

Council"—"which (instructions) every Governor and Commander in Chief should carefully attend to."

"The Council sit as Judges in the Court of Errors or Court of Appeal."

"The Council are named in every Commission of the Peace as Justices of the Peace throughout the whole Colony."—Stoke's Constitutions of the British Colonies, pp. 239, 240. Thus we see the origin of Councils in the Colonies, and the duties assigned to them, and how completely the duties heretofore performed by the Council in this Province correspond with those imposed on the Councils in the old Colonies now separated from Great Britain, as well as those which remain appendages of the Empire. In the old Colonies, they advised the Governor when required by the King's Instructions, they do so here; in the old Colonies they constituted a Court of Appeal, by our Constitution that duty is imposed upon them here:—and in this Province, as in the other Colonies, their names appear as Justices in every Commission of the Peace throughout the Province. The same author observes, that when a new Governor came to a Province, the names of the persons who were to constitute his Council were named in his instructions, and that no other appointment or commission was necessary; but this practice has now fallen into disuse, at least in this Province. The last set of instructions containing the names of the Council were those brought out by Sir Peregrine Maitland; but it should be borne in mind, that those very instructions are those now laid on the table by command of Sir Francis Head, that they contain the names of the Councillors then existing in Upper Canada and prescribe their duties. These instructions and these duties have undergone no change since that period.

Governor Simcoe, the first Governor that came to this Province, brought with him the first instructions that were designed to direct the King's representative, the Council, and other officers of the Government in their duties, and as they were in the adjoining-building on record in the books of the Council, it was somewhat strange that the committee did not examine them. They would be found to be the same as those delivered to Sir Peregrine Maitland.

In some of the old Colonies the Council was possessed of Legislative power conjointly with the Governor, and sometimes formed an

intermediate legislative branch between the Governor and an Assembly elected by the people:—of course, in all matters relating to the enactment of laws, the Governor could not act independently of the Council, except in so far as respected the assenting to or refusing of bills. Upon the death, removal, or resignation of the Governor, the senior Councillor by the King's Instructions assumed the Government, as in this country, unless the Senior Councillor happened to be Superintendent of Indian Affairs, or Surveyor General of the Customs, (which officers were always extraordinary members of the Council,) in which case the Government devolved on the ordinary member of the Council next in seniority.

Such was the nature and constitution of the Executive Councils in the old Colonies in America, and although in the majority of those Governments, Legislative Assemblies existed, one branch elected by the people as in this country, yet there is no trace of any pretence that those Councils were responsible for their official acts to any other person or party than the King. Responsibility to the elective branch of the Legislature was never thought of: and the Chief Justice of Georgia, whose work he had quoted, and who had resided and held office in several of the other Colonies, distinctly states, that the *Executive Council* were guided by the King's Instructions and were therefore responsible to His Majesty only. They were appointed as in this Province by the King, and removed at his pleasure; they advised his representative, when required, in secrecy; their acts could be known to the King only, and to him only, were they accountable for them.

Let us now consider the origin and constitutional powers of the Executive Councils in these Provinces—they will be found to be precisely similar to those already described.

It would be recollected that Canada was obtained by conquest from the Crown of France in 1759, and that by the treaty of Paris in 1763, it, together with other territories in America, was finally ceded to Great Britain:—the form of Government in Canada between the year 1759 and 1763, was of course a purely military despotism, regulated by the terms of the capitulation. In the year 1763 the King issued his Proclamation, in which he declared, that the Territory in America ceded by the treaty of Paris, should be erected into four separate Governments, viz: Quebec, comprising the whole of Canada; East Florida; West