SELE
BRI

The World's Classics

CCXV

SELECTED SPEECHES AND DOCUMENTS ON BRITISH COLONIAL POLICY

1763—1917

IN TWO VOLUMES

VOL. I

'Selected Speeches and Documents on British Colonial Policy' was first published in 'The World's Classics' in 1918.

SELECTED SPEECHES AND DOCUMENTS ON BRITISH COLONIAL POLICY

1763—1917

EDITED BY
ARTHUR BERRIEDALE KEITH,
D.C.L., D.LITT.

IN TWO VOLUMES
VOL. I

HUMPHREY MILFORD
OXFORD UNIVERSITY PRESS
LONDON EDINBURGH GLASGOW
NEW YORK TORONTO MELBOURNE BOMBAY

PREFACE

THE main object of these volumes is to trace by a series of speeches and documents the growth of the system of responsible government in the British Colonies, the gradual formation of powerful federations from groups of separate and rival colonies, the development of their local autonomy, and the process by which schemes of imperial federation have been laid aside in favour of the conception of the equal partnership in the Empire of units retaining and developing their legislative and administrative independence, but firmly resolved by frequent and frank consultation to co-operate in the carrying into effect of their common ideals of freedom, justice, and peaceful economic development.

For a full understanding, however, of the growth of responsible government it is necessary to examine the origin of representative government in Canada. The Royal Proclamation of 1763, had it ever come into effective operation, would have provided Canada with a constitution similar to that of the New England colonies. But the French inhabitants of the territories ceded by their King, unaccustomed to representative institutions, were

bitterly opposed to the introduction of a political system which carried with it the most grave disabilities on Roman Catholics, and the growing bitterness of relations between the imperial and the local legislatures in America rendered the Imperial Government unwilling to see representative government effectively established in Canada. The Quebec Act of 1774, therefore, revoked the promise of an Assembly made in 1763, and placed power in the hands of a nominee Council. The gratification caused to the French was, however, disproportionate to the indignation created among the English settlers, who petitioned earnestly for the revocation of the Act, while the New England States regarded the action of the King and Parliament as a menace to themselves, and the Declaration of Independence includes in its charges that of "abolishing the free system of English laws in a neighbouring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies." Concession was impracticable in the period of war, but the maintenance of a non-representative system became still less possible when the termination of that war saw a large increase of the population of Canada as the result of the influx of loyalists from the United States, and representative government was conferred in 1791, simultaneously with the division of the territory into the two provinces of Upper and Lower Canada, the former subject to English, the latter to French civil law.

Though the Constitutional Act of 1791 con-

ceded representative government, the British Administration were convinced by the events of the revolt of the United States that imperial control must be firmly maintained: hence nearly fifty years of strife between the executive and the legislature, complicated by differences of interest between the two provinces. For both problems Lord Durham essayed a solution. He was the last man to underrate the importance of imperial control, but he held that in the past imperial interests had been misconceived, and that it was perfectly possible, by the concession to the local legislature of the control of the executive, to permit the colonies to enjoy full autonomy in domestic concerns, while preserving to the Imperial Government supremacy over all matters of real imperial interest. The advantages of a plan which relieved Downing Street of the painful business of constant interference in local affairs which it could not understand attracted successive Colonial Secretaries: the system by 1855 was applied to all the British colonies in Eastern North America, in 1855–6 it became effective in New Zealand, New South Wales, Victoria, Tasmania, and South Australia; it was accorded to Queensland when that colony was carved out of New South Wales in 1859, and extended to Western Australia in 1890, as soon as the European population was sufficient to permit of its application. Resort was had to this expedient in the Cape of Good Hope in 1872, and, somewhat prematurely, in Natal in 1893; and the success of the grant of responsible government in Canada was the direct justification for the concession of this form of administration to

the Transvaal in 1906 and to the Orange River Colony in 1907. Appropriately enough this year, which saw the extension of the principle of responsible government to the only remaining British Crown Colony with a large European population, witnessed the creation of a new term to designate such a Colony, the Colonial Conference of that year adopting the name Dominion as the technical designation of such a territory.

As complete as was for the time being Lord Durham's solution of the difficulties arising from the independence of the executive government, was his failure to devise a solution of the difficulties arising from the jealousy of the French and British provinces. The plan of union was based on the fundamental miscalculation that the French element in the Canadian population as such was bound to gradual extinction. The transfer, however, of responsibility for local affairs to the Canadians themselves minimised the dangers caused by this miscalculation, and the formation of the federation of Canada in 1867 provided a means for the free development of both the British and the French elements of the population. Federation, however, not merely solved an internal problem of the first magnitude: it greatly strengthened the position of the British colonies in North America in regard to the United States, in which feeling against the United Kingdom ran high as a result of the attitude of a section of the British and Canadian public towards the War of Secession, and it enabled Canada to undertake the control of the vast areas in the west which were still in the hands of the Hudson's Bay Company. The impor-

tance of the external factor in the formation of the Canadian federation can best be gauged when it is remembered that it was not until 1900 that the colonies of Australia found it possible, despite the many obvious attractions of federation, to agree to the establishment of the Commonwealth, and that the final movement which produced federation was in no small degree influenced by the recognition of the emergence of a new great Power in the Pacific. Federation seemed also an ideal solution for the difficulties of South Africa, with its division of races, but the effort to frame a federal constitution failed for causes in the main economic, producing instead a unified constitution.

The growth in importance of the colonies, in large measure as the result of federation, has coincided with a steady development of the conception of local autonomy, until in all matters in which no imperial interests are involved the Governor of a Dominion occupies towards the Ministry a position closely analogous to that of the King in relation to the Cabinet of the United Kingdom. The parallelism of the two positions is not, however, complete. The power of the Crown is more restricted than that of the Governor, but its influence is far greater. The prestige of royalty, the long tenure of office by the sovereign, and the influence of tradition combine to secure for the King a degree of consideration and confidence from the Cabinet and the Prime Minister which is rarely accorded to any Governor of a Dominion by his Ministry. On the other hand, this relation

is rendered possible and maintained only by the rigid application of the rule that, save in the narrow sphere of the bestowal of honour, the King shall accept the advice of his Ministers in all matters of the exercise of his powers. In the Dominions no such rule has yet been accepted: even in matters wholly of internal interest the Governor may refuse ministerial advice if he thinks fit, provided that he can find other Ministers to accept office and to assume responsibility for his action *ex post facto*. The position is anomalous; it tends to make every Prime Minister chary of reposing full confidence in a Governor who may at some future time assume an attitude of antagonism towards him, and the inconveniences to which it may give rise are clearly illustrated by the case of the dispute between the Governor of Tasmania and his Ministers in 1914.

While the development of the internal autonomy of the Dominions, though it has naturally advanced far beyond the limits immediately contemplated by Lord Durham, has been in substantial accord with the principles laid down by him, yet events of the last seventy years have proved that a separation between local and imperial interests is impossible, and that in the long run the Imperial Government cannot undertake to exercise control over any steps taken by a Dominion Government within the bounds of its own territories, a principle strikingly illustrated by the case of the deportations of labour leaders from South Africa without warrant of law by the Union Government in 1914, as explained by Mr. Harcourt in the House of Commons on Febru-

ary 12, 1914. But, in addition, the war of 1914 has evoked a clear consciousness in the Dominions themselves that in the ultimate issue they cannot accept as permanent any position of subordination within the Empire, but must attain in theory and in effect a position equal with that of the United Kingdom. On the mode in which that position is to be attained no unanimity of view is yet apparent. One opinion, represented by Sir Joseph Ward at the Imperial Conference of 1911, and faintly echoed by Mr. Massey at the Imperial War Conference of 1917, contemplates the possibility of a federation for the limited purposes of foreign policy and naval defence only: the other opinion, which so far has found much wider support in Canada, Australia, South Africa, and Newfoundland, aims rather at securing a partnership of nations united by effective consultation, but not by legal bonds. Such a partnership has not of course as yet been effectively obtained. "Whatever we may say," General Smuts argued at the Conference of 1917, "and whatever we may think, we are subject provinces of Great Britain. That is the actual theory of the Constitution, and in many ways, which I need not specify to-day, that theory still permeates practice to some extent," and the same statesman made it clear that the two problems to be considered in the reconstruction after the war were the improvement of the status of the Dominions and the establishment of effective consultation, which indeed was strongly urged by Mr. Harcourt in 1912 before the outbreak of war had awakened the

Dominion Governments to the urgency of the problem.

General Smuts was careful to make it clear that the inferiority of the Dominions to the United Kingdom was much more serious in theory than in practice, but the inferiority exists and is substantial in character. In international law the British Empire forms a single unity, which is represented by the Imperial Crown acting on the advice of the Cabinet of the United Kingdom, which is responsible to the Parliament of the United Kingdom alone. The Parliaments of the Dominions are essentially subordinate legislatures: their legislation must respect the subject position of the Dominions, is limited to strictly territorial limits, is subject to disallowance by the Crown on the advice of the Imperial Government, and is liable to be overridden by imperial enactments. Save only in the case of certain classes of constitutional questions in Australia, an appeal lies from the decisions of their highest courts to the Judicial Committee of the Privy Council. The chief officer of the executive government is appointed by the King on the advice of the Imperial Government, and normally is not a native of the Dominion which he is selected to govern. In practice, of course, these marks of inferiority are largely neutralized. The Dominions, indeed, cannot make war or peace, conclude treaties, or accredit or receive ambassadors, but full control over all commercial treaties and effective representation of their interests abroad have been secured to them. Dominion legislation is rarely refused assent, or overridden, and then only in matters such

as merchant shipping in which Dominion and imperial interests are inextricably involved. The appeal to the Privy Council could be abolished if the Dominions were agreed in desiring its disappearance, and will doubtless disappear, unless effect is given to the alternative conception urged by Mr. Chamberlain in 1900 of the creation of a truly imperial court which would hear appeals from the United Kingdom also and on which the Dominions would be fully represented. The Governor has steadily tended to become a constitutional monarch, and his position could be deprived of any independent political authority if the Dominions so desired. It would be possible, therefore, and doubtless it is desirable, that these signs of a subject condition should disappear; but there remains for solution the real problem of devising a method by which the Dominions may share effectively in the control of foreign policy, without resort to federation, to which public opinion in the Dominions is in the main strongly opposed, and which is certainly not within the bounds of practical politics at the present time.

A. Berriedale Keith.

I.

1.
2.

3.

4.

5.
6.

7.

8.

9.

10.

11.

12.

CONTENTS

II. The Deadlock in Canada and the Grant of Responsible Government

III. Responsible Government in Australasia

IV. The Federation of Canada

V. The Commonwealth of Australia

I

THE ORIGIN OF REPRESENTATIVE GOVERNMENT IN CANADA

1. THE ROYAL PROCLAMATION OF OCTOBER 7, 1763

GEORGE R.

WHEREAS We have taken into our Royal Consideration the extensive and valuable Acquisitions in America, secured to our Crown by the late Definitive Treaty of Peace concluded at Paris, the 10th Day of February last; and being desirous that all our loving Subjects, as well of our Kingdom as of our Colonies in America, may avail themselves with all convenient Speed, of the great Benefits and Advantages which must accrue therefrom to their Commerce, Manufactures, and Navigation, We have thought fit, with the Advice of our Privy Council, to issue this our Royal Proclamation, hereby to publish and declare to all our loving Subjects, that we have, with the Advice of our Said Privy Council, granted our Letters Patent, under our Great Seal of Great Britain, to erect, within the Countries and Islands ceded and confirmed to Us by the said Treaty, Four distinct and separate Governments, styled and called by the Names of Quebec, East Florida, West Florida and Grenada, and limited and bounded as follows, viz.

First.—The Government of Quebec bounded on the Labrador Coast by the River St. John, and from thence by a Line drawn from the Head of that River through the Lake St. John, to the South End of the Lake Nipissim; from whence

the said Line, crossing the River St. Lawrence, and the Lake Champlain, in 45 Degrees of North Latitude, passes along the High Lands which divide the Rivers that empty themselves into the said River St. Lawrence from those which fall into the Sea; and also along the North Coast of the Baye des Chaleurs, and the Coast of the Gulph of St. Lawrence to Cape Rosieres, and from thence crossing the Mouth of the River St. Lawrence by the West End of the Island of Anticosti, terminates at the aforesaid River of St. John.

Secondly.—The Government of East Florida, bounded to the Westward by the Gulph of Mexico and the Apalachicola River; to the Northward by a Line drawn from that Part of the said River where the Chatahouchee and Flint Rivers meet, to the source of St. Mary's River, and by the course of the said River to the Atlantic Ocean; and to the Eastward and Southward by the Atlantic Ocean and the Gulph of Florida, including all Islands within Six Leagues of the Sea Coast.

Thirdly.—The Government of West Florida, bounded to the Southward by the Gulph of Mexico, including all Islands within Six Leagues of the Coast, from the River Apalachicola to Lake Pontchartrain; to the Westward by the said Lake, the Lake Maurepas, and the River Mississippi: to the Northward by a Line drawn due East from that Part of the River Mississippi which lies in 31 Degrees North Latitude, to the River Apalachicola or Chatahouchee; and to the Eastward by the said River.

Fourthly.—The Government of Grenada, comprehending the Island of that Name, together with

the Grenadines, and the Islands of Dominico, St. Vincent's and Tobago.

And to the End that the open and free Fishery of our Subjects may be extended to and carried on upon the Coast of Labrador, and the adjacent Islands, We have thought fit, with the Advice of our said Privy Council, to put all that Coast, from the River St. John's to Hudson's Streights, together with the Islands of Anticosti and Madelaine, and all other smaller Islands lying upon the said Coast, under the Care and Inspection of our Governor of Newfoundland.

We have also, with the Advice of our Privy Council, thought fit to annex the Islands of St. John's and Cape Breton, or Isle Royale, with the lesser Islands adjacent thereto, to our Government of Nova Scotia.

We have also, with the advice of our Privy Council aforesaid, annexed to our Province of Georgia all the Lands lying between the Rivers Alatamaha and St. Mary's.

And whereas it will greatly contribute to the speedy settling our said new Governments, that our loving Subjects should be informed of our Paternal care, for the Security of the Liberties and Properties of those who are and shall become Inhabitants thereof, We have thought fit to publish and declare, by this our Proclamation, that We have, in the Letters Patent under our Great Seal of Great Britain, by which the said Governments are constituted, given express Power and Direction to our Governors of our said Colonies respectively, that, so soon as the State and Circumstances of the said Colonies will admit thereof,

they shall, with the Advice and Consent of the Members of our Council, summon and call General Assemblies within the said Governments respectively, in such Manner and Form as is used and directed in those Colonies and Provinces in America which are under our immediate Government; and We have also given Power to the said Governors, with the Consent of our said Councils, and the Representatives of the People so to be summoned as aforesaid, to make, constitute, and ordain Laws, Statutes, and Ordinances for the Public Peace, Welfare, and good Government of our said Colonies, and of the People and Inhabitants thereof, as near as may be agreeable to the Laws of England, and under such Regulations and Restrictions as are used in other Colonies; and in the mean Time, and until such Assemblies can be called as aforesaid, all Persons inhabiting in or resorting to our said Colonies may confide in our Royal Protection for the Enjoyment of the Benefit of the Laws of our Realm of England; for which Purpose We have given Power under our Great Seal to the Governors of our said Colonies respectively to erect and constitute, with the Advice of our said Councils respectively, Courts of Judicature and Public Justice within our said Colonies for hearing and determining all Causes, as well Criminal as Civil, according to Law and Equity, and as near as may be agreeable to the Laws of England, with Liberty to all Persons who may think themselves aggrieved by the Sentences of such Courts, in all Civil Cases, to appeal, under the usual Limitations and Restrictions, to Us in our Privy Council.

We have also thought fit, with the advice of our Privy Council as aforesaid, to give unto the Governors and Councils of our said Three new Colonies upon the Continent, full Power and Authority to settle and agree with the Inhabitants of our said new Colonies or with any other Persons who shall resort thereto, for such Lands, Tenements and Hereditaments, as are now or hereafter shall be in our Power to dispose of; and them to grant to any such Person or Persons upon such Terms, and under such moderate Quit-Rents, Services and Acknowledgments, as have been appointed and settled in our other Colonies, and under such other Conditions as shall appear to us to be necessary and expedient for the Advantage of the Grantees, and the Improvement and Settlement of our said Colonies.

And whereas We are desirous, upon all occasions, to testify our Royal Sense and Approbation of the Conduct and Bravery of the Officers and Soldiers of our Armies, and to renew the same, We do hereby command and impower our Governors of our said Three new Colonies, and all other our Governors of our several Provinces on the Continent of North America, to grant without Fee or Reward, to such reduced Officers as have served in North America during the late War, and to such Private Soldiers as have been or shall be disbanded in America, and are actually residing there, and shall personally apply for the same, the following Quantities of Lands, subject, at the Expiration of Ten Years, to the same Quit-Rents as other Lands are subject to in the Province within which they are granted, as also

subject to the same Conditions of Cultivation and Improvement; viz.

To every Person having the Rank of a Field Officer	5,000 Acres.
To every Captain	3,000 Acres.
To every Subaltern or Staff Officer .	2,000 Acres.
To every Non-Commission Officer .	200 Acres.
To every Private Man . . .	50 Acres.

We do likewise authorize and require the Governors and Commanders in Chief of all our said Colonies upon the Continent of North America to grant the like Quantities of Land, and upon the same Conditions, to such reduced Officers of our Navy of like Rank as served on board our Ships of War in North America at the times of the Reduction of Louisbourg and Quebec in the late War, and who shall personally apply to our respective Governors for such Grants.

And whereas it is just and reasonable, and essential to our Interest, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds, —We do therefore, with the Advice of our Privy Council, declare it to be our Royal Will and Pleasure, that no Governor or Commander in Chief in any of our Colonies of Quebec, East Florida, or West Florida, do presume, upon any Pretence whatever, to grant Warrants of Survey, or pass any Patents for Lands beyond the Bounds of their

respective Governments, as described in their Commissions; as also that no Governor or Commander in Chief in any of our other Colonies or Plantations in America do presume for the Present, and until our further Pleasure be known, to grant Warrants of Survey, or pass Patents for any Lands beyond the Heads or Sources of any of the Rivers which fall into the Atlantic Ocean from the West and North West, or upon any Lands whatever, which, not having been ceded to or purchased by Us as aforesaid, are reserved to the said Indians, or any of them.

And We do further declare it to be Our Royal Will and Pleasure, for the Present as aforesaid, to reserve under our Sovereignty, Protection, and Dominion, for the use of the said Indians, all the Lands and Territories not included within the Limits of our said Three new Governments, or within the Limits of the Territory granted to the Hudson's Bay Company, as also all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North-West as aforesaid;

And We do hereby strictly forbid, on Pain of our Displeasure, all our loving Subjects from making any Purchases or Settlements whatever, or taking Possession of any of the Lands above reserved, without our especial Leave and Licence for that Purpose first obtained.

And We do further strictly enjoin and require all Persons whatever who have either wilfully or inadvertently seated themselves upon any Lands within the Countries above described, or upon any other Lands which, not having been ceded

to or purchased by Us, are still reserved to the said Indians as aforesaid forthwith to remove themselves from such Settlements.

And whereas great Frauds and Abuses have been committed in purchasing Lands of the Indians, to the great Prejudice of our Interests, and to the great Dissatisfaction of the said Indians; In order, therefore, to prevent such Irregularities for the Future, and to the end that the Indians may be convinced of our Justice and determined Resolution to remove all reasonable Cause of Discontent, We do, with the Advice of our Privy Council, strictly enjoin and require, that no private Person do presume to make any Purchase from the said Indians of any Lands reserved to the said Indians, within those Parts of our Colonies where We have thought proper to allow Settlement; but that, if at any Time any of the said Indians should be inclined to dispose of the said Lands, the same shall be Purchased only for Us, in our Name, at some public Meeting or Assembly of the said Indians, to be held for that Purpose by the Governor or Commander in Chief of our Colony respectively, within which they shall lie; and in case they shall lie within the Limits of any Proprietary Government, they shall be purchased only for the Use and in the Name of such Proprietaries, comformable to such Directions and Instructions as We or they shall think proper to give for that Purpose; And We do, by the Advice of our Privy Council, declare and enjoin, that the Trade with the said Indians shall be free and open to all our Subjects whatever, provided that every Person who may incline to Trade with the said

Indians do take out a Licence for carrying on such Trade from the Governor or Commander in Chief of any of our Colonies respectively where such Person shall reside, and also give Security to observe such Regulations as We shall at any time think fit, by ourselves or by our Commissaries to be appointed for this Purpose, to direct and appoint for the Benefit of the said Trade:

And We do hereby authorize, enjoin, and require the Governors and Commanders in Chief of all our Colonies respectively, as well those under our immediate Government as those under the Government and Direction of Proprietaries, to grant such Licences without Fee or Reward, taking especial Care to insert therein a Condition, that such Licence shall be void, and the Security forfeited in case the Person to whom the same is granted shall refuse or neglect to observe such Regulations as We shall think proper to prescribe as aforesaid.

And We do further expressly enjoin and require all Officers whatever, as well Military as those Employed in the Management and Direction of Indian Affairs, within the Territories reserved as aforesaid for the Use of the said Indians, to seize and apprehend all Persons whatever, who standing charged with Treason, Misprisions of Treason, Murders, or other Felonies or Misdemeanours, shall fly from Justice and take Refuge in the said Territory, and to send them under a proper Guard to the Colony where the Crime was committed of which they stand accused, in order to take their Trial for the same.

Given at our Court at St. James's the 7th Day of October 1763, in the Third Year of our Reign.

2. CONSIDERATIONS ON THE EXPEDIENCY OF PROCURING AN ACT OF PARLIAMENT FOR THE SETTLEMENT OF THE PROVINCE OF QUEBEC

(By Baron Maseres, afterwards Attorney-General of Quebec)

The difficulties that have arisen in the government of the province of Quebec, and which are likely still to occur in it, notwithstanding the best intentions of those who are entrusted by his Majesty with the administration of affairs there, are so many and so great that the Officers, whom his Majesty has been pleased of late to nominate to the principal departments in that government, cannot look upon them without the greatest uneasiness and apprehension, and despair of being able to overcome them without the assistance of an Act of Parliament to ground and justify their proceedings. Two nations are to be kept in peace and harmony, and moulded, as it were, into one, that are at present of opposite religions, ignorant of each other's language, and inclined in their affections to different systems of laws. The bulk of the inhabitants are hitherto either French from old France, or native Canadians, that speak only the French language, being, as it is thought, about ninety thousand souls, or, as the French represent it in their Memorial, ten thousand heads of families. The rest of the inhabitants are natives of Great Britain or Ireland, or of the British Dominions in

North America, and are at present only about six hundred souls; but, if the province is governed in such a manner as to give satisfaction to the inhabitants, it will probably every day increase in number by the accession of new settlers for the sake of trading and planting, so that in time they may equal or exceed the number of the French. The French are almost uniformly Roman Catholics: there were only three Protestant families amongst them at the time of the conquest of the province; and probably that number is not much increased among them, as no endeavours have been used for their conversion. But, what is more to be lamented, is that they are violently bigoted to the Popish religion, and look upon all Protestants with an eye of detestation. This unhappy circumstance has been, and is still likely to be, a ground of enmity and disunion between the old and new inhabitants. The French insist, not only upon a toleration of the public worship, but on a share in the administration of Justice, as jury-men and justices of the peace, and the like, and on a right, in common with the English, of being appointed to all the offices of the government. The English, on the contrary, affirm, that the laws of England made against the Papists ought to be in force there, and consequently that the native Canadians, unless they think proper to turn Protestants, ought to be excluded from all those offices and various branches of power, and in some degree they seem to be supported in this opinion by a part of the governor's commission; I mean, that part which enables him to call and constitute a general assembly of the freeholders

and planters of the province: for it is there expressly provided, that no person elected to serve in such an assembly, shall sit and vote there till he has subscribed the declaration against Popery prescribed by the statute 25 Car. 2 which would effectually exclude all the Canadians.

The grounds upon which the French demand a toleration of the Catholic religion, are partly the reasonableness of the thing itself, they being almost universally of that religion, and partly the stipulation made on that behalf in the fourth article of the definite treaty of peace, and which is expressed in these words:

> His Britannic Majesty on his side agrees to grant the liberty of the Catholic religion to the inhabitants of Canada; he will consequently give the most effectual orders that his new Roman Catholic subjects may profess the worship of their religion, according to the rites of the Romish Church, as far as the laws of Great Britain permit.

These last words, 'as far as the laws of Great Britain permit,' render the whole stipulation in favour of this toleration very doubtful; for it may reasonably be contended, that the laws of England do not at all permit the exercise of the Catholic religion.

For in the first place, these words seem to refer to some degree of toleration of the Catholic religion, already actually subsisting in some part of the British dominions, and by virtue of the laws of Great Britain; and if so, they convey no right to any toleration at all, because no degree of toleration is already actually allowed by the laws of Great Britain in any part of the British dominions.

2ndly. Supposing these words not to refer to any toleration of the Catholic religion now actually subsisting by virtue of the laws of Great Britain, but to mean only such a degree of toleration as (though it does not actually subsist in any of the British dominions by the virtue of the laws of Great Britain, yet) may subsist without a breach of the laws of Great Britain, yet still there will be great reason to think that the laws of Great Britain do not permit this toleration in any degree. For in the first place, the stat. of 1 Eliz. cap. i. for restoring the supremacy in ecclesiastical matters to the Crown, expressly extends to all the Queen's future dominions, as well as to those belonging to the Crown at the time of making the act. The words of the 16th section are as follows:

> Be it enacted, &c. that no foreign prince, person, prelate, &c. spiritual or temporal, shall at any time hereafter use or exercise any manner of power or jurisdiction, spiritual or ecclesiastical, within this realm, or within any other your Majesty's dominions, or countries, that now be, or *hereafter shall be*, but shall be clearly abolished out of this realm, and all other your highness's dominions for ever.

And in the next section, all this ecclesiastical jurisdiction or supremacy, is united and annexed for ever to the Crown. It is clear therefore, that the King is, by the laws of Great Britain, supreme head of the Church in the province of Quebec, as well as in England itself. Now it is the very essence of Popery, that the Pope, and not the King, is supreme in all spiritual matters. Consequently this essential article of Popery cannot, by virtue of the stipulation in the definite treaty, be

tolerated; but all appeals to the Pope, all exercises of ecclesiastical authority in Quebec, by the Pope, or his legates, or any other person commissioned by him, all nominations to benefices, or to the bishoprick of the province (which is a power the Pope has hitherto exercised, at least, so far as to approve the bishop before he entered upon the functions of his office) must now be illegal and void.

But this act goes a great deal further; for it requires all ecclesiastical persons whatsoever, and likewise all lay-persons holding temporal offices, or employed in the service of the Crown, and doing homage for them, to take the oath of supremacy to the Queen, or her successors, under pain of losing their benefices, or temporal offices, &c., and this not only in the realm of England, but in any of the Queen's highness's dominions. So that by this part of the act, all the Canadian clergy, and a great part of the laity, might be required to take the oath of supremacy, which it is well known the most moderate Catholics cannot take, it being contrary to the fundamental article of their religion; for the difference between the moderate Catholics and the more furious and zealous Papists, who are mostly guided by the Jesuits, consists principally in this circumstance, that the latter ascribe to the Pope an unlimited power in temporal as well as spiritual matters, and affirm that he may depose kings, and absolve subjects from their allegiance, and do other the like extravagant mischiefs; whereas the former deny his temporal, and acknowledge only his spiritual supremacy.

It is true indeed, this oath of supremacy is taken away by the stat. 1 Will. cap. 8. But another

shorter oath of supremacy, containing a mere denial of the Spiritual, or Ecclesiastical power of the Pope, or any other foreign prince, and which is therefore equally contrary to the sentiments of all Roman-Catholics, is appointed to be taken in its stead, and by the same persons, and under the same penalties, as before.

It appears therefore, from the statute 1 Eliz. cap. i. alone, without considering any other of the laws against Popery, that the exercise of the Popish religion cannot be tolerated in the province of Quebec, consistently with the laws of England; and consequently that it cannot be tolerated there at all by virtue of the stipulation of the definitive treaty above-mentioned, because that stipulation has an express reference to the laws of England.

Further by the text next in the statute-book, or stat. 1 Eliz. cap. ii. for the uniformity of common-prayer and service, it is enacted,

> That every minister of a parish-church, &c. within this realm of England, Wales, and marches of the same, or *other the Queen's dominions*, shall be bound to use the book of common-prayer, and shall use no other service, under pain of incurring certain heavy penalties.

By this act, the mass is prohibited in all parish-churches in all her Majesty's dominions.

This act does not indeed say expressly, as the former does, that it shall extend to all her Majesty's dominions that hereafter shall be, as well as those that at present are, belonging to the Crown of England. But there is reason to believe it meant so; or, at least there is room for doubt. And if it does mean so, the mass is prohibited by it in the province of Quebec.

Upon these reasons we may conclude that the exercise of the Catholic religion cannot consistently with the laws of Great Britain, be tolerated in the province of Quebec.

Yet that it should be tolerated is surely very reasonable, and to be wished by all lovers of peace and justice and liberty of conscience.

By what authority then shall it be tolerated? this is the only question that remains. Shall the King alone undertake to tolerate it? will it be advisable that he should exercise, though for so good an end, a power of dispensing with the laws? will it not give room to a thousand censures and odious reflections and comparisons? The authority of Parliament seems to be a much safer foundation to establish this measure upon, in a manner which neither the new English inhabitants of the province can contest, nor the French Catholics suspect to be inadequate.

The next great difficulty that occurs, is the settlement of the laws, by which the province of Quebec is for the future to be governed. The law upon this subject seems to be this: 1st, that the laws of the conquered continue in force till the will of the conqueror is declared to the contrary; this follows from the necessity of the case, since otherwise the conquered provinces would be governed by no laws at all. 2ndly, that after the declaration of the will of the conqueror, the conquered are to be governed by such laws as the conqueror shall think fit to impose, whether those are the old laws by which they have been governed before, or the laws by which the conquerors are governed themselves, or partly one, and partly

the other, or a new set of laws different from both. 3rdly, That by the conqueror is to be understood the conquering nation, that is, in the present case, the British nation; that consequently by the will of the conqueror is to be understood the will of the British nation, which in all matters relating to legislation is expressed by the King and Parliament, as in all matters relating to the executive power it is expressed by the King alone; that therefore the Parliament only have a power to make laws for the province of Quebec, or to introduce any part of the laws of Great Britain there, or to delegate such a power of making or introducing laws to any other hands, notwithstanding, it may happen that in fact such a power may inadvertently have been delegated to the governor and council of the province by a private instruction of the King alone. For if the contrary doctrine were true, that the King alone had the whole legislative power in the province of Quebec, it would follow, that not only all the conquered Canadians, but all the new English settlers there, would become slaves or subjects to an absolute and arbitrary government, the moment they set their foot there. The King might introduce the severest laws, the most cruel punishments, the inquisition, the rack, and the wheel, and might make all his subjects there, both old and new, tenants at will of their lands and other property, and tax them in any degree whensoever he thought fit. He might keep a standing army there, without consent of Parliament, and raise money to pay them by his own authority, and with such an army, a prince of James II's

disposition might oppress the liberties of the other adjoining colonies, or even of Great Britain itself. These are dreadful consequences, but follow clearly from such a doctrine; for which reason the doctrine itself ought not to be maintained. The other opinion, that the conquered people, when once ceded to the Crown of Great Britain, are thereby admitted to be British subjects, and immediately entitled to participate of the liberties of other British Subjects, and are therefore to be governed according to the rules of the limited monarchy of Great Britain, by which the executive power is vested solely in the King, but the power of making laws and raising taxes in the King and Parliament, is a much safer and more reasonable opinion.[1]

It is therefore to be wished, that an Act of Parliament might be obtained that at once declared what laws should take place in the province of Quebec, whether the laws of the conquered, or the laws of Great Britain, or some of the laws of the conquered, and some of the laws of Great Britain; or whether any other laws should be introduced there, more peculiarly fitted to the circumstances of the province; and if any, then what laws should be so introduced: or, if this detail be thought too troublesome for the Parliament to enter upon, and their informations concerning the state of the province should be

[1] This view cannot be regarded as legally sound; the authority of the Crown over conquered territory is absolute, and can be exercised without the intervention of Parliament; see Lord Mansfield's Judgement, below, pp. 42–47.

deemed to be as yet too imperfect to enable them to go through such a business with propriety, then it is to be wished that an Act of Parliament may be obtained, by which such a legislative power of making laws and ordinances for the good government of the province might be delegated to the governor and council, as has been already exercised by them by virtue of an instruction from the King alone. By such a delegated parliamentary authority, they may enquire into the state of the Canadian laws and customs already in force there, and may revise them and reduce them into writing, and enact such of them as shall be found beneficial to the province, and fit to be continued; and may introduce such part of the laws of England, as they shall think to be for the advantage of the province; and likewise, as occasion offers, make such other new laws and regulations as shall be necessary for the good government of it: And in so doing they will have a due regard to the heads of advice suggested by Mr. Attorney Yorke, and to such other intimations and instructions as the government shall think proper to communicate to them. And lest this legislative power should be abused or injudiciously executed by the governor and council, there might be a clause in the Act of Parliament directing them to transmit these several laws and ordinances to the King and Privy Council in England, to be by his Majesty in council allowed or disallowed, as his Majesty shall see cause. Only they should be in force till disallowed, and, if not disallowed within a certain time, as for instance two years, they should then be in force for ever,

unless repealed by act of Parliament. Laws and ordinances founded on such a parliamentary authority will easily find obedience from the people, which it is to be feared no others will; and the judges of the province will carry them into execution with ten times as much spirit and confidence as if they were doubtful of their legal validity.

Suppose a criminal in Canada to be guilty of an offence that is capital by the laws of England, but is not so by the laws of Canada that have hitherto been received (a supposition that is no way difficult as the criminal law of England abounds with capital offences) in what manner shall such a man be punished, unless there is a parliamentary declaration determining the punishment that shall attend his crime? Could any lesser authority warrant the infliction of death for such a crime? Or would any judge choose, though he should be sure of never being called to account for it, to pass such a sentence without the highest authority? But if the punishments of crimes be settled by authority of Parliament, whether immediately by the Parliament itself, or mediately by ordinances made by the governor and council of the province, by virtue of a legislative authority communicated to them by act of Parliament, the judges will be under no other difficulty what punishments to inflict upon the several criminals, that come before them, than they are in Great Britain itself.

Some persons are of opinion, that the laws of Great Britain do at once take place in a conquered province, without authoritative introduction of them, either by the King, or Parliament.

But this opinion seems destitute of foundation, and is sufficiently refuted by the advice of the learned Mr. Yorke, his Majesty's attorney-general, who has advised that the Canadians should be permitted to retain their own laws, relating to inheritances and the alienation of their real estates, which would be impossible without an act of Parliament for that purpose, if the whole system of the laws of England did *ipso facto* become the law of the province upon its being conquered, or ceded to the Crown. Indeed, the whole system of the laws of England, taken in the gross, and without a selection, would be by no means a blessing to the Canadians. The game-laws, the poor-laws, the fictions and the subtleties in various sorts of actions and conveyances, the niceties arising from the doctrine of uses, and the tedious and operose instruments founded on them, would really be a great misfortune to them; and from their novelty and strangeness, would be thought to be a much greater. This doctrine therefore of the instant validity of the whole mass of the laws of England throughout the conquered Province cannot be true. And if the whole system of those laws is not valid there, then certainly no part of them can be so. For if they are, then who shall distinguish which of them are valid there and which are not?

It may therefore be concluded, as at first, that none of the laws of England are valid in the conquered province *ipso facto* by virtue of the conquest, or cession, without a positive introduction there by a sufficient authority: and this sufficient authority seems, for the reasons already

mentioned, to be only the Parliament of Great Britain.

The next great difficulty that calls loudly for the interposition of Parliament, is the low state of the revenue of the province of Quebec. Under the French government this revenue amounted to about thirteen thousand pounds per annum, but is now sunk to less than three thousand. The cause of this is the change in the course of trade, by which means it falls out, that those taxes which produced the principal part of the revenue, now, though still in force, produce nothing at all. The principal of those taxes was a duty upon French wines, which were imported there from old France in great quantities. This single duty produced 8000l. a year; now it produces nothing, because no wines are allowed to be imported there from old France. Nor would it be replaced by an increase of the consumption of Spanish or Portuguese wines, supposing the tax might be construed to extend to those wines: for the Canadians do not like them, and will not drink them. From a like cause, another duty which formerly made a considerable part of the public revenue, which was a duty upon French brandies imported from old France, and French rums imported from the French West-India Islands, now produces nothing at all. From these causes the revenue is sunk so low that it is insufficient to defray the expense of the civil government, though the establishment of it is so very moderate. It is therefore become necessary, either for the treasury of England to issue a sufficient annual Sum to make good the salaries

of the several officers of the government, or that some new tax should be imposed upon the inhabitants, in aid of those which by reason of these accidents have failed, sufficient for all the purposes of the government. If this latter method should be adopted, it is presumed that the authority of Parliament will be the proper power to have recourse to, that there may be no colour or pretence for contesting the legality of the taxes so imposed. This power also the Parliament may exercise, either immediately itself by imposing a tax upon the province of Quebec this very session, before the Parliament rises, or it may delegate to the governor and council a power to impose such taxes as they shall find necessary for the support of the government, subject, as above, to the disallowance of the King and Privy Council, in order to prevent abuses, and with proper causes of restriction and appropriation of the money so raised, in order to prevent a misapplication of it, either by the officers of the province, or at home.

If the Parliament should think proper itself to lay a tax upon the Province, information has been received from persons well acquainted with the state and trade of the province, that British spirits should be the commodity that could best bear a duty, and would produce the best revenue; that there are annually imported into the province about 250,000 gallons of these spirits, and that they might bear a duty of threepence a gallon without hurting the trade, but not more; and this would produce about 3000l. a year.

The malicious and desperate enemies of an

upright and popular Administration, may perhaps traduce such a measure as inconsistent with their late indulgent conduct with respect to the other American colonies in the late repeal of the Stamp Act. But the difference of the cases is too striking to make such a calumny in the least degree formidable. The other American colonies have internal legislatures of their own, who have been permitted, ever since their first establishment, to be the assessors of all their internal taxes; and, as they had not abused this privilege with which they had been so long indulged, and further, as their exercising this privilege seemed to be no way prejudicial to the mother-country, it seemed to have been a harsh and ungracious measure in the Parliament, by the advice of the late ministry, to revive and exert a dormant and inherent right of taxing them; which however the whole Parliament, excepting a very few members of both houses, have highly declared themselves to be possessed of. But the Canadians have no such internal legislature, no such usage of taxing themselves by representatives of their own choosing. Unless therefore they have the singular privilege of not being liable to be taxed at all, they must be liable to be taxed either by the King alone, or by the King and Parliament; and the milder of these two opinions is, that they are taxable by the King and Parliament. Those therefore who should promote the taxing them by authority of Parliament, would act like the truest friends to civil liberty, and with the same spirit of mildness and moderation that conducted them in the repeal of the Stamp Act.

If it should be said, that the province of Quebec ought to have an assembly in the same manner as the other American colonies, and that the taxes ought to be imposed by the consent of such an assembly, it will be sufficient for the present purpose, and to support the measure here suggested of taxing them by authority of Parliament, to answer, that as yet no such assembly has been constituted; and till an assembly is erected, whether that time be short or long, the safest and mildest method of imposing taxes is to do it by authority of Parliament.

As to the erecting an assembly in the province, it is a measure which probably will not for some years to come be found expedient. If an assembly were now to be constituted, and the directions in the governor's commission, above alluded to, were to be observed, by which none of the members elected there are to be permitted to sit and vote in the assembly till they have subscribed the declaration against Popery, it would amount to an exclusion of all the Canadians, that is, of the bulk of the settled inhabitants of the province. An assembly so constituted, might pretend to be a representative of the people there, but in truth it would be a representative of only the 600 new English settlers, and an instrument in their hands of domineering over the 90,000 French. Can such an assembly be thought just or expedient, or likely to produce harmony and friendship between the two nations? Surely it must have a contrary effect.

On the other hand, it might be dangerous in these early days of their submission, to admit the

Canadians themselves to so great a degree of power. Bigoted, as they are, to the Popish religion, unacquainted with, and hitherto prejudiced against the laws and customs of England, they would be very unlikely for some years to come, to promote such measures, as should gradually introduce the Protestant religion, the use of the English language, of the spirit of the British laws. It is more probable they would check all such endeavours, and quarrel with the governor and council, or with the English members of the assembly, for promoting them. Add to this, that they are almost universally ignorant of the English language, so as to be absolutely incapable of debating in it, and consequently must, if such an assembly were erected, carry on the business of it in the French language, which would tend to perpetuate that language, and with it their prejudices and affections to their former masters, and postpone to a very distant time, perhaps for ever, that coalition of the two nations, or the melting down the French nation into the English in point of language, affections, religion, and laws, which is so much to be wished for, and which otherwise a generation or two may perhaps effect, if proper measures are taken for that purpose. And further it may be observed, that the Canadians themselves do not desire an assembly, but are contented to be protected in the enjoyment of their religion, liberties, and properties, under the administration of his Majesty's governor and council. If, to give a proper stability to this mode of government, it is carried on by authority of Parliament, and is properly superintended, as no

doubt it will be, by the wisdom of his Majesty's Privy Council, they will think themselves extremely happy under it. The persons who most desire the immediate constitution of an assembly, are some of the six hundred English adventurers, who probably are ambitious of displaying their parts and eloquence in the characters of leading Assemblymen.

But if an assembly is to be constituted, even this too had better be done by act of Parliament than by the King's single authority, as it is no less than severing from the general body of his Majesty's dominions a particular part of them, with respect to the purposes of making laws and imposing taxes. Could the King, if he thought proper, and a particular county of England was to desire it of him, sever that county from the rest of England, and no longer summon any of its members to Parliament, but instead thereof constitute a little Parliament in that county itself, that should make laws and lay taxes for the inhabitants of that single county? It is presumed that he could not: and the erecting an assembly in a conquered province is an act of much the same nature. It is true indeed, that some of the American charters and assemblies owe their rise to this authority: but this was in the reign of the Stuarts, who were fond of extending their prerogative; and, on account of the inconsiderableness of the colonies at that time, these things were then unnoticed; so that they do not prove the strict legality of the practice. Since that time these charters have been put in practice by the colonies, and acquiesced in by the mother-

country, and in some measure recognized in Parliament; and this usage, acquiescence and recognition, are in truth their best support.

But if an assembly is to be constituted, in which the Catholics or Canadians are to be admitted (as in justice and reason they ought to be, if any assembly at all is to be erected), the authority of Parliament seems to be still more necessary to give validity to such a measure.

For the reasons that have been just now mentioned, it seems evident, that the measure of erecting an assembly in the province of Quebec is somewhat premature. How soon it will become expedient and proper, experience only can shew. But in the meantime, however short that time may be, it seems necessary to have recourse to the authority of Parliament for settling the government of the province, and removing the difficulties that obstruct the settlement in the three great articles of Religion, Law, and Revenue. It is therefore the humble request of all the gentlemen who have lately been appointed to the principal offices in the government of Quebec, to his Majesty's Ministers of State, that they would use their influence and endeavours to procure such an Act of Parliament as they shall upon the whole matter think to be necessary, to remove the difficulties that have been stated, and to enable the said gentlemen to administer the government of that province in the several departments, with security to themselves, and advantage to the province.

3. PETITION OF DIVERS OF THE FRENCH INHABITANTS OF THE PROVINCE OF QUEBEC TO THE KING'S MAJESTY, WHICH WAS SIGNED ABOUT THE MONTH OF DECEMBER, 1773, AND PRESENTED TO THE KING ABOUT FEBRUARY, 1774.

SIR,

YOUR most obedient and faithful new subjects in the province of Canada take the liberty to prostrate themselves at the foot of your throne, in order to lay before you the sentiments of respect, affection, and obedience towards your august person, with which their hearts overflow, and to return to your Majesty their most humble thanks for your paternal care of their welfare.

Our gratitude obliges us to acknowledge, that the frightful appearances of conquest by your Majesty's victorious arms did not long continue to excite our lamentations and tears. They grew every day less and less as we gradually became more acquainted with the happiness of living under the wise regulations of the British empire. And even in the very moment of the conquest, we were far from feeling the melancholy effects of restraint and captivity. For the wise and virtuous general who conquered us, being a worthy representative of the glorious sovereign who entrusted him with the command of his armies, left us in possession of our laws and customs; the free

exercise of our religion was preserved to us, and afterwards was confirmed by the treaty of peace; and our own former countrymen were appointed judges of our disputes concerning civil matters. This excess of kindness towards us we shall never forget. These generous proofs of the clemency of our benign conqueror will be carefully preserved in the annals of our history; and we shall transmit them from generation to generation to our remotest posterity. These, Sir, are the pleasing ties by which, in the beginning of our subjection to your Majesty's government, our hearts were so strongly bound to your Majesty; ties which can never be dissolved, but which time will only strengthen and draw closer.

In the year 1764, your Majesty thought fit to put an end to the military government of this province, and to establish a civil government in its stead. And from the instant of this change we began to feel the inconveniences which resulted from the introduction of the laws of England, which till then we had been wholly unacquainted with. Our former countrymen, who till that time had been permitted to settle our civil disputes without any expense to us, were thanked for their services, and dismissed; and the militia of the province, which had till then been proud of bearing that honourable name under your Majesty's command, was laid aside. It is true indeed we were admitted to serve on juries; but at the same time we were given to understand, that there were certain obstacles that prevented our holding places under your Majesty's government. We were also told that the laws of England were to

take place in the province, which, though we presume them to be wisely suited to the regulation of the mother-country for which they were made, could not be blended and applied to our customs without totally overturning our fortunes and destroying our possessions. Such have been ever since the era of that change in the government, and such are still at this time, our just causes of uneasiness and apprehension; which however we acknowledge to be rendered less alarming to us by the mildness with which your Majesty's government has been administered.

Vouchsafe, most illustrious and generous sovereign, to dissipate these fears and this uneasiness, by restoring to us our ancient laws, privileges, and customs, and to extend our province to its former boundaries. Vouchsafe to bestow your favours equally upon all your subjects in the province, without any distinction! Preserve the glorious title of sovereign of a free people: a title which surely would suffer some diminution, if more than an hundred thousand new subjects of your Majesty in this province, who had submitted to your government, were to be excluded from your service, and deprived of the inestimable advantages which are enjoyed by your Majesty's ancient subjects. May heaven, propitious to our wishes and our prayers, bestow upon your Majesty a long and happy reign! May the august family of Hanover, to which we have taken the most solemn oaths of fidelity, continue to reign over us to the end of time!

We conclude by entreating your Majesty to grant us, in common with your other subjects, the

rights and privileges of citizens of England. Then our fears will be removed, and we shall pass our lives in tranquillity and happiness, and shall be always ready to sacrifice them for the glory of our prince and the good of our country.

We are, with the most profound submission,
Your Majesty's most obedient, most loyal,
and most faithful,
subjects,
Fr. Simonnet, &c., &c.

4. LORD MANSFIELD'S JUDGEMENT IN CAMPBELL *v.* HALL, 1774

THE CASE OF THE ISLAND OF GRENADA; IN RELATION TO THE PAYMENT OF FOUR AND ONE-HALF IN THE HUNDRED OF GOODS IMPORTED THEREFROM; BETWEEN ALEXANDER CAMPBELL, ESQ., PLAINTIFF, AND WM. HALL, ESQ., DEFENDANT, IN THE COURT OF KING'S BENCH, BEFORE LORD CHIEF-JUSTICE MANSFIELD: 15 GEORGE III, A.D. 1774

November 28

THE unanimous judgement of the Court was this day given by Lord Mansfield, as follows:

This is an action brought by the Plaintiff, Alexander Campbell, who is a natural-born subject of Great Britain, and who, upon the third of May, 1763, purchased lands in the island of Grenada; and it is brought against the defendant, William Hall, who was collector for his Majesty at the time of levying the imposts, and of the action brought, of a duty of four and a half per cent. upon goods exported from the island of Grenada. The action is to recover a sum of money, which was levied by the defendant and paid by the plaintiff, as for this duty of four and a half per cent., upon sugars, which were exported

from the island of Grenada, from the estate and by the consignment of the plaintiff.

The action is an action for money had and received; and it is brought upon this ground, namely, that the money was paid to the defendant without consideration, the duty for which he received it not having been imposed by lawful or sufficient authority to warrant the same.

And it is stated in the special verdict[1] that the money is not paid over, but continues in the defendant's hands, by consent of the Attorney-General, for his Majesty, in order that the question may be tried.

The special verdict states Grenada to have been conquered by the British arms from the French King in 1762; that the island was ceded by capitulation; and that the capitulation upon which it surrendered was by reference to the capitulation upon which the island of Martinico had been surrendered on the 7th of February, 1762.

The special verdict then states some articles of that capitulation, particularly the fifth, which grants that Grenada should continue to be governed by its own laws till his Majesty's pleasure be known. It next states the sixth article, where, to a demand of the inhabitants of Grenada requiring that they, as also the religious orders of both sexes, should be maintained in the property of their effects, moveable and immoveable, of what nature soever, and that they should be preserved in their privileges, rights, honours, and

[1] This refers to the verdict of the jury before which the case had been tried and which rendered a special verdict setting forth the facts in the case.

exemptions, the answer is that the inhabitants, being subjects of Great Britain, will enjoy their properties and the same privileges as in the other his Majesty's Leeward Islands.

Then it states another article of the capitulation, namely, the 7th article, by which they demand that they shall pay no other duties than what they before paid to the French King; that the capitation tax shall be the same, and that the expenses of the courts of justice, and of the administration of government should be paid out of the King's demesne: in answer to which they are referred to the answer I have stated, as given in the foregoing article; that is, being subjects they will be entitled in like manner as the other his Majesty's subjects in the British Leeward Islands.

The next thing stated in the special verdict is the treaty of peace signed on the 10th of February, 1763; and it states the part of the treaty of peace by which the island of Grenada is ceded, and other articles which are not material.

The next material instrument which they state is a proclamation under the Great Seal, bearing date the 7th of October, 1763, reciting thus:

Whereas it will greatly contribute to the settling of our said islands of which Grenada is one, that they be informed of our love and paternal care for the liberties and rights of those who are, or shall be inhabitants thereof; we have thought fit to publish and declare by this our proclamation, that we have by our letters patent under our Great Seal of Great Britain, whereby our said Governments are constituted, given express power and direction to our governors of our said colonies respectively, that so soon as the state and

circumstances of the said colonies will admit thereof, they shall, with the advice and consent of our said council, call and summon general assemblies, in such manner and form as is used in the other colonies under our immediate government. And we have also given power to the said governors, with the advice and consent of our said council and assembly of representatives as aforesaid, to make, constitute, and ordain laws, statutes, and ordinances for the public peace, welfare and good government of our said colonies and the inhabitants thereof, as near as may be agreeable to the laws of England, and under such regulations and restrictions as are used in our other colonies.[1]

Then follow letters patent under the Great Seal, or rather a proclamation of the 26th of March, 1764, whereby the King recites, that he had ordered a survey and division of the ceded islands, as an invitation to all purchasers to come and purchase upon certain terms and conditions specified in that proclamation.

The next instrument stated in the verdict is the letters patent bearing date the 9th of April, 1764. In these letters there is a commission appointing General Melville Governor of the island of Grenada, with power to summon an assembly as soon as the situation and circumstances of the island would admit; and to make laws in all the usual forms with reference to the manner of the other assemblies of the King's Provinces in America.

The Governor arrived in Grenada on the 14th of

[1] See the Proclamation of 1763, p. 3. This is a paraphrase of the section quoted; see p. 5, and, below, p. 49.

December, 1764; before the end of 1765, the particular day not stated, an assembly actually met; but before the arrival of the Governor at Grenada, indeed, before his Commission, and before his departure from London, there is another instrument upon the validity of which the whole question turns, which instrument contains letters patent under the Great Seal, bearing date the 20th of July, 1764, and reciting that in Barbadoes, and in all the British Leeward islands, a duty of four and a half per cent. was paid upon goods exported; and reciting further:

> Whereas it is reasonable and expedient, and of importance to our other sugar islands, that the like duties should take place in our said island of Grenada; we have thought fit, and our royal will and pleasure is, and we do hereby, by virtue of our prerogative royal, order, direct, and appoint that an impost or customs of four and a half per cent. in specie, shall, from and after the 29th day of September next ensuing the date of these presents be raised and paid to us, our heirs and successors, for and upon all dead commodities of the growth or produce of our said island of Grenada that shall be shipped off from the same, in lieu of all customs and impost duties hitherto collected upon goods imported and exported into and out of the said island, under the authority of his Most Christian Majesty, and that the same shall be collected, &c.;

then it goes on with reference to the island of Barbadoes, and the other Leeward islands.

The jury find that in fact such duty of four and a half per cent. is paid to his Majesty in all the British Leeward islands. And they find several Acts of Assembly which are relative to the several islands, and which I shall not state, as

they are public, and every gentleman may have access to them.

These letters patent of the 20th of July, 1764, with what I stated in the opening, are all that is material in this special verdict.

Upon the whole of the case this general question arises, being the substance of what is submitted to the Court by the verdict: 'Whether these letters patent of the 20th of July, 1764, are good and valid to abrogate the French duties, and in lieu thereof to impose this duty of four and a half per cent., which is paid by all the Leeward islands subject to his Majesty.'

That the letters are void has been contended at the bar, upon two points: (1) That although they had been made before the Proclamation of the 7th of October, 1763, the King by his prerogative could not have imposed them; and (2) that, although the King had sufficient authority before the 7th of October, 1763, he had divested himself of that authority by the Proclamation of that date.

A great deal has been said, and authorities have been cited relative to propositions in which both sides exactly agree, or which are too clear to be denied. The stating of these will lead us to the solution of the first point.

I will state the propositions at large:

1. A country conquered by the British arms becomes a dominion of the King in the right of his crown, and therefore necessarily subject to the legislative power of the Parliament of Great Britain.

2. The conquered inhabitants once received

into the conqueror's protection become subjects; and are universally to be considered in that light, not as enemies or aliens.

3. Articles of capitulation, upon which the country is surrendered, and treaties of peace by which it is ceded, are sacred and inviolate, according to their true intent and meaning.

4. The law and legislation of every dominion equally affects all persons and property within the limits thereof, and is the true rule for the decision of all questions which arise there. Whoever purchases, sues, or lives there, puts himself under the laws of the place, and in the situation of its inhabitants. An Englishman in Ireland, Minorca, the Isle of Man, or the Plantations, has no privilege distinct from the natives while he continues there.

5. The laws of a conquered country continue in force until they are altered by the conqueror. The justice and antiquity of this maxim are incontrovertible; and the absurd exception as to pagans mentioned in Calvin's case, shows the universality and antiquity of the maxim. That exception could not exist before the Christian era, and in all probability arose from the mad enthusiasm of the Crusades. In the present case the capitulation expressly provides and agrees that they shall continue to be governed by their own laws, until his Majesty's pleasure be further known.

6. If the King has power (and when I say 'the King,' I mean in this case 'the King without the concurrence of Parliament') to alter the old and to make new laws for a conquered country

—this being a power subordinate to his own authority as a part of the supreme legislature and parliament—he can make none which are contrary to fundamental principles, he cannot exempt an inhabitant from the laws of trade, or the authority of Parliament, or give him privileges exclusive of his other subjects; and so in many other instances that might be put.

The present Proclamation is an Act of this subordinate legislative power. If it had been made before the 7th of October, 1763, it would have been made on the most reasonable and equitable grounds, putting the island of Grenada as to duties on the same footing as the other islands.

If Grenada paid more duties, the injury would have been to her; if less, it must have been detrimental to the other islands; nay, it would have been carrying the capitulation into execution, which gave the people of Grenada hopes that, if any new duties were laid on, their condition would be the same as that of the other Leeward islands.

The only question which remains on this first point then is, whether the King of himself had power to make such a change between the 10th of February, 1763, the day the treaty was signed, and the 7th of October, 1763.

Taking the above propositions to be granted, he has a legislative power over a conquered country, limited to him by the constitution, and subordinate to the constitution and parliament. It is left by the constitution to the King's authority to grant or refuse a capitulation. If he refuses, and puts the inhabitants to the sword, or ex-

terminates them, all the lands belong to him; and, if he plants a colony, the new settlers share the land between them, subject to the prerogative of the conqueror. If he receives the inhabitants under his protection and grants them their property, he has power to fix such terms and conditions as he thinks proper. He is entrusted with making peace at his discretion; and he may retain the conquest, or yield it up, on such condition as he pleases. These powers no man ever disputed, neither has it hitherto been controverted that the King might change part or the whole of the law or political form of government of a conquered nation.[1]

To go into the history of conquests made by the Crown of England.

The alteration of the laws of Ireland has been much discussed by lawyers and writers of great fame at different periods of time; but no man ever said the change was made by the Parliament of England; no man, unless perhaps Mr. Molyneux, ever said the King could not do it. The fact, in truth, after all the researches that have been made, comes out clearly to be as laid down by Lord Chief Justice Vaughan, that Ireland received the laws of England by the charters and commands of Henry II, King John, Henry III, and he adds an *et cetera* to take in Edward I, and the successors of the princes named. That the charter of 12 King John was by assent of a parlia-

[1] For the rights of the British Crown over annexed territory see Keith, *The Theory of State Succession*, pp. 29–32.

ment of Ireland, he shows clearly to be a mistake. Whenever the first parliament was called in Ireland, that change in their constitution was without an act of the parliament of England, and therefore must have been derived from the King.

Mr. Barrington is well warranted in saying that the 12th of Edward I, called the 'Statute of Wales,' is certainly no more than a regulation made by the King as conqueror, for the government of the country, which, the preamble says, was then totally subdued; and, however for purposes of policy he might think fit to claim it as a fief appertaining to the realm of England, he could never think himself entitled to make laws without assent of parliament to bind the subjects of any part of the realm. Therefore as he did make laws for Wales without assent of parliament, the clear consequence is that he governed it as a conquest; which was his title in fact, and the feudal right was but a fiction.

Berwick, after the conquest of it, was governed by charters from the crown, till the reign of James I, without interposition of parliament.

Whatever changes were made in the laws of Gascony, Guyenne, and Calais must have been under the King's authority; if by act of parliament, that act would be extant, for they were conquered in the reign of King Edward III; and all the acts from that reign to the present time are extant; and in some acts of parliament there are commercial regulations relative to each of the conquests which I have named; none making any change in their constitution and laws, and

particularly with regard to Calais, which is alluded to as if its laws were considered as given by the Crown. Yet as to Calais, there was a great change made in the constitution: for the inhabitants were summoned by writ to send burgesses to the English parliament; and, as this was not by act of parliament, it must have been by the sole act of the King.

Besides the garrison there are inhabitants, property, and trade at Gibraltar; the King, ever since that conquest, has from time to time made orders and regulations suitable to the condition of those who live, trade, or enjoy property in a garrison town.

Mr. Attorney-General[1] has alluded to a variety of instances, several within these twenty years, in which the King has exercised legislation over Minorca. In Minorca, it has appeared lately, there are and have been for years back a great many inhabitants of worth and a great trade carried on. If the King does it there as coming in the place of the King of Spain, because their old constitution continues (which by the by is another proof that the constitution of England does not necessarily follow a conquest by the King of England) the same argument applies here; for before the 7th of October, 1763, the constitution of Grenada continued, and the King stood in the place of their former sovereign.

After the conquest of New York, in which most of the old Dutch inhabitants remained, King Charles II changed its constitution and political form of government, and granted it to the Duke

[1] Edward Thurlow.

of York, to hold from his crown under all the regulations contained in the letters patent.

It is not to be wondered that an adjudged case in point is not to be found; no dispute ever was started before upon the King's legislative right over a conquest; it never was denied in a court of law or equity in Westminster-hall, never was questioned in parliament. Lord Coke's report of the arguments and resolutions of the judges in Calvin's case lays it down as clear (and that strange extra-judicial opinion, as to a conquest from a pagan country, will not make reason not to be reason, and law not to be law as to the rest). The book says, that 'if a King'—I omit the distinction between a Christian and an infidel kingdom, which as to this purpose is wholly groundless, and most deservedly exploded—

> If a King comes to a kingdom by conquest, he may, at his pleasure, alter and change the laws of that kingdom; but until he doth make an alteration of those laws the ancient laws of that kingdom remain; but if a King hath a kingdom by title of descent, then, seeing that by the laws of that kingdom he doth inherit the kingdom, he cannot change those laws of himself without consent of parliament.

It is plain that he speaks of his own country where there is a parliament. Also,

> if a King hath a kingdom by conquest, as King Henry the Second had Ireland, after King John had given to them, being under his obedience and subjection, the laws of England for the government of that country, no succeeding King could alter the same without parliament.

Which is very just, and it necessarily includes

that King John himself could not alter the grant of the laws of England.

Besides this, the authority of two great names has been cited, who took the proposition for granted. And though opinions of counsel, whether acting officially in a public charge or in private, are not properly authority on which to found a decision, yet I cite them;—not to establish so clear a point, but to show that, when it has been matter of legal enquiry, the answer it has received, by gentlemen of eminent character and abilities in the profession, has been immediate and without hesitation, and conformable to these principles. In 1722, the assembly of Jamaica refusing the usual supplies, it was referred to Sir Philip Yorke, and Sir Clement Wearg, what was to be done if they should persist in this refusal. Their answer is—'If Jamaica was still to be considered as a conquered island, the King had a right to levy taxes upon the inhabitants; but, if it was to be considered in the same light as the other colonies, no tax could be imposed upon the inhabitants, but by an assembly of the island, or by an act of parliament.' The distinction in law between a conquered country and a colony they held to be clear and indisputable; whether, as to the case before them of Jamaica, that island remained a conquest or was made a colony, they had not examined. I have, upon former occasions, traced the constitution of Jamaica as far as there are books or papers in the offices; I cannot find that any Spaniard remained upon the island so late as the Restoration; if any, they were very few. A gentleman to whom I

put the question on one of the arguments in this cause, said he knew of no Spanish names among the white inhabitants of Jamaica; but there were amongst the negroes. The King, I mean Charles the Second, after the Restoration invited settlers by proclamation, promising them his protection. He made grants of land. He appointed at first a governor and council only; afterwards he granted a commission to the governor to call an assembly. The constitution of every province immediately under the King has arisen in the same manner; not by the grants, but by commissions, to call assemblies. And therefore, all the Spaniards having left the island, or having been killed or driven out of it, Jamaica from the first settling was an English colony, who under the authority of the King planted a vacant island, belonging to him in right of his crown; like the cases of the islands of St. Helena and St. John, mentioned by Mr. Attorney-General.

A maxim of constitutional law, as declared by all the judges in Calvin's case, and which two such men in modern times as Sir Philip Yorke and Sir Clement Wearg took for granted, will acquire some authority, even if there were anything which otherwise made it doubtful; but on the contrary no book, no saying of a judge, no, not even an opinion of any counsel, public or private, has been cited; no instance is to be found in any period of our history where it was ever questioned.

The counsel for the plaintiff undoubtedly laboured this point from a diffidence of what

might be our opinion on the second question. But upon the second point, after full consideration, we are of opinion that before the letters patent of the 20th of July, 1764, the King had precluded himself from an exercise of the legislative authority which he had before by virtue of his prerogative over the island of Grenada.

The first and material instrument is the proclamation of the 7th of October, 1763. See what it is that the King there says, and with what view he says it; how and to what he engages himself and pledges his word:

> Whereas it will greatly contribute to the speedy settling our said new governments, that our loving subjects should be informed of our paternal care for the security of the liberties and properties of those who are, and shall become, inhabitants thereof; we have thought fit to publish and declare by this our proclamation, that we have in the letters patent under our Great Seal of Great Britain, by which the said governments are constituted, given express power and direction to our governors of our said colonies respectively, that, so soon as the state and circumstances of the said colonies will admit thereof, they shall, with the advice and consent of the members of our council, summon and call general assemblies.

And then follows the directions for that purpose. And to what end? 'To make, constitute, and ordain laws, statutes, and ordinances for the public peace, welfare, and good government of our said colonies,' of which this of Grenada is one, 'and of the people and inhabitants thereof, as near as may be agreeable to the laws of England.' With what view is the promise given? To invite settlers; to invite subjects. Why? The reason

is given. They may think their liberties and properties more secure when they have a legislative assembly than under a governor and council only. The governor and council depending on the King, he can recall them at pleasure, and give a new frame to the constitution; but not so of the other, which has a negative on those parts of the legislature which depend on the King. Therefore that assurance is given them for the security of their liberty and properties, and with a view to invite them to go and settle there after this proclamation that assured them of the constitution under which they were to live.[1]

The next act is of the 26th of March, 1764, which, the constitution having been established by proclamation, invites further such as shall be disposed to come and purchase, to live under the constitution. It states certain terms and conditions on which the allotments were to be taken, established with a view to permanent colonization and the increase and cultivation of the new settlement. For further confirmation of all this, on the 9th of April, 1764, three months before the impost in question was imposed, there is an actual commission to Governor Melville, to call an assembly as soon as the state and circumstances of the island should admit. You will observe in the proclamation there is no legislature reserved to be exercised by the King, or by the governor and council under his authority, or in

[1] The arguments of the judgement are precisely those which were urged by the British in Canada in support of the repeal of the Quebec Act.

any other method or manner, until the assembly should be called: the promise imports the contrary; for whatever construction is to be put upon it (which perhaps it may be somewhat difficult to pursue through all the cases to which it may be applied) it apparently considers laws then in being in the island, and to be administered by courts of justice; not an interposition of legislative authority between the time of the promise and of calling the assembly.[1] It does not appear from the special verdict when the first assembly was called; it must have been in about a year at farthest from the governor's arrival, for the jury find he arrived in December, 1764, and that an assembly was held about the latter end of the year 1765. So that there appears to have been nothing in the state and circumstances of the island to prevent calling an assembly.

We therefore think that, by the two proclamations and the commission to Governor Melville, the King had immediately and irrevocably granted to all who were or should become inhabitants, or who had or should have property, in the island of Grenada—in general to all whom it might concern—that the subordinate legislation over the island should be exercised by an assembly, with the consent of the governor and council, in like manner as in the other provinces under the King.

Therefore, though the right of the King to have

[1] The same consideration applied to Canada, and, therefore, as it was held inexpedient (cf. pp. 27–30) to summon an assembly, recourse to Parliament was necessary to authorize legislation by a Council (below, pp. 62, 63).

levied taxes on a conquered country, subject to him in right of his crown, was good, and the duty reasonable, equitable, and expedient, and, according to the finding of the verdict, paid in Barbadoes and all the other Leeward islands; yet by the inadvertency of the King's servants in the order in which the several instruments passed the office (for the patent of the 20th of July, 1764, for raising the impost stated, should have been first), the order is inverted, and the last we think contrary to and a violation of the first, and therefore void. How proper soever the thing may be respecting the object of these letters patent of the 26th of July, 1764, it can only now be done, to use the words of Sir Philip Yorke and Sir Clement Wearg, 'by the assembly of the island, or by an act of the Parliament of Great Britain.'

The consequence is, judgement must be given for the plaintiff.

5. THE QUEBEC ACT

AN ACT FOR MAKING MORE EFFECTUAL PROVISION FOR THE GOVERNMENT OF THE PROVINCE OF *Quebec* IN *North America* (14 GEORGE III, c. 83).

Preamble

WHEREAS his Majesty, by his Royal Proclamation, bearing Date the Seventh Day of October, in the Third Year of His Reign, thought fit to declare the Provisions which had been made in respect to certain Countries, Territories, and Islands in *America*, ceded to his Majesty by the definitive Treaty of Peace, concluded at *Paris* on the Tenth Day of *February*, one thousand seven hundred and sixty-three: And whereas, by the Arrangements made by the said Royal Proclamation, a very large Extent of Country, within which there were several Colonies and Settlements of the Subjects of *France*, who claimed to remain therein under the Faith of the said Treaty, was left, without any Provision being made for the Administration of Civil Government therein; and certain Parts of the Territory of *Canada*, where sedentary Fisheries had been established and carried on by the Subjects of *France*, Inhabitants of the said Province of *Canada*, under Grants and Concessions from the Government thereof, were

annexed to the Government of *Newfoundland*, and thereby subjected to Regulations inconsistent with the Nature of such Fisheries: May it therefore please Your most Excellent Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same

The Territories, Islands, and Countries in North America, *belonging to* Great Britain, *annexed to the Province of* Quebec

That all the Territories, Islands, and Countries in *North America*, belonging to the Crown of Great Britain, bounded on the South by a Line from the Bay of *Chaleurs*, along the High Lands which divide the Rivers that empty themselves into the River *Saint Lawrence* from those which fall into the Sea, to a Point on Forty-five Degrees of Northern Latitude, on the Eastern Bank of the River *Connecticut*, keeping the same Latitude directly West, through the Lake *Champlain*, until, in the same Latitude, it meets the River *Saint Lawrence*; from thence up the Eastern Bank of the said River to the Lake *Ontario*; thence through the Lake *Ontario*, and the River commonly called *Niagara*; and thence along by the Eastern and South-eastern Bank of Lake *Erie*, following the said Bank, until the same shall be intersected by the Northern Boundary, granted by the Charter of the Province of *Pennsylvania*, in

case the same shall be so intersected; and from thence along the said Northern and Western Boundaries of the said Province, until the said Western Boundary strike the Ohio: But in case the said Bank of the said Lake shall not be found to be so intersected, then following the said Bank until it shall arrive at that Point of the said Bank which shall be nearest to the North-western Angle of the said Province of Pennsylvania, and thence by a right Line, to the North-western Angle of the said Province; and thence along the Western Boundary of the said Province, until it strike the River *Ohio*; and along the Bank of the said River, Westward, to the Banks of the *Mississippi*, and Northward to the Southern Boundary of the Territory granted to the Merchants Adventurers of *England*, trading to *Hudson's Bay*; and also all such Territories, Islands, and Countries, which have, since the Tenth of *February*, One thousand seven hundred and sixty-three, been made Part of the Government of *Newfoundland*, be, and they are thereby, during His Majesty's pleasure, annexed to, and made Part and Parcel of the Province of *Quebec*, as created and established by the said Royal Proclamation of the Seventh of *October*, One thousand seven hundred and sixty-three.

Not to affect the Boundaries of any other Colony

Provided always, That nothing herein contained, relative to the Boundary of the Province of *Quebec*, shall in anywise affect the Boundaries of any other Colony.

Nor to make void other Rights formerly granted

Provided always, and be it enacted, That nothing in this Act contained shall extend, or be construed to extend, to make void, or to vary or alter any Right, Title, or Possession, derived under any Grant, Conveyance, or otherwise howsoever, of or to any Lands within the said Province, or the Provinces thereto adjoining; but that the same shall remain and be in Force, and have Effect, as if this Act had never been made.

Former Provisions made for the Province to be null and void after May 1, 1775

And whereas the Provisions, made by the said Proclamation, in respect to the Civil Government of the said Province of *Quebec* and the Powers and Authorities given to the Governor and other Civil Officers of the said Province, by the Grants and Commissions issued in consequence thereof, have been found, upon Experience, to be inapplicable to the State and Circumstances of the said Province, the Inhabitants whereof amounted, at the Conquest, to above Sixty-five thousand Persons professing the Religion of the Church of *Rome*, and enjoying an established Form of Constitution and System of Laws, by which their Persons and Property had been protected, governed, and ordered, for a long Series of Years, from the First Establishment of the said Province of *Canada*; be it therefore further enacted by the Authority aforesaid, That the said Pro-

clamation, so far as the same relates to the said Province of *Quebec*, and the Commission under the Authority whereof the Government of the said Province is at present administered, and all and every the Ordinance and Ordinances made by the Governor and Council of *Quebec* for the Time being, relative to the Civil Government and Administration of Justice in the said Province, and all Commissions to Judges and other Officers thereof, be, and the same are hereby revoked, annulled, and made void, from and after the First Day of *May*, One thousand seven hundred and seventy-five.

Inhabitants of Quebec *may profess the Romish Religion, subject to the King's Supremacy as by Act I Eliz.*

And, for the more perfect Security and Ease of the Minds of the Inhabitants of the said Province, it is hereby declared, That his Majesty's Subjects, professing the Religion of the Church of *Rome* of and in the said Province of *Quebec*, may have, hold, and enjoy, the free Exercise of the Religion of the Church of *Rome*, subject to the King's Supremacy, declared and established by an Act, made in the First Year of the Reign of Queen *Elizabeth*, over all the Dominions and Countries which then did, or thereafter should belong, to the Imperial Crown of this Realm; and that the Clergy of the said Church may hold, receive, and enjoy, their accustomed Dues and Rights, with respect to such Persons only as shall profess the said Religion.

Provision may be made by His Majesty for the Support of the Protestant Clergy

Provided nevertheless, That it shall be lawful for his Majesty, his Heirs or Successors, to make such Provision out of the rest of the said accustomed Dues and Rights, for the Encouragement of the Protestant Religion, and for the Maintenance and Support of a Protestant Clergy within the said Province, as he or they shall, from Time to Time, think necessary and expedient.

No Person professing the Romish *Religion obliged to take the Oath of Elizabeth; but to take, before the Governor, &c., the following Oath.*

Provided always, and be it enacted, That no Person, professing the Religion of the Church of *Rome*, and residing in the said Province, shall be obliged to take the Oath required by the said Statute passed in the First Year of the Reign of Queen *Elizabeth*, or any other Oaths substituted by any other Act in the Place thereof; but that every such Person who, by the said Statute is required to take the Oath therein mentioned, shall be obliged, and is hereby required, to take and subscribe the following Oath before the Governor, or such other Person in such Court of Record as his Majesty shall appoint, who are hereby authorised to administer the same; *videlicet*,

The Oath

I A. B. do sincerely promise and swear, That I will be faithful, and bear true Allegiance to His

Majesty King GEORGE, *and him will defend to the utmost of my Power, against all traiterous Conspiracies, and Attempts whatsoever, which shall be made against his Person, Crown, and Dignity; and I will do my utmost Endeavour to disclose and make known to his Majesty, his Heirs and Successors, all Treasons, and traiterous Conspiracies, and Attempts, which I shall know to be against him, or any of them; and all this I do swear without any Equivocation, mental Evasion, or secret Reservation, and renouncing all Pardons and Dispensations from any Power or Person whomsoever to the Contrary.*

So Help me God.

Persons refusing the Oath to be subject to the Penalties by Act I Eliz.

And every such Person, who shall neglect or refuse to take the said Oath before mentioned, shall incur and be liable to the same Penalties, Forfeitures, Disabilities, and Incapacities, as he would have incurred and been liable to for neglecting or refusing to take the Oath required by the said Statute passed in the First Year of the Reign of Queen *Elizabeth*.

His Majesty's Canadian *Subjects (religious Orders excepted) may hold all their Possessions, &c., and in Matters of Controversy, Resort to be had to the Laws of* Canada *for the Decision.*

And be it further enacted by the Authority aforesaid, That all his Majesty's *Canadian* Subjects, within the Province of *Quebec*, the religious

Orders and Communities only excepted, may also hold and enjoy their Property and Possessions, together with all Customs and Usages relative thereto, and all other their Civil Rights, in as large, ample, and beneficial Manner, as if the said Proclamation, Commissions, Ordinances, and other Acts and Instruments, had not been made, and as may consist with their Allegiance to his Majesty, and Subjection to the Crown and Parliament of *Great Britain*; and that in all Matters of Controversy, relative to Property and Civil Rights, Resort shall be had to the laws of *Canada*, as the Rule for the Decision of the same; and all Causes that shall hereafter be instituted in any of the Courts of Justice, to be appointed within and for the said Province, by his Majesty, his Heirs and Successors, shall, with respect to such Property and Rights, be determined agreeably to the said Laws and Customs of *Canada*, until they shall be varied or altered by any Ordinances, that shall, from Time to Time, be passed in the said Province by the Governor, Lieutenant Governor, or Commander in Chief, for the Time being, by and with the Advice and Consent of the Legislative Council of the same, to be appointed in Manner herein-after mentioned.

Not to extend to Lands granted by his Majesty in common Soccage. Owners of Goods may alienate the same by Will, &c., if executed according to the Laws of Canada

Provided always, That nothing in this Act contained shall extend, or be construed to extend,

to any Lands that have been granted by his Majesty, or shall hereafter be granted by his Majesty, his Heirs and Successors, to be holden in free and common Soccage.

Provided also, That it shall and may be lawful to and for every Person that is Owner of any Lands, Goods, or Credits, in the said Province, and that has a Right to alienate the said Lands, Goods, or Credits, in his or her Life-time, by Deed of Sale, Gift; or otherwise, to devise or bequeath the same at his or her Death, by his or her last Will and Testament; any Law, Usage, or Custom, heretofore or now prevailing in the Province, to the Contrary hereof in any-wise notwithstanding; such Will being executed, either according to the Laws of Canada, or according to the Forms prescribed by the Laws of *England*.

Criminal Law of England *to be continued in the Province*

And whereas the Certainty and Lenity of the Criminal Law of *England*, and the Benefits and Advantages resulting from the Use of it, have been sensibly felt by the Inhabitants, from an Experience of more than Nine Years, during which it has been uniformly administered; be it therefore further enacted by the Authority aforesaid, That the same shall continue to be administered, and shall be observed as Law in the Province of *Quebec*, as well in the Description and Quality of the Offence as in the Method of Prosecution and Trial, and the Punishments and Forfeitures thereby inflicted, to the exclusion of every other

Rule of Criminal Law, or Mode of Proceeding thereon, which did or might prevail in the said Province before the Year of our Lord One thousand seven hundred and sixty-four; any Thing in this Act to the Contrary thereof in any Respect notwithstanding; subject nevertheless to such Alterations and Amendments as the Governor, Lieutenant-Governor, or Commander in Chief for the Time being, by and with the Advice and Consent of the legislative Council of the said Province, hereafter to be appointed, shall, from Time to Time, cause to be made therein, in Manner herein-after directed.

His Majesty may appoint a Council for the Affairs of the Province; which Council may make Ordinances, with Consent of the Governor

And whereas it may be necessary to ordain many Regulations for the future Welfare and good Government of the Province of *Quebec*, the Occasions of which cannot now be foreseen, nor, without much Delay and Inconvenience, be provided for, without intrusting that Authority, for a certain Time, and under proper Restrictions, to Persons resident there: And whereas it is at present inexpedient to call an Assembly; be it therefore enacted by the Authority aforesaid, That it shall and may be lawful for his Majesty, his Heirs and Successors, by Warrant under his or their Signet or Sign Manual, and with the Advice of the Privy Council, to constitute and appoint a Council for the Affairs of the Province of *Quebec*, to consist of such Persons resident there, not exceeding Twenty-three, nor less than

Seventeen, as his Majesty, his Heirs and Successors, shall be pleased to appoint; and, upon the Death, Removal, or Absence of any of the Members of the said Council, in like Manner to constitute and appoint such and so many other Person or Persons as shall be necessary to supply the Vacancy or Vacancies; 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, or, in his Absence, of the Lieutenant-Governor, or Commander in Chief for the Time being.

The Council are not impowered to lay Taxes, Publick Roads or Buildings excepted

Provided always, That nothing in this Act contained shall extend to authorise or impower the said legislative Council to lay any Taxes or Duties within the said Province, such Rates and Taxes only excepted as the Inhabitants of any Town or District within the said Province may be authorised by the said Council to assess, levy, and apply, within the said Town or District, for the Purpose of making Roads, erecting and repairing publick Buildings, or for any other Purpose respecting the local Convenience and Oeconomy of such Town or District.

Ordinances made to be laid before his Majesty for his Approbation

Provided also, and be it enacted by the Authority aforesaid, That every Ordinance so to be

made, shall, within Six Months, be transmitted by the Governor, or, in his Absence, by the Lieutenant-governor, or Commander in Chief for the Time being, and laid before his Majesty for his Royal Approbation; and if his Majesty shall think fit to disallow thereof, the same shall cease and be void from the Time that his Majesty's Order in Council thereupon shall be promulgated at *Quebec*.

Ordinances touching Religion not to be in Force without his Majesty's Approbation

Provided also, that no Ordinance touching Religion, or by which any Punishment may be inflicted greater than Fine or Imprisonment for Three Months, shall be of any Force or Effect, until the same shall have received His Majesty's Approbation.

Provided also, That no Ordinance shall be passed at any Meeting of the Council where less than a Majority of the whole Council is present, or at any Time except between the First Day of *January* and the First Day of *May*, unless upon some urgent Occasion, in which Case every Member thereof resident at *Quebec*, or within Fifty Miles thereof, shall be personally summoned by the Governor, or, in his Absence, by the Lieutenant-governor, or Commander in Chief for the Time being, to attend the same.

Nothing to hinder his Majesty to constitute Courts of Criminal, Civil, and Ecclesiastical Jurisdiction

And be it further enacted by the Authority aforesaid, That nothing herein contained shall

extend, or be construed to extend, to prevent or hinder his or their Letters Patent under the Great Seal of *Great Britain*, from erecting, constituting, and appointing, such Courts of Criminal, Civil, and Ecclesiastical Jurisdiction within and for the said Province of *Quebec*, and appointing, from Time to Time, the Judges and Officers thereof, as His Majesty, His Heirs and Successors, shall think necessary and proper for the Circumstances of the said Province.

All Acts formerly made are hereby inforced within the Province

Provided always, and it is hereby enacted, That nothing in this Act contained shall extend, or be construed to extend, to repeal or make void, within the said Province of *Quebec*, any Act or Acts of the Parliament of *Great Britain* heretofore made, for prohibiting, restraining, or regulating, the Trade or Commerce of His Majesty's Colonies and Plantations in *America*; but that all and every the said Acts, and also all Acts of Parliament heretofore made concerning or respecting the said Colonies and Plantations, shall be, and are hereby declared, to be, in Force, within the said Province of *Quebec*, and every Part thereof.

FINIS

6. PETITION FOR THE REPEAL OF THE QUEBEC ACT

To the Honourable the Commons of Great Britain in Parliament Assembled

The humble Petition and Memorial of his Majesty's ancient Subjects the Seigneurs, Freeholders, Merchants, Traders, and others settled in his Majesty's Province of Quebec,

Sheweth,

That, under the sanction of his Majesty's royal proclamation, bearing date the seventh day of October, in the year of our Lord one thousand seven hundred and sixty-three, which graciously promises to all persons inhabiting in, or resorting to, this province, his royal protection for the enjoyment of the benefit of the laws of the realm of England, until assemblies should be called therein, they did come and settle themselves in this province, having entrusted their own properties, as well as very considerable sums of their friends, in goods and merchandize, from Great Britain, and entrusted the same into the hands of the Canadians, as well for the purpose of internal trade in the province, as for outsets in carrying on the traffic of furs and peltries in the Indian countries and fisheries below Quebec, many of them having purchased lands and houses, and been employed in agriculture, and the ex-

portation of grain and other produce to foreign markets, to the great benefit and emolument of the said province, which has flourished chiefly by the industry and enterprising spirit of the said subjects, who, under the protection of British laws, and by the assistance of annual supplies of British manufactures, and other goods and merchandize obtained upon credit from the merchants of Great Britain, have been enabled to carry on at least four parts in five of all the imports and exports which are principally made in British bottoms, the latter consisting of furs, peltries, wheat, fish, oil, potash, lumber, and other country produce: and for the more convenient carrying on the said trade and commerce, they have built wharfs and store-houses at a very great expense, insomuch that the property, real and personal, now in British hands, or by them entrusted to Canadians at a long credit, is one half of the whole value of the province, exclusive of the wealth of the different communities; which your petitioners have in part set forth in the humble petition to his most excellent Majesty, dated at Quebec the thirty-first day of December, which was in the year of our Lord one thousand seven hundred and seventy-three, humbly praying, that he would be graciously pleased to require his governor or commander in chief to call a general assembly, in such manner, and of such constitution and form, as to his Majesty's royal wisdom should seem best adapted to secure the peace, welfare, and good government of this province. Wherefore with deep concern they observe, that in certain examinations taken before your honour-

able house, the British subjects here have been grossly abused and misrepresented, as well as to their numbers as in their importance in this province. For the number of the new subjects has, we humbly conceive, been greatly exaggerated, it being, by the last computation, about seventy-five thousand; whereas, by an enumeration of the British subjects, they amount at this time to upwards of three thousand souls, besides many that we cannot immediately ascertain that are dispersed in the Indian countries carrying on traffic with the savages, besides the merchants and traders with their families settled at Detroit and its dependencies, and at the fisheries below Quebec. And whereas an act of parliament has lately passed, entituled, '*An act for the making more effectual provision for the government of the province of Quebec in North America*,' which is said to have been passed upon the principles of humanity and justice, and at the pressing instance and request of the new subjects, signified to his Majesty by an humble petition setting forth their dislike to the British laws and form of government, and praying, in the name of all the inhabitants and citizens of the province, to have the French institutes in their stead, and a total abolition of trials by jury, together with a capacity of holding places of honour and trust in common with his Majesty's ancient subjects. We crave leave to inform your honourable house, that the said petition was never imparted to the inhabitants in general (that is) the freeholders, merchants, and traders, who are equally alarmed with us at the Canadian laws being to take place, but was

in a secret manner carried about and signed by a few of the seigneurs, chevaliers, advocates, and others in their confidence, at the suggestions, and under the influence of their priests; who, under colour of French laws, have obtained an act of parliament which deprives his Majesty's ancient subjects of all their rights and franchises, destroys the Habeas Corpus act, and the inestimable privilege of trial by juries, the only security against the venality of a corrupt judge, and gives unlimited power to the governor and council to alter the criminal laws; which act has already struck a damp upon the credit of the country, and alarmed all your humble petitioners with the just apprehensions of arbitrary fines and imprisonment, and which, if it takes place, will oblige them to quit the province, or, in the end, it must accomplish their ruin, and impoverish or hurt their generous creditors, the merchants in Great Britain, &c. To prevent which, your petitioners most humbly pray that the said act may be repealed or amended, and that they may have the benefit and protection of the English laws, in so far as relates to personal property; and that their liberty may be ascertained according to their ancient constitutional rights and privileges heretofore granted to all his Majesty's dutiful subjects throughout the British empire.

And your petitioners, as in duty bound, will ever pray.

QUEBEC, 12*th Nov.* 1774.

7. DECLARATION OF INDEPENDENCE

By the Representatives of the United States of America in Congress Assembled

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed, that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and, accordingly, all experience hath shown, that

mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But, when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government and to provide new guards for their future security. Such has been the patient sufferance of these colonies, and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having, in direct object, the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world:—

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly for opposing, with manly firmness, his invasions on the rights of the people.

He has refused for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the state remaining, in the meantime, exposed to all the danger of invasion from without and convulsions within.

He has endeavoured to prevent the population of these States; for that purpose, obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislature.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others (that is, with the Lords and Commons of Britain) to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation; for quar-

tering large bodies of armed troops among us: for protecting them, by mock trial, from punishment for any murders which they should commit on the inhabitants of these states; for cutting off our trade with all parts of the world: for imposing taxes on us without our consent: for depriving us, in many cases, of the benefits of trial by jury: for transporting us beyond the seas to be tried for pretended offences: for abolishing the free system of English laws in a neighbouring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies: for taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the powers of our governments: for suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is, at this time, transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun, with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against

their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions, we have petitioned for redress, in the most humble terms; our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attention to our British brethren. We have warned them, from time to time, of attempts made by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They, too, have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace, friends.

We, therefore, the representatives of the United States of America, in General Congress assembled, appealing to the Supreme Judge of the World for the rectitude of our intentions, do, in the name

and by the authority of the good people of these colonies, solemnly publish and declare, That these United Colonies are, and of right ought to be, Free and Independent States; that they are absolved from all allegiance to the British crown, and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved; and that, as Free and Independent States, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which Independent States may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other, our lives, our fortunes, and our sacred honour.

8. LORD SYDNEY TO LORD DORCHESTER

WHITEHALL 3*d Sepr.* 1788.

MY LORD,

Your Lordship will have seen, by the proceedings which took place in Parliament in the course of the last Session, the Arguments which were made use of on the Introduction of the Petition brought by Mr. Lymburner from Quebec, for a Change of the present Constitution of the Province, and the reasons which occurred to His Majesty's Ministers for avoiding any decision upon that very important subject.

It will, however, be absolutely necessary that it should be resumed very shortly after the next meeting, and it will, of course, be a matter of great importance to His Majesty's Servants, that they should be previously prepared to enter into a full discussion of the business, and to propose such arrangements as may be found to be expedient for removing every just and reasonable cause of complaint that may exist among His Majesty's Subjects, of any description whatsoever, who are Inhabitants of that Province.

The variety of applications which have from time to time been transmitted from thence upon this business, of so opposite a tendency to each other, render it extremely difficult to fix upon

any Arrangements calculated to satisfy all the Parties interested in, or connected with it; His Majesty's Servants however, are desirous to give the matter a full consideration and that they may be the better enabled to form a competent judgment of the steps advisable to be taken, they are solicitous of obtaining from Your Lordship a full and impartial account of the different Classes of Persons who desire a Change of Government, as well as of those who are adverse to the Measure, specifying, as nearly as it can be ascertained, the Proportion of Numbers and Property on each side in the several Districts; and, That your Lordship at the same time should state in what manner, either the interests or influence of the latter, might be affected by any alteration, and what is the Nature and grounds of their apprehensions from the Introduction of a greater Portion of English Law, or of a System of Government more comformable to that established in other British Colonies.

In particular, They wish to be informed from what Causes the objection of the old Canadian Subjects to an House of Assembly chiefly arises: Whether, from its being foreign to the Habits and Notions of Government in which they have been educated, or from an apprehension that it would be so formed as to give an additional Weight to the New Subjects, and lead to the introduction of Parts of the English Law which are obnoxious to them; or, from an idea that being invested with a Power of Taxation, it would eventually subject their Property to Burthens from which they are at present exempted; In like manner,

whether the Objections which appear to exist to a farther Introduction of Trial by Jury, arise either from Prejudices against the Nature and Mode of such a decision, or from the difficulty of finding Jurors properly qualified, and the inconvenience to Individuals of the necessary Attendance; or from the Notion of this species of Trial being necessarily coupled with Modes of Proof and Rules of Law, different from those to which they are accustomed.

Though several of these points have already been noticed by Your Lordship in some of your Letters to me, and in the Papers which accompanied them, yet His Majesty's Servants do not think that they are sufficiently explicit to enable them to form a decided opinion.

The anxiety of His Majesty's Servants to be perfectly informed with regard to all these matters as soon as possible has induced them to send out an Extraordinary Packet Boat, and they are in hopes of receiving from Your Lordship upon her return, a full communication of the Sentiments entertained upon these several heads of inquiry, and which communication they wish to be made in a manner that may be proper to be laid before Parliament, at the next meeting.

I find, upon an examination of the Plans transmitted by Your Lordship's predecessor, that the most considerable part of the disbanded Troops and Loyalists who have become settlers in the Province since the late War, have been placed upon Lands in that part of it which lie to the Westward of the Ceders, and beyond those Lands (excepting only Detroit and its Neighbourhood)

which are granted in Seigneurie; as these People are said to be of the number desirous of the Establishment of the British Laws. It has been in Contemplation to propose to Parliament a division of the Province, to commence from the Boundary Line of the Seigneurie granted to Monsieur De Longueil, and to take in all the Country to the Southward and Westward in the manner described in the enclosed paper. But, before they take any step towards the execution of this measure, they are desirous of receiving the advantage of Your Lordship's opinion how far it may be practicable or expedient; or, whether any other line or mode of separation would be preferable. Your Lordship will however understand, that it is the King's intention that the New Settlers in that part of the Province who now hold their Lands upon Certificates of Occupation, shall, at all events, be placed upon the same footing in all respects, as their Brethren in Nova Scotia and New Brunswick, by having their Lands granted to them in free and Common Soccage, with a Remission of Quit Rents for the first Ten Years; and Instructions will be prepared accordingly, as soon as Your Lordship's opinion upon the plan aforementioned shall be obtained.

With a view to the execution of the Plan in question, it will be necessary for you to consider previously to your Report upon it, what sort of Civil Government ought to be formed for its internal arrangement, and whether the Number and description of the Inhabitants and other Circumstances are such as do, or do not, make

the immediate Establishment of an Assembly within this district, practicable and advisable. At all events it will be natural, as the greatest Part of these New Settlers are attached to the English Laws, that that System should be introduced as the General Rule, with such Exceptions or Qualifications as particular and local Circumstances may appear to require; At the same time Your Lordship will attend to the situation to which the Old Canadian Settlers at Detroit would be reduced, provided it may be found expedient, in consequence of the Information which the King's Servants expect to receive from Your Lordship (and by which you will understand they mean in a great degree to be guided), to resist the Application for any Change of the Constitution of the remaining part of the Province; and Your Lordship will also consider, in case of such a determination, in what part of the Province within the reserved limits, the Settlers at Detroit, if they should desire to be removed, might be accomodated with Lands the best suited to their advantage.

I am, &c.

SYDNEY.

9. LORD DORCHESTER TO LORD SYDNEY

QUEBEC *8th November* 1788.

MY LORD,

The Province of Quebec consists at present of seven districts or counties; Quebec and Montreal in the central parts, Gaspe at and near the mouth of the Saint Lawrence, and the country, west of Point au Boudet, divided into the four districts of Luneburg, Mecklenburg, Nassau, and Hesse. The Canadians, or new subjects, occupy the districts of Quebec and Montreal, and some are also to be found in the districts of Gaspe, and Hesse. The three districts of Luneburg, Mecklenburg, and Nassau, are inhabited only by the loyalists, or old subjects of the Crown. The Commerce of the country being chiefly carried on by the English occasions a considerable mixture of inhabitants in the towns of Quebec and Montreal, nearly in the proportion of one British to two Canadians. Some of the former are also settled at Three Rivers, Terrebone, William Henry, Saint Johns, and the entrance of Lake Champlain, and a small number are dispersed among the Canadians in the country parishes; the fur trade has collected some hundreds at Detroit, as the fisheries have at the Bay of Chaleurs, and other

parts of the district of Gaspe. The proportions of British and Canadians in the two districts of Quebec and Montreal, exclusive of the towns, may be about one to forty, in the same districts, inclusive of the towns, one to fifteen, in the district of Hesse one to three, in the district of Gaspe two to three, and in the whole province, taken together, about one to five.

A change of the laws and form of government, by the introduction of an Assembly, is chiefly promoted by the commercial part of the community, in the towns of Quebec and Montreal. The Canadian Habitants, or farmers, who may be styled the main body of the freeholders of the country, having little or no education, are unacquainted with the nature of the question, and would, I think, be for, or against it, according to their confidence in the representations of others. The clergy do not appear to have interfered. But the Canadian gentlemen in general are opposed to the measure; they object to the introduction of a body of new laws, to the extent and tendency of which they are strangers; they express apprehensions of much disquietude among the people from the introduction of an assembly, and conceive that the low state of learning and knowledge in the country would lay them open to the pursuit and adoption of wrong measures, and to dangers, which a more enlightened people would not be exposed to. The fear of taxation, I take for granted, is among the motives of those, who are adverse to the change, and would no doubt strongly influence the sentiments of the common people, if they should come to consider the merits

of the question. The objections, which appear to exist to a farther introduction of the trial by jury, arise partly from prejudice, and partly from an idea, that the choice would be narrow, and render it difficult to find jurors totally disinterested.

In addition to these observations, it may be proper to mention, that the population of this country is chiefly confined to the margin of the waters from the western side of the Gulf of Saint Lawrence in the district of Gaspe, to the settlements at and above Detroit, a chain of not less than eleven hundred miles; and that, though the ancient settled parts of the districts of Quebec and Montreal, from Kamaraska to Point au Boudet (comprehending about three hundred and seventy miles of the above line), may find no great burthen in the expense of a representation, it may be otherwise with the inhabitants newly set down in Gaspe, Luneburg, Mecklenburg, Nassau, and Hesse, and that the inconveniencies and charges of assembling, from parts so distant, would be increased by the nature of the climate, which renders the roads for several months in the year difficult, if not impracticable.

A division of the province, I am of opinion, is by no means advisable at present, either for the interests of the new, or the ancient districts, nor do I see an immediate call for other regulations than such as are involved in the subject of the general jurisprudence of the country. Indeed it appears to me, that the western settlements are as yet unprepared for any organization, superior to that of a county. This has lately been given

to them, and will, I trust, answer their present wants, if I except Hesse, whose commercial and complicated affairs call for a particular provision, now under the consideration of a Committee of the Council. But though I hold a division of the province at present inexpedient, yet I am of opinion, that no time should be lost in appointing a person of fidelity and ability, in the confidence of the loyalists, to superintend, and lead them, and to bring their concerns with despatch to the knowledge of government, under the title of Lieutenant Governor of the four western districts above named.

Should a division of the province notwithstanding be determined by the wisdom of his Majesty's Council, I see no reason, why the inhabitants of those western districts should not have an Assembly, as soon as it may be organized without detriment to their private affairs, nor against their having so much of the English system of laws, as may suit their local situation and condition. But in this case particular care should be taken to secure the property and civil rights of the Canadian settlers at Detroit, who, I am convinced, would not choose to emigrate, though good lands might be given them in the lower parts of the province. But, should they choose to move, it would be attended with much inconvenience, as would their being left insulated, and attached to the district of Montreal.

With respect to proper limits for the new government, in the event of a separation, I would recommend those described in the annexed paper, which will comprehend all the settlements of the

loyalists on the River Saint Lawrence above Point au Boudet, and those also lately laid out for them on the south side of the Uttawas river.

DORCHESTER.

10. RT. HON. W. W. GRENVILLE TO LORD DORCHESTER

WHITEHALL, *20th Octr.* 1789.

MY LORD,

It having been determined to bring under the consideration of Parliament early in the next Session the propriety of making farther provision for the good government of the Province of Quebec, I enclose to your Lordship the draft of a Bill prepared for this purpose.

His Majesty's Servants are desirous, before this Plan shall be proposed to Parliament, to avail themselves of such observations upon it as your Lordship's experience and local knowledge may suggest. It is probable that Parliament may not meet till towards the end of January next, and that there will therefore be full time for me to receive your Lordship's answer to this despatch with such remarks as may occur to you on the proposed Bill, and with such information as may be necessary to enable me to supply those particulars of detail which are now left in blank.

Your Lordship will observe that the general object of this plan is to assimilate the Constitution of that Province to that of Great Britain, as nearly as the difference arising from the manners

of the People and from the present Situation of the Province will admit.

In doing this a considerable degree of attention is due to the prejudices and habits of the French Inhabitants who compose so large a proportion of the community, and every degree of caution should be used to continue to them the enjoyment of those civil and religious Rights which were secured to them by the Capitulation of the Province, or have since been granted by the liberal and enlightened spirit of the British Government.

This consideration has had a great degree of weight in the adoption of the plan of dividing the Province of Quebec into two Districts which are to remain as at present under the administration of a Governor General, but are each to have a Lieutenant Governor and a separate Legislature.

The King's Servants have not overlooked the reasons urged by your Lordship against such a separation, and they feel that while Canada remained under its present form of Government great weight would have been due to those suggestions; but when the resolution was taken of establishing a Provincial Legislature, to be constituted in the manner now proposed, and to be chosen in part by the People, every consideration of policy seemed to render it desirable that the great preponderance possessed in the Upper Districts by the King's ancient Subjects, and in the lower by the French Canadians, should have their effect and operation in separate Legislatures; rather than that these two bodies of People should be blended together in the first formation of the

new Constitution, and before sufficient time has been allowed for the removal of ancient prejudices, by the habit of obedience to the same Government, and by the sense of a common interest.

With respect to the intended Boundaries of these Provinces a blank is left in the Bill in order that your Lordship may, with the assistance of the Surveyor General, who is now in Quebec, consider of such a description of those Boundaries as may be sufficiently intelligible and certain, so as to leave no room for future difficulties on that subject. The division between the two Provinces is meant to be the same as is mentioned to your Lordship in Lord Sydney's Letter of 3rd Septr. 1788, with the alteration suggested by your Lordship in your Letter of the 8th November following.

There will, however, be a considerable difficulty in the mode of describing the Boundary between the District of Upper Canada and the Territories of the United States, as the adhering to the Line mentioned in the Treaty with America would exclude the Posts which are still in his Majesty's Possession, and which the infraction of the Treaty on the part of America has induced his Majesty to retain, while on the other hand the including them by express words within the Limits to be established for the Province by an Act of the British Parliament would probably excite a considerable degree of resentment among the Inhabitants of the United States, and might perhaps provoke them to measures detrimental to our Commercial Interests. Possibly the best solution for this difficulty might be to describe the Upper District by some general words such as "All the

Territories, &c., &c., &c., possessed by and subject to his Majesty, and being to the West or South West of the Boundary Line of Lower Canada, except such as are included within the present Boundaries of the Government of New Brunswick."

In settling this point of the Boundaries it will also be a question, whether the Fishing Settlement in Gaspe may not with advantage be annexed to the Government of New Brunswick rather than to be left as a part of that of Lower Canada under the system now proposed to be established particularly as the local Circumstances of that District might render a representation of it in an Assembly at Quebec extremely difficult if not impracticable.

The Legislature in each of the Two Provinces is intended, as your Lordship will observe from the draft of the Bill, to consist of his Majesty represented by his Governor, or Lieutenant Governor, a Legislative Council, and a House of Assembly.

It is intended to separate the Legislative from the Executive Council, and to give to the Members of the former a right to hold their Seats during their Life and good Behaviour, provided they do not reside out of the Province, or attach themselves to any Oath of allegiance or Obedience to the United States, or to any other Foreign Power.

It is the King's farther intention to confer upon the Persons whom he shall distinguish by calling them to his Legislative Council some mark of Honour, such as a Provincial Baronetage either personal to themselves, or descendible to their Eldest Sons, in lineal Succession.

A great accession of wealth to the Provinces might probably induce his Majesty at a future period to raise the most considerable of these Persons to a higher degree of Honour, but this could certainly not be done with propriety under the present Circumstances.

The Object of the regulations is both to give to the Upper branch of the Legislature a greater degree of weight and consequence than was possessed by the Councils in the old Colonial Governments, and to establish in the Provinces a Body of Men having that motive of attachment to the existing form of Government, which arises from the possession of personal or hereditary distinctions.

It will be very necessary that great attention should be paid to the choice of those Persons who are to be placed in this situation in the first instance, and of those whom his Majesty may be advised from time to time to add to that number; and as your Lordship's long knowledge of the Province and of the Individuals who compose the higher classes of the Community, must render your Lordship more particularly competent to such a Selection, I must desire that your Lordship will consider this point with that degree of attention to which its importance entitles it, and that you will state to me the names of those Persons whom you may think fit objects of the King's favour in this respect, in each of the Two Provinces intended to be formed.

In the draft of the Bill which I enclose, a blank is left for that which is to be fixed as the smallest number of which the Councils are respectively

to be composed. It is certainly desirable that this number should not be made too large in the first instance, as it would be easy for his Majesty to add to it whenever it may be found expedient, while on the other hand the calling improper Persons to the Council, in order to make up the number required by the Bill, would under the system now proposed be productive of permanent inconvenience and mischief to his Majesty's Government.

Of this point also your Lordship must unquestionably be the best Judge, and I shall be anxious to learn your Sentiments upon it. My present idea, founded, however, rather on conjecture than on any satisfactory information, would be that the Legislative Council in Upper Canada should not consist of less than six Members, and in Lower Canada of not less than Twelve; and that the selection of these Persons should be made with a view to increasing the number by some addition at no very distant period, as a mark of his Majesty's favour to those Persons whose Conduct may be found to entitle them to it.

Your Lordship will also state to me for His Majesty's information, the number and names of those Persons whom you may think proper to recommend to his Majesty for Seats in the Executive Council.

It is by no means intended that the Members of the Legislative Council should be excluded from this Body, or that it should on the other hand be wholly composed of Persons of this description. It may be advisable that some of the Persons named to the Executive Council in one of the

Districts, should also be admitted to the same distinction in the other.

In providing for the establishment of a House of Assembly in each of the Two Provinces, the first question of detail which occurs is that of the Numbers of which these Bodies should consist, and of the manner in which they should be elected; particularly with respect to the division of the Provinces into Counties or Districts, and to the relative proportion of Representation to be allowed to the Towns.

The decision of these points must necessarily depend on local knowledge: They are therefore left in blank in the Draft of the Bill, and I must desire your Lordship's opinion upon them. I am not sufficiently informed whether the present Division of the Counties would be well adapted to the Object in question, or whether a subdivision into Parishes or Districts would be more desirable.

I enclose for your Lordship's information a Paper delivered to me by Mr. Lymburner, containing a Plan of Representation for the Province; but as far as I am at all enabled to form an Opinion on the Subject, that plan appears to me to be liable to great objection. I also transmit a plan for the same purpose framed by the Board of Trade in 1765.[1]

The next point to be considered is the Qualifications of the Electors, and of the Persons to be elected in each of the Provinces. This is also

[1] This date should be 1769, the date being given in the enclosure mentioned.

in great measure a point of local detail, depending on the condition and circumstances of the different Classes of the Inhabitants of the Provinces; and on which his Majesty's Servants are therefore desirous of receiving your Lordship's Opinion. In the margin of the Bill which I now transmit, I have marked the suggestions which have been made to me on this Subject; but I do not feel myself enabled, without farther information, to form any satisfactory Opinion upon them.

The remaining Clauses of the Bill do not seem to require much particular discussion in this Letter; Your Lordship will observe by the 27th Clause, that it is intended to continue all the existing Laws of the Province until they shall be repealed or varied by the Legislatures of the respective Provinces. An exception is however made and there is a Clause left in blank for the insertion of such Commercial Regulations, if any, which it may be thought expedient to introduce, as exceptions to the Canadian Laws, respecting Property and Civil Rights, previous to investing the Assembly in Lower Canada with a right to negative all future changes which may be proposed.

This is a point which is now under the consideration of his Majesty's Law Servants, but as it is probable that I shall receive your Lordship's answer to this dispatch before it may be necessary to come to a final decision on this Subject, I shall be glad to be furnished with any suggestions which may occur to your Lordship upon it, as likely to conduce to the advancement and security of the

Commercial Interest of this Kingdom, and that of the Province as connected with it.

The Clause enabling Persons to commute the holding of their Lands into free and common Soccage is conformable to what your Lordship has recommended with respect to the Upper Districts, and it seems a measure of good policy to extend the same principle to the lower parts of the Province, as far as the prejudices of the French Inhabitants will allow.

I should wish to know your Lordship's sentiments with respect to the time which might be most convenient for the commencement of this new System, supposing the Bill to be passed in the next Session of Parliament.

I am, etc.

W. W. GRENVILLE.

11. LORD DORCHESTER TO THE RT. HON. W. W. GRENVILLE

QUEBEC, *8th February*, 1790.

SIR,

I received the triplicate of your dispatch No. 2 on the 29th of last month, and avail myself of the first opportunity to submit to his Majesty's Ministers such observations on the proposed Bill, as occur to me in the moment.

The enclosed Draft comprehends the corresponding alterations, engrafted upon the Bill, transmitted in your letter.

The attainment of a free course of Justice throughout every part of his Majesty's possessions, in the way least likely to give umbrage to the United States, appears to me very desirable. For this reason the Boundaries of the two proposed Provinces are described by a precise Partition line only of the Country of Canada, with the Addition of such general words, as I hoped might include the Territories subject to, or possessed by, his Majesty, to the southward of the forty fifth degree of North Latitude on the side of Lake Champlain, as well as on the side of Oswego, Niagara, Detroit, and Michilimakinac, corresponding as nearly as could be, with the idea expressed in your letter. But upon consulting the Chief Justice, relative to the operation

of this description of the Boundary, I find that he does not think it will answer the desired end.

The District of Gaspe it seems best for the present to leave annexed to the Province of Lower Canada, on account of its commercial connection with this province, and because, notwithstanding its distance, the communication of it with Quebec by water is easier than its access to the seat of the Government of New Brunswick, in the present condition of that province; the more so, as the difficulty of a representation from that District in an Assembly at Quebec is greatly diminished, by the opening left in the Bill for non-residents of any district being elected Representatives thereof.

But the Bay of Chaleurs being subject to different Governments, particularly during the present uninhabited state of that part of New Brunswick, gives an opportunity to ill disposed persons to elude the control of the law, to the detriment of the Fisheries, and good order; a clause to remedy this Evil is therefore enclosed, which, if approved of, may be introduced into the Bill, as an addition to the second clause.

Many advantages might result from an hereditary Legislative Council, distinguished by some mark of honour, did the condition of the country concur in supporting this dignity; but the fluctuating state of Property in these Provinces would expose all hereditary honours to fall into disregard; for the present therefore it would seem more advisable to appoint the members during life, good behaviour, and residence in the province. The number for Upper Canada to be not less than

seven, and for Lower Canada not less than fifteen, to be increased by His Majesty, as the wealth and population of the Country may require. To give them as much consequence as possible, in the present condition of the Province, they should be selected from among the men of property, where talents, integrity, and a firm attachment to the Unity of the Empire may be found. I shall take the first opportunity of communicating the names of such persons, as appear to me the fittest objects of this description.

The House of Assembly for Upper Canada might consist of not less than Sixteen, and that for Lower Canada of not less than thirty members, or nearly double in number to the Legislative Councils, to be augmented also in proportion to the Population of the Country.

As far as I can judge at present it might be advisable to give the Towns of Quebec and Montreal in Lower Canada, a representation of four members each, and two to the Town of Three Rivers, dividing the Country Parishes thereof into twenty Circles, to send one member each. In Upper Canada the four districts of Luneberg, Mecklenburg, Nassau, and Hesse, to furnish four members each, and hereafter to be subdivided into as many Circles and Towns, as their condition may require. But the present time is too short to enter into a more minute detail, for which reason it is proposed to fix only the smallest number of Members in the Bill, and to leave the actual subdivision and apportionment, necessary for an equal representation, to be ascertained by the Lieutenant Governors, with the advice of the

Executive Councils of the respective Provinces, under authority for that purpose from His Majesty.

The qualification of Electors, and persons to be Elected, as to birth, has been extended to inhabitants of the Provinces before and since the conquest, because they may be considered upon an equal footing with the natives, and to foreigners naturalized, because an accession to the Province of light and property from abroad is desirable, and not likely to injure the King's interest, under the guards proposed.

The disqualifications of Persons, attainted for Treason, and Felony, Deserters from the Militia when called out into service, and Bankrupts, until the full payment of their debts, have been added to the fourteenth clause, as a check to these evils, and from a persuasion, that persons of that description are not entitled to any political honours or consequence.

On the expediency of inserting any commercial regulations, as exceptions to the Laws of Canada, previous to investing the Assembly in Lower Canada with a right to negative all future changes, I regret that the complicated and professional nature of the subject, prevents my forming any other than a general opinion, that whatever regulations of this sort shall be thought proper to be adopted, should be enacted specially, unfolded to the people, and not introduced in bulk, and by general description.

The introduction of a Soccage Tenure I think necessary in the upper country, and advisable in every part of the province, and this free of Quit-

rents from all holding no more than one thousand acres, as recommended in my letter to Lord Sydney No. 18. And the Quitrent, which it may be judged proper to lay on large Tracts, should be given up to the Provincial Governments for their Support, that all seeds of discord between Great Britain and her Colonies may be prevented. And independent of this important consideration perhaps the true principle of economy is rather to obviate the necessity of sending money abroad, than to bring home any from Quitrents or Duties of any Kind.

I take for granted, that the benefits, arising to the subject, from a change of the tenure in Fief to that in Common Soccage, are meant to run throughout, as from the King to His Tenant, so from the latter to all his Under-tenants, at the time of change; otherwise the advantages will be confined to a few, and an interest created unfriendly to the improvement of the country. Some alterations have been made in the clause relative to this point, with a view of clearing doubt upon the subject.

The commencement of the operation of the Act, as to every part, excepting only the issuing the Writs of Election, and calling together the Houses of Assembly of the respective Provinces, has been fixed at such time, as may be declared by His Majesty, with the advice of His Privy Council, not later than Six months after the notification of the Act in this Country, which I think will allow time sufficient for all necessary arrangements, as to these points.

But for the Convocation of the Assemblies a

more distant period appears to be necessary, for the reasons above stated. As soon as the proper plans for their organization shall have been prepared, His Majesty may order the Assemblies to be convened, as soon as convenient, previous to the first of January, 1792, as suggested in the thirty first clause of the Bill, to which is likewise added a proposal for the temporary Government of the two Provinces in the interval, by the Lieutenant Governors, and Legislative Councils thereof, according to the model of the Quebec Bill.

Should this be approved, the Royal indulgence of returning to England for a few months on my private Affairs, would give me an opportunity to lay before His Majesty's Ministers all further explanations in my power on this subject.

Before I conclude, I have to submit to the wisdom of His Majesty's Councils, whether it may not be advisable to establish a General Government for His Majesty's Dominions upon this Continent, as well as a Governor General, whereby the united exertions of His Majesty's North American Provinces may more effectually be directed to the general interest, and to the preservation of the Unity of the Empire.

I enclose a copy of a letter from the Chief Justice, with some additional clauses, upon this subject, prepared by him at my request, together with this draught of another proposed addition to the Bill, to provide for the trial of foreign treason and murder, as also a copy of his letter respecting the operation of the Boundary, as described in the Bill, with his idea of the Addition necessary to give free scope to our Courts of

Justice. The clause above referred to under the letter B was also prepared by him at my request.

I am, etc.

DORCHESTER.

[ENCLOSURE]

Chief Justice Smith to Lord Dorchester

QUEBEC, *5th February*, 1790.

MY LORD,

The clause enclosed for the Trial of extra-provincial offences appears to me to be necessary to encourage that spirit of Enterprize, which leads our people in the Fur Trade to explore the Depths of this Continent, and has carried them almost over to the Eastern shores of the Pacific Ocean. This Commerce, elsewhere wearing out, by the increased Population of the northeastern parts of the ancient Continent, will soon become the monopoly of our nation. I have couched it in terms least likely of any that occur to me, to excite the Jealousy of our Neighbours.

The Bill with the other additions for the intended Reforms in this Country, left to be supplied by Your Lordship's local Experience, greatly improves the old model of our colonial Governments; for even those called the Royal Provinces, to distinguish them from the Proprietary and chartered Republics of the Stuart Kings had Essential Faults, and the same general tendency.

Mr. Grenville's plan will most assuredly lay a

foundation for two spacious populous and flourishing Provinces, and for more to grow out of them; and compose, at no remote period, a mass of Power very worthy of immediate attention.

I miss in it however, the expected Establishment to put what remains to Great Britain of Her Ancient Dominions in North America, under one general direction, for the united interest and safety of every Branch of the Empire.

The Colonies of England were flourishing Colonies. It was the natural effect of the connection, the Character of the People, and the Genius of the English Constitution. Ours will be so too. But that prosperity may be their ruin. And I trust in God that the wisdom, which is dictating the new Arrangements for us, will perfect its work, by a system to prevent our repeating the Folly, that has plunged the several parts of the Continent into poverty and distress.

Native as I am of one of the old Provinces, and early in the public service and Councils, I trace the late Revolt and Rent to a remoter cause, than those to which it is ordinarily ascribed. The Truth is that the Country had outgrown its Government, and wanted the true remedy for more than half a century before the Rupture commenced—To what period it continued to be practicable is problematical, and need not now be assigned.

To expect wisdom and moderation from near a score of Petty Parliaments, consisting in effect of only one of the three necessary branches of a Parliament, must, after the light brought by experience, appear to have been a very extravagant

Expectation. So it has been to my view above twenty years, and I did not conceal it.

My Lord, an American Assembly, quiet in the weakness of their Infancy, could not but discover in their Elevation to Prosperity, that *themselves* were the substance, and the Governor and Board of Council mere shadows in their political Frame. All America was thus, at the very outset of the Plantations, abandoned to Democracy. And it belonged to the Administrations of the days of Our Fathers to have found the Cure, in the Erection of a Power upon the Continent itself, to control all its own little Republics, and create a Partner in the Legislation of the Empire, Capable of consulting their own safety, and the common welfare.

To be better understood by your Lordship I beg leave to put a paper under this cover, in the form of additions to the present proposed Bill, partly suggested by the necessity of something to give a real and useful significancy to Your Lordship's nominal command of more Provinces than this.

As to the moment for commencing such an Establishment, that certainly must be the worst, when it shall be most wanted. And since its Erection will speak Intentions, and may give Umbrage, that will be the best time, in which that Umbrage shall excite the least apprehension.

The Debility of our Neighbours is notorious, nor can be succoured during the Distractions of France, and the consternation Spread by those Distractions through all Europe.

Here in these provinces, where it is of much

consequence, to set out with good habits, what juncture can be so favourable, as when the thousands thrown into them, under Your Patronage and Direction, have their Loyalty confirmed by Resentments for their Sufferings; and so are disposed to take, and especially from Your hand, whatever the wisdom of Great Britain shall prescribe, as a Gift of her Benevolence.

As to Canada, I mean that part of it to become Lower Canada, the Biasses in it, if there are any remaining, to the Stock from which it was severed, are become perfectly harmless, by that Body of English Loyalty Your Lordship has planted in the West—By their aversion to share in the Burdens and Miseries of the Revolted Colonies, and by the growing Discernment, that our safety and Prosperity is only to be found in the Commerce and Arms of Great Britain.

I am old enough to remember, what we in the Maritime Provinces dreaded from this French Colony in the North, and what it cost to take away that dread, which confined our Population to the Edges of the Atlantic; and my mind is therefore carried, under such an Administration as the present one, into a strong Persuasion, that nothing will be neglected to enable Great Britain, so to serve herself of that Power she already possesses here, as to check any Councils to be meditated to her Detriment, by the new Nation she has consented to create. She may do more! but this is out of my province.

So much, my Lord, You'll forgive me. I could not repress what I owed to the vindication of my Zeal, in the sacrifice of my fortune for the

British Interest, and as I think still for the best Interests too of the Country of my Birth. Most of all I owed it to my Sovereign, in whose Grace I found a Relief at the end of the Storm.

With a deep and grateful sense of all Your kindness and the honour of your request of my poor abilities, upon questions of so great magnitude and consequence.

I am, etc.

Wm. Smith.

12. RT. HON. H. DUNDAS TO LORD DORCHESTER

WHITEHALL, 16*th September*, 1791.

MY LORD,

In the letters which were written to your Lordship by my Predecessor, Lord Grenville, I find you were long ago fully informed by his Lordship of His Majesty's intention of dividing His Province of Quebec into two separate Governments, to be called the Province of Upper Canada, and the Province of Lower Canada, and of Regulations which were proposed to be made in consequence, for the better Government of that part of His Majesty's Dominions. In pursuance of that intention I am now to inform your Lordship that a Bill was introduced into Parliament and passed during the last session, intituled "An Act to repeal certain parts of an Act passed in the Fourteenth year of His Majesty's Reign intituled An Act for making more effectual Provision for the Government of the Province of Quebec in North America; and to make further provision for the Government of the said Province," a Copy of which I enclose together with a Commission under the Great Seal, revoking your former Commission of Governor of the Province of Quebec, and vesting you with the Chief Government of the two Provinces before-mentioned

and also Instructions under the Royal Sign Manual applicable to the Regulations which His Majesty under the Act has thought fit to establish.

In framing the Instructions to Your Lordship with respect to the Quorums of the Legislative Councillors and of the Members of the Assembly for Lower Canada, some difficulties occurred in fixing the number which might be proper to compose such Quorums, and on a consideration of the subject, it was rather thought advisable that the number of which such Quorums should consist, should be left to those Bodies to determine. The mode which His Majesty's Servants recommend for adjusting this point, is either by an Act of the Legislature, or what may perhaps equally answer the purpose, that of making the regulation now to be fixed upon, a standing order of each of the two Houses respectively, and I have it in Command to desire that your Lordship will on the first meeting recommend this object to their consideration, and likewise the forming other such Rules or standing Orders for regulating the Form of proceeding in the Council and Assembly, respectively, as may be most conducive to the regular dispatch of Business.

Your Lordship will find on a perusal of the Act that the number of Representatives of which the Assembly of Lower Canada was originally intended to consist has been considerably increased. This measure will render a new Distribution necessary instead of that which was proposed by Your Lordship in your letter to Lord Grenville, and I wish Your Lordship particularly to consider whether for the sake of convenience

and dispatch in deciding upon Elections and preventing the inconvenience of too great a number of Electors, the Towns of Quebec and Montreal might not for that purpose be divided into two separate and distinct Districts, and that these Towns should return Four Members each, by electing Two in each District. Your Lordship will see by the Copy of a Paper delivered to me by Mr. Lymburner, that he proposes that each of the Towns of Quebec and Montreal should choose seven Members each, but that arrangement His Majesty's Servants entirely disapprove of, and would be sorry that such a distribution should on any account take place.

When your Lordship shall have considered this subject maturely, and have arranged your Plan for the Representatives to be chosen by each of the Towns and Circles respectively, you will as soon as conveniently may be issue your Proclamation accordingly.

According to the best opinions which I can obtain it seems to me adviseable that excepting in the instances of Trois Rivieres, St. John, and William Henry, each of the other Circles and Towns or Townships in Lower Canada should elect one Representative, and as the Extent of the several Towns from the introduction of new Settlers and from the probable increase of Population will hereafter be likely to be enlarged, it seems to be desireable that for the same purpose of preventing too great a number of Electors for any place, that limits should now be fixed within which the Electors for the Representatives of the Towns should be resident, and whenever the

number of new Inhabitants resident within the limits adjacent and possessed of qualifications to vote for Towns or Townships shall increase so as to render it expedient that they should be represented in the House of Assembly, a new Town or Township shall in like manner be established within fixed limits for the purpose of separately electing an additional Representative in the House of Assembly, and so on from time to time as often as the occasion may require.

Your Lordship has, I have no doubt, been informed of the disputes and disagreements which have at times taken place between the Councils and Assemblies of the different Colonies respecting the Right claimed by the latter that all Bills whatsoever for granting money should originate with them. The principle itself as far as it relates to any question of imposing burthens upon the Subject is so consistent with the Spirit of Our Constitution that it ought not to be resisted; at the same time it would be prudent, if possible, to avoid any unnecessary discussion of its application in minute cases, and above all that it should not be so extended by overstrained refinements as to produce embarrassment and perplexity in the progress of Public business.

As there does not at present appear to be sufficient provision for the support of the Protestant Clergy either in Upper Canada or in Lower Canada, the collection of Tithes has under the Act of the present year been suffered to continue. But your Lordship will understand that it is not wished to continue this burthen longer than is necessary for the competent provision of the

Clergy: If therefore the Proprietors of Lands liable to the payment of Tithes shall be induced to concur with your Lordship's recommendation in providing a sufficient fund for clearing the reserved Lands and for building Parsonage Houses on the several Parsonages which may be endowed under the Act of the last Session of Parliament, and at the same time provide an intermediate fund for the maintenance of the Clergy during the period that will be required for the purpose of so clearing these reserved Lands, the obligation of Tithes may then cease. I have thought it necessary to explain this subject minutely to your Lordship, that by making it understood among the Proprietors of these Lands they may perceive the means which are in their own power to relieve themselves from a burthen which is naturally irksome to them.

By the Act of the last Session the duties payable to His Majesty under the Act of the 14th year of His Majesty's Reign, Cap. 88, on Articles imported into the Province of Quebec are suffered to remain upon their former footing; but I have it in Command to intimate to Your Lordship that as soon as the Legislatures of the Provinces of Upper Canada and Lower Canada shall have passed Laws laying the same or other Duties to an equal amount to those which become payable under the Acts, and such Act shall have obtained the Royal Assent, His Majesty's Ministers will be ready to propose to Parliament a Repeal of the Act abovementioned.

I am, etc.

H. DUNDAS.

II

THE DEADLOCK IN CANADA AND THE GRANT OF RESPONSIBLE GOVERNMENT

1. FROM LORD DURHAM'S REPORT ON THE AFFAIRS OF BRITISH NORTH AMERICA

I

Such is the lamentable and hazardous state of things produced by the conflict of races which has so long divided the Province of Lower Canada, and which has assumed the formidable and irreconcileable character which I have depicted. In describing the nature of this conflict, I have specified the causes in which it originated; and though I have mentioned the conduct and constitution of the Colonial Government as modifying the character of the struggle, I have not attributed to political causes a state of things which would, I believe, under any political institutions have resulted from the very composition of society. A jealousy between two races, so long habituated to regard each other with hereditary enmity, and so differing in habits, in language and in laws, would have been inevitable under any form of government. That liberal institutions and a pru-

dent policy might have changed the character of the struggle I have no doubt; but they could not have prevented it; they could only have softened its character, and brought it more speedily a more decisive and peaceful conclusion. Unhappily, however, the system of government pursued in Lower Canada has been based on the policy of perpetuating that very separation of the races, and encouraging these very notions of conflicting nationalities which it ought to have been the first and chief care of Government to check and extinguish. From the period of the conquest to the present time, the conduct of the Government has aggravated the evil, and the origin of the present extreme disorder may be found in the institutions by which the character of the colony was determined.

There are two modes by which a government may deal with a conquered territory. The first course open to it is that of respecting the rights and nationality of the actual occupants; of recognizing the existing laws, and preserving established institutions; of giving no encouragement to the influx of the conquering people, and, without attempting any change in the elements of the community, merely incorporating the Province under the general authority of the central Government. The second is that of treating the conquered territory as one open to the conquerors, of encouraging their influx, of regarding the conquered race as entirely subordinate, and of endeavouring as speedily and as rapidly as possible to assimilate the character and institutions of its new subjects to those of the great body of its empire.

In the case of an old and long settled country, in which the land is appropriated, in which little room is left for colonization, and in which the race of the actual occupants must continue to constitute the bulk of the future population of the province, policy as well as humanity render the well-being of the conquered people the first care of a just government, and recommend the adoption of the first-mentioned system; but in a new and unsettled country, a provident legislator would regard as his first object the interests not of the few individuals who happen at the moment to inhabit a portion of the soil, but those of that comparatively vast population by which he may reasonably expect that it will be filled; he would form his plans with a view of attracting and nourishing that future population, and he would therefore establish those institutions which would be most acceptable to the race by which he hoped to colonize the country. The course which I have described as best suited to an old and settled country, would have been impossible in the American continent, unless the conquering state meant to renounce the immediate use of the unsettled lands of the Province; and in this case such a course would have been additionally unadvisable, unless the British Government were prepared to abandon to the scanty population of French whom it found in Lower Canada, not merely the possession of the vast extent of rich soil which that Province contains, but also the mouth of the St. Lawrence, and all the facilities for trade which the entrance of that great river commands.

In the first regulations adopted by the British Government for the settlement of the Canadas, in the Proclamation of 1763, and the Commission of the Governor-in-Chief of the Province of Quebec, in the offers by which officers and soldiers of the British army, and settlers from the other North American Provinces, were tempted to accept grants of land in the Canadas, we perceive very clear indications of an intention of adopting the second and the wiser of the two systems. Unfortunately, however, the conquest of Canada was almost immediately followed by the commencement of those discontents which ended in the independence of the United Provinces. From that period, the colonial policy of this country appears to have undergone a complete change. To prevent the further dismemberment of the Empire became the primary object with our statesmen; and an especial anxiety was exhibited to adopt every expedient which appeared calculated to prevent the remaining North American Colonies from following the example of successful revolt. Unfortunately the distinct national character of the French inhabitants of Canada, and their ancient hostility to the people of New England, presented the easiest and most obvious line of demarcation. To isolate the inhabitants of the British from those of the revolted Colonies, became the policy of the Government; and the nationality of the French Canadians was therefore cultivated, as a means of perpetual and entire separation from their neighbours. It seems also to have been considered the policy of the British Government to govern its Colonies by

means of division, and to break them down as much as possible into petty isolated communities, incapable of combination, and possessing no sufficient strength for individual resistance to the Empire. Indications of such designs are to be found in many of the acts of the British Government with respect to its North American Colonies. In 1775 instructions were sent from England, directing that all grants of land within the Province of Quebec, then comprising Upper and Lower Canada, were to be made in fief and seigniory; and even the grants to the refugee loyalists, and officers and privates of the colonial corps, promised in 1786, were ordered to be made on the same tenure. In no instance was it more singularly exhibited than in the condition annexed to the grants of land in Prince Edward's Island, by which it was stipulated that the Island was to be settled by 'foreign Protestants'; as if they were to be foreign in order to separate them from the people of New England, and Protestants in order to keep them apart from the Canadian and Acadian Catholics. It was part of the same policy to separate the French of Canada from the British emigrants, and to conciliate the former by the retention of their language, laws, and religious institutions. For this purpose Canada was afterwards divided into two Provinces, the settled portion being allotted to the French, and the unsettled being destined to become the seat of British colonization. Thus, instead of availing itself of the means which the extent and nature of the Province afforded for the gradual introduction of such an English population into its

various parts as might have easily placed the French in a minority, the Government deliberately constituted the French into a majority, and recognized and strengthened their indistinct national character. Had the sounder policy of making the Province English, in all its institutions, been adopted from the first, and steadily persevered in, the French would probably have been speedily outnumbered, and the beneficial operation of the free institutions of England would never have been impeded by the animosities of origin.

Not only, however, did the Government adopt the unwise course of dividing Canada, and forming in one of its divisions a French community, speaking the French language, and retaining French institutions, but it did not even carry this consistently into effect; for at the same time provision was made for encouraging the emigration of English into the very Province which was said to be assigned to the French. Even the French institutions were not extended over the whole of Lower Canada. The civil law of France, as a whole, and the legal provision for the Catholic clergy were limited to the portion of the country then settled by the French, and comprised in the seigniories; though some provision was made for the formation of new seigniories, almost the whole of the then unsettled portion of the Province was formed into townships, in which the law of England was partially established, and the Protestant religion alone endowed. Thus two populations of hostile origin and different characters, were brought into juxtaposition under a common

government, but under different institutions; each was taught to cherish its own language, laws and habits, and each, at the same time, if it moved beyond its original limits, was brought under different institutions, and associated with a different people. The unenterprising character of the French population, and, above all, its attachment to its church (for the enlargement of which, in proportion to the increase or diffusion of the Catholic population, very inadequate provision was made) have produced the effect of confining it within its ancient limits. But the English were attracted into the seigniories, and especially into the cities, by the facilities of commerce afforded by the great rivers. To have effectually given the policy of retaining French institutions and a French population in Lower Canada a fair chance of success, no other institutions should have been allowed, and no other race should have received any encouragement to settle therein. The Province should have been set apart to be wholly French, if it was not to be rendered completely English. The attempt to encourage English emigration into a community, of which the French character was still to be preserved, was an error which planted the seeds of a contest of races in the very constitution of the Colony; this was an error, I mean, even on the assumption that it was possible to exclude the English race from French Canada. But it was quite impossible to exclude the English race from any part of the North American continent. It will be acknowledged by every one who has observed the progress of Anglo-Saxon colonization in America,

that sooner or later the English race was sure to predominate even numerically in Lower Canada, as they predominate already, by their superior knowledge, energy, enterprise and wealth. The error, therefore, to which the present contest must be attributed, is the vain endeavour to preserve a French Canadian nationality in the midst of Anglo-American colonies and states.

That contest has arisen by degrees. The scanty number of the English who settled in Lower Canada during the earlier period of our possession, put out of the question any ideas of rivalry between the races. Indeed, until the popular principles of English institutions were brought effectually into operation, the paramount authority of the Government left little room for dispute among any but the few who contended for its favours. It was not until the English had established a vast trade, and accumulated considerable wealth, until a great part of the landed property of the Province was vested in their hands, until a large English population was found in the cities, had scattered itself over large portions of the country, and had formed considerable communities in the townships, and not until the development of representative government had placed substantial power in the hands of the people, that that people divided itself into races, arrayed against each other in intense and enduring animosity.

The errors of the Government did not cease with that, to which I have attributed the origin of this animosity. The defects of the colonial

constitution necessarily brought the executive Government into collision with the people; and the disputes of the Government and the people called into action the animosities of race; nor has the policy of the Government obviated the evils inherent in the constitution of the Colony, and the composition of society. It has done nothing to repair its original error, by making the Province English. Occupied in a continued conflict with the Assembly, successive Governors and their councils have overlooked, in great measure, the real importance of the feud of origin; and the Imperial Government, far removed from opportunities of personal observation of the peculiar state of society, has shaped its policy so as to aggravate the disorder. In some instances it has actually conceded the mischievous pretensions of nationality, in order to evade popular claims; as in attempting to divide the Legislative Council, and the patronage of Government, equally between the two races, in order to avoid the demands for an elective Council, and a responsible Executive: sometimes it has, for a while, pursued the opposite course. A policy founded on imperfect information, and conducted by continually changing hands, has exhibited to the Colony a system of vacillation which was in fact no system at all. The alternate concessions to the contending races have only irritated both, impaired the authority of Government, and, by keeping alive the hopes of a French Canadian nationality, counteracted the influences which might, ere this, have brought the quarrel to its natural and necessary termination. It is impossible to determine precisely the

respective effects of the social and political causes. The struggle between the Government and the Assembly, has aggravated the animosities of race; and the animosities of race have rendered the political difference irreconcileable. No remedy can be efficient that does not operate upon both evils. At the root of the disorders of Lower Canada, lies the conflict of the two races, which compose its population; until this is settled, no good government is practicable; for whether the political institutions be reformed or left unchanged, whether the powers of the Government be entrusted to the majority or the minority, we may rest assured, that while the hostility of the races continues, whichever of them is entrusted with power, will use it for partial purposes.

I have described the contest between the French and English races in Lower Canada with minuteness, because it was my wish to produce a complete and general conviction of the prominent importance of that struggle, when we are taking into consideration the causes of those disorders which have so grievously afflicted the Province. I have not, however, during the course of my preceding remarks, been able to avoid alluding to other causes, which have greatly contributed to occasion the existing state of things; and I have specified among these the defects of the constitution, and the errors arising out of the system of government. It is, indeed, impossible to believe that the assigned causes of the struggle

between the Government and the majority have had no effect, even though we may believe that they have had much less than the contending parties imagined. It is impossible to observe the great similarity of the constitutions established in all our North American Provinces, and the striking tendency of all to terminate in pretty nearly the same result, without entertaining a belief that some defect in the form of government, and some erroneous principle of administration, have been common to all: the hostility of the races being palpably insufficient to account for all the evils which have affected Lower Canada, inasmuch as nearly the same results have been exhibited among the homogeneous population of the other provinces. It is but too evident that Lower Canada, or the two Canadas, have not alone exhibited repeated conflicts between the executive and the popular branches of the legislature. The representative body of Upper Canada was before the late election, hostile to the policy of the Government; the most serious discontents have only recently been calmed in Prince Edward's Island and New Brunswick; the Government is still, I believe, in a minority in the Lower House in Nova Scotia; and the dissensions of Newfoundland are hardly less violent than those of the Canadas. It may fairly be said, that the natural state of government in all these Colonies is that of collision between the executive and the representative body. In all of them the administration of public affairs is habitually confided to those who do not co-operate harmoniously with the popular branch of the legislature; and the

Government is constantly proposing measures which the majority of the Assembly reject, and refusing its assent to bills which that body has passed.

A state of things, so different from the working of any successful experiment of representative government, appears to indicate a deviation from sound constitutional principles or practice. Though occasional collisions between the Crown and the House of Commons have occurred in this country since the establishment of our constitution at the Revolution of 1688, they have been rare and transient. A state of frequent and lasting collisions appears almost identical with one of convulsion and anarchy; and its occurrence in any country is calculated to perplex us as to the mode in which any government can be carried on therein, without an entire evasion of popular control. But, when we examine into the system of government in these colonies, it would almost seem as if the object of those by whom it was established had been the combining of apparently popular institutions with an utter absence of all efficient control of the people over their rulers. Representative assemblies were established on the basis of a very wide, and, in some cases, almost universal suffrage; the annual meeting of these bodies was secured by positive enactment, and their apparent attributes were locally nearly as extensive as those of the English House of Commons. At the same time the Crown almost entirely relied on its territorial resources, and on duties imposed by Imperial Acts, prior to the introduction of the representative system, for

carrying on the government, without securing the assent of the representative body either to its policy or to the persons by whom that policy was to be administered.

It was not until some years after the commencement of the present century that the population of Lower Canada began to understand the representative system which had been extended to them, and that the Assembly evinced any inclination to make use of its powers. Immediately, however, upon its so doing, it found how limited those powers were, and entered upon a struggle to obtain the authority which analogy pointed out as inherent in a representative assembly. Its freedom of speech immediately brought it into collision with the Governor; and the practical working of the Assembly commenced by its principal leaders being thrown into prison. In course of time, however, the Government was induced, by its necessities, to accept the Assembly's offer to raise an additional revenue by fresh taxes; and the Assembly thus acquired a certain control over the levying and appropriation of a portion of the public revenue. From that time, until the final abandonment in 1832 of every portion of the reserved revenue, excepting the casual and territorial funds, an unceasing contest was carried on, in which the Assembly, making use of every power which it gained, for the purpose of gaining more, acquired, step by step, an entire control over the whole revenue of the country.

I pass thus briefly over the events which have heretofore been considered the principal features

of the Canadian controversy, because, as the contest has ended in the concession of the financial demands of the Assembly, and the admission by the Government of the impropriety of attempting to withhold any portion of the public revenues from its control, that contest can now be regarded as of no importance, except as accounting for the exasperation and suspicion which survived it. Nor am I inclined to think that the disputes which subsequently occurred are to be attributed entirely to the operation of mere angry feelings. A substantial cause of contest yet remained: The Assembly, after it had obtained entire control over the public revenues, still found itself deprived of all voice in the choice or even designation of the persons in whose administration of affairs it could feel confidence. All the administrative power of Government remained entirely free from its influence; and though Mr. Papineau appears by his own conduct to have deprived himself of that influence in the Government which he might have acquired, I must attribute the refusal of a civil list to the determination of the Assembly not to give up its only means of subjecting the functionaries of Government to any responsibility.

The powers for which the Assembly contended, appear in both instances to be such as it was perfectly justified in demanding. It is difficult to conceive what could have been their theory of government who imagined that in any colony of England a body invested with the name and character of a representative Assembly, could be deprived of any of those powers which, in the

opinion of Englishmen, are inherent in a popular legislature. It was a vain delusion to imagine that by mere limitations in the Constitutional Act, or an exclusive system of government, a body, strong in the consciousness of wielding the public opinion of the majority, could regard certain portions of the provincial revenues as sacred from its control, could confine itself to the mere business of making laws, and look on as a passive or indifferent spectator, while those laws were carried into effect or evaded, and the whole business of the country was conducted by men, in whose intentions or capacity it had not the slightest confidence. Yet such was the limitation placed on the authority of the Assembly of Lower Canada; it might refuse or pass laws, vote or withhold supplies, but it could exercise no influence on the nomination of a single servant of the Crown. The Executive Council, the law officers, and whatever heads of departments are known to the administrative system of the Province, were placed in power, without any regard to the wishes of the people or their representatives; nor indeed are there wanting instances in which a mere hostility to the majority of the Assembly elevated the most incompetent persons to posts of honour and trust. However decidedly the Assembly might condemn the policy of the Government, the persons who had advised that policy retained their offices and their power of giving bad advice. If a law was passed after repeated conflicts, it had to be carried into effect by those who had most strenuously opposed it. The wisdom of adopting the true principle of

representative government and facilitating the management of public affairs, by entrusting it to the persons who have the confidence of the representative body, has never been recognized in the government of the North American Colonies. All the officers of government were independent of the Assembly; and that body, which had nothing to say to their appointment, was left to get on as it best might, with a set of public functionaries, whose paramount feeling may not unfairly be said to have been one of hostility to itself.

A body of holders of office thus constituted, without reference to the people or their representatives, must in fact, from the very nature of colonial government, acquire the entire direction of the affairs of the Province. A Governor, arriving in a colony in which he almost invariably has had no previous acquaintance with the state of parties, or the character of individuals, is compelled to throw himself almost entirely upon those whom he finds placed in the position of his official advisers. His first acts must necessarily be performed, and his first appointments made, at their suggestion. And as these first acts and appointments give a character to his policy, he is generally brought thereby into immediate collision with the other parties in the country, and thrown into more complete dependence upon the official party and its friends. Thus, a Governor of Lower Canada has almost always been brought into collision with the Assembly, which his advisers regard as their enemy. In the course of the contest in which he was thus involved, the provo-

cations which he received from the Assembly, and the light in which their conduct was represented by those who alone had any access to him, naturally imbued him with many of their antipathies; his position compelled him to seek the support of some party against the Assembly; and his feelings and his necessities thus combined to induce him to bestow his patronage and to shape his measures to promote the interests of the party on which he was obliged to lean. Thus, every successive year consolidated and enlarged the strength of the ruling party. Fortified by family connexion, and the common interest felt by all who held, and all who desired, subordinate offices, that party was thus erected into a solid and permanent power, controlled by no responsibility, subject to no serious change, exercising over the whole government of the Province an authority utterly independent of the people and its representatives, and possessing the only means of influencing either the Government at home, or the colonial representative of the Crown.

This entire separation of the legislative and executive powers of a State is the natural error of governments desirous of being free from the check of representative institutions. Since the Revolution of 1688, the stability of the English constitution has been secured by that wise principle of our Government which has vested the direction of the national policy, and the distribution of patronage, in the leaders of the Parliamentary majority. However partial the monarch might be to particular ministers, or however he might have personally committed himself to their

policy, he has invariably been constrained to abandon both, as soon as the opinion of the people has been irrevocably pronounced against them through the medium of the House of Commons. The practice of carrying on a representative government on a different principle, seems to be the rock on which the continental imitations of the British Constitution have invariably split; and the French Revolution of 1830 was the necessary result of an attempt to uphold a ministry with which no Parliament could be got to act in concert. It is difficult to understand how any English statesmen could have imagined that representative and irresponsible government could be successfully combined. There seems, indeed, to be an idea, that the character of representative institutions ought to be thus modified in colonies; that it is an incident of colonial dependence that the officers of government should be nominated by the Crown, without any reference to the wishes of the community, whose interests are entrusted to their keeping. It has never been very clearly explained what are the imperial interests, which require this complete nullification of representative government. But if there be such a necessity, it is quite clear that a representative government in a colony must be a mockery, and a source of confusion. For those who support this system have never yet been able to devise, or to exhibit in the practical working of colonial government, any means for making so complete an abrogation of political influence palatable to the representative body. It is not difficult to apply the case to our own country. Let it be

imagined that at a general election the opposition were to return 500 out of 658 members of the House of Commons, and that the whole policy of the ministry should be condemned, and every Bill introduced by it, rejected by this immense majority. Let it be supposed that the Crown should consider it a point of honour and duty to retain a ministry so condemned and so thwarted; that repeated dissolutions should in no way increase, but should even diminish, the ministerial minority, and that the only result which could be obtained by such a development of the force of the opposition were not the slightest change in the policy of the ministry, not the removal of a single minister, but simply the election of a Speaker of the politics of the majority; and, I think, it will not be difficult to imagine the fate of such a system of government. Yet such was the system, such literally was the course of events in Lower Canada, and such in character, though not quite in degree, was the spectacle exhibited in Upper Canada, and, at one time or another, in every one of the North American Colonies. To suppose that such a system would work well there, implies a belief that the French Canadians have enjoyed representative institutions for half a century, without acquiring any of the characteristics of a free people; that Englishmen renounce every political opinion and feeling when they enter a colony, or that the spirit of Anglo-Saxon freedom is utterly changed and weakened among those who are transplanted across the Atlantic.

It appears, therefore, that the opposition of

the Assembly to the Government was the unavoidable result of a system which stinted the popular branch of the legislature of the necessary privileges of a representative body, and produced thereby a long series of attempts on the part of that body to acquire control over the administration of the Province. I say all this without reference to the ultimate aim of the Assembly, which I have before described as being the maintenance of a Canadian nationality against the progressive intrusion of the English race. Having no responsible ministers to deal with, it entered upon that system of long inquiries by means of its committees, which brought the whole action of the executive immediately under its purview, and transgressed our notions of the proper limits of Parliamentary interference. Having no influence in the choice of any public functionary, no power to procure the removal of such as were obnoxious to it merely on political grounds, and seeing almost every office of the Colony filled by persons in whom it had no confidence, it entered on that vicious course of assailing its prominent opponents individually, and disqualifying them for the public service, by making them the subjects of inquiries and consequent impeachments, not always conducted with even the appearance of a due regard to justice; and when nothing else could attain its end of altering the policy of the composition of the colonial government, it had recourse to that *ultima ratio* of representative power to which the more prudent forbearance of the Crown has never driven the House of Commons in England, and endeavoured to disable

the whole machine of Government by a general refusal of the supplies.

It was an unhappy consequence of the system which I have been describing, that it relieved the popular leaders of all the responsibilities of opposition. A member of opposition in this country acts and speaks with the contingency of becoming a minister constantly before his eyes, and he feels, therefore, the necessity of proposing no course, and of asserting no principles, on which he would not be prepared to conduct the Government, if he were immediately offered it. But the colonial demagogue bids high for popularity without the fear of future exposure. Hopelessly excluded from power, he expresses the wildest opinions, and appeals to the most mischievous passions of the people, without any apprehension of having his sincerity or prudence hereafter tested, by being placed in a position to carry his views into effect; and thus the prominent places in the ranks of opposition are occupied for the most part by men of strong passions, and merely declamatory powers, who think but little of reforming the abuses which serve them as topics for exciting discontent.

II

Such are the lamentable results of the political and social evils which have so long agitated the

Canadas; and such is their condition, that, at the present moment, we are called on to take immediate precautions against dangers so alarming as those of rebellion, foreign invasion, and utter exhaustion and depopulation. When I look on the various and deep-rooted causes of mischief which the past inquiry has pointed out as existing in every institution, in the constitutions, and in the very composition of society throughout a great part of these Provinces, I almost shrink from the apparent presumption of grappling with these gigantic difficulties. Nor shall I attempt to do so in detail. I rely on the efficacy of reform in the constitutional system by which these Colonies are governed, for the removal of every abuse in their administration which defective institutions have engendered. If a system can be devised which shall lay in these countries the foundation of an efficient and popular government, ensure harmony, in place of collision, between the various powers of the State, and bring the influence of a vigorous public opinion to bear on every detail of public affairs, we may rely on sufficient remedies being found for the present vices of the administrative system.

The preceding pages have sufficiently pointed out the nature of those evils, to the extensive operation of which, I attribute the various practical grievances, and the present unsatisfactory condition of the North American Colonies. It is not by weakening, but strengthening the influence of the people on its Government; by confining

within much narrower bounds than those hitherto allotted to it, and not by extending the interference of the imperial authorities in the details of colonial affairs, that I believe that harmony is to be restored, where dissension has so long prevailed; and a regularity and vigour hitherto unknown, introduced into the administration of these Provinces. It needs no change in the principles of government, no invention of a new constitutional theory, to supply the remedy which would, in my opinion, completely remove the existing political disorders. It needs but to follow out consistently the principles of the British constitution, and introduce into the Government of these great Colonies those wise provisions, by which alone the working of the representative system can in any country be rendered harmonious and efficient. We are not now to consider the policy of establishing representative government in the North American Colonies. That has been irrevocably done; and the experiment of depriving the people of their present constitutional power, is not to be thought of. To conduct their Government harmoniously, in accordance with its established principles, is now the business of its rulers; and I know not how it is possible to secure that harmony in any other way, than by administering the Government on those principles which have been found perfectly efficacious in Great Britain. I would not impair a single prerogative of the Crown; on the contrary, I believe that the interests of the people of these Colonies require the protection of prerogatives, which have not hitherto been exercised. But

the Crown must, on the other hand, submit to the necessary consequences of representative institutions; and, if it has to carry on the Government in unison with a representative body, it must consent to carry it on by means of those in whom that representative body has confidence.

In England, this principle has been so long considered an indisputable and essential part of our constitution, that it has really hardly ever been found necessary to inquire into the means by which its observance is enforced. When a ministry ceases to command a majority in Parliament on great questions of policy, its doom is immediately sealed; and it would appear to us as strange to attempt, for any time, to carry on a Government by means of ministers perpetually in a minority, as it would be to pass laws with a majority of votes against them. The ancient constitutional remedies, by impeachment and a stoppage of the supplies, have never, since the reign of William III, been brought into operation for the purpose of removing a ministry. They have never been called for, because, in fact, it has been the habit of ministers rather to anticipate the occurrence of an absolutely hostile vote, and to retire, when supported only by a bare and uncertain majority. If Colonial Legislatures have frequently stopped the supplies, if they have harassed public servants by unjust or harsh impeachments, it was because the removal of an unpopular administration could not be effected in the Colonies by those milder indications of a want of confidence, which have

always sufficed to attain the end in the mother country.

The means which have occasionally been proposed in the Colonies themselves appear to me by no means calculated to attain the desired end in the best way. These proposals indicate such a want of reliance on the willingness of the Imperial Government to acquiesce in the adoption of a better system, as, if warranted, would render an harmonious adjustment of the different powers of the State utterly hopeless. An elective executive council would not only be utterly inconsistent with monarchical government, but would really, under the nominal authority of the Crown, deprive the community of one of the great advantages of an hereditary monarchy. Every purpose of popular control might be combined with every advantage of vesting the immediate choice of advisers in the Crown, were the Colonial Governor to be instructed to secure the co-operation of the Assembly in his policy, by entrusting its administration to such men as could command a majority; and if he were given to understand that he need count on no aid from home in any difference with the Assembly, that should not directly involve the relations between the mother country and the Colony. This change might be effected by a single dispatch containing such instructions; or, if any legal enactment were requisite, it would only be one that would render it necessary that the official acts of the Governor should be countersigned by some public functionary. This would induce responsibility for every act of the Government, and, as a natural consequence, it would

necessitate the substitution of a system of administration, by means of competent heads of departments, for the present rude machinery of an executive council. The Governor, if he wished to retain advisers not possessing the confidence of the existing Assembly, might rely on the effect of an appeal to the people, and, if unsuccessful, he might be coerced by a refusal of supplies, or his advisers might be terrified by the prospect of impeachment. But there can be no reason for apprehending that either party would enter on a contest, when each would find its interest in the maintenance of harmony; and the abuse of the powers which each would constitutionally possess, would cease when the struggle for larger powers became unnecessary. Nor can I conceive that it would be found impossible or difficult to conduct a Colonial Government with precisely that limitation of the respective powers which has been so long and so easily maintained in Great Britain.

I know that it has been urged that the principles, which are productive of harmony and good government in the mother country, are by no means applicable to a colonial dependency. It is said that it is necessary that the administration of a colony should be carried on by persons nominated without any reference to the wishes of its people; that they have to carry into effect the policy, not of that people, but of the authorities at home; and that a colony which should name all its own administrative functionaries, would, in fact, cease to be dependent. I admit that the system which I propose would, in fact, place the

internal government of the colony in the hands of the colonists themselves; and that we should thus leave to them the execution of the laws, of which we have long entrusted the making solely to them. Perfectly aware of the value of our colonial possessions, and strongly impressed with the necessity of maintaining our connexion with them, I know not in what respect it can be desirable that we should interfere with their internal legislation in matters which do not affect their relations with the mother country. The matters, which so concern us, are very few. The constitution of the form of government,—the regulation of foreign relations, and of trade with the mother country, the other British Colonies, and foreign nations,—and the disposal of the public lands, are the only points on which the mother country requires a control. This control is now sufficiently secured by the authority of the Imperial Legislature; by the protection which the Colony derives from us against foreign enemies; by the beneficial terms which our laws secure to its trade; and by its share of the reciprocal benefits which would be conferred by a wise system of colonization. A perfect subordination, on the part of the Colony, on these points, is secured by the advantages which it finds in the continuance of its connexion with the Empire. It certainly is not strengthened, but greatly weakened, by a vexatious interference on the part of the Home Government, with the enactment of laws for regulating the internal concerns of the Colony, or in the selection of the persons entrusted with their execution. The colonists may

not always know what laws are best for them, or which of their countrymen are the fittest for conducting their affairs; but, at least, they have a greater interest in coming to a right judgement on these points, and will take greater pains to do so, than those whose welfare is very remotely and slightly affected by the good or bad legislation of these portions of the Empire. If the colonists make bad laws, and select improper persons to conduct their affairs, they will generally be the only, always the greatest, sufferers; and, like the people of other countries, they must bear the ills which they bring on themselves, until they choose to apply the remedy. But it surely cannot be the duty or the interest of Great Britain to keep a most expensive military possession of these Colonies, in order that a Governor or Secretary of State may be able to confer colonial appointments on one rather than another set of persons in the Colonies. For this is really the only question at issue. The slightest acquaintance with these Colonies proves the fallacy of the common notion, that any considerable amount of patronage in them is distributed among strangers from the mother country. Whatever inconvenience a consequent frequency of changes among the holders of office may produce, is a necessary disadvantage of free government, which will be amply compensated by the perpetual harmony which the system must produce between the people and its rulers. Nor do I fear that the character of the public servants will, in any respect, suffer from a more popular tenure of office. For I can conceive no system so calculated to fill

important posts with inefficient persons as the present, in which public opinion is too little consulted in the original appointment, and in which it is almost impossible to remove those who disappoint the expectations of their usefulness, without inflicting a kind of brand on their capacity or integrity.

I am well aware that many persons, both in the Colonies and at home, view the system which I recommend with considerable alarm, because they distrust the ulterior views of those by whom it was originally proposed, and whom they suspect of urging its adoption, with the intent only of enabling them more easily to subvert monarchical institutions, or assert the independence of the Colony. I believe, however, that the extent to which these ulterior views exist, has been greatly overrated. We must not take every rash expression of disappointment as an indication of a settled aversion to the existing constitution; and my own observation convinces me, that the predominant feeling of all the English population of the North American Colonies is that of devoted attachment to the mother country. I believe that neither the interests nor the feelings of the people are incompatible with a Colonial Government, wisely and popularly administered. The proofs, which many, who are much dissatisfied with the existing administration of the Government, have given of their loyalty, are not to be denied or overlooked. The attachment constantly exhibited by the people of these Provinces towards the British Crown and Empire has all the characteristics of a strong national feeling. They value

the institutions of their country, not merely from a sense of the practical advantages which they confer, but from sentiments of national pride; and they uphold them the more, because they are accustomed to view them as marks of nationality, which distinguish them from their Republican neighbours. I do not mean to affirm that this is a feeling which no impolicy on the part of the mother country will be unable to impair; but I do most confidently regard it as one which may, if rightly appreciated, be made the link of an enduring and advantageous connexion. The British people of the North American Colonies are a people on whom we may safely rely, and to whom we must not grudge power. For it is not to the individuals who have been loudest in demanding the change, that I propose to concede the responsibility of the Colonial administration, but to the people themselves. Nor can I conceive that any people, or any considerable portion of a people, will view with dissatisfaction a change which would amount simply to this, that the Crown would henceforth consult the wishes of the people in the choice of its servants.

The important alteration in the policy of the Colonial Government which I recommend, might be wholly or in great part effected for the present by the unaided authority of the Crown; and I believe that the great mass of discontent in Upper Canada, which is not directly connected with personal irritation, arising out of the incidents of the late troubles, might be dispelled by an assurance that the government of the Colony should hencefortb be carried on in conformity with the

views of the majority in the Assembly. But I think that for the well-being of the Colonies, and the security of the mother country, it is necessary that such a change should be rendered more permanent than a momentary sense of the existing difficulties can ensure its being. I cannot believe that persons in power in this country will be restrained from the injudicious interference with the internal management of these Colonies, which I deprecate, while they remain the petty and divided communities which they now are. The public attention at home is distracted by the various and sometimes contrary complaints of these different contiguous Provinces. Each now urges its demands at different times, and in somewhat different forms, and the interests which each individual complainant represents as in peril, are too petty to attract the due attention of the Empire. But if these important and extensive Colonies should speak with one voice, if it were felt that every error of our colonial policy must cause a common suffering and a common discontent throughout the whole wide extent of British America, those complaints would never be provoked; because no authority would venture to run counter to the wishes of such a community, except on points absolutely involving the few imperial interests, which it is necessary to remove from the jurisdiction of Colonial legislation.

It is necessary that I should also recommend what appears to me an essential limitation on the present powers of the representative bodies in these Colonies. I consider good government not

to be attainable while the present unrestricted powers of voting public money, and of managing the local expenditure of the community, are lodged in the hands of an Assembly. As long as a revenue is raised, which leaves a large surplus after the payment of the necessary expenses of the civil Government, and as long as any member of the Assembly may, without restriction, propose a vote of public money, so long will the Assembly retain in its hands the powers which it everywhere abuses, of misapplying that money. The prerogative of the Crown, which is constantly exercised in Great Britain for the real protection of the people, ought never to have been waived in the Colonies; and if the rule of the Imperial Parliament, that no money vote should be proposed without the previous consent of the Crown, were introduced into these Colonies, it might be wisely employed in protecting the public interests now frequently sacrificed in that scramble for local appropriations, which chiefly serves to give an undue influence to particular individuals or parties.

The establishment of a good system of municipal institutions throughout these Provinces is a matter of vital importance. A general legislature, which manages the private business of every parish, in addition to the common business of the country, wields a power which no single body, however popular in its constitution, ought to have; a power which must be destructive of any constitutional balance. The true principle of limiting popular power is that apportionment of it in many different depositaries which has been

adopted in all the most free and stable States of the Union. Instead of confiding the whole collection and distribution of all the revenues raised in any country for all general and local purposes to a single representative body, the power of local assessment, and the application of the funds arising from it, should be entrusted to local management. It is in vain to expect that this sacrifice of power will be voluntarily made by any representative body. The establishment of municipal institutions for the whole country should be made a part of every colonial constitution; and the prerogative of the Crown should be constantly interposed to check any encroachment on the functions of the local bodies, until the people should become alive, as most assuredly they almost immediately would be, to the necessity of protecting their local privileges.

The establishment of a sound and general system for the management of the lands and the settlement of the Colonies, is a necessary part of any good and durable system of government. [In a report contained in the Appendix to the present, the plan which I recommend for this purpose will be fully developed.]

These general principles apply, however, only to those changes in the system of government which are required in order to rectify disorders common to all the North American Colonies; but they do not in any degree go to remove those evils in the present state of Lower Canada which require the most immediate remedy. The fatal feud of origin, which is the cause of the most extensive mischief, would be aggravated at the

present moment by any change, which should give the majority more power than they have hitherto possessed. A plan by which it is proposed to ensure the tranquil government of Lower Canada, must include in itself the means of putting an end to the agitation of national disputes in the legislature, by settling, at once and for ever, the national character of the Province. I entertain no doubts as to the national character which must be given to Lower Canada; it must be that of the British Empire; that of the majority of the population of British America; that of the great race which must, in the lapse of no long period of time, be predominant over the whole North American Continent. Without effecting the change so rapidly or so roughly as to shock the feelings and trample on the welfare of the existing generation, it must henceforth be the first and steady purpose of the British Government to establish an English population, with English laws and language, in this Province, and to trust its government to none but a decidedly English Legislature.

III

On these grounds, I believe that no permanent or efficient remedy can be devised for the dis-

orders of Lower Canada, except a fusion of the Government in that of one or more of the surrounding Provinces; and as I am of opinion that the full establishment of responsible government can only be permanently secured by giving these Colonies an increased importance in the politics of the Empire, I find in union the only means of remedying at once and completely the two prominent causes of their present unsatisfactory condition.

Two kinds of union have been proposed,—federal and legislative. By the first, the separate legislature of each Province would be preserved in its present form, and retain almost all its present attributes of internal legislation; the federal legislature exercising no power, save in those matters of general concern, which may have been expressly ceded to it by the constituent Provinces. A legislative union would imply a complete incorporation of the Provinces included in it under one legislature, exercising universal and sole legislative authority over all of them, in exactly the same manner as the Parliament legislates alone for the whole of the British Isles.

On my first arrival in Canada, I was strongly inclined to the project of a federal union, and it was with such a plan in view, that I discussed a general measure for the government of the Colonies, with the deputations from the Lower Provinces, and with various leading individuals and public bodies in both the Canadas. I was fully aware that it might be objected that a federal union would, in many cases, produce a weak and rather

cumbrous government; that a Colonial federation must have, in fact, little legitimate authority or business, the greater part of the ordinary functions of a federation falling within the scope of the imperial legislature and executive; and that the main inducement to federation, which is the necessity of conciliating the pretensions of independent states to the maintenance of their own sovereignty, could not exist in the case of Colonial dependencies, liable to be moulded according to the pleasure of the supreme authority at home. In the course of the discussions which I have mentioned, I became aware also of great practical difficulties in any plan of federal government, particularly those that must arise in the management of the general revenues, which would in such a plan have to be again distributed among the Provinces. But I had still more strongly impressed on me the great advantages of an united Government; and I was gratified by finding the leading minds of the various Colonies strongly and generally inclined to a scheme that would elevate their countries into something like a national existence. I thought that it would be the tendency of a federation sanctioned and consolidated by a monarchical Government gradually to become a complete legislative union; and that thus, while conciliating the French of Lower Canada, by leaving them the government of their own Province and their own internal legislation, I might provide for the protection of British interests by the general government, and for the gradual transition of the Provinces into an united and homogeneous community.

But the period of gradual transition is past in Lower Canada. In the present state of feeling among the French population, I cannot doubt that any power which they might possess would be used against the policy and the very existence of any form of British government. I cannot doubt that any French Assembly that shall again meet in Lower Canada will use whatever power, be it more or less limited, it may have, to obstruct the Government, and undo whatever has been done by it. Time, and the honest co-operation of the various parties, would be required to aid the action of a federal constitution; and time is not allowed, in the present state of Lower Canada, nor co-operation to be expected from a legislature, of which the majority shall represent its French inhabitants. I believe that tranquillity can only be restored by subjecting the Province to the vigorous rule of an English majority; and that the only efficacious government would be that formed by a legislative union.

If the population of Upper Canada is rightly estimated at 400,000, the English inhabitants of Lower Canada at 150,000, and the French at 450,000, the union of the two Provinces would not only give a clear English majority, but one which would be increased every year by the influence of English emigration; and I have little doubt that the French, when once placed, by the legitimate course of events and the working of natural causes, in a minority, would abandon their vain hopes of nationality. I do not mean that they would immediately give up their pre-

sent animosities, or instantly renounce the hope of attaining their end by violent means. But the experience of the two Unions in the British Isles may teach us how effectually the strong arm of a popular legislature would compel the obedience of the refractory population; and the hopelessness of success, would gradually subdue the existing animosities, and incline the French Canadian population to acquiesce in their new state of political existence. I certainly should not like to subject the French Canadians to the rule of the identical English minority with which they have so long been contending; but from a majority, emanating from so much more extended a source, I do not think they would have any oppression or injustice to fear; and in this case, the far greater part of the majority, never having been brought into previous collision, would regard them with no animosity that could warp their natural sense of equity. The endowments of the Catholic Church in Lower Canada, and th eexistence of all its present laws, until altered by the united Legislature, might be secured by stipulations similar to those adopted in the Union between England and Scotland. I do not think that the subsequent history of British legislation need incline us to believe, that the nation which has a majority in a popular legislature is likely to use its power to tamper very hastily with the laws of the people to which it is united.

The union of the two Provinces would secure to Upper Canada the present great objects of its desire. All disputes as to the division or amount

of the revenue would cease. The surplus revenue of Lower Canada would supply the deficiency of that part of the upper Province; and the Province thus placed beyond the possibility of locally jobbing the surplus revenue, which it cannot reduce, would, I think, gain as much by the arrangement as the Province, which would thus find a means of paying the interest of its debt. Indeed it would be by no means unjust to place this burthen on Lower Canada, inasmuch as the great public works, for which the debt was contracted, are as much the concern of one Province as of the other. Nor is it to be supposed that, whatever may have been the mismanagement, in which a great part of the debt originated, the canals of Upper Canada will always be a source of loss, instead of profit. The completion of the projected and necessary line of public works would be promoted by such an union. The access to the sea would be secured to Upper Canada. The saving of public money, which would be ensured by the union of various establishments in the two Provinces, would supply the means of conducting the general Government on a more efficient scale than it has yet been carried on. And the responsibility of the executive would be secured by the increased weight which the representative body of the United Province would bring to bear on the Imperial Government and Legislature.

But while I convince myself that such desirable ends would be secured by the legislative union of the two Provinces, I am inclined to go further, and inquire whether all these objects would not

more surely be attained, by extending this legislative union over all the British Provinces in North America; and whether the advantages which I anticipate for two of them, might not, and should not in justice be extended over all. Such an union would at once decisively settle the question of races; it would enable all the Provinces to co-operate for all common purposes; and, above all, it would form a great and powerful people, possessing the means of securing good and responsible government for itself, and which, under the protection of the British Empire, might in some measure counterbalance the preponderant and increasing influence of the United States on the American continent. I do not anticipate that a Colonial Legislature thus strong and thus self-governing, would desire to abandon the connexion with Great Britain. On the contrary, I believe that the practical relief from undue interference, which would be the result of such a change, would strengthen the present bond of feelings and interests; and that the connexion would only become more durable and advantageous, by having more of equality, of freedom, and of local independence. But at any rate, our first duty is to secure the well-being of our colonial countrymen; and if in the hidden decrees of that wisdom by which this world is ruled, it is written, that these countries are not for ever to remain portions of the Empire, we owe it to our honour to take good care that, when they separate from us, they should not be the only countries on the American continent in which the Anglo-Saxon race shall be found unfit to govern itself.

I am, in truth, so far from believing that the increased power and weight that would be given to these Colonies by union would endanger their connexion with the Empire, that I look to it as the only means of fostering such a national feeling throughout them as would effectually counterbalance whatever tendencies may now exist towards separation. No large community of free and intelligent men will long feel contented with a political system which places them, because it places their country, in a position of inferiority to their neighbours. The colonist of Great Britain is linked, it is true, to a mighty Empire; and the glories of its history, the visible signs of its present power, and the civilization of its people, are calculated to raise and gratify his national pride. But he feels, also, that his link to that Empire is one of remote dependence; he catches but passing and inadequate glimpses of its power and prosperity; he knows that in its government he and his own countrymen have no voice. While his neighbour on the other side of the frontier assumes importance, from the notion that his vote exercises some influence on the councils, and that he himself has some share in the onward progress of a mighty nation, the colonist feels the deadening influence of the narrow and subordinate community to which he belongs. In his own, and in the surrounding Colonies, he finds petty objects occupying petty, stationary and divided societies; and it is only when the chances of an uncertain and tardy communication bring intelligence of what has passed a month before on the other side of the Atlantic, that he is reminded of the

Empire with which he is connected. But the influence of the United States surrounds him on every side, and is for ever present. It extends itself as population augments and intercourse increases; it penetrates every portion of the continent into which the restless spirit of American speculation impels the settler or the trader; it is felt in all the transactions of commerce, from the important operations of the monetary system down to the minor details of ordinary traffic; it stamps, on all the habits and opinions of the surrounding countries, the common characteristics of the thoughts, feelings and customs of the American people. Such is necessarily the influence which a great nation exercises on the small communities which surround it. Its thoughts and manners subjugate them, even when nominally independent of its authority. If we wish to prevent the extension of this influence, it can only be done by raising up for the North American colonist some nationality of his own; by elevating these small and unimportant communities into a society having some objects of a national importance; and by thus giving their inhabitants a country which they will be unwilling to see absorbed even into one more powerful.

While I believe that the establishment of a comprehensive system of Government, and of an effectual union between the different Provinces, would produce this important effect on the general feelings of their inhabitants, I am inclined to attach very great importance to the influence which it would have in giving greater scope and satisfaction to the legitimate ambition of the most

active and prominent persons to be found in them. As long as personal ambition is inherent in human nature, and as long as the morality of every free and civilized community encourages its aspirations, it is one great business of a wise Government to provide for its legitimate development. If, as it is commonly asserted, the disorders of these Colonies have, in great measure, been fomented by the influence of designing and ambitious individuals, this evil will best be remedied by allowing such a scope for the desires of such men as shall direct their ambition into the legitimate chance of furthering, and not of thwarting, their Government. By creating high prizes in a general and responsible Government we shall immediately afford the means of pacifying the turbulent ambitions, and of employing in worthy and noble occupations the talents which now are only exerted to foment disorder. We must remove from these Colonies the cause to which the sagacity of Adam Smith traced the alienation of the Provinces which now form the United States: we must provide some scope for what he calls 'the importance' of the leading men in the Colony, beyond what he forcibly terms the present 'petty prizes of the paltry raffle of colonial faction.' A general Legislative Union would elevate and gratify the hopes of able and aspiring men. They would no longer look with envy and wonder at the great arena of the bordering federation, but see the means of satisfying every legitimate ambition in the high offices of the Judicature and Executive Government of their own Union.

Nor would an union of the various Provinces be less advantageous in facilitating a co-operation for various common purposes, of which the want is now very seriously felt. There is hardly a department of the business of Government which does not require, or would not be better performed, by being carried on under the superintendence of a general Government; aad when we consider the political and commercial interests that are common to these Provinces, it appears difficult to account for their having ever been divided into separate governments, since they have all been portions of the same Empire, subject to the same Crown, governed by nearly the same laws and constitutional customs, inhabited, with one exception, by the same race, contiguous and immediately adjacent to each other, and bounded along their whole frontier by the territories of the same powerful and rival State. It would appear that every motive that has induced the union of various Provinces into a single State, exists for the consolidation of these Colonies under a common legislature and executive. They have the same common relation to the mother country; the same relation to foreign nations. When one is at war, the others are at war; and the hostilities that are caused by an attack on one, must seriously compromise the welfare of the rest. Thus the dispute between Great Britain and the State of Maine, appears immediately to involve the interests of none of these Colonies, except New Brunswick or Lower Canada, to one of which the territory claimed by us must belong. But, if a war were to commence on this ground, it is

most probable that the American Government would select Upper Canada as the most vulnerable, or, at any rate, as the easiest point of attack. A dispute respecting the fisheries of Nova Scotia would involve precisely the same consequences. An union for common defence against foreign enemies is the natural bond of connexion that holds together the great communities of the world; and between no parts of any Kingdom or State is the necessity for such an union more obvious than between the whole of these Colonies.

Their internal relations furnish quite as strong motives for union. The Post Office is at the present moment under the management of the same imperial establishment. If, in compliance with the reasonable demands of the Colonies, the regulation of a matter so entirely of internal concern, and the revenue derived from it, were placed under the control of the Provincial Legislatures, it would still be advisable that the management of the Post Office throughout the whole of British North America should be conducted by one general establishment. In the same way, so great is the influence on the other Provinces of the arrangements adopted with respect to the disposal of public lands and colonization in any one, that it is absolutely essential that this department of Government should be conducted on one system, and by one authority. The necessity of common fiscal regulations is strongly felt by all the Colonies; and a common custom-house establishment would relieve them from the hindrances to their trade, caused by the duties now

levied on all commercial intercourse between them. The monetary and banking system of all is subject to the same influences, and ought to be regulated by the same laws. The establishment of a common colonial currency is very generally desired. Indeed, I know of no department of Government that would not greatly gain, both in economy and efficiency, by being placed under a common management. I should not propose, at first, to alter the existing public establishments of the different Provinces, because the necessary changes had better be left to be made by the united Government; and the judicial establishments should certainly not be disturbed until the future legislature shall provide for their re-construction, on an uniform and permanent footing. But even in the administration of justice, an union would immediately supply a remedy for one of the most serious wants under which all the Provinces labour, by facilitating the formation of a general appellate tribunal for all the North American Colonies.

But the interests which are already in common between all these Provinces are small in comparison with those which the consequences of such an union might, and I think I may say assuredly would, call into existence; and the great discoveries of modern art, which have throughout the world, and nowhere more than in America, entirely altered the character and the channels of communication between distant countries, will bring all the North American Colonies into constant and speedy intercourse with each other. The success of the great experiment of steam

navigation across the Atlantic opens a prospect of a speedy communication with Europe, which will materially affect the future state of all these Provinces. In a Despatch which arrived in Canada after my departure, the Secretary of State informed me of the determination of your Majesty's Government to establish a steam communication between Great Britain and Halifax; and instructed me to turn my attention to the formation of a road between that port and Quebec. It would, indeed, have given me sincere satisfaction, had I remained in the Province, to promote, by any means in my power, so highly desirable an object; and the removal of the usual restrictions on my authority as Governor-General, having given me the means of effectually acting in concert with the various Provincial Governments, I might have been able to make some progress in the work. But I cannot point out more strikingly the evils of the present want of a general government for these Provinces, than by adverting to the difficulty which would practically occur, under the previous and present arrangements of both Executive and Legislative authorities in the various Provinces, in attempting to carry such a plan into effect. For the various Colonies have no more means of concerting such common works with each other, than with the neighbouring States of the Union. They stand to one another in the position of foreign States, and of foreign States without diplomatic relations. The Governors may correspond with each other: the Legislatures may enact laws, carrying the common purposes into effect in their respective juris-

dictions; but there is no means by which the various details may speedily and satisfactorily be settled with the concurrence of the different parties. And, in this instance, it must be recollected that the communication and the final settlement would have to be made between, not two, but several of the Provinces. The road would run through three of them; and Upper Canada, into which it would not enter, would, in fact, be more interested in the completion of such a work than any even of the Provinces through which it would pass. The Colonies, indeed, have no common centre in which the arrangement could be made, except in the Colonial Office at home; and the details of such a plan would have to be discussed just where the interests of all parties would have the least means of being fairly and fully represented, and where the minute local knowledge necessary for such a matter would be least likely to be found.

The completion of any satisfactory communication between Halifax and Quebec, would, in fact, produce relations between these Provinces, that would render a general union absolutely necessary. Several surveys have proved that a railroad would be perfectly practicable the whole way. Indeed, in North America, the expense and difficulty of making a railroad, bears by no means the excessive proportion to those of a common road that it does in Europe. It appears to be a general opinion in the United States, that the severe snows and frosts of that continent very slightly impede, and do not prevent, the travellings on railroads; and if I am rightly informed, the Utica railroad,

in the northern part of the State of New York, is used throughout the winter. If this opinion be correct, the formation of a railroad from Halifax to Quebec would entirely alter some of the distinguishing characteristics of the Canadas. Instead of being shut out from all direct intercourse with England during half the year, they would possess a far more certain and speedy communication throughout the winter than they now possess in summer. The passage from Ireland to Quebec would be a matter of 10 or 12 days, and Halifax would be the great port by which a large portion of the trade, and all the conveyance of passengers to the whole of British North America, would be carried on. But even supposing these brilliant prospects to be such as we could not reckon on seeing realized, I may assume that it is not intended to make this road without a well-founded belief that it will become an important channel of communication between the Upper and Lower Provinces. In either case, would not the maintenance of such a road, and the mode in which the Government is administered in the different Provinces, be matters of common interest to all? If the great natural channel of the St. Lawrence gives all the people who dwell in any part of its basin such an interest in the government of the whole as renders it wise to incorporate the two Canadas, the artificial work which would, in fact, supersede the lower part of the St. Lawrence, as the outlet of a great part of the Canadian trade, and would make Halifax, in a great measure, an outport to Quebec, would surely in the same way render it advisable that the incorporation should

be extended to Provinces through which such a road would pass.

With respect to the two smaller Colonies of Prince Edward's Island and Newfoundland, I am of opinion, that not only would most of the reasons which I have given for an union of the others, apply to them, but that their smallness makes it absolutely necessary, as the only means of securing any proper attention to their interests, and investing them with that consideration, the deficiency of which they have so much reason to lament in all the disputes which yearly occur between them and the citizens of the United States, with regard to the encroachments made by the latter on their coasts and fisheries.

The views on which I found my support of a comprehensive union have long been entertained by many persons in these Colonies, whose opinion is entitled to the highest consideration. I cannot, however, refrain from mentioning the sanction of such views by one whose authority Your Majesty will, I may venture to say, receive with the utmost respect. Mr. Sewell, the late Chief Justice of Quebec, laid before me an autograph letter addressed to himself by Your Majesty's illustrious and lamented father, in which his Royal Highness was pleased to express his approbation of a similar plan then proposed by that gentleman. No one better understood the interests and character of these Colonies than his Royal Highness; and it is with peculiar satisfaction, therefore, that I submit to Your Majesty's perusal the important document which contains his Royal Highness's opinion in favour of such a scheme:—

KENSINGTON PALACE,
November 30, 1814.

MY DEAR SEWELL,

I have this day had the pleasure of receiving your note of yesterday, with its interesting enclosure: nothing can be better arranged than the whole thing is, or more perfectly I cannot wish; and, when I see an opening, it is fully my intention to hint the matter to Lord Bathurst, and put the paper into his hands, without, however, telling him from whom I have it, though I shall urge him to have some conversation with you relative to it. Permit me, however, just to ask you whether it was not an oversight in you to state that there are *five* Houses of Assembly in the British Colonies in North America? for if I am not under an error, there are *six*, viz. Upper and Lower Canada, Nova Scotia and New Brunswick, the Islands of Prince Edward and Cape Breton. Allow me also to beg of you to put down the proportions in which you think the thirty members of the representative Assembly ought to be furnished by each province; and, finally, to suggest whether you would not think two Lieutenant Governors, with two Executive Councils, sufficient for the Executive Government of the whole, viz. one for the two Canadas and one for Nova Scotia and New Brunswick, comprehending the small dependencies of Cape Breton and Prince Edward's Island; the former to reside at Montreal, and the latter at whichever of the two situations may be considered most central for the two Provinces, whether Annapolis Royal or Windsor. But at all events, should you even consider four Executive Governments and four Executive Councils requisite, I presume there cannot be a question of the expediency of comprehending the two small islands in the Gulf of St. Lawrence with Nova Scotia.

Believe me ever to remain, with the most friendly regard,

My dear Sewell, yours faithfully,
EDWARD.

I know of but one difficulty in the way of such an union; and that arises from the disinclination which some of the Lower Provinces might feel to the transference of powers from their present Legislatures to that of the Union. The objection to this would arise principally, I imagine, from their not liking to give up the immediate control which they now have over the funds by which their local expenditure is defrayed. I have given such a view of the evils of this system, that I cannot be expected to admit that an interference with it would be an objection to my plan. I think, however, that the Provinces would have a right to complain, if these powers of local management, and of distributing funds for local purposes, were taken from Provincial Assemblies only to be placed in the yet more objectionable hands of a general legislature. Every precaution should, in my opinion, be taken to prevent such a power, by any possibility, falling into the hands of the Legislature of the Union. In order to prevent that, I would prefer that the Provincial Assemblies should be retained, with merely municipal powers. But it would be far better, in point both of efficiency and of economy, that this power should be entrusted to the municipal bodies of much smaller districts; and the formation of such bodies would, in my opinion, be an essential part of any durable and complete Union.

With such views, I should without hesitation recommend the immediate adoption of a general legislative union of all the British Provinces in North America, if the regular course of Government were suspended or perilled in the Lower

Provinces, and the necessity of the immediate adoption of a plan for their government, without reference to them, a matter of urgency; or if it were possible to delay the adoption of a measure with respect to the Canadas until the project of an union could have been referred to the Legislatures of the Lower Provinces. But the state of the Lower Provinces, though it justifies the proposal of an union, would not, I think, render it gracious, or even just, on the part of Parliament to carry it into effect without referring it for the ample deliberation and consent of the people of these Colonies. Moreover, the state of the two Canadas is such, that neither the feelings of the parties concerned nor the interests of the Crown or the Colonies themselves will admit of a single Session, or even of a large portion of a Session of Parliament, being allowed to pass without a definite decision by the Imperial Legislature as to the basis on which it purposes to found the future government of those Colonies.

In existing circumstances, the conclusion to which the foregoing considerations lead me, is that no time should be lost in proposing to Parliament a Bill for repealing the 31 Geo. 3; restoring the union of the Canadas under one Legislature; and re-constituting them as one Province.

The Bill should contain provisions by which any or all of the other North American Colonies may, on the application of the Legislature, be, with the consent of the two Canadas, or their united Legislature, admitted into the union on such terms as may be agreed on between them.

As the mere amalgamation of the Houses of Assembly of the two Provinces would not be advisable, or give at all a due share of representation to each, a Parliamentary Commission should be appointed, for the purpose of forming the electoral divisions and determining the number of members to be returned on the principle of giving representation, as near as may be, in proportion to population. I am averse to every plan that has been proposed for giving an equal number of members to the two Provinces, in order to attain the temporary end of out-numbering the French, because I think the same object will be obtained without any violation of the principles of representation, and without any such appearance of injustice in the scheme as would set public opinion, both in England and America, strongly against it; and because, when emigration shall have increased the English population in the Upper Province, the adoption of such a principle would operate to defeat the very purpose it is intended to serve. It appears to me that any such electoral arrangement, founded on the present provincial divisions, would tend to defeat the purposes of union, and perpetuate the idea of disunion.

At the same time, in order to prevent the confusion and danger likely to ensue from attempting to have popular elections in districts recently the seats of open rebellion, it will be advisable to give the Governor a temporary power of suspending by proclamation, stating specifically the grounds of his determination, the writs of electoral districts in which he may be of opinion that elections could not safely take place.

The same commission should form a plan of local government by elective bodies subordinate to the general legislature, and exercising a complete control over such local affairs as do not come within the province of general legislation. The plan so framed should be made an Act of the Imperial Parliament, so as to prevent the general legislature from encroaching on the powers of the local bodies.

A general executive on an improved principle should be established, together with a Supreme Court of Appeal, for all the North American Colonies. The other establishments and laws of the two Colonies should be left unaltered, until the Legislature of the Union should think fit to change them; and the security of the existing endowments of the Catholic Church in Lower Canada should be guaranteed by the Act.

The constitution of a second legislative body for the United Legislature, involves questions of very great difficulty. The present constitution of the Legislative Councils of these Provinces has always appeared to me inconsistent with sound principles, and little calculated to answer the purpose of placing the effective check which I consider necessary on the popular branch of the Legislature. The analogy which some persons have attempted to draw between the House of Lords and the Legislative Councils seems to me erroneous. The constitution of the House of Lords is consonant with the frame of English society; and, as the creation of a precisely similar body in such a state of society as that of these Colonies is impossible, it has always appeared to me most unwise to

attempt to supply its place by one which has no point of resemblance to it, except that of being a non-elective check on the elective branch of the Legislature. The attempt to invest a few persons, distinguished from their fellow-colonists neither by birth nor hereditary property, and often only transiently connected with the country, with such a power, seems only calculated to ensure jealousy and bad feelings in the first instance, and collision at last. I believe that when the necessity of relying, in Lower Canada, on the English character of the Legislative Council as a check on the national prejudices of a French Assembly shall be removed by the Union, few persons in the Colonies will be found disposed in favour of its present constitution. Indeed, the very fact of union will complicate the difficulties which have hitherto existed; because a satisfactory choice of councillors would have to be made with reference to the varied interests of a much more numerous and extended community.

It will be necessary, therefore, for the completion of any stable scheme of government, that Parliament should revise the constitution of the Legislative Council, and, by adopting every practicable means to give that institution such a character as would enable it, by its tranquil and safe, but effective, working, to act as an useful check on the popular branch of the Legislature, prevent a repetition of those collisions which have already caused such dangerous irritation.

The plan which I have framed for the management of the public lands being intended to promote the common advantage of the Colonies and

of the mother country, I therefore propose that the entire administration of it should be confided to an imperial authority. The conclusive reasons which have induced me to recommend this course, will be found at length in the separate Report on the subject of Public Lands and Emigration.

All the revenues of the Crown, except those derived from this source, should at once be given up to the United Legislature, on the concession of an adequate civil list.

The responsibility to the United Legislature of all officers of the Government, except the Governor and his Secretary, should be secured by every means known to the British Constitution. The Governor, as the representative of the Crown, should be instructed that he must carry on his government by heads of departments, in whom the United Legislature shall repose confidence; and that he must look for no support from home in any contest with the Legislature, except on points involving strictly Imperial interests.

The independence of the Judges should be secured, by giving them the same tenure of office and security of income as exist in England.

No money-votes should be allowed to originate without the previous consent of the Crown.

In the same Act should be contained a repeal of past provisions with respect to the clergy reserves, and the application of the funds arising from them.

In order to promote emigration on the greatest possible scale, and with the most beneficial results to all concerned, I have elsewhere recommended a system of measures which has been expressly

framed with that view, after full inquiry and careful deliberation. Those measures would not subject either the colonies or the mother country to any expense whatever. In conjunction with the measures suggested for disposing of public lands, and remedying the evils occasioned by past mismanagement in that department, they form a plan of colonization to which I attach the highest importance. The objects, at least, with which the plan has been formed, are to provide large funds for emigration, and for creating and improving means of communication throughout the provinces; to guard emigrants of the labouring class against the present risks of the passage; to secure for all of them a comfortable resting-place, and employment at good wages immediately on their arrival; to encourage the investment of surplus British capital in these colonies, by rendering it as secure and as profitable as in the United States; to promote the settlement of wild lands and the general improvement of the colonies; to add to the value of every man's property in land; to extend the demand for British manufactured goods, and the means of paying for them, in proportion to the amount of emigration and the general increase of the colonial people; and to augment the colonial revenues in the same degree.

When the details of the measure, with the particular reasons for each of them, are examined, the means proposed will, I trust, be found as simple as the ends are great; nor have they been suggested by any fanciful or merely speculative view of the subject. They are founded on the facts given in

evidence by practical men; on authentic information, as to the wants and capabilities of the colonies; on an examination of the circumstances which occasion so high a degree of prosperity in the neighbouring States; on the efficient working and remarkable results of improved methods of colonization in other parts of the British Empire; in some measure on the deliberate proposals of a Committee of the House of Commons; and, lastly, on the favourable opinion of every intelligent person in the colonies whom I consulted with respect to them. They involve, no doubt, a considerable change of system, or rather the adoption of a system where there has been none; but this, considering the number and magnitude of past errors, and the present wretched economical state of the colonies, seems rather a recommendation than an objection. I do not flatter myself that so much good can be accomplished without an effort; but in this, as in other suggestions, I have presumed that the Imperial Government and Legislature will appreciate the actual crisis in the affairs of these colonies, and will not shrink from any exertion that may be necessary to preserve them to the Empire.

By the adoption of the various measures here recommended, I venture to hope that the disorders of these Colonies may be arrested, and their future well-being and connexion with the British Empire secured. Of the certain result of my suggestions, I cannot, of course, speak with entire confidence, because it seems almost too much to hope that evils of so long growth, and such extent, can be removed by the tardy application

of even the boldest remedy; and because I know that as much depends upon the consistent vigour and prudence of those who may have to carry it into effect, as on the soundness of the policy suggested. The deep-rooted evils of Lower Canada will require great firmness to remove them. The disorders of Upper Canada, which appear to me to originate entirely in mere defects of its constitutional system, may, I believe, be removed by adopting a more sound and consistent mode of administering the government. We may derive some confidence from the recollection, that very simple remedies yet remain to be resorted to for the first time. And we need not despair of governing a people who really have hitherto very imperfectly known what it is to have a Government.

2. LORD JOHN RUSSELL TO THE RIGHT HON. C. POULETT THOMSON

DOWNING STREET
Oct. 11, 1839.

SIR,

It appears from Sir George Arthur's despatches that you may encounter much difficulty in subduing the excitement which prevails on the question of what is called 'Responsible Government.' I have to instruct you, however, to refuse any explanation which may be construed to imply an acquiescence in the petitions and addresses upon this subject. I cannot better commence this despatch than by a reference to the resolutions of both Houses of Parliament of the 28th April and 9th May in the year 1837.

The assembly of Lower Canada having repeatedly pressed this point, her Majesty's confidential advisers at that period thought it necessary not only to explain their views in the communications of the Secretary of State, but expressly called for the opinion of Parliament on the subject. The Crown and the two houses of Lords and Commons having thus decisively pronounced a judgement upon the question, you will consider yourself precluded from entertaining any proposition on the subject.

It does not appear, indeed, that any very definite meaning is generally agreed upon by those who call themselves the advocates of this principle; but its very vagueness is a source of delusion, and if at all encouraged, would prove the cause of embarrassment and danger.

The constitution of England, after long struggles and alternate success, has settled into a form of government in which the prerogative of the Crown is undisputed, but is never exercised without advice. Hence the exercise only is questioned, and, however the use of the authority may be condemned, the authority itself remains untouched.

This is the practical solution of a great problem, the result of a contest which from 1640 to 1690 shook the monarchy and disturbed the peace of the country.

But if we seek to apply such a practice to a colony, we shall at once find ourselves at fault. The power for which a minister is responsible in England, is not his own power, but the power of the Crown, of which he is for the time the organ. It is obvious that the executive councillor of a colony is in a situation totally different. The Governor, under whom he serves, receives his orders from the Crown of England. But can the colonial council be the advisers of the Crown of England? Evidently not, for the Crown has other advisers, for the same functions, and with superior authority.

It may happen, therefore, that the Governor receives at one and the same time instructions from the Queen, and advice from his executive

council totally at variance with each other. If he is to obey his instructions from England, the parallel of constitutional responsibility entirely fails; if, on the other hand, he is to follow the advice of his council he is no longer a subordinate officer, but an independent sovereign.

There are some cases in which the force of these objections is so manifest, that those who at first made no distinction between the constitution of the United Kingdom, and that of the colonies, admit their strength. I allude to the questions of foreign war and international relations, whether of trade or diplomacy. It is now said that internal government is alone intended. But there are some cases of internal government in which the honour of the Crown or the faith of Parliament, or the safety of the state, are so seriously involved, that it would not be possible for Her Majesty to delegate her authority to a ministry in a colony.

I will put for illustration some of the cases which have occurred in that very province where the petition for a responsible executive first arose—I mean Lower Canada.

During the time when a large majority of the Assembly of Lower Canada followed M. Papineau as their leader, it was obviously the aim of that gentleman to discourage all who did their duty to the Crown within the province, and to deter all who should resort to Canada with British habits and feelings from without. I need not say that it would have been impossible for any minister to support, in the Parliament of the United Kingdom, the measures which a ministry, headed

by M. Papineau, would have imposed upon the Governor of Lower Canada:—British officers punished for doing their duty; British emigrants defrauded of their property; British merchants discouraged in their lawful pursuits, would have loudly appealed to Parliament against the Canadian ministry and would have demanded protection.

Let us suppose the Assembly as then constituted to have been sitting when Sir John Colborne suspended two of the judges. Would any councillor, possessing the confidence of the Assembly, have made himself responsible for such an act? And yet the very safety of the province depended on its adoption. Nay, the very orders of which your Excellency is yourself the bearer respecting Messrs. Bedard and Panet, would never be adopted or put in execution by a ministry depending for existence on a majority led by M. Papineau.

Nor can any one take upon himself to say that such cases will not again occur. The principle once sanctioned, no one can say how soon its application might be dangerous, or even dishonourable, while all will agree that to recall the power thus conceded would be impossible.

While I thus see insuperable objections to the adoption of the principle as it has been stated, I see little or none to the practical views of colonial government recommended by Lord Durham, as I understand them. The Queen's government have no desire to thwart the representative assemblies of British North America in their measures of reform and improvement. They have no wish to

make those provinces the resource for patronage at home. They are earnestly intent on giving to the talent and character of leading persons in the colonies, advantages similar to those which talent and character, employed in the public service, obtain, in the United Kingdom. Her Majesty has no desire to maintain any system of policy among her North American subjects which opinion condemns. In receiving the Queen's commands, therefore, to protest against any declaration at variance with the honour of the Crown, and the unity of the empire, I am at the same time instructed to announce her Majesty's gracious intention to look to the affectionate attachment of her people in North America, as the best security for permanent dominion. It is necessary for this purpose that no official misconduct should be screened by her Majesty's representative in the provinces; and that no private interests should be allowed to compete with the general good.

Your Excellency is fully in possession of the principles which have guided her Majesty's advisers on this subject; and you must be aware that there is no surer way of earning the approbation of the Queen, than by maintaining the harmony of the executive with the legislative authorities.

While I have thus cautioned you against any declaration from which dangerous consequences might hereafter flow, and instructed you as to the general line of your conduct, it may be said that I have not drawn any specific line beyond which the power of the Governor on the one hand, and the privileges of the Assembly on the other, ought not to extend. But this must be the case in any

mixed government. Every political constitution in which different bodies share the supreme power, is only enabled to exist by the forbearance of those among whom this power is distributed. In this respect the example of England may well be imitated. The sovereign using the prerogative of the Crown to the utmost extent, and the House of Commons exerting its power of the purse, to carry all its resolutions into immediate effect, would produce confusion in the country in less than a twelvemonth. So in a colony: the Governor, thwarting every legitimate proposition of the Assembly; and the Assembly continually recurring to its power of refusing supplies, can but disturb all political relations, embarrass trade, and retard the prosperity of the people. Each must exercise a wise moderation. The Governor must only oppose the wishes of the Assembly where the honour of the Crown, or the interests of the empire are deeply concerned; and the Assembly must be ready to modify some of its measures for the sake of harmony, and from a reverent attachment to the authority of Great Britain.

I have, etc.,

J. RUSSELL.

3. THE EARL OF ELGIN AND KINCARDINE TO EARL GREY

GOVERNMENT HOUSE, MONTREAL,
April 30, 1849.

I REGRET to state that rioting, attended with some consequences much to be regretted, though happily with no injury to life, or, except in one instance, to person, has taken place in the city of Montreal during the last few days. I hasten to furnish your Lordship with an account of what has actually occurred, lest you should be misled by exaggerated reports conveyed through the United States.

2. In consequence of the unexpected arrival of vessels with merchandize at the Port of Quebec, it became necessary for me to proceed, on a short notice, to Parliament, on Wednesday last, in order to give the Royal Assent to a Customs Bill which had that day passed the Legislative Council; and I considered that, as this necessity had arisen, it would not be expedient to keep the public mind in suspense by omitting to dispose, at the same time, of the other Acts in which the two branches of the local Parliament had at an earlier period of the session concurred, and which still awaited my decision. Among these was the Act to provide for the indemnification of parties in Lower Canada whose property was destroyed during the

Rebellion in 1837 and 1838, with respect to which, as your Lordship is aware, much excitement has unhappily been stirred.

3. I herewith enclose, for your Lordship's perusal, a printed copy of the Act in question, and I shall not fail by the first mail to furnish you with full information respecting its character and objects, the circumstances which led to its introduction, and the grounds on which I resolved, after much reflection, to sanction it. No money can be paid under it as indemnity for a considerable period, so that her Majesty's power of disallowance can be exercised with effect, should her Majesty be so advised, notwithstanding the course which I have taken. As I am writing this Dispatch in haste, with a view to its transmission by way of New York, I shall confine myself for the present to a statement of the proceedings by which the peace of the city has been disturbed.

4. In order, however, to render this narrative intelligible, I must premise that for some time past the House of Assembly, as at present constituted, has been the object of bitter denunciation, and not infrequently of reckless menace, on the part of a certain portion of the press of the province, and more especially of that of Montreal. Your Lordship will probably recollect that the body in question is the product of a general election which took place about 18 months ago, under the auspices of the political party now in opposition, and after a dissolution, to which I had recourse on their advice, for the purpose of strengthening them in their position as a Government. The result of this measure was in the last degree

unfavourable to those who had recommended it; not, however, so much so in Lower Canada, where the complexion of the representation was little affected by the dissolution, as in the Upper Province, where several constituencies, among which were some of the most populous, rejected Conservative in favour of Liberal candidates. On a question of confidence raised at the commencement of the session, immediately after the general election, the Administration was defeated by a majority of more than two to one, and a change of Government, as a matter of course, ensued.

5. This alteration in the political complexion of the Assembly, and the change of Government consequent upon it, were therefore clearly and distinctly traceable to a revulsion of sentiment in the British constituencies of Upper Canada. In Lower Canada nothing had occurred to account for either. This circumstance has, however, failed to secure for the decisions of the popular representative body either forbearance or respect from a certain section of those who profess to be emphatically the supporters of British interests. To denounce the Parliament as French in its composition, and the Government as subject to French influences, has been their constant object, and the wildest doctrines have been broached with respect to the right which belongs to a British minority of redressing by violence any indignity to which it may be subjected from such a source. I have now before me an article that appeared in one of the principal English newspapers of Montreal at a very early period of the session, of which I transcribe the concluding paragraph, as illustra-

tive of the temper and language in which, even at that time, and before the public mind had been excited by the discussion of the Rebellion Losses Bill, a portion of the press ventured to criticize the proceedings of the local Parliament. The article treats of a measure affecting the townships, to which, I believe, no great objection was raised in Parliament. It terminates, however, in the words—

> We are very glad of it—the sooner the cloven foot is made visible the better: the obvious intention of that majority, composed of Frenchmen, aided by traitorous British Canadians, is to force French institutions still further upon the British minority in Lower Canada. The intention is obvious, as we said, and we are glad that it is openly shown. We trust that the party of the Government will succeed in every one of their obnoxious measures. When French tyranny becomes insupportable we shall find our Cromwell. Sheffield, in the olden times, used to be famous for its keen and well-tempered whittles; well, they make bayonets there now, just as sharp and just as well-tempered. When we can stand tyranny no longer, it will be seen whether good bayonets in Saxon hands will not be more than a match for a mace and a majority.

6. To persons accustomed to the working of constitutional government in well-ordered communities, it may seem incredible that such language should be employed by the organs of any respectable party in reference to a body comprising the freely-chosen representatives of a constituency, formed on a most popular basis; but the cause of the anomaly is apparent enough to all who are acquainted with the history of Canada.

For a series of years the popular representative body and the Executive supported by the Legislative Council were, in the Lower Province especially, in a condition of almost constant antagonism. To revile the one was the surest test of patriotism; to denounce the other, of loyalty. In a society singularly democratic in its structure, where diversities of race supplied special elements of confusion, and where consequently it was most important that constituted authority should be respected, the moral influence of law and Government was enfeebled by the existence of perpetual strife between the powers that ought to have afforded to each other a mutual support. No state of affairs could be imagined less favourable to the extinction of national animosities, and to the firm establishment of the gentle and benignant control of those liberal institutions which it is England's pride and privilege to bestow upon her children.

7. I am not without hope that a steady adherence to the principles of constitutional Government, and the continuance of harmony between the co-ordinate branches of the Legislature, may lead in process of time to the correction of these evils; meanwhile, however, I must ascribe mainly to the cause which I have assigned the tone of arrogant defiance with which the resolutions, not of the Government only, but also of the Parliament, are treated by parties who happen for the moment to be unable to make their views prevail with either, and the acts of violence to which this inflammatory language has in the present instance led.

8. That many persons conscientiously disapprove of the measure respecting rebellion losses in Lower Canada which has been introduced by the Government, and which the local Parliament has passed by large majorities, and that in the minds of others it stirs national antipathies and recollections of former conflicts, which designing politicians seek to improve to their own selfish ends, cannot, I fear, be doubted. It is therefore emphatically a measure which should have been approached with calmness and caution, by all at least who are not directly interested in the issue. Unfortunately, however, this has been by no means the case. Not only have appeals to passion of the most reckless description proceeded from the local press, but they have received encouragement from quarters from which they had little right to look for it. Passages such as the following, in which a London journal of influence treats of the British population as affected by the measure in question :—

> They are tolerably able to take care of themselves, and we very much misconstrue the tone adopted by the English press and English public in the province if they do not find some means of resisting the heavy blow and great discouragement which is aimed at them,

are read with avidity, and construed to mean that sympathy will be extended from influential quarters at home to those who seek to annul the obnoxious decision of the local Legislature, whatever be the means to which they resort for the attainment of that end.

9. The scenes by which the city of Montreal has been lately disgraced, are the natural fruits of an agitation of this character, operating on a people of excitable temper, who have been taught to believe that a race which they despise, and over which they have been wont to exercise dominion, has obtained through the operation of a constitutional system an authority which it could not otherwise have acquired. Hence, more especially, their vehement indignation against me personally, and the conviction, in many cases I doubt not perfectly sincere, that I have been guilty of a serious dereliction of duty because I have not, as my predecessors have often done before me, consented to place myself in the front of an agitation to counteract the policy of Parliament. The nature of the constitutional doctrines which practically obtain in this section of the community, is curiously exemplified by the fact, that it is not the passage of the Bill by an overwhelming majority of the representatives of the people, or the acquiescence of the Council, but the consent of the Governor which furnishes the pretext for an exhibition of popular violence.

10. When I left the House of Parliament after giving the Royal Assent to several Bills, to which I have referred, I was received with mingled cheers and hootings by a crowd by no means numerous which surrounded the entrance to the building. A small knot of individuals consisting, it has since been ascertained, of persons of a respectable class in society pelted the carriage with missiles which they must have brought with them for the purpose. Within an hour after this occurrence,

a notice, of which I enclose a copy, issued from one of the newspaper offices, calling a meeting in the open air. At the meeting inflammatory speeches were made. On a sudden, whether under the effect of momentary excitement, or in pursuance of a plan arranged beforehand, the mob proceeded to the House of Parliament where the members were still sitting, and breaking the windows set fire to the building and burned it to the ground. By this wanton act public property of considerable value, including two excellent libraries, has been utterly destroyed. Having achieved their object the crowd dispersed, apparently satisfied with what they had done. The members were permitted to retire unmolested and no resistance was offered to the military who appeared on the ground after a brief interval, to restore order, and aid in extinguishing the flames. During the two following days a good deal of excitement prevailed in the streets, and some further acts of incendiarism were perpetrated. Since then the military force has been increased, and the leaders of the disaffected party have shown a disposition to restrain their followers, and to direct their energies towards the more constitutional object of petitioning the Queen for my recall, and the disallowance of the obnoxious Bill. The proceedings of the House of Assembly will also tend to awe the turbulent. I trust, therefore, that the peace of the city will not be again disturbed. The newspapers which I enclose contain full, and I believe pretty accurate, accounts of all that has occurred since Wednesday last.

11. The ministry are blamed for not having

made adequate provision against these disasters; that they by no means expected that the hostility to the Rebellion Losses Bill would have displayed itself in the outrages which have been perpetrated during the last few weeks is certain. Perhaps sufficient attention was not paid by them to the menaces of the opposition press. It must be admitted, however, that their position was one of considerable difficulty. The civil force of Montreal—a city containing about 50,000 inhabitants of different races, with secret societies and other agencies of mischief in constant activity—consists of two policemen under the authority of the Government, and seventy appointed by the Corporation. To oppose, therefore, effectual resistance to any considerable mob, recourse must be had in all cases either to the military or to a force of civilians enrolled for the occasion. Grave objections, however, presented themselves in the present instance to the adoption of either of these courses until the disposition to tumult on the part of the populace unhappily manifested itself in overt acts. More especially was it of importance to avoid any measure which might have had a tendency to produce a collision between parties on a question on which their feelings were so strongly excited. The result of the course pursued is, that there has been no bloodshed, and, except in the case of some of the ministers themselves, no destruction of private property.

12. The proceedings in the Assembly have been important. I enclose the copy of an address which has been voted to me by a majority of 36

to 16, expressive of abhorrence at the outrages which have taken place in the city of Montreal, of loyalty to the Queen, and approval of my just and impartial administration of the Government with my late as well as my present advisers. Some of the opposition approve of the course which I have taken with respect to the Rebellion Losses Bill, as appears from the speeches of Messrs. Wilson and Galt, of which reports are given in the newspapers which I enclose. Mr. Wilson is an influential member of the Upper Canada conservative party, and Mr. Galt's views are the more important, because he has been returned to Parliament only a few days ago by a Lower Canadian constituency which comprises a large British population. Generally, however, as the amendments they have moved to the address show, they desire to avoid committing themselves on this point. The votes against the Address may be thus classed: Sir A. M'Nab and his party; my late ministers and their party; and Mr. Papineau. The first acts with perfect consistency in voting as he has done on this question; for he has always contended that government conducted on British principles is unsuited to Canada. The course of the second class is less intelligible; for, until the day on which they resigned their offices into my hands, they uniformly expressed approval of the principles on which my conduct as Governor-General was guided; and these, as your Lordship well knows, have undergone no change with the change of administration. Mr. Papineau's vote conveys a useful lesson which will not, I trust, be lost on persons who had been induced to believe

that the persecution of which I am now the object is really attributable to my having shown undue lenity to those who were led by him into rebellion.

13. I have now furnished your Lordship with as clear a statement of these important occurrences as I can give, and I can conclude by assuring you that the city is perfectly tranquil, and that there is no present likelihood of a renewal of disturbances. A few days will show what echo the proceedings of the violent party awaken in Upper Canada, and to what extent they are followed by reaction. Meanwhile it is my firm conviction that if this dictation be submitted to, the government of this province by constitutional means will be impossible, and that the struggle between overbearing minorities, backed by force, and majorities resting on legality and established forms, which has so long proved the bane of Canada, driving capital from the province, and producing a state of chronic discontent, will be perpetuated. At the same time, I think that if I am unable to recover that position of dignified neutrality between contending parties which it has been my unremitting study to maintain, and from which I would appear to have been for the moment driven—not, as I firmly believe, through any fault of my own, but by the unreasoning violence of faction—it may be a question with your Lordship whether it would not be for the interests of her Majesty's service that I should be removed from my high office to make way for one who should not indeed hold views at variance with mine with respect to the duties of a consti-

tutional Governor, but who should have the advantage of being personally unobnoxious to any section of her Majesty's subjects within the province.

I have, etc.

ELGIN.

ad-
any
pro-

4. EARL GREY TO THE EARL OF ELGIN AND KINCARDINE

DOWNING STREET,
May 18, 1849.

MY LORD,

I have received, and laid before the Queen, your Lordship's despatch of the 30th of April giving an account of the scenes by which the City of Montreal has been disgraced, and in the course of which the building occupied by the provincial parliament has been destroyed by fire.

I am commanded by her Majesty to inform your Lordship that, while she has received with very great concern, the intelligence of these deplorable events, they have not impaired the confidence which her Majesty has hitherto felt in your ability and judgement, and that she continues to regard your administration of the affairs of the province as meriting her entire approbation.

Upon the act of the provincial Parliament, which has afforded a pretext for the outrages which have been committed, it is the duty of her Majesty's servants to reserve their judgement until we shall be in possession of the full information which you lead me to expect as to its character and objects: but, whatever may be the view which may be taken of the merits of that measure, there can be but one opinion as to the guilt of

those who in resistance to a law, constitutionally passed by the provincial legislature, have had recourse to violence of so disgraceful a character, or as to the very serious responsibility incurred by all who have, even by the imprudence of their language, assisted in producing the excitement which has led to such lamentable results. Her Majesty's servants entirely concur with your Lordship, as to the consequences which must follow from submitting to the kind of dictation by which it has been attempted on this occasion to overrule the decision of the legally constituted authorities of the province, and they confidently rely upon your firmness, supported, as I trust you will be, by the Parliament and the great majority of the people of Canada, to enforce for the future obedience to the law, and to compel those who may disapprove of the measures either of the legislative or of the executive government of the province to confine their opposition within legal and constitutional limits.

I appreciate the motives which have induced your Lordship to offer the suggestion with which your despatch concludes, but I should most earnestly deprecate the change it contemplates in the government of Canada. Your Lordship's relinquishment of that office, which under any circumstances would be a most serious loss to her Majesty's service and to the province, could not fail, in the present state of affairs, to be most injurious to the public welfare, from the encouragement which it would give to those who have been concerned in the violent and illegal opposition which has been offered to your government. I

also feel no doubt that, when the present excitement shall have subsided, you will succeed in regaining that position of 'dignified neutrality' becoming your office which, as you justly observe, it has hitherto been your study to maintain, and from which even those who are at present most opposed to you will on reflection perceive that you have been driven by no fault on your part but by their own unreasoning violence.

Relying therefore upon your devotion to the interests of Canada, I feel assured that you will not be induced by the unfortunate occurrences which have taken place to retire from the high office which the Queen has been pleased to entrust to you, and which, from the value she puts upon your past services, it is her Majesty's anxious wish that you should retain.

I have, etc.,

GREY.

III

RESPONSIBLE GOVERNMENT IN AUSTRALASIA

1. REPORT OF COMMITTEE FOR TRADE AND PLANTATIONS OF PRIVY COUNCIL ON PROPOSED AUSTRALIAN CONSTITUTION

Dated May 1, 1849.

But in sanctioning that departure[1] from the general type or model of the earlier colonial Constitutions, it has been the practice of Parliament to recognize the ancient principle, and to record the purpose of resuming the former constitutional practice so soon as the causes should have ceased to operate, which in each particular case had forbidden the immediate observance of it. Nor has the pledge thus repeatedly given been forgotten. It has been redeemed in New South Wales, except so far as relates to the combination which has taken place there of the Council and Assembly into one Legislative House or Chamber. It has been redeemed with regard to New Zealand, although peculiar circumstances have required a temporary postponement of the operation in that

[1] Namely, the creation of nominee Legislative Councils in place of elective Assemblies.

Colony of the Act passed by Parliament for establishing in it a Representative Legislature.

We are of opinion that the time has not yet arrived for conferring the franchise on the Colonists of Western Australia, because they are unable to fulfil the condition on which alone, it appears to us, such a grant ought to be made; the condition, that is, of sustaining the expense of their own Civil Government, by means of the local revenue, which would be placed under the direction and control of their representatives. Whenever the Settlers in Western Australia shall be willing and able to perform this condition, they ought, we apprehend, to be admitted to the full enjoyment of the corresponding franchises, but not till then.

The Colonies of South Australia and Van Diemen's Land, being on the other hand at once willing and able to provide by local resources for the public expenditure of each or at least for so much of that expenditure as is incurred with a view to colonial and local objects, the time has in our judgement arrived when Parliament may properly be recommended to institute in each of these Colonies a legislature, in which the representatives of the people at large shall enjoy and exercise their constitutional authority.

In submitting to your Majesty this advice, we are only repeating an opinion so familiar and so generally adopted by all persons conversant with the Government of the British Colonies, that it would seem superfluous to support it by argument or explanation. The introduction of this constitutional principle into every dependency

of the British Crown is a general rule sanctioned by a common and clear assent. The exception to that rule arises only when it can be shown that the observance of it will induce evils still more considerable than those which it would obviate and correct. We are aware of no reason for apprehending that such a preponderance of evil would follow on the introduction of such a change in South Australia and Van Diemen's Land. The contrary anticipation appears to be entertained by all those who possess the best means and the greatest powers of foreseeing the probable results of such a measure. We therefore recommend that, during the present session of Parliament, a Bill shall be introduced for securing to the representatives of the people of South Australia and Van Diemen's Land respectively, their due share in the legislation of each of those Colonies.

We apprehend however that it would be found highly inconvenient to consider the question as it regards those two settlements, without at the same time adverting to the effects with which such a change in them must be followed in the whole range of the Australian Colonies.

New Holland is at present divided between the three Governments of New South Wales, South Australia, and Western Australia. The most cursory inspection of the maps and charts of those regions will sufficiently show, that as they shall become more populous and more extensively settled, it will be necessary to divide them into a greater number of distinct Colonies. But, confining our immediate attention to the case of New South Wales, we observe that the cities of

Sydney and of Melbourne, lying at a great distance from each other, form the respective capitals of districts of great extent, separated from each other by diversities of climate and by some corresponding differences in their natural resources, and in the agricultural and commercial pursuits followed in each of them. The inhabitants of the southern districts have long and earnestly solicited that Melbourne should be made the seat and centre of a Colonial Government separated from that of Sydney; and so decided has this wish become of late, that on the recent general election of members of the Legislature of New South Wales collectively, the inhabitants of the southern district have virtually and in effect refused to make any such choice. The reluctance which was at first so naturally entertained at Sydney to the proposed innovation, appears to have gradually but effectually yielded to the progress of knowledge and reasoning on the subject. The Governor and the Executive Council, the existing Legislature, and, as we believe, the great body of the Colonists, now favour the contemplated division of their extensive territory into a northern and a southern Colony.

Nor is it surprising that such should have been the ultimate conclusion of such a debate. The inhabitants of countries recently and imperfectly settled are exposed to few greater social evils than that of the remoteness of the seat of Government from large bodies of the settlers. The effect is virtually to disfranchise a large proportion, if not a majority, of the Colonists, by excluding them from any share in the management of public

affairs, and in the inspection and control of the conduct of their rulers. In such circumstances the inconveniences of the centralization of all the powers of Government are experienced in their utmost force. The population of the districts most distant from the metropolis are compelled to entrust the representation of their persons and the care of their local interests to settled residents at that metropolis, who possess but a very slight knowledge of their constituents and a faint sympathy with their peculiar pursuits and wants.

We propose therefore that Parliament should be recommended to authorize the division of the existing Colony of New South Wales into a northern and a southern Province. Sydney would be the capital of the northern division, which would retain the present name of New South Wales. Melbourne would be the capital of the southern division, on which we would humbly advise that your Majesty should be graciously pleased to confer the name of Victoria. . . .

The line of demarcation between New South Wales and Victoria would coincide with the existing boundary between the two districts into which for certain purposes the Colony is already divided. It would commence at Cape How, pursue a straight line to the nearest source of the river Murray, and follow the course of that river as far as the boundary which now divides New South Wales from South Australia.

In each of the two proposed provinces of New South Wales and Victoria we apprehend that provision ought now to be made by Parliament

for creating a Legislature, in which the representatives of the people should exercise their Constitutional authority and influence. We do not advise that resort should be had for these purposes to the ancient and unaided prerogatives of your Majesty's Crown, because it is not competent to your Majesty, in the exercise of that prerogative, to supersede the Constitutions which Parliament has already established in the Australian Colonies. Parliamentary intervention is therefore indispensable.

If we were approaching the present question under circumstances which left to us the unfettered exercise of our own judgement as to the nature of the Legislature to be established in New South Wales, Victoria, South Australia, and Van Diemen's Land, we should advise that Parliament should be moved to recur to the ancient constitutional usage by establishing in each a Governor, a Council, and an Assembly. For we think it desirable that the political institutions of the British Colonies should thus be brought into the nearest possible analogy to the Constitution of the United Kingdom. We also think it wise to adhere as closely as possible to our ancient maxims of government on this subject, and to the precedents in which those maxims have been embodied. The experience of centuries has ascertained the value and the practical efficiency of that system of Colonial polity to which those maxims and precedents afford their sanction. In the absence of some very clear and urgent reason for breaking up the ancient uniformity of design in the Government of the Colonial dependencies of the Crown,

it would seem unwise to depart from that uniformity. And further, the whole body of constitutional law, which determines the rights and duties of the different branches of the ancient Colonial Governments, having, with the lapse of time, been gradually ascertained and firmly established, we must regret any innovation which tends to deprive the Australian Colonies of the great advantage of possessing such a code so defined and so maturely considered.

But great as is the weight that we attach to these considerations, the circumstances under which we actually approach the question are such as to constrain us, however reluctantly, to adopt the opinion that the proposed Act of Parliament should provide for the establishment in each of the four Australian Colonies of a single House of Legislature only; one-third of the members of which should be nominated by your Majesty and the remaining two-thirds elected by the Colonists. . . . We recommend therefore that the proposed Act of Parliament should provide for convoking in each of the four Colonies a Legislature comprising two estates only, that is, a Governor and a single House, composed of nominees of the Crown and of the representatives of the people jointly. We also think that in South Australia and Van Diemen's Land, as in New South Wales and Victoria, the Legislatures now to be established ought to have the power of amending their own Constitutions, by resolving either of these single Houses of Legislature into two Houses. Whatever the result may be in either of the four Colonies, your Majesty will thus

at least have the satisfaction of knowing that free scope has been given for the influence of public opinion in them all; and that this constitutional question has been finally adjusted in each, in accordance with that opinion.

For the same reason we think it desirable that the Legislatures now to be created should be entrusted with the power of making any other amendments in their own Constitutions which time and experience may show to be requisite. We are aware of no sufficient cause for withholding this power, and we believe that the want of it in the other British Colonies has often been productive of serious inconvenience. On the other hand, we do not think it right that a subordinate Legislature should have the power of enlarging or altering any of the constitutional franchises conferred on it by Parliament, without either the express or the implied assent of the Queen, Lords and Commons of the United Kingdom. We should object to such an unrestrained permission, not for technical or legal reasons merely, but on broad and substantial grounds. Changes in the Constitution of any Colony may be productive of consequences extending far beyond the limits of the place itself. They may affect the interests of other British settlements adjacent or remote. They may be injurious to the less powerful classes of the local society. They may be prejudicial to your Majesty's subjects in this country, or they may invade the rights of your Majesty's Crown. We think therefore that no Act of any Australian Legislature which shall in any manner enlarge, retrench or alter the

Constitution of that Legislature or its rights or privileges, or which shall be in any respect at variance with the Act of Parliament or other instruments under which the Legislature is constituted, ought to be of any validity until it had been expressly confirmed and finally enacted by your Majesty in Council. And we are further of opinion that it should not be lawful to make any Order in Council so confirming any such Act until it had been laid before each House of Parliament for at least thirty days.

. . . . .

We should think it prudent, if we thought it practicable, to confine the proposed Act to those provisions which are necessary for constituting Legislatures in the four Colonies in question, and for enabling those Legislatures to perform the duties to which they will be called. For we contemplate with great reluctance any departure from the general principle which leaves to the local Legislature of every Colony the creation of other local institutions, and the enactment of any laws which are to have their operation within the local limits of the Colony.

Passing to the subject of a Civil List, we have to observe that the very large proportion of the revenue of New South Wales, at present withdrawn from the control of the Legislature by the permanent appropriation of Parliament, has been a continual subject of complaint and remonstrance in the Colony since the passing of the Constitution Act of 1842; and we cannot conceal our opinion

that these complaints are not without some foundation. It appears to us hardly consistent with the full adoption of the principles of Representative Government that as to a large part of the public expenditure of the Colony, the Legislature should be deprived of all authority; nor does there appear to us to be any real occasion for imposing a restriction upon the powers of that body which manifests so much jealousy as to the manner in which those powers may be exercised. The expenditure thus provided for is all incurred for services in which the Colonists alone are interested. The Colonists themselves are mainly concerned in the proper and efficient performance of those services; and it appears to us that they ought to possess, through their representatives, the power of making such changes from time to time in the public establishments as circumstances may require. But while we are of opinion that there is no sufficient reason for refusing to the Legislatures of the Colonies a control over the whole of their expenditure, we also think that great inconvenience and very serious evils might be expected to arise from leaving the whole of the public establishments to be provided for by annual vote. In this country your Majesty's Civil List is settled upon your Majesty for life, and, in addition to this, Parliament has thought fit to provide, by a permanent charge on the Consolidated Fund for a very considerable part of the establishments kept up for the public service, including the whole of those of a judicial character, leaving to be defrayed by annual votes those charges only which have been regarded as requir-

ing the more frequent revision of the Legislature. The reasons which have induced the British Parliament in this manner to withdraw various heads of expenditure from annual discussion, and to make provision for them in a manner which can only be altered by an Act of the whole Legislature, apply, as we apprehend, with much increased force in favour of adopting a similar policy in the Colonies. It is not to be denied that in these smaller societies party spirit is apt to run still higher than amongst ourselves, and that questions respecting the remuneration of public servants are occasionally discussed, rather with reference to personal feelings than to a calm consideration of the real interest of the community. We believe also, that true economy is promoted by giving to those who are employed in the public service some reasonable assurance for the permanence of their official incomes. It is thus only that efficient service can be secured in return for a moderate remuneration. With these views the arrangement which we should recommend is that Parliament should, in the first instance, charge upon the revenues of the several colonies an amount sufficient to defray the expenses of those services which it would be inexpedient to leave to be provided for by annual votes of the respective Legislatures, leaving, however, to those Legislatures full power to alter this appropriation by laws to be passed in the usual form. It would remain for your Majesty to determine what instructions should be given to the Governors of these Colonies, as to their assenting on behalf of the Crown to any laws which might be tendered

to them by the Legislatures for repealing or altering any of the charges created by Parliament on the revenues of the respective Colonies. We conceive that it might be advisable by such instructions to restrain the Governors from assenting to Acts making any alterations in the salaries of their own offices, or of those of the Judges, and some others of the public servants, unless these Acts contained clauses suspending their operation until they should be confirmed by your Majesty's immediate authority. It appears to us that this course ought to be adopted, because we consider that the salaries of the principal officers of the Colonial Governments ought not to be changed without your Majesty's direct concurrence; and because the present holders of some of the offices of lower rank have received their appointments under circumstances which give them a strong claim to the protection which would be thus afforded them. . . . We doubt not that such claims would be respected by the local Legislatures, whatever reductions they might see fit to make in other cases; but we think that your Majesty ought to secure them even from the risk of a hasty and ill-considered decision to their prejudice, occasioned by some temporary excitement; subject to these qualifications, we are of opinion that complete control over the Colonial expenditure ought to be given to the respective Legislatures.

There yet remains a question of considerable difficulty. By far the larger part of the revenue of the Australian Colonies is derived from duties on customs. But if, when Victoria shall have

been separated from New South Wales, each province shall be authorized to impose duties according to its own wants, it is scarcely possible but that in process of time differences should arise between the rates of duty imposed upon the same articles in the one and in the other of them. There is already such a difference in the tariffs of South Australia and New South Wales; and although, until of late, this has been productive of little inconvenience, yet with the increase of settlers on either side of the imaginary line dividing them, it will become more and more serious. The division of New South Wales into two Colonies would further aggravate this inconvenience, if the change should lead to the introduction of three entirely distinct tariffs, and to the consequent necessity for imposing restrictions and securities on the import and export of goods between them. So great indeed would be the evil, and such the obstruction of the inter-colonial trade, and so great the check to the development of the resources of each of these Colonies, that it seems to us necessary that there should be one tariff common to them all, so that goods might be carried from the one into the other with the same absolute freedom as between any two adjacent counties in England.

We are further of opinion that the same tariff should be established in Van Diemen's Land also, because the intercourse between that Island and the neighbouring Colonies in New Holland has risen to a great importance and extent, and has an obvious tendency to increase. Yet fiscal regulations on either side of the intervening strait

must of necessity check, and might perhaps to a great extent destroy, that beneficial trade.

If the duties were uniform, it is obvious that there need be no restrictions whatever imposed upon the import or export of goods between the respective Colonies, and no motive for importing into one goods liable to duty, which were destined for consumption in another: and it may safely be calculated that each would receive the proportion of revenue to which it would be justly entitled, or, at all events, that there would be no departure from this to an extent of any practical importance.

Hence it seems to us that a uniformity in the rate of duties should be secured.

For this purpose we recommend that a uniform tariff should be established by the authority of Parliament, but that it should not take effect until twelve months had elapsed from the promulgation in the several Colonies of the proposed Act of Parliament. That interval would afford time for making any financial arrangements which the contemplated change might require in any of them; and by adopting the existing Tariff of New South Wales (with some modifications to adapt it to existing circumstances) as the General Tariff for Australia, we apprehend that there would be no risk of imposing upon the inhabitants of these Colonies a table of duties unsuited to their actual wants. We should not, however, be prepared to offer this recommendation unless we proposed at the same time to provide for making any alteration in this general tariff, which time and experience may dictate, and this we think

can only be done by creating some authority competent to act for all those Colonies jointly.

For this purpose we propose that one of the Governors of the Australian Colonies should always hold from your Majesty a Commission constituting him the Governor-General of Australia. We think that he should be authorized to convene a body to be called the General Assembly of Australia, at any time and at any place within your Majesty's Australian dominions, which he might see fit to appoint for the purpose. But we are of opinion that the first convocation of that body should be postponed until the Governor-General should have received from two or more of the Australian Legislatures addresses requesting him to exercise that power.

We recommend that the General Assembly should consist of the Governor-General and of a single House to be called the House of Delegates. The House of Delegates should be composed of not less than twenty, nor of more than thirty members. They should be elected by the Legislatures of the different Australian Colonies. We subjoin a schedule explanatory of the composition of this body; that is, of the total number of delegates, and of the proportion in which each Colony should contribute that number.

We think that your Majesty should be authorized to establish provisionally, and in the first instance, all the rules necessary for the election of the delegates, and for the conduct of the business of the General Assembly, but that it should be competent to that body to supersede any such rules, and to substitute others, which substituted

rules should not, however, take effect until they had received your Majesty's sanction.

We propose that the General Assembly should also have the power of making laws for the alteration of the number of delegates, or for the improvement in any other respect of its own Constitution. But we think that no such law should come into operation until it had actually been confirmed by your Majesty.

We propose to limit the range of the legislative authority of the General Assembly to the ten topics which we proceed to enumerate. These are :—

1. The imposition of duties upon imports and exports.
2. The conveyance of letters.
3. The formation of roads, canals, or railways, traversing any two or more of such Colonies.
4. The erection and maintenance of beacons and light-houses.
5. The imposition of dues or other charges on shipping in every port or harbour.
6. The establishment of a General Supreme Court, to be a Court of Original Jurisdiction, or a Court of Appeal from any of the inferior Courts of the separate Provinces.
7. The determining of the extent of the jurisdiction and the forms and manner of proceeding of such Supreme Court.
8. The regulation of weights and measures.
9. The enactment of laws affecting all the Colonies represented in the General As-

sembly on any subject not specifically mentioned in the preceding list, but on which the General Assembly should be desired to legislate by addresses for that purpose presented to them from the Legislatures of all those Colonies.

10. The appropriation to any of the preceding objects of such sums as may be necessary, by an equal percentage from the revenue received in all the Australian Colonies, in virtue of any enactments of the General Assembly of Australia.

By these means we apprehend that many important objects would be accomplished which would otherwise be unattainable; and, by the qualifications which we have proposed, effectual security would, we think, be taken against the otherwise danger of establishing a Central Legislature in opposition to the wishes of the separate Legislatures, or in such a manner as to induce collisions of authority betweeen them. The proceedings also of the Legislative Council of New South Wales with reference to the proposed changes in the Constitution, lead us to infer that the necessity of creating some such general authority for the Australian Colonies begins to be seriously felt.

. . . . .

SCHEDULE

Composition of the House of Delegates

Each Colony to send two members, and each to send one additional member for every 15,000

of the population, according to the latest census before the convening of the House.

On the present population the numbers would be as follows:—

	Population last census.	Number of members.
New South Wales .	155,000	12
Victoria . . .	33,000	4
Van Diemen's Land (deducting convicts) .	46,000	5
South Australia .	31,000	4
		25

2. RIGHT HON. SIR JOHN S. PAKINGTON TO SIR CHARLES FITZROY

DOWNING STREET,
December 15, 1852.

SIR,

In my Despatch of 1st October No. 61, I informed you that it was the intention of her Majesty's Government at the earliest period to arrive at the necessary decision with respect to the contents of the petition of the Legislative Council of New South Wales, transmitted in your Despatch of January 15th last, and to apprise you of the result of their deliberations upon it.

They have been fully impressed with a sense of the importance to be attached to that petition, not only as proceeding from a great majority of the Legislature of the province, but as reiterating that statement of the causes of discontent felt by the community, which had been deliberately urged by their predecessors upon the attention of her Majesty's then Government,—a statement, moreover, which was accompanied by your assurance that its sentiments were shared by the most loyal, respectable, and influential members of the community.

But they are influenced, in addition, by considerations arising from those extraordinary discoveries of gold which have lately taken place in

some of the Australian colonies, and which may be said to have imparted new and unforeseen features to their political and social condition.

They are sensible that they have now to consider the prayer of the petition thus laid before her Majesty, with reference to a state of affairs which has no parallel in history, and which must, in all human probability, stimulate the advance of population, wealth, and material prosperity, with a rapidity alike unparalleled.

Her Majesty's Government have observed, with a degree of satisfaction which it is impossible to express too strongly, the general order and good conduct which have distinguished the multitudes attracted to the gold deposits; and they have had the additional good fortune of being able to approve of the general firmness and good judgement displayed by the local authorities, under circumstances so strange and difficult.

And with the evidence thus before them, they cannot but feel, that while it has become more urgently necessary than heretofore to place full powers of self-government in the hands of a people thus advanced in wealth and prosperity, that people have, on the other hand, given signal evidence of their fitness to regulate their own affairs, especially under legislative institutions amended in the manner which the Council itself has pointed out in the concluding part of this petition.

It is in this spirit, and with these views, that her Majesty's Government have approached the consideration of the great subject before them; and under circumstances thus altered, it becomes

less necessary than it otherwise might have been, that they should enter minutely on the consideration of the separate grievances here alleged.

It is, however, their duty to state, that they concur in opinion with their predecessors as to a portion of these grievances, and consider the allegations concerning them to have been answered in substance by Lord Grey's Despatch of 23rd January last. They agree with his Lordship that there is no just complaint in evidence before them as to the distribution of the patronage of the Crown in the Australian colonies, and that the exclusive rule proposed by the Council could not be adopted without great prejudice to the public service. They believe that the wish of the Council, that the Customs shall be subject to the direct supervision and control of the Local Legislature, has been to a considerable extent met by the directions contained in Lord Grey's Despatches of the 8th August 1850, and the 12th February last; and they will, therefore, not at present enter farther into that ground of remonstrance, except by saying that they are prepared to give fair consideration to any representations or proposals which the Legislature of the colony may be disposed hereafter to make with respect to it.

As to the more important question involved in the last head of the grievances stated in the petition, namely, the demand for the exemption of legislative enactments of a strictly local character from the disallowing power of the Crown, her Majesty's Government have no indisposition to meet the views of the Council if any practicable mode can be devised of distinguishing local from

imperial subjects of legislation. But as to the difficulty of fixing on such a mode, they cannot better express their views than has already been done by Lord Grey, believing that neither the plan noticed and combatted by his Lordship, nor other plans which have been suggested with the same general purpose, would prove useful or indeed practicable substitutes for the system now in force. They must add that, under the present mode of exercising the royal prerogative in this behalf, the grievance complained of is, in their opinion, rather theoretical than practical.

Upon the two remaining grounds of complaint, those, namely, which stand first in the petition, her Majesty's Government are ready to accede to the wishes of the Council and of the colony in a spirit of entire confidence.

They are indeed unable to concede the claim advanced on behalf of the colonists to the administration of the waste lands as one of absolute right, in which shape the petition asserts it. And here again, feeling it their duty not to leave this claim unnoticed, they are unable to express their views on it better than by adopting the language of Lord Grey in the Despatch referred to.

They concur, farther, in his Lordship's opinion that when, and on what conditions, it may be desirable to transfer the control of the waste lands of a colony to its Local Legislature, is a question of expediency and not of right.

But they have arrived, after full consideration, at the conclusion that, under the new and rapidly changing circumstances of New South Wales, the time is come at which it is their duty to advise

her Majesty that the administration of those lands should be transferred to the Colonial Legislature, after those changes in its constitution have been effected which are adverted to in the petition.

Without believing that the operation of the Land Sales Act has been in truth pernicious to New South Wales, and with a strong persuasion that much benefit has resulted to the Australian colonies in general from that adherence to fixed principles in the disposal of the land fund which it enforced, they are of opinion that those benefits are no longer such as to countervail the disadvantages attending its restrictions. They think those restrictions should no longer be maintained, unless they are so by the will of the colonists themselves, either as regards the selling price of land or the application of the proceeds. As to the latter, they are clearly of opinion that the portion now expended, according to the terms of the Act, for general purposes, under the authority of the Lords Commissioners of the Treasury, ought to be entrusted to the control of the Legislature. And with respect to the other moiety, although the benefit which they believe New South Wales to have, upon the whole, largely derived from its expenditure on immigration, renders any change in its disposal matter of more serious doubt, they do not propose to except it from the surrender. For they are persuaded that the cost of an immigration which has become more than ever necessary to the welfare of the colony, and is far more important to its interests than to those of the mother country, will be also best undertaken by the Legislature of the former.

Her Majesty's Government are not unmindful of the changes to which this concession may possibly lead, in the amount of revenue to be derived from the disposal of lands, and in the facilities afforded by the land fund for emigration from this country. But they are willing to rely in this, as in other respects, on the foresight and political judgement of that body to which the supervision will be transferred, especially in its improved shape, and they are bound to add, that it appears to them matter of justice, as well as expediency, that concessions on so important a subject which have been made for some time to the principal North American colonies, and recently to New Zealand, should no longer be withheld from New South Wales.

The only remaining subject adverted to as a grievance in the recitals of the petition, and which I conclude to be also embodied under the first head of the protest, relates to the civil list or 'schedules' attached to the Constitutional Acts under which the present Legislature possesses its powers.

I understand the complaint of the Council to be, both that the sums reserved by these schedules are unnecessarily and disproportionately large, and further, that the power which the Act of 1850 gives for altering the appropriation of these sums is so clogged by restrictions, especially those imposed by Lord Grey's subsequent instructions, as to be practically insufficient.

That the sums in question are unnecessarily large, her Majesty's Government are disposed to agree; and it appears to them that, although no

further restriction is imposed by the instructions referred to than that any Act altering their amount and distribution should be reserved for the Royal confirmation if it affected existing interests, yet that a restriction so expressed may easily be understood as interposing serious delay, if not more permanent obstacles, in the way of any except the most trifling change. Her Majesty's Government are, therefore, desirous of meeting on this point also the wishes of the Council.

I cannot close this statement of the spirit in which her Majesty's Government are prepared to meet the views of the Council, and the concessions which they are willing to make to its demands, without adverting to another subject, which, although not included in this petition, is one of extreme interest and importance to the Australian colonies, and of no ordinary difficulty to the mother country.

It is unnecessary for me now to recapitulate the circumstances under which the transportation of convicts from the United Kingdom to New South Wales and Victoria has ceased.

It is enough for my present purpose to state, that its continuance to Van Diemen's Land has elicited from the Legislature of that Colony, and a large portion of its most respectable inhabitants, notwithstanding the effect produced by the discoveries of gold upon the labour market, strong and repeated remonstrances, accompanied by urgent petitions that their flourishing and improving country may no longer be made the receptacle of the criminal population of the mother country.

New South Wales and Victoria have also pro-

tested against this system with equal warmth; declaring, and no doubt with truth, that with the temptation of gold fields within their limits, it is impossible for them to prevent themselves from being contaminated by a large influx of such criminals as may have obtained conditional pardons, or contrived to escape from the restraints of justice.

Her Majesty's Government are unable to resist the force and justice of these remonstrances; and in pursuance of the announcement made by the Queen, in her Majesty's gracious speech from the throne, at the commencement of the present session of Parliament, they propose altogether to discontinue transportation to Van Diemen's Land at as early a period as shall be consistent with the completion of the arrangements which are indispensable for the bringing to a close a system so long in operation.

It only remains for me to refer once more to the last paragraph of the petition, which I conclude to express the sentiment of the Council, that a reform in the constitution of the Legislature itself is expedient, along with that extension of its powers which they demand. In that sentiment her Majesty's Government fully concur. They believe that the rapid progress of New South Wales in wealth and population renders it necessary that the form of its institutions should be more nearly assimilated to that prevailing in the mother country, and should be better adapted to the enlarged functions, and increased responsibilities which will now devolve on the legislative body. I will not lengthen this Despatch by enlarging

upon the advantages of a double Chamber for the safe and satisfactory government of an important community under representative institutions. The people of New South Wales must not only be familiar with the recent discussions in Parliament on this subject, when their own constitution was under debate, but they must be aware that the change has been recommended in several able Despatches from yourself, and has been much debated among themselves, both on public occasions and by their representatives. In a remarkable memorial from certain inhabitants of New South Wales, forwarded to my predecessor in your Despatch of 12th April 1850, I find it stated as in their opinion of the highest importance, 'to protect the colony against rash and hasty legislation by the interposition of a second Chamber.' A step in the progress of constitutional improvement which, they add, has from the first been contemplated, and ought no longer to be deferred.

Assuming therefore, that this is a change as to the expediency of which general agreement prevails, her Majesty's Government believe it to be desirable for the interests of the colony that it should precede those important concessions which I have now the pleasure of announcing their readiness to make.

Ample powers for the purpose of effecting this alteration appear to be entrusted to the existing Legislature by the Constitutional Act of 1850, subject to the confirmation by the Crown of any Act passed for the purpose.

In compliance therefore with the opinion expressed by the Council in favour of a constitution

similar iu its outlines to that of Canada, and with a view also to the most simple and expeditious mode of completing the whole transaction, it is the wish of her Majesty's Government that the Council should establish the new Legislature on the bases of an elective Assembly, and a Legislative Council to be nominated by the Crown. Adopting this general outline, they would leave it to the judgement of the Council to determine the numbers of the two Chambers, and, if they think it necessary, to make any change in the constituency by which the new Assembly is to be elected; subject to the approval of such change by her Majesty when the Act is submitted to her.

It is scarcely necessary to add that her Majesty's Government do not consider that the power which the Legislature of New South Wales at present possesses of changing its constitution is to be considered as exhausted by this exercise of it; that power must be retained, in case further reform should at any time appear expedient.

On the receipt by her Majesty's advisers of such a constitutional enactment by the present Colonial Legislature as I have here generally indicated, with a civil list annexed to it in accordance with what I understand to be the intention of the Legislative Council, they undertake forthwith to propose to Parliament such measures as will be necessary to carry into effect the entire arrangement, namely, the repeal of the Land Sales Act, and the requisite alterations in the Constitutional Acts, and the Schedules annexed to them.

In order to avoid misunderstanding, I wish to state that such a civil list should provide for the

maintenance of the salaries of the principal officers of the Government at their present rate, until altered by Act. The Governor, Judges, Colonial Secretary, Treasurer, and Auditor General, and Attorney and Solicitor General, are clearly within this description ; but I must leave it to yourself and to the Legislature to decide what other functionaries have claims to a similar position. The sums appropriated to pensions and to public worship should also be maintained.

It is my sincere wish that this great change may be speedily and satisfactorily effected, and the course of policy, already commenced by the transfer which has taken place of the gold revenue to the control of the Local Legislature, carried into complete operation. And in the meantime, it is to me a source of very great satisfaction to be the agent for conveying to you the consent of her Majesty's Government to measures which, they trust, will not only tend to promote the welfare and prosperity of the great colony over which you preside, but also to cement and perpetuate the ties of kindred affection and mutual confidence which connect its people with that of the United Kingdom.

I annex for your information copies of two Despatches which I have addressed on the same subject to the Lieutenant-Governors of Victoria and South Australia.

I have, etc.

JOHN S. PAKINGTON.

3. THE OFFICER ADMINISTERING THE GOVERNMENT OF NEW ZEALAND [GENERAL WYNYARD] TO THE DUKE OF NEWCASTLE

GOVERNMENT HOUSE, AUCKLAND,
9 *June*, 1854.

MY LORD DUKE,

The question of responsible government having been the first subject before the House of Representatives, and fully discussed with great talent and moderation in a debate lasting four days, a resolution, of which the enclosed is a copy, was carried on the 5th instant, by a majority of 29 to 1.

2. Seeing the position in which I was thus placed by an all but unanimous resolution from the House of Representatives, calling for certain arrangements not provided for in the Constitution Act, and which, if rejected, would inevitably lead to unpleasant if not serious consequences to the well-working of a form of government in all other respects so popular to the people of New Zealand; and seeing by the opinion of the Attorney-General, embodied in the decision of the Executive Council, that an opening presented itself, I trust your Grace will concur with me that I could not adopt, justifiably, any course better calculated to meet

the views of the Representatives (so as to avert a rupture, that if once roused would be fatal to the harmony of the whole Session), than the one suggested by the legal adviser of the colony, and confirmed by the Members of my Council. Feeling also how much depended on immediate action on my part, and entirely setting aside personal consequences in the hopes of furthering the interest and prosperity of the colony at large, I determined on seeking an interview with the gentlemen named in the margin (who so ably and temperately proposed and seconded the reply to my opening Address), in the hopes of preserving unanimity in the Assembly, by securing their services in my Executive Council, subject to her Majesty's approval; thus carrying out the earnestly desired system of responsible government to the utmost in my power, without trenching on the Constitution Act or exceeding the limits of my instructions.

3. The plan I propose to adopt, and which will, I imagine, be gratefully received, is to add to my Executive Council the names of three Members of the Assembly, whose duty it will be not only to conduct the legislative business of the government through the Session, but also carry with them while so engaged the confidence of the House of Representatives, without at the same time disturbing the original Members of my Executive Council in the discharge of their respective duties, and whose appointments under the New Zealand Government are already recognized by the Crown.

4. Having conferred with these gentlemen, and

explained to them the line of policy I proposed to adopt, pending the receipt of your Grace's commands, I beg to add that, although they conceive the proposal calculated to give perfect satisfaction to all parties, still time has been solicited to ascertain if they are likely to carry with them the confidence of the House, or whether it may be more desirable for me to solicit the exertions of others. No third party has yet been decided on, as it is deemed advisable to select one whose legal knowledge and experience can by them be made available.

5. When the arrangements are finally completed, which I trust may be in a few days, I shall again communicate with your Grace, and continue to keep you informed of every step I take on this highly important and to me trying position.

I have, &c.

R. H. WYNYARD,
Officer administering the Government.

ENCLOSURE 1

Extract from the Minutes of the Proceedings of the House of Representatives

Tuesday, 6 June 1854

Resolved, That a respectful address be presented by the Speaker to the Officer administering the Government, praying that his Excellency will be pleased to take the following resolution into his serious and early consideration, viz.:

That amongst the objects which this House

desires to see accomplished wthout delay, both as an essential means whereby the general Government may rightly exercise a due control over the provincial government, and as a no less indispensable means of obtaining for the general Government the confidence and attachment of the people, the most important is the establishment of ministerial responsibility in the conduct of legislative and executive proceedings by the Government.

CHARLES CLIFFORD, Speaker.

ENCLOSURE 2

Extract from the Minutes of the Executive Council

Tuesday, 6 June, 1854

The Officer administering the Government brought under the consideration of the Council the following resolution passed by the House of Representatives, on Monday, the 5th instant, by a majority of 29 to 1, namely,

'That among the objects which this House desire to be accomplished without delay, both as an essential means whereby the general Government may rightly exercise a due control over the provincial governments, and as a no less indispensable means of obtaining for the general Government the confidence and attachment of the people, the most important is the establishment of ministerial responsibility in the conduct of legislative and executive proceedings by the Governor.'

His Excellency informed the Council that he

had submitted the subject for the legal opinion of the Attorney-General, and that that officer had given the following opinion thereon, viz. :—

By the recent Act for granting a representative constitution to New Zealand no provision has been made for establishing 'ministerial responsibility in the conduct of legislative and executive proceedings by the Governor.' By the Royal letters patent (13 September, 1852) issued to the Governor subsequently to the passing of the Act, it is provided that the government of the colony shall be administered by a governor, under instructions from the Crown, and with the advice and assistance of an Executive Council.

By the 'Royal Instructions' of the same date (13th of September, 1852), and accompanying the Governor's commission, the under-mentioned persons are nominated and appointed by the Crown to be members of the Executive Council (that is to say) :

The senior Military Officer in command of her Majesty's Troops ;

The Colonial Secretary, or the person acting in that capacity ;

The Attorney-General, or the person acting in that capacity ;

The Treasurer, or the person acting in that capacity ;

And such other persons as the Governor shall deem to be qualified and capable to advise him. But it is provided that any appointment so to be made by the Governor shall be provisional only, and subject to be confirmed or disallowed by the Crown.

The 'Royal Instructions' further provide that the Executive Council shall not proceed to the despatch of business unless summoned by the Governor; that as a general rule no question shall be brought before them for their advice or decision excepting such as may be proposed by the Governor; and that it shall be competent for the Governor, although he may dissent from the opinion of the major part, or of the whole of the Council, to execute the powers conferred upon him, in opposition to their opinion. But that, in such case, it shall be competent for any member of the Council to record on the minutes the reasons of any advice he may give; and that it shall be peremptory on the Governor in such case immediately to transmit to the Crown a full explanation and a copy of such minutes.

By the terms of his commission, and by the 'Royal Instructions' accompanying it, the Governor himself is made directly responsible to the Crown, and no power is given to him to delegate his authority, or to relieve himself from such responsibility in the conduct of the duties of his office.

By the same instruments, the members of the Executive Council are also made responsible to the Crown.

Neither by the Constitution Act, nor by the instruments under the authority of which he administers the government, has any provision been made for enabling the Governor to establish 'ministerial responsibility in the conduct of legislative and executive proceedings by the Governor.'

Looking at the provisions of the Constitution

Act (sections 55 and 56), by which it is enacted, that the Governor may by message transmit to either the Legislative Council or to the House of Representatives, for their consideration, the drafts of any laws which it may appear to him to be desirable to introduce; and that he may also make such amendments as he may think expedient in any Bill which may have been passed by the Council and House, and return the same for their consideration; and looking to the recommendation contained in the Report of the Committee of the Board of Trade and Plantations on the proposed establishment of a representative legislature for the Cape of Good Hope, which appears to have been under the notice of her Majesty's Government when engaged in the preparation of the New Zealand Constitution Act, it would seem to have been the opinion of the framers of the Act, that it was not necessary that the executive should be represented either in the Legislative Council or in the House of Representatives; and that it was intended by them that the Governor should not only exercise the power of assenting to or disallowing the legislative measures of the Legislative Council and the House of Representatives, but that he should form an active and co-ordinate branch of the Assembly, and with the advice and assistance of the Executive Council, take a direct and distinct share in the business of the Legislature.

With a general desire on the part of the Members of the Assembly to carry out the apparent intentions of the framers of the Act, it would be possible, though difficult, to carry through two

chambers the legislative measures necessary for giving effect to the policy of the Government; but, in the absence of a co-operative spirit on their part, it would be impracticable successfully to conduct through the two branches of the Legislature the most ordinary government business. From the recent debates in the House of Representatives, it is obvious that the Members of the House are not prepared cordially to acquiesce in any arrangement for the conduct of the public business in the Assembly, which shall render unnecessary the presence in the Legislature of any representation of the Executive Government.

It can scarcely be doubted that the absence of any provision for securing that the Executive should be represented in the Legislature is a defect in the Act, and the practical question is, whether it is now within the power of the Officer administering the Government to remedy the defect.

In the absence of any practical difficulty, the most simple course would have been for the Officer administering the Government to select from the Members of the Assembly three persons who enjoy the respect and confidence of the country, and who would be prepared to carry out the policy of the Government, and to appoint such persons to the offices of Colonial Secretary, Attorney-General, and Colonial Treasurer; but the difficulty which stands in the way of such an arrangement arises from the fact that the present holders of these offices held virtually permanent appointments, which, in the absence of misconduct on their parts, they can hardly be called upon to resign; and

not having been required by the then Governor to secure their election for a seat in the House of Representatives before the general election, they could not now be required to vacate their offices merely because they should not be able to secure their election by any particular constituency, even if a vacancy were made in order that the experiment might be tried.

It would be desirable, however, that the Officer administering the Government, if he remains in office, and that a new Governor, if a successor be appointed, should be in a position to call to his Council, and to appoint to the principal offices of government, persons in whom the country would confide, to give free scope to the full development of the new constitution. An Act to be passed by the Assembly for securing to the present holders of these offices a reasonable provision, in the event of their retirement, would probably lead to the attainment of that object.

It would further be competent for the Officer administering the Government, under the authority of the 'Royal Instructions' at once to add to the Executive Council such other persons as 'he may deem qualified and capable to advise him.' By this means it would be within his power to secure, in some measure, the representation of the Government in the Legislature. With this object, two or three Members having seats in the Assembly, might be appointed provisionally members of the Executive Council, to form the recognized organ of communication between the Executive and Legislative. The persons selected for this purpose, without being appointed at present to any specific

offices, might be charged with the duty of conducting the Government business through the two Chambers; with the duty of preparing, introducing, and superintending in their progress such Bills as may be necessary for giving effect to the policy of the Government; of preparing a financial statement, and the necessary measures for giving it practical effect. To enable the persons entrusted with these duties to discharge them efficiently, it would be essential that the Officer administering the Government should give them his confidence and cordial support. As a return for laborious service, and further to secure their responsibility, it would be desirable that they should be adequately paid. It would also be indispensable that one of the number should be an able and experienced lawyer.

These legislative members of the Government, it is to be presumed, would take office only on the condition of holding their appointments so long as they should retain the confidence of the Legislature; as regards the Crown, their appointments being made under the authority of the 'Royal Instructions' would be 'provisional only, and subject to be confirmed or disallowed by the Crown.'

In the meantime, and during the continuance of the Session, at least, it would probably tend to the public convenience that the present Secretary, Attorney-General, and Treasurer, should continue to hold their offices, and to transact the ordinary and current business of their respective departments.

In the absence of special authority from her

Majesty's Government, it is not, I think, within the power of the Officer administering the Government to take any measures for carrying into effect the resolution of the House of Representatives further than to prepare the way for opening the principal offices of the Government to new men, and in the meantime, and as a temporary measure, to add two or three Members of the Assembly to the Executive Council, for the purpose of establishing a recognized and responsible medium of communication between the Executive and the Legislative of the Government.

The course thus suggested is not free from objection, and it would no doubt be attended with some difficulty and inconvenience; it proceeds, however, as far as, consistently with his powers and duties, and especially with his position as temporary administrator of the Government, he can, I think, prudently be advised to proceed.

Looking to the views and expectations of the Members of the Legislation now assembled from all parts of the colony, there is no reasonable grounds to believe that, in the absence of any measure for securing the representation of the executive in the Assembly, that the most ordinary and necessary business of the Government can be successfully conducted through the Chambers, seeing the strong tendency to provincial independence; believing that if the general Government be not strengthened, the central authority will become virtually powerless, and that, if the power of the general Government be not now increased, the opportunity will be lost of limiting and defining the powers of the Provincial Execu-

tive; seeing, too, that the temper of the House is as yet moderate, and that there appears to be a disposition on the part of the Members to work cordially with the Government, if met in a conciliatory spirit, and believing that ill feeling once aroused would be followed for years by a mischievous and unprofitable agitation, I think that if the course above suggested would secure the maintenance of harmonious relations between the executive and legislative branches of the Government, his Excellency would, under all the circumstances of the case, exercise a sound discretion in adopting it.

WILLIAM SWAINSON,
Attorney-General.

June 5, 1854.

The Officer administering the Government then requested the opinion of the Council as to the course which it would, in their opinion, be advisable by him to take in relation thereto.

The Council were unanimous in their opinion, that the Officer administering the Government would exercise a sound discretion, under the circumstances, in adopting the course suggested by the Attorney-General.

A. S. RICHMOND,
Acting Clerk of Executive Council.

4. THE RIGHT HONOURABLE SIR GEORGE GREY, BART., TO THE OFFICER ADMINISTERING THE GOVERNMENT OF NEW ZEALAND [GENERAL WYNYARD]

DOWNING STREET,
8 *December*, 1854.

SIR,

I have to acknowledge your despatches of the numbers and dates specified in the margin, reporting the proceedings which have taken place in the General Assembly of New Zealand on the subject of the future Executive Government of the colony.

As regards the most important portion of that subject, I have taken the earliest opportunity of informing you that her Majesty's Government have no objection whatever to offer to the establishment of the system known as responsible government, in New Zealand. They have no reason to doubt that it will prove the best adapted for developing the interests as well as satisfying the wishes of the community. Nor have they any desire to propose terms, or to lay down restrictions on your assent to the measures which may be necessary for that object, except that of which the necessity appears to be fully recognized by the General Assembly, namely, the making provision for certain officers who have accepted

their offices on the equitable understanding of their permanence, and who may now be liable to removal. The only officers mentioned in your despatches as likely to fall within this category, are the Colonial Secretary and Treasurer, and the Attorney-General, nor am I myself aware of any others; but I do not wish to fetter your discretion, if further consideration makes it, in your opinion, desirable to alter the list.

Should the arrangements made for this purpose be in your judgement satisfactory, you are authorized to admit at once the new holders of office under the responsible system, reporting their names for confirmation in the usual manner. There will be no occasion, on this supposition, for a further reference to the home Government before the change is carried into effect. But if the arrangements proposed should not meet your approval, which I trust will not be the case, the appeal to the home Government for ultimate decision will be unavoidable.

The preliminary steps for the introduction of responsible government being thus few and plain, I do not understand the opinion which some portions of this correspondence appear to convey, and which is supported by the language of your Address of 31st August, that Legislative enactment by the General Assembly is required to bring the change into operation. In this country the recognized plan of Parliamentary government, by which Ministers are responsible to Parliament, and their continuance in office practically depends on the votes of the two Houses, rests on no written law, but on usage only. In carrying a similar

system into effect in the North American Colonies legislation has indeed been necessary, to make a binding arrangement for the surrender by the Crown of the territorial revenues, which has generally formed part of the scheme, and for the establishment of a civil list, but not for any other purpose. In New Zealand the territorial revenue has already been ceded to the Assembly, and her Majesty's Government have no terms to propose with reference to the civil list already established. Unless, therefore, there are local laws in existence which would be repugnant to the new system, legislation seems uncalled for, except for the very simple purpose of securing their pensions to retiring officers; and, if uncalled for, such legislation is objectionable, because the laws so enacted would probably stand in the way of various partial changes which it might be necessary to adopt in the details of a system in its nature liable to much modification.

The shortness of the time at my command, as I am anxious to answer your despatches by the present mail, prevents me from entering on the details of the narrative contained in your despatches; nor, indeed, does there appear any necessity for my doing so; I am satisfied that you acted to the best of your judgement under the circumstances in which you were placed; and it gives me much pleasure to find that the ultimate result of the deliberations of the General Assembly has been the adoption of the ordinary and most satisfactory course, namely, that of referring the question of responsible government to her Majesty's Ministers for complete adjustment, instead of put-

ting it partially in practice, and leaving some important question bearing on it undecided.

There are passages in your Address already referred to, of 31st August to the General Assembly, after its prorogation, to which I feel it my duty shortly to advert. You appear in that Address to have especially called the attention of the Assembly to the expediency of legislation on a subject upon which they could not, by the constitution, legislate at all; I refer to the proposal for rendering the Legislative Council elective. It is also extremely doubtful whether the proposed measure for authorizing the superintendents to dissolve provincial councils, a function reserved by section 13 of the Constitutional Act to the Governor, is within the powers of the General Assembly. So, too, the constituting Auckland as a separate government, under a Lieutenant-governor, and with exclusive powers of legislation, if I rightly understand what is meant by the proposal, is also a measure which it would be beyond the power of that body to carry into execution. You appear also to propose the foundation of a new federal convention (apart from the General Assembly), which would be an innovation irreconcileable with the existing fundamental law.

I do not now enter on the question of the expediency of these several schemes, but I am anxious to call your attention to the inconvenience of inviting the Legislature to originate measures to which the Crown could not assent, as such assent would be invalid.

The views of her Majesty's Government on these points will be communicated to the Governor,

who will, I hope, shortly proceed to New Zealand, but, as you have yourself conducted the proceedings reported in your present despatches, and I am very desirous to avoid unnecessary delay, I have no hesitation in authorizing you to act in person on my present instructions.

I am, etc.

G. GREY.

IV

THE FEDERATION OF CANADA

1. THE QUEBEC RESOLUTIONS, OCTOBER 10, 1864

REPORT OF RESOLUTIONS ADOPTED AT A CONFERENCE OF DELEGATES FROM PROVINCES OF CANADA, NOVA SCOTIA, AND NEW BRUNSWICK, AND THE COLONIES OF NEWFOUNDLAND AND PRINCE EDWARD ISLAND, HELD AT THE CITY OF QUEBEC, OCTOBER 10, 1864, AS THE BASIS OF A PROPOSED CONFEDERATION OF THOSE PROVINCES AND COLONIES

1. THE best interests and present and future prosperity of British North America will be promoted by a Federal Union under the Crown of Great Britain, provided such Union can be effected on principles just to the several Provinces.

2. In the Federation of the British North American Provinces the system of government best adapted under existing circumstances to protect the diversified interests of the several Provinces, and secure efficiency, harmony, and permanency in the working of the Union—would be a General Government charged with matters of common interest to the whole country, and Local Governments for each of the Canadas and for the Provinces of Nova Scotia, New Brunswick, and Prince Edward Island, charged with the control

of local matters in their respective sections, provision being made for the admission into the Union on equitable terms of Newfoundland, the North-West Territory, British Columbia, and Vancouver.

3. In framing a Constitution for the General Government, the Conference, with a view to the perpetuation of our connexion with the Mother-Country, and to the promotion of the best interests of the people of these Provinces, desire to follow the model of the British Constitution, so far as our circumstances will permit.

4. The Executive Authority or Government shall be vested in the Sovereign of the United Kingdom of Great Britain and Ireland, and be administered according to the well understood principles of the British Constitution by the Sovereign personally or by the Representative of the Sovereign duly authorized.

5. The Sovereign or Representative of the Sovereign shall be Commander-in-Chief of the Land and Naval Militia Forces.

6. There shall be a General Legislature or Parliament for the Federated Provinces, composed of a Legislative Council and a House of Commons.

7. For the purpose of forming the Legislative Council, the Federated Provinces shall be considered as consisting of three divisions—1st, Upper Canada; 2nd, Lower Canada; 3rd, Nova Scotia, New Brunswick, and Prince Edward Island; each division with an equal representation in the Legislative Council.

8. Upper Canada shall be represented in the Legislative Council by 24 members, Lower Canada

by 24 members, and the three Maritime Provinces by 24 members, of which Nova Scotia shall have 10, New Brunswick 10, and Prince Edward Island 4 members.

9. The Colony of Newfoundland shall be entitled to enter the proposed Union, with a representation in the Legislative Council of four members.

10. The North-west Territory, British Columbia, and Vancouver shall be admitted into the Union, on such terms and conditions as the Parliament of the Federated Provinces shall deem equitable, and as shall receive the assent of her Majesty; and in the case of the Province of British Columbia or Vancouver, as shall be agreed to by the Legislature of such Province.

11. The Members of the Legislative Council shall be appointed by the Crown under the Great Seal of the General Government, and shall hold office during life; if any Legislative Councillor shall, for two consecutive sessions of Parliament, fail to give his attendance in the said Council, his seat shall thereby become vacant.

12. The Members of the Legislative Council shall be British subjects by birth or naturalization, of the full age of 30 years, shall possess a continuous real property qualification of four thousand dollars over and above all incumbrances, and shall be and continue worth that sum over and above their debts and liabilities, but in the case of Newfoundland and Prince Edward Island the property may be either real or personal.

13. If any question shall arise as to the quali-

fication of a Legislative Councillor, the same shall be determined by the Council.

14. The first selection of the Members of the Legislative Council shall be made, except as regards Prince Edward Island, from the Legislative Councils of the various Provinces, so far as a sufficient number be found qualified and willing to serve. Such Members shall be appointed by the Crown at the recommendation of the General Executive Government, upon the nomination of the respective Local Governments; and in such nomination due regard shall be had to the claims of the Members of the Legislative Council of the opposition in each Province, so that all political parties may as nearly as possible be fairly represented.

15. The Speaker of the Legislative Council (unless otherwise provided by Parliament) shall be appointed by the Crown from among the Members of the Legislative Council, and shall hold office during pleasure, and shall only be entitled to a casting vote on an equality of votes.

16. Each of the 24 Legislative Councillors representing Lower Canada in the Legislative Council of the General Legislature shall be appointed to represent one of the 24 electoral divisions mentioned in Schedule A. of Chapter 1st of the Consolidated Statutes of Canada, and such Councillor shall reside or possess his qualification in the division he is appointed to represent.

17. The basis of Representation in the House of Commons shall be Population, as determined by the official census every 10 years; and the

number of Members at first shall be 194, distributed as follows:

Upper Canada	82
Lower Canada	65
Nova Scotia	19
New Brunswick	15
Newfoundland	8
And Prince Edward Island	5

18. Until the official census of 1871 has been made up, there shall be no change in the number of Representatives from the several sections.

19. Immediately after the completion of the census of 1871, and immediately after every decennial census thereafter, the representation from each section in the House of Commons shall be readjusted on the basis of population.

20. For the purpose of such readjustments, Lower Canada shall always be assigned 65 Members, and each of the other sections shall at each readjustment receive, for the 10 years then next succeeding, the number of members to which it will be entitled on the same ratio of representation to population as Lower Canada will enjoy, according to the census last taken, by having sixty-five members.

21. No reduction shall be made in the number of members returned by any section, unless its population shall have decreased relatively to the population of the whole Union, to the extent of five per centum.

22. In computing at each decennial period the number of Members to which each section is entitled, no fractional parts shall be considered,

unless when exceeding one-half the number entitling to a Member, in which case a Member shall be given for each such fractional part.

23. The Legislature of each Province shall divide such Province into the proper number of constituencies, and define the boundaries of each of them.

24. The Local Legislature of each Province may, from time to time, alter the electoral districts for the purposes of representation in the House of Commons, and distribute the Representatives to which the Province is entitled, in any manner such Legislature may think fit.

25. The number of Members may at any time be increased by the General Parliament, regard being had to the proportionate rights then existing.

26. Until provisions are made by the General Parliament, all the laws which at the date of the Proclamation constituting the Union are in force in the Provinces respectively, relating to the qualification of any person to be elected or to sit or vote as a Member of the Assembly in the said Provinces respectively—and relating to the qualification or disqualification of voters, and to the oaths to be taken by voters, and to Returning Officers and their powers and duties,—and relating to the proceedings at elections,—and to the period during which such elections may be continued,—and relating to the trial of Controverted Elections, and the proceedings incident thereto,—and relating to the vacating of seats of Members, —and the issuing and execution of new writs in case of any seat being vacated otherwise than by a dissolution,—shall respectively apply to elections

of Members to serve in the House of Commons, for places situate in those Provinces respectively.

27. Every House of Commons shall continue for five years from the day of the return of the writs choosing the same, and no longer, subject, nevertheless, to be sooner prorogued or dissolved by the Governor.

28. There shall be a Session of the General Parliament once at least in every year, so that a period of 12 calendar months shall not intervene between the last sitting of the General Parliament in one session and the first sitting thereof in the next session.

29. The General Parliament shall have power to make Laws for the peace, welfare and good Government of the Federated Provinces (saving the Sovereignty of England), and especially Laws respecting the following subjects:—

1. The Public Debt and Property.
2. The Regulation of Trade and Commerce.
3. The imposition or regulation of Duties of Customs on Imports and Exports, except on Exports of Timber, Logs, Masts, Spars, Deals, and Sawn Lumber, and of Coal and other Minerals.
4. The imposition and regulation of Excise Duties.
5. The raising of money by all or any other modes or systems of Taxation.
6. The borrowing of money on the public credit.
7. Postal service.
8. Lines of Steam or other Ships, Railways, Canals and other works, connecting any

two or more of the Provinces together, or extending beyond the limits of any Province.

9. Lines of Steamships between the Federated Provinces and other Countries.
10. Telegraphic communication and the incorporation of Telegraph Companies.
11. All such works as shall, although lying wholly within any Province, be specially declared by the Acts authorizing them to be for the general advantage.
12. The Census.
13. Militia—Military and Naval Service and Defence.
14. Beacons, Buoys and Light Houses.
15. Navigation and Shipping.
16. Quarantine.
17. Sea Coast and Inland Fisheries.
18. Ferries between any Province and a Foreign Country, or between any two Provinces.
19. Currency and Coinage.
20. Banking, incorporation of Banks, and the issue of paper money.
21. Savings Banks.
22. Weights and Measures.
23. Bills of Exchange and Promissory Notes.
24. Interest.
25. Legal Tender.
26. Bankruptcy and Insolvency.
27. Patents of Invention and Discovery.
28. Copyrights.
29. Indians and Lands reserved for the Indians.
30. Naturalization and Aliens.
31. Marriage and Divorce.

32. The Criminal Law, excepting the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal matters.

33. Rendering uniform all or any of the laws relative to property and civil rights in Upper Canada, Nova Scotia, New Brunswick, Newfoundland and Prince Edward Island, and rendering uniform the procedure of all or any of the Courts in these Provinces; but any Statute for this purpose shall have no force or authority in any Province until sanctioned by the Legislature thereof.

34. The establishment of a General Court of Appeal for the Federated Provinces.

35. Immigration.

36. Agriculture.

37. And generally respecting all matters of a general character, not especially and exclusively reserved for the Local Governments and Legislatures.

30. The General Government and Parliament shall have all powers necessary or proper for performing the obligations of the Federated Provinces, as part of the British Empire, to Foreign Countries, arising under Treaties between Great Britain and such Countries.

31. The General Parliament may also, from time to time, establish additional Courts, and the General Government may appoint Judges and Officers thereof, when the same shall appear necessary or for the public advantage, in order to the due execution of the laws of Parliament.

32. All Courts, Judges, and Officers of the several Provinces shall aid, assist, and obey the General Government in the exercise of its rights and powers, and for such purposes shall be held to be Courts, Judges and Officers of the General Government.

33. The General Government shall appoint and pay the Judges of the Superior Courts in each Province, and of the County Courts of Upper Canada, and Parliament shall fix their salaries.

34. Until the consolidation of the Laws of Upper Canada, New Brunswick, Nova Scotia, Newfoundland, and Prince Edward Island, the Judges of these Provinces appointed by the General Government shall be selected from their respective Bars.

35. The Judges of the Courts of Lower Canada shall be selected from the Bar of Lower Canada.

36. The Judges of the Court of Admiralty now receiving salaries shall be paid by the General Government.

37. The Judges of the Superior Courts shall hold their offices during good behaviour, and shall be removable only on the Address of both Houses of Parliament.

Local Government

38. For each of the Provinces there shall be an Executive Officer, styled the Lieutenant-Governor, who shall be appointed by the Governor General in Council, under the Great Seal of the Federated Provinces, during pleasure: such pleasure not to be exercised before the expiration of the first five

years, except for cause: such cause to be communicated in writing to the Lieutenant-Governor immediately after the exercise of the pleasure as aforesaid, and also by Messages to both Houses of Parliament, within the first week of the first Session afterwards.

39. The Lieutenant-Governor of each Province shall be paid by the General Government.

40. In undertaking to pay the salaries of the Lieutenant-Governors, the Conference does not desire to prejudice the claim of Prince Edward Island upon the Imperial Government for the amount now paid for the salary of the Lieutenant-Governor thereof.

41. The Local Government and Legislature of each Province shall be constructed in such manner as the existing Legislature of such Province shall provide.

42. The Local Legislatures shall have power to alter or amend their Constitution from time to time.

43. The Local Legislatures shall have power to make Laws respecting the following subjects:

1. Direct Taxation and the imposition of Duties on the Export of Timber, Logs, Masts, Spars, Deals, and Sawn Lumber, and of Coals and other Minerals.
2. Borrowing Money on the credit of the Province.
3. The establishment and tenure of Local Offices, and the appointment and payment of Local Officers.
4. Agriculture.
5. Immigration.

6. Education; saving the rights and privileges which the Protestant or Catholic minority in both Canadas may possess as to their Denominational Schools, at the time when the Union goes into operation.
7. The sale and management of Public Lands, excepting Lands belonging to the General Government.
8. Sea Coast and Inland Fisheries.
9. The establishment, maintenance, and management of Penitentiaries, and of Public and Reformatory Prisons.
10. The establishment, maintenance, and management of Hospitals, Asylums, Charities, and Eleemosynary Institutions.
11. Municipal Institutions.
12. Shop, Saloon, Tavern, Auctioneer and other Licences.
13. Local Works.
14. The Incorporation of private or local Companies, except such as relate to matters assigned to the General Parliament.
15. Property and civil rights, excepting those portions thereof assigned to the General Parliament.
16. Inflicting punishment by fine, penalties, imprisonment or otherwise for the breach of laws passed in relation to any subject within their jurisdiction.
17. The Administration of Justice, including the constitution, maintenance, and organization of the Courts—both of Civil and Criminal Jurisdiction, and including also the Procedure in Civil Matters.

18. And generally all matters of a private or local nature, not assigned to the General Parliament.

44. The power of respiting, reprieving, and pardoning Prisoners convicted of crimes, and of commuting and remitting of sentences in whole or in part, which belongs of right to the Crown, shall be administered by the Lieutenant-Governor of each Province in Council, subject to any instructions he may from time to time receive from the General Government, and subject to any provisions that may be made in this behalf by the General Parliament.

Miscellaneous

45. In regard to all subjects over which jurisdiction belongs to both the General and Local Legislatures, the laws of the General Parliament shall control and supersede those made by the Local Legislature, and the latter shall be void as far as they are repugnant to or inconsistent with the former.

46. Both the English and French languages may be employed in the General Parliament and in its proceedings, and in the Local Legislature of Lower Canada, and also in the Federal Courts and in the Courts of Lower Canada.

47. No lands or property belonging to the General or Local Government shall be liable to taxation.

48. All bills for appropriating any part of the

public revenue, or for imposing any new tax or impost, shall originate in the House of Commons or the House of Assembly, as the case may be.

49. The House of Commons or House of Assembly shall not originate or pass any vote, resolution, address, or bill for the appropriation of any part of the public revenue, or of any tax or impost to any purpose, not first recommended by Message of the Governor General, or the Lieutenant-Governor, as the case may be, during the session in which such vote, resolution, address, or bill is passed.

50. Any bill of the General Parliament may be reserved in the usual manner for her Majesty's assent, and any bill of the Local Legislatures may in like manner be reserved for the consideration of the Governor General.

51. Any bill passed by the General Parliament shall be subject to disallowance by her Majesty within two years, as in the case of bills passed by the Legislatures of the said Provinces hitherto, and in like manner any bill passed by a Local Legislature shall be subject to disallowance by the Governor General within one year after the passing thereof.

52. The seat of Government of the Federated Provinces shall be Ottawa, subject to the Royal Prerogative.

53. Subject to any future action of the respective Local Governments, the seat of the Local Government in Upper Canada shall be Toronto; of Lower Canada, Quebec; and the seats of the Local Governments in the other Provinces shall be as at present.

Property and Liabilities

54. All stocks, cash, bankers' balances and securities for money belonging to each Province, at the time of the Union, except as hereafter mentioned, shall belong to the General Government.

55. The following public works and property of each Province shall belong to the General Government; to wit:—

1. Canals;
2. Public harbours;
3. Lighthouses and piers;
4. Steamboats, dredges, and public vessels;
5. River and lake improvements;
6. Railway and railway stocks, mortgages, and other debts due by railway companies;
7. Military roads;
8. Custom houses, post offices, and other public buildings, except such as may be set aside by the General Government for the use of the Local Legislatures and Governments;
9. Property transferred by the Imperial Government, and known as Ordnance property;
10. Armouries, drill sheds, military clothing, and munitions of war; and
11. Lands set apart for public purposes.

56. All lands, mines, minerals, and royalties vested in her Majesty in the Provinces of Upper Canada, Lower Canada, Nova Scotia, New Brunswick, and Prince Edward Island, for the use of

such Provinces, shall belong to the Local Government of the territory in which the same are so situate; subject to any trusts that may exist in respect to any of such lands or to any interest of other persons in respect of the same.

57. All sums due from purchasers or lessees of such lands, mines, or minerals, at the time of the Union, shall also belong to the Local Governments.

58. All assets connected with such portions of the public debt of any Province as are assumed by the Local Governments, shall also belong to these Governments respectively.

59. The several Provinces shall retain all other public property therein, subject to the right of the General Government to assume any lands or public property required for fortifications or the defence of the country.

60. The General Government shall assume all the debts and liabilities of each Province.

61. The debt of Canada not specially assumed by Upper and Lower Canada respectively, shall not exceed at the time of the Union . . .	$62,500,000
Nova Scotia shall enter the Union with a debt not exceeding	8,000,000
And New Brunswick, with a debt not exceeding . . .	7,000,000

62. In case Nova Scotia or New Brunswick do not incur liabilities beyond those for which their Governments are now bound, and which shall make their debts at the date of Union less than

$8,000,000 and $7,000,000 respectively, they shall be entitled to interest at 5 per cent. on the amount not so incurred, in like manner as is herein-after provided for Newfoundland and Prince Edward Island; the foregoing resolution being in no respect intended to limit the powers given to the respective Governments of those Provinces by legislative authority, but only to limit the maximum amount of charge to be assumed by the General Government. Provided always that the powers so conferred by the respective Legislatures shall be exercised within five years from this date, or the same shall then lapse.

63. Newfoundland and Prince Edward Island, not having incurred debts equal to those of the other Provinces, shall be entitled to receive by half-yearly payments in advance from the General Government the interest at 5 per cent. on the difference between the actual amount of their respective debts at the time of the Union, and the average amount of indebtedness per head of the population of Canada, Nova Scotia, and New Brunswick.

64. In consideration of the transfer to the General Parliament of the powers of taxation, an annual grant in aid of each Province shall be made, equal to 80 cents per head of the population, as established by the census of 1861, the population of Newfoundland being estimated at 130,000. Such aid shall be in full settlement of all future demands upon the General Government for local purposes, and shall be paid half-yearly in advance to each Province.

65. The position of New Brunswick being such

as to entail large immediate charges upon her local revenues, it is agreed that for the period of 10 years from the time when the Union takes effect, an additional allowance of $63,000 per annum shall be made to that Province. But that so long as the liability of that Province remains under $7,000,000, a deduction equal to the interest on such deficiency shall be made from the $63,000.

66. In consideration of the surrender to the General Government by Newfoundland of all its rights in mines and minerals, and of all the ungranted and unoccupied lands of the Crown, it is agreed that the sum of $150,000 shall each year be paid to that Province, by semi-annual payments. Provided that that Colony shall retain the right of opening, constructing, and controlling roads and bridges through any of the said lands, subject to any laws which the General Parliament may pass in respect of the same.

67. All engagements that may, before the Union, be entered into with the Imperial Government for the defence of the country shall be assumed by the General Government.

68. The General Government shall secure, without delay, the completion of the Intercolonial Railway from Rivière-du-Loup through New Brunswick to Truro in Nova Scotia.

69. The communications with the North-western Territory, and the improvements required for the development of the trade of the Great West with the Seaboard, are regarded by this Conference as subjects of the highest importance to the Federated Provinces, and shall be prose-

cuted at the earliest possible period that the state of the finances will permit.

70. The sanction of the Imperial and Local Parliaments shall be sought for the Union of the Provinces, on the principles adopted by the Conference.

71. That her Majesty the Queen be solicited to determine the rank and name of the Federated Provinces.

72. The proceedings of the Conference shall be authenticated by the signatures of the Delegates, and submitted by each Delegation to its own Government, and the Chairman is authorized to submit a copy to the Governor General for transmission to the Secretary of State for the Colonies.

I certify that the above is a true copy of the original Report of Resolutions adopted in Conference.

E. P. TACHÉ, Chairman.

2. THE RIGHT HONOURABLE EDWARD CARDWELL TO VISCOUNT MONCK

DOWNING STREET,
December 3, 1864.

MY LORD,

Her Majesty's Government have received with the most cordial satisfaction your Lordship's Despatch of the 7th ultimo, transmitting for their consideration the Resolutions adopted by the Representatives of the several Provinces of British North America, who were assembled at Quebec.

With the sanction of the Crown—and upon the invitation of the Governor General—men of every Province, chosen by the respective Lieutenant-Governors without distinction of party, assembled to consider questions of the utmost interest to every subject of the Queen, of whatever race or faith, resident in those Provinces; and have arrived at a conclusion destined to exercise a most important influence upon the future welfare of the whole community.

Animated by the warmest sentiments of loyalty and devotion to their Sovereign,—earnestly desirous to secure for their posterity throughout all future time the advantages which they enjoy as subjects of the British Crown,—steadfastly attached to the institutions under which they live,—they have conducted their deliberations with

patient sagacity, and have arrived at unanimous conclusions on questions involving many difficulties, and calculated under less favourable auspices to have given rise to many differences of opinion.

Such an event is in the highest degree honourable to those who have taken part in these deliberations. It must inspire confidence in the men by whose judgement and temper this result has been attained:—and will ever remain on record as an evidence of the salutary influence exercised by the institutions under which these qualities have been so signally developed.

Her Majesty's Government have given to your Despatch and to the Resolutions of the Conference their most deliberate consideration. They have regarded them as a whole, and as having been designed by those who have framed them to establish as complete and perfect an union of the whole into one Government, as the circumstances of the case and a due consideration of existing interests would admit. They accept them, therefore, as being, in the deliberate judgement of those best qualified to decide upon the subject, the best framework of a measure to be passed by the Imperial Parliament for attaining that most desirable result.

The point of principal importance to the practical well-working of the scheme, is the accurate determination of the limits between the authority of the Central and that of the Local Legislatures in their relation to each other. It has not been possible to exclude from the resolutions some provisions which appear to be less consistent than

might, perhaps, have been desired with the simplicity and unity of the system. But upon the whole it appears to her Majesty's Government that precautions have been taken, which are obviously intended to secure to the Central Government the means of effective action throughout the several Provinces; and to guard against those evils which must inevitably arise, if any doubt were permitted to exist as to the respective limits of Central and Local authority. They are glad to observe that, although large powers of legislation are intended to be vested in local bodies, yet the principle of Central control has been steadily kept in view. The importance of this principle cannot be overrated. Its maintenance is essential to the practical efficiency of the system,—and to its harmonious operation, both in the general administration, and in the Governments of the several Provinces. A very important part of this subject is the expense which may attend the working of the Central and the Local Governments. Her Majesty's Government cannot but express the earnest hope that the arrangements which may be adopted in this respect may not be of such a nature as to increase—at least in any considerable degree—the whole expenditure, or to make any material addition to the taxation, and thereby retard the internal industry, or tend to impose new burdens on the commerce of the country.

Her Majesty's Government are anxious to lose no time in conveying to you their general approval of the proceedings of the Conference. There are, however, two provisions of great importance which seem to require revision. The first of these

is the provision contained in the 44th Resolution with respect to the exercise of the Prerogative of pardon. It appears to her Majesty's Government that this duty belongs to the representative of the Sovereign,—and could not with propriety be devolved upon the Lieutenant-Governors, who will, under the present scheme, be appointed not directly by the Crown, but by the Central Government of the United Provinces.

The second point which her Majesty's Government desire should be reconsidered is the Constitution of the Legislative Council. They appreciate the considerations which have influenced the Conference in determining the mode in which this body, so important to the constitution of the Legislature, should be composed. But it appears to them to require further consideration whether if the Members be appointed for life, and their number be fixed, there will be any sufficient means of restoring harmony between the Legislative Council and the Popular Assembly, if it shall ever unfortunately happen that a decided difference of opinion shall arise between them.

These two points, relating to the Prerogative of the Crown and to the Constitution of the Upper Chamber, have appeared to require distinct and separate notice. Questions of minor consequence and matters of detailed arrangement may properly be reserved for a future time, when the Provisions of the Bill, intended to be submitted to the Imperial Parliament, shall come under consideration. Her Majesty's Government anticipate no serious difficulty in this part of the case, —since the Resolutions will generally be found

sufficiently explicit to guide those who will be intrusted with the preparation of the Bill. It appears to them, therefore, that you should now take immediate measures in concert with the Lieutenant-Governors of the several Provinces, for submitting to their respective Legislatures this project of the Conference;—and if, as I hope, you are able to report that these Legislatures sanction and adopt the scheme, her Majesty's Government will render you all the assistance in their power for carrying it into effect. It will probably be found to be the most convenient course, that in concert with the Lieutenant-Governors, you should select a deputation of the persons best qualified, to proceed to this country;—that they may be present during the preparation of the Bill, and give to her Majesty's Government the benefit of their counsel upon any question which may arise during the passage of the measure through the two Houses of Parliament,

I have, &c.,

EDWARD CARDWELL.

(A copy of the foregoing Despatch was sent on the 8th December to the Governors of each of the other Provinces in North America, viz., Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland.)

3. HON. JOHN MACDONALD'S SPEECH IN THE CANADIAN PARLIAMENT

February 6, 1865.

I HAVE the honour of being charged, on behalf of the Government, to submit a scheme for the Confederation of all the British North American Provinces—a scheme which has been received, I am glad to say, with general, if not universal, approbation in Canada. The scheme, as propounded through the press, has received almost no opposition. While there may be occasionally, here and there, expressions of dissent from some of the details, yet the scheme as a whole has met with almost universal approval, and the Government has the greatest satisfaction in presenting it to this House. This subject, which now absorbs the attention of the people of Canada, and of the whole of British North America, is not a new one. For years it has more or less attracted the attention of every statesman and politician in these provinces, and has been looked upon by many far-seeing politicians as being eventually the means of deciding and settling very many of the vexed questions which have retarded the prosperity of the colonies as a whole, and particularly the prosperity of Canada. The subject was pressed upon the public attention by a great many writers

and politicians; but I believe the attention of the Legislature was first formally called to it by my honourable friend the Minister of Finance. Some years ago, in an elaborate speech, my honourable friend, while an independent member of Parliament, before being connected with any Government, pressed his views on the Legislature at great length and with his usual force. But the subject was not taken up by any party as a branch of their policy, until the formation of the Cartier-Macdonald Administration in 1858, when the Confederation of the Colonies was announced as one of the measures which they pledged themselves to attempt, if possible, to bring to a satisfactory conclusion. In pursuance of that promise, the letter or despatch, which has been so much and so freely commented upon in the press and in this House, was addressed by three of the members of that Administration to the Colonial Office. The subject, however, though looked upon with favour by the country, and though there were no distinct expressions of opposition to it from any party, did not begin to assume its present proportions until last session. Then men of all parties and all shades of politics became alarmed at the aspect of affairs. They found that such was the opposition between the two sections of the province, such was the danger of impending anarchy, in consequence of the irreconcileable differences of opinion with respect to representation by population, between Upper and Lower Canada, that unless some solution of the difficulty was arrived at, we would suffer under a succession of weak governments,—weak in numerical sup-

port, weak in force, and weak in power of doing good. All were alarmed at this state of affairs. We had election after election,—we had ministry after ministry, with the same result. Parties were so equally balanced, that the vote of one member might decide the fate of the Administration and the course of legislation for a year or a series of years. This condition of things was well calculated to arouse the earnest consideration of every lover of his country, and I am happy to say it had that effect. None were more impressed by this momentous state of affairs, and the grave apprehensions that existed of a state of anarchy destroying our credit, destroying our prosperity, destroying our progress, than were the members of this present House; and the leading statesmen on both sides seemed to have come to the common conclusion, that some step must be taken to relieve the country from the deadlock and impending anarchy that hung over us.—With that view, my colleague, the President of the Council, made a motion founded on the despatch addressed to the Colonial Minister, to which I have referred, and a committee was struck, composed of gentlemen of both sides of the House, of all shades of political opinion, without any reference to whether they were supporters of the Administration of the day or belonged to the Opposition, for the purpose of taking into calm and full deliberation the evils which threatened the future of Canada. That motion of my honourable friend resulted most happily. The committee, by a wise provision,—and in order that each member of the committee might have an opportunity of expressing his

opinions without being in any way compromised before the public, or with his party, in regard either to his political friends or to his political foes,—agreed that the discussion should be freely entered upon without reference to the political antecedents of any of them, and that they should sit with closed doors, so that they might be able to approach the subject frankly and in a spirit of compromise. The committee included most of the leading members of the House,—I had the honour myself to be one of the number,—and the result was that there was found an ardent desire, —a creditable desire, I must say,—displayed by all the members of the committee to approach the subject honestly, and to attempt to work out some solution which might relieve Canada from the evils under which she laboured. The report of that committee was laid before the House, and then came the political action of the leading men of the two parties in this House, which ended in the formation of the present Government. The principle upon which that Government was formed has been announced, and is known to all. It was formed for the very purpose of carrying out the object which has now received to a certain degree its completion by the resolutions I have had the honour to place in your hands. As has been stated, it was not without a great deal of difficulty and reluctance that that Government was formed. The gentlemen who compose this Government had for many years been engaged in political hostilities to such an extent that it affected even their social relations. But the crisis was great, the danger was imminent, and the gentle-

men who now form the present Administration found it to be their duty to lay aside all personal feelings, to sacrifice in some degree their position, and even to run the risk of having their motives impugned, for the sake of arriving at some conclusion that would be satisfactory to the country in general. The present resolutions were the result. And, as I said before, I am proud to believe that the country has sanctioned, as I trust that the representatives of the people in this House will sanction, the scheme which is now submitted for the future government of British North America. Everything seemed to favour the project, and everything seemed to show that the present was the time, if ever, when this great union between all her Majesty's subjects dwelling in British North America should be carried out. When the Government was formed, it was felt that the difficulties in the way of effecting a union between all the British North American Colonies were great—so great as almost, in the opinion of many, to make it hopeless. And with that view it was the policy of the Government, if they could not succeed in procuring a union between all the British North American Colonies, to attempt to free the country from the dead-lock in which we were placed in Upper and Lower Canada, in consequence of the difference of opinion between the two sections, by having a severance to a certain extent of the present union between the two provinces of Upper and Lower Canada, and the substitution of a Federal Union between them. Most of us, however, I may say all of us, were agreed—and I believe every thinking man will

agree—as to the expediency of effecting a union between all the provinces, and the superiority of such a design, if it were only practicable, over the smaller scheme of having a Federal Union between Upper and Lower Canada alone. By a happy concurrence of events, the time came when that proposition could be made with a hope of success. By a fortunate coincidence the desire for union existed in the Lower Provinces, and a feeling of the necessity of strengthening themselves by collecting together the scattered colonies on the seaboard, had induced them to form a convention of their own for the purpose of effecting a union of the Maritime Provinces of Nova Scotia, New Brunswick, and Prince Edward Island, the legislatures of those colonies having formally authorized their respective governments to send a delegation to Prince Edward Island for the purpose of attempting to form a union of some kind. Whether the union should be federal or legislative was not then indicated, but a union of some kind was sought for the purpose of making of themselves one people instead of three. We, ascertaining that they were about to take such a step, and knowing that if we allowed the occasion to pass, if they did indeed break up all their present political organizations and form a new one, it could not be expected that they would again readily destroy the new organization which they had formed,—the union of the three provinces on the sea-board,—and form another with Canada, knowing this, we availed ourselves of the opportunity, and asked if they would receive a deputation from Canada, who would go to meet them

at Charlottetown, for the purpose of laying before them the advantages of a larger and more extensive union, by the junction of all the provinces in one great government under our common Sovereign. They at once kindly consented to receive and hear us. They did receive us cordially and generously and asked us to lay our views before them. We did so at some length, and so satisfactory to them were the reasons we gave; so clearly, in their opinion, did we show the advantages of the greater union over the lesser, that they at once set aside their own project, and joined heart and hand with us in entering into the larger scheme, and trying to form, as far as they and we could, a great nation and a strong government. Encouraged by this arrangement, which, however, was altogether unofficial and unauthorized, we returned to Quebec, and then the Government of Canada invited the several governments of the sister colonies to send a deputation here from each of them for the purpose of considering the question, with something like authority from their respective governments. The result was, that when we met here on the 10th of October, on the first day on which we assembled, after the full and free discussions which had taken place at Charlottetown, the first resolution now before this House was passed unanimously, being received with acclamation, as in the opinion of every one who heard it, a proposition which ought to receive, and would receive, the sanction of each government and each people. The resolution is, 'That the best interests and present and future prosperity of British North America will

be promoted by a Federal Union under the Crown of Great Britain, provided such union can be effected on principles just to the several provinces.' It seemed to all the statesmen assembled —and there are great statesmen in the Lower Provinces, men who would do honour to any government and to any legislature of any free country enjoying representative institutions—it was clear to them all that the best interests and present and future prosperity of British North America would be promoted by a Federal Union under the Crown of Great Britain. And it seems to me, as to them, and I think it will so appear to the people of this country, that, if we wish to be a great people; if we wish to form—using the expression which was sneered at the other evening—a great nationality, commanding the respect of the world, able to hold our own against all opponents, and to defend those institutions we prize: if we wish to have one system of government, and to establish a commercial union, with unrestricted free trade, between people of the five provinces, belonging, as they do, to the same nation, obeying the same Sovereign, owning the same allegiance, and being, for the most part, of the same blood and lineage: if we wish to be able to afford to each other the means of mutual defence and support against aggression and attack—this can only be obtained by a union of some kind between the scattered and weak boundaries composing the British North American Provinces.

The very mention of the scheme is fitted to bring with it its own approbation. Supposing

that in the spring of the year 1865, half a million of people were coming from the United Kingdom to make Canada their home, although they brought only their strong arms and willing hearts; though they brought neither skill nor experience nor wealth, would we not receive them with open arms, and hail their presence in Canada as an important addition to our strength? But when, by the proposed union, we not only get nearly a million of people to join us—when they contribute not only their numbers, their physical strength, and their desire to benefit their position, but when we know that they consist of old-established communities, having a large amount of realized wealth,—composed of people possessed of skill, education and experience in the ways of the New World—people who are as much Canadians, I may say, as we are—people who are imbued with the same feelings of loyalty to the Queen, and the same desire for the continuance of the connexion with the Mother Country as we are, and at the same time have a like feeling of ardent attachment for this, our common country, for which they and we would alike fight and shed our blood, if necessary—when all this is considered, argument is needless to prove the advantage of such a union.

There were only three modes—if I may return for a moment to the difficulties with which Canada was surrounded—only three modes that were at all suggested, by which the deadlock in our affairs, the anarchy we dreaded, and the evils which retarded our prosperity, could be met or averted. One was the dissolution of the union

between Upper and Lower Canada, leaving them as they were before the union of 1841. I believe that that proposition, by itself, had no supporters. It was felt by every one that, although it was a course that would do away with the sectional difficulties which existed—though it would remove the pressure on the part of the people of Upper Canada for representation based upon population—and the jealousy of the people of Lower Canada lest their institutions should be attacked and prejudiced by that principle in our representation; yet it was felt by every thinking man in the province that it would be a retrograde step, which would throw back the country to nearly the same position as it occupied before the union—that it would lower the credit enjoyed by United Canada—that it would be the breaking up of the connection which had existed for nearly a quarter of a century, and, under which, although it had not been completely successful, and had not allayed altogether the local jealousies that had their root in circumstances which arose before the union, our province, as a whole, had nevertheless prospered and increased. It was felt that a dissolution of the union would have destroyed all the credit that we have gained by being a united province, and would have left us two weak and ineffective governments, instead of one powerful and united people.

The next mode suggested was the granting of representation by population. Now we all know the manner in which that question was and is regarded by Lower Canada; that while in Upper Canada the desire and cry for it was daily aug-

menting, the resistance to it in Lower Canada was proportionably increasing in strength. Still, if some such means of relieving us from the sectional jealousies which existed between the two Canadas, if some such solution of the difficulties as Confederation had not been found, then representation by population must eventually have been carried; no matter though it might have been felt in Lower Canada as being a breach of the Treaty of Union, no matter how much it might have been felt by the Lower Canadians that it would sacrifice their local interests, it is certain that in the progress of events representation by population would have been carried; and, had it been carried—I speak here of my own individual sentiments—I do not think it would have been for the interest of Upper Canada. For though Upper Canada would have felt that it had received what it claimed as a right, and had succeeded in establishing its right, yet it would have left the Lower Province with a sullen feeling of injury and injustice. The Lower Canadians would not have worked cheerfully under such a change of system, but would have ceased to be what they are now—a nationality, with representatives in Parliament, governed by general principles, and dividing according to their political opinions—and would have been in great danger of becoming a faction, forgetful of national obligations and only actuated by a desire to defend their own sectional interests, their own laws, and their own institutions.

The third and only means of solution for our difficulties was the junction of the provinces either

in a Federal or a Legislative Union. Now, as regards the comparative advantages of a Legislative and a Federal Union, I have never hesitated to state my own opinions. I have again and again stated in the House, that, if practicable, I thought a Legislative Union would be preferable. I have always contended that if we could agree to have one government and one parliament, legislating for the whole of these peoples, it would be the best, the cheapest, the most vigorous, and the strongest system of government we could adopt. But, on looking at the subject in the Conference, and discussing the matter as we did, most unreservedly, and with a desire to arrive at a satisfactory conclusion, we found that such a system was impracticable. In the first place, it would not meet the assent of the people of Lower Canada, because they felt that in their peculiar position—being in a minority, with a different language, nationality and religion from the majority—in case of a junction with the other provinces, their institutions and their laws might be assailed, and their ancestral associations, on which they prided themselves, attacked and prejudiced; it was found that any proposition which involved the absorption of the individuality of Lower Canada—if I may use the expression—would not be received with favour by her people. We found too, that though their people speak the same language and enjoy the same system of law as the people of Upper Canada, a system founded on the common law of England, there was as great a disinclination on the part of the various Maritime Provinces to lose their individuality as

separate political organizations, as we observed in the case of Lower Canada herself. Therefore, we were forced to the conclusion that we must either abandon the idea of union altogether, or devise a system of union in which the separate provincial organizations would be in some degree preserved. So that those who were, like myself, in favour of a Legislative Union, were obliged to modify their views and accept the project of a Federal Union as the only scheme practicable, even for the Maritime Provinces. Because, although the law of those provinces is founded on the common law of England, yet every one of them has a large amount of law of its own—colonial law framed by itself, and affecting every relation of life, such as the laws of property, municipal and assessment laws; laws relating to the liberty of the subject, and to all the great interests contemplated in legislation; we found, in short, that the statutory law of the different provinces was so varied and diversified that it was almost impossible to weld them into a Legislative Union at once. Why, sir, if you only consider the innumerable subjects of legislation peculiar to new countries, and that every one of those five colonies had particular laws of its own, to which its people have been accustomed and are attached, you will see the difficulty of effecting and working a Legislative Union, and bringing about an assimilation of the local as well as general laws of the whole of the provinces. We in Upper Canada understand from the nature and operation of our peculiar municipal law, of which we know the value, the difficulty of framing a general

system of legislation on local matters which would meet the wishes and fulfil the requirements of the several provinces. Even the laws considered the least important, respecting private rights in timber, roads, fencing, and innumerable other matters, small in themselves, but in the aggregate of great interest to the agricultural class, who form the great body of the people, are regarded as of great value by the portion of the community affected by them. And when we consider that every one of the colonies has a body of law of this kind, and that it will take years before those laws can be assimilated, it was felt that at first, at all events, any united legislation would be almost impossible. I am happy to state—and indeed, it appears on the face of the resolutions themselves—that, as regards the Lower Provinces, a great desire was evinced for the final assimilation of our laws. One of the resolutions provides that an attempt shall be made to assimilate the laws of the Maritime Provinces and those of Upper Canada, for the purpose of eventually establishing one body of statutory law, founded on the common law of England, the parent of the laws of all those provinces.

One great objection made to a Federal Union was the expense of an increased number of legislatures. I will not enter at any length into that subject, because my honourable friends, the Finance Minister and the President of the Council, who are infinitely more competent than myself to deal with matters of this kind—matters of account—will, I think, be able to show that the expenses under a Federal Union will not be greater than

those under the existing system of separate governments and legislatures. Here, where we have a joint legislature for Upper and Lower Canada, which deals not only with subjects of general interest common to all Canada, but with all matters of private right and of sectional interest, and with that class of measures known as 'private bills,' we find that one of the greatest sources of expense to the country is the cost of legislation. We find, from the admixture of subjects of a general with those of a private character in legislation, that they mutually interfere with each other; whereas, if the attention of the Legislature was confined to measures of one kind or the other alone, the session of Parliament would not be so protracted and therefore not so expensive as at present. In the proposed Constitution all matters of general interest are to be dealt with by the General Legislature; while the local legislatures will deal with matters of local interest, which do not affect the Confederation as a whole, but are of the greatest importance to their particular sections. By such a division of labour the sittings of the General Legislature would not be so protracted as even those of Canada alone. And so with the local legislatures, their attention being confined to subjects pertaining to their own sections, their sessions would be shorter and less expensive. Then, when we consider the enormous saving that will be effected in the administration of affairs by one General Government—when we reflect that each of the five colonies has a government of its own with a complete establishment of public departments and

all the machinery required for the transaction of the business of the country—that each has a separate executive, judicial and militia system—that each province has a separate ministry including a Minister of Militia, with a complete Adjutant-General's Department—that each has a Finance Minister with a full Customs and Excise staff—that each Colony has as large and complete an administrative organization, with as many executive officers as the General Government will have—we can well understand the enormous saving that will result from a union of all the colonies, from their having but one head and one central system.

We, in Canada, already know something of the advantages and disadvantages of a Federal Union. Although we have nominally a Legislative Union in Canada—although we sit in one Parliament, supposed constitutionally to represent the people without regard to sections or localities, yet we know, as a matter of fact, that since the union in 1841 we have had a Federal Union; that in matters affecting Upper Canada solely, members from that section claimed and generally exercised the right of exclusive legislation, while members from Lower Canada legislated in matters affecting only their own section. We have had a Federal Union in fact, though a Legislative Union in name; and in the hot contests of late years, if on any occasion a measure affecting any one section were interfered with by the members from the other—if, for instance, a measure locally affecting Upper Canada were carried or defeated against the wishes of its majority, by one from Lower

Canada,—my honourable friend the President of the Council and his friends denounced with all their energy and ability such legislation as an infringement of the rights of the Upper Province. Just in the same way, if any act concerning Lower Canada were pressed into law against the wishes of the majority of her representatives by those from Upper Canada, the Lower Canadians would rise as one man and protest against such a violation of their peculiar rights. The relations between England and Scotland are very similar to that which obtains between the Canadas. The union between them, in matters of legislation, is of a federal character, because the Act of Union between the two countries provides that the Scottish law cannot be altered, except for the manifest advantage of the people of Scotland. This stipulation has been held to be so obligatory on the Legislature of Great Britain, that no measure affecting the law of Scotland is passed unless it receives the sanction of a majority of the Scottish members in Parliament. No matter how important it may be for the interests of the Empire as a whole to alter the laws of Scotland—no matter how much it may interfere with the symmetry of the general law of the United Kingdom, that law is not altered, except with the consent of the Scottish people, as expressed by their representatives in Parliament. Thus we have in Great Britain, to a limited extent, an example of the working and effects of a Federal Union, as we might expect to witness them in our own Confederation.

The whole scheme of Confederation, as pro-

pounded by the Conference, as agreed to and sanctioned by the Canadian Government, and as now presented for the consideration of the people and the Legislature, bears upon its face the marks of compromise. Of necessity there must have been a great deal of mutual concession. When we think of the representatives of five colonies, all supposed to have different interests, meeting together, charged with the duty of protecting those interests and of pressing the views of their own localities and sections, it must be admitted that, had we not met in a spirit of conciliation, and with an anxious desire to promote this union; if we had not been impressed with the idea contained in the words of the resolution —'That the best interests and present and future prosperity of British North America would be promoted by a Federal Union under the Crown of Great Britain,'—all our efforts might have proved to be of no avail. If we had not felt that, after coming to this conclusion, we were bound to set aside our private opinions on matters of detail, if we had not felt ourselves bound to look at what was practicable, not obstinately rejecting the opinions of others nor adhering to our own; if we had not met, I say, in a spirit of conciliation, and with an anxious, overruling desire to form one people under one government, we never would have succeeded. With these views, we press the question on this House and the country. I say to this House, if you do not believe that the union of the colonies is for the advantage of the country, that the joining of these five peoples into one nation, under one sovereign, is for the benefit of

all, then reject the scheme. Reject it if you do not believe it to be for the present advantage and future prosperity of yourselves and your children. But if, after a calm and full consideration of this scheme, it is believed, as a whole, to be for the advantage of this province—if the House and country believe this union to be one which will ensure for us British laws, British connection, and British freedom—and increase and develop the social, political and material prosperity of the country, then I implore this House and the country to lay aside all prejudices, and accept the scheme which we offer. I ask this House to meet the question in the same spirit in which the delegates met it. I ask each member of this House to lay aside his own opinions as to particular details, and to accept the scheme as a whole if he think it beneficial as a whole. As I stated in the preliminary discussion, we must consider this scheme in the light of a treaty. By a happy coincidence of circumstances, just when an Administration had been formed in Canada for the purpose of attempting a solution of the difficulties under which we laboured, at the same time the Lower Provinces, actuated by a similar feeling, appointed a Conference with a view to a union among themselves, without being cognizant of the position the government was taking in Canada. If it had not been for this fortunate coincidence of events, never, perhaps, for a long series of years would we have been able to bring this scheme to a practical conclusion. But we did succeed. We made the arrangement, agreed upon the scheme, and the deputations from the several governments

represented at the Conference went back pledged to lay it before their governments, and to ask the legislatures and people of their respective provinces to assent to it. I trust the scheme will be assented to as a whole. I am sure this House will not seek to alter it in its unimportant details; and, if altered in any important provisions, the result must be that the whole will be set aside, and we must begin *de novo*. If any important changes are made, every one of the colonies will feel itself absolved from the implied obligation to deal with it as a treaty, each province will feel itself at liberty to amend it *ad libitum* so as to suit its own views and interests; in fact, the whole of our labours will have been for nought, and we will have to renew our negotiations with all the colonies for the purpose of establishing some new scheme. I hope the House will not adopt any such course as will postpone, perhaps for ever, or at all events for a long period, all chances of union. All the statesmen and public men who have written or spoken on the subject admit the advantages of a union, if it were practicable: and now when it is proved to be practicable, if we do not embrace this opportunity the present favourable time will pass away, and we may never have it again. Because, just so surely as this scheme is defeated, will be revived the original proposition for a union of the Maritime Provinces, irrespective of Canada; they will not remain as they are now, powerless, scattered, helpless communities; they will form themselves into a power, which, though not so strong as if united with Canada, will, nevertheless, be a powerful and

considerable community, and it will be then too late for us to attempt to strengthen ourselves by this scheme, which, in the words of the resolution, 'is for the best interests, and present and future prosperity of British North America.'

If we are not blind to our present position, we must see the hazardous situation in which all the great interests of Canada stand in respect to the United States. I am no alarmist. I do not believe in the prospect of immediate war. I believe that the common sense of the two nations will prevent a war; still we cannot trust to probabilities. The Government and Legislature would be wanting in their duty to the people if they ran any risk. We know that the United States at this moment are engaged in a war of enormous dimensions—that the occasion of a war with Great Britain has again and again arisen, and may at any time in the future again arise. We cannot foresee what may be the result; we cannot say but that the two nations may drift into a war as other nations have done before. It would then be too late when war had commenced to think of measures for strengthening ourselves, or to begin negotiations for a union with the sister provinces. At this moment, in consequence of the ill-feeling which has arisen between England and the United States—a feeling of which Canada was not the cause,—in consequence of the irritation which now exists, owing to the unhappy state of affairs on this continent, the Reciprocity Treaty, it seems probable, is about to be brought to an end—our trade is hampered by the passport system,—and at any moment we may be deprived of permission

to carry our goods through United States channels —the bonded goods system may be done away with,—and the winter trade through the United States put an end to. Our merchants may be obliged to return to the old system of bringing in during the summer months the supplies for the whole year. Ourselves already threatened, our trade interrupted, our intercourse, political and commercial, destroyed, if we do not take warning now when we have the opportunity, and, while one avenue is threatened to be closed, open another by taking advantage of the present arrangement and the desire of the Lower Provinces to draw closer the alliance between us, we may suffer commercial and political disadvantages it may take long for us to overcome.

The Conference having come to the conclusion that a legislative union, pure and simple, was impracticable, our next attempt was to form a government upon federal principles, which would give to the General Government the strength of a legislative and administrative union, while at the same time it preserved that liberty of action for the different sections which is allowed by a Federal Union. And I am strong in the belief that we have hit upon the happy medium in those resolutions, and that we have formed a scheme of government which unites the advantages of both, giving us the strength of a legislative union and the sectional freedom of a federal union, with protection to local interests. In doing so we had the advantage of the experience of the United States. It is the fashion now to enlarge on the defects of the Constitution of the United States,

but I am not one of those who look upon it as a failure. I think and believe that it is one of the most skilful works which human intelligence ever created, is one of the most perfect organizations that ever governed a free people. To say that it has some defects is but to say that it is not the work of Omniscience, but of human intellects. We are happily situated in having had the opportunity of watching its operation, seeing its working from its infancy till now. It was in the main formed on the model of the Constitution of Great Britain, adapted to the circumstances of a new country, and was perhaps the only practicable system that could have been adopted under the circumstances existing at the time of its formation. We can now take advantage of the experience of the last seventy-eight years, during which that Constitution has existed, and I am strongly of the belief that we have, in a great measure, avoided in this system which we propose for the adoption of the people of Canada, the defects which time and events have shown to exist in the American Constitution.

In the first place, by a resolution which meets with the universal approval of the people of this country, we have provided that for all time to come, so far as we can legislate for the future, we shall have as the head of the executive power, the Sovereign of Great Britain. No one can look into futurity and say what will be the destiny of this country. Changes come over nations and peoples in the course of ages. But, so far as we can legislate, we provide that, for all time to come, the Sovereign of Great Britain shall be the Sove-

reign of British North America. By adhering to the monarchical principle, we avoid one defect inherent in the Constitution of the United States. By the election of the President by a majority and for a short period, he never is the sovereign and chief of the nation. He is never looked up to by the whole people as the head and front of the nation. He is at best but the successful leader of a party. This defect is all the greater on account of the practice of re-election. During his first term of office, he is employed in taking steps to secure his own re-election, and for his party a continuance of power. We avoid this by adhering to the monarchical principle—the Sovereign whom you respect and love. I believe that it is of the utmost importance to have that principle recognized, so that we shall have a Sovereign who is placed above the region of party—to whom all parties look up—who is not elevated by the action of one party nor depressed by the action of another, who is the common head and sovereign of all.

In the Constitution we propose to continue the system of Responsible Government, which has existed in this province since 1841, and which has long obtained in the Mother Country. This is a feature of our Constitution as we have it now, and as we shall have it in the Federation, in which, I think, we avoid one of the great defects in the Constitution of the United States. There the President, during his term of office, is in a great measure a despot, a one-man power, with the command of the naval and military forces, with an immense amount of patronage as head of the

Executive, and with the veto power as a branch of the Legislature, perfectly uncontrolled by responsible advisers, his cabinet being departmental officers merely, whom he is not obliged by the Constitution to consult with, unless he chooses to do so. With us the Sovereign, or in this country the Representative of the Sovereign, can act only on the advice of his ministers, those ministers being responsible to the people through Parliament.

Prior to the formation of the American Union, as we all know, the different states which entered into it were separate colonies. They had no connection with each other further than that of having a common sovereign, just as with us at present. Their constitutions and their laws were different. They might and did legislate against each other, and when they revolted against the Mother Country they acted as separate sovereignties, and carried on the war by a kind of treaty of alliance against the common enemy. Ever since the union was formed the difficulty of what is called the 'State Rights' has existed, and this had much to do in bringing on the present unhappy war in the United States. They commenced, in fact, at the wrong end. They declared by their Constitution that each state was a sovereignty in itself, and that all the powers incident to a sovereignty belonged to each state, except those powers which, by the Constitution, were conferred upon the General Government and Congress. Here we have adopted a different system. We have strengthened the General Government. We have given the General Legislature all the great subjects of legislation.

We have conferred on them, not only specifically and in detail, all the powers which are incident to sovereignty, but we have expressly declared that all subjects of general interest, not distinctly and exclusively conferred upon the local governments and local legislatures, shall be conferred upon the General Government and Legislature.—We have thus avoided that great source of weakness which has been the cause of the disruption of the United States. We have avoided all conflict of jurisdiction and authority, and if this Constitution is carried out, as it will be in full detail in the Imperial Act to be passed if the colonies adopt the scheme, we will have in fact, as I said before, all the advantages of a legislative union under one administration, with, at the same time, the guarantees for local institutions and for local laws, which are insisted upon by so many in the provinces now, I hope, to be united.

I think it is well that, in framing our Constitution—although my honourable friend the member for Hochelaga sneered at it the other day, in the discussion on the Address in reply to the speech from the Throne—our first act should have been to recognize the sovereignty of her Majesty. I believe that, while England has no desire to lose her colonies, but wishes to retain them, while I am satisfied that the public mind of England would deeply regret the loss of these provinces—yet, if the people of British North America after full deliberation had stated that they considered it was for their interest, for the advantage of the future of British North America, to sever the tie, such is the generosity of the people of England,

that, whatever their desire to keep these colonies, they would not seek to compel us to remain unwilling subjects of the British Crown. If therefore at the Conference we had arrived at the conclusion, that it was for the interest of these provinces that a severance should take place, I am sure that her Majesty and the Imperial Parliament would have sanctioned that severance. We accordingly felt that there was a propriety in giving a distinct declaration of opinion on that point, and that, in framing the Constitution, its first sentence should declare, that 'The Executive authority or government shall be vested in the Sovereign of the United Kingdom of Great Britain and Ireland, and be administered according to the well understood principles of the British Constitution, by the Sovereign personally, or by the Representative of the Sovereign duly authorized.' That resolution met with the unanimous assent of the Conference. The desire to remain connected with Great Britain and to retain our allegiance to her Majesty was unanimous. Not a single suggestion was made that it could, by any possibility, be for the interest of the colonies, or of any section or portion of them, that there should be a severance of our connection. Although we knew it to be possible that Canada, from her position, might be exposed to all the horrors of war by reason of causes of hostility arising between Great Britain and the United States—causes over which we had no control, and which we had no hand in bringing about—yet there was a unanimous feeling of willingness to run all the hazards of war, if war must come,

rather than lose the connexion between the Mother Country and these colonies. We provide that 'the Executive authority shall be administered by the Sovereign personally, or by the Representative of the Sovereign duly authorized.' It is too much to expect that the Queen should vouchsafe us her personal governance or presence, except to pay us, as the heir apparent of the Throne, our future Sovereign, has already paid us, the graceful compliment of a visit. The Executive authority must therefore be administered by her Majesty's Representative. We place no restriction on her Majesty's prerogative in the selection of her representative. As it is now, so it will be if this Constitution is adopted. The Sovereign has unrestricted freedom of choice. Whether in making her selection she may send us one of her own family, a Royal Prince, as a Viceroy to rule over us, or one of the great statesmen of England to represent her, we know not. We leave that to her Majesty in all confidence. But we may be permitted to hope, that when the union takes place, and we become the great country which British North America is certain to be, it will be an object worthy the ambition of the statesmen of England to be charged with presiding over our destinies.

Let me now invite the attention of the House to the provisions in the Constitution respecting the legislative power. The sixth Resolution says, 'There shall be a general legislature or parliament for the federated provinces, composed of a Legislative Council and a House of Commons.' This resolution has been cavilled at in the English

press as if it excluded the Sovereign as a portion of the Legislature. In one sense, that stricture was just—because in strict constitutional language, the Legislature of England consists of King, Lords and Commons. But, on the other hand, in ordinary parlance we speak of 'the King and his Parliament,' or 'the King summoning his Parliament,' the three estates—Lords spiritual, Lords temporal, and the House of Commons, and I observe that such a writer as Hallam occasionally uses the word Parliament in that restricted sense. At best it is merely a verbal criticism. The legislature of British North America will be composed of King, Lords, and Commons. The Legislative Council will stand in the same relation to the Lower House, as the House of Lords to the House of Commons in England, having the same power of initiating all matters of legislation, except the granting of money. As regards the Lower House, it may not appear to matter much, whether it is called the House of Commons or House of Assembly. It will bear whatever name the Parliament of England may choose to give it, but 'The House of Commons' is the name we should prefer, as showing that it represents the Commons of Canada, in the same way that the English House of Commons represents the Commons of England, with the same privileges, the same parliamentary usage, and the same parliamentary authority. In settling the constitution of the Lower House, that which peculiarly represents the people, it was agreed that the principle of representation based on population should be adopted, and the mode of applying that principle is fully

developed in these resolutions. When I speak of representation by population, the House will of course understand that universal suffrage is not in any way sanctioned, or admitted by these resolutions, as the basis on which the constitution of the popular branch should rest. In order to protect local interests, and to prevent sectional jealousies, it was found requisite that the three great divisions into which British North America is separated, should be represented in the Upper House on the principle of equality. There are three great sections, having different interests, in this proposed Confederation. We have Western Canada, an agricultural country far away from the sea, and having the largest population, who have agricultural interests principally to guard. We have Lower Canada, with other and separate interests, and especially with institutions and laws which she jealously guards against absorption by any larger, more numerous, or stronger power. And we have the Maritime Provinces, having also different sectional interests of their own, having, from their position, classes and interests which we do not know in Western Canada. Accordingly, in the Upper House—the controlling and regulating, but not the initiating, branch (for we know that here, as in England, to the Lower House will practically belong the initiation of matters of great public interest), in the House which has the sober second-thought in legislation —it is provided that each of those great sections shall be represented equally by 24 members. The only exception to that condition of equality is in the case of Newfoundland, which has an interest

of its own, lying, as it does, at the mouth of the great river St. Lawrence, and more connected, perhaps, with Canada than with the Lower Provinces. It has, comparatively speaking, no common interest with the other Maritime Provinces, but has sectional interests and sectional claims of its own to be protected. It, therefore, has been dealt with separately, and is to have a separate representation in the Upper House, thus varying from the equality established between the other sections.

As may be well conceived, great difference of opinion at first existed as to the constitution of the Legislative Council. In Canada the elective principle prevailed; in the Lower Provinces, with the exception of Prince Edward Island, the nominative principle was the rule. We found a general disinclination on the part of the Lower Provinces to adopt the elective principle; indeed, I do not think there was a dissenting voice in the Conference against the adoption of the nominative principle, except from Prince Edward Island. The delegates from New Brunswick, Nova Scotia and Newfoundland, as one man, were in favour of nomination by the Crown. And nomination by the Crown is of course the system which is most in accordance with the British Constitution. We resolved then, that the constitution of the Upper House should be in accordance with the British system as nearly as circumstances would allow. An hereditary Upper House is impracticable in this young country. Here we have none of the elements for the formation of a landlord aristocracy—no men of large territorial positions—

no class separated from the mass of the people. An hereditary body is altogether unsuited to our state of society, and would soon dwindle into nothing. The only mode of adapting the English system to the Upper House is by conferring the power of appointment on the Crown (as the English peers are appointed), but that the appointments should be for life. The arguments for an elective Council are numerous and strong; and I ought to say so, as one of the Administration responsible for introducing the elective principle into Canada. I hold that this principle has not been a failure in Canada; but there were causes —which we did not take into consideration at the time—why it did not so fully succeed in Canada as we had expected. One great cause was the enormous extent of the constituencies and the immense labour which consequently devolved on those who sought the suffrages of the people for election to the Council. For the same reason the expense—the legitimate expense—was so enormous that men of standing in the country, eminently fitted for such a position, were prevented from coming forward. At first, I admit, men of the first standing did come forward, but we have seen that in every succeeding election in both Canadas there has been an increasing disinclination, on the part of men of standing and political experience and weight in the country, to become candidates; while, on the other hand, all the young men, the active politicians, those who have resolved to embrace the life of a statesman, have sought entrance to the House of Assembly. The nominative system in this country was to a great

extent successful, before the introduction of responsible government. Then the Canadas were to a great extent Crown colonies, and the upper branch of thee Legislature consisted of gentlemen chosen from among the chief judicial and ecclesiastical dignitaries, the heads of departments, and other men of the first position in the country. Those bodies commanded great respect from the character, standing, and weight of the individuals composing them, but they had little sympathy with the people or their representatives, and collisions with the Lower House frequently occurred, especially in Lower Canada. When responsible government was introduced, it became necessary for the Governor of the day to have a body of advisers who had the confidence of the House of Assembly, which could make or unmake ministers as it chose. The Lower House in effect pointed out who should be nominated to the Upper House; for the ministry, being dependent altogether on the lower branch of the Legislature for support, selected members for the Upper House from among their political friends at the dictation of the House of Assembly. The Council was becoming less and less a substantial check on the legislation of the Assembly; but under the system now proposed, such will not be the case. No ministry can in future do what they have done in Canada before, —they cannot, with the view of carrying any measure, or of strengthening the party, attempt to overrule the independent opinion of the Upper House, by filling it with a number of its partisans and political supporters. The provision in the Constitution that the Legislative Council shall

consist of a limited number of members—that each of the great sections shall appoint twenty-four members and no more,—will prevent the Upper House from being swamped from time to time by the ministry of the day, for the purpose of carrying out their own schemes or pleasing their partisans. The fact of the government being prevented from exceeding a limited number will preserve the independence of the Upper House, and make it, in reality, a separate and distinct chamber, having a legitimate and controlling influence in the legislation of the country. The objection has been taken that in consequence of the Crown being deprived of the right of unlimited appointment, there is a chance of a deadlock arising between the two branches of the Legislature; a chance that the Upper House being altogether independent of the Sovereign, of the Lower House, and of the advisers of the Crown, may act independently, and so independently as to produce a deadlock. I do not anticipate any such result. In the first place we know that in England it does not arise. There would be no use of an Upper House, if it did not exercise, when it thought proper, the right of opposing or amending or postponing the legislation of the Lower House. It would be of no value whatever were it a mere chamber for registering the decrees of the Lower House. It must be an independent House, having a free action of its own, for it is only valuable as being a regulating body, calmly considering the legislation initiated by the popular branch, and preventing any hasty or ill-considered legislation which may come from that body, but it will never

set itself in opposition against the deliberate and understood wishes of the people. Even the House of Lords, which, as an hereditary body, is far more independent than one appointed for life can be, whenever it ascertains what is the calm, deliberate will of the people of England, yields, and never in modern times has there been, in fact or act, any attempt to overrule the decisions of that House by the appointment of new peers, excepting, perhaps, once in the reign of Queen Anne, It is true that in 1832 such an increase was threatened in consequence of the reiterated refusal of the House of Peers to pass the Reform Bill. I have no doubt the threat would have been carried into effect, if necessary; but every one, even the Ministry who advised that step, admitted that it would be a revolutionary act, a breach of the Constitution, to do so, and it was because of the necessity of preventing the bloody revolution which hung over the land, if the Reform Bill had been longer refused to the people of England, that they consented to the bloodless revolution of overriding the independent opinion of the House of Lords on that question. Since that time it has never been attempted, and I am satisfied it will never be attempted again. Only a year or two ago the House of Lords rejected the Paper Duties Bill, and they acted quite constitutionally, according to the letter and, as many think, according to the spirit of the Constitution in doing so. Yet when they found they had interfered with a subject which the people's house claimed as belonging of right to themselves, the very next session they abandoned their position,

not because they were convinced they had done wrong, but because they had ascertained what was the deliberate voice of the representatives of the people on the subject. In this country, we must remember, that the gentlemen who will be selected for the Legislative Council stand on a very different footing from the peers of England. They have not, like them, any ancestral associations or position derived from history. They have not that direct influence on the people themselves, or on the popular branch of the legislature, which the peers of England exercise, from their great wealth, their vast territorial possessions, their numerous tenantry, and that prestige with which the exalted position of their class for centuries has invested them. The members of our Upper House will be like those of the Lower, men of the people, and from the people. The man put into the Upper House is as much a man of the people the day after, as the day before, his elevation. Springing from the people, and one of them, he takes his seat in the Council with all the sympathies and feelings of a man of the people, and when he returns home, at the end of the session, he mingles with them on equal terms, and is influenced by the same feelings and associations and events as those which affect the mass around him. And is it, then, to be supposed that the members of the upper branch of the legislature will set themselves deliberately at work to oppose what they know to be the settled opinions and wishes of the people of the country? They will not do it. There is no fear of a deadlock between the two houses. There is an infinitely greater

chance of a deadlock between the two branches of the legislature, should the elective principle be adopted, than with a nominated chamber—chosen by the Crown, and having no mission from the people. The members of the Upper Chamber would then come from the people as well as those of the Lower House, and should any difference ever arise between both branches, the former could say to the members of the popular branch: 'We as much represent the feelings of the people as you do, and even more so; we are not elected from small localities and for a short period; you as a body were elected at a particular time, when the public mind was running in a particular channel; you were returned to Parliament, not so much representing the general views of the country, on general questions, as upon the particular subjects which happened to engage the minds of the people when they went to the polls. We have as much right, or a better right, than you to be considered as representing the deliberate will of the people on general questions, and therefore we will not give way.' There is, I repeat, a greater danger of an irreconcilable difference of opinion between the two branches of the legislature, if the upper be elective, than if it holds its commission from the Crown. Besides, it must be remembered that an Upper House, the members of which are to be appointed for life, would not have the same quality of permanence as the House of Lords; our members would die, strangers would succeed them, whereas son succeeded father in the House of Lords. Thus the changes in the membership and state of opinion in our Upper

House would always be more rapid than in the House of Lords. To show how speedily changes have occurred in the Upper House, as regards life members, I will call the attention of the House to the following facts:—At the call of the House, in February, 1856, forty-two life members responded; two years afterwards, in 1858, only thirty-five answered to their names; in 1862 there were only twenty-five life members left, and in 1864, but twenty-one. This shows how speedily changes take place in the life membership. But remarkable as this change has been, it is not so great as that in regard to the elected members. Though the elective principle only came into force in 1856, and although only twelve men were elected that year, and twelve more every two years since, twenty-four changes have already taken place by the decease of members, by the acceptance of office, and by resignation. So it is quite clear that, should there be on any question a difference of opinion between the Upper and Lower Houses, the government of the day being obliged to have the confidence of the majority on the popular branch—would, for the purpose of bringing the former into accord and sympathy with the latter, fill up any vacancies that might occur, with men of the same political feelings and sympathies with the Government, and consequently with those of the majority in the popular branch; and all the appointments of the Administration would be made with the object of maintaining the sympathy and harmony between the two houses. There is this additional advantage to be expected from the limitation. To the Upper

House is to be confided the protection of sectional interests; therefore is it that the three great divisions are there equally represented, for the purpose of defending such interests against the combinations of majorities in the Assembly. It will, therefore, become the interest of each section to be represented by its very best men, and the members of the Administration who belong to each section will see that such men are chosen, in case of a vacancy in their section. For the same reason each state of the American Union sends its two best men to represent its interests in the Senate. It is provided in the Constitution that in the first selections for the Council, regard shall be had to those who now hold similar positions in the different colonies. This, it appears to me, is a wise provision. In all the provinces, except Prince Edward Island, there are gentlemen who hold commissions for the Upper House for life. In Canada, there are a number who hold under that commission; but the majority of them hold by a commission, not, perhaps, from a monarchical point of view so honourable, because the Queen is the fountain of honour,—but still, as holding their appointment from the people, they may be considered as standing on a par with those who have her Majesty's commission. There can be no reason suggested why those who have had experience in legislation, whether they hold their positions by the election of the people or have received preferment from the Crown—there is no valid reason why those men should be passed over, and new men sought for to form the Legislative Council of the Confederation. It is, there-

fore, provided that the selection shall be made from those gentlemen, who are now members of the upper branch of the Legislature in each of the colonies, for seats in the Legislative Council of the General Legislature. The arrangement in this respect is somewhat similar to that by which Representative Peers are chosen from the Peers of Scotland and Ireland, to sit in the Parliament of the United Kingdom. In like manner, the members of the Legislative Council of the proposed Confederation will be first selected from the existing Legislative Councils of the various provinces.

In the formation of the House of Commons, the principle of representation by population has been provided for in a manner equally ingenious and simple. The introduction of this principle presented at first the apparent difficulty of a constantly increasing body until, with the increasing population, it would become inconveniently and expensively large. But by adopting the representation of Lower Canada as a fixed standard —as the pivot on which the whole would turn— that province being the best suited for the purpose, on account of the comparatively permanent character of its population, and from its having neither the largest nor least number of inhabitants —we have been enabled to overcome the difficulty I have mentioned. We have introduced the system of representation by population without the danger of an inconvenient increase in the number of representatives on the recurrence of each decennial period. The whole thing is worked by a simple rule of three. For instance, we have

in Upper Canada 1,400,000 of a population; in Lower Canada 1,100,000. Now, the proposition is simply this—if Lower Canada, with its population of 1,100,000, has a right to 65 members, how many members should Upper Canada have, with its larger population of 1,400,000? The same rule applies to the other provinces—the proportion is always observed and the principle of representation by population carried out, while, at the same time, there will not be decennially an inconvenient increase in the numbers of the Lower House. At the same time, there is a constitutional provision that hereafter, if deemed advisable, the total number of representatives may be increased from one hundred and ninety-four, the number fixed in the first instance. In that case, if an increase is made, Lower Canada is still to remain the pivot on which the whole calculation will turn. If Lower Canada, instead of sixty-five, shall have seventy members, then the calculation will be, if Lower Canada has seventy members, with such a population, how many shall Upper Canada have with a larger population? I was in favour of a larger House than one hundred and ninety-four, but was overruled. I was perhaps singular in the opinion, but I thought it would be well to commence with a larger representation in the lower branch. The arguments against this were, that, in the first place, it would cause additional expense; in the next place, that in a new country like this, we could not get a sufficient number of qualified men to be representatives. My reply was that the number is rapidly increasing as we increase in education and wealth; that

a larger field would be open to political ambition by having a larger body of representatives; that, by having numerous and smaller constituencies, more people would be interested in the working of the Union, and that there would be a wider field for selection for leaders of governments and leaders of parties. These are my individual sentiments—which, perhaps, I have no right to express here—but I was overruled, and we fixed on the number of one hundred and ninety-four, which no one will say is large or extensive, when it is considered that our present number in Canada alone is one hundred and thirty. The difference between one hundred and thirty and one hundred and ninety-four is not great, considering the large increase that will be made to our population when Confederation is carried into effect.

While the principle of representation by population is adopted with respect to the popular branch of the legislature, not a single member of the Conference, as I stated before, not a single one of the representatives of the government or of the opposition of any one of the Lower Provinces, was in favour of universal suffrage. Every one felt that in this respect the principle of the British Constitution should be carried out, and that classes and property should be represented as well as numbers. Insuperable difficulties would have presented themselves if we had attempted to settle now the qualification for the elective franchise. We have different laws in each of the colonies fixing the qualification of electors for their own local legislatures; and we

therefore adopted a similar clause to that which is contained in the Canada Union Act of 1841, viz., that all the laws which affected the qualification of members and of voters, which affected the appointment and conduct of returning officers and the proceedings at elections, as well as the trial of controverted elections in the separate provinces, should obtain in the first election to the Confederate Parliament, so that every man who has now a vote in his own province should continue to have a vote in choosing a representative to the first Federal Parliament. And it was left to the Parliament of the Confederation, as one of their first duties, to consider and to settle by an act of their own the qualification for the elective franchise, which would apply to the whole Confederation. In considering the question of the duration of Parliament, we came to the conclusion to recommend a period of five years. I was in favour of a longer period. I thought that the duration of the local legislatures should not be shortened so as to be less than four years, as at present, and that the General Parliament should have as long a duration as that of the United Kingdom. I was willing to have gone to the extent of seven years; but a term of five years was preferred, and we had the example of New Zealand, a precedent which was carefully considered, not only locally, but by the Imperial Parliament, and which gave the provinces of those islands a general parliament with a duration of five years. But it was a matter of little importance whether five years or seven years was the term, the power of dissolution by the Crown

having been reserved. I find, on looking at the duration of parliaments since the accession of George III to the Throne, that, excluding the present parliament, there have been seventeen parliaments, the average period of whose existence has been about three years and a half. That average is less than the average duration of the parliaments of Canada since the union, so that it was not a matter of much importance whether we fixed upon five or seven years as the period of duration of our General Parliament.

A good deal of misapprehension has arisen from the accidental omission of some words from the 24th resolution. It was thought that by it the local legislatures were to have the power of arranging hereafter, and from time to time of readjusting, the different constituencies and settling the size and boundaries of the various electoral districts. The meaning of the resolution is simply this, that for the first General Parliament the arrangement of constituencies shall be made by the existing local legislatures; that in Canada, for instance, the present Canadian Parliament shall arrange what are to be the constituencies of Upper Canada, and to make such changes as may be necessary in arranging for the seventeen additional members given to it by the Constitution; and that it may also, if it sees fit, alter the boundaries of the existing constituencies of Lower Canada. In short, this Parliament shall settle what shall be the different constituencies electing members to the first Federal Parliament. And so the other provinces, the legislatures of which will fix the limits of their several constituencies in the session

in which they adopt the new Constitution. Afterwards the local legislatures may alter their own electoral limits as they please, for their own local elections. But it would evidently be unproper to leave to the Local Legislature the power to alter the constituencies sending members to the General Legislature after the General Legislature shall have been called into existence. Were this the case, a member of the General Legislature might at any time find himself ousted from his seat by an alteration of his constituency by the Local Legislature in his section. No; after the General Parliament meets, in order that it may have full control of its own legislation, and be assured of its position, it must have the full power of arranging and re-arranging the electoral limits of its constituencies as it pleases, such being one of the powers essentially necessary to such a Legislature.

I shall not detain the House by entering into a consideration at any length of the different powers conferred upon the General Parliament as contradistinguished from those reserved to the local legislatures; but any honourable member, on examining the list of different subjects which are to be assigned to the General and Local Legislatures respectively, will see that all the great questions which affect the general interests of the Confederacy as a whole, are confided to the Federal Parliament while the local interests and local laws of each section are preserved intact, and entrusted to the care of the local bodies. As a matter of course, the General Parliament must have the power of dealing with the public debt

and property of the Confederation. Of course, too, it must have the regulation of trade and commerce, of customs and excise. The Federal Parliament must have the sovereign power of raising money from such sources and by such means as the representatives of the people will allow. It will be seen that the local legislatures have the control of all local works; and it is a matter of great importance, and one of the chief advantages of the Federal Union and of local legislatures, that each province will have the power and means of developing its own resources and aiding its own progress after its own fashion and in its own way. Therefore all the local improvements, all local enterprises or undertakings of any kind, have been left to the care and management of the local legislatures of each province. It is provided that all 'lines of steam or other ships, railways, canals and other works, connecting any two or more of the provinces together or extending beyond the limits of any province,' shall belong to the General Government, and be under the control of the General Legislature. In like manner 'lines of steamships between the Federated Provinces and other countries, telegraph communication and the incorporation of telegraph companies, and all such works as shall, although lying within any province, be specially declared by the Acts authorizing them, to be for the general advantage,' shall belong to the General Government. For instance, the Welland Canal, though lying wholly within one section, and the St. Lawrence Canals in two only, may be properly considered national works, and for the general benefit of the whole

Federation. Again, the census, the ascertaining of our numbers and the extent of our resources, must as a matter of general interest, belong to the General Government. So also with the defences of the country. One of the great advantages of Confederation is, that we shall have a united, a concerted, and uniform system of defence. We are at this moment with a different militia system in each colony—in some of the colonies with an utter want of any system of defence. We have a number of separate staff establishments, without any arrangement between the colonies as to the means, either of defence or offence. But, under the union, we will have one system of defence and one system of militia organization. In the event of the Lower Provinces being threatened, we can send the large militia forces of Upper Canada to their rescue. Should we have to fight on our lakes against a foreign foe, we will have the hardy seamen of the Lower Provinces coming to our assistance and manning our vessels. We will have one system of defence and be one people, acting together alike in peace and in war. The criminal law too—the determination of what is a crime and what is not and how crime shall be punished—is left to the General Government. This is a matter almost of necessity. It is of great importance that we should have the same criminal law throughout these provinces—that what is a crime in one part of British America, should be a crime in every part—that there should be the same protection of life and property as in another. It is one of the defects in the United States system, that each separate state has or may have a criminal

code of its own, that what may be a capital offence in one state, may be a venial offence punishable slightly in another. But under our Constitution we shall have one body of criminal law, based on the criminal law of England, and operating equally throughout British America, so that a British American belonging to what province he may, or going to any other part of the Confederation, knows what his rights are in that respect, and what his punishment will be if an offender against the criminal laws of the land. I think this is one of the most marked instances in which we take advantage of the experience derived from our observations of the defects in the Constitution of the neighbouring Republic. The 33rd provision is of very great importance to the future well-being of these colonies. It commits to the General Parliament the 'rendering uniform all or any of the laws relative to property and civil rights in Upper Canada, Nova Scotia, New Brunswick, Newfoundland and Prince Edward Island, and rendering uniform the procedure of all or any of the courts in these provinces.' The great principles which govern the laws of all the provinces, with the single exception of Lower Canada, are the same, although there may be a divergence in details; and it is gratifying to find, on the part of the Lower Provinces, a general desire to join together with Upper Canada in this matter, and to procure, as soon as possible, an assimilation of the statutory laws and the procedure in the courts, of all these provinces. At present there is a good deal of diversity. In one of the colonies, for instance, they have no

municipal system at all. In another, the municipal system is merely permissive, and has not been adopted to any extent. Although, therefore, a legislative union was found to be almost impracticable, it was understood, so far as we could influence the future, that the first act of the Confederate Government should be to procure an assimilation of the statutory law of all those provinces, which has, as its root and foundation, the common law of England. But to prevent local interests from being over-ridden, the same section makes provision, that, while power is given to the General Legislature to deal with this subject, no change in this respect should have the force and authority of law in any province until sanctioned by the Legislature of that province. The General Legislature is to have power to establish a general Court of Appeal for the Federated Provinces. Although the Canadian Legislature has always had the power to establish a Court of Appeal, to which appeals may be made from the courts of Upper and Lower Canada, we have never availed ourselves of the power. Upper Canada has its own Court of Appeal, so has Lower Canada. And this system will continue until a General Court of Appeal shall be established by the General Legislature. The Constitution does not provide that such a court shall be established. There are many arguments for and against the establishment of such a court. But it was thought wise and expedient to put into the Constitution a power to the General Legislature, that, if after full consideration they think it advisable to establish a General Court of Appeal from all the Superior

Courts of all the provinces, they may do so.[1] I shall not go over the other powers that are conferred on the General Parliament. Most of them refer to matters of financial and commercial interest, and I leave those subjects in other and better hands. Besides all the powers that are specifically given, the 37th and last item of this portion of the Constitution confers on the General Legislature the general mass of sovereign legislation, the power to legislate on 'all matters of a general character, not specially and exclusively reserved for the local governments and legislatures.' This is precisely the provision which is wanting in the Constitution of the United States. It is here that we find the weakness of the American system—the point where the American Constitution breaks down. It is in itself a wise and necessary provision. We thereby strengthen the Central Parliament, and make the Confederation one people and one government, instead of five peoples and five governments, with merely a point of authority connecting us to a limited and insufficient extent.

With respect to the local governments, it is provided that each shall be governed by a chief executive officer, who shall be nominated by the General Government. As this is to be one united province, with the local governments and legislatures subordinate to the General Government and Legislature, it is obvious that the chief officer in each of the provinces must be subor-

[1] A Supreme Court was created in 1875; from it an appeal to the Privy Council lies by special leave of the latter body in all civil cases.

dinate as well. The General Government assumes towards the local governments precisely the same position as the Imperial Government holds with respect to each of the colonies now: so that as the Lieutenant-Governor of each of the different provinces is now appointed directly by the Queen, and is directly responsible, and reports directly to her, so will the executives of the local governments hereafter be subordinate to the Representative of the Queen, and be responsible and report to him. Objection has been taken that there is an infringement of the Royal prerogative in giving the pardoning power to the local governors, who are not appointed directly by the Crown, but only indirectly by the Chief Executive of the Confederation, who is appointed by the Crown. This provision was inserted in the Constitution on account of the practical difficulty which must arise if the power is confined to the Governor-General. For example, if a question arose about the discharge of a prisoner convicted of a minor offence, say in Newfoundland, who might be in imminent danger of losing his life if he remained in confinement, the exercise of the pardoning power might come too late if it were necessary to wait for the action of the Governor-General. It must be remembered that the pardoning power not only extends to capital cases, but to every case of conviction and sentence, no matter how trifling—even to the case of a fine in the nature of a sentence on a criminal conviction. It extends to innumerable cases, where, if the responsibility for its exercise were thrown on the General

Executive, it could not be so satisfactorily discharged. Of course there must be, in each province, a legal adviser of the Executive, occupying the position of our Attorney-General, as there is in every state of the American Union. This officer will be an officer of the Local Government; but, if the pardoning power is reserved for the Chief Executive, there must, in every case where the exercise of the pardoning power is sought, be a direct communication and report from the local law officer to the Governor-General. The practical inconvenience of this was felt to be so great, that it was thought well to propose the arrangement we did, without any desire to infringe upon the prerogatives of the Crown, for our whole action shows that the Conference, in every step they took, were actuated by a desire to guard zealously these prerogatives. It is a subject, however, of Imperial interest, and if the Imperial Government and Imperial Parliament are not convinced by the arguments we will be able to press upon them for the continuation of that clause, then, of course, as the overruling power, they may set it aside.[1]

There are numerous subjects which belong, of right, both to the Local and the General Parliaments. In all these cases it is provided, in order to prevent a conflict of authority, that where there is concurrent jurisdiction in the General

[1] In the constitution as finally adopted in the *British North America Act*, 1867, no power of pardon is given to the Lieutenant-Governors, but it has been held that, as part of the executive power, it belongs to them in respect of offences against provincial law.

and the Local Parliaments, the same rule should apply as now applies in cases where there is concurrent jurisdiction in the Imperial and in the Provincial Parliaments, and that when the legislation of the one is adverse to or contradictory of the legislation of the other, in all such cases the action of the General Parliament must overrule, *ex necessitate*, the action of the Local Legislature. We have introduced also all those provisions which are necessary in order to the full working out of the British Constitution in these provinces. We provide that there shall be no money votes, unless those votes are introduced in the popular branch of the Legislature on the authority of the responsible advisers of the Crown —those with whom the responsibility rests of equalizing revenue and expenditure,—that there can be no expenditure or authorization of expenditure by Address or in any other way unless initiated by the Crown on the advice of its responsible advisers. . . .

The last resolution of any importance is one which, although not affecting the substance of the Constitution, is of interest to us all. It is that 'her Majesty the Queen be solicited to determine the rank and name of the federated provinces.' I do not know whether there will be any expression of opinion in this House on this subject—whether we are to be a vice-royalty, or whether we are still to retain our name and rank as a province. But I have no doubt her Majesty will give the matter her gracious consideration, that she will give us a name satisfactory to us all, and that the rank she will confer upon us will

be a rank worthy of our position, of our resources, and of our future. Let me again, before I sit down, impress upon this House the necessity of meeting this question in a spirit of compromise, with a disposition to judge the matter as a whole, to consider whether really it is for the benefit and advantage of the country to form a Confederation of all the provinces; and if honourable gentlemen, whatever may have been their preconceived ideas as to the merits of the details of this measure, whatever may still be their opinions as to these details, if they really believe that the scheme is one by which the prosperity of the country will be increased, and its future progress secured, I ask them to yield their own views, and to deal with the scheme according to its merits as one great whole. One argument, but not a strong one, has been used against this Confederation, that it is an advance towards independence. Some are apprehensive that the very fact of our forming this union will hasten the time when we shall be severed from the Mother Country. I have no apprehension of that kind. I believe it will have the contrary effect. I believe that as we grow stronger, that as it is felt in England we have become a people, able from our union, our strength, our population, and the development of our resources, to take our position among the nations of the world, she will be less willing to part with us than she would be now, when we are broken up into a number of insignificant colonies, subject to attack piecemeal without any concerted action or common organization of defence. I am strongly of

opinion that year by year, as we grow in population and strength, England will more and more see the advantages of maintaining the alliance between British North America and herself. Does any one imagine that, when our population, instead of three and a half, will be seven millions, as it will be ere many years pass, we would be one whit more willing than now to sever the connexion with England? Would not those seven millions be just as anxious to maintain their allegiance to the Queen and their connexion with the Mother Country, as we are now? Will the addition to our numbers of the people of the Lower Provinces in any way lessen our desire to continue our connexion with the Mother Country? I believe the people of Canada East and West to be truly loyal. But, if they can by possibility be exceeded in loyalty, it is by the inhabitants of the Maritime Provinces. Loyalty with them is an overruling passion. In all parts of the Lower Provinces there is a rivalry between the opposing political parties as to which shall most strongly express and most effectively carry out the principle of loyalty to her Majesty, and to the British Crown. When this union takes place, we will be at the outset no inconsiderable people. We find ourselves with a population approaching four millions of souls. Such a population in Europe would make a second, or at least, a third rate power. And with a rapidly increasing population—for I am satisfied that under this union our population will increase in a still greater ratio than ever before—with increased credit—with a higher position in the eyes of Europe—

with the increased security we can offer to immigrants, who would naturally prefer to seek a new home in what is known to them as a great country, than in any one little colony or another—with all this I am satisfied that, great as has been our increase in the last twenty-five years since the union between Upper and Lower Canada, our future progress, during the next quarter of a century, will be vastly greater. And when, by means of this rapid increase, we become a nation of eight or nine millions of inhabitants, our alliance will be worthy of being sought by the great nations of the earth. I am proud to believe that our desire for a permanent alliance will be reciprocated in England. I know that there is a party in England—but it is inconsiderable in numbers, though strong in intellect and power—which speaks of the desirability of getting rid of the colonies; but I believe such is not the feeling of the statesmen and the people of England. I believe it will never be the deliberately expressed determination of the Government of Great Britain. The colonies are now in a transition state. Gradually a different colonial system is being developed—and it will become, year by year, less a case of dependence on our part, and of overruling protection on the part of the Mother Country, and more a case of a healthy and cordial alliance. Instead of looking upon us as a merely dependent colony, England will have in us a friendly nation—a subordinate but still a powerful people—to stand by her in North America in peace or in war. The people of Australia will be such another subordinate nation. And England

will have this advantage, if her colonies progress under the new colonial system, as I believe they will, that, though at war with all the rest of the world, she will be able to look to the subordinate nations in alliance with her and owning allegiance to the same Sovereign, who will assist in enabling her again to meet the whole world in arms, as she has done before. And if, in the great Napoleonic war, with every port in Europe closed against her commerce, she was yet able to hold her own, how much more will that be the case when she has a colonial empire rapidly increasing in power, in wealth, in influence, and in position? It is true that we stand in danger, as we have stood in danger again and again in Canada, of being plunged into war and suffering all its dreadful consequences, as the result of causes over which we have no control, by reason of this connexion. This, however, did not intimidate us. At the very mention of the prospect of a war some time ago, how were the feelings of the people aroused from one extremity of British America to the other, and preparations made for meeting its worst consequences! Although the people of this country are fully aware of the horrors of war—should a war arise, unfortunately, between the United States and England, and we all pray it never may—they are still ready to encounter all perils of that kind, for the sake of the connexion with England. There is not one adverse voice, not one adverse opinion on that point. We all feel the advantages we derive from our connexion with England. So long as that alliance is maintained, we enjoy, under her

protection, the privileges of constitutional liberty according to the British system. We will enjoy here that which is the great test of constitutional freedom—we will have the rights of the minority respected. In all countries the rights of the majority take care of themselves, but it is only in countries like England, enjoying constitutional liberty, and safe from the tyranny of a single despot or of an unbridled democracy, that the rights of minorities are regarded. So long, too, as we form a portion of the British Empire, we shall have the example of her free institutions, of the high standard of the character of her statesmen and public men, of the purity of her legislation, and the upright administration of her laws. In this younger country one great advantage of our connexion with Great Britain will be, that, under her auspices, inspired by her example, a portion of her empire, our public men will be actuated by principles similar to those which actuate the statesmen at home. These, although not material, physical benefits, of which you can make an arithmetical calculation, are of such overwhelming advantage to our future interests and standing as a nation, that to obtain them is well worthy of any sacrifices we may be called upon to make, and the people of this country are ready to make them. We should feel also sincerely grateful to beneficent Providence that we have had the opportunity vouchsafed us of calmly considering this great constitutional change, this peaceful revolution—that we have not been hurried into it, like the United States, by the exigencies of war—that we have not had a violent

revolutionary period forced on us, as in other nations, by hostile action from without, or by domestic dissensions within. Here we are in peace and prosperity, under the fostering government of Great Britain—a dependent people, with a government having only a limited and delegated authority, and yet allowed, without restriction, and without jealousy on the part of the Mother Country, to legislate for ourselves, and peacefully and deliberately to consider and determine the future of Canada and of British North America. It is our happiness to know the expression of the will of our Gracious Sovereign, through her Ministers, that we have her full sanction for our deliberations, that her only solicitude is that we shall adopt a system which shall be really for our advantage, and that she promises to sanction whatever conclusion after full deliberation we may arrive at as to the best mode of securing the well-being—the present and future prosperity—of British America. It is our privilege and happiness to be in such a position, and we cannot be too grateful for the blessings thus conferred upon us. I must apologise for having detained you so long—for having gone perhaps too much into tedious details with reference to the questions bearing on the Constitution now submitted to this House. In conclusion, I would again implore the House not to let this opportunity pass. It is an opportunity that may never recur. At the risk of repeating myself, I would say, it was only by a happy concurrence of circumstances that we were enabled to bring this great question to its present position. If

we do not take advantage of the time, if we show ourselves unequal to the occasion, it may never return, and we shall hereafter bitterly and unavailingly regret having failed to embrace the happy opportunity now offered of founding a great nation under the fostering care of Great Britain, and our Sovereign Lady, Queen Victoria.

4. THE RIGHT HONOURABLE EDWARD CARDWELL TO VISCOUNT MONCK

DOWNING STREET,
June 17, 1865.

MY LORD,

I have the honour to inform your Lordship that several conferences have been held between the four Canadian Ministers who were deputed, under the Minute of your Executive Council of March 24th, to proceed to England to confer with her Majesty's Government on the part of Canada, and the Duke of Somerset, the Earl de Grey, Mr. Gladstone, and myself, on the part of her Majesty's Government.

On the first subject referred to in the Minute, that of the Confederation of the British North American Provinces, we repeated on the part of the Cabinet the assurances which had already been given of the determination of her Majesty's Government to use every proper means of influence to carry into effect without delay the proposed Confederation.

On the second point, we entered into a full consideration of the important subject of the defence of Canada, not with any apprehension on either side that the friendly relations now happily subsisting between this country and the United States are likely to be disturbed, but impressed

with the conviction that the safety of the Empire from possible attack ought to depend upon its own strength and the due application of its own resources. We reminded the Canadian Ministers that on the part of the Imperial Government we had obtained a vote of money for improving the fortifications of Quebec. We assured them that so soon as that vote had been obtained the necessary instructions had been sent out for the immediate execution of the works, which would be prosecuted with despatch; and we reminded them of the suggestion her Majesty's Government had made to them to proceed with the fortifications of Montreal.

The Canadian Ministers, in reply, expressed unreservedly the desire of Canada to devote her whole resources, both in men and money, for the maintenance of her connexion with the Mother Country; and their full belief in the readiness of the Canadian Parliament to make known that determination in the most authentic manner. They said they had increased the expenditure for their militia from 300,000 to 1,000,000 dollars, and would agree to train that force to the satisfaction of the Secretary of State for War, provided the cost did not exceed the last-mentioned sum annually, while the question of confederation is pending. They said they were unwilling to separate the question of the works at Montreal from the question of the works west of that place, and from the question of a naval armament on Lake Ontario. That the execution of the whole of these works would render it necessary for them to have recourse to a loan, which could only be

raised with the guarantee of the Imperial Parliament. They were ready to propose to their Legislature on their return a measure for this purpose, provided that the guarantee of the Imperial Parliament was given now, and that they were authorized to communicate to the Parliament of Canada the assurance that, the occasion arising, England will have prepared an adequate naval force for Lake Ontario. They thought that if the guarantee were not obtained now it was probable that the Canadian Government and Parliament would think it desirable that the question of defensive works should await the decision of the Government and Legislature of the United Provinces.

On the part of Her Majesty's Government we assented to the reasonableness of the proposal that if the Province undertook the primary liability for the works of defence mentioned in the letter of Lieutenant-Colonel Jervois, and showed a sufficient security, her Majesty's Government should apply to Parliament for a guarantee for the amount required; and we said that her Majesty's Government would furnish the armaments for the works. But we said that the desire and decision of the Provincial Legislature ought to be pronounced before any application was made to the Imperial Parliament. On the subject of a Naval Force for Lake Ontario, we said that, apart from any question of expediency, the convention subsisting between this country and the United States rendered it impossible for either nation to place more than the specified number of armed vessels on the lakes in time of peace.

In case of war it would, as a matter of course, be the duty of any Government in this country to apply its means of naval defence according to the judgment it might form upon the exigencies of each particular time, and the Canadian Ministers might be assured that her Majesty's Government would not permit itself to be found in such a position as to be unable to discharge its duty in this respect. This was the only assurance the Canadian Ministers could expect or we could give.

Upon a review of the whole matter, the Canadian Ministers reverted to the proposal which has been mentioned above, that priority in point of time should be given to the Confederation of the Provinces. To this, we, on the part of her Majesty's Government, assented. In conformity, however, with a wish strongly expressed by the Canadian Government we further said that if, upon future consideration, the Canadian Government should desire to anticipate the Confederation, and to propose that Canada should execute the works, they would doubtless communicate to her Majesty's Government that decision; and we trusted that after what had passed in these conferences they would feel assured that any such communication would be received by us in the most friendly spirit.

On the third point, the Reciprocity Treaty,[1] the Canadian Ministers represented the great importance to Canada of the renewal of that treaty,

[1] Concluded by Lord Elgin with the United States Government in 1854. Its expiration in 1866 was followed by many efforts on the part of Canada to secure its renewal; cf. above, p. 289.

and requested that Sir F. Bruce might be put in communication with the Government of Lord Monck upon the subject. We replied that Sir F. Bruce had already received instructions to negotiate for a renewal of the treaty, and to act in concert with the Government of Canada.

On the fourth point, the subject of the North-western Territory, the Canadian Ministers desired that that territory should be made over to Canada, and undertook to negotiate with the Hudson's Bay Company for the termination of their rights, on condition that the indemnity, if any, should be paid by a loan to be raised by Canada under the Imperial guarantee. With the sanction of the Cabinet, we assented to this proposal, undertaking that if the negotiation should be successful we, on the part of the Crown, being satisfied that the amount of the indemnity was reasonable, and the security sufficient, would apply to the Imperial Parliament to sanction the arrangement and to guarantee the amount.

On the last point, it seemed sufficient that her Majesty's Government should accept the assurances given by the Canadian Ministers on the part of Canada, that that Province is ready to devote all her resources both in men and money to the maintenance of her connexion with the Mother Country, and should assure them in return that the Imperial Government fully acknowledged the reciprocal obligation of defending every portion of the Empire with all the resources at its command.

The Canadian Ministers in conclusion said, that they hoped it would be understood that the pre-

sent communications did not in any way affect or alter the correspondence which had already passed between the Imperial Government and the Governments of the British North American Provinces on the subject of the Intercolonial Railway. To this we entirely agree.

I have, &c.

EDWARD CARDWELL.

V

THE COMMONWEALTH OF AUSTRALIA

THE COMMONWEALTH OF AUSTRALIA

Right Hon. J. Chamberlain's Speech on the Introduction of the Constitution Bill in the House of Commons, May 14, 1900

I have no doubt there are many Members of the House who will be inclined to envy me the privilege that has fallen to my lot in introducing this Bill for the federation of some of our greatest colonies—a Bill which marks an era in the history of Australia, and is a great and important step towards the organization of the British Empire. This Bill, which is the result of the careful and prolonged labours of the ablest statesmen in Australia, enables that great island continent to enter at once the widening circle of English-speaking nations. No longer will she be a congeries of States, each of them separate from and entirely independent of the others, a position which any one will see might possibly in the future, through the natural consequences of competition, become a source of danger or lead, at any rate, to friction and to weakness. But, if this Bill passes, in future Australia will be, in the words of the preamble of the Bill which I am about to introduce, 'an indissoluble federal Commonwealth firmly united for many of the most important functions of government.' After it has been passed there will be for Australia under

one Administration a uniform postal and telegraphic service, and provision is made making it possible hereafter for railway communication to be under similar control. In the meantime everything which has to do with the exterior relations of the six colonies concerned will be a matter for the Commonwealth, and not for the individual Governments; a common tariff will be established for all the colonies; there will be at the same time inter-colonial free trade, and, what is perhaps more important than all, in future there will be a common form and a common control of national defences. Now, this is a consummation long expected and earnestly hoped for by the people of this country. We believe that it is in the interest of Australia, and that has always been with us the first consideration. But we recognize that it is also in our interest as well; we believe the relations between ourselves and these colonies will be simplified, will be more frequent and unrestricted, and, if it be possible, though I hardly think it is, will be more cordial when we have to deal with a single central authority instead of having severally to consult six independent Governments. Whatever is good for Australia is good for the whole British Empire. Therefore, we all of us—independently altogether of party, whether at home or in any other portion of the Empire—rejoice at this proposal, welcome the new birth of which we are witnesses, and anticipate for these great, free, and progressive communities a future even more prosperous than their past, and an honourable and important position in the history of the

Anglo-Saxon race. I hope the House will not think I am taking up its time unnecessarily if, in a few brief words, I give some account of the history of this great movement. The House is aware that the first colonization of Australia took place in New South Wales in 1788, and that for nearly a generation after that time, as other settlements were made at vast distances along the coast, they all came in some measure under the control of what I may call the central Administration which existed at Sydney. But it will be readily seen that, as these settlements gradually became more populous and of greater importance, the difficulty of such a system of central administration became almost intolerable; and accordingly in 1825 what was then known as Van Diemen's Land became a separate colony under the name of Tasmania, and the example of Tasmania was followed in succession by Western Australia, South Australia, Victoria, and lastly by Queensland in 1859. Victoria, which was then known as the Port Philip Settlement, was separated from New South Wales by Act of Parliament in 1850, but in 1847, when giving assent to this proposal, Earl Grey, to whom we all must feel we owe most of the principles by which our colonial policy is guided, laid down the views then entertained by him and her Majesty's Government of the time in reference to the ultimate necessity for some central authority in Australia. He said:

> It is necessary, while providing for local management of local interests, we should not omit to provide for the central management of all interests not local.

> Questions having a bearing on the interests of the Empire may be left appropriately to the Imperial Parliament; but there are questions which, though local to Australia collectively, are not merely local in relation to one colony, though each may have part in a common interest, and in regard to which it may be essential to the welfare of all to have a single authority, and they may more appropriately and effectually be decided by a single authority in Australia than by the more remote, less accessible, and, in truth, less competent authority of Parliament.

It will be seen that Earl Grey foresaw that in the future, at any rate, this necessity would arise. He was a little before his time, for, when, in 1850, he introduced proposals for constituting such central authority, his proposals met with no general support, and the Bill, when it became an Act, was confined to the establishment of the colony of Victoria, separating it from the older colony of New South Wales. But from this time, and continuously down to the present day, the subject of some closer union between the separate Australian provinces or States has attracted the attention of all far-seeing and patriotic statesmen, especially in Australia. And among those who laboured in this movement I think it would be ungrateful not to mention the name of Sir Henry Parkes. Sir Henry Parkes was certainly a most remarkable individuality; he had his peculiarities, as most of us have, but no one would deny that he was a man of great capacity, of great power of work, of great resource, and of intense local patriotism; and I think that to-day, when the consummation of the work for which he laboured so long is clearly within sight, we may well bear

his memory in respectful regard. In 1867 the Dominion of Canada was established. This gave to Sir Henry Parkes an opportunity which he was not slow to seize, and, although he had raised the question before, he now again emphatically urged his fellow-Australians to follow the example of the Dominion of Canada. Still, however, no progress was made. A little later the somewhat sinister activity of certain foreign Powers in the Pacific brought the matter home in a clearer degree to the majority of the Australian people; and in 1883, accordingly, a conference was called, again at the instance of Sir Henry Parkes, of all the colonies, which resulted in certain recommendations, in the adoption of certain general principles, which led almost immediately[1] to the establishment of what is known as the Federal Council. The Federal Council, however, although very wisely designed as an experimental step at a time when there was still much to be done before the colonies themselves could see the necessity of a closer union—the Federal Council was not a very effective instrument; it had restricted legislative power, no executive power, it was neither more nor less than an advisory council, and under the circumstances it did not excite any warm popularity in Australia. The great colony of New South Wales refused from the first to attend its deliberations; South Australia subsequently withdrew from them; and now, having served its turn, this Federal Council will be abolished by the Bill which I am about to introduce. Then, again,

[1] In 1885 by the Imperial Act 48 & 49 Vict. c. 60.

after the establishment of the Federal Council, and coming down to 1890, a good deal of uneasiness, the result, I think, largely of what was known as the Russian scare, was felt in Australia as to the state of Australian defences, and accordingly another conference was then held in Melbourne. It was followed by a convention in Sydney in 1891, when the first great advance towards a federal union was at last made, because the convention of Sydney in 1891 produced a draft of a Commonwealth Bill which has been the foundation for all subsequent discussion. Those who are acquainted with this draft, which has, of course, very many points of resemblance with the present measure, will, I am sure, recognize the great constructive skill with which it was framed; and they may be interested to know that its great qualities are largely, if not chiefly, due to the labour given to it by Sir Samuel Griffith, the present Chief Justice of Queensland, and by Mr. Barton, who was then Attorney-General in Sir George Dibbs' Government, and who is now the distinguished representative of New South Wales among the delegates who have recently been our guests. Well, this draft was then submitted to the local Parliaments, but still, although quiet progress had been made, there was not sufficient popular force behind the movement to secure the Bill being brought into operation; and it was evident to those who were interested in the movement, and particularly I think to my honourable friend Mr. Barton, that the next step must be to educate the people of Australia themselves to the necessity and the

importance of this movement. Accordingly, I believe it is to him that we owe the formation of what is known as the Federal League, which went up and down the country throughout Australia informing the people of the nature of their proposal, explaining the draft, and urging the desirability of its adoption. And so successful was this educational movement that in 1895 the Premiers, meeting again, agreed to bring forward enabling Bills in their several Parliaments providing a convention of delegates which should be instructed and empowered to frame a constitution. This constitution was then to be submitted to the separate Parliaments sitting in Grand Committee—in Committee of the whole House—and the amendments which might be made in the several Parliaments were then to be referred back to another meeting of the convention and considered by them, and a final draft after such consideration was then to be submitted to the people of the several States in the shape of a general referendum. The convention, accordingly, was held at Adelaide in March, 1897; and certainly, I think, any one who reads the history of the debates which took place then will agree with me that it would have been absolutely impossible to have collected together more capable, more able, more efficient representatives of Australian feeling than met in that convention. I say that, but I must make one exception. Owing to circumstances on which I need not dwell, the Government of Queensland refused to pass an enabling Bill, and consequently at this convention Queensland was not represented; but the

other colonies were all present. The convention went to work in that businesslike spirit which we flatter ourselves distinguishes British proceedings throughout the world. In the first instance they considered and passed resolutions settling the principle upon which they would proceed; then these resolutions were divided amongst a number of committees, and considered by them, and the result was afterwards discussed and finally settled in the whole convention. The draft so prepared went to the different Parliaments, and was returned by them to the Sydney convention in 1897 with their amendments. That convention adjourned to Melbourne in 1898, and the final draft—as it was submitted to her Majesty's Government the other day by the Parliaments of the five colonies who may be described as the federating colonies—the draft as then submitted was finally passed by the convention. It had still to go through the ordeal of a referendum. The first referendum showed 219,000 votes for and 108,000 against the Bill. Unfortunately, or as it may be considered fortunately, the New South Wales majority, although there was a majority in favour of the Bill, did not reach the amount of 80,000 votes, which had been fixed as the minimum to justify the adoption of the measure. Accordingly on that occasion the Bill was not passed by that colony. New South Wales then took the opportunity of proposing further amendments. These amendments were considered in a friendly spirit by another meeting of the Premiers, and they were to some extent adopted, the proceedings being, perhaps, rather

in the nature of a compromise. But still I think in substance the wishes of New South Wales were complied with, and arrangements were then made for a second referendum. On this occasion the referendum took place in the five colonies—I should have said previous to the first referendum taking place there were only four colonies, Queensland and Western Australia being excluded—but in the second and last referendum Queensland took part for the first time, and the results were 377,000 votes for the Bill and 141,500 against. Western Australia did not join in this decision, but pressed for certain further amendments, which, however, the Premiers decided it was too late for them to consider. And so the Bill is presented to us. It comes with the authority behind it of five federating colonies, and it is this Bill, with a few alterations, but substantially this Bill, with 128 clauses, and dealing with a vast number, probably with hundreds, or even thousands, of separate propositions of the greatest importance, which I have to ask leave to introduce. I think it will be admitted that this Bill is a Bill worthy of all the care and the labour which has been bestowed upon it. I think I may describe it as, and it certainly is, a monument of legislative competency. Of course, the framers of the Bill themselves are perfectly ready to admit that it may not be perfect, that amendments may ultimately be required in it, and that experience may show that something has been omitted, or that something has been placed within its four corners which might with advantage have been left out. But provision has been made

for any such amendment in the Bill itself; and, considering the magnitude and the variety of the interests that we are to deal with, the intricacy and the importance of the subjects with which the Bill has to deal, I think that no praise can be too high for those whose moderation, patience, skill, mutual consideration, and patriotism have been able to produce so great a result. It would be absolutely impossible for me, within anything like a reasonable time, to refer to the multifarious details of this great measure, nor do I think it necessary to do so, because I cannot conceive that the House will be inclined to discuss these details in any critical spirit; but I might be allowed, and it would interest the House, I think, if I call attention to the general scope of the measure and to some of its most striking features. I think it is true to say that, on the whole, this new Constitution, although it is in important respects unlike every other constitution at present existing, still in the main, and more than any other, follows the Constitution of the United States of America. But it would be, perhaps, more interesting to us to contrast it with the Constitution of our own colony of Canada. The differences between the Constitution of the Dominion and the Constitution of the new Commonwealth are, I think, to be explained in a certain fundamental diversity in the position of the two colonies, and also in the methods by which the Constitution has been brought into existence. In the case of Canada, the delegates came here and the Constitution was settled here in conference with her Majesty's Government, and was the result, to

some extent at any rate, of their advice and suggestion. In the case of Australia, the people of Australia, through their representatives, have worked alone, without either inviting or desiring any assistance from outside. In Australia, it must also be remembered, the separate States have enjoyed for a much longer period than had the provinces of Canada complete independent self-governing existence, and, accordingly, while in Canada the people had before them at the time that the Constitution was decided upon the warning, I might almost say, afforded by the civil war in America of the danger of exaggerating State rights, and while the special provinces had no desire to put forward those rights in too emphatic a manner, in Australia there was no such example to fear, and the separate colonies had enjoyed for so long such great powers that they were naturally unwilling to part with them to anything like the same extent. Accordingly, while in Canada the result of the Constitution was substantially to amalgamate the provinces into one Dominion, the Constitution of Australia created a federation for distinctly definite and limited objects of a number of independent States, and State rights have throughout been jealously preserved. In Canada everything that was not given expressly to the provinces went to the Central Government. In Australia the Central Government has only powers over matters which are expressly stated and defined in the Constitution. In Canada the Senate was a body which represented particular provinces substantially in proportion to their population. In Australia the

Senate consists of six members from all the States —that is to say, an equal number, whatever may be the size or the population; and the mode of the election of the Senate is also different from that of Canada, and, I believe, entirely novel. In Canada the Senate was nominated for life on the advice of the Ministers. In the United States, as we all know, the Senate is elected by the Legislatures of the several States. In Australia the Senate is to be elected at the same election as the Lower House, but each State is to vote, not in the separate constituencies into which it is divided for the purposes of the Lower House, but as one constituency—a *scrutin de liste*, in fact, as the French call it—except in the case of Queensland, where there may be divisions. The Upper House is to serve for six years instead of three; but those are the only differences which separate it in composition, qualification, or constitution from the composition of the Lower House. The Lower House is to be elected according to the electoral laws of the several States, but according to population, and a very ingenious device has been resorted to in order to prevent the numbers of the Lower House from ever becoming excessive. It is provided by the Constitution that the Members of the Lower House shall, as far as possible, be exactly double the numbers of the Upper House or Senate. I should add, perhaps, that the Members of both Houses will be paid, and paid the same salary. There is also an example which I cannot help thinking might be wisely imitated by ourselves. Ministers on taking office do not vacate their seats. Then there is a most ingenious

and complicated provision to prevent a possible deadlock between the two Houses; for although they are, as I have said, elected practically by the same constituency, I think it is evident that the differences in the manner of election may sometimes result in a diversity of opinion between the two chambers. In that case—and here, also, I cannot help thinking that hon. Members who are interested in the subject may find many useful suggestions—the course of the operation is this. Measures may be twice rejected by the Senate, as I understand, in two separate sessions of Parliament. After that the Government may dissolve both Houses. Both Houses will be re-elected at the same time. If, after that re-election the Senate should again—a third time—reject a measure, then there is to be a joint sitting of both Houses, and a decision is to be taken by a simple majority of both Houses. That applies to the case of ordinary measures, but, if the question between the two Houses is an amendment of the Constitution, then a somewhat different course is followed. The proposed amendment may be twice rejected by the Senate, and if after that the Houses do not come to an agreement, then the amendment will be settled by means of a referendum, and is to be decided by the majority of votes in a majority of the States. Now, to this new Parliament so constituted thirty-nine distinct subjects have been expressly referred. Amongst them are the tariff, post office and telegraph services, defence, currency, bankruptcy, marriage and divorce, and old-age pensions, and also the following matters—to which I call special

attention because they involve interests outside Australia as well as local—first, the fisheries in Australian waters, beyond the territorial limits of Australia; secondly, copyright; thirdly, legislation dealing with the people of any race not being natives of any of the States (I think that has in view legislation in regard to Asiatics); fourthly, 'external affairs,' a phrase of great breadth and vagueness, which, unless interpreted and controlled by some other provision, might easily, it will be seen, give rise to serious difficulties; and, fifthly, the relations with the islands of the Pacific, which also involves, of course, many questions in which foreign nations are concerned. It will be seen that almost all the points to which I have thus called special attention are matters in which the Imperial Government may have to deal with foreign countries. It is important, therefore—I say this in passing, although I shall deal with it more at length,—it is important that measures of this kind, which may involve the Imperial Government in the most serious responsibility, should be interpreted by a tribunal in which all parties have confidence. There are also in the Bill some complicated provisions for dealing with the division of the receipts from Customs among the several States, for the imposition of new duties, and the division of old ones. I have mentioned, at all events, the most important and the most interesting matters which are raised by this Bill, and I think it is evident, from even this very brief and inadequate résumé, that there are a great number of propositions in the Bill which, if it were a

case of freely discussing a Constitution of our own, would arouse much difference of opinion. If we had been invited to frame a Constitution, or if we had been consulted after the Constitution had been framed, it is quite possible—I do not say it would have been so—it is quite possible we might have had many suggestions to make and some amendments to offer. But that is not the position. The Bill has been prepared without reference to us. It represents substantially and in most of its features the general opinion of the Australian people; and although I differ totally from those who have said that the Australian people do not desire that this great measure, the result of the labour of their representatives, should receive in the Imperial Parliament the fullest consideration and even the fullest discussion; although I deny altogether that the Australian people have ever considered, or shown that they consider, the Imperial Parliament as merely a Court for the registration of their decrees; and although I am convinced that the Australian people will be neither offended nor insulted if we alter here a word or there a word, or even a clause, in this Bill, I think, on the other hand, they do expect that we shall have a reasonable regard to the labours which they have already expended upon this measure, and to the general feeling of the Australian people, wherever it has been really and conclusively shown, and to those rights of self-government of which they have made so magnificent a use and which we have so freely and gladly conceded. Now, it is therefore on these main principles that the Government

have proceeded in dealing with this Bill. On the one hand, we have accepted without demur, and we shall ask the House of Commons to accept, every point in this Bill, every word, every line, every clause, which deals exclusively with the interests of Australia. We may be vain enough to think that we might have made improvements for the advantage of Australia, but we recognize that they are the best judges in their own case, and we are quite content that the views of their representatives should be in these matters accepted as final; and the result of that is that the Bill which I hope to present to the House to-night is, so far as ninety-nine hundredths of it, I think I might almost say 999-thousandths of it is concerned—as regards the vast proportion of the Bill—exactly the same as that which passed the referendum of the Australian people. But the second principle which I ask the House to assent to, and to which we have given application by certain amendments we have made in the Bill, is that wherever the Bill touches the interests of the Empire as a whole, or the interests of her Majesty's subjects, or of her Majesty's possessions outside Australia, the Imperial Parliament occupies a position of trust which it is not the desire of the Empire, and which I do not believe for a moment it is the desire of Australia, that we should fulfil in any perfunctory or formal manner. As I say, we have applied these principles in dealing with the Bill. Two colonies—Western Australia and New Zealand—appealed to her Majesty's Government, and were represented here by special delegates, and asked us to

interfere to secure for them certain amendments in the Bill. I may say her Majesty's Government were inclined to sympathize with the desire of both these colonies. Her Majesty's Government would have been very glad indeed could their wishes have been complied with; but, as we considered that it was an entirely Australian question, as it was a difference of opinion arising between the Australian colonies, in which neither the Empire nor the Mother Country were themselves directly concerned, we felt we were not justified in pressing these claims, or in insisting upon securing their adoption as against the majority of the colonies in Australia. Western Australia asked for the right to come in as an original State, on terms slightly different from those provided in the Constitution. The differences arose as to the question of tariffs; and undoubtedly it was admitted by the five federating colonies, that, owing to the peculiar position of Western Australia, she was entitled to some period of interval before she adopted the common tariff of the Commonwealth; and accordingly five years were allowed her for that purpose, subject to the condition that each year one-fifth of any difference that might exist between the tariff of Western Australia and the tariff of the Commonwealth should be reduced. I confess that it seemed to me that a condition of that kind imposed, and I still think it imposes, on the financial system of Western Australia a very considerable strain. I do not envy the position of the Chancellor of the Exchequer who is beforehand tied down by a statutory and con-

stitutional law to reduce his tariff by one-fifth in every successive year for five years to come. It is perfectly evident that that must interfere to a considerable extent with the production of his annual budget. But, as I have said, having appealed to the Premiers, and having put forward the views of Western Australia, and having received from them the statement that they did not feel justified in assenting to any amendments, we reported the result of our inquiries to Sir John Forrest, the highly-respected Premier of Western Australia; and we ventured—although it was perhaps hardly our business—in the interest, as we believed, of Australia as a whole and even of Western Australia, to press upon him that his Government should now reconsider their position, and that in spite of the arrangements of which they complained they should seek to enter the Federation as an original State. I am very happy to say—as will be seen by the Blue Book which I have laid upon the table—that Sir John Forrest and his Government have assented to our request to take this step. Their Parliament will be shortly called together; and I hope the result will be that the Constitution will be submitted to the people of Western Australia,[1] and that her Majesty's Government will be able to proclaim the whole of the six colonies of Australia as taking part in this great scheme. The colony of New Zealand made several requests to us. Two of these were, I think, of minor impor-

[1] This step was duly taken, and a vote in favour of the entrance of Western Australia into the Commonwealth recorded.

tance. They were that they should have access to the Supreme Court of the new Federation, and that some arrangement should be made at once for common defence. We considered that there would be no difficulty in dealing with these very important questions as between New Zealand and the Federated Commonwealth after it was formed, and that it was unnecessary to delay the Commonwealth Bill during the discussion of matters which, no doubt, would require a considerable amount of time. The third proposal was that New Zealand should be allowed to enter as an original State at any time within the next seven years—I do not know that the period of seven years was a definite part of the proposition; but, at all events, a considerable period was to be given to them to make their choice. I confess that here also I should have been very glad if the Premiers had seen their way to accept the suggestion. The delegates, however, who were representing the five federating colonies explained, very ably, the difficulties that would arise from such a state of things. They pointed out that great inconvenience might be suffered, especially with regard to the establishment of a tariff, if the federating colonies were under a sort of compulsion to accept another partner at any time during a long period. I felt this decision the more particularly, because I do not hesitate to say that her Majesty's Government and the people of this country are under special obligations to the Government and people of New Zealand. Of all the colonies, all the possessions of her Majesty, including Canada and all the colonies of Australia

—I am excluding the colonies in South Africa—New Zealand, in proportion to her population, supplied the largest contingent to her Majesty's forces, and made the greatest sacrifices. I mentioned this matter in the House a few days ago; but I find I underestimated what New Zealand has done. I am told that, according to population, the New Zealand contingent in South Africa is equivalent to an army sent from this country of 107,000 men. I do think that is a most extraordinary proof of—what shall I say?—of affection and regard for the Mother Country; and if this point of difference had been between the Mother Country and New Zealand I feel quite certain the House would be inclined to make almost any concession that could be asked. But as it was exclusively a matter between New Zealand and the federating colonies, and as the Premiers again put in a *non possumus* and stated that they had no authority to consent at this period to any further amendments, we have had no course open to us but to accept, although we regret, that decision. We could not, I think, fairly press the opinion of a single colony against the unanimous opinion of five.

I now come to the points upon which we think amendment to be necessary. Substantially there is only one point of importance, but in order that I may be perfectly accurate I will mention others, as to which, I think, there will probably be very little debate or opposition. In the first place, there was a blank left in the draft Constitution Bill which it was intended we should fill up as soon as it was known whether Western Australia had joined. We have applied

for the figures requisite to fill up the blank, and, having received them from the Australian colonies, we shall insert them at their request. Then there are certain drafting alterations which are desirable, if not absolutely necessary, in consequence of the probability of the admission of Western Australia as an original State. We have submitted these amendments to the delegates, and, so far as I know at present, no objection of any kind is taken to their insertion. Then, in the third place, there is a matter of more importance, though I am happy to say it is one on which there is no division of opinion. We propose to make clear in the Bill the application of the Colonial Laws Validity Act to the Commonwealth.[1] Doubts have been expressed in the course of the discussion whether the Commonwealth is a colony within the meaning of the Act. The Act, as lawyers in the House are no doubt perfectly well aware, provides, among other things, that where a colonial Act is repugnant to an Imperial statute it shall not be wholly void, but shall only be void so far as repugnancy extends. It was intended as an enabling Act to prevent what otherwise might have occurred—the whole of the colonial statute being rendered void in consequence of its being repugnant on some point to Imperial legislation. The Act is one of great importance, because it defines the extent to which the paramountcy of Imperial legislation goes. The fact that Imperial legislation is paramount has always been admitted

[1] Passed in 1865 in order to remove doubts as to the extent of the power of Colonial legislatures to pass laws.

by the colonies, although the use of the constitutional power has, of course, been extremely rare. The kind of cases in which that paramountcy becomes of importance are such cases as those of the Foreign Enlistment Act and the Merchant Shipping Act. In both of these cases I think it will be admitted to be desirable that there should be legislation for the whole Empire and not conflicting legislation in different parts of the Empire. In the memorandum presented by the delegates on 23rd March they argue that this amendment is altogether unnecessary. They say the Commonwealth appears to the delegates to be clearly a colony and the Federal Parliament to be a legislature within the meaning of the Act; and they cannot think that the larger meaning given to the word 'colony' in Clause 6 can be held to take away the protection of the Act of 1865 for any law passed by the Federal Parliament. Now, I think that the House will feel that there is no difference of opinion as to the merits between us and the delegates. The only point is that they think the amendment is a work of supererogation, but we feel that the matter, involving as it does our foreign relations, is of such vast importance that we ought not to leave a shadow of doubt on the question. It is fair to say—and I wish to call the attention of the House to the fact—that in the last memorandum which was presented by the delegates only a day or two ago they raised for the first time a very very important question—namely, whether the Colonial Laws Validity Act as it stands is a law properly applicable to a great Commonwealth like the Dominion of Canada

and the new Commonwealth of Australia. Her Majesty's Government admit the importance of that question. They admit that it is a very fair point to raise. But, if there is to be any change in regard to the matter, which, as I have said, is of such infinite importance, the greatest care will have to be taken and very considerable delay must necessarily occur. We should have to consult Canada and other colonies before any amendment of that Act could be adopted. I do not object on behalf of her Majesty's Government that the matter is not worthy of consideration. All I say is we have to deal with a provisional period. We cannot delay the passing of the Federation Act in order to discuss this matter. We must have a proper understanding before any change is made; but it will be open to the Federation of Australia and the Dominion of Canada, if they see fit, to raise the matter at a subsequent period, and no doubt, in that case, any views they may express will receive the most careful consideration by her Majesty's Government. Now I come to what I have described as the substantial point of alteration, which of course is the point affecting the question of appeal. This is the only point, I think, on which there can possibly be any important subject of controversy or difference of opinion between ourselves and the Australian representatives. Sir, I wish at the outset to repudiate in the strongest and clearest terms the possibility that any difference of opinion upon what is a great constitutional point, which has hitherto been discussed by the delegates with ourselves in the

most friendly and cordial spirit, can, by any possibility, be a matter of serious conflict between ourselves and the colonies of Australia. I saw with regret a speech made only a few days ago by the right hon. Gentleman the Member for East Fife, at Colchester, and I must say that I think he was a little premature. He certainly prejudged this question without having heard one single word of the case which her Majesty's Government had to put before the House; and he seemed to be speaking from a brief which was supplied, of course, by a single one of the parties.

Mr. Asquith (Fifeshire, E.): No, no!

Mr. Chamberlain: Well, speaking from information—I do not know that the right hon. Gentleman will take exception to that word—speaking from information that came from one side only. Now that is what I complain of; and I think I ought to persuade the right hon. Gentleman to withdraw his speech on this subject. I regret his allusion in connexion with this matter that the revolutionary war in America is a warning to us. Sir, what connexion does the right hon. Gentleman suppose there can be between the two cases? Then, in another part of his speech, he referred to Canada as being exemplar and model. Well, I do not ask for anything more than Canada and South Africa have already most willingly granted.

Mr. Asquith: As far as my memory goes—I have not got the speech with me—my reference to the revolution was in a totally different connexion. It had nothing whatever to do with this question of the appeal.

Mr. Chamberlain: I am extremely glad to have elicited that statement from the right hon. Gentleman. The report which I saw, I confess, was a condensed report.

Mr. Asquith: It was a condensed report.

Mr. Chamberlain: I understood him to refer to the revolution in connexion with this difference of opinion, which as I say must under no circumstances be exaggerated. It is important, of course, but it must be discussed by all parties, and it will be discussed by Australia as well as by ourselves, in a perfectly friendly spirit. I am going very much further than I have done hitherto. We have got to a point in our relations with our self-governing colonies in which I think we recognize, once for all, that these relations depend entirely on their free will and absolute consent. The links between us and them at the present time are very slender. Almost a touch might snap them. But, slender as they are, and slight as they are, although we wish, although I hope, that they will become stronger, still if they are felt irksome by any one of our great colonies, we shall not attempt to force them to wear them. One of these ancient links is precisely this right of appeal by every subject of her Majesty to the Queen in Council. The Bill weakens that—there is no doubt about that—and thereby there opens up, as I shall show, a prospect of causes of friction and irritation between the colonies and ourselves which, in my opinion, would be more numerous and more serious than anything that is likely to result if the right of appeal is retained. Well, how shall we deal with this question? I

am sure the House will feel that there is no man in the House who is more anxious to maintain the good feeling between ourselves and our colonies than I am. Ever since I have been in office that has been my chief desire. Sir, in a case of this kind nothing is more easy than to concede; nothing is more difficult than to refuse. At the same time, believing firmly, as the Government do, that what is asked for in this Bill, as it originally came to us, is not only injurious to the best interests of Australia, but that it would lead to complications which might be destructive of good relations and prejudicial to the unity of the Empire, we feel that we are bound to ask the House to reconsider it. Sir, we believe further—and this is an important point—that opinion has not yet been definitely formed on the subject in Australia, and before, therefore, assenting to a change which may have such serious results, we hold it will be our duty to be quite certain that the demand is a demand that has behind it the whole force of Australian opinion. Now, the new clause, Clause 74, as submitted, would allow no appeal in any matter involving the Federal Constitution, or the constitution of a State, unless the 'public interests' of some part of her Majesty's dominions other than Australia are involved; and it further provides—a matter to which sufficient attention has not been directed—that the Federal Parliament may in the future make laws limiting further the matters on which appeal is to lie. Now, the right hon. Gentleman the Member for East Fife, unless he has been again misrepresented, said that the Bill did not take away

any right already existing. He will find that that is a mistake. It does take away the right of appeal from a State where the State Constitution is in question: and that right exists at the present time. And further, as I have pointed out, by a proposal in this solemn instrument expressly to authorize the newly-created Parliament to further limit the right of appeal, it almost makes it impossible for her Majesty in future, in reference to this subject, to exercise the right of veto which, of course, is inherent in the prerogative.

Mr. Asquith: Only as regards appeals from the new High Court. The Parliament can limit no other right of appeal.

Mr. Chamberlain: Pardon me. Surely an appeal from a State might very likely come to the High Court, and then no appeal would lie to her Majesty in Council. I will not argue the legal point with my right hon. friend, but I think it will be found that, inasmuch as any appeal may come from the Supreme Court of a State to the High Court, there will be a very considerable limitation of the right of appeal, because there would be no appeal from the High Court to the Judicial Committee of the Privy Council. I go on to another point to which I wish to call attention. Although this Bill does not in direct terms limit the right of veto, which is a right, although undoubtedly reserved to the Crown, which must, nevertheless, always be exercised with the most scrupulous care and consideration—although it does not take away that right, it would make it almost a stultification on the part of her Majesty if the Crown were advised to exercise that right

in a matter which we had expressly referred and delegated to the new Parliament. Now, these are the proposals. What are the main objections to these proposals? The matter was under discussion in the convention at Adelaide. When the Australian Premiers were here in the Jubilee year in 1897, I had the honour of discussing the subject with them, to which some public reference was made in Papers presented to this House. The conversations were as a rule in the nature of private discussions, but at the request of Mr. Reid, who was, as it were, the Dean of the representatives from Australia—being the Prime Minister of New South Wales, the mother colony—I handed to him a memorandum on the part of her Majesty's Government of the amendments on the draft proposal, which we had seen, which we thought were desirable; and I specially called his attention to the probability that the Imperial Parliament would think it its duty to interfere if there were any limitation of the right of appeal. In this memorandum I quoted a passage from a memorandum of the Privy Council, which gave in very succinct terms the main objections to any proposal of the kind. In 1871, it appears, a question was raised at the instigation of some of the Australian colonies, and then the Privy Council in their memorandum said:

> The appellate jurisdiction of her Majesty in Council exists for the benefit of the colonies, and not for that of the Mother Country; but it is impossible to overlook the fact that this jurisdiction is part of her Majesty's prerogative, and which has been exercised for the benefit of the colonies since the date of their

settlement. It is still a powerful link between the colonies and the Crown of Great Britain, and secures to every subject throughout the Empire the right to claim redress from the Throne. It provides a remedy in many cases not falling within the jurisdiction of the ordinary courts of justice. It removes causes from the influence of local prepossession; it affords the means of maintaining the uniformity of the laws of England and her colonies which derive a great body of their laws from Great Britain, and enables them, if they think fit, to obtain a decision in the last resort, from the highest judicial authority, composed of men of the greatest legal capacity existing in the metropolis.

The Australian colonies in 1871 recognized the validity of these reasons, and the matter was allowed to drop. It was raised again in 1875, by the passing of the Act by which the Dominion of Canada was created; and again the Privy Council pointed out that—

This power had been exercised for centuries over all the dependencies of the Empire by the Sovereign of the Mother Country sitting in Council. By this institution, common to all parts of the Empire beyond the seas, all matters whatever requiring a judicial solution may be brought to the cognizance of one Court in which all have a voice. To abolish this controlling power and abandon each colony and dependency to a separate Court of Appeal of its own would obviously destroy one of the most important ties connecting all parts of the Empire in common obedience to the courts of law, and to renounce the last and most essential mode of exercising the authority of the Crown over its possessions abroad.

There are other reasons, besides these which are stated by the Privy Council, which we have now to bear in mind. This Constitution is to be an

Imperial Act, and it is, in substance, the delegation of powers to an authority which is created by the Imperial Parliament. Is it reasonable that when questions arise, as they certainly will arise, as to the interpretation of the powers of the clause by which this authority is delegated, the Imperial power which made the delegation shall not be represented upon the Court which is to give a decision? Then, Sir, there is another point. The terms of the clause are such as certainly to introduce confusion where uniformity is most desired. No appeal is to lie except where the 'public interests' of a portion of her Majesty's dominions outside Australia are concerned. The advice which I have received on the subject goes to show that there may be endless litigation as to the precise nature of the cases in which public interests will arise. I believe there is no legal authoritative definition of what constitutes public interest. I believe it to be extremely difficult to say whether in the case of a number of individuals, subjects of her Majesty but not, of course, constituting in themselves part of her Majesty's possessions, whether in that case it would be held that the public interests of her Majesty's possessions were involved. And if I am rightly informed, therefore, a clause of this kind, instead of lessening litigation, would increase it, and would bring up to the Judicial Committee of the Privy Council for its decision case after case in which it was a question whether or not the public interests of her Majesty's possessions were or were not involved. But there is something still more serious than that. I am not going to dwell upon it,

because it is so exclusively legal that I would rather leave it to my hon. friend the Attorney-General to explain later in the discussion. But I am told that under this proposal, as it stands, it is almost certain that in the confusion of appeals there might be conflict of authority between the new High Court and the Judicial Committee of the Privy Council.[1] Can there be anything worse than two co-equal Courts concurrently giving diverse decisions in matters of the greatest importance that may be submitted to them affecting the British Empire? Lastly, there is also the question, to which I have already referred, that the Constitution empowers the new Parliament to deal with maritime jurisdiction, with the Pacific islands, with foreign enlistments, and with external affairs. The responsibility for the action of the Parliament of Australia and its legislation rests with us. We may be brought into a hostile position in regard to any foreign country in consequence of the action of the Colonial Court. Is it reasonable that while we still undertake to co-operate with the colonies in their defence, while the whole strength of the Empire would be brought to bear in order to protect the interests of the colonies—is it reasonable that the question whether or not their Parliament has gone beyond the powers delegated to it, in some matter in which a foreign country—not one of her Majesty's possessions—is concerned, should be settled without an appeal to the Privy Council? For these and other reasons—but I have stated the principal ones—her Majesty's Government, as soon as they

[1] This conflict actually took place.

obtained the Bill from the Premiers, were desirous of making some amendments. There were several points in regard to which we desired to make changes, but this was the principal one; and we cordially invited the Governments of the federating colonies to send delegates to this country to represent them, to give the necessary explanations, and to assist us with information in the course of the passage of this Bill through the House. We must joyfully acknowledge that the Australian colonies could not have paid us a greater compliment than to send us gentlemen so able and so representative as those who constitute the delegation; and I am delighted to say that, whatever differences may have arisen upon such points as this to which I have been referring, our personal relations, ever since their arrival, have been of the most cordial and friendly description. Now, most unfortunately, as we think, when the delegates arrived in this country we found that they held themselves precluded by their mandate—by the fact that the referendum had been taken on the Bill, and that, as they contended, public opinion had been expressed—from accepting any amendments at all. They argued, and they have argued since, that the result of the referendum upon the question whether this Bill should or should not pass, whether there should be federation or should not, did in fact imply agreement with every line and every word of the Bill. Of course, holding that view, it became impossible that we should come to a full agreement. It is true that in the first instance the delegates used language which filled our minds with hope,

because they said that they interpreted their mandate as one to get this Bill passed intact if they could, and, if not, with the slightest amendment possible. But unfortunately they have not been able to tell us that the slight amendments which they had in view included anything so important as the amendment which we have thought it our duty to make. In these circumstances the next step was to ask the Governments of the federating colonies to enlarge the instructions of their delegates, and that was done in a Paper which has been presented to the House. The reply of the Premiers is also in the possession of the House. It is interpreted by the delegates as a confirmation and approval of the attitude which they have taken up. Of course, every one must be allowed to offer his own opinion upon this matter. I confess that to me it does not seem to go as far as the delegates think. It is not, in effect, so irreconcileable, because while it does undoubtedly indicate the desire of the Premiers that the Bill should pass as it stands, while it does undoubtedly indicate their opinion that they have no authority to accept the amendment, it does not seem to me to imply that if her Majesty's Government, upon its own responsibility, were to make the particular amendment suggested there would be any strong feeling in Australia, but that the people and Governments of Australia would be prepared in all good feeling to accept the suggestion. We are called upon, therefore, to make our decision. It has been recognized by none more strongly or more eloquently than by the delegates themselves that the position of the Imperial Parliament

is that of trustee for the Empire, and that, although the policy of reconstruction may be a different matter, the right of reconstruction undoubtedly rests with us. If, therefore, it were a fact that Australia as a whole was absolutely united on this question, if the clause exactly as it stands had been taken as the irrevocable and final decision of the Governments and the people of Australia, our position would no doubt be a very delicate and very difficult one, because, as I have already pointed out, we recognize fully the unwisdom—I had almost said the impossibility—of pressing views on great self-governing communities to which they are absolutely opposed. However great we might think the mistake that they are making, and however great we might think the injury to the Empire, still we should have to set against that the danger of interfering with those rights which they regard as their undoubted palladium. I do not know to what conclusion we should have come if that had been the position. We should have had to consider not the wishes of Australia alone. We should have had to consider also that, if we accept their view as to right of appeal, our decision will react upon other colonies just as much entitled to consideration as the great colonies of Australia—on Canada, on South Africa, on New Zealand. I read the other day a statement attributed to a distinguished man—to Sir Henry de Villiers, Chief Justice of the Cape, and recently appointed member of the Judicial Committee of the Privy Council. Sir Henry de Villiers deprecated any change in the existing right of appeal. He went on to say that if such

a change were made it would be impossible, or it would be unlikely, that either South Africa or other parts of the British Empire would rest content without a similar, or some equal, change being made in reference to their position also. What would be the result? The result would be the weakening and, probably, ultimately the destruction of the Court of Appeal for the Empire, and this Court of Appeal, whatever defects it may have possessed, has, at all events, worked well in the past. It has been acknowledged to have been of importance and value to the great colonies, and it has within it the germs of a still greater, a still more important, and a still more beneficent institution. Now I come to what is perhaps the most pleasant portion of my task. Fortunately, her Majesty's Government are not placed in this difficult position. We have not to choose between what we firmly believe to be the interests of the Empire on the one hand and the united and absolutely convinced opinion of Australia on the other. For my part, I do not understand at all that in assenting to the Bill by a referendum the majority who voted for it intended to preclude the Imperial Parliament from considering the Bill and from making amendments. On the contrary, I have information from some of the Governments that their intention was exactly the reverse, and that they always believed that this great mother of Parliaments, as a proof of its good-will, would give its best consideration to this important matter, and, if it saw fit, would suggest amendments and changes. It is putting too great a strain on the principle of the referen-

dum to say that a referendum on a Bill like this, which contains such an enormous number of difficult and different propositions, carries with it assent to every one of these propositions. To say anything of the sort would be directly contrary to the argument used by some of the representatives themselves by which the referendum was carried. The people of Australia were told —'It is not so much your duty at the present moment to look to the individual parts of the Bill, to this clause or to that section of a clause to which you may possibly take exception. You have got to consider this great work as a whole, and, if as a whole you agree to it and are willing to accept it, then vote for the referendum.' That is the argument, but that is an argument entirely inconsistent with the present view that the referendum carries with it absolute agreement with every line of the Bill. That that is so is proved also by the action of the great colony of Queensland. Queensland accepted the referendum. Queensland, by one of the largest majorities, accepted this Bill. And yet the delegate of Queensland, the Government of Queensland, the Ministers of Queensland, and the people of Queensland are at the present time urging, with all the strength in their power, that her Majesty's Government shall restore the right of appeal. Queensland, one of the five original federating States; Queensland, represented by one of the Premiers who refused the other day to enlarge the power of the delegate; Queensland, who has sent to us a delegate in common with the other colonies, is entirely opposed to the view taken by

four of the delegates, and is strongly in favour of the line which her Majesty's Government ventured to commend to the House. I go much further. It is not merely a question of Queensland. Since this matter has been discussed here, this particular question of appeal—not the Bill as a whole—has been raised in Australia as well as in this country. It has been raised as a point for separate discussion and decision; and, while I do not want to exaggerate my own case, I can conclusively show to the House that there is no such unanimity among the four colonies of Australia whose delegates are pressing this change as would justify us in sacrificing the interests of the Empire to the views which are formulated in the Bill. The clause was introduced after lengthened discussions in convention after convention, in the course of which different conclusions were arrived at at different times. The final decision was arrived at by comparatively small majorities. I think only thirty-six members were present out of a convention of fifty members. I do not doubt, however, that it represented the view of the convention at that time, but I may point out that Queensland was then absent, and that if the Queensland delegates, ten in number, had been present, the decision of the Conference would have been reversed. Australasia has seven colonies. Five of them are federating now. One of them is contemplating the possibility of federation. Of those seven colonies the Governments of three are strongly in favour of our view. The proportion of opinion as represented by the public statements of the Governments concerned in

Australasia is as three to four. But that is not all. The Premier of Queensland declares that the Government and the people of Queensland are strongly in favour of the alteration. In Western Australia the Ministers are unanimously in favour of the amendment of Clause 74. They are of opinion—

> That by the possession of one Court of Appeal for the whole British race, whose decisions are final and binding on all the Courts of the Empire, there is constituted a bond between all British people which should be maintained inviolate as the keystone of Imperial unity.

The Government of New Zealand say that—

> In the best interests of the Empire the right of appeal on constitutional grounds is one of the strongest links binding us to the Mother Country.

That is sufficient, I think, to show the character of the opinion in three out of the seven colonies. But what about the remainder? What about New South Wales? New South Wales is the mother colony. When the Constitution was submitted to the Legislature of New South Wales both Houses passed resolutions urging amendments to maintain the right of appeal. They were subsequently outvoted in the convention, but their opinion remains, and I think it is also the opinion of the majority of the people. Yesterday I received a telegram in which it is stated that the Prime Minister is reported by the newspapers to have made a speech in which he empha-

sizes his loyalty to federation—at one time, I believe, he was opposed to federation—and declared that at the recent conference of Premiers at Melbourne the Premiers took a constitutional course; that they also intimated that they did not think the alteration suggested by me would jeopardize the Bill; that her Majesty's Government would probably amend the Bill if only on account of the desirability of making the appeal uniform in all British colonies, without which uniformity the rights of British subjects would differ in different places; and that they hoped her Majesty's Government would not amend the Bill in any other clause, as, if any other changes were attempted, it would be a source of great danger to the rest. That, of course, is a condensed report, and I give it for what it is worth; but certainly the implication of that report is that if the changes were confined to the particular change I am advocating there would be no serious objection on the part of New South Wales. Then I come to a remarkable expression of opinion, that of the Chief Justices of the Colonies in Australia. The seven Chief Justices are unanimously in favour of the maintenance of the right of appeal. In the newspapers this morning I saw a letter from my right hon. friend Mr. Kingston, the delegate from South Australia, in which there were expressions which I very much regret and which I am inclined to hope he himself will regret having rather hastily used. He suggests that the Chief Justices of Australia are moved in the opinion they have given by the hope of being appointed to the new Court of Appeal which may hereafter be created.

Let me remind my right hon. friend and also those Members of the House who are inclined to cheer that statement that one of the arguments most eloquently pressed on us by the delegates in their memorandum is that the Bench in Australia is as pure, as high-minded, and has as great judicial capacity as can be found anywhere in the British dominions. We have welcomed that assertion, we agree with that assertion; but then you cannot, at the same time, apply to this self-same Bench the sordid and unworthy motive which has been suggested. I do not believe there is any motive at all, either in the opinion which has been given by the Chief Justices, or in the opinion which has been given on the other side by lawyers who possibly may profit by retaining the appeal at home. In neither case do I believe that either party has been moved in the slightest degree by any feeling other than a desire that the best interests of Australia should be considered. I say it is a most remarkable and a very strong feature in my case that the Chief Justices, who are all men of the highest capacity, who have enjoyed the greatest respect and popularity in Australia, and who are recognized here as most distinguished men, should be unanimously in favour of the alteration. I inquired about newspaper opinion. I knew no other way of getting at popular opinion; and what do I find? I find that the enormous preponderance of newspaper opinion is in favour of the repeal of this clause. Just before I entered this House I received a telegram from Victoria, the other great colony, next in population to New South Wales. This

telegram, which is from the officer administering the Government, says:

> The amendment of Section 74 of the Federation Bill is vigorously supported in all the newspapers of Victoria to-day. I have ascertained the opinion of as many trustworthy persons of all classes as possible. I have not met one opposed to your amendment. If the amendment is substantially confined to Section 74 you will be enthusiastically approved throughout all Victoria.

The Chambers of Commerce of Sydney, Adelaide, and Brisbane have all communicated through the Prime Ministers of these colonies urging the maintenance of the appeal; public bodies like the Melbourne Metropolitan Board of Works, representatives of trade in public meetings, representatives of the Bar, the banks, insurance corporations, and others—representative bodies whose interests are, of course, largely concerned in this matter—all are unanimously in favour of maintaining the appeal, and, to the best of my knowledge and belief, there has not been held one single meeting throughout Australia against the proposal. I do not wish to attach too much importance to what may be one-sided opinion. I do not deny, in fact, I most readily admit, that there is a strong opinion in favour of the Bill which is not represented by any of the quotations I have read to the House, and which has not come to me in the course of these discussions except from the statements of the delegates who are in this country. I admit that there is a strong, and I have no doubt an equally patriotic opinion; but what I say, and what I think the House will

be absolutely convinced of, is that there is no such unanimity as should make us hesitate in a matter of this vast importance, at all events to take time, and for the present, at any rate, retain the right of appeal as it now exists. It is under these circumstances that I have no hesitation in recommending the amendments—very small in point of extent, involving the alteration of only a few words or a few lines, but no doubt substantial in importance—which will preserve for Australia precisely the same right of appeal as is now enjoyed by Canada, South Africa, and India. I believe that it is called for by the interests of the Empire, and I trust and believe that it will be accepted by the people of Australia as made in a spirit of co-operation and not at all of antagonism, and in full belief in our sincere interest in and approval of the great work which they have carried out.

Mr. Asquith: Are the amendments set out in the Blue-book?

Mr. Chamberlain: No; but I think they are substantially the same. There is only one other point to which I wish to call the attention of the House. In the conferences which her Majesty's Government held with the delegates from Australia allusion was made to a desire which has long been entertained by her Majesty's Government to reconsider the constitution of the Supreme Court of the Empire. What the Lord Chancellor, as representing specially the Government in this matter, has had in view has been an amalgamation of the Judicial Committee of the Privy Council with the appeal jurisdiction of the

House of Lords. But the House will readily see —the legal Members perhaps more readily than others—that this would be a very great change, involving very difficult and important constitutional questions, about which it would be of the highest importance to consult Canada and the other colonies and dependencies interested. Therefore, in this matter, as in the matter I previously referred to of the application of the Colonial Laws Validity Act, we have to provide for the immediate future without prejudice to what may be done hereafter. I would remind the House that the present position is not satisfactory. When we came into office we found a Bill prepared by my predecessor by which it was proposed to call to the Privy Council one representative of Canada, South Africa, and Australia to assist in the deliberations of the Privy Council. I found that scheme in the pigeon-holes of the Colonial Office. Her Majesty's Government adopted it because, although they thought it was not satisfactory, still it was a tentative step which would give us some experience, and seemed to meet the wish, already expressed, of the colonies. That was passed in the first session of the present Parliament. The result has been as we expected. It made no proposal for paying these gentlemen. The Australian colonies and the other colonies concerned—I am not quite certain about Canada—did not propose to pay themselves, and that confined the selection, and the gentlemen actually selected were Judges of high distinction, but who were still engaged in judicial functions in the several colonies. The result was

that they could not be here permanently to deal with colonial cases in which they were interested. Another subsidiary result was that, when they were here and a colonial case came up, it might be one with which they had already dealt in their judicial capacity in the colonies. Practically, therefore, although some of these Judges—I believe all of them—have taken their seats and have assisted in the deliberations of the Judicial Committee, we have not secured, by means of that Act, such a permanent constitution of the Judicial Committee as would make it certain that on every occasion when a colonial case was involved there was a colonial Judge with full knowledge of local conditions well qualified to advise his colleagues. Therefore, what we propose, pending further consideration which must be given to any greater scheme, is to appoint for seven years a representative from each of these colonies and India, to be members of the Privy Council, who shall also act during that period as Lords of Appeal, and upon whom will be conferred life peerages, so that they may continue to sit in the House of Lords, although they will not act as Judges after the term of their service has expired. It may be that those services will be renewed, and provision may be taken to renew them if thought desirable. The Judges so appointed will be paid the same salaries as the Lords of Appeal are now paid, and payment will be made at the cost of the Imperial Parliament. Sir, that is the proposal which I hope will be submitted to the other House of Parliament in a very few days, and which I hope will be

approved by Parliament as a whole.[1] I feel I ought to apologize to the House. I have travelled over a great number of subjects in the course of this long review of an intricate subject. I have now only to ask the House to consent to the introduction of this Bill. I hope they will be content subsequently to pass it exactly as it has been introduced.[2] I am quite certain that no more important measure of legislation has ever been presented to Parliament, and that nothing throughout the whole course of the Queen's reign will be a more beneficent feature in that long and glorious history.

Motion made, and Question proposed, "That leave be given to introduce a Bill to constitute the Commonwealth of Australia."—*Mr. Secretary Chamberlain.*

[1] This proposal was ultimately dropped.

[2] After much discussion the clause as to appeals was finally altered so as to preserve intact the right of the Privy Council to hear appeals from the High Court of the Commonwealth, except in cases in which the constitutional rights of the Commonwealth and the States or the States *inter se* are concerned, in which case the decision of the High Court is final, unless it grants leave to appeal to the Judicial Committee of the Privy Council. In practice the interpretation of the Commonwealth constitution has thus been carried out by the High Court, while in the case of Canada the final interpretation has been given to the British North America Act by the Privy Council.

PRINTED BY
HAZELL, WATSON AND VINEY, LD.,
LONDON AND AYLESBURY.