

Appendix
(D. D.)

7th May.

(1st enclosure in No. 7.)

" NEW BRUNSWICK.

" Message to the House of Assembly, 4th Feb. 1846.

" W. M. G. COLEBROOKE,

" Lieut. Governor.

" The Lieutenant Governor lays before the House
" the copy of a Despatch referred to in his opening
" Speech, relative to King's College.

" W. M. G. C."

The Document accompanying this Message being
read at the Clerk's table, is as follows:

KING'S COLLEGE.

(Copy.)

No. 342.

DOWNING STREET,

12th November, 1845.

SIR,

Referring to the correspondence which has already
taken place between us on the subject of the Act of the
last Session of the Legislature of New Brunswick to
amend the Charter of King's College, I have now to
convey to you the necessary instructions for your guidance
in that case.

On the authority of the Solicitor General of the
Province, and of the great American Jurist, Mr. Story,
you suggest a preliminary doubt, which, if well founded,
must supersede all further discussion of this Act. It
is the doubt whether the local Legislature possesses any
constitutional right to alter the Royal Charter, without
the express consent of the Corporate Body, and whether
such an Act, if passed, would have the authority
of law.

In applying the decision of Mr. Story (whatever
that decision may be) to the case of a British Colony,
there must obviously be great room for error, unless the
most exact attention be given to the inherent distinctions
between the constitutions of various States united
together in one Federal Government, and those of our
own Provinces united together as members of our extended
Empire. That Colonial laws, repugnant to the
law of England, are null and void, has indeed been
repeatedly and very recently enacted by Parliament.
But with that exception it has not occurred to me to
hear of any cases in which the Courts of any British
Colony could lawfully refuse to enforce obedience to
the Acts of the Local Legislature.

I do not, however, propose to pursue further this abstract
enquiry, since the question to which it refers does
not really arise in the present case. It is not the fact,
that the Charter of King's College is a Royal Charter
in the proper sense of that term; it was not granted by
the Crown in the unaided exercise of the Royal Prerogative,
but on the authority of the Provincial Act of 1823,
(4th George IV. chapter 3,) which enabled the Trustees
of the College to surrender their Charter to His
late Majesty King George the Fourth, on condition that
His Majesty would grant another Charter for the re-incorporation
of the College, the terms of which new
Charter were partly left by the Act of 1823, and were
partly left by that Act to the discretion of the Crown.
The question in debate is, therefore, not whether the
local Legislature have power to alter a Royal Charter
proceeding from the Royal grace and favour, but whether
they have power to alter a Charter, the promulgation
of which was expressly authorized by themselves,
and which, without their authority, could not have
been promulgated.

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Neither is King's College exclusively a Royal Endowment.
For the General Assembly, first in 1823 and again
in 1829, granted large sums for the support of it, and
for the erection of the buildings in which the College
was held. After the acceptance of such grants, the
Crown cannot claim the same unlimited rights as might
perhaps have been asserted if the Royal Bounty had been
the only source of the collegiate property. The Legislature
and the Crown are, at least joint Founders, and as
no Legislative Act on this (or indeed on any subject)
can be passed without the consent of the Crown, so can
no Royal Grant changing the basis of this institution be
properly issued without the concurrence of the Legislative
Council and Assembly. Between those Houses
and the Crown a virtual, if not a formal, compact must
be held to result from the acts which they have thus
already done in concert and concurrence with each
other. In such a state of things it would be at once
impolitic and unjust to insist on, or even to propound
extreme, and at best, but questionable rights.

It follows, that if the Act transmitted to me for the
Queen's assent were otherwise unobjectionable, Her
Majesty would be advised to assent to it, without raising
any objections; but it is certain that the changes introduced
by it are highly offensive to one considerable
class of Her Majesty's subjects in New Brunswick,
and that the class so offended are precisely those for
whose more especial advantage the College was originally
founded. Even they, however, have most distinctly
recorded their opinion, that the Charter requires
some great amendments, and that, in its present
form it has failed to produce any advantage commensurate
with the expenditure incurred for its support. It has
not, indeed, been merely unsuccessful, it has been
productive of much positive evil; it has formed a monument
but too impressive of the futility of a great project which
had aimed at the highest public good, a monument
dissuading and discouraging similar undertakings. However
just may be the objections to the changes actually
proposed in the Charter, it is therefore impossible to deny
that numerous and great amendments of it are indispensable.

I have no hesitation in acknowledging my own inability
to suggest what those amendments should be. Even if the
College were to be established in England, for the education
of young men for the highest pursuits of life amongst
themselves, I should not scruple to avow the incapacity
of Her Majesty's Executive Government to prescribe the
right course of academical instruction and discipline to
be observed in it. To form a correct estimate of such
questions, a far deeper familiarity with them is necessary
than is to be acquired during a pupillage in early life at
one of our Universities. The science of education, especially
in its higher walks, must be learned like other sciences—by
patient study and long experience. All our Collegiate
Institutions in England have been originally founded or
progressively moulded by learned and scholastic men. We
have no such institution deriving its internal economy from
an Act of Parliament. The failure of a College regulated
by an Act of the Provincial Legislature is no just
subject of surprise.

The great requisite in the present case appears to
be, that the alterations to be made should be maturely
weighed and recommended by men possessing an intimate
acquaintance both with the theory and the practice of
educating in religion, in literature and in science, those
youths who, from their birth, their fortune, or their natural
talents, are probably destined for the public service as
Legislators, Divines, Jurists, Physicians or Magistrates, or
as Merchants on an extensive scale. To obtain such advice
it would be necessary that a Commission should be constituted,
and that it should be armed with all powers requisite
for conducting and defraying the expense of the necessary
enquiries. It should be composed of men unani-