

ON CLERGY RESERVES.

The measure of selling the Clergy Reserves in Upper Canada, introduced into parliament (by Mr. Wilmot, Secretary and supposed to be objectionable to his successor in office who gave notice to that effect,) had ever an interest in my mind, from the time they were first said to have been sold to the Canada Land Company, and I was induced to seek such elucidation on the subject, as might be accessible to a stranger.

As the act of the Union* with Scotland, had provided that in all future time the Church of England should continue to be the prevailing establishment, in the then colonies of England, and future colonies and plantations of Great Britain, I was induced to seek the origin of the reserve of land in Upper Canada for the support of a Protestant Clergy, in lieu of tythes, to which I had imagined she carried her claim, wherever established by Law.

I found that by the capitulation for the province of Canada,† preceding the peace of 1763, the free exercise of the Roman Catholic religion, was acceded to by the Conqueror; and that although the terms of that capitulation were ratified by the Sovereign, nothing decisive took place, on the subject of tythes, until the year 1774; but that in this year, Parliament took into consideration the state of that conquered colony, and provided,‡ not merely for the free exercise of the Roman Catholic religion, but expressly authorized the payment of tythes, by its professors, for the support of the Roman Clergy; and as expressly reserved the payment of tythes by protestants, to be made to the King's Receiver General for the support of a Protestant Clergy.

At the close of the War which terminated in the Independence of the other Colonies in 1783,§ a large mass of loyal pro-

* See the Union of Scotland and England.

† See Capitulation of Canada.

‡ 14th Geo. 3rd, Chap. 83.

§ Treaty of Paris, 1763.

testant subjects were expatriated ; and a refuge was afforded to them in that part of the conquered Province of Canada, West of, and beyond all the old grants made by the French King.—As might be expected, those people who had for seven years struggled with their countrymen for the maintenance of the Throne, the laws and religion of England, had some claim, when cast from their homes into a strange land, to find there the laws and religion which they had abandoned to preserve their loyalty.

Such a claim was felt by the King and Parliament, and after a deliberation of seven years, the King informed his parliament that, he was about to divide His conquest of Canada into two Provinces ; comprehending in one part, such portion of the province of Quebec as was below the point of Bodet, the termination of the old French Grants, and in the other part all that was ceded to Great Britain under the name of Canada : and called upon the nation for a constitution for the two provinces, suitable to their respective circumstances. The task was of no small importance, and it resulted in the Canada Bill, which received the Royal Assent in 1791.

By this bill, a constitution was formed, intended to be suitable to two several populations, differing, in language, religion, and manners ; giving to each, the future power of Legislation for itself, with the assent of the King, in such matters as affected neither religion or commerce ; but in these exceptions, the King had no power to give force to their enactment, without an appeal to both houses of parliament, and, at least, a tacit assent, after a due and stipulated period.

In this bill of 31st Geo. 3d, ch. 31, Parliament presumed, that tythes were, by law established in both Provinces, either by the operation of the act of Union, by which the church of England became the establishment in all the dominions of England or Great Britain, except only Scotland ; or by the 14th Geo. 3d, which had established, or confirmed the laws of France as anciently administered in the conquered Province, as the rule of decision in all controversies relating to property and civil rights, but the Legislature having experience of what might

be expected, in moderd time, from exacting tythes for the support of a church, of which the party to pay was not a member ; and undoubtedly perceiving the moment favorable, in a new constitution of law, to provide for the support of the altar, independently of the feelings, the prejudices, & the interests of the people, it declared, that no grant of land to be made in future in those provinces, should be valid, unless it contained the reserve of one-seventh of land, in proportion to the quantity granted, to be expressly described and specified in the body of the patent of the Grant, to be for the support of a Protestant Clergy within the province.

This provision required only attention to have made this seventh, or rather eighth, of the land increase in value as rapidly as the intervening lands amongst which it was scattered ; but there were reasons opposed to such an attention, which it is needless now to advert to, the fact is that the rental of the Clergy Reserves has not hitherto in thirty years produced more in any one year than £600, if so much. In the mean time it had become a nice question, how far the Clergy of the Church of England had, by the act of 31st Geo. 3, ch. 31, lost their right to demand and receive tythes : if once, according to the provisions of that act, Parishes were laid out and endowed with Clergy Reserves, they were lawfully inducted into the benefice, living, or Parish.

There is no doubt that the Canada Act, to substitute this seventh, or rather eighth of the whole of the land of the Province of Upper Canada, (for no grant of land had been made within that province) to be in lieu of tythes, such was the wording of the original paper bill submitted to the house ; on that point there was some discourse in the committee, without any amendment, so it was printed by order of the house, and so it continues in the Journals of the House—without erasure or amendment ; but the printed law given to the public, and which governs the Courts of Law generally, contains no such provision or limitation ; but if the Clergy before that act, had a right by Law to tythes, they certainly continue to enjoy that right under the printed Law.

This fact, at that time, and still, unaccounted for, obtained the notice of a warm friend to Mr. Pitts original bill, which he had seen in the German Text-Copy, and little suspecting the extraordinary fact that the omission and difference, is not warranted by any Legislative proceeding, used every exertion to prevent the legal induction of a parson to a parish, agreeably to the provision of the act, which, it was feared, might establish the receipt of Tythes, and with it a feeling throughout the province not to be encouraged.

This important step of induction, was accordingly delayed until opportunity offered to procure an act of the Provincial Legislature, declaratory, that it should not be lawful to demand or receive Tythes in that province; which act passed into a law by the assent of the King, under the sanction of both houses of parliament, in the manner prescribed by the 31st Geo., ch. 31.

From the moment of passing that act, and its promulgation in Canada, there could be no opposition to the induction of parsons, to parishes and the endowment of such parishes out of the clergy reserves.—Such a measure, however would have opposed some further difficulty to the completion of the project, soon after formed, to sell these reserves, and out of their proceeds, provide for the support of the clergy of the Kirk of Scotland, and Church of England.

This proposition, it is believed, was hazarded at first with much caution; not from any apprehension of right, in parliament, to take away what it had given, but from the appearance of such a measure to the public eye, when it should be investigated either by the provincial government, or the parliament of the United Kingdom, but it seems that such tenderness towards the Provincial Government or the parliament, was equally unnecessary; and a sale of a certain portion of the clergy reserves was bargained for with the land company, without appeal to either; fortunately it was discovered that, although who gave could take away, no other could, and the advice of parliament was found essential to this bargain; for breach of which, the Canada Land

Company, was so modest as to accept in compensation, one million acres* of the waste lands of the crown in Upper Canada,

It is the sale of the lands in Canada, which is to come under consideration of parliament at the ensuing session; and the friends of the Canada act, have no longer hope in the powerful support of the young nobleman who stopped its progress in the former; but admitting the position that the power which created, must necessarily have power to do away with its own creation, seem willing not to question the principle, or approve its being carried into effect *sub modo*, to obviate the apprehended consequence of this admission, may it not be questioned if power and right are in this case synonymous.

It is therefore with a view to open the subject to more general acquaintance, that recourse is had to this concise representation, in the hope to raise some friends to the Canada bill.

For thirty years, and more, every grant of land in Canada, contains its own nullity; if there is not found reserved the proportion of one seventh of the land granted, described, and appropriated, in the patent *for support* of a Protestant Clergy.

For this appropriation, a body of men who had rights, have abandoned those rights, in the fullest assurance that the exchange was solemnized in every instance by the royal seal, and secured by the interest and possession of each individual proprietor. Will it be contended that the right exists here with the power to take away? The land is permanent, it must advance in value with the surrounding property; whereas the proceeds in money, vested as they may be, can never be secure from the various incident, of fluctuation of stock and exchange; supposing them to be lodged in the national funds, and subject to no control but that of parliament.

If the lands are sold for their value at the present time, the public in the best administration of them, will benefit no more

* Valued by the Company at £350,000 Sterling.

than the interest of the money, to be divided in all time, among the increasing members of the clergy, who; by retaining their right to Tythes, would have funds increasing in value with the population and industry of the people.

There is a feature in the projected legislation on the subject of clergy reserves in Upper Canada, which if allowed to remain, will be of more serious consequence than their entire relinquishment. The proposition to admit the church of Scotland to a participation in the benefit of these lands, reserved for the support of a Protestant Clergy, excluding all other dissenters from the church of England, cannot fail to produce the worst effects in the mixed population of that province; who at present submitting silently to the distinction in favor of the national church, are content to support their own teachers; but so soon as that line of demarcation is passed, and the national funds are applied to the maintenance of the tolerated church of Scotland, they will affect to see no difference between the sect of Presbyterians, and any other sect, merely tolerated like themselves. It is not supposed that one twentieth part of Upper Canada, profess the tenets of the Kirk of Scotland. The various other sects of christians maintaining public worship in the province, with full license, and under the protection of the law, precisely as the Presbyterians; will naturally murmur at a distinction for which they see no good cause. They all know that, in the mother country to which they append, the Kirk of Scotland is the national church of only one part; and that in England, it may receive countenance and protection under the toleration act, precisely as other sects, but not entitled to any portion of the funds of the church of England. They know that the reserved land is a substitute for Tythes, which could only be applicable to the national church, of which they can only participate by a union with that church—that of the many sects dissenting from the worship of the church of England, the most numerous retain her principles, and are separate only in form. Every consideration, will furnish reasons of offence at the proposed distinction

Between other dissenters, and the Presbyterians of the Kirk of Scotland.

It is therefore desirable to pause, and weigh well the probable consequences of such measures, as those proposed, first to the sale of the clergy reserves, and then to the division and application of the proceeds. By such a course, parliament will gain time to inform itself on certain points fitting to be known; such as the number of acres reserved for the support of a Protestant Clergy in Upper Canada.

The number of those acres already under Lease.

The amount of rents receivable.

× The probable progress of lease of those reserves on a reasonable restraint of grants and sales of the waste lands.

The number and style of sectaries tolerated to have places of public worship.

The numbers of the several congregations.

The number of Episcopal churches.

The numbers of each congregation.

Should it appear that the members of the church of England, form less than a twentieth part of the population; and the members of the church of Scotland, a still inferior proportion; there will be nine tenths of the people dissatisfied and murmuring, none of whom would deem it privation to be excluded from the benefit of the reserves, so long as they are enjoyed, exclusively by the national church of England, for whom they were set apart; but would deem it a grievance to be postponed to any other sect of tolerated christians. The feeling would grow and spread until it became the source, first of angry jealousy of the favored sect; and by degrees, a charge of injustice in the government. At present it is no source of reproach to the government from the Quakers, from the Methodists, (ten fold the most numerous) the Baptists, the Annabaptists, the Independents and a

long & eas of Sectaries, that no fund is provided for their support or for any but that of the national church of England ; because they themselves, nor any other sect in England, (altho' tolerated) receive support from the national funds ; but when discrimination is made in Canada, which is not made in England amongst the sects, there are none so simple as not to believe that they are equally deserving, and to consider the discrimination unjust.

If the wise provision of Mr. Pitt to preserve the Law of the Union, by preserving the Church of England pre-dominant in the Colonv; and touching upon her rights to tythes only for her own advantage, and by the same course as the church itself desiderates in England, (the exchange of tythes for the fee simple) must be abandoned to the sudden thought of a youthful speculator, let the provision of his bill cease, and the tythes to which the Church of England was at that time lawfully entitled be restored, she will enjoy these exclusively even of the Kirk of Scotland ; but if all veneration for the wisdom of our Ancestors has ceased, and the time is come to prostrate the Church of England, bind her not up in the same wythe with her bitterest enemy ; force her not to an exclusive association with any one of her rivals ; leave the tythes abolished, abolish all the legal exchange for them; and restore the Reserves to the Crown, which in its bounty, will apply the proceeds equally for the support of Christianity, without other distinction.

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TOLPIDDLE, DORSET,
1st FEBRUARY, 1828.

SIR,

I fear that my actual situation may not justify the liberty, but the deep interest I have in the subject impels me to this intrusion.

The public Journals announce meetings in Canada, of the Presbyterians attached to the Church of Scotland, in order to prefer to the three estates in Parliament, claims which they are said to entertain, in exclusion of all other dissenters from the Church of England.

There is no doubt, that this measure is connected with the proposition of Mr. W. Horton, to sell the Lands reserved for the support of a Protestant Clergy in Canada, and to admit the Scotch Presbyterians to a participation in the proceeds with the Church of England.

Such a measure cannot fail to produce alarming consequences in Upper Canada.

The combined numbers of the Churches of England and Scotland do not exceed one-tenth of the population of that Province.

At present that vast majority of dissenters submit respectfully to the appropriation of the Clergy Reserves for the sole use of the Clergy of the Church of England, because they well know, that by an article of the union with Scotland, that Church is to be established in all the Colonies of Great Britain, and that, by the constitutional charter of Upper Canada, those Reserves are expressly and exclusively devoted to the endowment of the national Church, in lieu of its legal right to Tythes ; with this knowledge, they are content to submit silently to the distinction in favor of the national Church, and to support their own Teachers, but so soon as that line of demarcation is passed, and the national funds are applied to the maintenance of the tolerated Church of Scotland, they will affect to see no favorable cause of distinction between that sect of Presbyterians, and any other sect of Christians equally tolerated.

Nine-tenths of the people would thus become dissatisfied and murmuring, none of whom would deem it no privation to be excluded

from the benefit of the Reserves, so long as they are enjoyed exclusively by the Church of England, for which they were set apart, but all would deem it a grievance to be postponed to any other tolerated sect of Christians.

The feeling would grow and spread until it became a source of angry jealousy, and by degrees a charge and reproach to the Government, from the Methodists, the Baptists, the Independants, and a long list of tolerated sectaries.

Forty years residence among this people have taught me to apprehend more danger from this source of discord than any other, and to deprecate any tendency to religious altercation.

So impressed, and misled by an omission in the printed statute (31st Geo. 3, ch. 31st) of that provision, which established the reserved Land "in lieu of Tythes," I was induced, when I had some influence in the Colony, to move and principally to effect a legislative enactment to supply that supposed omission, and thereby, if Mr. Wilmot Horton's Bill passes into a Law, shall have become a prominent instrument of an act of injustice to the national Church, and possibly the remote cause of future religious discord in the land of my children.

To obviate as much as in me such a result, I have thus imparted to you, Sir, my idea of possible inconvenience from this measure, in hope that you, Sir, as head of the department, from whence it is supposed to proceed, may countenance a short pause for enquiry into all its bearings.

Most respectfully,

W. DUMMER POWELL.

RIGHT HONORABLE

WILLIAM HUSKINSON, &c.