

the Church of Scotland has a right to be regarded under the Act of Union as established any where out of Scotland, it was a right of which the people of Scotland, of England, and of the colonies, were all equally ignorant, until it was discovered in Upper Canada one hundred and ten years after the Act of Union; and that, if it was really intended by the British Parliament, when the 31st George 3d. chap. 31, was passed, to comprehend the clergy of the church of Scotland within the provisions of that Statute, it was an intention of which the British Government, the church of Scotland, and her clergy and adherents in and out of the Province, were evidently unconscious for thirty years after the Statute passed. Of this there is, in my opinion, satisfactory proof, both negative and positive.

In 1821 and 1825, His Majesty's Government had entered into a contract with a joint stock company for selling to them a large portion of the waste lands of the Crown at a cheap rate, and upon terms of payment very advantageous to the Company. About two millions of acres of the Clergy Reserves were to be included in this contract. But the clergy of the church of England in this Province very earnestly appealed to His Majesty's Government against this improvident alienation; and happily their appeal was not made in vain.

The Reserves were excluded from the sale; and, by agreement with the Canada Company, a block of the other waste lands of the Crown was transferred in their stead.

And further, His Majesty was graciously pleased to manifest his desire to place the Established Church in this Province upon a footing which could alone secure it against the recurrence of similar danger by transmitting through His Secretary of State for the Colonies, the late Earl Bathurst, a formal instrument, plain and unequivocal in its terms, and which expressly conveys, in the words of the Statute, the requisite authority for establishing Rectories and Parsonages in Upper Canada and endowing them with lands at the discretion of the Governor and Council.

Downing Street, 22d July, 1825.

Sir,

"I have received His Majesty's commands to direct, that you do from time to time, with the advice of the Executive Council for the affairs of the Province of Upper Canada, constitute and erect, within every Township or Parish, which now is, or hereafter may be, formed and constituted or erected within the said Province, one or more Parsonage or Rectory or Parsonages or Rectories, according to the Establishment of the Church of England; and that you do from time to time, by an Instrument under the Great Seal of the said Province, endow every such Parsonage or Rectory with so much or such parts of the land so allotted and appropriated as aforesaid, in respect of any lands within such Township or Parish, which shall have been granted subsequently to the commencement of a certain Act of the Parliament of Great Britain passed in the 31st year of the reign of His late Majesty King George the 3d, entitled, 'An Act to repeal certain parts of an Act passed in the 14th year of His Majesty's reign, entitled An Act for making more effectual provision for the Government of the Province of Quebec in North America, and to make further provision for the Government of the said Province, or of such lands as may be allotted and appropriated for the same purpose, by or in virtue of any Instruction which may have been given by his said late Majesty before the commencement of the said Act, as you shall, with the advice of the said Executive Council, judge to be expedient under the existing circumstances of such Township or Parish.

"You shall also present to every such Parsonage or Rectory an Incumbent or Minister of the church of England who shall have been duly ordained according to the rites of said church, and supply from time to time such vacancies as may happen therein.

I have the honor to be &c.

(Signed)

BATHURST."

Major General

Sir Peregrine Maitland, K.C.B.

&c. &c. &c.

This instruction is perfectly full and complete, and has no limitations like the one transmitted to Pres. Smith. It was officially laid before the Executive Council of the time soon after its receipt; and in November 1825, the Council prepared and submitted a proposition for erecting and endowing Rectories and Parsonages. This plan was for some time under consideration, because a difference of opinion was entertained on its details.—There was a doubt as to the proper extent of the Parishes, and the portion of land which it would be expedient to annex to each. It was found that the funds, though increasing, were still inadequate to build any number of Parsonage Houses at the same time, and there was some reluctance to constitute and erect a great number of Parishes and annexing portions of wild lands yielding no profit, without at the same time bringing them partly into cultivation and building residences for the clergy. There was also a reluctance to adopt any temporary or partial arrangement, while hesitation was felt to act decisively and make a general appropriation of the Clergy Reserves by dividing the whole Province into Parishes and endowing each with a sufficient portion, while the question had been brought under the consideration of Parliament and the Government in England. These various points were made still more perplexing by the passing of 7 and 8 Geo. 4, chap. 63, authorising the sale of part of the Clergy Reserves, as it directed the monies arising from the sales to be placed in the British Funds, and so removed them from the more immediate control of the Colonial Government. Moreover, these sales frequently included Reserves under lease, by which means the proceeds arising from rents were in some degree diminished. These difficulties may well account for the delay during the short remainder of Sir Peregrine Maitland's administration. They likewise furnished sufficient motives for inducing Sir John Colborne to take time for consideration. In the mean while aid continued to be given, as before, towards the erection of Parsonage Houses at Toronto, Port Hope, Woodstock, London, Long Point, &c., as the funds allowed. The clergy were not urgent, and did not press any general plan. Relying in the

faith of Government, which they saw was doing all in its power, they waited in tranquillity,—fully assured that the interests of the Church would not be lost sight of, and that, when the proper time arrived, a general measure for constituting and erecting Parsonages and Rectories would be adopted, or as soon as means were at the disposal of the proper authorities to make it efficient.

Thus matters continued for some length of time; but during the latter part of Sir John Colborne's administration the propriety of turning the lands to some account for the support of the clergy engaged the consideration of the Secretary of State, as appears from the copies of despatches which accompany my Lord Glenelg's correspondence with His Excellency the Lieutenant Governor. Indeed some such course now became absolutely necessary; for His Majesty's Government had, by its late arrangements, in some degree withdrawn from a most meritorious class of the ministers of the Church that scanty support which they had enjoyed, and which they had little reason to expect would have ever been denied them. It was, therefore, but a natural sentiment of justice which impelled Lord Goderich to enjoin upon Sir John Colborne the reparation of the loss, by securing in a permanent manner a small fraction of that provision which an Act of the British Parliament had assured to them for their support.

Moreover, the result of the negotiations since entered into by the Secretary of State for the Colonies with the Society for the propagation of the Gospel in foreign parts being only of a temporary nature, and implying the discontinuance of any salaries to the successors of the present Incumbents, the Colonial Government was obliged without delay to take such measures as might enable it, in some degree, to meet this alarming contingency.—They were also pressed to take active steps in this behalf by the Clergy Corporation, as appears from the minutes of their proceedings on the 9th February 1835;—on which occasion the late Lord Bishop presided.

There was no necessity for considering Lord Goderich's letter an authority or instruction in accordance with the requirements of the 38th section of 31st George 3d chap. 31;—it is rather to be deemed an injunction or friendly admonition no longer to postpone, under any circumstances, doing something towards the permanent establishment of the Church. To have sent additional authority would have been superfluous, as the Royal Instructions already mentioned were, and still are, more than sufficient to enable his Excellency the Lieutenant Governor in Council to constitute and erect Parsonages and Rectories with competent endowments throughout the whole Province, instead of the very small number to which they have been unfortunately limited.

I would not presume to offer any further explanations of the delay which occurred in carrying the injunction, into effect, because Sir John Colborne is in the country and may be easily referred to.

I know, however, that the measure of constituting the Rectories was no sudden resolution, but, on the contrary, it was a long time in progress; that it was retarded by various opinions upon some points of detail, as well as by the difficulties already noticed; but that, nevertheless, much progress was made in it, and all was in fact substantially executed before Sir John Colborne had the slightest intimation of an intention to supersede him in his Government.

When this intimation did arrive, His Excellency certainly manifested an unequivocal anxiety to lose no time in completing what had been much more than begun, and did hasten it as much as was in his power.

His motives for this were probably, in the first place, not to leave to the power of chance what he felt it to be his duty to secure; and, in the next place, to avoid the appearance of leaving to his successor the performance of an act which he might imagine would, with some, injure his popularity.

However this may be, I have no doubt that the measure in question is precisely that act of Lieutenant General Colborne's administration of which the remembrance will ever be the most satisfactory to him as a man and as a Christian.

With respect to what I find has been said by the friends of the church of Scotland in regard to the ecclesiastical jurisdiction over other sects, which the endowments of these Rectories has conferred upon the church of England, it is not easy to understand how any number of persons residing in this country could prevail upon themselves to express any serious apprehensions on that score.

Parishes have, for many years, been erected within the Province of Lower Canada under the same Act of Parliament, and in the other colonies of British North America, in the West India Islands, and in New South Wales. These Rectories which are now complained of, have been established nearly two years; and the experience of the past and the observation of the present must have equally shewn that no person of any other religious community has the slightest reason to suppose that his civil or religious liberty, his person or his property, will be in any manner interfered with in consequence of these Rectories or endowments. It is, in fine, notorious that the rights of marriage, baptism and sepulture are, by the laws of the Province, common to the teachers of all other denominations with the clergy of the church of England.

Whatever, therefore, may have been stated, it is very certain that no such apprehension is, or can have been felt.

With respect to the land annexed as an endowment, it is in almost every instance an insignificant fraction of those Reserves to which the church of England in this Province has a claim which ought to be regarded as sacred.

In value it is so small as, in many places, to be chiefly acceptable to supply firewood, and in most cases, being wild and totally uncultivated, it will yield nothing without incurring a considerable expense. Even the very best of the endowments yield a very trifling emolument, and will not for a long time make up for the fifteen per cent recently deducted from the narrow salary of the Incumbents. Indeed these endowments, looking to futurity when the country will be populous and well cultivated, can scarcely be anticipated in any instance to supply an adequate provision for the sustenance of an educated Minister of the Gospel, and ought not therefore to have raised the jealousy of any

body of Christians. It must be further borne in mind that the greater number of these endowments consists of lands which have been in possession of the several Incumbents by license of occupation from their first settlement in the mission without notice or complaint, and that the only difference now is a greater security of title.

I do not know that the establishment of the Rectories has called forth the language of complaint from any religious community except from the Church of Scotland, of whose Members it is remarkable, that their illiberal and intemperate hostility to the Church of England in this Province appears to have certainly increased in proportion to the unjust aggressions which they have made upon her rights, and the countenance which these aggressions have unexpectedly received.

Even the House of Assembly after much discussion, occasioned chiefly by the five or six members belonging to the Church of Scotland who have seats, passed the following resolution by a majority of thirteen.

"That this House regards as inviolable the rights acquired under the patents by which Rectories have been endowed, and cannot therefore either invite or sanction any interference with the rights thus established."

It is true other resolutions were passed disapproving of their establishment, but to call in question the patents by which they were constituted would have been, as many of the speakers wisely averred, to disturb and unsettle the titles to property throughout the whole Province.

In recapitulation I beg to state:—

1. That however sensible I am of the consideration of His Majesty's Government in making the reference which occasions this report, I cannot but regret that, before submitting to the Crown Officers of England a statement of a case which had led to their expressing an opinion against the legal validity of the Act which has been called in question, the same inquiry was not made, which it has been thought just and prudent to institute, before their opinion should be acted upon.

2. That the case stated for the opinion of the Crown Officers must have conveyed to them clearly the impression that, from the year 1791 to the time of creating these Rectories, no authority had been conveyed from His Majesty through his Secretary of State, such as the 38th clause of the Statute Geo. 3. chap. 31 requires; that their opinion is founded upon this impression, and rests therefore upon the supposed non-existence of an instrument, two of which of different dates are now before me, and are recorded in the proceedings of the Executive Council of this Province.

3. That this provision made for the resident Clergy of the Established Church, partial and insufficient as it unfortunately is, stands upon the express provisions of an Act of Parliament and the execution of a power given by the King in exact conformity to its enactments: it cannot therefore be destroyed to gratify the uncharitable feeling of any person or party; and nothing can deprive the clergy of the Church of England in this Province of the rights thus secured to them but the overruling power of the same Legislature which conferred them. I need not say that an Act of Parliament which should have that for its object would be such an Act as never yet has dishonoured the supreme Council of the Empire.

I observe that the letter of Lord Glenelg suggests the possibility, though it by no means expresses an expectation or desire, that I may be found willing to surrender, or to concur in surrendering, voluntarily, the endowments which the King has annexed to the Rectories. Happily, the provident caution of Parliament has not placed it in the power of any individual to be the instrument of so much injustice. It is not in my discretion to make any surrender of the kind. If it were, I believe it would not be necessary to assure any one who is personally acquainted with me, that I would as readily surrender my life.

I have laboured earnestly for nearly forty years, through good report and bad report, in promoting the peace and happiness of this Province, and its attachment to the Parent State. During more than thirty four years of that period I have been zealously, and I trust successfully, employed in promoting the cause of true religion, and in the discharge of the sacred duties of a Clergyman, and have uniformly acted towards all other Christian denominations with a Christian spirit, which the respectable portion of them will readily acknowledge. I am now approaching the evening of my life, and assuredly I shall never incur the reproach of having sacrificed any portion of the interests of the Church to which I have the happiness to belong, in the wild hope of conciliating her enemies, or from the culpable desire of avoiding the unpopularity which, it seems to be feared, must attach to those who fairly maintain the religion of our Sovereign and of the British Empire.

I have not failed to notice that, from the tenor of Lord Glenelg's despatch, it is to be inferred that the petitioners in the name of the Church of Scotland, have claimed for their Church the right to be treated in this part of the Queen's dominions, upon a footing of perfect equality with the United Church of England and Ireland.

It is incredible to suppose that any number of the enlightened members of the Church of Scotland can have imposed so far on their own judgment as to believe, that it was reserved for two or three laymen in the Legislature of a remote Colony, to discover rights and relations resulting from the Act of Union, which had escaped consideration and notice in all parts of the British dominions during more than a century, and which were never in the contemplation of those who were parties to that treaty. They cannot but be aware that the Act of Union did but protect the rights and privileges of the Church of Scotland within the Kingdom of Scotland, in express words; while, in language as express, it guarded all the rights and privileges of the National Church of the Empire; in every other part of the British dominions.

They must, beyond all question, know and feel, that the claim which they have originated in Upper Canada, to constitute of right a second Church Establishment in a British Colony, is a novel pretension, at variance with the principles of the Constitution, and not to be reconciled to the frequently de-