of the Governor for the time being having been specially authorised by His Majesty to carry into effect the provisions of this public statute, to the extent he had done.

We should have had in that case many things to consider, into which I need not now enter, because an express authority from his Majesty to his Lieutenant Governor, to do what was done in his name, is shewn, and is relied upon; and the question we are to determine is whether that authority, considering all the circumstances that are brought before us, is sufficient to uphold the patent.

I may seem to have dwelt at an unnecessary length upon considerations, which it is clear this case will not turn upon, but it is because I have a strong sense of the inconvenience and injustice, and of the great public confusion which might follow, from giving an apparent countenance to an unreasonable construction and application of legal principles in cases of this kind.

When an act of Parliament provides, as in this case, that the Sovereign may authorise certain public acts to be done by the Governor of a Colony, without prescribing any particular formality as evidence of the authority, it does not seem to me to place such an act on any footing greatly different from those acts which upon principles of the common law, the Governor would be competent to perform, if not restrained by the Crown, in the general exercise of the powers inherent in him, in virtue of his commission: I mean not on a different footing as to the legal validity of the act, so long as the Sovereign in whose name, and by whose authority, it was assumed to be done, does not disavow it, and take measures within a reasonable period to resume what has been granted.

Individuals, or public bodies, whose rights may depend on the validity of the Governor's acts in such cases, can hardly be expected to be able at any distance of time to ascertain and prove what may have passed between the Sovereign and his representative.

I take it that such acts of Government, especially if not attempted to be disturbed until large and complicated interests have grown up under them, are not to be looked upon by Courts of Justice in the same spirit as they would in a case between individuals, look upon an appointment made in the execution of a power.

It would be proper in any such case to consider that the common law favours all benevolent purposes, such as provision made for the support and advancement of religion and learning, and upholds them where it can; and when, in consequence of restraining statutes, or of any imperfection in the manner of carrying out the pious or benevolent intentions, it is likely to fail of its effect, Courts of Equity frequently lend their aid to supply what is wanting, and endeavour to accomplish the end in view by a disposition as nearly in accordance with the arrangement intended as the law of the land will permit.

If, at this distance of time, the only objection taken were that nothing can be produced to shew a special authority actually given to Sir John Colborne to constitute these Rectories, and if we were called upon to determine what must be the effect upon the validity of his Public Act, of the mere absence of any positive proof of a special authority to the Governor, my impression is that we could not on that ground have felt ourselves warranted in disturbing the existing order of things. For it must be considered that this was not a thing done in a corner. The creating of 44 Rectories and the presentation, time after time, of as many incumbents, must have been acts perfectly notorious in the Province.

We know that in fact the measure was not passed over in silence; and if when the attention of the Colonial Government had been called to the very point of the validity of the patents, steps were nevertheless not taken till after the lapse of ten or fifteen years for calling in question the rights held under them, the presumption that a signification of the Royal authority had been in some manner conveyed to the Governor, would be at least so far entertained, I think, that the Colonial Government itself could not be allowed to raise the question with any hope of success.

But it is more to our purpose to consider whether it is or is not shewn by the evidence that Sir John Colborne had in fact authority sufficient, under the 38th clause of the statute, for issuing the patent in question in this suit. The defendants affirm that he had; the Attorney General denies it.

As the statute says nothing more particular in regard to the authority to be given, than that his Majesty "*may authorise the Governor*," without saying how he may authorise him, room is left for the question as to whether a verbal authority to the Governor, conveyed either by his Majesty or through his Secretary of State, would be sufficient, or whether it must not be by some formal instrument.

But at least there need not be, nor could be any more formal method of giving the authority than by an instrument under the great seal of England; and the defendants contend that proof of such authority is given; and so no doubt it is, not only in the documents before us, but in the statements contained in the information—for though there is indeed an apparent inconsistency in the statements in this respect, yet it is plain how they are intended to be reconciled.

In the first place it is affirmed that this and all the other Rectory patents were issued without any "authority or instructions to Sir John Colborne from the then Sovereign, King William the Fourth, under his sign manual, or by order of his Privy Council, or through any Secretary of State, or *otherwise however*, to constitute, erect, or endow the Rectory of St. James, or any of the other Rectories."

There could be no more complete denial than this of any authority from the Crown to Sir John Colborne in the matter; and yet a little further on in this information we are told that the authority of any Governor, or Lieutenant Governor of Upper Canada, was always conferred by Royal Commission, addressed to each at the time of his appointment, "which commissions always had been and were in the same form to every Governor, Lieutenant Governor, &c., and amongst other things purported to authorise such Governor, with the advice of the Executive Council, to erect Parsonages or Rectories in the terms of the 38th section of the said statute, and that the Commission to Sir John Colborne, which was from his late Majesty King William the Fourth, declared such authority to be subject nevertheless to such instructions, touching the premises, as should or might be given to him by His Majesty, under his signature, or sign manual, or by his Majesty's order in his Privy Council, or through one of his principal Secretaries of State."

The meaning of this, I presume, is that like his predecessors Sir John Colborne was made Lieutenant Governor of Upper Canada, by a commission which referred him to the powers, authority, and instructions contained in the commission to the Governor General, of both provinces for the time being, which, during the absence from Upper Canada of the Governor General, he, as Lieutenant Governor, was authorised to execute in the name of His Majesty.

In January, 1836, the patent in question was issued by Sir John Colborne, while Lord Gosford the Governor General was resident in Quebec, and administering the Government of Lower Canada under a commission dated in June 1835, and which we see from the copy of it laid before us did contain precisely such authority, as it is admitted in the information, the Governor of Upper Canada had always held. Not that the commission to any of the Lieutenant Governors of Upper Canada had contained these words, as the information would seem to impart: but that they were to be looked upon as in effect incorporated in the commission which authorised them to execute the powers committed to the Governor General for the time being.

The terms in which His Majesty authorised Lord Gosford to erect and endow Parsonages are in exact accordance with the Statute; and the authority being under the Great Seal of England, and given by the commission which was in force when the act was done, it cannot be material to consider what might or might not otherwise have been done, under the separate instructions sent by Lord Bathurst to the Lieutenant Governor of Upper Canada, in July, 1825, or under any other authority or instruction more or less formal than that. If any previous authority differed nothing from that expressed in the commission to Lord Gosford, then it cannot by possibility be material. If, on the other hand, it differed in substance, then the latest declaration of the Royal pleasure conveyed in the most authoritative form, is that which must govern. For I do not assume that parliament did not mean that when authority should be once given by His Majesty to the Lieutenant Governor under the 38th clause, it should be an authority incapable of being recalled or modified.

I do not mean that it could be annulled, so as to make void what had been done under it; but that a restraint might be placed upon the Governor in regard to any further proceedings upon it.

It has been taken for granted in framing the Royal Commission to Lord Gosford, that the authority would be subject, or at least might be made subject to such instructions touching the matter, as might afterwards be given by His Majesty; and so I think it might; but it is not shewn or asserted that between the issuing of the commission in June, 1835, and the issuing of the Rectory Patents in January, 1836, any thing had been done to cancel or abridge the authority given in this repect to Lord Gosford; and all that remains to be considered, is whether the fact of the authority being conveyed, *subject* to further *instructions*, makes it as has been contended an incomplete authority; one that can only be acted upon in case some further instructions shall come; or whether it be not the more obvious meaning and effect of those latter words that His Majesty reserved to himself and his successors, the power of interposing, by revoking the authority, or by sending such instructions as might in some particulars narrow the discretion of the Governor, as for instance in regard to the number of Rectories, or the extent of the endowments.

I fully concur in the view taken of that point in the Court below. It is plain, I think, that under the authority given in Lord Gosford's commission the Lieutenant Governor of Upper Canada could, without further instructions, legally proceed in carrying out the provisions of the statute in regard to Rectories and endowments, until he should be checked by some subsequent instruction.

In the royal instructions accompanying the commission to the Governor General, he is told that he is to administer the Government according to the power and authority given by his commission, and by those instructions; and according to such further power and authority as he shall at any time hereafter receive, under his Majesty's signet or sign manual, or by order of his Majesty in his Privy Council.

And in fact in the commission itself which issued to Lord Gosford, we find that in regard to all other matters, as well as this of constituting Rectories,