

No. 11.
Lord John Russell
to Sir G. Arthur.
12th Oct. 1839.

The delay which accidentally occurred in the transmission of the address from the Legislative Council and House of Assembly, contained in your Despatch of the 27th July last, would have prevented a compliance, before the termination of the last Session, with the provision of the Constitutional Act of 1791, which requires that the Bill should be laid before Parliament for 30 days before the Royal Assent is given. But another and more fatal difficulty has been found to present itself to the confirmation of this Bill by the Crown. The Bill proposes, under the authority of the 41st and 42nd sections of the 31 Geo. 3, c. 31, to repeal the clauses of that Act relating to the Clergy Reserves, and to the making provision for the Protestant clergy; and to provide that the land shall be sold, and the purchase-money be paid into the hands of the Receiver-General of the Province, *to be appropriated by the Imperial Parliament* for religious purposes. The effect of the Bill is, therefore, to refer to the Imperial Parliament the solution of the question relating to the Clergy Reserves. It appeared to Her Majesty's Government that very strong objections existed to this delegation to Parliament by a subordinate authority, of the powers of legislation, and that the more proper mode of attaining the object in view would have been, not by Bill, as is proposed, but by an address from the Legislature of the Province to the three estates of the realm, praying them to undertake the decision of the question. In the correctness of this view of the case, Her Majesty's Government are confirmed by the opinion of the law officers of the crown, who have reported that, although the Bill passed does not exceed the legal competency of the Provincial Legislature, yet that Her Majesty ought not to assent to such a Bill, the principle which it involves being quite novel, and one which might lead to very inconvenient consequences.

Under these circumstances, Her Majesty's Government have had no course open to them but to advise Her Majesty to withhold Her assent from this Bill. I need hardly state, that it is with regret Her Majesty's Government have witnessed the failure of this attempt to effect a settlement of this important matter. They trust, however, that this failure is but temporary, and that the opportunity will, at no distant period, be found for arriving at a wise and satisfactory adjustment of a question, which, from circumstances beyond their control, has been unfortunately so long delayed.

No. 1148.

The next reserved Bill to which I have to advert is that intituled "An Act to appropriate the Casual and Territorial Revenue, and for other purposes therein mentioned."

Your despatch, No. 118, of the 18th of May, anticipates the objection which Her Majesty's Government have to urge against this Bill. It excludes from the protection of the Civil List, granted in exchange for the revenues ceded by the Crown, the provision hitherto made for the support of the Clergy. It is hardly necessary that I should state to you, that with such an omission Her Majesty could not be advised to assent to a Bill of this nature. It involves, as you have observed, a departure from the conditions on which Lord Glenelg proposed that the casual and territorial revenues should be surrendered—conditions which could not be departed from without a violation of the faith of the Crown, which is pledged to the maintenance of the Clergy from these revenues, under the arrangement of 1834.

The transfer of this charge to the fund derived from the Clergy Reserves offers, under the present state of that fund, no equivalent which, with a view to the interests of the parties, the Crown could be advised to accept.

No. 1150.

On these grounds Her Majesty withholds her assent from this Bill.

The third Bill to be considered is that intituled "An Act to ascertain and provide for the payment of all just claims arising from the late rebellion and invasions of this Province."

To this Bill in its present form I fear that Her Majesty's Assent cannot be given.

Her Majesty's Government readily concur in the propriety of the measure which it is the object of the Bill to effect; but they cannot undertake the obligation which, if it were sanctioned, would be imposed upon them by the Preamble of the Bill, of providing ultimately for the payment of this indemnity from the British Treasury. Such a principle Her Majesty's Government are not prepared to recognise; neither, if it were otherwise, would it be of any avail, unless with the previous sanction of Parliament.

Should a similar Bill be passed for this important object free from the objec