This is an objection altogether distinct from the question whether by any thing that had taken place, between 1825 and 1836, this instruction could, in a court of justice, be held to have been cancelled either expressly or virtually. It turns altogether upon the legal effect upon official acts in a colony, produced by the demise of the Sovereign or by a change of persons in the office of Governor of the colony. Questions of that nature have, as we suppose, not unfrequently presented themselves; and from an early period a great deal of legal learning has been employed on both sides of the Atlantic in discussing them.

If it could be at any moment, (which under the circumstances it cannot be) to consider in the present case the effect of the change in the person of the Sovereign or of the Governor, or of both, upon an authority such as we are speaking of, I apprehend that upon a close investigation some difficulty would be found in coming to the conclusion that the authority of his late Majesty, King George the Fourth, to Sir Peregrine Maitland, to carry the provisions of an Act of Parliament into effect, had become *legally* of no force from the changes I have spoken of.

My own opinion at present, so far as I have formed one, is the other way. But the existence of a much later authority, equally explicit, and conveyed in a manner more formal, from the King who was reigning, to the Governor who was in office at the time the patents complained of were issued, makes it wholly immaterial to consider in what position Sir John Colborne's acts would have stood if this separate instruction to his predecessor had been his only authority.

Then with the statute 31 George III., chap. 31, before us, and with this evidence which we have, of the royal commissions to the Governor of Canada which issued after the statute, and of the Royal instructions which accompanied or followed them, we are called upon to determine whether it can be properly held, as it is contended by the Attorney General, "that the Lieutenant Governor, Sir John Colborne, had not at any time authority to issue the patent in question in this suit, or to establish the rectory therein mentioned, or to endow the same with the lands contained in the patent."

It is true that the 38th clause of the statute does not enact that it shall be lawful for *his Majesty to constitute Parsonages*, or Rectories, or to endow them; nor does it enact that the Governor of each Province, might do with the advice of his Council. But it makes it "lawful for his Majesty *to authorise*" the Governor of each Province, with the advice of his Council, to constitute and endow Parsonages, or Rectories; and under another state of facts it might have appeared rather a nice question for a court of justice to determine what degree of force it would be proper to give to the word "*authorise*," as used in the 38th clause; in other words what evidence of the fact of the Governor having been "*authorised*," it would be reasonable to call for, after a lapse of sixteen years and upwards, during which the Rectors had been in the enjoyment of their Rectories and endowments, and suffered to build upon, improve, and lease them, without any proceedings having been instituted in any court of justice to question their right.

The statute 31st George III., was very ably and carefully framed; the different objects to be provided for are systematically arranged; and there is a clearness and precision of language such as might be looked for from the eminent men by whom it is known to have been prepared. There are some of the clauses of that statute in which it is distinctly specified with what degree of formality his Majesty is to authorise his Governor, or Lieutenant Governor to do certain acts. Thus, in the 3rd, 13th and 14th clauses, it is provided that his Majesty may authorise the Governor "*by an instrument under his sign manual,*" to do the several things mentioned in those clauses.

In the 25th, 26th, 36th, 39th, and 48th clauses, in just the same form of expression as is used in the 38th clause, it is made "*lawful for his Majesty to authorise* the Governor," &c., without pointing out any particular form or instrument by which the authority shall be conveyed. And again the 8th and 31st clauses prescribe particular methods of making known his Majesty's permission, or his decision upon the matters to which they refer.

It is not probable that these variations in the language were accidental and undersigned. I think I see reasons for the diversity, and that it proves the careful discrimination with which the act was framed.

For instance Parliament, having by its direct legislative authority, constituted a Legislative Council for each Province, it was intended that the members of it should be such persons as his Majesty (and not his Lieutenant Governor) should think fit to appoint. The nomination was reserved to the Crown; and it was made necessary therefore, as in all such cases, that the selection should be manifested by some form of appointment.

So by the 13th clause, the foundation was to be laid of our representative form of constitution; and it seemed proper that the measures which were to be taken in the colony by the Lieutenant Governor for calling these provisions into operation, should be shewn by some solemnity of form to have emanated from his Majesty.

In all these cases, therefore, the authority from the Crown to the Governor is expressly required by the Act to be conveyed by an instrument under the sign manual.

By the eighth clause, it is enacted that a Legislative Councillor shall forfeit his seat if he resides out of the Province for four years continually, without the permission of his Majesty signified to the Legislative Council by the Governor. But by what formality, or in what manner his Majesty is to signify his permission is not stated in the Act.

No one, I suppose, would think of enquring what foundation the Governor had for communicating his Majesty's permission.

Practically his announcing the permission in his Majesty's name, would be taken as proof that it had been given, or in other words would be accepted as a compliance with the Act.

In the 31st clause, which relates to disallowance of Bills passed by the Legislature, the disallowance is required to be expressed in an order of his Majesty in Council, and to be certified under the hand and seal of the Secretary of State. These solemnities are evidently proper, both in regard to the nature of the Act to be done, and also for the purpose of shewing by some written record of the precise day of disallowance, that it has taken place within the two years limited by the statute. So, also, in providing by the 48th clause for fixing the time when this important constitutional charter should come into force, it was made lawful for his Majesty, *with the advice of his Privy Council*, to declare, or to authorise the Governor to declare the date of the commencement of the Act in each Province.

That must be taken to imply, as I suppose, the necessity for an order in Council; a formality not unusual on similar occasions, and peculiarly necessary in this instance, since it could not, upon any general principle, have come within the sphere of duty of a colonial Governor, to fix the period of commencement of a British Act of Parliament. But with respect to those other clauses, in which, as in the 38th, nothing more is said than that his Majesty *may authorise* the Governor to do the acts mentioned in them, viz: the 25th, 26th, 36th and 39th clauses, they respect matters which are all of them of internal concern, and some of them periodically recurring; and matters which, after the new Government should be organized and be in operation, it would, upon constitutional principles, have been competent for the representative of the Sovereign to deal with, by virtue of the Royal prerogative. One is not therefore surprised that the irregularity of such acts, when done by the Governor, in the name of the Sovereign, is not by the statute made to depend upon the existence of an instrument under the sign manual, or of an instrument executed with any other prescribed degree of solemnity.

Take for instance the constitution of the Rectories, under the 38th clause, which is the matter we have now to do with. If it had not been for public discussions and movements, not growing out of any such claim of interest in the subject matter, as courts of justice can recognize, we can see plainly enough that the Rectories *might have* existed without their validity being contested, from their establishment in 1836 to the year 1852, when this information was filed. Rectors would have been appointed, as indeed they have been, from time to time, throughout the whole period, notwithstanding the addresses and dispatches which are collected in the volume before us. The Rectors would not have been likely to demand rigid proof of the manner in which *his Majesty had authorised* the Governor to constitute their Rectories; but would, as we may suppose, have entered into possession of the lands which they found annexed to their livings, as endowments, and would have improved or leased them, assuming that all was right. And, if in 1852, when it seems this information was filed, after large sums of money had been expended by the Rectors or their lessees in buildings and improvements, the Colonial Government had either upon, or without, an application from either branch of Legislature, *directed its* Attorney General to call the legality of the Rectories in question, *by filing an information* for cancelling the patents, upon the mere ground of inability in the Rectors to produce an authority under his Majesty's sign manual, or in any other shape more formal, I do not believe that such a suit could have received much countenance either upon legal, or equitable principles.

We should not, in that case, have had (nor have we now,) the Sovereign complaining that the Patents had been issued in the name of her royal predecessor, but without his authority, and desiring on that account to abolish the Rectories, and dispossess the Rectors; but we should have had, as we now have, the Colonial Government praying a Court of Justice to bring things to that issue.

And when we look at the information itself, and all the documents submitted to us, we see very clearly that it is not because either the legislature or the Governor of Canada *for the time being*, advisedly denies the validity of the Rectories, or maintains that Sir John Colborne in the use which he made of the Royal authority, acted injuriously, or in error, that this proceeding is pending; but because one or both branches of the Legislature desires to have the question of validity determined.

A Court of Justice, however, can dispose of no question as a merely abstract, or speculative question, with a view to its bearing upon political considerations, and without regard to the legal interests that may be involved. *They must assume* that the suit is brought in order to accomplish the object prayed for; and must deal with it accordingly.

And if the question had been before us under such circumstances as I have supposed: that is, without any positive and direct evidence of authority having been sent to the Lieutenant Governor, we should have had to ask ourselves whether the Rectories could be cancelled, and the endowments resumed after such a lapse of time, on this ground only, that the Rectors could not produce evidence