

Minute relative to
the 92 Resolutions
of the House of
Assembly.

an office shall vacate a seat in the House of Assembly may probably deprive this question of all importance with a view to the future. Still it may be necessary to record that His Majesty's Government adopt the more general and abstract principle by which Lord Aylmer appears to have been guided on that occasion. It is as follows: If it shall appear, upon a document issued by the authority of the House, that in their judgment a seat is vacant, and if, at the same time, there shall appear on the face of that document a statement of the ground on which that judgment proceeds, then, if the ground so alleged be insufficient in point of law to create a vacancy, the Governor is neither bound, nor is he at liberty to accede to the application of the House for a new writ. To the law alone an implicit obedience is due. Any one branch of the Legislature may err in their interpretation of it; and when a conflict arises between the rule of law on the one hand, and the resolutions of a single branch of the Legislature on the other, no officer of the Executive Government, and least of all the Governor himself, is at liberty to defer to their authority. If it be inquired by whom, then, is the law of the land to be ascertained, the answer in Canada, as in this kingdom, is, by the judges. To their decision must be brought even the pretensions of the separate branches of the Legislature, those cases being alone excepted in which the question in debate is a mere matter of privilege, of which each House is for itself the ultimate judge.

16. The last of the topics which remains to be noticed is that of the default of Sir John Caldwell. It is a subject not to be approached without very deep concern. It would be futile to deny, or to attempt to conceal that the loss in which he involved the Province resulted from the omission of His Majesty's officers to demand adequate securities for his faithful administration of the funds in his possession, and also from the neglect of the local Government to call him to a strict and frequent audit.

Under such circumstances, there are no means at the disposal of the Crown which His Majesty's Ministers would not cheerfully devote to the relief of the Province from this loss. The transfer to the Assembly of the territorial and hereditary revenue has, however, left His Majesty nothing further to concede in liquidation of this demand. The net proceeds of the payments to be made by the British North American Land Company would amount to 6,000 l. per annum, and will, it may be hoped, relieve the provincial treasury from any temporary difficulty in which it may have been involved by Sir J. Caldwell's default. Perhaps, also, the legal proceedings for the recovery of what is due from him might be urged forward with greater activity; and, at whatever expense of personal feeling, it will be necessary to enforce the demands of the public against his estate, with decision and effect.

There is one topic connected with Sir John Caldwell's case which it would be impossible to pass over in silence. That gentleman still occupies a seat in the Legislative Council. Of course, he cannot be removed from it by the Royal authority, the place being necessarily granted for life. But it is right that Sir John Caldwell should be admonished of the prudence of relinquishing his seat in the Legislative Council, or at least of totally abstaining from all interference in the deliberations of that body. It will be Lord Amherst's painful but necessary duty to convey this intimation to Sir John Caldwell, and to apprise him that his resignation would be acceptable to His Majesty, and would not be regarded as an impeachment of his character in any other sense than that in which unhappily it has already been prejudiced by his inability to make good what he owes to the public. It is almost superfluous to state that this unpleasant office will be discharged by Lord Amherst in whatever manner will be least irksome to his own feelings, because least distressing to the party more immediately concerned.

(signed) *Aberdeen.*

Enclosure, No. 5, in Lord *Aberdeen's* Despatch to Lord *Amherst*, dated the 2d April 1835.—
(No. 2.)

My Lord,

Downing-street, 14 February 1835.

IN conformity with the pledge given in my despatch of the 8th January, I can assure your Lordship that His Majesty's Government have not ceased to direct their anxious attention to the discovery of those means which appeared to offer the most reasonable prospect of bringing to a happy termination the existing differences between the House of Assembly of Lower Canada and the Executive Government of the Province. This inquiry has been undertaken with a deep sense of the importance of the object to be attained, and has been prosecuted with the most zealous and earnest endeavours to arrive at a favourable result; but I cannot disguise from your Lordship, that throughout the investigation I have found myself surrounded by no common difficulties.

Your Lordship will recollect that in the year 1828 a Committee of the House of Commons was appointed for the purpose of inquiring into the state of the Civil Government of Canada, which, after a laborious and protracted examination, embodied in their report various suggestions calculated, in their opinion, for the improvement of the administration of the affairs of the Province. This report was declared by the House of Assembly of Lower Canada to be "an imperishable monument of the justice and profound wisdom of the Committee," and to point out the certain mode of removing all the evils of which the people of Canada had complained. On a future occasion I may endeavour to show, and I hope incontrovertibly, the manner in which the recommendations of the Committee have been carried into full effect. At present I will only observe, that notwithstanding the general enthusiasm with which the appearance of the report was hailed by the House of Assembly, a spirit of discontent, from whatever cause arising, has continued gradually to increase among the members of that body, until in the last year it has burst forth with a vehemence altogether unparalleled. This spirit

was

Lord Aberdeen to
Lord Aylmer.
14 February 1835.