

Wherefore, your petitioners, expressing the sentiments of the majority of the inhabitants of Lower Canada, pray your honourable House to comply with the prayer of the aforesaid petition of the Commons of Lower Canada, dated on the first of March last, and also with that of the present petition, by removing the abuses and grievances set forth therein, so that full justice be rendered to the House of Assembly and to the people whom it represents.

And your petitioners will ever pray.

Lower Canada, December 1834.

Enclosure 4, in No. 1.

LETTER from *David Brown* to Lord Glenelg.

Mr. Neilson presents his respects to Lord Glenelg, and transmits the copy of the petition of the Scotch Church, in Lower Canada, which he had the honour of mentioning to his Lordship yesterday.

He has taken the liberty to add the letter from a member of the Presbytery, by which it was accompanied.

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Mr.

Enclosure 3,  
in No. 1.

Petition of  
Members serving  
in the Assembly of  
Lower Canada.

Enclosure 4.  
in No. 1.



Enclosure 4,  
in No. 1.

Letter from  
David Brown to  
Lord Glenelg.

Mr. Neilson is fully aware of the disposition of His Majesty's Government to do justice to the Scotch settlers in Canada, and he is persuaded that my Lord Glenelg is well aware of the attachment of the generality of Scotchmen to their national church, and of the merits of its clergy, which are comparatively as great in Canada as in the mother country; but the means of the new settlers do not permit them to recompense these merits, especially in addition to the charge upon the settlers for erecting places of worship. It ought also to be observed, that the legal provision which exists at home for the support of the established clergy has habituated settlers recently from the mother country to be less active in providing a voluntary support for clergymen than those who have been in the habit of providing for them in that way, and the clergymen of the establishments consequently labour under a disadvantage in comparison with religious teachers of other denominations.

His Lordship is, of course, aware that there is a legal provision in Canada for the support of the Roman Catholic clergy, although not compulsory on any excepting those who belong to that church.

To the KING's most Excellent MAJESTY.

Petition of  
Scotch Church  
in Lower Canada.

The Petition of the Ministers and Ruling Elders of the Presbytery of Quebec, in connexion with the Church of Scotland,

Humbly sheweth,

That your petitioners, impressed with a tender anxiety for the moral and religious interests of that large portion of Your Majesty's dutiful subjects in this Your Majesty's province of Lower Canada, who are by education and conviction attached to the doctrines, discipline and laws of the Church of Scotland, deem it a sacred duty again to approach your throne, and, together with their expressions of unfeigned loyalty and attachment, to submit to Your Majesty's favourable consideration the difficulties which press heavily upon them in a religious point of view, and to solicit your gracious interposition in their behalf, in adopting, or causing to be adopted, such measures as may be found requisite to put them in possession of their undoubted and unquestionable right, an equitable participation with their brethren attached to the Church of England in the profits arising from the clergy reserves in this province.

Your petitioners are the more imperiously urged to make this new appeal to Your Majesty's justice, in consequence of the great additions that emigration and other causes have lately made to the number of persons and families in whose spiritual concerns they feel a lively interest.

The number of Presbyterian congregations in the province of Lower Canada being now fifteen, and many more requiring to be formed, if a newly-settled and widely-diffused population had the means of enabling them, to afford even a partial contribution towards the support of ministers.

Your Majesty's petitioners, may it please Your Majesty, ground their right to this participation, First, on the Act of Union between the two, formerly independent, kingdoms of England and Scotland; which Act guarantees (Article 4th), "That all the subjects of the United Kingdom of Great Britain shall from and after the Union have full freedom and intercourse of trade and navigation to and from any port or place within the said United Kingdom, and the dominions and plantations thereunto belonging; and that there be a communication of all *other rights, privileges and advantages which do or may belong to the subjects of either kingdom, except where it is otherwise expressly agreed in these Articles.*"

Here your petitioners consider their rights to be founded as upon a rock, for if there is any faith to be placed in the most sacred treaties and covenants between nations, they must contend, that it is most solemnly pledged in this contract, a contract ratified severally by the Parliaments of England and Scotland, and which forms the foundation of the British Constitution.

Canada was conquered in 1759, not by England, not by Scotland, but by Great Britain, and, therefore, in Canada the clergy of the Established Church of Scotland are by covenant entitled to an equal communication of all rights, privileges and advantages enjoyed by the clergy of the Church of England, as clearly as that the mariners of Greenock and Glasgow have an equal right with the mariners of London and Liverpool to navigate the St. Lawrence and Lake Ontario.

Secondly, your petitioners, acting in behalf of their Presbyterian brethren aforesaid, found their right to a participation in the profits arising from the clergy reserves, on the provision made by the Statute 31 Geo. 3, for the support and maintenance of a protestant clergy; the 36th clause reserves a seventh of the land for the support and maintenance of a protestant clergy; no preference is given in either clause to the Church of England, no exclusion is mentioned of the Church of Scotland; neither is named; yet, by inference, both must be intended to be included, for both are supported by Government in Great Britain; and as they are the only protestant churches so supported in great Britain, the members of the one church, they humbly and respectfully represent, cannot, without a violation of the Act of Union, be countenanced by Your Majesty in their pretensions to a better right than the members of the other to Government support in Canada, a British province.

Your Majesty's petitioners further beg Your Majesty to consider that the construction put by them upon the provisions in the several clauses of the aforesaid Statute was unanimously confirmed by the deliberate opinion of the law officers of the Crown, in the year 1819, when the question was submitted to them by his late Majesty's Government. Their opinion

opinion bears, "We are of opinion, that though the provisions made by 31 Geo. III. c. 31, sec. 36 and 42, for the support and maintenance of a Protestant clergy, are not solely confined to the clergy of the Church of England, but may be extended also to the clergy of the Church of Scotland, if there are any such settled in Canada (as appears to have been admitted in the debate upon the passing of the Act); yet that they do not extend to dissenting ministers, since we think the terms 'Protestant clergy,' can apply only to Protestant clergy recognized and established by law."

The same opinion, as stated in former petitions, may it please Your Majesty, has been deliberately expressed by the Houses of Assembly of Upper and Lower Canada, and it has been likewise confirmed by the report of the Select Committee of the House of Commons on Canadian Affairs in the year 1828; which report bears, that "the Law Officers of the Crown have given an opinion in favour of the rights of the Church of Scotland to such participation (an equal participation in the profits arising from the clergy reserves), in which your committee entirely concur."

Your Majesty's petitioners beg further to remind Your Majesty, that the justice of their right to the provision claimed, has been frequently and fully admitted by the distinguished individual who held for the time being the honourable situation of Principal Secretary of State for the Colonies.

The Earl of Bathurst, in a despatch dated "Downing-street, 6th November 1821," addressed to the Earl of Dalhousie, in answer to a memorial from the ministers and elders of the congregations of the Church of Scotland in Canada, makes use of the following words, or words to the following effect:—

"I entirely concur with your lordship in considering as a most important political and moral duty to extend the influence of the Established Church of England and Scotland in the British Provinces in North America, and to make, as far as means will allow, an adequate provision for their respective ministers. A great difficulty arises from the insufficiency of the funds, which might, under certain circumstances, be disposable for this purpose; for although the clergy reserves may ultimately be expected to form a fund adequate to the maintenance both of the Church of England and Presbyterian pastors, in proportion to the number of their respective congregations, yet, in their present state, utterly insufficient as they are to the demands of one established church, your lordship will not impute to me any want of consideration for the Church of Scotland, if I do not consider them in the Lower Province as yet available for the payment of their ministers.

"At the same time, it is very desirable that some means should be adopted for placing a certain number of the ministers of the Presbyterian clergy on a less precarious footing in point of income than that on which they at present stand; and if your lordship could state to me the extent to which provision to them is required, and the amount which might be expected to be derived from the contributions of the members of that church, either in the Province or in Scotland, it would afford me much satisfaction to consider how far it was possible to attend to their wishes."

In a despatch to Lord Dalhousie, dated Downing-street, 3d September 1823, the Earl Bathurst says, "Could such propositions (propositions to the House of Assembly of Lower Canada, for a legislative provision for the Scotch clergy and the English Protestant clergy) be both brought forward in a proper manner, and with reference to the relative importance of the two establishments, I should be happy to recommend to His Majesty to give his sanction to any bills that might be framed to give effect to the principle; but I am afraid that in the present state of feeling in the Legislature of Lower Canada there is little chance of such measures being brought forward, and I much fear that there would be little disposition in the House of Commons to sanction any measure of that necessary charge which must be sustained at home for the support of the English Protestant church in Lower Canada for whom no effective provision is made within the colony, however desirable it might be to afford the ministers of the Scotch church that assistance which their exemplary conduct so much deserves."

In another despatch of the Earl Bathurst to Lord Dalhousie, dated Downing-street, 26th June 1826, his lordship, after acknowledging the receipt of memorials from the different congregations and ministers of the Church of Scotland in Canada, says, "In reply I have to acquaint your lordship that I am of opinion it would certainly be desirable to grant salaries to the ministers of the Church of Scotland, and in the event of any funds being placed at His Majesty's disposal, by the sale of Crown lands in Lower Canada, I shall be very ready to entertain the applications which you have recommended, but at present I can only express my regret that the want of means prevents me from complying with the petitioners' requests."

To a memorial from a committee of the General Assembly of the Church of Scotland, appointed by the Assembly in 1827, to apply to His Majesty's Government for pecuniary aid to the ministers in connection with the said church, resident in Canada, the convener of said committee received an answer from His Majesty's Principal Secretary of State for the Colonies, bearing, "That whenever a congregation in any of those provinces shall have erected a suitable place of worship and be prepared to acknowledge the jurisdiction of the Church of Scotland, and to contribute according to their means towards the maintenance of a minister, upon presenting a memorial to the Governor in council, the Governor will have received His Majesty's commands authorizing him, upon being satisfied that those conditions have been duly complied with, to contribute to the support of the clergymen in such proportion as, together with the contribution of the parties presenting the memorial, may be sufficient to afford him a competent maintenance," &c.

May it please Your Majesty, taking into consideration the admission of the justice of your petitioners' rights by His Majesty's Government, the promise made in the event of any

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in No. 1.

Petition from  
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in Lower Canada.

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funds being placed at His Majesty's disposal by the sale of Crown lands in Lower Canada, that their applications would be readily entertained, the regret expressed that the want of means only prevented an immediate compliance with their request, the opinion of both Houses of Assembly in Upper and Lower Canada, the assurance given to the convener of the committee of the General Assembly of the Church of Scotland, in answer to their memorial, that whenever any congregation in these provinces had satisfied the Governor thereof that they had complied with certain conditions, he would have received His Majesty's commands authorizing him to contribute to the support of their clergymen, together with the opinion of the Select Committee of the House of Commons on Canadian affairs, in 1828, in their favour, your petitioners cannot refrain from respectfully declaring, with the knowledge which they possess of large sums of money having been appropriated, in the year 1824, by His Majesty's Government, for increasing the salary of the bishop of Nova Scotia from 1,200 *l.* to 3,000 *l.* sterling per annum, endowing two rectories in his diocese at an annual salary of 300 *l.* sterling each, and three rectories in the diocese of Quebec at an annual salary of 500 *l.* sterling each, in the face of these promises, assurances and opinions; and with the further knowledge which they possess of a revenue to a very considerable amount having within these few years been derived from the sale of Crown lands, the sale of clergy reserves and the rents paid by lessees of clergy reserves, (at whose disposal said revenue is placed, where it is or has been applied your petitioners pretend not to know,) that they consider their Presbyterian brethren in this province, a numerous, loyal and respectable people, to have been and still to be most unfavourably dealt with, and to have long patiently, and almost in silence, endured a most serious grievance in not obtaining, many years ago, the benefit of an equitable share of the profits arising from the clergy reserves.

May it therefore please Your Majesty to take the premises into your serious and favourable consideration, and to cause measures speedily to be adopted for giving effect to the opinion of the Committee of the House of Commons, given in the Report in 1828, in favour of the people whom your Petitioners represent, and putting them in possession of their just and lawful right, a participation with their brethren attached to the Church of England in the profits arising from the clergy reserves, "in proportion to the number of their respective congregations."

And that Your Majesty may long live, and in the exercise of your Royal prerogative see that justice be done in all matters pertaining to the just and lawful rights of all classes of Your Majesty's loyal, affectionate and devoted subjects, is the earnest prayer of Your Majesty's petitioners.

In the name, on behalf and by appointment of Presbytery,

(signed) *Alexander Matthieson*,  
Moderator.

Quebec, 24th December 1833.

*David Brown*, Minister.  
(A true Copy.)

Sir,

Valentia, 28th March 1835.

THE enclosed is a copy of a Petition from the Presbytery of Quebec, to the King's most Excellent Majesty, which was transmitted to the Colonial Office by Principal McFarlane, of Glasgow, convener of the Standing Committee of the General Assembly of the Church of Scotland, when Mr. Stanley was Colonial Secretary, and to which the Presbytery of Quebec have received no answer. The sum and substance of the Petition is this, that the ministers of the Established Church of Scotland who have settled in Canada, are justly entitled to an equal participation with their brethren attached to the Church of England in the profits arising from the clergy reserves.

Should the question in any way be brought forward in the Colonial Office, when you are in England, I hope that you will use your utmost zeal in endeavouring to get us put in possession of our just and lawful rights, or, at any rate, try to obtain from the present Colonial Secretary an answer to our Petition.

You are perfectly aware that the ministers of the Church of Scotland, who have settled in Lower Canada, labour under insurmountable difficulties in propagating the inestimable blessings of the Gospel among their expatriated countrymen, and that the voluntary contributions of the poor settlers are inadequate to support the number of ministers that are at present wanted for the country. We have to contend against an endowed clergy, to whom we do not yield in point of education or loyalty.

And it is certainly not good policy on the part of the British government to give an undue preference to the clergy of the Church of England over those of the Church of Scotland.

It is a melancholy fact, that many persons in Lower Canada, aliens to the British government, usurp the pastoral duties, whose moral habits and imperfect acquirements totally disqualify them for the sacred office, and whose peculiar dogmas, which are instilled into the minds of the people, tend very much to alienate them from the British government.

The present state of things must still become worse if even the few ministers of the Church of Scotland that have settled in the country, are necessitated to abandon their charges for want of government aid and protection equal to what their brethren receive in Upper Canada.

I remain, &c.

(signed) *David Browne*.

Enclosure

## Enclosure 5, in No. 1.

My Lord,

London, 10th July 1835.

I think it my duty to leave with you, before my departure from London, an extract from the report of the committee appointed to draw up my instructions when I was deputed to this country with the Petitions lately presented to His Majesty and both Houses of Parliament.

This extract will put you in possession of the views of that committee, truly representing, as I believe, about 120,000 souls, comprising a majority of the persons of information, property, enterprise and industry, in Lower Canada.

With respect to the means of providing a more equal representation in the Provincial Assembly, the committee have not been as explicit as on other matters.

It has been suggested that it might be done by giving the Governor power for a limited time to subdivide the cities, and set off, as counties, the *new settlements in the rear of the present counties*, upon petition to that effect from the inhabitants, whenever they amount to a sufficient number, *according to the existing Provincial Law*, to entitle them to send representatives. It will be observed that a similar power, but much more extensive, was contained in the 14th clause of the Act 31 Geo. 3. cap. 31, commonly called the Constitutional Act; this power was a thing of necessity then to give effect to the new constitution. It is equally necessary now, for these people have in fact no share in the representation, nor is there any probability of its being granted to them by another portion of the people who now hamper their industry, enterprise and extension, and virtually dispose of their persons and property, with very little check or control.

There are other matters which are important to the welfare and security of the North American Provinces particularly.

1st. The settlement of the boundary between the United States, Lower Canada, and New Brunswick.

2d. The state of the currency and its regulation throughout all the North American Provinces, which is become indispensably necessary on account of the regulations adopted in the United States last year.

3d. The removal of all impediments to the settlement of the Waste lands of the Crown, and the facilitating the freedom of communication between the Provinces and the United States; removing, as much as is consistent with the general system of the Empire, all custom-house interruptions.

4th. The quieting the minds of the Roman Catholic clergy of Lower Canada, about the existence of any disposition to interfere with their ecclesiastical institutions and establishments of education; and generally a continuance of whatever is secured by the capitulations and the Act 14 Geo. 3., commonly called the Quebec Act.

5th. A better protection for the remains of the Indian tribes within the Provinces.

On these matters I may have occasion to trouble you with some observations before leaving the United Kingdom.

I beg leave at present, more particularly, to call your attention to the Timber question, now before a Committee of the House of Commons.

It was not expected when I left Quebec, in the beginning of April last, that this question would be agitated this Session. We thought the last alteration of the duties after the general peace in Europe, was final, and particularly after the rejection of a proposed alteration four years ago.

People in Canada had good ground to calculate on the present scale of duties. An immediate alteration would be little better than taking money out of one man's pocket to give it to another.

The announcement of a prospective alteration would discourage those who wish to maintain the connexion with this country, and encourage those who are turning their attention *elsewhere*.

I have reason to think that the value of the timber exported from Canada in 1833, formed more than one *half* the value of all the exports from both Provinces, and in 1834, more than *two-thirds* of the whole. It is by means of these exports that the inhabitants supply themselves with what they cannot get on their farms, there being no manufactories in the country, and the climate of Lower Canada generally, allowing of no surplus of corn or provisions.

In truth, the inhabitants of Lower Canada, nine-tenths of whom are *chiefly* employed in agriculture, have always depended for a supply of everything, but food, and some coarse clothing of family manufacture, on exports produced by some other employments. In early times, it was hunting and fishing; latterly, cutting, getting out, preparing and shipping timber and lumber.

This country has suffered the United States people to occupy the fisheries, and an Act of Parliament, passed some years ago, has turned the fur trade to Hudson's Bay.

An alteration of the duties now would leave the inhabitants of the British North American provinces in a worse situation than those of the United States. It is a fact that lumber brings a higher price in the American ports than at Quebec, that the wages of labour are higher in the adjoining States than in Canada. This is a state of things which British subjects in the Colonies ought not to see increased.

It is hardly necessary for me to point out to you the importance of the North American provinces to this country. As a commercial position, they afford an inlet to British manu-

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in No. 1.

Letter from  
J. Neilson, Esq.  
relative to Petitions  
from  
Lower Canada.

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factures and trade to the United States, independent of that power; as a naval station, they command the trade to Europe of nearly all America; for the trade winds and the gulph stream will always force this trade to pass near Nova Scotia and the Banks of Newfoundland. The possession of the Colonies by the United States would give them harbours, coal and timber, in which they are deficient, and enable them to command the trade of nearly all America to Europe, and engross the Newfoundland fisheries. England would become dependent on foreign powers for timber, and lose an important nursery for seamen, without which she would be reduced to the rank of a secondary power, after having been so long "the dread and envy of them all."

I should flatter myself that the interest of the Colonies and the power of England will not be sacrificed to a spirit of innovation, or of theories, which ought rather to be tested by experience at home, under the eyes of the legislators, than in the colonies, who are not represented in Parliament, and whose sufferings cannot so directly reach those who make the experiment.

An alteration of the timber duties, which would diminish the competition with foreigners, and the quantity in the market, could hardly benefit the consumer in this country, as it would assuredly raise the price of the article.

I have, &c.

(signed) *J. Neilson.*

(Extract.)

Report from Committee of Instruction relative to Petitions from Lower Canada.

Your Committee have approached the subject of the above reference with a deep sense of its difficulty and importance. The instructions to be given to the agent must of necessity be based upon the petition with the conveyance and support of which he is charged.

Your Committee have thought that the objects in view would be best attained by accompanying the draught of the instructions to the agent with a full and distinct statement of the grounds and reasons upon which those instructions proceed. The general heads embraced in the petition are,—

1st. The powers exercised by the Legislature in relation to the monies necessary for the defraying of the charges of the administration of justice and support of the civil government of the province.

2d. The composition of the legislative and executive councils and the means of ameliorating the same.

3d. The securing of the independence of the judiciary and the ameliorating of the existing system of judicature.

4th. The establishment of a more equal and just representation of the people generally in the assembly of the provinces.

The subject of the first contains in it considerations of the highest order in colonial polity,—the just and economical application of the public monies levied within the colony to the greatest advantage without any unnecessary or hurtful interference on the part of the metropolitan authorities, the proper control over public officers, and the maintenance of the just rights of the metropolitan state must be combined in such way as to secure all possible liberty without licentiousness in the colony, and just subordination to the parent state without impairing the rights of free British subjects; even prejudices, when general and inveterate, ought not to be offended except when not to be avoided without compromising great public interests or violating fundamental principles of law and government. It would be neither a pleasing nor an useful task to enter into the details of the various controversies relative to the appropriation of the public monies of the province to its civil expenditure since the year 1818, when the metropolitan government accepted the offer made by the assembly of the province in 1810 to charge the people thereof with the payment of the whole civil expenditure of the colony. Now, however, that for the last three sessions of the provincial parliament the government has been reduced to a state of insolvency with its coffers full of money, thereby impairing the credit of the government, setting an evil example to the people, interrupting the circulation of money, disturbing the relations of commerce and business, and depreciating the value of property of every description, it becomes necessary boldly and impartially, but with all due caution, to examine the causes which have led to such disastrous results, the remedies which may be applied, and the principles which ought to guide the application of those remedies.

The controversies which have led to these results relate principally to the imperial statute 14 Geo. III. cap. 88, and to the legal and constitutional construction of that statute. The opinions which have been maintained in relation to this matter may be distributed under three several heads.

1st. Of those who think that the appropriation of the monies levied under the authority of this statute was a valid and legal appropriation only so long as there was no Assembly within the province, and upon the constitutional act 31 Geo. III. c. 31 going into operation, the control of those monies come to be vested in the local legislature created by that statute. In support of this doctrine it has been said that it is an inherent right in British subjects to impose taxes, and to regulate their application by their lawful representatives; that the 18 Geo. III. c. 12, "For removing all doubts and apprehensions concerning taxation by the Parliament of Great Britain in any of the colonies, provinces, or plantations in North America and the West Indies, &c.," though in its terms prospective, contained a recognition of this principle, so far forth as the peculiar circumstances of that time, and the relations then existing between the old colonies and Great Britain admitted. That the general

general appropriation through the Lords of the Treasury by the 14 G. III. was justifiable *ex necessitate rei*, and by the uniform usage in the British colonies so long as Canada had no local legislature; but the same usage established the power of the colony to appropriate all the public monies levied therein by and through its own legislature, when and as soon as such legislature was lawfully established, and further that this ancient usage and the principle itself are recognized in the late statutes regulating the possessions abroad of the Empire (6 G. IV. c. 114, s. 13, and 3 & 4 W. IV. c. 59, s. 13.) This opinion has been maintained by the majority in the Assembly since the year 1819.

2. Of those who maintain that the appropriation contained in the 14 G. III. c. 88, was a valid and subsisting appropriation down to the repeal contained in the 1 & 2 W. IV. c. 23.

In support of this opinion it is urged that the duties and the appropriation of the duties being made by one and the same statute, if the appropriation was illegal, so also must be the imposition of the duties, which last had never been pretended by any one. That the Constitutional Act operated no repeal of the 14 G. III. either expressly or by necessary implication, on the contrary that statute provides that all laws, statutes, &c. in force at the time of the Constitutional Act going into operation, should continue in force until repealed, &c. (s. 33.); and it is provided by the 46th section that nothing therein contained shall affect any law which had at any time been made by Great Britain for establishing regulations or prohibitions, or for imposing, levying, or collecting duties for the regulation of the navigation, or for the regulation of the commerce, &c. That by the provincial statute 39 G. III. c. 9, certain duties are imposed upon goods coming into the province, to be levied so soon as the Parliament of Great Britain shall have repealed so much of the 14 G. III. as relates to the payment of rates and duties on goods imported or brought into this province, &c. The plain object of which statute was to set aside the appropriation contained in the 14 Geo. III., and constitutes a legislative recognition of that appropriation; and that the validity of this appropriation had never been questioned previous to the year 1819, nor in Upper Canada at any time. And lastly, that the sections cited above from the late Imperial Acts regulating the possessions abroad implied that that act was in full force. This last consideration is supported by the opinions of the present Lord Chancellor and Sir Charles Wetherell, law officers of the Crown in the year 1824, and the Report of the Committee of the House of Commons appointed to inquire into the State of the Civil Government of the Country, of the 22d July 1828.

3. It has been contended by others, that supposing the appropriation to have been a good and valid appropriation so long as the funds levied under the 14 Geo. III. were sufficient to defray the expenses of the government of Canada; it was otherwise when they became insufficient and the Crown found it necessary to call upon the Colonial Assembly to supply the deficiency. That by such demands, the control of all the public funds of the province came to be in the Assembly, as they could not exercise their judgment upon the quantum to be supplied, without examining the whole of the expenditure. This view of the case is susceptible of two different opinions, which it is important to distinguish and weigh. According to one of these opinions, the provincial legislature would be invested with direct control over all the public funds upon the question of supplying the deficiency. According to the other, the provincial legislature would thereby be invested with a direct control over the deficiency demanded, and could examine the application of the monies appropriated by the 14 Geo. III. only incidentally, and with reference to the quantum of the deficiency. This distinction, though it may appear at first sight somewhat nice, is pregnant with important consequences. If the first of these principles be true, then the application to any purpose whatsoever of the monies levied under the 14 Geo. III. would be an illegal appropriation. According to the other, the Commissioners of His Majesty's Treasury might distribute the whole amount levied under 14 Geo. III. to the general object of the appropriation, in such manner as His Majesty might direct, and the power of Assembly would be confined to the rejection or modification of the demand of supply for the deficiency. Your committee think that the last is the true view of the subject.

The subject has thus far been treated upon strictly legal principles: there are other considerations of public policy appertaining to it.

The power of the colonial legislature to regulate the expenses of the civil government of the colony, when employed to refuse all supply, is an abuse of power. It is essentially a power of regulation within the colony, not of controlling the government without. The necessary officers of government within the colony are officers of the empire as well as of the colony. The refusal of the supplies necessary for the payment of their salaries, must either cast that expense upon the metropolitan government without its consent, and then the colonial is paramount to the metropolitan authority, or the officers must be left without any pay whatever, and then the metropolitan authority over the colony is annihilated by the exercise of a just legal authority, both which positions are contradictions in terms. Where such a contingency occurs, there must be a power in the metropolitan state, through its legislature, to secure the payment of its officers within the colony. And this brings your committee to the consideration of the Imperial Statute of the 1st & 2d W. IV. c. 23. This statute appears to have been passed in pursuance of the recommendation in the Report of the Committee of the House of Commons appointed to inquire into the State of the Civil Government of this Country, of the 22d July 1828, and was made in full confidence that the Assembly would render the Governor, the Members of the Executive Council and the Judges independent of the annual votes of the House of Assembly for their respective salaries. Failing the redemption of this pledge on their part, the assembly cannot complain if the Imperial Legislature should recall that repeal, declaring at the same time the validity of the appropriation, or making by the same Act an appropriation liable to be modified or

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altered by any Act made by His Majesty, with the advice and consent of the Legislative Council and Assembly of the province. This last course seems well adapted to the peculiar situation and condition of this colony. The members of the constitutional association claim no privileges over their fellow subjects of another origin; but the experience of late years has shown a determination on the part of the majority of the Assembly of that origin to make of the power which this repeal has vested them with, an instrument for controlling the metropolitan government, and for reducing their fellow subjects of British and Irish origin to a condition of inferiority, without regard to the public utility, or the principle of equal justice, vesting in the provincial legislature the power of altering and modifying any appropriation which may be made by the Imperial Parliament, secures the government from the danger of being left without any resources for the civil expenditure, at the same time that it gives to the subject within the colony a steady, just and efficient, instead of an arbitrary and capricious, control over the public expenditure; and if this measure embraced the whole of the necessary expenses of the civil government, and rendered the whole of the public funds of the province available for those expenses, without reference either to the particular monies levied under the 14 Geo. III., or to the general appropriation under that statute, this source of discussion would be removed, and the tranquillity of the country would be permanently established. In considering the public affairs of this country, it can never be lost sight of with any safety that the population is not homogeneous, and those rules which may be pursued with safety in a country whose population is homogeneous, will lead to dangerous consequences in a country whose population is composed of two large or unequal and heterogeneous masses of people. It would, however, be essentially necessary, for the success of this measure, that proper precautions should be taken that the holders of office should not at any time have a preponderance in one branch of the legislature, as they would otherwise be enabled to maintain themselves in the possession of greater emoluments than they ought to have.

As the basis of such appropriation, your committee is of opinion that, under no circumstances, ought any appropriation to be made which has not received the sanction of the colonial legislature from the year 1829 to the year 1832 inclusive. The appropriations, though made in the bills of supply in one sum, are based upon the votes of the Assembly to be in their Journals.

As a complement to the foregoing system, it is essential that public functionaries should be amenable before a competent tribunal, to be established within the province, to be tried for offences in office by them committed, whereby, on the one hand, the public functionaries may be protected from calumnies in the honest discharge of their duties of office; and on the other, that all of them may be made liable to trial and punishment for nonfeasance or misfeasance in office, properly cognizable upon impeachment by the Assembly of the province. The only proper tribunal for the trial of such offences would be the legislative council of the province, upon which, in the opinion of your committee, ought to be confined by the same legislative Act which regulates the civil expenditure of the province, the requisite powers to hear, try and determine such impeachments, and upon conviction of the person impeached, to give judgment that he be removed from office, or that he be disqualified to hold any office of honour, trust or profit under the Crown, or both; but to pronounce no other judgment. Every person impeached should nevertheless be liable to indictment and punishment according to law.

2dly. The composition of the Legislative and Executive Council, and the means of ameliorating the same.

Convinced as your committee are, that uniformity of action cannot be attained in a colonial government without an efficient Executive Council, they cannot shut their eyes to the difficulty of selecting fit persons in colonies to fulfil the important duties which devolve upon such a body regularly, the Executive Council performing as it does the functions of a council of state, ought to be composed of the heads of the public departments of the colony, with an admixture, less or greater, of members independent of the government and of the administration for the time being; whether this admixture ought to be equal, superior or inferior in number to the heads of departments, is, in the opinion of your committee, a matter of very serious consideration. The safer course would, perhaps, be to make of the members of the council, unconnected with office, the majority, but certainly they ought to be inferior in number; it is desirable, also, that they should not all be resident in Quebec, but distributed over the other parts of the province, giving to the people at large confidence in the government, and checking cabals in the council itself. The constitution of an Executive Council, composed exclusively of men unconnected with the government, would be imperfect in several particulars; such persons could not give up their time to the details of the duty of executive councillors, they would not have a sufficient *esprit de corps*, and would not have a sentiment of responsibility for the well carrying on of the government, continuous systematic action they cannot bestow. On the other hand, the officers of government, holding their offices during pleasure, having little community of interest or feelings with the mass of the people, naturally disposed to avail themselves of their facility of access to the Colonial Governor to locate the members of their families in office, the disposition to maintain authority and to stifle inquiry when contrary to their official interests, are all drawbacks upon their utility as councillors, and would disqualify them from acting with advantage to the public as such by themselves. These objections might be removed, and would certainly be greatly mitigated, by introducing with them members unconnected with government and the administration. By this course, the government would be careful in selecting efficient heads of departments, each of them would continue to be responsible for

for his own department, and united, they would be exempt from maintaining abuses or sanctioning inefficiency in any particular department; their respectability would be increased with this increase of their power, and having reached the highest point that they could expect to attain in official advancement, they would have nothing to look forward to, for themselves at least, which could lessen their independence; combined, they would form a body sufficiently strong with the other members to advise the Governor fearlessly and independently.

The present composition of the Executive Council is felt by all to be one of the sources of the weakness of the government, and that weakness has disturbed the equilibrium of the provincial government, joined to the unfortunate composition of the Legislative Council; down to a very late period, the Governors have had recourse to the Colonial Secretaries from time to time, for instructions in all cases of conflicts between the Governors or the Legislative Council with the Assembly. All the intermediate powers between the Colonial Secretary and the Assembly have been thrown down, and the Colonial Secretary, organ of the metropolitan authority, has been brought into direct collision with the representatives of the people in the colony, which it had been the policy of the colonial system to prevent.

The reasons which renders necessary the presence of all the heads of departments in the Executive Council as members thereof, do not seem to extend to the Legislative Council.

The predominance of the officers of government in the Legislative Council would disqualify that body from acting as a barrier to the Assembly, and would not be attended with any beneficial result; too much care cannot be employed in the selection of its members; landed qualifications, which may be of use in England, are contrary to the genius and condition of North American societies; besides the official and landed, with a small sprinkling of the commercial, interest which are now found in the Legislative Council, it should contain a representation of all the other masses of interest in the colony, and should be made at least equal in business talent to the Assembly. The difficulty of selection cannot be denied. The power which has of late years been exercised by each successive Governor, without advice or control, within the Colony, of selecting new members to a large extent, is a very dangerous power; it may at any time be used to support a tottering administration within the Colony, and to render the majority of the Legislative Council *facilio haud dubia regis cujus beneficio in curiam venerunt*.

It is apprehended that no member ought to be recommended for a seat in the Legislative Council whose name was not first submitted to the Executive Council, each of the members of which last-mentioned body should be at liberty to express in writing, quite confidentially, and enter it upon the proceedings of the council, to be transmitted with the recommendation to the Colonial Secretary.

The Executive Council, as now composed of six members, whereof only four reside at Quebec, and discharge the duties of that body, has in it a majority of the officers of the Legislative Council, the clerk, assistant clerk and law clerk of that body; as well upon this point as upon the necessity of keeping apart the legislative and administrative powers, reference may be had to the resolution adopted by the Assembly unanimously on the 10th February 1834, and the Bill passed without a division in any of its stages in that body, intituled, "An Act for securing the Dignity and Independence of the Legislative Council and Executive Council of this Province and of the Judicial Body thereof," and passed in the Legislative Council on the 22d February 1834, seventeen members being present, and only three appearing to vote against the same.

On this Bill, Lord Aberdeen, in his despatch, laid before the legislature in the late sitting thereof, says, "that it raises a question of so much importance in itself, and so intimately connected with the inquiries of the Committee of the House of Commons, which sat during the last Session of Parliament, on the affairs of Canada, that he had, however reluctantly, been compelled to advise His Majesty to postpone his decision upon this proposed law." He adds, "that it would be impossible to detach from the general subject a measure so deeply affecting one of the most important questions in discussion with the House of Assembly; nor does it appear expedient to concur in an insulated measure affecting the constitution of the legislative, executive and judicial bodies, until the whole of these important but complicated inquiries shall have reached a stage in which there may be a prospect of bringing them all to a termination."

This measure having received the concurrent approbation of both Houses, being founded on plain principles of right and public policy, and requiring now only the sanction of His Majesty, at a stage when the committee indulge the hope that there is a prospect of all these matters being brought to a termination, we trust that no exertions will be spared by the agent of the association in obtaining the sanction of His Majesty to this Bill.

3dly. The securing of the Independence of the Judiciary, and the Amelioration of the existing System of Judicature.

Any appropriation made by the Imperial Legislature would contain a permanent appropriation for the salaries of the judges, with their retired allowances, as contained in the Bill which passed the two branches of the provincial legislature, on the 20th January 1831, intituled, "An Act to incapacitate the Judges in this Province for sitting or voting in the Executive or Legislative Councils, to secure the Independence of the Judges in this Province, and for other purposes therein mentioned." As the appropriation contained in this Bill was made a part of a more general measure, touching the commissions of the judges and the composition of the councils, justice would seem to require that the other provisions contained in this Bill, as well as the appropriation in question, should be incorporated in the

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Report from Committee of Instructions relative to Petitions from Lower Canada.



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same law, several of its provisions will be found in the Bill above mentioned, intituled, "An Act for securing the Dignity and Independence of the Legislative Council and Executive Council of this Province, and of the Judicial Body thereof," passed in the Legislative Council on the 22d February 1834, which, if sanctioned, would render those several provisions unnecessary in the proposed law; the people of this province are no doubt subject to great inconvenience from the system of judicature now established; the dissensions by which the country has been agitated since the year 1818, in relation to the Civil List, have distracted men's attention from this and other objects of high local importance. These dissensions once allayed, the attention of the local legislature will, doubtless, be directed to the establishment of a more fit system of judicature, corresponding with the increasing population and wants of the province. This matter too is one not touching Imperial rights or powers, but wholly local and affecting colonial interests, and ought, therefore, your committee humbly conceives, to be left to the colonial legislature.

4thly. The Establishment of a more equal and just Representation of the People generally in the Assembly of the Province.

The peculiar condition of Lower Canada, arising out of the diversity of the origin, language and manners of its people, renders necessary the interposition of the authority of the Imperial Parliament to establish the representation in the province, upon a footing of equality with reference to the numbers of these two classes of people. The representation, as it now stands, is manifestly unequal, and an undue preponderance is thereby given over the inhabitants of the colony of British, Irish and American origin. The Act passed in the provincial legislature for the division of counties, would have the effect of rendering this inequality permanent, notwithstanding any accession however great, made to the inhabitants of British, Irish and American origin. The petitions upon this subject, coming from various parts of the country, and the previous proceedings of the association, will be found to contain all the information that is desired upon this head.

Your committee is fully sensible of the delicacy which is rightly felt in England, of interfering by legislative Acts of the Imperial Parliament in the internal affairs of the colonies of the Empire, and they have therefore carefully confined their recommendations to such matters as are of paramount importance, and cannot be regulated by the local authorities. Matters upon the due regulation of which depends the continuance of that connexion between the parent state and this colony, which it is our anxious wish to maintain; and your committee do not hesitate to say as their firm conviction, that peace and good order cannot be maintained within the colony, and that connexion secured, without the immediate adoption of measures of more energy and firmness, combined always with justice, than those which have characterized the proceedings as well in the Colonial Office as in the colony, of late years.

All which, nevertheless, is humbly submitted.

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Enclosure 6.  
in No. 1.

LETTER from Mr. Walker, &c. to the Right honourable Lord Glenelg, &c. &c. &c.

My Lord,

Letter from Mr.  
Walker to the Right  
hon. Lord Glenelg  
relative to Petitions  
from Lower Canada.

AVAILING myself of your Lordship's suggestion, that the agents deputed to this country by the constitutional associations of Montreal and Quebec, for the purpose of bringing under the consideration of His Majesty's Ministers and of Parliament various matters of complaint which most injuriously effect the welfare of the inhabitants of Lower Canada, and retard the prosperity of the province, and of enforcing the representations contained in the petitions entrusted to them, and in certain resolutions emanating from public meetings held in the city of Montreal, in the months of November and January last, should from time to time submit to your Lordship, in writing or otherwise, the views which are entertained by the petitioners, in order that instructions of the most comprehensive character may be given to the Commissioners who are on the eve of proceeding to Canada; and taking it for granted that His Majesty's Ministers, pending the proposed investigation, will suspend all discussion or inquiry in England, I take the liberty of directing your attention to the leading points enumerated in the resolutions of the Montreal Association, now in the possession of your Lordship.

1. "The state of pecuniary embarrassment in which the provincial administration has been placed by the conduct of the Assembly, and the expediency of a permanent appropriation being made for defraying the charges of the administration of justice, and the support of the civil government."

2. "The propriety of imposing a restraint on the expenditure of the Assembly, under the head of contingent expenses."

3. "The constitution of the Legislative Council."

4. "The securing of the independence of the judiciary and the establishment of a tribunal for the trial of impeachments."

5. "The necessity of ameliorating the composition of the Executive Council and the Court of Appeals."

6. "The establishment of a fair and equitable representation in the Provincial Assembly."

7. "The

7. The necessity of obtaining from the Imperial Parliament an Act for the establishment of Registry Offices within the Seigniories.

8. The tendency of the feudal tenure to retard the improvement of the Province, and the necessity of obtaining an amendment of the Tenure Act, 6 Geo. 4, c. 59, with a view to its commutation and extinction.

9. The improvement of the navigation of the St. Lawrence.

10. The Lumber trade.

11. The contingent measures of the Union of the Provinces, or the annexation of the countries of Montreal and Vaudreuil to Upper Canada.

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Letter from Mr.  
Walker to the  
Right Hon. Lord  
Glenelg, relative to  
Petition from  
Lower Canada.

With reference to the first head, I have been instructed to impress upon His Majesty's Ministers the propriety of obtaining from the Imperial Parliament an appropriation from the provincial funds of a sum adequate to defray the civil expenses of the province, and those attendant upon the administration of justice, such appropriation to be permanent in its character, but subject to be repealed or varied by His Majesty, His heirs or successors, by and with the advice and consent of the Legislative Council and Assembly of the province. Should this measure obtain the sanction of Parliament, the casual and territorial revenue of the province, hitherto appropriated at the discretion of the Crown, might be placed at the disposal of the Provincial Legislature, an opinion being generally entertained that the revenue in question should merge in the general funds of the province so soon as an adequate and permanent appropriation shall be made for the support of the Civil Government.

Upon the second head, the recorded proceedings of the House of Assembly, and more particularly the votes of that body, in relation to the indemnity of its members in the form of payment for their travelling expenses and attendance in Parliament, to the defraying of missions to England and retainers to agents here, in support of its own peculiar views; and the invitation not long since given to the people of the country to organize conventions and committees for the purpose of overawing the Government, the Assembly, by resolution, pledging its honour to defray the expenses of such conventions and committees out of the public monies placed at his discretion for purposes connected with the discharge of its constitutional duties, cannot fail to satisfy His Majesty's Government of the necessity of some restraint being imposed upon the expenditure by the Assembly of a part of the public monies under the denomination of contingent expenses, which have been largely and without any justifiable necessity augmented during several successive years, or of instructing the head of the Provincial Executive to adopt such a course as will tend to restore the legitimate control of the other branches of the Legislature with respect to the regulation and disposal of the public funds. Recognizing the Assembly as a constitutional control and a co-equal branch of the Legislature, but denying to it the right of exclusively directing the application of the provincial revenue, the Petitioners denounce, as an unwarrantable usurpation of authority on the part of the Assembly, the power assumed by that body of setting apart a share of the public revenues for the purposes already enumerated, and waiving any consideration of the consequences which might be expected to flow from a salaried Legislature in the peculiar circumstances of the province, and assuming the propriety of an allowance to members, they consider it to be more equitable that such allowance should be levied in the form of local taxes or contribution within the limits of the counties or cities which the members may respectively represent.

The third, fourth and fifth heads are in some degree connected. The Petitioners deprecate any alteration of the principle upon which members are now appointed to the Legislative Council. They consider that body to have acquired a character of independence alike of the Government and of the popular branch of the Legislature, and to be the representative of interests which are denied a voice in the Assembly. The discussions which have taken place and the proceedings of the Council for some years past render it apparent that the supposed influence of the Crown in that body has no foundation in fact; and whilst the principle continues to be acted upon, of excluding all dependants upon executive favour, its deliberations cannot fail to possess a character of independence. An extension of the elective principle to the Council would render it in every respect a counterpart of the Assembly, in which the interests and opinions of one class only of the society are expressed, inasmuch as the mediocrity of circumstances which obtains generally amongst the population would render it impracticable to set apart any class of persons in the province, distinct from the constituents of the Assembly, as electors of those by whom the seats in the Council should be filled.

A bill for securing the dignity and independence of the Legislative and Executive Councils and of the Judicial Body of the Province, which met with the concurrence of the Council and Assembly in the session which preceded the last, was reserved by the Governor-in-Chief for the signification of His Majesty's pleasure. As a measure in accordance with the sentiments of all classes in the province, and calculated to impart a confidence in and respect for the bench of justices, it is desirable that His Majesty's sanction should no longer be withheld.

But one opinion will be found to exist with respect to the necessity of a Court of Impeachment for the determination of misdemeanors and offences committed by public servants, which are not in principle cognizable by the courts of ordinary jurisdiction; and the Petitioners respectfully submit that an authority to this effect might with propriety be confided to the Legislative Council.

An amelioration of the composition of the Executive Council would be partially effected by the sanctioning of the bill alluded to, passed by the two branches of the Provincial

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Legislature, on the 22d February 1834; and further, by the introduction of a greater number of members unconnected with office under the administration, and selected from different sections of the province, with a view of imparting to the people at large, on the one hand, confidence in the measures of government, and to the government, on the other, a more intimate acquaintance with the necessities of the people. Were this body more efficiently organized, and placed upon a footing to command the public respect, it might be permitted to resume that share in the government and concerns of the province which in practice it has long ceased to possess.

The defective constitution of the Court of Appeals has been long apparent. The system of judicature, both as respects the courts of original jurisdiction and the court of appeals, is highly obnoxious to censure. This evil at a comparatively early period attracted the attention of the Colonial Legislature, although it still continues unredressed. By the Executive Council sitting as a court of appellate jurisdiction, justice has never been satisfactorily administered. This court should be composed of persons professionally versed in the laws of the province, and unconnected with either council.

With respect to the sixth head, I would most earnestly crave the attention of your Lordship to the details furnished in the Petition adopted by the two associations respectively. The defects in the existing system are aggravated by an unjust and faulty arrangement for the exercise of the elective franchise under a late Act of the Provincial Legislature, which includes a great majority of the people of British origin, within the limits of countries where a majority of French descent predominate; and a new division and creation of counties, combining the principle of territory with that of numbers as a basis of representation, with a prospective view to the increasing population of the township settlements, is accordingly indispensable for the purpose of securing to a class of the population, virtually, if not by express enactment, deprived of that share in the legislative concerns of the province to which their wealth, intelligence and enterprise forcibly lay a claim, a fair and equitable representation in the Assembly. I have already taken occasion to bring under the consideration of your Lordship the large quorum fixed by the Assembly, which has served to obstruct the public business; and in a recent instance, enabled a part of the House, by voluntarily absenting themselves from their representative duties, to defeat the purposes for which the Legislature had been convened.

If the various matters of grievance alluded to in the resolutions of the Montreal Association, already submitted to your Lordship, as embodying the views of the British population of the colony, were at this time open to inquiry, it would be our duty to call the attention of His Majesty's government to the injurious effects resulting from the system of general and secret mortgages, which, in connexion with the tenure of land, operates to prevent a settlement within the province of emigrants from Britain.

The system alluded to being maintained by a party in the colony, whose proceedings the Petitioners unhesitatingly denounce as pregnant with consequences fatal to the best interests of the colony, with a view to preserve their political ascendancy, it is evident that adequate measures of relief will not be obtained except by a direct intervention on the part of the Imperial Parliament; and when the important interests which are affected are duly considered, it is confidently anticipated that a measure of legislative authority in reference to this subject, founded upon principles which will tend to the general advantage of the community, will be obtained at the hands of the Imperial Parliament.

The Petitioners take a deep interest in the subject under the eighth head. The early extinction of the feudal tenure in Lower Canada, due consideration being had for the rights of private property, is intimately connected with the future peace and prosperity of the country, and cannot be too strenuously urged upon the attention of government.

The fines or dues to which mutations of property situate in the seigniories are liable, are felt to be exceedingly onerous; more especially in the cities and towns, the growth of which these dues have largely contributed to retard, as well as to check the progress of improvement, and where such burthens will not be much longer endured without exciting a feeling that will render a fair and equitable adjustment of the question of compensation for the rights of property a much more difficult matter than it would be at the present moment. It is under this view of the subject, and believing that the proprietors of seigniories, perceiving the growing dislike to the tenure, will be disposed to accede to moderate terms of commutation, that the Montreal Association has directed its agent to solicit the amendment of the Tenure Act, 6 Geo. 4, c. 59, in the manner proposed in the resolutions already alluded to.

The Association desire cautiously to guard against the inference of any intention on their part to interfere improperly or unnecessarily with the rights of ecclesiastic or religious corporations; but to be efficacious the measures proposed must extend to all lands held in *main morte*, or by entail or substitution.

In connexion with this subject, your Lordship will be pleased to refer to the resolutions in respect to the right of property in the seigniori of Montreal, claimed and exercised by the gentlemen ecclesiastics of the seminary of St. Sulpice. It being understood that the title to that property is vested in His Majesty, and there being reasonable grounds to believe that an arrangement will be concluded by which the management thereof will revert to the Crown, a fair and reasonable provision being made for the present incumbents, the Association having abstained from recommending the adoption of any measures of an exclusive character, in relation to the peculiar situation of the inhabitants of Montreal, a firm reliance being placed on the favourable disposition of His Majesty's government, in regard to the important interests which are involved in a satisfactory adjustment of the question at issue.

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The improvement of the River St. Lawrence within the geographical limits of Lower Canada, in connexion with the improvements now proceeding in Upper Canada, claims the attention of His Majesty's Government, with reference to the interests, not merely of the two Canadas, but of the empire at large. I believe it to be the nearly unanimous desire of the British population, whose sentiments I am deputed to represent, that the control of this great highway or channel of communication for the two provinces should be transferred to the Supreme Government, and that the desired improvement, as one of a strictly national character, should be confided to its discretion. The regulation of the commerce and intercourse between the two provinces, and the control of the inter-provincial navigation, are clearly within the scope of the authority reserved to the Imperial Parliament by the terms of the Constitutional Act; and this reservation must embrace every thing which is incident to the practical exercise of the power. Under this construction, which is sanctioned by the analogous practice of the Congress and general government of the United States in all matters incidental to the regulation of commerce as one of the enumerated powers reserved to the federal Legislature, the exercise of the suggested control by the Supreme Government of the navigable waters of Canada may be justified. It is, moreover, a measure dictated by considerations of practical expediency, if not of necessity, arising from the peculiar geographical position of Upper Canada, from the restraints imposed upon her commerce and industry by the want of a sea-port subject to her own control, from her dependence upon the Legislature of another and a rival province for those improvements in the navigation of the St. Lawrence beyond her own limits which are essential to her prosperity. From a Legislature which has postponed the completion of the Montreal Harbour to the gratification of personal and vindictive feelings, an improvement of the St. Lawrence upon a scale of befitting magnitude, with a view of affording increased facilities to the commerce of Upper Canada, is hardly to be expected.

In the determination of His Majesty's Ministers to inquire by means of a commission into the alleged grievances set forth in the Resolutions and Petition of the Assembly, and the various causes of complaint which the entire British population have recently brought under the consideration of Government, the Petitioners, whom we represent, cannot fail to recognize an earnest desire to promote the best interests of the province. It would accordingly be unbecoming in me to speculate upon the line of conduct which the colonial executive may be instructed to adopt in the present emergency. The necessity of acting upon the coming instructions from your Lordship's department, and carrying into effect the purposes of the commission, will in all probability require an early renewal of intercourse between the head of the executive and the representatives of the people; but it is to be apprehended that the conduct of the Assembly, and its avowed principles of action, hold out no prospect of a conciliatory adjustment of the existing difficulties, and that an appeal to the sovereign authority of the Parliament of England, as the source of powers which have been so grossly abused, has long ceased to be a matter of discretion or choice, and is now become one of necessity.

There exists at this time within the colony a power without and above the government, which does not even deign to conceal its objects by the adoption of established forms. The Assembly, with a view to cripple the government, have organized permanent conventions to overlook its conduct, and arrogated to themselves all the attributes of sovereignty, without any constitutional claim to the authority which they exercise.

The population, whose sentiments are expressed in the petitions confided to Mr. Neilson and the writer, are swayed by no feelings hostile to their fellow-subjects of French descent. They have no distinct interests to consult. The two classes of society in the province are both the children of one common parent, the government to which they owe equal allegiance. The policy of England, when unchecked by the spirit of party, has hitherto redounded to the prosperity of the country; and when the two classes of its people are more sincerely united, much may be effected for their common advantage, which is now obstructed by the dissensions too sedulously cultivated by the leaders of the Assembly.

There are at this time but two political divisions in the country,—that which is aiding, and that which obstructs the administration of the government. The latter have denounced the government, the constitution, the magistrates, the people of England, and the minority of the population. To discredit the established influence of authority, to inculcate a distrust of British connexion, and to set one order of the country in feud with another, has been the object of the popular leaders in the province; and to these ends the privileges of the representative character and of parliamentary discussion have been abused. The concessions hitherto made to the demands of party have been considered as proceeding from an inability to resist, and not from principle; and respect for authority is accordingly weakened. The first and chief precaution to be adopted is that of controlling the busy spirit of innovation which has arisen in the colony.

Ere concluding, I am desirous of reminding your Lordship, that the views of the association which I have the honour to represent, differ in many particulars from those which the agent of the Quebec petitioners has been instructed to advocate. The association of the District of Montreal, reflecting the opinions of a great majority of the British population throughout the province, claim a redress of the many subjects of grievance described in the resolutions submitted to your Lordship; and your Lordship's assurance, that to all these topics the attention of the commissioners will be directed, demands an acknowledgment of thanks.

Whilst in London it is not improbable that accounts from Canada may suggest the propriety of a renewal of communication with the colonial department; and I venture to

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indulge a hope that any thing connected with the interests of the petition which I may be advised to bring under the notice of the proper authorities will at all times command a share of your Lordship's attention.

I have, &c.  
(signed) *W. Walker*

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Minute relative to  
Recommendations  
of Canada Com-  
mittee of 1828.

ENCLOSURE 2, in Lord *Aberdeen's* Despatch to Lord *Amherst*, dated 2d April 1835.

A MINUTE, showing in what manner the Recommendations of the CANADA COMMITTEE of 1828 have been carried into execution by His Majesty's Government.

IN the following pages Lord *Aberdeen* will attempt to show that there was sufficient reason to anticipate the entire conciliation of Lower Canada from the accomplishment of the resolutions of the Canada Committee, and that to the utmost of the power of the Crown those resolutions were in fact carried into execution.

The appointment of the Canada Committee of 1828 was, on every account, an important proceeding. The redress of grievances had been demanded, not by an isolated party, but by both of those great bodies which divide between them the wealth and political authority of the province; with views essentially dissimilar or rather hostile, they had concurred in an appeal to the metropolitan government.

By each body of petitioners were deputed agents authorized to interpret their wishes, and to enforce their claims. The committee itself was certainly not composed of gentlemen unfavourable to the views of the great numerical majority of the House of Assembly; they prosecuted the inquiry with great diligence and zeal; they examined the agents of both parties and every other person capable of throwing light on the subject referred to them. None of the questions brought under their notice, either by the petitioners or by the witnesses, was unexplored, and in the result a report was made in which, with an explanation of every known or supposed grievance, were combined suggestions for the guidance of the executive government in applying the appropriate remedies.

The House of Assembly in Lower Canada, in their answer to the address with which the administrator of the government opened the session of the provincial parliament in the winter of 1828, characterized this report in terms which may be transcribed as expressing on the highest local authority the claims of that document to respect, as affording a guide at once to the Canadian Assembly, and to the ministers of the Crown, of the rights to be asserted by the one and conceded by the other. "The charges and well founded complaints (observed the House) of the Canadians, before that august senate, were referred to a Committee of the House of Commons indicated by the colonial minister, that committee exhibiting a striking combination of talent and patriotism, uniting a general knowledge of public and constitutional law to a particular acquaintance with the state of both the Canadas, formerly applauded almost all the reforms which the Canadian people and their representatives demanded and still demand. After a solemn investigation, after deep and prolonged deliberation, the committee made a report, an imperishable monument of their justice and profound wisdom, an authentic testimonial of the reality of our grievances and of the justice of our complaints, faithfully interpreting our wishes and our wants. Through this report, so honourable to its authors, His Majesty's Government has become better than ever acquainted with the true situation of this province, and can better than ever remedy existing grievances and obviate difficulties for the future." Language more comprehensive or emphatic could not have been found in which to record the acceptance by the House of Assembly of the report of 1828 as the basis on which they were content to proceed for the adjustment of all differences. The questions in debate became thenceforth, by the common consent of both parties, reducible to the simple inquiry whether the British Government had, to the fullest extent of their lawful authority, faithfully carried the recommendations of the committee of 1828 into execution.

On a review of all the subsequent correspondence, Lord *Aberdeen* finds himself entitled to state, that in conformity with the express injunctions and the paternal wishes of the King, His Majesty's confidential advisers have carried into complete effect every suggestion offered for their guidance by the Committee of the House of Commons.

It is necessary to verify this statement by a careful and minute comparison between the advice received and the measures adopted. To avoid the possibility of error, the successive recommendations of the Committee of 1828 shall be transcribed at length, with no other deviation than that of changing the order in which the topics are successively arranged in their report; an order dictated by considerations of an accidental and temporary nature, but otherwise inconvenient as postponing many of the weightier topics to some of comparatively light importance.

First, then, the report of 1828 contains the following advice of the Canada Committee on the subject of finance: "Although from the opinion given by the law officers of the Crown, your Committee must conclude that the legal right of appropriating the revenues arising from the Act of 1774 is vested in the Crown, they are prepared to say that the real interests of the provinces would be best promoted by placing the receipt and expenditure of the whole public revenue under the superintendence and control of the House of Assembly." "If the officers above enumerated are placed on the footing recommended," (that is, in a state of pecuniary independence on the assembly) "your Committee are of opinion that all the

the revenues of the province, except the territorial and hereditary revenues, should be placed under the control and direction of the legislative assembly."

The strict legal right of the Crown to appropriate the proceeds of the statute 14 Geo. 3, c. 88, being thus directly maintained, the renunciation of that right was recommended on condition that "the governor, the members of the executive council and the judges should be made independent of the annual votes of the House of Assembly for their respective salaries." What then has been the result? His Majesty has renounced these his acknowledged legal rights, but has not stipulated for the performance, on the part of the assembly, of the conditions thus imposed upon them, and to the present moment that condition remains unfulfilled. By the British statute 1st & 2d Will. 4, c. 73, which was introduced into Parliament by His Majesty's then confidential advisers, the appropriation of the revenues of the 14th Geo. 3 is transferred to the assembly absolutely, and without either that qualification which the committee proposed, or any other. Here, then, it cannot be denied that their advice has been followed, not only with implicit deference, but in a spirit of concession which they did not contemplate.

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Secondly. On the subject of the representation of the people in Lower Canada, the opinion of the Committee was expressed in the following terms: "Your Committee are now desirous of adverting to the representative system of Lower Canada, with respect to which, all parties seem to agree that some change should take place." After detailing the various causes which had led to an inequality in the number of the members of the assembly in favour of the French inhabitants of the seigneuries, and therefore to the prejudice of the inhabitants of English origin in the townships, the Committee passed from the subject, with the following general remark: "In providing a representative system for the inhabitants of a country which is gradually comprehending within its limits newly peopled and extensive districts, great imperfections must necessarily arise from proceeding in the first instance on the basis of population only. In Upper Canada a representative system has been founded on the compound basis of territory and population. This principle, we think, might be advantageously adopted in Lower Canada."

It was with the entire concurrence of His Majesty's Government that the Legislature of Lower Canada assumed to themselves the duty of giving effect to this part of the advice of the Committee. That report had laid down the general principle, that with one exception, "all changes, if possible, be carried into effect by the local Legislature themselves," and to that principle the Ministers of the Crown adhered, even in a case where the dominant majority of the assembly had an interest directly opposed to that of the great body of English inhabitants, for whose special relief the new Representation Bill was to be enacted. Such a Bill was accordingly passed, and was reserved for the signification of His Majesty's pleasure. It actually received the royal assent, and is, at this day, the law of the province.

In this case also the concessions made to the Canadian inhabitants of French origin were far greater than the authors of the report of 1828 could have had in contemplation. The Upper Canadian principle, of combining territory and population as the basis of elective franchise, was not adopted in Lower Canada; the assembly substituted for it a new division of the country, of which the effect has been to increase rather than to diminish the disproportion between the number of members returned by the English and those representing the French Canadian interest. This result of the Bill was distinctly foreseen by the official advisers of the Crown, and it became the subject of grave deliberation whether His Majesty should be advised to acquiesce in a scheme which followed the advice of the Canada Committee, so far indeed as to effect a material change in the representative body, and so far as to give to the English settlers a few more voices in the assembly, but not so far as to secure to them any additional weight in the deliberations of that house. It is not within the object of this minute to defend or to explain the motives of the ultimate decision in favour of the Bill. For the present purpose it is enough to say, that the acceptance of it gave to the Canadians of French origin far more than the report of 1828 authorized them to expect.

Thirdly. Inferior only in importance to the topics already noticed is that of the independence of the judges, respecting which the following passage may be extracted from the report of 1828: "On the other hand, your Committee, while recommending such a concession on the part of the Crown," (the concession, that is, of the revenue), "are strongly impressed with the advantage of rendering the judges independent of the annual votes of the House of Assembly for their respective salaries. Your Committee are fully aware of the objections in principle which may be fairly raised against the practice of voting permanent salaries to judges who are removable at the pleasure of the Crown; but being convinced that it would be inexpedient that the Crown should be deprived of that power of removal, and having well considered the public inconvenience which might result from their being left in dependence upon an annual vote of the Assembly, they have decided to make the recommendation in their instance of a permanent vote of salary."

Thus the Canada committee of 1828 were of opinion that the judges ought to be independent of the Assembly for their incomes, but ought to continue liable to removal from office at the pleasure of the Crown. Yet, so far have the British Government been from meting out relief to the province grudgingly, or in any narrow spirit, that they have left nothing unattempted which could secure to the judges, not merely that pecuniary independence which the committee advised, but that independent tenure of office also which their report expressly dissuaded. In the adjacent province of Upper Canada, both objects have been happily accomplished. In his despatch of the 8th April 1831, No. 22, the Earl of Ripon

explained



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explained to Lord Aylmer the course of proceeding which had been adopted for asserting the independence of the judges in this kingdom, and signified to the governor His Majesty's Commands to avail himself of the earliest opportunity for proposing to the Legislative Council and Assembly of Lower Canada the enactment of a Bill, declaring, that the commissions of all the judges of the Supreme Courts should be granted to endure during their good behaviour, and not during the royal pleasure; and Lord Aylmer was further instructed, in the name and on behalf of His Majesty, to assent to a Bill for carrying that object into effect. Lord Ripon, however, declared it to be, "of course, an essential condition of this arrangement that an adequate and permanent provision should be made for the judges." It remains to state the result. A Bill was passed by the House of Assembly, by which, indeed, the tenure of the judicial office was made to depend on the good behaviour of the judges, and by which a provision, adequate in amount, was made for them. But that provision was so granted as to be liable to be diminished or taken away by the annual votes of the House of Assembly. To this measure, so popular in its general character or pretensions, were also "tacked," to adopt the usual parliamentary phrase, clauses, by which a right to dispose of the Territorial Revenue of the Crown was asserted, and by which all the public officers in the colony, the governor himself not being expressly excepted, were made amenable to a tribunal to be constituted for the trial of all impeachments preferred by the representatives of the people. Such was the return made to an act of grace, which the Canada committee themselves had expressly dissuaded. To have acquiesced in it would have involved a sacrifice of whatever is due to the dignity of the King, and to the liberties of His Majesty's subjects. His Majesty's assent was therefore withheld, though not without the expression of the deepest regret, and the most distinct offer to assent to any other Bill for establishing the independence of the judges, which should be exempt from such objections. The House of Assembly, however, have never since tendered an act of that nature for the acceptance of His Majesty, or of His Majesty's representative in the province.

Fourthly. The next topic is that of the composition of the Legislative and Executive Councils, respecting which the following suggestions occur in the Report of 1828: "One," it is said, "of the most important subjects to which their inquiries have been directed, has been the state of the Legislative Councils in both the Canadas, and the manner in which these assemblies have answered the purposes for which they were instituted. Your Committee strongly recommend that a more independent character should be given to these bodies; that the majority of their members should not consist of persons holding offices at the pleasure of the Crown; and that any other measures that may tend to connect more intimately this branch of the constitution with the interest of the colonies would be attended with the greatest advantage. With respect to the judges, with the exception only of the Chief Justice, whose presence on particular occasions might be necessary, your Committee entertain no doubt that they had better not be involved in the political business of the house. Upon similar grounds it appears to your Committee that it is not desirable that judges should hold seats in the Executive Council."

With what scrupulous exactness these recommendations have been followed will now be shown. With respect to the judges, Lord Ripon, in the Despatch of the 8th of February already quoted, conveyed to Lord Aylmer His Majesty's commands to signify to the Legislative Council and Assembly His Majesty's settled purpose to nominate on no future occasion any judge as a member either of the Executive or of the Legislative Council of the province. It was added, that the single exception to that general rule would be, that the Chief Justice of Quebec would be a member of the Legislative Council, in order that the members of that body might have the benefit of his assistance in framing laws of a general and permanent character. But His Majesty declared His purpose to recommend even to that high officer a cautious abstinence from all proceedings by which he might be involved in any political contentions of a party nature.

It was not in the power of the King's government to remove from the Legislative Council any of the judges who had already been appointed to be members of that body, because the terms of the Constitutional Act secure to them the enjoyment of their seats for life. But in a private Despatch of the same date, the four gentlemen who had at that time combined the judicial character with seats in the council, were earnestly exhorted to resign their places as councillors, and were assured that nothing should be wanting to rescue them from any possibility of misconstruction as to the motives by which that advice had been dictated or obeyed. In point of fact, it was not accepted; but the judges unanimously agreed to withdraw from all active interference in the business of the council, and have never since attended its sittings. The Chief Justice indeed, as was recommended by the Canada committee, forms the single exception; but even that gentleman, as far as the information of this office extends, has confined his interference within the limits prescribed to him by the committee, and by the Earl of Ripon.

The principles laid down by the committee of 1828 for regulating the composition of the Legislative Council have been not less strictly pursued in every other respect. Since the date of their report 18 new members have been appointed. Of that number, there is not one who holds any office or place of emolument at the pleasure of the Crown, or who is in any other manner dependent upon the favour of His Majesty or of His official advisers. Of the 18 new members ten are of French origin. The total number of councillors is 35, of whom only seven hold public offices. Amongst them is the Bishop of Quebec, who is in the fullest sense of the term independent of the Crown. The Chief Justice, whose dependence is altogether nominal, is another. Of the whole body of 35 members, there remain therefore

but

but five, over whom the executive government can, with any reason or plausibility, be said to possess any direct influence.

It is, therefore, not without a reasonable confidence that the words in which the committee of 1828 suggest the proper composition of the Legislative Council may be adopted as precisely descriptive of the manner in which it is actually composed. "A more independent character" has been given to that body. The "majority of the members does *not* consist of persons holding office at the pleasure of the Crown." This branch of the constitution has been connected "more intimately with the interest of the province," by the addition of a large body of independent Canadian gentlemen.

But the case may be carried still farther, and it may be shown that, in respect to the councils, the efforts of Lord Aberdeen's predecessors have left behind them the advice of the Canada committee. The executive council has also been strengthened by the addition of three members of French origin. A seat was offered to Mr. Neilson, the most prominent of the delegates from the House of Assembly of 1828, and to Mr. Papineau, the speaker of that house. It need scarcely be said that it was impossible to give a more decisive proof of the wish of the ministers of the Crown, that the composition of the Canadian councils should be acceptable to the great majority of the people.

Fifthly. The next in order of the recommendations of that committee relates to the clergy reserves, a subject on which they employed the following language: "As your Committee entertain no doubt that the reservation of these lands in mortmain is a serious obstacle to the improvement of the colony, they think every proper exertion should be made to place them in the hands of persons who will perform upon them the duties of settlement, and bring them gradually into cultivation."

Although the views of the committee were thus limited to the improvement of the clergy reserves, the Government advanced to the redress of the evil indicated in the report, by a measure not only far more decisive, but eminently remarkable for the confidence it expressed in the Provincial Legislature. The constitutional Act having authorized His Majesty, with the advice of the Legislative Council and Assembly, to vary or repeal any of the provisions therein made for the allotment and appropriation of lands for the support of the Protestant clergy, Lord Ripon availing himself of that enactment, proposed that the power of repeal should be exercised by those bodies, and should be accompanied with a declaration that the reserve lands should merge in the general demesne of the Crown. The object of this proposal was to bring the reserves within the reach of the general rules under which all the waste lands of the province are progressively sold to the highest bidder. To prevent any possible misconception of the views of His Majesty's Government, the draft of a Bill for the accomplishment of this design was transmitted to Lord Aylmer, with instructions to give his assent, if such a law should be presented for his acceptance. To obviate the risk of offence being given, by suggesting to the House of Assembly the exact language, as well as the general scope of a measure to originate with them, Lord Aylmer was directed to proceed with the most cautious observance of the privileges of that body, and of all the constitutional forms. Anticipating the contingency of the measure being adopted in substance, but with variations in the terms, Lord Ripon further stated that in that event the Bill was not to be rejected by the governor, but was to be specially reserved for the signification of His Majesty's pleasure.

In obedience to these directions, the Bill was introduced into the House of Assembly, but did not pass into a law. That it would have effectually removed the grievance pointed out by the Canada committee has not been disputed, nor can the ministers of the Crown be held in any sense responsible for the continuance of an evil for which they had matured so complete a remedy. The only explanation which has ever been given of the failure of the proposal is, that the Solicitor-general, Mr. Ogden, had used some expressions, whence it was inferred that His Majesty's Government would reject the Bill if altered in a single word. It is scarcely credible that this should be an accurate surmise of the real cause of the loss of the Clergy Lands Appropriation Bill. It is not to be believed, that the Assembly of Lower Canada would have rejected an unobjectionable proposal for the redress of a grievance of which complaint had been long and loudly made, for no other reason than that a public officer, not of the highest rank or consideration, had used some casual expression in which the ultimate views of His Majesty's advisers were inaccurately explained. To the governor, application could have immediately been made for more authentic information; and in fact the tenor of the despatch which had been received by Lord Aylmer was perfectly well known throughout the province to every person who felt any interest on the subject. The measure has never since been revived; and it must be therefore assumed, that the Assembly are less anxious than Lord Ripon supposed for the removal of this obstruction to agriculture and internal improvement. Be that as it may, the British Government are completely absolved from the responsibility thrown upon them by this part of the report of the Canada committee.

Sixthly. That body proceeding to other subjects connected with the wild lands of the province, expressed their opinion that "it might be well for the Government to consider whether the Crown reserves could not be permanently alienated, subject to some fixed moderate reserved payment, either in money or in grain, as might be demanded, to arise out of the first ten or fifteen years of occupation." They add, "that they are not prepared to do more than offer this suggestion, which appears to them to be worthy of more consideration than it is in their power to give to it; but that in this, or in some such mode, they

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are fully persuaded the lands thus reserved ought, without delay, to be permanently disposed of."

In pursuance of this advice, Lord Ripon directed the sale of the Crown reserves throughout the province, as opportunity might offer, precisely in the same manner as any other part of the royal demesne. The system has undergone an entire change, and the Crown reserves considered as distinct allotments, left in their wild state to draw a progressive increasing value from the improvement of the vicinity, have no longer any existence.

Seventhly. Another abuse connected with the wild lands of Lower Canada was noticed by the Committee in the following language: "One of the obstacles which is said greatly to impede the improvement of the country is the practice of making grants of land in large masses to individuals who had held official situations in the colony, and who had evaded the conditions in the grant, by which they were bound to provide for its cultivation, and now wholly neglect it. Although powers have been lately acquired by the government to estreat those lands, and although we think that, under certain modifications, this power may be advantageously used, we are nevertheless of opinion that a system should be adopted similar to that of Upper Canada by the levy of a small annual duty on lands remaining unimproved and unoccupied contrary to the conditions of the grant.

The remedial measure of a tax on wild land, which is suggested in the preceding passage, could of course originate only with the representatives of the people, and the House of Assembly have not indicated any disposition to resort to that mode of taxation. To such a Bill, if tendered by them, His Majesty's assent would have been cheerfully given; yet the King's government did not omit to avail themselves of all those remedial powers with which the Crown is intrusted. It is little to say, (though it may be stated with the strictest truth) that since the date of the report the system reprobated by the committee, of granting land in large masses to individuals, has been entirely discontinued; it is more material to add that this change in practice is the result of a series of regulations established on Lord Ripon's advice in Lower Canada, and indeed throughout all the other British Colonies. The system of gratuitous donations of land has been abandoned absolutely and universally, and during the last three years all such property has been disposed of by public auctions to the highest bidder, at such a minimum price as to ensure the public at large against the waste of this resource by nominal or fictitious sales. This is not the occasion for vindicating the soundness of that policy which, however, if necessary, it would not be hard to vindicate. It is sufficient for the immediate purpose of this minute to have shown that on this as on other topics the Ministers of the Crown did not confine themselves to a servile adherence to the mere letter of the Parliamentary recommendation, but embraced and gave the fullest effect to its genuine spirit.

Eighthly. The Committee sought to relieve the province, not only from the evils of improvident reservations and grants of wild lands, but from those incident to the tenures on which the cultivated districts are holden. The following passages on this subject appear in their report: "They do not decline to offer as their opinion that it would be advantageous that the declaratory enactment in the Tenures Act respecting lands held in free and common socage should be retained. Your Committee are further of opinion that means should be found of bringing into effective operation the clause in the Tenures Act which provides for the mutation of tenure; and they entertain no doubt of the inexpediency of retaining the seigneurial rights of the Crown, in the hope of deriving a profit from them. The sacrifice on the part of the Crown would be trifling, and would bear no proportion to the benefit that would result to the colony from such a concession. The Committee cannot too strongly express their opinion that the Canadians of French extraction should in no degree be disturbed in the peaceful enjoyment of their religion, laws and privileges, as secured to them by the British Acts of Parliament; and so far from requiring them to hold lands on the British tenure, they think that when the lands in the seigneuries are fully occupied, if the descendants of the original settlers shall still retain their preference to the tenure of Fief et Seigneurie, they see no objection to other portions of unoccupied lands in the province being granted to them on that tenure, provided that such lands are apart from, and not intermixed with the townships."

The British Government are again entitled to claim of having to the utmost possible extent regulated their conduct by the language, and still more by the spirit of this advice.

No application has been made for the creation of a new seigneurie, as indeed the period contemplated by the Committee when the seigneurial lands would be fully occupied still seems very remote. It is almost superfluous to add that no attempt has been made to superinduce upon those lands any of the rules of the law of England.

The Crown has also been prompt to bring into the most effective operation the clause of the Canada Tenures Act, which provides for the mutation of tenures; but no lord or censitaire having hitherto invoked the exercise of the powers of the Crown, they have, of necessity, continued dormant. Respecting the socage lands, some explanation seems necessary. The general principle adopted by the committee, in the passage already quoted, is, that the inhabitants, both of French and of British origin, should respectively be left in the enjoyment of the laws regulating the tenures of their lands derived from their different ancestors, and endeared to either party by habit, if not by national prejudices. It has already been shown that the French Canadians have enjoyed the benefit of this principle to the fullest possible extent; in the anxiety which has been felt to gratify their wishes, it may

may not be quite clear that equal justice has been rendered to the inhabitants of British descent. The maintenance of so much of the Canada Tenures Act as rendered the soccage lands inheritable and transmissible according to English law, was most unequivocally recommended in the extracts already made from the report. The Provincial Legislature, however, in their session of 1829, made provision for the conveyance of such lands in a manner repugnant to this British Statute; of course His Majesty could not be advised to assent to a law which directly contravened an Act of Parliament. Such, however, was the anxiety of the King's Ministers to avoid every needless cause of jealousy, that a Bill (1 Will. IV. c. 20) was introduced into Parliament by Lord Ripon, and passed into a law, in order to relieve His Majesty from this difficulty. The Canadian Act was then accepted; nor was this all, striving to multiply to the utmost possible extent every proof and expression of respect and confidence towards the provincial Legislature, the Government introduced into the British Statute, which has been last mentioned, a further enactment, of which the effect was to absolve the Canadian Legislature in future from every restraint laid upon them by any Act of Parliament regulating the various incidents of the soccage tenure in the province. The barriers erected for the defence of the British settlers by the caution of Parliament in the years 1791 and 1826, were thus overthrown, in order that there might be the fewest possible exceptions to the principle of confiding to the Canadian Legislature the regulations of the internal interests of Lower Canada. No one will deny that this unsolicited concession was made in the spirit of the most large and liberal acceptance of the advice of the Canada committee, so far at least as the views and interests of the dominant majority of the House of Assembly are concerned.

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Ninthly. The next is the subject of the Jesuit's estates, in reference to which the views of the Committee of 1828 are expressed as follows: "With respect to the estates which formerly belonged to the Jesuits, your Committee lament that they have not more full information, but it appears to them to be desirable that the proceeds should be applied to the purposes of general education."

Far, indeed, beyond the letter of this advice did the concessions made by His Majesty on the advice of Lord Ripon proceed; not only were the Jesuit's estates "applied to purposes of general education," but the Provincial Legislature were authorized to determine what specific purposes of that kind should be preferred, and the proceeds of the estates were placed for that purpose unreservedly under their control. No suggestion has been made impeaching the fulness of this concession, except as far as respects certain buildings occupied for half a century past as a barrack; even if a rent should be payable by the Crown for the use of those barracks (the single question admitting of debate), it would be idle on that ground to deny either the importance of the concession made, or the almost unbounded confidence in the House of Assembly, perceptible in the form and manner in which the Crown renounced to them, not merely a proprietary right, but even an administrative function.

Tenthly. To the positive recommendations which have already been considered, succeeds another, of which the end is rather to dissuade than to advise the adoption of any specific measure: "The Committee (it is said) are desirous of recording the principle which, in their judgment, should be applied to any alterations in the constitutions of the Canadas, which were imparted to them under the formal Act of the British Legislature of 1791. That principle is to limit the alterations which it may be desirable to make by any future British Acts, as far as possible, to such points as, from the relation between the mother country and the Canadas, can only be disposed of by the paramount authority of the British Legislature, and they are of opinion that all other charges should, if possible, be carried into effect by the local Legislatures themselves, in amicable communications with the local government.

So rigidly has this principle been observed, that of two Acts of Parliament which since 1828 have been passed, with reference to the internal concerns of the province, the common object has been so to enlarge the authority of the provincial Legislature as to enable His Majesty to make, with their concurrence, laws to the enactment of which they were positively incompetent. The Acts in question are those already noticed, by which the revenues of Geo. 3. were relinquished, and the regulation of soccage tenures was transferred to the governor, council and assembly.

Eleventhly. "The committee," again to borrow their own words, "recommended for the future, that steps should be taken by official securities, and by a regular audit of the accounts, to prevent the recurrence of losses and inconveniences to the province, similar to those which had occurred in Mr. Caldwell's case, and, as connected with this branch of the inquiry, they recommended that "precautions of the same nature should be adopted with regard to the sheriffs."

In reference to these suggestions, Sir George Murray proposed to the House of Assembly, and Lord Ripon repeated the proposal, that the public accountants should pay their balances, at very short intervals, into the hands of the commissary-general, tendering the security of the British Treasury for the punctual repayment of all such deposits. The scheme embraced a plan for a regular audit and for the punctual demand of adequate securities. Sir James Kempt and Lord Aylmer were successively instructed to propose to the Legislative Council and Assembly the enactment of such a law. The proposal was accordingly made to the Assembly in the year 1829, and was repeated in the year 1832. On each occasion it was the pleasure of the House to pass it by in silence. That they had good reasons for their

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conduct it would be unjust and indecorous to doubt. Those reasons, however, remain to this moment completely unknown to the Executive Government, who, having exhausted all their authority and influence in a fruitless attempt to give effect to this part of the Canada committee's recommendations, cannot, with any reason, be held responsible if they still have failed to produce the advantage contemplated to the province at large.\*

Twelfthly. A further recommendation of the committee is conveyed in the report in the following terms: "Your Committee also beg leave to call the particular attention of the Government to the mode in which juries are composed in the Canadas, with a view to remedy any defects that may be found to exist in the present system."

Here again the Government pressed upon the House of Assembly the importance of giving effect to the views of the committee, and in fact, a law has received the Royal Assent, having for its object the improvement of the jury system—an object which has been pursued by those methods which the House of Assembly themselves devised or adopted.

Thirteenth. The report proceeds to recommend, "That the prayer of the Lower Canadians for permission to appoint an agent in the same manner as agents are appointed by other colonies, which possess local Legislatures should be granted."

His Majesty's Government have accordingly repeatedly authorized the governor to assent to any Bill which might be passed for that purpose. No such Bill has, however, been presented for Lord Aylmer's acceptance. The Assembly, in opposition to the advice of the committee that the habits of other colonies should be followed as a precedent, have chosen to nominate, by resolutions of that House alone, gentlemen deputed to represent them in this kingdom, but who have not, as in other colonies possessing Legislative Assemblies, been appointed by an Act of the entire Legislature.

Fourteenth. Upon the most careful perusal of the report of 1828, no other recommendations can be found addressed to the King's Government, although the committee, addressing themselves in that instance rather to the local Legislature, have advised that mortgages should be special, and that in proceedings for the conveyance of lands, the simplest and least expensive forms of conveyance should be adopted, upon the principles of the law of England; that form which prevails in Upper Canada being probably, under all circumstances, the best which could be selected; and that the registration of deeds relating to soccage lands should be established as in Upper Canada. "In addition," it is added, "to these recommendations, it appears to be desirable that some competent jurisdiction should be established to try and decide causes arising out of this description of property," (that is, the soccage lands), "and that Circuit Courts should be instituted within the townships for the same purposes."

In these passages, the design of the committee was to administer to the relief of the settlers of English origin, and their claims were pressed by Sir George Murray on the attention of the Assembly. Some advance has been accordingly made towards the establishment of a registry of deeds and of local courts in the townships. Respecting the law of mortgages, and the forms of conveyancing, it does not appear that the Assembly have hitherto interposed for the relief of that part of the constituent body.

Concluding at this point, the comparison between the advice tendered to the Government and the measures adopted in pursuance of it, it may be confidently asserted that the general statement made at the commencement of this minute has been substantiated. To the utmost limit of their constitutional power and legitimate influence, successive administrations have earnestly and successfully laboured to carry the report of 1828 into complete effect in all its parts. It has already been shown with how cordial an acquiescence that report was received by the House of Assembly, with what liberal eulogies the talent, the patriotism, the knowledge and the intimate acquaintance with Canadian affairs of its authors were commanded; how that document was hailed as the faithful interpretation of the wishes and wants of the Canadian people; and how the British Government were called upon by the House of Assembly to look to that report as their guide in remedying existing grievances, and obviating difficulties for the future. That this guide should have been studiously followed, that its suggestions should have been invariably construed and enforced, with no servile adherence to the letter, but in the most liberal acceptance of its prevailing spirit, and yet that such efforts should have been unavailing to produce the expected conciliation, may well justify the deepest regret and disappointment.

(signed) *Aberdeen.*

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\* They have not, however, abstained from such measures as were within their own power. They have established a fire-proof vault with three keys, held by three separate officers of high rank, all of whom must be present whenever it is opened, and they have provided that the Receiver-general shall not hold in his hands any balance exceeding 10,000 £. without depositing it in this vault, and that once at least in every year the contents of the vault shall be inspected or reported on by five persons named by the governor for the purpose. They have also taken security from the Receiver general to the extent of 10,000 £., with two sufficient sureties, and have required him to render statements of his accounts on the 1st of January, 1st of April, 1st of July and 1st of October in every year.

## — No. 2. —

COPY of a DESPATCH from Lord *Glenelg* to His Majesty's Commissioners of Inquiry in Lower Canada.

My Lord and Gentlemen,

Downing-street, 17 July 1835.

No. 2.

Despatch from  
Lord *Glenelg* to  
Commissioners of  
Inquiry,  
17 July 1835.

THE general objects of the mission to Lower Canada, with which His Majesty has been pleased to entrust you, are explained in my accompanying despatch of this date. The purpose of my present communication is, to lay down for your guidance such rules as appear to me necessary respecting the mode in which your duties as commissioners should be performed.

1. For your assistance in the execution of the powers confided to you, His Majesty has been pleased, on my recommendation, to appoint Mr. Thomas Frederick Elliot to be your secretary. The station which that gentleman has for some years past occupied in this department has rendered him familiar with the recent political history of the Canadian provinces, and, generally, of British North America. He will bring to the office for which he has been selected, the still more important qualifications of general ability, of talents both natural and acquired for civil business, and of the habitual discretion and secrecy learned by the devotion of several years to official life.

2. I have concerted with the Lords Commissioners of the Admiralty all the arrangements necessary for your conveyance to Quebec. You will embark for that port on board His Majesty's ship the *Pique*, now lying at Spithead under sailing orders.

3. I have made with the Lords Commissioners of the Treasury all necessary arrangements for defraying the expenses of the commission, and for the remuneration of the two junior commissioners and of the secretary. For your information on those subjects I enclose copies of the correspondence which has passed between my under-secretary, Sir George Grey, and the assistant-secretary of the Treasury.

4. The confidence which His Majesty so unreservedly places in your discretion might seem to supersede the necessity of my prescribing any regulations respecting the forms to be observed in the conduct of your duties as commissioners. But although I am anxious that you should be fettered by no needless restrictions, yet experience forbids me to suppose, that on any occasion like the present there may not be some advantage in prescribing some few elementary rules of procedure, especially since the relaxation or entire abrogation of them might be readily authorized by His Majesty, if in the result they should prove either inapplicable or inconvenient.

5. Your official inquiries must of course be conducted either by the examination *viva voce* of witnesses, or by the inspection of documents. I do not anticipate any difficulty in your procuring, either in original or otherwise, all records and papers which you may find it necessary to inspect. The attendance of witnesses unwilling to give their testimony, or the obtaining full answers from any reluctant witness who may attend, may be occasionally accompanied by serious embarrassment. His Majesty has conferred upon you no powers to compel obedience to your citations; I am not aware that it would have been possible to arm you with any such authority, still less am I convinced that it would have been expedient. You proceed to Lower Canada on a mission of conciliation and peace, and could not, without much danger to your success, appear in the province enforcing a new and invidious, and indeed a doubtful power. I do not, however, suppose that any general reluctance will be felt to lay before you such information as you may be desirous to obtain. The various officers of the government will attend your citations as a matter of course, and as a part of their duty to His Majesty. One large section of the Canadian people will, it may be presumed, press forward to establish the complaints which they have urged against the dominant majority in the Assembly: their antagonists will not, probably, allow such evidence to pass without contradiction; and if in any case a resistance should be opposed to your inquiries, it will, I trust, yield to the influence of the courtesy, kindness and respect which will characterise your demeanour toward all classes of the King's subjects in the province. I am not anxious that you should be armed with any sterner authority.

6. I have hitherto assumed\* that your investigations are to be conducted in a formal and official manner, by the examination of evidence either oral or docu-

mentary.

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mentary. There are, however, other means not less valuable of acquiring an accurate view of the state of affairs in the province, of which you will avail yourselves.

Especially you will, as opportunity may offer, enter into an unrestrained intercourse with the inhabitants of different classes, whether of French or English origin; whether engaged in commerce or in agriculture, or in any of the learned professions. Maintaining at all times due circumspection and reserve in the expression of your own opinions, you may acquire a great insight into the prevailing state of public feeling, by watching with an observant eye all the indications afforded at public meetings, voluntary associations, or in the ordinary intercourse of society. Nor will the political writings and periodical literature of the province escape your notice. In short, you will give that wakeful attention to whatever is passing around you, indicative of the political state of Lower Canada, which a rational curiosity would recommend to persons holding no official station.

7. It may be convenient, for the more effectual prosecution of your inquiries, to transfer the meetings of the commission from Quebec to some other of the principal towns of Lower Canada, and especially to some places in the eastern townships. Occasionally also it may be necessary to communicate with persons residing in places remote from those towns, and not conveniently accessible by the commissioners collectively. To meet exigencies of this nature, you will transfer your sittings to any place within the province which you may think most convenient for the purpose; or you will delegate either of the junior commissioners, or the secretary, to collect evidence and prosecute investigations in places not adapted to receive the whole commission.

8. Any two of the three commissioners should form a quorum for the dispatch of business; the absence of any one, however, is to be deprecated, except on the pressure of some evident necessity: the chief commissioner will especially attend as often as his duties as governor of the province will permit. It is superfluous to remark, that his convenience will be habitually consulted in this respect by his colleagues, as they would be prompt to anticipate any instruction of that nature.

9. All questions proposed for decision at any meeting must be decided by the majority of votes; such votes being given by the commissioners in the reverse of the order in which they are named in the commission.

10. The secretary (except during the occasional absences already supposed) will be present at all your deliberations; not indeed to vote, nor even, in the proper sense of the term, to deliberate jointly with yourselves, but to assist by such suggestions or statements as he may think it right to communicate.

11. In the event of any difference of opinion arising between you, upon any question connected with your commission, it will be important to observe that no separate communications from any member of the commission must be addressed to this department. Each commissioner will be at liberty to record his own views on the minutes, and to controvert, in the same place, any statement or argument of any of his colleagues. Such written discussions will, of course, be conducted with the temper and in the style appropriate to such an occasion. When completed, and not till then, the secretary will transcribe the whole of such entries, which must then be transmitted to this department for His Majesty's decision.

12. All communications to the Secretary of State will be made in your joint names, and subscribed with your respective signatures; all other correspondence will pass, in the name of the commissioners, through the secretary.

13. You will avail yourselves of the service of the secretary, so far as you may find it practicable or convenient, in drawing up resolutions or other documents to be entered on your minutes. It will probably be found that papers framed, not by one of yourselves, but by your principal officer, will be more unreservedly discussed, and more frankly subjected to the necessary revision, than if the plan were reversed.

14. I cannot too earnestly enjoin upon you the observance of the most careful circumspection to prevent the premature disclosure or detection of the conclusions which you may be disposed to adopt upon any of the subjects of your inquiry; any indiscretion in this respect might greatly embarrass His Majesty's Government, and frustrate the successful issue of the mission. Even in the questions to be proposed to witnesses, and in the very tones and manner of the querist, this habitual caution should be exercised. It is of the utmost importance to prevent the jealousies and to keep alive the good-will of all the parties concerned.

15. In the accompanying despatch you will find some intimations of the order  
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in which your inquiries are to be pursued and your reports presented. In other respects you will exercise your own judgment, as to the number of separate reports which it will be most expedient to make, and as to the order in which they should follow each other. His Majesty's Government are anxious for the completion of your duties, by the earliest period compatible with the effective discharge of them. Your reports must be completed and signed in Lower Canada; for I have reason to expect that the chief commissioner will, after the close of the commission, remain in the province as governor, to give effect to the measures which it may be thought right to adopt: it will, therefore, be impossible to postpone the completion of your reports until after your return to Europe. I will only add, that those reports will be most conveniently made in the form of communications addressed to the Secretary of State, for the information of His Majesty.

No. 2.  
Despatch from  
Lord Glenelg to  
Commissioners of  
Inquiry,  
17 July 1835.

I have, &c.  
(signed) *Glenelg.*

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— No. 3. —

COPY of a DESPATCH from Lord *Glenelg* to the Earl of *Gosford*.

My Lord,

Downing-street, 17 July 1835.

I HAVE the honour herewith to transmit to your Lordship, first, a commission under the great seal, constituting you governor and commander-in-chief of the provinces of Lower and Upper Canada; secondly, a similar commission for the government of Nova Scotia and Prince Edward's Island; and thirdly, a separate commission for the government of New Brunswick. With these commissions your Lordship will receive the usual instructions under His Majesty's sign-manual, explanatory of the general rules according to which the powers they confide to you are to be exercised.

No. 3.  
Despatch from  
Lord Glenelg to  
the Earl of Gosford,  
17 July 1835.

In my despatch of this date I have conveyed to your Lordship, to Sir Charles Edward Grey, and to Sir George Gipps, the commission under the great seal, addressed to yourself and to them jointly, constituting you and them His Majesty's commissioners of inquiry in Lower Canada.

The object with which I now address your Lordship is, to convey to you, in obedience to the King's commands, His Majesty's pleasure regarding several subjects upon which you will be called to take some step, not as chief commissioner, but in your character of governor of Lower Canada, and upon which it will be both practicable and expedient to act promptly and at once, without awaiting the investigation and reports of the commissioners.

Your Lordship proceeds to Canada at a moment of no common difficulty and importance. In every part of the instructions with which, either as chief commissioner or as governor, you are charged, conciliation and the reconciliation of all past differences are studiously presented as the great objects of your mission. It is therefore needless to reiterate on the present occasion the admonitions which you have already received, to secure the confidence of the House of Assembly, and to cultivate the good-will of the Canadian people of all ranks and classes. I am well assured that in the absence of any such injunction your Lordship would have exercised, in the high office with which His Majesty has entrusted you, that discretion and urbanity which are so eminently required for the satisfactory performance of your arduous duties.

It may not, however, be improper to address to your Lordship one caution of a different nature. Whatever may be the ground of the disputes which have so long prevailed between the executive government and the House of General Assembly of the province, it could not with any degree of truth, or even of plausibility, be alleged that they have either originated, or have been prolonged, with a view to any interests, real or imaginary, excepting those of the people of Canada themselves. No motive could possibly be assigned as influencing British policy towards this part of His Majesty's dominions, except the advancement of the social welfare of the inhabitants, and the development of the resources of the country. In promoting these great ends, the King has found an object worthy of the noblest ambition, and of the most earnest solicitude. Even if the counsels submitted to His Majesty for the government of Lower Canada were admitted to be as injudicious as they have been sometimes described to be, yet, even on that supposition,

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the singleness and disinterestedness of the motives by which His Majesty's confidential advisers have been actuated, would be beyond dispute. What has Great Britain to gain by the misgovernment of so important a portion of the British empire? There is no single ground of national competition which could induce the metropolitan state to abuse her authority, or which should make that authority a subject of reasonable distrust to the Canadian people. If it could with any justice be supposed that those who are honoured with a place in His Majesty's more immediate counsels, could be diverted, by the sordid desire of patronage, from the upright discharge of duties so clear and important as those which they owe to British North America, yet it is demonstrable that so unworthy a motive has not exercised the slightest influence on their deliberations. I do not find, for many years past, a solitary example of any place, excepting that of the governor himself, and one or two of the chief officers of customs, having been conferred in Lower Canada on any person except the settled inhabitants of the province, or in consequence of any recommendation but that of the governor. No British Minister, during the present or the last reign, has ever used the patronage of British North America either to promote his political power, or the personal advantage of himself or his connexions. I need scarcely add, that His Majesty is firmly resolved to enforce the observance, in future, of the same just and liberal policy.

Your Lordship, therefore, proceeds to Lower Canada to advocate no British interest, and to secure no selfish ends. To maintain the peace and integrity of the empire, and to mediate between contending parties by whom those blessings have been endangered, is the high and honourable trust confided to you.

I am consequently entitled to claim for your Lordship, and for the constitutional authority which you will exercise as governor of Lower Canada, the respect due in every part of the King's dominions to the representative of His Majesty. Prepared to make every just concession which the well-being of the province may require, His Majesty's confidential advisers will not lend their sanction to any proceedings involving the sacrifice of what is due to the dignity, correctly understood, of His Majesty's Crown and person.

On your Lordship's arrival in Lower Canada, the first and most urgent demand upon your attention will be the means of defraying the arrears due to the public officers for their salaries: for this purpose it will probably be necessary to convene a very early session of the legislature. I do not venture peremptorily to prescribe this measure; but unless reasons, drawn from local circumstances of which I am ignorant, should appear to your Lordship to forbid this course, it will then, I apprehend, be the most expedient.

In the communication which your Lordship will proceed to make to the Assembly in His Majesty's name, you will, in effect, announce that the King is most solicitous and firmly resolved to provide, as far as may be possible, for remedying all the grievances affecting His Majesty's subjects in Lower Canada, of which complaint has been made to Him: that especially, with regard to the disputed question of revenue, the King is disposed to place under the control of the representatives of the people all public money payable to His Majesty, or to His officers in the province, whether arising from taxes or from any other Canadian source; but that this session cannot be made except on conditions which must be most maturely considered: that to arrange such conditions for the consideration of the Assembly, is one of the principal objects of the commission which His Majesty has been pleased to confide to your Lordship and to your colleagues: that your inquiries into that subject will be undertaken with the utmost promptitude, and pursued with unceasing diligence: that in a session to be holden in the commencement of the year 1836, you hope to submit to the Assembly proposals for such an arrangement: that you are commanded by His Majesty to request that in the meantime the Assembly will provide for the payment of the arrears now due to the public servants in Lower Canada, and for their maintenance pending the inquiry: that upon such a vote being adopted, you are authorized on the part of His Majesty to engage that no part of the casual, territorial or hereditary revenues accruing in the interval shall be applied to any purpose whatever, unless with the assent of the House of Assembly, but that the whole intermediate proceeds of that revenue may be allowed to await the result of the proposed investigations. Your Lordship's address will further comprise an application for the repayment to the military chest of the sum of 31,000 £, advanced in the autumn of last year to meet the exigencies of the public service.

I have stated the substance rather than the terms of this address, because I am  
unwilling



unwilling needlessly to fetter your Lordship's discretion as to the selection either of topics or of particular expressions; aware that, in that respect, you will enjoy within the province itself advantages in which no person residing beyond its limits can fully participate.

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the Earl of Gosford,  
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I trust that the House of Assembly will meet the application thus to be made to them, by placing at your Lordship's disposal the funds necessary for carrying on the public service, pending the inquiries of the commissioners. If that hope should be fulfilled, there will be an end of all difficulties which might otherwise impede the prosecution of your inquiries, and the adjustment of the questions in dispute. If on the other hand the House should decline to meet your proposals, and should refuse to afford leisure for those inquiries which must inevitably precede the adjustment of the financial question, then (with whatever reluctance I contemplate such a contingency) measures of a different kind must be adopted, and these I now proceed to explain.

If the conciliatory assurances of the address to be made by yourself to the House of Assembly, shall unhappily prove insufficient to induce the Assembly to grant the supplies as proposed, even during the intended inquiry, then your Lordship would be left in possession of no local resources for defraying the charges of the administration of justice and of the civil government, except those revenues of which His Majesty is in possession, either in right of the Crown, or under permanent grants made by the Assembly in former times. In the unfortunate case which I am thus compelled to contemplate, it would remain for your Lordship to apply those local resources, as far as they will extend, towards the expenses of the judicial and other civil establishments: you would, however, immediately report to the Secretary of State the difficulty to which you had been reduced, in order that His Majesty's Government might submit to both Houses of Parliament the measures necessary to meet so extreme an emergency. Your Lordship would also be at liberty to apprise the public officers of the province that the Ministers of the Crown unreservedly acknowledged it to be their duty to employ all constitutional means for the protection of public servants against the loss of emoluments earned in His Majesty's service.

It may however be anticipated as the most probable result of your Lordship's address to the Assembly, that they will meet your application for a supply, by demanding a warrant to defray their own contingent expenses. To that demand your Lordship will accede cheerfully and at once.

Whether the Assembly at their meeting on your Lordship's arrival, shall accede to or refuse the applications for a supply pending the inquiries of the commissioners, those inquiries must proceed with all practicable dispatch and care, in order that instructions for your Lordship's guidance, to be founded on the financial report of the commissioners, may be received in the province in time for a session to be holden as early as may be possible, in the spring of 1836. In pursuance of the intention already announced, I now proceed more immediately to the consideration of the subjects which are not noticed in my instructions to the commissioners, but in regard to which your Lordship will have to act promptly and at once as governor of the province.

1. It is alleged that the patronage of His Majesty's government in Lower Canada has been exercised in such a manner as to exclude the Canadians of French descent, not only from the larger number, but from all the more lucrative and honourable of the public employments in their native country.

The abuse of patronage is said to extend still further; some persons are represented as having been preferred to offices, in performing the duties of which they are unable to communicate, except through an interpreter, with the great body of those with whom their affairs are to be transacted. Other successful candidates for office are represented as persons who had made themselves justly offensive to the House of Assembly; while, on the other hand, employments created at the instance of that House with a view to public improvements, have, it is alleged, been studiously denied to those whom the governor had reason to believe would be most acceptable to the Assembly.

It would be scarcely possible to find any terms more emphatic than those employed by the Earl of Ripon, to enjoin the utmost impartiality in the distribution of public offices in Lower Canada, without reference to national or political distinctions, or to any consideration, except that of superior capacity and fitness for the trust. I adopt my predecessor's instructions in their fullest extent; I concur with him in thinking that personal merit and skill, or knowledge, qualifying a candidate

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for the vacant trust, are the chief circumstances to which the governor of the province must have regard; and that in the distribution of offices, it is impossible to adhere with any minute exactness to the rule which the numerical proportion subsisting between the two races might afford. But your Lordship will remember that between persons of equal or not very dissimilar pretensions, it may be fit that the choice should be made in such a manner as in some degree to satisfy the claims which the French inhabitants may reasonably urge to be placed in the enjoyment of an equal share of the Royal favour. There are occasions also on which the increased satisfaction of the public at large with an appointment, might amply atone for some inferiority in the qualifications of the persons selected. To take the most effectual security in His Majesty's power against the recurrence of any abuse in the exercise of this part of His delegated authority in Lower Canada, the King is pleased to command that, in anticipation of any vacancies which may occur in the higher offices in that province, and especially in all judicial offices, your Lordship should from time to time transmit to the Secretary of State, for His Majesty's consideration, the names of any gentlemen resident in Lower Canada, whom you may think best qualified to perform such trusts with advantage to the public. His Majesty proposes to authorize the nomination, as opportunity may occur, of the persons so to be submitted for His choice; having regard to such representations as He may receive from your Lordship, or from any other adequate authorities, respecting the competency of such persons to the public service. His Majesty is further pleased to direct that all offices in the gift of the King, of which the emolument shall amount to or exceed 200 *l.* per annum, shall be granted under the public seal of the province, in pursuance of warrants to be issued by His Majesty for that purpose; and that, except when the successful candidate shall have been previously approved by His Majesty in the manner already mentioned, he should be informed that his appointment is strictly provisional, until His Majesty's pleasure could be known. The control which it is thus proposed to establish over the hitherto unlimited powers of the governor, is not designed and will not be used as a means of securing to His Majesty's confidential advisers in this kingdom any beneficial patronage whatever. I have already expressed my entire approbation of the system hitherto observed, of considering public employments in Lower Canada as properly appropriate to the inhabitants of the province. Without giving a pledge against any deviation from that rule in any solitary case (for such a pledge might in the event prove embarrassing to all parties, and prejudicial to the welfare of the province), I can yet have no difficulty in acknowledging the rule as a general maxim from which no departure should be admitted, unless on grounds so peculiar as plainly to justify the exception.

It has also been represented, that in some cases the same individual is charged with numerous offices of which the duties are incompatible, either by creating a larger demand on the time of the officer than any one man is able to meet, or by placing him in situations of which the appropriate functions clash and interfere with each other. From the generality of the terms in which this complaint has been made, it has not been in my power to ascertain the extent or reality of this grievance; but in whatever degree it may be found to exist, your Lordship will understand that His Majesty expects that it should be completely remedied: that all persons occupying any such incompatible employments should be called upon to renounce such as they cannot efficiently execute; and that in future the general rule must be, that no person should be entrusted with any office of which he cannot discharge the proper duties with due punctuality and method in his own person.

2. Complaint is made of an unjust partiality in favour of the use of the English language in all official acts. The foundation of this complaint appears to be, that 13 years ago a Bill for the union of the two Canadas was brought into Parliament by the then Government, which, had it passed into a law, would have made English the single official language of both. I have no motive for defending a scheme which was rejected by the House of Commons. A case is also said to have occurred at the distance of about 11 years since, in which the Judges refused to entertain an action, because some part of the proceedings had been written in the French language. This is admitted to be an isolated case; and it is acknowledged, that neither in the courts of law nor in the legislature is any preference of one language over the other really shown. I therefore do not find any grievance on this subject susceptible of a remedy; nor is it in my power to strengthen the injunctions of Lord Ripon, on the impropriety of any such preference of the English over the French tongue. As, however, the complaint has been again urged by  
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the House of Assembly, your Lordship will take the earliest opportunity of assuring them, that His Majesty disapproves, and is desirous to discourage and prevent to the utmost of His power, the adoption of any practice which would deprive either class of his subjects of the use in their official acts of that tongue with which early habits and education may have rendered them most familiar. Your Lordship will signify your willingness to assent to any law which may give, both to the French and the English inhabitants, the most ample security against any such prejudice.

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3. Reference has been made to certain rules of court made by the Judges, of which the earliest have been in force for 34 years, and the latest for 19; and which are said to be illegal, and even to amount to a violation of the faith of treaties, and of the pledges of the King and Parliament. It is admitted, that until the year 1834 those rules had been followed, without any complaint having been preferred to His Majesty's Government: I can, indeed, undertake to say, that until the fact was stated in evidence before the Canada Committee of last year, the existence of such rules was altogether unknown in this country. Here, as on so many other topics, I am compelled to revert to the instructions of the Earl of Ripon, and to instruct your Lordship to renew the proposal which he authorized Lord Aylmer to make to the provincial legislature, that a commission should be appointed to revise any rules of court made by the Judges; and that on the report of such a commission, all such rules as are either contrary to law or inexpedient should be revoked. I am not less solicitous than my predecessor, that such an inquiry should be made to embrace all the practice and proceedings of the superior tribunals, with a view to rendering them more prompt and methodical, and less expensive. If the House of Assembly should think that these objects can be better effected by any other method than that of a commission of inquiry, you will concur with them in carrying it into effect.

4. It is said that exorbitant fees have been exacted in some public offices. I have met with no proof or illustration of this statement. You will, however, acquaint the House of Assembly that His Majesty will be happy to concur with them in the revision of the fees of every office in the province without exception, and in the appointment, should they think it expedient, of a commission of inquiry for the purpose. His Majesty has no wish on the subject, but that the remuneration of all public officers, from the highest to the lowest, should be so regulated as to provide for the efficient discharge of the public service; an object which cannot be secured without a fair remuneration to the persons employed by the public.

5. A complaint is made of the practice of calling upon the Judges for extra-judicial opinions on public questions. Here again I know not how to reduce the general statement to any specific form; I can therefore advance no further than to lay down, for your Lordship's guidance, the general rule, that you do not call upon the Judges for their opinion on any question which, by the most remote possibility, may subsequently come before them for decision. I should scarcely hesitate to interdict the practice of consulting them, altogether and without a solitary exception, if I did not remember that there are public contingencies in which the King would, for the common good of his subjects, be bound to take counsel with his Judges. Such cases, however, will be exceedingly infrequent, and will arise only upon some of those great emergencies for which it is scarcely possible, or even desirable, that any definite provision should be made beforehand. To protect the independent exercise of the judicial office, not only against just censure, but even against the breath of suspicion, will be amongst your constant studies and most anxious endeavours.

6. Complaint is made of the interference of the government and the Legislative Council in the election of members of the Assembly. With this general charge, I can deal only in terms equally general. If any such practice prevailed, of which however there is no proof before me, your Lordship will avoid with the utmost care every approach to it. I acknowledge, without any reserve or limitation, the duty of the executive government of Lower Canada to abstain altogether from interference, direct or indirect, in the choice of the representatives of the people: such an encroachment on the principles of the constitution would be unattended even with a plausible prospect of temporary advantage. I earnestly hope that the Assembly were misinformed as to the existence of any such practices; for I am well convinced, that it is by very different methods that the legitimate authority and influence of the King's government in Canada is to be maintained.

7. I have read, not without deep concern, the language in which the House of Assembly have spoken, in their 92 resolutions, of the conduct of the troops during

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the elections at Montreal : it is described as a sanguinary execution of the citizens by the soldiery. Anxious as I am to conciliate, by all just concessions, the favourable regard of the House, I am bound, by the strict obligations of justice to the British army, to protest against the application of such language to any part of a body, not less distinguished by their humanity and discipline, than by their gallantry. The House had appointed a committee to inquire into those proceedings, and had not received the report of the committee when they proceeded to pronounce this censure on the conduct of His Majesty's troops. The officers had been indicted before a grand jury of the country, and the bills had been thrown out for want of evidence. In assuming to themselves the power to inquire, the Assembly exercised their legitimate privilege : in passing a sentence of condemnation pending that inquiry, and in direct opposition to the finding of the proper legal tribunal, they exceeded their proper authority, and acted in opposition to the parliamentary usages of this country. Nor can I receive such an unauthorized expression of opinion with that deference which it is my duty and inclination to show for every judgment of the House, falling within the appropriate sphere of their deliberation.

8. The Assembly further complain that there is no method by which legal demands against the government can be enforced in the province. In the absence of any distinct proof or illustration of the fact, I can only express His Majesty's desire that effectual means may be taken for remedying this alleged defect in the law.

9. The too frequent reservation of Bills for the signification of His Majesty's pleasure, and the delay in communicating the King's decision upon them, is a grievance of which my inquiries lead me to believe the reality. Your Lordship will understand that the power of reserving Bills, granted by the Constitutional Act of 1791, is an extreme right, to be employed not without much caution, nor except on some evident necessity. You will also have the goodness to remember the indispensable necessity of transmitting, with the least possible delay, the transcript of every law of which the operation is suspended for the signification of the Royal pleasure ; and of accompanying every such transcript with such full and minute explanations as may be necessary for rendering the scope and policy of them perfectly intelligible, and for explaining the motives by which your Lordship may have been influenced in declining to give your decision in the first instance. You will pledge His Majesty's Government in this country to the most prompt and respectful attention to every question of this nature which may be brought under their notice.

10. My predecessors in office are charged with having, on various occasions, neglected to convey to the House His Majesty's answers to the addresses presented to him by that body. Whether this statement could be verified by a careful examination of any particular cases, I am unable to state with certainty ; nor on such a subject is it fit to make a conjectural statement. Your Lordship will, however, assure the House, that His Majesty has been pleased to command, in the most unqualified terms, that every communication that either branch of the provincial legislature may see fit to make to him, be laid before His Majesty immediately on its arrival in this kingdom, and that His Majesty's answer be conveyed to the province with the utmost possible dispatch. The King cannot, however, forget that the delay which may occasionally have taken place in making known in the province His Majesty's decision upon reserved Bills, or upon addresses from either House of General Assembly, may in some instances have been either occasioned or prolonged by circumstances which no promptitude or zeal in His Majesty's service could have obviated ; as, for example, the rigour of the Canadian climate obstructing, during a certain period of the year, the direct approach to Quebec and Montreal, and the imperfect nature of the internal communications through His Majesty's dominions in North America.

11. Much complaint is made of the refusal of information for which the House of Assembly have at different times applied to the governor of the province. After a careful examination of the proceedings of the latest session in which any such applications were made, I have not been able to avoid the conclusion that there is just ground for the complaint. I do not perceive that any advantage would arise from entering in this place into a very exact survey of the communications between the House and the governor respecting the production of papers. It is more useful, with a view to the future, to state the general principle by which your Lordship will be guided. I think, then, that the correspondence between your Lordship and the Secretary of State cannot be considered as forming part of those documents of which

which the Assembly are entitled to demand, as a matter of course, the unreserved and universal inspection or perusal. In the official intercourse between His Majesty and His Majesty's representative in the province, conducted as such intercourse necessarily is through the intervention of the Ministers of the Crown, much confidential communication must necessarily occur. Many questions require to be debated copiously, and in all the various lights in which they may present themselves to the governor or to the Secretary of State: and in such a correspondence it is necessary to anticipate emergencies which eventually do not occur, to reason upon hypothetical statements, and even to advert to the conduct and qualifications for particular employments of particular individuals. It would be plainly impossible to conduct any public affairs of this nature, except on such terms of free and unrestrained intercourse. It is no less plainly impossible to give general publicity to such communications, without needless injury to the feelings of various persons, and constant impediment to the public service. A rule which should entitle a popular assembly to call for and make public all the despatches passing between the King's Government and His Majesty's local representative, would so obstruct the administration of public affairs, as to produce mischiefs far outweighing the utmost possible advantage of the practice.

In the same manner, there will occasionally be communications, in their own nature confidential, between the governor and many of his subordinate officers, which should also be protected from general publicity.

But though I think it right to make this general reservation against the unlimited production of all public documents, I am ready to acknowledge that the restriction itself may admit and even require many exceptions; and that in the exercise of a careful discretion, the governor, as often as he shall judge it conducive to the general good of the province, may communicate to either branch of the legislature any part of his official correspondence, such only excepted as may have been expressly declared or manifestly designed, by the Secretary of State, to be confidential.

But I am not aware of any other document connected with the public affairs of the province, the concealment of which from the Assembly would be really useful or justifiable: especially whatever relates to the revenue and expenditure in all their branches, or to the statistics of the province, should be at once and cheerfully communicated to them. For example, it will be desirable to make to the two Houses such a communication of the blue books, or annual statistical returns, which are compiled for the use of this department; and your Lordship will solicit the assistance of the two Houses of the local legislature, in rendering those returns as accurate and as comprehensive as possible. In short, the general rule must be that of entire freedom from reserve. The particular exception, as it arises, must be vindicated by the terms of the preceding instructions, or by some explanation sufficient to show that secrecy was demanded, not for the protection of any private interest, but for the well-being of the province at large. In every case in which the production of any paper, in answer to any address of either House, may be refused, your Lordship will immediately transmit to this office a statement of the case, with an explanation of the grounds of your decision.

12. The occupation as a barrack of the buildings which anciently were part of the Jesuits' college, is strongly reprobated by the Assembly. I can only remark that this exception from the general transfer of the Jesuits' estates to their disposal, was made and vindicated by Lord Ripon on a ground which has rather acquired a new force, than lost any of its original weight. After an occupation of those buildings for this purpose, for much more than half a century, there has accrued to the Crown a prescriptive title, of which however His Majesty has never sought to avail himself. The King is, on the contrary, anxious that the buildings should be restored, as promptly as possible, to their original use; nor will that measure be delayed for a single day, after other and adequate provision shall have been made for the accommodation of the troops; but it is needless to remark that His Majesty has no funds at his disposal for that purpose. The proposed transfer of all the sources of local revenue to the House of Assembly has deprived the King of the means of providing for this, or any similar service. It must rest therefore with the house to erect or purchase other barracks sufficiently commodious for the garrison, upon which the Board of Ordnance will immediately issue the necessary instructions for evacuating the buildings at present occupied for that purpose.

13. The lease of the forges of St. Maurice to Mr. Bell has been made, and is now irrevocable. I do not conceal my regret, that this property was not disposed

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of by public auction, to the highest bidder. Whatever arrangements may be hereafter settled respecting the territorial revenue, it will be necessary to prevent the granting of any Crown property on lease in the same manner by private contract, and more especially when the contractor is a member of the Legislative Council.

14. Impediments are said to have been needlessly raised to the endowment of colleges by benevolent persons. I fear it is not to be denied, that some unnecessary delay in deciding upon Bills reserved for His Majesty's consideration, having such endowments for their object, did occur: a delay chiefly attributable to political events, and the consequent changes of the colonial administration in this kingdom. I have no wish to withhold a frank acknowledgment of error when really due, to the House of Assembly; because I am persuaded that in that frankness they will perceive the best assurance of the sincerity with which, on behalf of the Ministers of the Crown, a pledge is given for the more prompt and exact attention hereafter, to every measure which has for its object the institution in the province, of any colleges or schools for the advancement of Christian knowledge or sound learning.

15. On the subject of the clergy reserves, of which complaint is still made, the arrangements proposed by Lord Ripon leave His Majesty nothing further to concede. The whole question has been referred to the decision of the provincial legislature. To obviate misconceptions, the draft of a Bill for the adjustment of the claims of all parties was framed under his Lordship's directions, and brought into the House of Assembly. Anticipating the possibility that this Bill might undergo amendments in its progress through the two Houses, materially affecting its character, Lord Ripon had instructed the governor in that event not to refuse his assent, but to reserve the Bill for the signification of His Majesty's pleasure. The loss of the Bill is however ascribed to the solicitor-general having in his place in the House stated, that no amendment would be permitted. The solicitor-general's expressions may have been misunderstood; but if this was their purport, not only was the statement unauthorized, but directly at variance with the spirit of the instructions of the Home Government. I much regret the misapprehension, in whatever cause it may have originated. It may perhaps be ascribed to the fact, that Lord Aylmer did not think himself at liberty to produce to the House the Earl of Ripon's despatches on the subject. Your Lordship will immediately communicate copies of them, inviting the Council and Assembly to resume the consideration of the question upon the terms of Lord Ripon's proposal, to every part of which they may be assured of His Majesty's continued adherence.

16. Lord Aylmer's refusal to issue a writ for the election of a new member of the Assembly, upon the declaration of the House that M. Mondelet's seat had become vacant, is condemned by that body as a violation of their rights. The question has lost much, if not all, of its practical importance since the passing of the recent law for vacating the seats of members accepting places of emolument under the Crown. Still, in justice to Lord Aylmer, I am bound to affirm the accuracy of the distinction in reference to which he appears to have acted. In cases where the vacancy of a seat may, consistently with existing usages, be notified by the House to the governor without assigning the cause, he is bound to presume that the adjudication of the House is right, and must carry it into effect by issuing a new writ. But in cases where usage requires that in the notification to the governor the cause of vacancies should be stated, then, if the cause alleged be insufficient in point of law, the governor is not at liberty to comply with the request of the House. The concurrence of the governor and the House in any measure, cannot render it legal, if it be prohibited by the law of the land. To that rule obedience is emphatically due by those to whom the constitution has assigned the high functions of legislation and of the executive government. If, therefore, Lord Aylmer rightly judged that M. Mondelet's seat had not been lawfully vacated, his Lordship adhered to the strict line of duty in declining to issue the writ for which the House applied. If he entertained a serious and honest doubt on the subject, his Lordship was bound to pause until that doubt could be removed by competent judicial authority. The subsequent introduction by statute of a law for vacating seats in such cases as that of Mr. Mondelet's, would seem sufficiently to establish that his acceptance of office was not followed by that legal consequence.

17. I now approach the case of Sir John Caldwell. It is a subject which has uniformly excited the deepest regret of my predecessors; and I need hardly add, that

that I partake largely of that feeling. His Majesty's Government have offered to the province every reparation which it has been in their power to make, for the original error of allowing monies to accumulate in the hands of a public officer, without taking full securities for the faithful discharge of his trust: they have placed at the disposal of the Assembly whatever could be recovered from Sir John Caldwell, or from his sureties; and your Lordship will now, on the terms to which I have referred in my accompanying despatch, be authorized to surrender to the appropriation of that House, the only funds by which His Majesty could have contributed towards making good the defalcation. Every practicable suggestion has also been made to the Assembly, for preventing the recurrence of similar losses. Nothing, in short, has been left undone, or at least unattempted, to mitigate the evil which the inadequacy of the securities taken from Sir John Caldwell, and the accumulations of public money in his hands, occasioned. Perhaps the legal proceedings against his property might be carried on with greater activity and effect; and if so, your Lordship will lend your aid with the utmost promptitude to that object. It is, indeed, much to be lamented, that for so many years together, on such a case as this, the law should have proved inadequate to secure for the public such property as was in the possession of the defaulter, or his securities, at the time of his insolvency.

I feel, however, that incomplete justice has hitherto been rendered to the people of Lower Canada, in Sir John Caldwell's case. That gentleman has been permitted to retain his seat at the Legislative Council, and still holds that conspicuous station. Whatever sympathy I may be disposed to feel for individual misfortune, and in whatever degree the lapse of years may have abated those feelings of just indignation which were provoked by the first intelligence of so gross a breach of the public trust, I cannot, in the calm and deliberate administration of justice, hesitate to conclude, that it is not fitting that Sir John Caldwell should retain a seat in the legislature of Lower Canada: his continuance in that position, and his management and apparent possession of the estates which formerly belonged to him in his own right, must exhibit to the people at large an example but too justly offensive to public feeling. Your Lordship will cause it to be intimated to Sir John Caldwell, that the King expects the immediate resignation of his office of legislative councillor; and that in the event of the failure of that reasonable expectation, His Majesty will be compelled, however reluctantly, to resort to other and more painful methods of vindicating the government of the province against the reproach of indifference to a diversion of public money from its legitimate use to the private ends of the accountant.

I am not aware that there remains a single topic of complaint unnoticed, either in the preceding pages or in my accompanying instructions to your Lordship and your fellow commissioners. It has been my endeavour to meet each successive topic distinctly and circumstantially, neither evading any of the difficulties of the case, nor shrinking from the acknowledgment of any error which may be discovered in the administration of affairs so various and complicated. I dismiss the subject for the present, with the expression of my earnest hope that His Majesty's efforts to terminate these dissensions may be met by all parties in the spirit of corresponding frankness and good-will; assured that, in that case, His Majesty will not be disappointed in that which is the single object of his policy on this subject,—the prosperity of Canada, as an integral and highly important member of the British empire.

I have, &c.  
(signed) *Glenelg.*

— No. 4. —

COPY of a DESPATCH from Lord *Glenelg* to the Earl of *Gosford*.

My Lord,

Downing-street, 18 July 1835.

I HAVE the honour to enclose for your Lordship's information, the copy of a letter written by Mr. Baring\*, the Secretary to the Lords Commissioners of the Treasury, by their Lordships' directions, in which will be found an explanation of their views and wishes respecting the repayment by the province of Lower Canada, of the sum of 31,000 £. advanced by Lord Aylmer on the 27th November last,

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under

No. 3.

Despatch from  
Lord *Glenelg* to  
the Earl of *Gosford*,  
17 July 1835.

No. 4.

Despatch from  
Lord *Glenelg* to  
the Earl of *Gosford*,  
18 July 1835.

\* 11th instant.



No. 4.  
Despatch from  
Lord Glenelg to  
the Earl of Gosford,  
18 July 1835.

under their Lordships' sanction, for meeting the pressing exigencies of the public service, during the non-session of the House of Assembly.

In my despatch of the 17th instant, No. 1, I have entered so much at large into the various financial arrangements which it will be your Lordship's duty to make or to propose to the Assembly, that on the present occasion I limit myself to the expression of my entire concurrence in the views of the Lords of the Treasury on this subject, and of my deep solicitude that this claim upon the justice of the House of Assembly may be met by that body in a frank and cordial spirit. Your Lordship will consult your own discretion as to the manner in which the question may be most conveniently brought under their notice; not, however, postponing the application for the repayment of this advance beyond the earliest period which you may deem consistent with the important objects to which your attention has been directed. Whether the case will be most advantageously submitted to the provincial legislature by laying before them a copy of Mr. Baring's letter, supported by a recommendation from yourself, or by an address conceived in the terms, or at least in the spirit of that letter, will be a question for your own consideration.

I have, &c.  
(signed) *Glenelg.*

(Enclosure.)

(Enclosure.)

Sir,

Treasury Chambers, 11 July 1835.

I AM directed by the Lords Commissioners of His Majesty's Treasury to request that you will call the earnest and immediate attention of Lord Glenelg to the subject of the repayment of the sum advanced from the military chest in Lower Canada, in aid of the civil government of that province, under Lord Aylmer's warrant of 27th November 1834; and that you will move Lord Glenelg to give directions that such steps should be taken as his Lordship may consider expedient, in order that this advance, made by the express sanction and authority of His Majesty's Government, under a peculiar and most pressing emergency, and to provide against any interruption of the public service by the non-payment of salaries then two years in arrear, may be repaid.

His Lordship is well aware that this advance was exclusively made from British funds, for the purpose of avoiding the course which on former occasions had been so strongly objected to, and with the intention of scrupulously abstaining from any act which could prejudice the question at issue between the House of Assembly in Lower Canada and the government, or which could throw difficulties in the way of the final and satisfactory adjustment of these unhappy differences.

My Lords trust that Lord Glenelg will impress upon the minds of the Canadian authorities their Lordships' hope that a confidence thus marked in the just and liberal feelings of the House of Assembly, will not have been misplaced, but that an advance thus made with a view to prevent any interruption of the civil business of the colony, and any unjust pressure on public servants, and made in a manner not to compromise any of the questions at issue, will be cheerfully repaid; the legislature of the province doing justice to the principles by which the conduct of His Majesty's advisers has been governed.

R. W. Hay, Esq.

I am, &c.

(signed) *F. Baring.*

— No. 5. —

COPY of a DESPATCH from Lord *Glenelg* to Sir *F. B. Head*, К. С. Н.

No. 5.  
Despatch from  
Lord Glenelg to  
Sir F. B. Head,  
5 December 1835.

Sir,

Downing Street, 5 December 1835.

I HAVE the honour 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 presuppose 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

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 of 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.

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Despatch from  
Lord Glenelg to  
Sir F. B. Head,  
5 December 1835.

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 inquiry 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 there 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 14 Geo. 3, c. 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 justice 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 8th of 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

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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.

1. 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 whatever." The committee then proceed to an enumeration of the various public offices, and the different departments and branches of the public service, over which this patronage is said to extend; and by bringing 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 number 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 government 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 honourable occupation of their leisure time. Thus in the Canadas, although the mere text of the law would there, as in England, authorize 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

whom any portion of the powers 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 instrumentality 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 continuance in their employments.

It is not difficult to show, 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

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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 200*l.*, 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 authorizing 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.

2. 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 House; but its provisions (they add) are so inapplicable and absurd, that no benefit could be derived from their enactment."

On the measure thus characterised 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 Postmaster-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.

3. Under the head of salaries and fees, the committee have entered into very copious statements, to show that the emoluments of the public officers in Upper Canada are excessive, and out of all just proportion to the value of the 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 inquiry, 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

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 show 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 public credit, would weaken the foundations on which all proprietary rights 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.

4. 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 better 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 services. 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.

5. 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 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 disapprobation of the conduct of the Government in attempting to uphold particular religious sects by money grants. And in the 10th and 11th parliaments has declared, that it recognises no particular denomination as established 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.

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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.

The chief practical question, then, which at present demands consideration, is whether His Majesty should be advised to recommend to Parliament the assumption to itself of the office of deciding on the future appropriation of these lands. There are two distinct reasons, both of which appear to me conclusively to forbid that course of proceeding.

First: Parliamentary legislation on any subject of exclusively internal concern, in any British colony possessing a representative assembly, is as a general rule, unconstitutional. It is a right of which the exercise is reserved for extreme cases, in which necessity at once creates and justifies the exception.

But important as is the question of the clergy reserves in Upper Canada, yet I cannot find in the actual state of the question any such exigency as would vindicate the Imperial Legislature in transferring to themselves the settlement of this controversy. The conflict of opinion between the two Houses upon this subject, much as it is to be lamented, yet involves no urgent danger to the peace of society, and presents no insuperable impediment to the ordinary administration of public affairs. Although a great evil, it is not such as to exclude every hope of mitigation by the natural progress of discussion, and by the influence of that spirit which, in public affairs, not seldom suggests to parties alike solicitous for the general good, some mutual surrender of extreme views, and some compromise on either side of differences which at first sight might have appeared irreconcilable. Until every prospect of adjusting this dispute within the province itself shall have been distinctly exhausted, the time for the interposition of Parliament will not have arrived, unless indeed both Houses shall concur in soliciting that interposition; in which event there would of course be an end to the constitutional objections already noticed.

The second ground on which I think myself bound to abstain from advising His Majesty from referring this question immediately to Parliament, is, that the authors of the Constitutional Act have declared this to be one of those subjects, in regard to which the initiative is expressly reserved and recognized as falling within the peculiar province and the special cognizance of the local legislature, although its ultimate completion is no less distinctly made to depend, in addition to the ordinary submission to His Majesty, on the acquiescence of the Imperial Parliament.

It is not difficult to perceive the reasons which induced Parliament in 1791, to connect with a reservation of land for ecclesiastical purposes, the special delegation to the Council and Assembly of the right to vary that provision by any Bill, which being reserved for the signification of His Majesty's pleasure, should be communicated to both Houses of Parliament for six weeks before that decision was pronounced. Remembering, it should seem, how fertile a source of controversy ecclesiastical endowments had supplied throughout a large part of the Christian world, and how impossible it was to foretell with precision what might be the prevailing opinions and feelings of the Canadians on this subject at a future period, Parliament at once secured the means of making a systematic provision for a Protestant clergy, and took full precaution against the eventual inaptitude of that system to the more advanced stages of a society then 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



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 arbiters 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.

6. The report of the committee next passes to the subject of the land-granting department.

Admitting that Lord Ripon'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 shown 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 Ripon's instructions respecting the grant of lands, it shall be immediately removed; and that if His Majesty's officers in the province can be shown 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, insomuch that there shall in future be no doubt whether the grievances at which they aimed have or have not been completely removed.

7. 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.

8. The committee complain that a very considerable proportion of the sum, amounting to 31,728 *l.* 18 *s.* 11 *d.*, expended in aid of emigration from Europe, was for "articles or services not specified, and concerning which a committee of the

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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 reports, 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.

9. 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 be thus 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.

10. The withholding of public accounts from the House of Assembly is the next head 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 accountability 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

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.

11. The report then passes to the consideration of cases in which your predecessor is charged with having failed to show 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.

12. The next topic of complaint is, that many of the recommendations contained in Lord Ripon'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 Ripon, 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.

13. 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 promptly or decisively 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 a justice of the peace, without reference to any political considerations.

14. 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

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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 practical responsibility. To His Majesty 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 labours of the Committees which have been appointed by the House of Commons during the last few years to inquire 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 favourable 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 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 insincerity, 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 honour 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.

15. I next advert to two subjects of far more importance than any of those to which

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 inquiry 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 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 inquiries 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 inquiry 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 honour 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 every 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.*

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Despatch from  
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Sir F. B. Head,  
5 December 1835.

C A N A D A .

INSTRUCTIONS to the Earl of *Gosford*, and the  
Commissioners appointed to inquire into the  
GRIEVANCES complained of in *Lower Canada*:—  
also, INSTRUCTIONS to Sir *F. B. Head*, Lieute-  
nant-Governor of *Upper Canada*.

(*Sir George Grey.*)

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