

Are you aware of Dr. Franklin's expressed opinion on this subject, of the utter impropriety of people in any free state allowing judges that were dependent upon the Crown to become independent of them, as being utterly subversive of every free constitution?—When the Canadas shall have grown into a nation, large and extensive as the United States had become, even at the time when Doctor Franklin spoke, I should say that the time had arrived for constituting independent judges. The danger of their independence, in my estimate, arises almost entirely from the peculiar constitution of small colonial societies.

Does not a greater degree of danger arise from the necessity which prevails, or is supposed to prevail, for sending judges from this country, and thereby placing them out of the sphere of their own natural dependence?—It is not a necessity which is merely supposed to prevail, but which, as I conceive, does to a great extent in fact prevail. If a sufficient number of gentlemen were educated in Canada to be competent judges, (and there is at this time in Upper Canada and I believe also in the Lower Province, more than one gentleman at the bar competent to discharge the judicial office in this or in any part of the world) if the choice were sufficiently large, then the most urgent reason for sending judges from England would be at an end.

Do you think it necessary that the judges should be in the Legislative Council in Lower Canada?—I suppose it to be necessary from the want of other competent persons. *Ceteris paribus*, I should prefer, as a member of council, a man who was not a judge; but if the superiority of knowledge, talents, and other accomplishments, were decided and unequivocal, I should prefer the inconvenience of employing the judge to the inconvenience of losing his assistance.

Do you think that the circumstance, either of the dependence of the judges upon the Government for their continuance in office, or of the dependence of the judges upon the Assembly for their salaries, is at all influenced by the circumstance of their sitting in the Legislative Council?—I do.

Is it more or less desirable on that account?—If a judge, dependent on the Assembly for his judicial salary, is also sitting in the Legislative Council with a salary, he is bound to the Assembly by two ties instead of one. The dependence in which he is placed is consequently increased, and the objection to that dependence augmented.

Do not you think that if that independence of the judges was once ascertained it would lead to the sending out of men of rather a higher character as judges?—Not unless their emoluments were much greater than it is. At this time a puisne judge in Upper Canada receives only 900*l.* sterling annually; he has no outfit nor passage found him; it is a mere 900*l.* sterling. Now there are few men who have borne the expense of a legal education, and who have had any sort of success in their profession, who would emigrate to a foreign land for such a remuneration.

Would not the Government, if the judges were made independent, send out men of higher moral character, and men less likely to violate their public duties?—I entirely disclaim having meant to impugn the moral character of those who go at present; I have questioned only their discretion.

Do not you think that the sacrifice of duty to party feeling intimates a moral want?—As an abstract question, I should say so; but in truth, men slide so easily from the highest morality to a lower and more easy standard of morals, that one would hardly impeach a man's character upon that ground.

Is it not within your own knowledge that the individuals who are appointed to judicial situations in the colonies always receive such testimony as to their character and competency as to justify their appointment?—It is an established rule, and I should say a settled practice also.

Do you consider that it would be safe to leave to the Colonial Legislature the power of impeachment of the judges?—That depends altogether upon the constitution of the tribunal by which the impeachment was to be tried.

What should you consider to be the requisites of the tribunal before which such impeachments should be carried, under the conditions of which it would be safe to leave that power in the Legislative Body?—They should be judges perfectly independent of the parties preferring the impeachment; and they ought, if possible, to be judges quite remote from all the feuds and party feelings of the colony in which the impeachment arises. In the case of the charter which has recently been issued for the constitution of new courts in the Cape of Good Hope, the power of removing a judge is reserved to the King in Council, but only upon proof of misconduct. The King in Council then is the tribunal before which the supposed impeachment is to be preferred; and that, in my mind, is the best possible tribunal for such a purpose.

Are the Committee to understand that in the charter to the Cape, the King is deprived of the power of removing a judge except under circumstances of misconduct?—Yes.

Then in point of fact, at the Cape, if a judge were to mix himself up with local parties, unless it amounted to some ostensible act of a violent nature, it would be impossible for the Crown to remove him?—It would; but the charter is avowedly an experiment, and as long as it is regarded in the light of an experiment it may perhaps have a salutary effect in preventing any misconduct which might lead to an alteration of it.

Mr. William Parker, called in; and Examined.

YOU are a Merchant in the city of London?—I am.

Of what country are you a native?—Of Scotland.

Have you resided in Lower Canada?—I resided there 13 years without leaving the country, and afterwards made upwards of 20 voyages to Canada and Britain.

Have you any connection and interest in that country at present?—Yes, very considerable; I have debts owing; I have retired from business in that country, but I have very considerable debts outstanding there.

What is the opinion you may have formed of the general character of the population of that province from your own knowledge?—I consider that the peasantry there are the finest people in the world that ever I met with; I had an opportunity of knowing them very intimately, I succeeded as a partner in a French house in 1784, which had extensive connections with French Canadian merchants, in the district of Montreal, when there was very little accommodation in the town of Montreal, and they all staid with us when they came to town, which was very frequently, and therefore I was very much in their company.

What are, in your opinion, the causes of the dissensions which have prevailed in Canada for some time past?—I think it is, in some measure, owing to my countrymen the merchants there, who are ambitious to be legislators; and they are very much hurt that the French Canadians prefer their own countrymen as their representatives to them.

What is the character of the mercantile population in Montreal which you have spoken of; are they permanently resident in the country, or are they generally people who make their money there, and then come over to England?—The French Canadians consider them not as fixtures, but as movables, and therefore they have not that confidence in them that they have in their own educated countrymen.

Has the interest you have in Canada induced you to enter into any correspondence of a public nature relative to the dissensions which have prevailed there, with a view to quieting them, and preventing their recurrence?—In 1822, when the union business was brought forward, I, jointly with Mr. Munro and Mr. Stansfield, addressed Lord Bathurst on behalf of the Canadians, and since the late dissensions I wrote to Mr. Huskisson in September 1827 and January 1828; and these three letters I desire may be taken down as part of my evidence, and inserted as such; as also the letter from Mr. Wilnot Horton in 1822.

[The witness delivered in the same.]

—No. 1.—

LETTER to the Right Honourable Earl Bathurst, dated 8 July 1822.

9, John Street, America Square, 8th July 1822.

My Lord,

Our attention having been drawn to a bill recently introduced into the House of Commons, for uniting the two provinces of Upper and Lower Canada into one government, we

most respectfully, but most earnestly, entreat of your Lordship that the measure may not be proceeded in until the sentiments of the inhabitants shall have been ascertained. A long residence in the province of Lower Canada, and a connection of upwards of forty years with both these valuable colonies, have afforded us the means of forming an opinion on the subject, and we feel it our indispensable duty to state to your Lordship our strong conviction, that the hurrying of this measure without giving the Canadians a hearing, is pregnant with the most disastrous consequences.

Allow us, therefore, most earnestly to entreat that it may not be proceeded in until His Majesty's Government shall have had an opportunity of learning in a direct manner the sentiments and feelings of the parties whom it most concerns.

We have the honour to be with much respect,

Your most obedient servants.

The Right Honourable,  
Earl Bathurst, K. G.  
&c. &c. &c.

(signed) Wm. Parker,  
D. Munro,  
G. Stansfield.

—No. 2.—

LETTER from R. Horton, Esq., dated 10th July 1822.

Colonial Office, 10th July 1822.

Gentlemen,

Lord Bathurst directs me to acknowledge the receipt of your letter of the 8th instant, requesting that the Bill lately introduced into the House of Commons may not at present be proceeded in; and I am to acquaint you, that the measure having been brought forward in Parliament after a full consultation and strong conviction of its expediency, his Lordship cannot recommend that it should be withdrawn in the present stage of its progress.

I am, Gentlemen, your most obedient servant,

(signed) R. Horton.

To William Parker, Esq. &c.

—No. 3.—

LETTER to the Right Honourable William Huskisson, dated 27th September 1827.

9, John Street, America Square, 27th September 1827.

Sir,

The controversies and increasing hostile feeling between the Representatives of the House of Assembly in Lower Canada, and the Executive Government of that province, make so strong an impression on my mind as to the political consequences of such an unhappy state of things, that I feel it my duty to make a communication to you on the subject; for impressed as I am with a deep conviction that the British North American colonies are of the most vital importance to the empire, as well in a political as commercial point of view, especially the two Canadas, which not only consume largely themselves of British manufactures, but are the indirect cause of probably more than three fourths of their present consumption in the United States of America, the government of which, were it not for the vicinity of our colonies, would exclude them by high duties in favour of their own infant manufactures. Being at the same time convinced that these most valuable colonies can only be preserved to the British Empire by uniting the whole population of the two Canadas, and especially the French Canadians of the Lower Province, in a zealous and unanimous defence against any possible hostile invasion on the part of the Government of the United States. From the knowledge I have of the temper and feelings of the French Canadians, derived from a long residence amongst them, and an intimate connection with all the different classes of these most invaluable British subjects, and more especially with those of the higher orders, for nearly the last fifty years, I religiously believe, that a more loyal, brave, and hardy race of men do not exist on the face of the globe; nor who are more capable of the greatest military exertions, and which they gave convincing proofs of at their conquest by the British, when their numbers were not one sixth part of their present population. I feel truly proud of them as British fellow-subjects, and would ever deplore any unhappy circumstance that might throw them into the arms of the United States, the most dangerous rival of the British Empire, and who are impatiently waiting for this most important event to enable them to rid North America of British residence, influence, and interference with their ambitious and aspiring Republic. Under this deep conviction, I am fully persuaded that Government would consult the best interests of the empire by granting (and without delay) to the inhabitants of the two Canadas every right and privilege that the citizens of the United States of America enjoy, with the exception of their dependence on the Crown of these colonies. They ought, in my humble opinion, to have the election (as the citizens of the United States of the Union have) of every officer of the province, including their Governor, Lieutenant-governor, judges, &c. &c. Under these very liberal circumstances I am convinced they would cheerfully consent to pay all their own expenses, Great Britain of course to pay any military force she might deem it prudent to keep in any of these provinces, and which would be all the expense attendant on keeping the two Canadas as colonies.

So liberal a measure as this would effectually secure the gratitude, confidence, and cordial attachment of every French Canadian in these provinces, and would determine them to make every sacrifice of life and fortune that may be necessary to preserve their connection with this empire against any hostile attempt on the part of the Government of the United States, whom they certainly do not like. I beg leave once more to repeat my firm conviction, that we cannot preserve our North American colonies from the grasp of their ambitious neighbours without the zealous and cordial co-operation of every French Canadian in the Lower province; but, on the contrary, if we secure their exertions, supported by a moderate British force of about 10,000 men, I would not fear any numbers that the United States could employ against them. They would soon find their graves, or a prison, in that interesting province. I would be most happy personally to explain the grounds on which my opinion is founded, when you think fit and at your convenience, will do me the honour to appoint a time to wait upon you for that purpose.

I have the honour to be, with great respect,

Sir, your obedient servant,

The Right Honourable  
William Huskisson,  
&c. &c. &c.

(signed) Wm. Parker.

—No. 4.—

LETTER to the Right Honourable William Huskisson, dated 28th January 1828.

9, John Street, America Square, 28th January 1828.

Sir,

I did myself the honour of addressing you on the 27th September last, with my sentiments in regard of the unhappy differences existing between the Executive Government and