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IMPORTANT.

PUBLIC DOCUMENTS.

RELATIVE TO THE LATE

CHANGES IN THE EXECUTIVE COUNCIL.

ADDRESS OF THE HOUSE OF ASSEMBLY.

To His Excellency, SIR FRANCIS BOND HEAD,
K. C. H. &c. &c. &c.

MAY IT PLEASE YOUR EXCELLENCY:

We, His Majesty's dutiful and loyal subjects, the Commons of Upper Canada in Provincial Parliament assembled, humbly beg leave to inform Your Excellency, that this House, considering the appointment of a responsible Executive Council to advise Your Excellency on the affairs of the Province, to be one of the most happy and wise features in the Constitution, and essential to the form of our Government, and one of the strongest securities for a just and equitable administration, and eminently calculated to ensure the full enjoyment of our civil and religious rights and privileges, has lately learned, with no small degree of surprise and anxiety, that the Executive Council so recently formed for the purpose above stated, (as we presume,) consisting of six members, did, on Saturday the 12th instant, unanimously tender to Your Excellency their resignations, and that Your Excellency was pleased to accept the same; and humbly to request Your Excellency to inform this House, without delay, whether such are the facts, and also to communicate to this House full information relative to the cause of disagreement between Your Excellency and your said late Executive Council, as far as lies in Your Excellency's power to make known; as also to furnish this House with copies of all communications

between Your Excellency and your said late Council, or any of them, on the subject of such disagreement and subsequent tender of resignation.

(Signed) M. S. BIDWELL, *Speaker.*
Commons' House of Assembly, }
14th March, 1836. }

HIS EXCELLENCY'S REPLY.

GENTLEMEN,—Nothing can appear more reasonable to my mind, than the surprise and anxiety which the House of Assembly express to me at the intelligence they have received of the sudden resignation of the six members of the Executive Council; for with both these feelings I was myself deeply impressed, when, firmly relying on the advice, assistance, and cordial coöperation of my Council, I unexpectedly received from them the embarrassing document which, with my reply thereto, I now, at the request of the House of Assembly, willingly present to you.

With every desire to consult my Council, I was preparing for their consideration important remedial measures, which I conceived it would be advisable to adopt, and had they but afforded me those few moments for reflection which, from my sudden arrival among you, I fancied I might fairly have claimed as my due, the question which so unnecessarily they have agitated, would have proved practically to be useless.

Had they chosen to have verbally submitted to me in Council, that responsibility, and consequently the power and

patronage, of the Lieutenant Governor ought henceforward to be transferred from him to them,—had they even in the unusual form of a written petition, recommended to my attention, as a new theory, that the Council, instead of the Governor, was to be responsible to the people, I should have raised no objection whatever to the proceeding, however in opinion I might have opposed it; but, when they simultaneously declared, not that such *ought* to be, but that such actually *was* the law of the land, and concluded their statement, by praying that a Council, sworn in secrecy to assist me, might be permitted, in case I disapproved of their opinion, to communicate with the public; I felt it my duty, calmly and with due courtesy to inform them, that they could not retain such principles together with my confidence—and to this opinion I continue stedfastly to adhere.

I feel confident that the House of Assembly will be sensible, that the power entrusted to me by our Gracious Sovereign, is a subject of painful anxiety—that from the patronage of this Province I can derive no advantage—and that I can have no object in retaining undivided responsibility, except that which proceeds from a just desire to be constitutionally answerable to His Majesty, in case I should neglect the interests of his subjects in this Province.

With these sentiments I transmit to the House of Assembly the documents they have requested, feeling confident that I can give them no surer proof of my desire to preserve *their* privileges inviolate, than by proving to them that I am equally determined to maintain the rights and prerogatives of the *Crown*, one of the most prominent of which is, that which I have just assumed, of naming those Councillors in whom I conscientiously believe I can confide.

For *their* acts I deliberately declare myself to be responsible, but they are not responsible for mine, and cannot be,

because being sworn to silence, they are deprived by this fact, as well as by the Constitution, of all power to defend themselves.

EXECUTIVE COUNCIL CHAMBER AT TORONTO.

Friday, 4th March, 1836.

To His Excellency SIR FRANCIS BOND HEAD,
K. C. H. &c. &c. &c.

MAY IT PLEASE YOUR EXCELLENCY:

The Executive Council, impressed with the oath they have taken to discharge the duties necessarily resulting from their appointment “to advise the King and his Representative in the Government of this Province,” in the terms of the Constitutional Act, “upon the affairs of the Province,” deem it incumbent upon them most respectfully to submit the following representation:—

The Executive Council recognize the truth of the opinion expressed by LORD GLENELG, that “the present is an era of more difficulty and importance than any which has hitherto occurred in the history of this part of His Majesty’s dominions.” This unhappy condition they ascribe, in a very great degree, to the hitherto unconstitutional abridgment of the duties of the Executive Council. It appears from the proceedings of the House of Assembly, and from the reiteration of established opinion in the country, that neither will public expectation be satisfied, nor contentment be restored, until the system of Local Government is altered and conducted according to the true spirit and meaning of the Constitutional Act. The delay of this just and indispensable course has already excited in the great mass of the people, a lamentable jealousy and distrust, and has also induced the discussion of constitutional changes, the desire for which, unless speedily arrested, by affording the unrestricted operation of the 31st George 3rd. chap. 31, will not only become more fixed, but rapidly increase to a greater and irretrievable extent.

The policy and measures which have led to the present condition, seldom passed under the review of the Executive Council, or were submitted for their advice. Nevertheless, its members have been undeservedly subjected to the heaviest reproach throughout the country, from a prevalent belief that they have been called upon to fulfil the duty imposed upon them by the Constitution, as advisers upon public affairs. But amidst the obloquy thus thrown upon them, they have studiously avoided any attempt at exculpation, by disavowing, in their defence, any participation in the conduct of the affairs which they were erroneously supposed to have approved. The consequence of this silent endurance of political odium, has been the perpetuation of the misbelief that the Executive Council are conversant with the affairs of the Province, upon which they are appointed to advise: and although an opposite practice has generally prevailed between former Lieutenant Governors and their Council, yet it has ever been notoriously contrary to the state of things presumed by the community to exist.

Public opinion respecting the Executive Council and their duties, has been founded upon the terms of the 31st Geo. 3, chapter 31, to which Statute the people used to express a firm attachment, an attachment which the Council believe never would have been impaired had the Constitution been administered either according to its letter or its spirit.

In several clauses of 31st George 3, chap. 31, the Executive Council is mentioned in general terms. In the 34th clause the terms are "together with such Executive Council as shall be appointed by His Majesty for the affairs of such Province," and not as it would otherwise have been expressed, "together with such Executive council as shall be appointed by His Majesty for that purpose." In the 36th clause the terms are "with the advice of such Executive Council as

shall have been appointed by His Majesty, his heirs, or successors, within such Province for the affairs thereof," and not, as it would otherwise have been expressed, "with the advice of such Executive Council as shall have been appointed by His Majesty, his heirs, or successors, within the Province for that purpose."

The same may be said of similar terms used in the latter part of the seventh clause.

With respect to which clauses it may be further remarked, that had it been contemplated that the Executive Council were to act only in the matters therein specified, the words "on the affairs of such Province" might have been omitted, without in the least impairing the legal effect. In the construction, therefore, of this Statute, the above expression can not be treated as surplussage, but must be taken to impose the duty which it imports.

From the language of this Statute, therefore, it appears—

Firstly,—That there is an Executive Council.

Secondly,—That they are appointed by the King.

Thirdly,—That they are appointed to advise the King, and his Representative, upon "the affairs of the Province,"—no particular affairs are specified: no limitation to any particular time or subject.

As the Constitutional Act prescribes to the Council the latitude of "the affairs of the Province," it requires an equal authority of law to narrow those limits, or relieve the Council from a co-extensive duty.

Every Representative of the King, upon arriving from England to assume the Government of this country, is necessarily a stranger to it; and the law has provided for a Local Council as a source of advice, which when given, is followed or not, according to his discretion.

In certain cases specified in the 38th clause of the 31 Geo. 3, chap. 31, the

concurrency of the Council is required to give effect to certain Executive Acts. But these exceptions prove the general rule, viz : that while the advice is to be given upon the affairs of the Province generally, it is only in the particular cases that it must harmonize with the pleasure of the Crown, to give that pleasure effect. Indeed, if the law could be construed to limit the advice to the particular cases, it would follow that the Council could not legally and constitutionally advise upon any others ; a proposition which, besides its manifest repugnance to the terms of the Act, is contrary to received opinion and usage.

But while the Constitution has assigned to the Council this duty, it is only to a very subordinate and limited extent that they have heretofore had opportunity afforded them to perform it. It is submitted that the exigency of the Statute can only be answered by allowing the affairs of the Province to pass under their review for such advice as their consciences may suggest, preparatory to the final and discretionary action of the King's Representative, upon those affairs.

The Council meeting once a week upon Land matters, while the affairs of the country are withheld from their consideration and advice, is as imperfect a fulfilment of the Constitutional Act, as if the Provincial Parliament were summoned once a year, to meet the letter of the law, and immediately prorogued upon answering the Speech from the Throne. In both cases the true meaning and spirit of the Constitutional Act require, that the Parliament should have a general and practicable opportunity to legislate, and the Executive Council to advise, upon the affairs of the country. In the former case, the Representative of the King can withhold the Royal Assent from bills, and in the latter, reject the advice offered ; but their respective proceedings cannot be constitutionally circumscribed or denied because they need the expression of the

Royal pleasure thereon for their consummation.

The extent and importance of the affairs of the Country have necessarily increased with its population, wealth and commerce, and the Constitution has anticipated the difficulty, by a division of labour and responsibility, from the active attention of the Executive Council to their duties.— With the exception of those matters of so weighty or general a character as not properly to fall under any particular department, and therefore fitted for the deliberation of the Council collectively, it is recommended, that the affairs of the Province be distributed into Departments, to the heads of which shall be referred such matters as obviously appertain to them respectively. Upon this principle (recognized by the existing Constitution of this Province and of the mother country) the people have long and anxiously sought for the administration of their Government, under the Representative of the King ; and the Council most respectfully, but at the same time earnestly represent, that public opinion upon the subject is so fixed, and becoming so impatient, as to preclude the possibility of denying or delaying the measure, without increasing public dissatisfaction, and leading to the final adoption of other views, as already too universally manifested, uncongenial to the genius of the Constitution, and most dangerous to the connection with the Parent State.

The remedy, it is feared, is now proposed too late for all the advantages desired ; but the longer it is withheld, the more alienated and irreconcilable will the public mind become. The present comparative calm and thankfulness arise from a belief that the Council will second this exigency, in establishing a system of Government, according to the principles recognized by the charter of the liberties of the country—an expectation which the Council are most anxious to realize.

Should such a course not be deemed

wise or admissible by the Lieutenant Governor, the Council most respectfully pray that they may be allowed to disabuse the public from a misapprehension of the nature and extent of the duties confided to them.

(Signed,)

PETER ROBINSON,
GEORGE H. MARKLAND,
JOSEPH WELLS,
JOHN H. DUNN,
ROBERT BALDWIN,
JOHN ROLPH.

HIS EXCELLENCY'S REPLY.

F. B. HEAD.

The Lieutenant Governor transmits to the Executive Council the following observations, in reply to the document which, in Council, they yesterday addressed to him.

The Constitution of a British Colony resembles, but is not identical with, the Constitution of the Mother Country—for in England, besides the House of Commons, which represents the people, there exists a hereditary nobility, the honours and wealth of which, as well as the interests of the Established Church, are represented by a House of Lords, while the Sovereign (who, by law, can do no wrong) is surrounded by a Ministry upon whom devolves the entire responsibility of the measures they suggest, and who are consequently removable at pleasure. But in the Colonial portion of the British Empire, which, however rising, is generally speaking thinly inhabited, the people are represented by their House of Assembly, which is gifted not only with the same command over the supplies as in England, but which possesses within the Colony, most of the powers of the British House of Commons. The Legislative Council is intended, as far as the circumstances of a young Colony can permit, to resemble the British House of Lords; and if the Lieutenant Governor stood in the place

of the Sovereign—and if, like His Majesty, he could do no wrong, it would evidently be necessary that a Ministry, Executive Council, or some other body of men should be appointed, who might be responsible to the country for their conduct.

This, however, is not the case. His Majesty delegates his Sovereign protection of his Colonies to no one, but he appoints a Lieutenant Governor, who is responsible to him for his behaviour, who is subject to impeachment for neglecting the interests of the people, and who is liable, like the English Ministry, to immediate removal; and the history of the British Colonies clearly shews, that there is no class or individual of His Majesty's subjects to whose representation, prayer or petition, the King is not most willing to attend.

The Lieutenant Governor is, therefore, the responsible Minister of the Colony; and as not only his character, but his continuance in office depend on his attending to the real interests of the people, it would be evidently as unjust towards him that he should be liable to impeachment for any acts but his own; as it would be unjust towards the people, that a responsibility so highly important to their interests should be intangible and divided. It is true his knowledge of the country is not equal to that of many intelligent individuals within it; but in government, impartiality is better than knowledge, and it must be evident to every well constituted mind, that in an infant state of society it would be impossible practically to secure a sufficient number of impartial persons to effect a change of Ministry, as often as it might be necessary for the interests of the people to do so.

This difference between the Constitution of the mother country and that of its colony is highly advantageous to the latter—for, as in all small communities private interests and party feelings must unavoidably be conflicting, it is better as

well as safer that the people should be enabled to appeal in person, or by petition, to the Lieutenant Governor himself, whose duty it is to redress their complaints, and who is liable to dismissal if he neglects them, than that they should appeal to a series of Provincial Ministries, composed of various individuals.

To enable the Lieutenant Governor to perform the arduous duties of his office, the Constitution has wisely provided him with an Executive Council, competent to supply him with that local knowledge in which he may be deficient, and to whom he may apply for counsel and advice.

Before he entrusts himself to these Gentlemen, they are by order of His Majesty required solemnly to swear, not only to give to the Lieutenant Governor their best counsel and advice, but they are also sworn to secrecy.

Their individual opinions can never be divulged, *even to the King*; and as a proof that His Majesty does not hold them responsible for the acts of his Lieutenant Governor, they can retain, and often do retain, their office of sworn advisers, although Governor after Governor may have been dismissed.

The advantage of such a Council to a Lieutenant Governor is so self-evident, that he must be weak and self-sufficient indeed who does not continually have recourse to it; but although it strengthens his judgment, and confers dignity on his proceedings, yet, in no way does it shield him from disgrace, should his acts be found contrary to the interests of the people. In such a case it would be vain, as well as unconstitutional, for a Lieutenant Governor to attempt to shield himself from responsibility, by throwing it upon his Council; for by his oath he cannot even divulge which of his advisers may have misled him. Supposing, for instance, that with the concurrent advice of his Council, he was illegally to eject by military force an individual from his land, the Lieutenant Governor would be

liable to arraignment, and whether he had acted by the opinion of the Law Officers of the Crown—by the advice of his Council—by information derived from books—or from his own erring judgment, it has been wisely decreed that the injured subject shall look to him, and him alone, for retribution, and that he, and he alone, is answerable to his Sovereign for the act of injustice which has been committed.

Being therefore subject both to punishment and disgrace, it is absolutely necessary, as well as just, that the Lieutenant Governor of a Colony should have full liberty to act (though at his peril) in every case as he may think best for the interests of the people, according to the commands of His Majesty, and of His Majesty's Ministers. To consult his Council on the innumerable subjects upon which he has daily to decide, would be as utterly impossible as for any one but himself to decide upon what points his mind required, or needed not, the advice of his Council. Upon their sterling fund he must therefore constitutionally draw whenever embarrassment requires it, and on their part, if they faithfully honour his bills, however often he may present them, they conscientiously fulfil to their Sovereign, to Him, to their Country, and to their Oath, the important duty which they have sworn in secrecy to perform.

Having concluded the above outline of the relative responsibility of the Lieutenant Governor and his Executive Council, as it regards His Majesty's Colonies in general, it may be observed with respect to this Province in particular, that when His Majesty, by conquest, first obtained possession of the Canadas, the Government thereof devolved upon the Military Commander, until by an Act passed in the 14th year of George III, a Council was appointed "for the affairs of the Province of Quebec, to consist of such persons resident therein (not exceeding twenty-three nor less than seventeen) as His Majesty, His Heirs and Successors, shall

be pleased to appoint, which Council so appointed and nominated, or the major part thereof, shall have power and authority to make ordinances for the peace, welfare, and good government of the said Province, *with the consent of His Majesty's Governor*."

This power of the Council was further restricted by certain important limitations, specified in clauses 13, 14, 15, 16, and 17, of the said Act; however, in the year 1791, a new Act was passed, commonly called the Constitutional Act, because it settled the constitution of the Canadas, which were then divided into the Upper and Lower Provinces.

By this Act, the Military domination of the General and his Council was changed for a new and better system; and as evidently both could not exist together, the very first clause in the Act declared—"That so much of the late Act (14th Geo. III.) as in any manner relates to the appointment of a council for the affairs of the said Province of Quebec, or to the power given by the said Act to the said council, or to the major part of them, to make ordinances for the peace, welfare, and good government of the said Province, with the consent of His Majesty's Governor, Lieutenant-Governor, or Commander-in-Chief for the time being, shall be, and the same is REPEALED."

The Act then proceeds to state, "That there shall be within each of the said Provinces respectively, a Legislative Council and an Assembly," the duties and privileges of which are minutely declared in thirty-three consecutive clauses; but in no part of the said Act is an Executive Council directly or indirectly created; nevertheless, a vestige of the ancient one is for the purpose of a court of Appeal, (vide clause 34) recognised, with an expression which seemed to intimate, that an efficient Executive Council would very shortly be created.

For instance, in section 38, the Gover-

nor is by authority of His Majesty's Government, and with the advice of the Executive Council, "empowered to erect Parsonages and Rectories," but in section 39 no mention "whatever is made of the Executive Council, but on the contrary, it is declared, that the Governor or Lieutenant Governor, or person administering the Government, should present the incumbent "to every such Parsonage or Rectory."

In the fifty clauses of this Act in question, the Executive Council, which in section 34 is merely described as "such Executive Council as shall be appointed by His Majesty," is scarcely mentioned, and as regards even its existence, the most liberal construction which can possibly be put upon the said Act only amounts to this—"That as an Executive Council was evidently intended to exist, the remnant of the old one ought not to be deemed totally extinct until its successor was appointed.

However, this latent intention of His Majesty to create a Council for each of the Provinces of His Canadian dominions, was soon clearly divulged in a most important document, commonly called "*the King's Instructions*," in which an Executive Council was regularly constituted and declared as follows:—

"Whereas, we have thought fit that there should be an Executive Council for assisting you, or the Lieutenant Governor, or Person administering the Government of the said Province of Upper Canada for the time being, we do by these presents nominate and appoint the under-mentioned persons to be of the Executive Council of our said Province of Upper Canada," &c. &c. &c.

In subsequent clauses it was equally precisely defined upon what affairs of the Province the Lieutenant Governor was to act, "*with the advice of the Executive Council*," but with the view distinctly to prevent the new Council being what the old one had been (which indeed under the

new constitution was utterly impossible,) in short, to set that question at rest for ever, it was declared in section 8, "that to the end that our said Executive Council may be assisting to you in all affairs relating to our service, you are to communicate to them *such and so many* of our instructions *wherein their advice is mentioned to be requisite*, and likewise all such others from time to time as you SHALL FIND CONVENIENT for our service to be imparted to them."

The Lieutenant Governor having now transmitted to the Executive Council his opinion of their duties, in contradistinction to that contained in their communication to him of yesterday's date, will not express the feelings of regret with which, under a heavy pressure of business, he unexpectedly received a document of so unusual a nature, from Gentlemen upon whom he had only recently placed his implicit and unqualified reliance.

But he feels it incumbent upon him frankly and explicitly to state, that to the opinions they have expressed, he can never subscribe—on the contrary, that so long as he shall continue to be Lieutenant Governor of this Province, he will never allow his Executive Council officially to assume that heavy responsibility which he owes to his Sovereign, as well as to the people of this Province, to whom he has solemnly pledged himself "*to maintain the happy Constitution of this country inviolate, but cautiously, yet effectually to correct all real grievances.*"

The Lieutenant Governor maintains that the responsibility to the people (who are already represented by their House of Assembly,) which the Council assume, is unconstitutional,—that it is the duty of the Council to serve *him*, not *them*; and that if upon so vital a principle they persist in a contrary opinion, he foresees embarrassments of a most serious nature—for

as power and responsibility must, in common justice, be inseparably connected with each other, it is evident to the Lieutenant Governor, that if the Council were once to be permitted to assume the *latter*, they would immediately, as their right, demand the *former*; in which case, if the interests of the people should be neglected, to whom could they look for redress? For in the confusion between the Governor, and an oligarchy composed of a few dominant families, shielded by secrecy, would not all tangible responsibility have vanished?

The Council cannot have forgotten, that previous to their first meeting in the Council Chamber, which happened only a few weeks ago, the Lieutenant Governor had assured them in a note, (which was even publicly read in the House of Assembly) that although he had no preliminary conditions to accede to, or to require, it was his intention to treat them with implicit confidence; and the council must also remember how willingly they approved of the very first suggestion he made to them, namely, that no important business should be commenced in council, until they as well as the Lieutenant Governor himself, had become mutually acquainted with their respective duties.

The Lieutenant Governor assures the council, that his estimation of their talents and integrity, as well as his personal regard for them, remain unshaken, and that he is not insensible of the difficulties to which he will be exposed, should they deem it necessary to leave him. At the same time, should they be of opinion that the oath they have taken requires them to retire from his confidence, rather than from the principles they have avowed, he begs that on his account they will not for a moment hesitate to do so.

Government House,
Toronto, March 5, 1836. }

ADDRESS OF THE COMMON COUNCIL OF THE CITY OF TORONTO.

To His Excellency SIR FRANCIS BOND HEAD,
K. C. H., &c. &c. &c.

MAY IT PLEASE YOUR EXCELLENCY :

We, His Majesty's dutiful and loyal subjects the Mayor, Aldermen and Commonalty of the City of Toronto; most respectfully beg leave to state, that at the present most difficult and important era in the history of this Province, when this Council had fondly hoped that the appointment of Your Excellency to the government of this country, with the accession to the Executive Council appointed for the affairs thereof of gentlemen of integrity and talent, known to possess liberal constitutional principles, would have secured to its inhabitants that wise, just, and liberal policy so imperiously demanded, to strengthen the bonds of union between the Mother Country and the Colony; this Council have with extreme regret and surprise witnessed their just anticipation destroyed by the dissolution of the late Executive Council and the appointment of another in their stead, composed of gentlemen who, however worthy in their individual private capacity, are incapable from their well known political views of giving satisfaction to the people, and that this Council, as the representatives of the inhabitants of the capital of Upper Canada (from this as well as other causes not necessary to be here explained on account of their general notoriety,) have no confidence whatever in the present Provincial administration, nor deeming them competent to advise with the Representative of our Most Gracious Sovereign upon the peace, welfare, and prosperity of the Province.

We therefore most humbly pray Your Excellency to be pleased to dismiss Your present advisers, and call to Your Council, gentlemen possessing the public confidence, as the only measure in the opinion of this Council calculated to insure the tranquillity of the Province at the present crisis.

HIS EXCELLENCY'S REPLY.

Mr. MAYOR and GENTLEMEN:—The particular interest which I take in the welfare of this Capital, of which I am myself an inhabitant, induces me to reply at some length to the address I have just received from you, in which you state,

1st.—That you have no confidence in what

you term "the present *Provincial Administration*," and

2ndly.—That you beg leave to name for me, other individuals for that station.

With respect to a "*Provincial Administration*," although no such power exists in this or any other colony of the British Empire, I may remark, that very shortly after the late addition to the Executive Council, I observed that great efforts were making to delude and persuade the public mind that the new Council were entitled to claim the responsibility, power, and patronage of the Lieutenant Governor, and that such an arrangement would be highly advantageous to the people.

Finding that this new theory was rapidly gaining ground, I resolved to offer it no secret opposition; nor in any way to exert my influence to oppose it; but I determined the very first time it should come well within my reach, that I would drag it into day light, in order that it might be openly, fairly, and constitutionally discussed.

From several places I subsequently received addresses on the subject, which I did not deem it advisable to notice; but to my astonishment there suddenly appeared from a quarter from which I certainly least expected it, namely, from the Executive Council itself, a document (a copy of which had been inscribed in the Minutes of the Council, signed by all the six Councillors,) openly declaring that what had secretly been promulgated respecting the powers of the Executive Council, was actually the law of the land!

The question being fairly before me, I deliberately opposed it—accepted the resignation of the six Councillors, and at the request of the Assembly I laid before that House the communication I had received from the Council, with my reply.

The subject was thus formally brought before the public, and having performed this duty, I felt comparatively indifferent as to the result; for if the power and patronage of this Province, which have hitherto been invested in the Lieut. Governor, really belong to his Council, I consider that without reluctance they ought at once to be delivered up and secured to them.

The House of Assembly, however, cannot alter the Constitutional Act of this Province—neither can I; and as regards popular meetings, I need hardly observe, that if the inhabitants of the whole Province were simulta-

neously to petition me to alter a single letter of that solemn Act, I have neither power nor inclination to do so.

If it should prove that the practice which has hitherto been pursued is erroneous, I will not for a moment hesitate to acknowledge it; and in that case, I should feel it my duty at once to recall to my Council the six members who have resigned; but I cannot be blind to the fact, that the Constitutional Act which is open to every body, does not create any Executive Council at all.

The members of the late Council rest their claims very nearly on the following grounds:

1st. That the responsibility they assume, being a popular opinion daily increasing, is consequently the law of the land; and

2nd. That though the powers they acquire are no where expressed in the Constitutional Act, they were evidently intended to have been inserted.

I conceive that these arguments do not even require to be refuted; and with respect to what Genl. Simcoe, or any other Governor may have asserted, I must also be permitted to assert, that the rights, liberties, and property of the inhabitants of this Province, would be insecure indeed, if they rested on any such declarations.

The Constitution of this Province is the sacred charter of the land; and it is no less my duty, than the interests of its inhabitants, that I should firmly maintain it, as I ever will, inviolate.

If that charter constitutes a "Provincial Ministry," it need only be shewn to me, to be secured; but I deliberately repeat that it contains the creation of no such a power, and in my opinion, were it to be now created, it would be productive of the most vicious effects; for if the power and patronage of the Crown were to be delivered over to a tribunal

sworn to secrecy, they would very soon fall into the hands of a few metropolitan families who might possibly promote their own views, to the rejection of the interests of the distant Counties: whereas while these powers continue invested in the individual appointed by His Majesty to be the Lieutenant Governor of this Province, he (being a stranger) can have neither interest nor inducement to abuse them.

No one can be more anxious than I am, that this plain constitutional question should be gravely and calmly discussed, for it will be impossible for me to attempt to correct the grievances of the country, until I can prevail upon the Legislature to follow me cheerfully in the noble object we have in view; and I certainly do feel most deeply, that, for the sake of the people, those who are invested with power ought manfully to determine to lay aside all private feelings—to forgive and forget all political animosity—and to allow His Majesty's wishes, and my instructions, to be promptly executed.

With respect to the want of confidence you express in the Council I have just selected, I will only observe, that in my judgment, they appear to be sensible, steady men of business, of high moral worth; and I cannot but recollect, that one of these gentlemen was, only a few weeks ago, actually the Mayor of your own City, selected by yourselves as being peculiarly entitled to that public confidence which you now declare is denied to him.

With this moral before your minds, you surely cannot but admit, what a political tempest would continually exist—how the interests of the farmer would be blighted, were the power and patronage of this thinly peopled Province to be transferred from His Majesty's Lieutenant Governor into the hands of what you term a "Provincial Ministry" at Toronto.

ADDRESS FROM A PUBLIC MEETING HELD IN THE CITY HALL.

To His Excellency SIR FRANCIS BOND HEAD,
K. C. H. &c. &c. &c.

MAY IT PLEASE YOUR EXCELLENCY:

We, His Majesty's dutiful and loyal subjects, the Inhabitants of the City of Toronto, assembled under the authority of the Mayor of the City, beg respectfully to submit to Your Excellency this our Address, containing the expression of our sentiments and feelings in reference to the late changes in the Executive Council, and of the opinions which have been expressed by your Excellency as to the nature of the Constitution of this Province:

That Colonel Simcoe, the first as well as the ablest and most enlightened Lieutenant Governor of this Province, who was a Member of the Parliament of Great Britain when the Statute 31st Geo. 3, chap. 31, commonly called the Constitutional Act, was passed, was the bearer of that Act to this Colony and was authorised undoubtedly by His Majesty's Government to declare to his faithful subjects in this Province, the nature of the Constitution, then about to be put into operation for their benefit, and who assured the people of this Province from the Throne, on

the opening of the first session of the Provincial Parliament that the said Act had "established the *British Constitution*, and all the forms which secure and maintain it in this distant country," and "that the wisdom and beneficence of our most gracious Sovereign, and the British Parliament has been eminently proved, not only in imparting to us the same form of government, but also in securing the benefits of it by the many provisions that guard that memorable Act, so that the blessings of an invaluable Constitution thus protected and amplified, they might hope would be extended to the remotest posterity;" and that the same Governor upon closing that session specially enjoined upon the members of the Legislature from the Throne to explain to the people of the country, "that this Province was singularly blest, not with a mutilated Constitution, but with a Constitution which has stood the test of experience and was the very image and transcript of that of Great Britain."

That it is an essential and inalienable feature of the British Constitution thus assured to us; that the King shall be assisted in all the affairs of Government by the advice of known and responsible Councillors and Officers who possess the confidence of the people, and of the majority of their Representatives; and that our fellow subjects in the United Kingdom would indignantly resent any attempt to deprive them of this part of their Constitution, as an infringement upon their most sacred rights and liberties, and a step taken to degrade them to the condition of slaves.

That the recent appointment by Your Excellency of the Hon'ble. John Rolph, Robert Baldwin, and John Henry Dunn as Executive Councillors gave universal gladness and satisfaction throughout the Province, those gentlemen having been long known, beloved and respected for the talents, acquirements and virtues which adorn their characters, the liberal and patriotic principles that they entertain, and the important services which they have respectively rendered to the people of this Province, and that the selection of them by Your Excellency as your advisers disposed His Majesty's subjects to hope that a new and happy era had at length arrived in the history of this Province.

That we have learned with surprise and sorrow that those gentlemen, together with the former members of Your Excellency's Council, have found themselves under the

necessity of resigning their seats, and that Your Excellency appears to us, to have taken offence for no other reason than the respectful expression of an opinion in favour of the Government being conducted on the acknowledged principles of the British Constitution; an opinion supported by unanswerable arguments, and which they were bound by every obligation of honour and duty as faithful Councillors to express to Your Excellency.

That our most sincere respect and gratitude are due to those gentlemen and their late colleagues in Your Excellency's Council, for the noble efforts which they made in the honourable and upright discharge of their duties, to secure to the people of this Province the practical benefit and faithful application of Constitutional principles of the highest importance to their liberty and prosperity; and that we are solemnly called upon at such a crisis to declare our firm and unalterable determination to resist every attempt to *mutilate* and deform our Constitution by the denial of those principles, or the refusal of the full benefit and practical operation of them, and that the people of this Province will never, in our humble opinion, be content with a system that is only a mockery of a free and *responsible* Government.

That we feel it our bounden duty to declare to Your Excellency, that the gentlemen whom Your Excellency has called to your Council, since the resignation of your late Council, do not in any degree possess the confidence of the people of Upper Canada.

We further humbly express our disappointment and regret at the remarks which Your Excellency has, by evil and unknown advisers, been induced to animadvert upon the circumstances under which Your Excellency caused your late Council to resign; and that respect which it is equally our duty and inclination to pay to the Representative of our Most Gracious Sovereign, forbids our declaring on this painful occasion any other feeling than that of an earnest hope that the persons, whoever they may be, who have been guilty of such an abuse of Your Excellency's confidence may be forever discarded by Your Excellency.

In conclusion, we beg leave to state to Your Excellency, that as subjects of the British Empire we claim all the rights and privileges of the British Constitution, and as subjects of a British Colony possessing the powers of self-government given to it by the Parent State, we claim our right that the Repre-

representative of the Crown shall be advised in all our affairs by men known to, and possessing the confidence of, the people; and as the true friends of His Majesty's Government, and to the permanency of our connexion with the Parent State we earnestly entreat Your Excellency to regard our opinions and remonstrances (firmly though we hope respectfully expressed) and to adopt measures to calm the present extraordinary state of public excitement, aggravated by the high hopes created in the public mind by the removal of Sir John Colborne, and the appointment of Your Excellency to the head of the administration.

By order of the Meeting.

(Signed)

T. D. MORRISON, MAYOR,

Chairman.

JAMES LESSLIE,

Secretary.

Toronto, March 25th, 1836.

HIS EXCELLENCY'S REPLY.

GENTLEMEN,—Having reason to believe that the meeting from which you are a deputation, was composed principally of the industrious classes, and being persuaded that the liberal principle of the British Government, in whatever climate it may exist, is the welfare and happiness of the people, I shall make it my duty to reply to your address with as much attention as if it had proceeded from either of the branches of the Legislature, although I shall express myself in plainer and more homely language.

1st. I have no wish to deny "that Colonel Simcoe was the first as well as the ablest and most enlightened Governor of this Province— that he was a Member of Parliament when the Statute 31st Geo. 3, chap. 31, commonly called the Constitutional Act, was passed; and that he was the bearer of that Act to this Colony;" but I ask you, can this possibly alter the solemn Act itself? for surely your own plain good sense will tell you, that Colonel Simcoe had no more power, either during his voyage or on his arrival here, to alter the Charter committed to his charge, than I had power to alter the Instructions which I lately delivered from His Majesty to both Houses of your Legislature; and so, if Colonel Simcoe, instead of saying that the

Constitution of this Province "was the very image and transcript of that of Great Britain," had thought proper to compare it to the arbitrary Governments of Russia or Constantinople, it would in no way have injured your liberties, or have altered one single letter of the written Charter of your land.

2d. I have no wish to deny "that in the British Constitution the King is assisted in all the affairs of Government, by the advice of known and responsible Councillors, and Officers who possess the confidence of the people," and who form His Majesty's Cabinet; but Colonel Simcoe, who you yourselves state "was authorized undoubtedly by His Majesty's Government to declare to his faithful subjects in this Province the nature of the Constitution," created no such Cabinet, nor any cabinet at all; and from his day, down to the present hour, there has never existed any ministry in the Colony, except the Governor, who is himself the responsible minister of the Crown.

Supposing it were to be argued that four-fifths of the members of your House of Assembly ought immediately to be dismissed, because, in proportion to the population of Great Britain and Ireland, there exist five times as many members here as in the English House of Commons, would you not think it very irrational that this noble but thinly-peopled Colony should be made "the exact image and transcript" of the British Constitution merely because Colonel Simcoe happened to use these words? Would you not immediately appeal to your Constitutional Act on the subject?

Would you deem it just that a young rising Province like this, should be afflicted with the same expensive machinery requisite for the Government of the Mother Country, 4,000 miles off?

Would you not very fairly argue, that as the whole population of this immense country exceeds only by one-third that of the single Parish of St. Marylebone in London—and as the whole of its revenue does not equal the private fortune of many an English Commoner, it would be unreasonable to expect that the people of this Province should be ruined in vainly attempting to be the "exact image and transcript" of the British Constitution.

But the Constitution which His Britannic Majesty George the Third granted to this Province ordained no such absurdities; and

you have only to read that Constitution, to see quite clearly the truth of this assertion.

The yeomen and industrious classes of Upper Canada should never allow a single letter to be subtracted from, or added to, this great Charter of their liberties; for if once they permit it to be mutilated, or what may be termed improved, they and their children become instantly liable to find themselves suddenly deprived of their property, and, what is better than all property, of their freedom and independence.

By this Act, you are of course aware that a House of Assembly, a Legislative Council, and a Lieutenant Governor are appointed; but it creates no Executive Council: and if people tell you that it does, read the Act, and you will see the contrary.

Now as regards the House of Assembly, you must know, that being your Representatives, they are of course answerable to you for their conduct; and as regards the Lieutenant Governor, I publicly declare to you, that I am liable to dismissal in case I should neglect your interests.

But, contrary to the practice which has existed in this or any other British colony,—contrary to Colonel Simcoe's practice, or to the practice of any other Lieutenant-Governor who has ever been stationed in this Province,—it has suddenly been demanded of me that the Executive Council are to be responsible for my acts; and, because I have refused, at a moment's warning, to surrender that responsibility which I owe to the people,—whose real interests I will never abandon,—I find that every possible political effort is now making to blind the public mind, and to irritate its most violent passions.

But I calmly ask, what can be the secret reason of all this? Is it usual for one person to insist on bearing another person's blame? or for a body of men to insist on receiving the punishment incurred by an individual superior to them in station? Why therefore should my Council, whose valuable advice, if I were not to be forced upon me, I should be most anxious to receive, be required to demand from me my responsibility? What reason can exist for attempting to deprive me of the only consolation which supports any honest man in an arduous duty,—namely, the reflection that he is ready to atone for every error he commits, and that he is subject to arraignment if he offends? Why should it be declared that responsibility would be more

perfect with my Council than with me? Are they purer from party feelings, or less entangled with their family connections, than I am? How can Gentlemen who have sworn to be dumb, be responsible to the yeomanry and people of this rising Province? How could they possibly undertake to administer this Government, with mouths sealed by an oath which forbids them to disclose, to any one, the valuable advice they may conscientiously impart to me?

The answer to these questions is very short. The political party which demand responsibility for my Council know perfectly well that the power and patronage of the Crown are attached to it; and it is too evident, that if they could but obtain this marrow, the empty bone of contention,—namely, responsibility to the people,—they would soon be too happy to throw away; and from that fatal moment would all those who nobly appreciate liberty, who have property to lose, and who have children to think of, deeply lament, that they had listened to sophistry, had been frightened by clamour, and had deserted the Representative of our Gracious Sovereign to seek British justice from his mute but confidential advisers. This supposition, however, I will not permit to be realized; for never will I surrender the serious responsibility I owe to the people of this Province; and I have that reliance in their honesty—I have lived so intimately with the yeomanry and industrious classes of our revered Mother Country, that I well know, the more I am assailed by faction, the stronger will be their loyal support,—and that if intimidation be continued, it will soon be made to recoil upon those who shall presume to have recourse to it.

The Grievances of this Province must be corrected—impartial justice must be administered: The People have asked for it— their Sovereign has ordained it—I am here to execute his gracious commands—delay will only increase impatience. Those, however, who have long lived upon agitation already, too clearly see their danger; and, with surprising alacrity, they are now taking every possible measure to prevent me from rooting up the tree of abuse, because they have built and feathered their nests in its branches. They asked, however, for the operation, and to amputation they must very shortly submit; for "what's worth doing should always be done well."

I have come here for the avowed purpose

of Reform, but I am not an Agitator; and, by command of our gracious Sovereign, I will maintain the constitutional liberties of his subjects in this Province, and at the same time encourage, to the utmost of my power, internal wealth, agriculture, commerce, peace and tranquillity.

With respect to my late Council, I regret, quite as much as you can do, their resignation; but, before they took the oath of secrecy, (which appears to my judgment to be an oath of non-responsibility to the people,) I addressed to them a note which clearly forewarned them, as follows:—"I shall rely on your giving me your unbiassed opinion on all subjects respecting which I may feel it advisable to require it."

Three weeks after they had joined the Council, they altogether, in a body, disputed this arrangement; and accordingly we parted on a matter of dry-law.

No one can deny that my view of the sub-

ject agrees with the practice of Colonel Simcoe, and of all the succeeding Governors of this Province down to the day of Sir John Colborne's departure; but that is no proof whatever that the practice has been right,—and, if you would prefer to form your own opinion of the law, read the Constitutional Act.

With respect to my new Council, whose high moral character I cannot but respect, I shall consult them as unreservedly as I had promised to consult those who have just resigned; and, if any competent tribunal shall pronounce that they are responsible for my conduct, no one will be a greater gainer than myself by the decision.

In the meanwhile I shall deal openly and mildly with all parties; and I trust that I can give you no better proof of my own intention to be governed by reason than the explanation I have just offered to yourselves, the citizens and industrious classes who attended the Toronto meeting.

ADDRESS OF THE HOUSE OF ASSEMBLY ON THE NEW APPOINTMENTS TO THE EXECUTIVE COUNCIL.

To His Excellency SIR FRANCIS BOND HEAD,
K. C. H. &c. &c. &c.

MAY IT PLEASE YOUR EXCELLENCY:

We, His Majesty's dutiful and loyal subjects, the Commons of Upper Canada in Provincial Parliament assembled, humbly beg leave to inform Your Excellency, that we have with deep regret learned that Your Excellency has been induced to cause the late Executive Council to tender their resignations to seats in the Council under circumstances which still enabled Your Excellency to declare that your estimation of their talents and integrity, as well as your personal regard for them, remained unchanged; and that under the present excited state of public feeling in this Colony, occasioned by the recent proceedings between Your Excellency and the late Executive Council, and the appointment of a new Council (as appears by the Gazette Extraordinary of Monday 14th March instant,) composed of Robert B. Sullivan, John Elmsley, Augustus Baldwin, and William Allan, Esqrs., this House feel it to be a duty they owe alike to His Most Gracious Majesty and to the people of this Colony, whose representatives they are, to avail themselves of the first opportunity to declare at once to Your Excellency the entire want of confidence of this House in

the last mentioned appointments, and deep regret that Your Excellency consented to accept the tender of resignation of the late Council, and humbly request Your Excellency to take immediate steps to remove the present Council from such their situation.

(Signed)

MARSHALL S BIDWELL,

SPEAKER

Commons' House of Assembly, }
March 26th, 1836. }

HIS EXCELLENCY'S REPLY.

GENTLEMEN,—In reply to your Address, assure you that I very sincerely regret that the House of Assembly should entertain want of confidence in the Council I appointe on the 14th instant, as I faithfully declare, that under the circumstances in which I was placed, I made every exertion to select gentlemen that I thought would be most acceptable to the House and to the people.

I can assure the House, that no one laboured more than I did the resignation the late Council, three of the members which, namely, Messrs. Dunn, Baldwin, and Rolph, I had myself especially selected.

With respect to the request, "that I should take immediate steps to remove the present

Council from such their situation," I might say, that I had hoped the House would have refrained from any such decided expression of its opinion on the subject, until it had received the report of the Committee to whom the subject was referred, and for whom the Government Office is now occupied in furnishing the documentary evidence they desire; but I am unwilling to discuss that question.

With respect to the "present excited state of public feeling in this Colony, occasioned by the recent proceedings," I feel guiltless of being its cause, inasmuch as to the House of Assembly, as well as to people of all classes who have addressed me on the subject, I have done every thing in my power to assure them of my desire that the question should be calmly settled, according to the spirit of the Constitution, and, consequently, according to the interests of the people.

I can assure the House, that far from entertaining any determination to maintain my opinion, merely because I have uttered it, I should be at this moment happy to abandon it, if the duty I owed to my Sovereign and to the people could permit me. My mind invites rather than repels conviction; and hoping that the House will, on a subject which must surely occupy the attention of the whole country, meet me with a desire to be governed by reason and truth, I will concisely, once again, submit to it my view of the case.

From the time of General Simcoe to the departure of Sir John Colborne, the practice of every Lieutenant Governor of this Province has been, to consider their Executive Councillors as advisers, sworn not to respond, or in other words, not to be responsible to the people.

On my arrival here, finding this had been the practice, I also pursued it; but on preparing to add three popular members to the Council, one of them, Mr. R. Baldwin, with the sincerity which forms his character, tells me he thinks my Council, in spite of their oath, should respond to the people.

To this project I refuse to accede—a long

argument ensues—and at last I write to Mr. R. Baldwin a note, of which the following is an extract:—

"I shall rely on your giving me your un-biassed opinion on all subjects respecting which I may feel it advisable to require it."

After receiving this distinct statement of my intention *not* to alter the old practice, Mr. R. Baldwin sends a copy of the same to Dr. Rolph and to Mr. Dunn, and they then, knowing my sentiments, all three join my Council.

After sitting in the Council three weeks, Mr. Baldwin's conscientious opinion again appears; convinces the other members, old as well as new; and the subject, in a more formal manner, is officially brought before me, with a request, that, if I disapprove of the opinion, the Council may be allowed to address the people. On referring to the Constitutional Act, I am unable to comprehend their reasoning, and we consequently part on the same good terms on which we met,—I retaining my unaltered opinion, while at least four of the Council have (since my arrival) changed theirs.

The whole correspondence I forward to the House of Assembly, with an earnest desire, that, regardless of my opinion, the question may be fairly discussed.

In the station I hold, I form one branch, out of three, of the Legislature, and I claim for myself freedom of thought as firmly as I wish that the other two branches should retain the same privilege.

If I should see myself in the wrong, I will at once acknowledge my error; but, if I should feel it my duty to maintain my opinion, the House must know that there exists a constitutional tribunal competent to award its decision: and to that tribunal I am ever ready most respectfully to bow.

To appeal to the people is unconstitutional as well as unwise—to appeal to their passions is wrong;—but on the good sense of the House of Assembly I have ever shown a disposition to rely, and to their good sense I still confidently appeal.