PREROGATIVES OF THE CROWN.

(Continued.)

The principles which govern this question were affirmed very early in the history of the Dominion. We have seen the opinion of Earl Carnarvon upon the status of local Governors. His despatch was dated January 7th, 1875; but in a despatch bearing date February 24, 1869 (Sess Paper No. 16) Earl Granville, then Secretary of State for the Colonies, had, in reality, laid down the rule in relation to the prerogative power of pardon which is applicable to all other powers in so far as they are *prerogatives*. He had referred the whole matter to the law advisers of the Crown, whose opinion he follows. The power of pardon had actually been assumed by some of the local Governors, but Earl Granville says that "it is part of the Royal prerogative, and after the British North America Act it was to be found solely in the Queen and in those to whom she deputed it." The whole of the constitutions of the Provinces, he says, were changed by the Act of Union "*and the powers delegated from the Crown ceased.*" "It is true," he adds, "that before the passing of this Act the power of pardoning was vested in the Lieutenant-Governors of the several Provinces, but that power was withdrawn, not only by the revocation of the Letters Patent by which it was conferred, but also, as I am advised, by the Queen's act in assenting to the British North America Act, by which Act the authorities given to the several Provincial Lieutenant-Governors were revoked, except so far as is otherwise therein provided; *among the revoked powers, the power of pardoning would be one unless specially excepted.*" It is not easy to see how the force of this reasoning can be evaded. The power of pardon ceased *because it was a prerogative power.* In geometry it is quite sufficient to demonstrate once the properties of a square. Those properties are ever after included in the definition of the word "square."

Again—it is difficult to see how the local Governors can represent the Crown in their executive acts when there is no communication between them and the Crown. This is demonstrated by the procedure in the case of reserved Bills. The Sessional papers, No. 25, of 1873, and No. 19, of 1871, afford numerous instances of bills reserved by the local Governors of Ontario, Quebec, Nova Scotia, British Columbia and New Brunswick. Some of these were disallowed and others were allowed to stand; but the point to note is that this action was taken by the Privy Council at Ottawa upon the report of the Minister of Justice, and the Lieutenant-Governors are instructed accordingly. The local Governors represent the Queen in a real sense, in the same way that a militia officer, or a judge, represents the Queen in a very limited but real sense. They are *de facto* representatives of the Ottawa Government, and in all cases it would be better to avoid that mischievous and misleading expression "prerogatives of the Crown," and substitute "powers under the Union Act."

In the old days, before the revolution, Ministers were really the servants of the King. They are so yet theoretically, so strong is the hold of the hereditary monarch upon the affections and imaginations of the British people. The haughty Chatham, in the full plenitude of his power often used to confer with King George III. while kneeling at his bedside. It is impossible to speak of the Quebec Ministry as the servants of the Crown in any similar sense, for the local Governor is the nominee of a party. He is responsible to the nominating power, to the criticising power, to the censuring power, to the dismissing power, to wit the Ottawa Government. This Government then takes the place of the Crown in our local system, and it is responsible ultimately to the people of Canada. The Crown holds its prerogative of dismissing its servants by inheritance, the local Governors must show statutory authority for it. If they have this power it must be inferentially from the Union Act, for it is no where distinctly expressed. The local Ministry are, in fact, the servants of the Local Parliament more than the servants of the local Governor or of the Ottawa Cabinet which appointed him. He is the servant of the Central Government, and his statutory power of reserving bills is his lawful check upon improper legislation.

His Honour no doubt acted in perfectly good faith, supposing he had the Queen's prerogative of dismissal. He does not seem to have had any instructions from Ottawa, and the Government there does not appear eager to approve his action. So unusual a proceeding is more likely to embarrass them than not, for if the Governor of New Brunswick had dismissed his Ministry upon the School Act, which the Roman Catholics considered as an act of intolerable tyranny, a revolution in that Province would have been threatened. To fly in the face of such a large majority of both Houses is a very dangerous precedent if it be established. The only other theory possible is that His Honour, like the Stuart Kings, supposed himself to be responsible to God and his own conscience for the use of his power. He has written to Ottawa to justify his action, but if he has informed Her Majesty of the use he has made of her prerogative the despatch has not been published. If Her Majesty were ever to hear of the matter she would have no power to commend or reprimand her *soi-disant* representative.

For the sake of argument let it be, however, granted that the local Governor has the full prerogative of the Crown. The dismissal of a ministry, having the confidence of both Houses, with so large a majority, is a course of action so unusual that only four times has it occurred during the last one hundred and twenty years. Indeed, it may be said only four times since the House of Hanover came to the throne of England. In 1763 George III. dismissed the Grenville Ministry because they insulted him by excluding his mother's name from the Regency bill. In 1783 he dismissed the ministry of the Duke of Portland, but, although he disliked them, he did not venture upon that course of action until they had been defeated in Parliament upon the India Bill. In 1807 he dismissed Lord Grenville's Ministry because they would not pledge themselves to abstain from bringing in a bill for the relief of the Roman Catholics. In 1834 King William IV. dismissed the Melbourne Ministry in an unexpected and sudden manner. The details are given in the second volume of the Greville memoirs. The ministry was at that time in a minority in the House of Lords. It was very weak, and was besides in a transition state from the loss of Lord Althorp in the Commons. Lord Melbourne himself was not anxious to go on, and when the King dismissed him he advised His Majesty to send for the Duke of Wellington. The Duke in accepting the Government, after hearing the King's explanation, said, "Sir, I see at once how it all is. Your Majesty has not been left by your ministers, *but something very like it.*" (Vide Greville, vol. II, pp. 310, 311.) Now during all this time, from the accession of George III. to the present day, many measures have been carried distasteful to the Crown and yet how seldom has the prerogative of dismissal been exercised. Even this last, though exercised by the King in person, raised a great excitement in England, and the Earl of Durham, who was not a democratic agitator, said in a speech at Newcastle on November 19, "this great military commander will find it to have been much easier to take Badajos and Ciudad Rodrigo than to retake the liberties and independence of the people." If in the Colonies we are to have "prerogatives" thrown about in the loose way of the recent *coup d'état*, we may bid farewell to peace for the future. Prerogative is a dangerous weapon, as Kings of England well know. It had better be left in the hands of those trained to use it. Our local governors, coming hot from the arena of party strife, and put to rule over their party antagonists for a limited term, if they adopt such weapons will be like artillery recruits who are astonished at the recoil and the noise of the gun they have clumsily fired off. If amateur coachmen have to drive, they had better stick to the beaten road, and not essay any unusual feats of skill or follow any untried paths. The recent occurrence at Quebec is utterly without precedent in Canada. Lord Metcalf did not dismiss his ministry—they resigned. One of the speakers at a recent meeting is reported as having cited ten cases of dismissal since 1784, some of which he admitted were arbitrary and condemned. Only ten cases in a hundred years in Great Britain and all her numerous colonies! Surely then, in this Quebec case, there was some great meditated infringement of Imperial rights, or at least of Dominion rights. But no—here the Crown has without instructions been invoked on a purely local question of finance—of economy—of the route of a railway—of the collection of a promised subsidy! But the Queen's Courts have been all the while open, and the Governor's power of withholding or reserving assent remains unchallenged. Why, then, this seeking so far afield when a remedy lay close at hand. A remedy concerning which there was no question, and which is in constant use under our Dominion system.

Sufficient attention has not been directed in this discussion to the essential distinction which renders much of the English usage inapplicable to a subordinate legislature. The Provincial Legislature has continual reference to that of the Dominion, and the Dominion constitution presupposes the existence of the Imperial Parliament. Provision is made in the subordinate legislatures for dissent, reservation, or disallowance, in the case of bills which have passed both Houses. Not a session passes over in the colonies but some Acts are reserved for the concurrence of higher legislatures. The British North America Act gives to local governors powers of dissent, reservation or assent, the same as are possessed by the Governor-General, by commission from the Queen as well as by statute. These powers are in continual use in a subordinate legislature; but in England the Crown never dissents from a bill which has passed both Houses. The prerogative exists and was exercised by William III. in 1693, nevertheless such a thing could not occur now, for the assent of the Crown is given before the measure is brought in and the ministry would have resigned if that assent could not have been obtained. But in the colonies ministers are not obliged to resign if the Governor-General reserves a bill which they have carried. The Copyright Act is a recent instance of this. The first Act failed because, after having been reserved, the Home Government would not assent. The second bill was reserved likewise, although a Government measure, for, in the words of Lord Metcalf, "permission to introduce a bill can never be justly assumed as fettering the Governor's judgment with regard to the Royal assent, for the discussion in Parliament during the passage of the bill through the Legislature may materially influence his decision in the case," (Life, vol. ii. p. 370). Hence the Lieut.-Governor, had he desired to do so, might have reserved the objectionable bill and prevented what he considered evil legislation without taking the violent course of dismissing his Cabinet. This difference between English and Colonial usage is fundamental, and destroys the validity of an argument by analogy from one to the other on this point. In the Imperial Parliament legislation must be final and decisive. The Queen is there in person. Colonial legislation is not necessarily final, there is something always possible beyond it, and, if this is so with the Dominion Government, how much more with that of Quebec. If, then, (which in this instance is not proved) a measure were brought in without the formal permission of the Governor, he would not be deprived of a ready and customary remedy. He could refuse his assent without throwing the Province into a turmoil, and the ministry might either accept the position or resign. No ministry would be likely to attempt such a thing twice.

Liberals who cry out so loudly for prerogative do not seem to have any firm faith in popular government. They would have been shocked if the Governor-General had rejected the Speaker of the House of Commons; an undoubted prerogative of the Crown, and one exercised by Lord Dalhousie in 1827 in the case of M. Papineau, who was elected by a vote of 41 to 5. Is this prerogative also lodged with the Lieutenant-Governors? and if not, why not? Those liberals who desire to invest the local Governors with Royal prerogatives should first enquire as to their extent, and not rush blindly from one extreme to the other. After all the quotations, apropos to this crisis, which have appeared in Mr. Todd's pamphlet and elsewhere, there seems to be nothing which is more relevant than the following extract from Lord John Russell's instructions to Sir John Harvey, by which Responsible Government was introduced into Nova Scotia. It will be found in vol. 1 Colonial Policy of Earl Grey, p. 210, and comes in just before the passage quoted by Mr. Todd, p. 16. Lord John writes: "The object with which I recommend to you this course, is that of making it apparent that any transfer which may take place of political power from the hands of one party in the Province to those of another, is the result *not of an act of yours, but of the wishes of the people themselves, as shown by the difficulty experienced by the retiring party in carrying on the government of the Province* according to the forms of the Constitution. To this I attach great importance." If his Honour had attached any importance to that principle laid down by the great liberal statesman who introduced responsible government into the Colonies, a dangerous precedent would have been avoided.

QUIS.