

QUEBEC, Oct. 9.

DURHAM.

By His Excellency The Right Honorable John George, Earl of Durham, Viscount Lambton, etc. etc. Knight Grand Cross of the Most Honorable Military Order of the Bath, one of her Majesty's Most Honorable Privy Council, and Governor General, Vice Admiral, and Captain General of all Her Majesty's Provinces within, and adjacent to, the Continent of North America, etc. etc. etc.

A PROCLAMATION.

In conformity with one of its provisions, I have this day proclaimed the Act 1 and 2 Victoria, chap. 112, entitled An Act for indemnifying "those who have issued or acted under certain Parts of a certain Ordinance made under colour of an Act passed in the present Session of Parliament, intituled *An Act to make temporary Provision for the Government of Lower Canada.*"

I have also to notify the disallowance by Her Majesty of the Ordinance 2d Victoria, chapter 1, entitled, "An Ordinance to provide for the security of the province of Lower Canada."

I cannot perform these official duties without at the same time informing you, the People of British America, of the course which the measures of the Imperial Government and Legislature make it incumbent on me to pursue. The mystery which has heretofore, too often, during the progress of the most important affairs, concealed from the people of these Colonies, the intentions, the motives, and the very actions of their rulers appears to me to have been one of the main causes of the numerous errors of the Government, and the general dissatisfaction of the People. Undesirable at any time, such concealment on the part of one entrusted with the supreme authority in the present crisis of your affairs, would be most culpable and pernicious. With a people from whom I have had so many and such gratifying proofs of warm and confiding attachment, I can have no reserve. And my implicit reliance on your loyalty and good sense will justify me in making you acquainted with what it most imports you to know.

It is the more necessary for me thus to act, because, when I first entered upon this Government, I explained to you, in a Proclamation issued immediately on my arrival on these shores, the nature of the powers vested in me, and the principles on which it was my intention to exercise them. Now, therefore, that I am about to return to England, I feel it to be my bounden duty to state to you, as fully and as frankly, the reasons which have induced me to lay down powers rendered inadequate to the carrying into effect those or any other principles of government.

I did not accept the Government of British North America, without duly considering the nature of the task which I imposed on myself, or the sufficiency of my means for performing it. When Parliament concentrated all legislative and executive power in Lower Canada in the same hands, it established an authority, which, in the strictest sense of the word, was despotic. This authority Her Majesty was graciously pleased to delegate to me. I did not shrink from assuming the awful responsibility of power thus freed from constitutional restraints, in the hope, that by exercising it with justice, with mildness, and with vigour, I might secure the happiness of all classes of the people, and facilitate the speedy and permanent restoration of their liberties. But I never was weak enough to imagine that the forms by which men's rights are wisely guarded in that country where freedom has been longest enjoyed, best understood, and most prudently exercised, could be scrupulously observed in a society almost entirely disorganized by misrule and dissension. I conceived it to be one of the chief advantages of my position, that I was enabled to pursue the great ends of substantial justice and sound policy, free and unfettered. Nor did I ever dream of applying the theory or the practice of the British Constitution, to a country whose constitution was suspended,—where all representative government was annihilated, and the people deprived of all control over their own affairs,—where the ordinary guarantees of personal rights had been in abeyance during a long subjection to Martial Law, and a continued suspension of the Habeas Corpus,—where there neither did exist, nor had for a long time existed, any confidence in the impartial administration of justice in any political case.

To encourage and stimulate me in my arduous task, I had great and worthy objects in view. My aim was to elevate the Province of Lower Canada to a thoroughly British character, to link its people to the sovereignty of Britain, by making them all participants in those high privileges, conducive at once to freedom and order, which have long been the glory of Englishmen. I hoped to confer on an united people, a more extensive enjoyment of free and responsible government, and to merge the petty jealousies of a small community, and the odious animosities of origin, in the higher feelings of a nobler and more comprehensive nationality.

To give effect to these purposes it was necessary that my powers of government should be as strong as they were extensive, that I should be known to have the means of acting as well as judging for myself, without a perpetual control by distant authorities. It were well indeed if such were the ordinary tenure of government in Colonies, and that your local administration should always enjoy so much of the confidence of those, with whom rests the ultimate decision of your affairs, that it might ever rely on being allowed to carry out its policy to completion, and on being supported in giving effect to its promises and its commands. But in the present posture of your affairs, it was necessary that the most unusual confidence should accompany the delegation of a most unequal authority; and that in addition to such great legal powers, the government here, should possess all the moral force that could be derived from the assurance that its acts would be final, and its engagements religiously observed. It is not by stinted powers or a dubious authority, that the present danger can be averted, or the foundation laid of a better order of things.

I had reason to believe that I was armed with all the power which I thought requisite, by the Commissions and Instructions under the Royal sign manual, with which I was charged as Governor General and High Commissioner,—by the authority invested

in me and my Council, by the Act of the Imperial Legislature—and by the general approbation of my appointment, which all parties were pleased to express. I also trusted that I should enjoy, throughout the course of my administration, all the strength which the cordial and steadfast support of the authorities at home can alone give to their distant officers; and that even party feeling would refrain from molesting me whilst occupied in maintaining the integrity of the British Empire.

In these just expectations I have been painfully disappointed. From the very commencement of my task, the minutest details of my administration have been exposed to incessant criticism, in a spirit which has evinced an entire ignorance of the state of this country, and of the only mode in which the supremacy of the British Crown can here be upheld and exercised. Those who have in the British Legislature systematically deprecated my powers, and the ministers of the Crown by their tacit acquiescence therein, have produced the effect of making it too clear that my authority is inadequate for the emergency which called it into existence. At length an act of my government, the first and most important which was brought under the notice of the authorities at home, has been annulled; and the entire policy of which that act was a small though essential part, has thus been defeated.

The disposal of the political prisoners was from the first a matter foreign to my mission. With a view to the more easy attainment of the great objects contemplated, that question ought to have been settled before my arrival. But as it was essential to my plans for the future tranquility and improvement of the colony, that I should commence by allaying actual irritation, I had in the first place to determine the fate of those who were under prosecution, and to provide for the present security of the Province by removing the most dangerous disturbers of its peace. For these ends, the ordinary tribunals, as a recent trial has clearly shewn, afforded me no means. Judicial proceedings would only have agitated the public mind afresh—would have put in evidence the sympathy of a large portion of the people with rebellion—and would have given to the disaffected generally a fresh assurance of impunity for political guilt. An acquittal in the face of the clearest evidence, which I am justified in having anticipated as inevitable, would set the immediate leaders of the insurrection at liberty, absolved from crime, and exalted in the eyes of their deluded countrymen, as the innocent victims of an unjust imprisonment, and a vindictive charge. I looked on these as mischiefs which I was bound to avert by the utmost exercise of the powers entrusted to me. I could not, without trial and conviction, take any measures of a purely penal character; but I thought myself justified in availing myself of an acknowledgement of guilt, and adopting measures of precaution against a small number of the most culpable or most dangerous of the accused. To all the rest I extended a complete amnesty.

Whether a better mode of acting could have been devised for the emergency, is now immaterial. This is the one that has been adopted—the discussion which it at first excited, had passed away—and those who were once most inclined to condemn its leniency, had acquiesced in, or submitted to it. The good effects which must necessarily have resulted from any settlement of this question, had already begun to shew themselves. Of these the principal were, the general approval of my policy by the people of the United States, and the consequent cessation of American sympathy with any attempt to disturb the Canadas. This result has been most gratifying to me, inasmuch as it has gone far towards a complete restoration of that good will between you and a great and kindred nation, which I have taken every means in my power to cultivate, and which I earnestly entreat you to cherish as essential to your peace and prosperity.

It is also very satisfactory to me to find that the rectitude of my policy has hardly been disputed at home, and that the disallowance of the Ordinance proceeds from no doubt of its substantial merits, but from the importance which has been attached to a supposed technical error in the assumption of a power, which, if I had it not, I ought to have had.

The particular defect in the Ordinance which has been made the ground of its disallowance was occasioned, not by mistaking the extent of my powers, but by my reliance on the readiness of Parliament to supply their insufficiency in case of need. For the purpose of relieving the prisoners from all apprehensions of being treated as ordinary convicts, and the loyal inhabitants of the Province from the dread of their immediate return, words were inserted in the Ordinance respecting the disposal of them in Bermuda, which were known to be inoperative. I was perfectly aware that my powers extended to landing the prisoners on the shores of Bermuda, but no further. I knew that they could not be forcibly detained in that Island without the co-operation of the Imperial Legislature. That co-operation I had a right to expect, because the course I was pursuing was pointed out in numerous Acts of the Imperial and Provincial Legislatures, as I shall have occasion hereafter most fully to prove. I also did believe that, even if I had not the precedents of these Acts of Parliament, a Government and a Legislature anxious for the peace of this unhappy country and for the integrity of the British Empire, would not sacrifice to a petty technicality the vast benefits which my entire policy promised and had already in a great measure secured. I trusted they would take care that a great beneficent purpose should not be frustrated by any error, if error there was, which they could rectify, or the want of any power which they could supply; finally, that if they found the Ordinance inoperative they would give it effect—if illegal that they would make it law.

This small aid has not been extended to me, even for this great object; and the usefulness of my delegated power expires with the loss of that support from the supreme authority which could alone sustain it. The measure now annulled was but part of a large system of measures, which I promised when I proclaimed the amnesty. When I sought to obliterate the traces of recent discord, I pledged myself to remove its causes—to prevent the revival of a contest between hostile races—to raise the defective institutions of Lower Canada, to the level of British civilization and freedom—to remove all impediments to the course, of British enterprise in this Province, and promote colonization and improvement in the others—and to consolidate these general benefits on the strong and permanent basis of a free, responsible, and comprehensive government.

Such large promises could not have been ventured, without a perfect reliance on the unhesitating aid of the supreme authorities. Of what avail are the purposes and promises of a delegated

power whose acts are not respected by the authority from which it proceeds? With what confidence can I invite co-operation, or impose forbearance, whilst I touch ancient laws and habits, as well as deep-rooted abuses, with the weakened hands that have ineffectually essayed but a little more than the ordinary vigour of the police of troubled times.

How am I to provide against the immediate effects of the disallowance of the Ordinance? That Ordinance was intimately connected with other measures which remain in unrestricted operation. It was coupled with Her Majesty's proclamation of amnesty; and as I judged it becoming, that the extraordinary Legislature of Lower Canada should take upon itself all measures of rigorous precaution, and leave to Her Majesty the congenial office of using Her Royal Prerogative, for the sole purpose of pardon and mercy, the Proclamation contained an entire amnesty, qualified only by the exceptions specified in the Ordinance. The Ordinance has been disallowed, and the Proclamation is confirmed. Her Majesty having been advised to refuse her assent to the exceptions, the amnesty exists without qualification. No impediment therefore exists to the return of the persons who had made the most distinct admission of guilt, or who had been excluded by me from the Province on account of the danger to which their tranquility would be exposed by their presence; and none can now be enacted, without the adoption of measures alike repugnant to my sense of justice and of policy. I cannot recall the irrevocable pledge of Her Majesty's mercy. I cannot attempt to evade the disallowance of the Ordinance, by re-enacting it under the disguise of an alteration of the scene of banishment, or of the penalties of unauthorized return. I cannot, by a needless suspension of the Habeas Corpus, put the personal liberty of every man at the mercy of the government, and declare a whole Province in immediate danger of rebellion, merely in order to exercise the influence of a vague terror over a few individuals.

In these conflicting and painful circumstances, it is far better that I should at once and distinctly announce my intention of desisting from the vain attempt to carry my policy and system of administration into effect with such inadequate and restricted means. If the peace of Lower Canada is to be again menaced, it is necessary that its Government should be able to reckon on a more cordial and vigorous support at home than has been accorded to me. No good that may not be expected from any other Government in Lower Canada, can be obtained by my continuing to wield extraordinary legal powers of which the moral force and consideration are gone.

You will easily believe that, after all the exertions which I have made, it is with feelings of deep disappointment that I find myself thus suddenly deprived of the power of conferring great benefits on that Province to which I have referred,—of reforming the administrative system there and eradicating the manifold abuses which had been engendered by the negligence and corruption of former times, and so lamentably fostered by civil dissensions. I cannot but regret being obliged to renounce the still more glorious hope of employing unusual Legislative powers in the endowment of that Province with those free Municipal Institutions, which are the only sure basis of local improvement and representative liberty,—of establishing a system of general education,—of revising the defective Laws which regulate real property and commerce,—and of introducing a pure and competent administration of justice. Above all, I grieve to be thus forced to abandon the realization of such large and solid schemes of Colonization and internal Improvement as would connect the distant portions of these extensive Colonies, and lay open the unwrought treasures of the wilderness to the wants of British industry and the energy of British enterprise.

For these objects I have laboured much—and have received the most active, zealous, and efficient co-operation from the able and enlightened persons who are associated with me in this great undertaking. Our exertions, however, will not, cannot be thrown away. The information which we have acquired, although not as yet fit for the purposes of immediate legislation, will contribute to the creation of juster views as to the resources, the wants, and the interests of these Colonies, than ever yet prevailed in the Mother Country. To complete and render available those materials for future legislation, is an important part of the duties which, as High Commissioner, I have yet to discharge, and to which I shall devote the most anxious attention.

I shall also be prepared, at the proper period, to suggest the constitution of a form of Government for Her Majesty's dominions on this continent, which may restore to the people of Lower Canada all the advantages of a representative system, unaccompanied by the evils that have hitherto proceeded from the unnatural conflicts of parties; which may safely supply any deficiencies existing in the governments of the other colonies; and which may produce throughout British America a state of contented allegiance, founded, as colonial allegiance ever must be, on a sense of obligation to the parent state.

I fervently hope that my usefulness to you will not cease with my official connexion. When I shall have laid at Her Majesty's feet the various high and important commissions with which her Royal favour invested me, I shall still be enabled as a Peer of Parliament to render to you efficient and constant service in that place where the decisions that affect your welfare are in reality made. It must be, I humbly trust, for the advantage of these Provinces, if I can carry into the Imperial Parliament a knowledge, derived from personal inspection and experience, of those interests, upon which some persons there are too apt to legislate in ignorance or indifference—and can aid in laying the foundation of a system of general government, which while it strengthens your permanent connexion with Great Britain, shall save you from the evils to which you are now subjected by every change in the fluctuating policy of distant and successive Administrations.

Given under My Hand and Seal at Arms, at the Castle of St. Lewis, in the City of Quebec, in the said Province of Lower Canada, the ninth day of October, in the year of our Lord one thousand eight hundred and thirty-eight, and in the second year of HER MAJESTY'S Reign.

(By Command.)

CHARLES BULLER,
Chief Secretary.