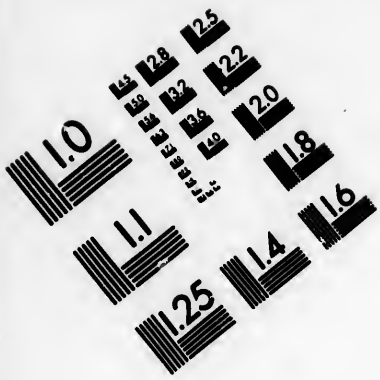

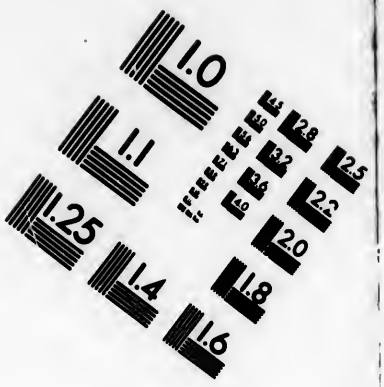

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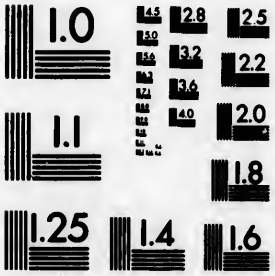

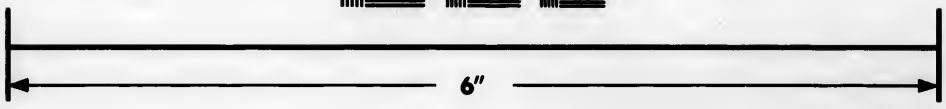

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SPEECH

OF

SIR WM. MOLESWORTH, BART., M.P.

IN THE

HOUSE OF COMMONS,

On FRIDAY, the 5th of MARCH, 1853,

FOR

THE SECOND READING

OF THE

CLERGY RESERVES OF CANADA BILL.

CHARLES WESTERTON,
(WESTERTON'S LIBRARY,)
20, ST. GEORGE'S PLACE, HYDE PARK, CORNER.

1853.

SPEECH, &c.

Sir,—The right hon. baronet (Sir John Pakington) who has just addressed the House, commenced his speech by deprecating the treating this bill as a party measure. I cordially concur with the right hon. baronet in that deprecation, because this bill raises two questions of the utmost importance, which ought not to be decided under the influence of party spirit. The first of these questions is the great and fundamental one of the colonial polity of the British empire—namely, whether it ought to be a rule of our Colonial Government that all questions which affect exclusively the local interests of a colony possessing representative institutions, should be dealt with by the local Legislature. If this rule be assumed to be a sound one, then the next question is, whether it should now be applied to the greatest of England's colonial dependencies, with a population of nearly 2,000,000 of inhabitants—whether it ought now to be applied to Canada with reference to the question of the clergy reserves?

The object of this bill is to apply this rule to Canada. The right hon. baronet seemed to have some difficulty in understanding the intentions of the framers of this bill. Their intentions are to transfer to the Legislature of Canada the power of dealing with the clergy reserves, irrespective altogether of the mode or manner in which that Legislature may think proper to deal with those reserves. In my opinion the questions, whether the Legislature of Canada ought or ought not to maintain the present application of the proceeds of the clergy reserves,—whether it ought or ought not to secularize those reserves, are questions for the Canadian and not for the Imperial Parliament to debate. I shall, therefore, not follow the example of the right hon. baronet, the greater portion of whose speech, was not addressed to the real question at

issue, whether we should transfer to the colonial Legislature the power of dealing with the clergy reserves, but merely expressed his opinions as to the manner in which the Canadian Legislature would exercise such a power.

Sir,—The right hon. baronet has admitted over and over again to-night, that the rule of colonial polity, which I have just mentioned, is a sound general rule; and the right hon. baronet cannot deny that the question, how the proceeds of that portion of the lands of Canada which are called the "Clergy Reserves," should be disposed of, is one which affects exclusively the people of Canada. But the right hon. baronet has asserted that the question of the clergy reserves should be treated as an exception to the general rule that local questions should be dealt with by the local Parliament of a colony. The reasons which have been assigned by the right hon. baronet for making this exception may, I think, be reduced to two chief ones. First, That the question of the clergy reserves is essentially an Upper Canadian and Protestant question. Secondly, That the act of 1840 was intended to be a final settlement of this question. With the permission of the House, I will consider each of these arguments separately.

First, the right hon. baronet has repeatedly affirmed that the question of the clergy reserves is essentially an Upper Canada question; that the representatives of Upper Canada were as nearly as possible equally divided upon it; and that the majority who carried the resolutions which the House of Assembly passed last September in favor of a bill similar to that now before the House, had consisted in a large proportion of Roman Catholic members of the lower province, whose religion had been amply and munificently endowed. Thence the right hon. baronet inferred that the Roman Catholic members of Canada ought not to have power to legislate on questions affecting the endowments of Protestants, and that such questions should be dealt with in accordance with the wishes of the Protestants of Canada alone.

Sir,—It is by no means correct, on the part of the right hon. baronet, to say that the Roman Catholic religion is munificently endowed in Canada. The landed endowments referred to by the right hon. baronet are not, strictly

speaking, the property of the Roman Catholic clergy, nor are they applicable in any considerable degree to the support of religious worship in Canada, but they are chiefly applicable to educational and charitable uses, or to the conversion of the Indian tribes. They belong to corporations which existed before the conquest of Canada. They were mostly obtained by gift, bequest, or purchase. A small portion only was granted by the French Crown. By the capitulation of Montreal in 1760, it was stipulated that this property should be preserved to its possessors; but this stipulation was not confirmed by the treaty of 1763, nor by any act of Parliament, and it was expressly set aside by the act of 1774. Therefore, there is at present no statutory provision which would prevent the Canadian Legislature from dealing with this property in any way it might think proper. In Lower Canada the Roman Catholic clergy are now supported, as they were supported before the conquest, by tithes and other dues, which have much more of the character of voluntary contributions than of legal dues. For no person in Canada can now be required to pay tithes unless he voluntarily professes the Roman Catholic religion; and if a man in Lower Canada ceases to be a Roman Catholic, or sells his lands to a Protestant, the priest loses his tithes; because tithes were not secured to the Roman Catholic clergy by the capitulation of Montreal, but their payment was made to depend upon the will and pleasure of the British Crown. That pleasure was signified in 1774, in the first act for the government of Canada. That act evidently proceeded on the principle of religious equality between Christian sects, for it provided that the Roman Catholic clergy might receive tithes only from Roman Catholics, and that Protestants should pay tithes for the support of a Protestant clergy. In Lower Canada tithes have been regularly paid by Roman Catholics; they are moderate in amount, having been reduced from one-tenth to one-thirteenth, and finally to one twenty-sixth part of the cereal crops. In Upper Canada, on the contrary, tithes have never been paid, though as legally due as in the lower province, and the Roman Catholics, who have become a numerous body—nearly as numerous as the members of the Church of England, and thrice as numerous as the members

of the church of Scotland,—have neither tithes nor landed endowments, as in the lower province, nor any statutory provision for the support of their clergy. I must also call the attention of the House to the fact, that the Legislatures of the Canadas had power under the Constitutional Act of 1791, and the united Legislature has power under the Constitutional Act of 1840, to abolish the payment of tithes; and that power was exercised with reference to Protestant tithes by the Legislature of Upper Canada in an act which received the Royal assent in 1823. These facts prove that the right hon. baronet was inaccurate when he said, that the Roman Catholic religion is munificently endowed in Canada; and they also prove that the Legislature of Canada has the same power at present over the endowments of the Roman Catholic clergy, as it would have over the endowments of the Protestant clergy if this bill were to become law. Therefore the principle of religious equality requires that this bill should become law.

I will however assume, for the sake of argument, with the right hon. baronet, that the Roman Catholic religion is munificently endowed in Canada; yet that fact would not warrant the conclusion of the right hon. baronet that the Roman Catholic members of Canada ought not to have power to legislate on the question of the clergy reserves; for, by an exact parity of reason, it might be argued that the members of the church of England in this house ought not to have power to legislate on any question affecting the Roman Catholic religion, or any other religion less munificently endowed than the church of England; and that all questions affecting the Roman Catholic religion and its endowments in this country, as for instance, the endowment of Maynooth, should be dealt with in accordance with the wishes of the Roman Catholics alone.

But I will again suppose, for the sake of argument, with the right hon. baronet, that the question of the clergy reserves ought to be dealt with in accordance with the wishes of the Protestants of Canada alone; then it would be dealt with in the manner proposed by this bill. For it was quite a mistake on the part of the right hon. baronet to assert that the majority of the House of Assembly, who carried Mr. Hinck's resolutions of last

September, had consisted, in a large proportion, of Roman Catholic members. That majority consisted, in an almost equal proportion, of Protestants and Roman Catholics. I have carefully analyzed the division-lists (which are the only real tests of the opinions of members), and I have ascertained that of the 84 members of the House of Assembly, 54 are Protestants and only 30 are Roman Catholics. With so decided a majority of Protestants—equivalent to an absolute majority of 187 members in this house—it is evident that no measure could be carried in the House of Assembly in opposition to the wishes of the Protestants, as a body; and I find that, on every resolution which had reference to the merits of the question whether the Imperial Parliament ought to transfer to the local Legislature the power of dealing with the clergy reserves, the decided majority of the Protestant members was in favour of such a transfer being made. For instance, on the 14th of September last a motion was made in the House of Assembly to the effect, "That the people of Canada concurred in the act of 1840 as a final settlement of the question of the clergy reserves." That motion was rejected by a majority of 50 votes against a minority of 18; —of the majority, one-half, or 25 were Protestants. Again, the same day another motion was made—"That this House deprecates in the strongest manner any attempt to bring back the question of the clergy reserves to this province for future legislation." This motion was rejected by 51 to 17; of the majority 26 were Protestants.

On the 17th of September last the resolutions of Mr. Hincks, which I will now read, were carried:

"That an address should be presented to the Crown, deeply regretting that Sir John Pakington was not prepared to bring in a bill to repeal the Imperial Act of 1840. That the great mass of the people of Canada will ever maintain the principles recognized by Earl Grey, that the question of the clergy reserves is one so exclusively affecting the people of Canada, that its decision ought not to be withdrawn from the provincial Legislature. That the refusal on the part of the Imperial Parliament to comply with the just demands of the Canadian people on a matter exclusively affecting their own interests will be viewed as a violation of their constitu-

tional rights, and will lead to deep and wide-spread disaffection. That the opinions of the people of Canada and their representatives on this subject are unaltered and unalterable. That the House of Assembly, in thus giving expression to the public opinion of the country, is actuated by the strongest feelings of loyalty, and by a sincere desire to prevent the lamentable consequences of a difference of opinion between the Imperial and Provincial Parliaments on a question, on which very strong feelings are known to prevail among the people of this province."

There were several divisions on these resolutions, all of which were carried by a majority of at least fifty-two against a minority never exceeding twenty-two. Of the majority, twenty-six were Protestants; of the minority, twenty were Protestants. Therefore the absolute majority of Protestant members was equivalent to an absolute majority of seventy-seven members in a house as numerous as that which decided the fate of the late administration, or equivalent to four times the absolute majority that overthrew the Government of Lord Derby, and by so doing saved the Colonial Empire of Great Britain in North America. For I am convinced that if the right hon. baronet, the late Secretary of State for the Colonies, had been able, as a Minister of the Crown, to persuade Parliament to adopt his views on the subject of the clergy reserves, that empire would have speedily crumbled into dust. When I heard the right hon. baronet declare, in reply to a question which I put to him last December, that it was the intention of Her Majesty's late Ministers to break the pledge which their predecessors had given to the Legislature of Canada, and to deny to that Legislature the power of dealing with the exclusively local question of the clergy reserves, a painful vision from the past crossed my mind. I thought of the year 1833, of a young and reckless man, whom high rank and powers of facile speech had then raised to the office of Secretary of State for the Colonies—I remembered that he had addressed an Assembly of Canada in language which that Assembly had justly denounced as inconsiderate and unconstitutional, as insolent and insulting. That language had embittered an unhappy conflict which terminated in a rebellion that cost this country many

millions of money. I feared much that twenty years had not matured the judgment of this man, who had become Prime Minister of England—that, actuated by old feelings, he was bent upon renewing an old conflict, but with a new and more powerful assembly, and that the result would be a worse catastrophe. Therefore, for the sake of the Colonial Empire of Great Britain in North America, I rejoiced most sincerely at his downfall.

The right hon. baronet has affirmed over and over again, that the question of the clergy reserves is essentially an Upper Canadian one, and thence he inferred that it ought to be dealt with in accordance with the wishes of the members of Upper Canada alone. It is, however, quite a mistake on the part of the right hon. baronet, to say that this question is essentially an Upper Canadian one. Lord Durham declared, in his report of 1839, that it equally concerned the people of the two Canadas; and so it does in principle, for it affects the whole of Canada, with the exception of that portion which had become private property before 1791. The extent of the clergy reserves is, however, greater in Upper than in Lower Canada, because Upper Canada was settled at a later period than Lower Canada. The system of clergy reserves was created in 1791, for the support of a Protestant clergy. The first statutory provision for that purpose in Canada, was made in 1774. The act of that year, proceeding upon the principle of religious equality, intended that the clergy of every denomination of Christians should be supported by tithes; for it provided that the Roman Catholic clergy should receive tithes only from Roman Catholics, and that Protestants should pay tithes for the support of a Protestant clergy. This provision for the support of a Protestant clergy proved to be trifling in amount, because the great majority of the inhabitants of Canada were at that time Catholics; the Protestants were few in number, widely scattered, and unwilling to pay tithes. Consequently this provision appeared insufficient to the Government of 1791; they determined to make further provision for the support of a Protestant clergy according to a system which was said to have been in existence in the State of Pennsylvania; and they did so when they passed the first Constitutional Act of Canada—namely, the 31st of George III.

c. 31. That act divided Canada into two provinces, gave to each province representative institutions, and enacted that whenever any land in Canada should hereafter be granted by the Crown, there should be made an allotment for the support of a Protestant clergy, which should be equal in amount to one-seventh part of the land so granted. The same act provided that the Legislatures of the Canadas should have power to vary or repeal the provisions of the Constitutional Act respecting the allotment of land, and also to abolish tithes, subject however, to the restriction, that all local acts for any of these purposes, should be reserved for the Royal assent, and laid before both Houses of Parliament; and that the Royal assent should not be given, if within a certain period of time either House of Parliament should address the Crown to withhold its assent. By this act, one-eighth of the land of Canada—not one-seventh, as the right hon. baronet said,—which had not been granted before 1791, ought to have been reserved for the support of a Protestant clergy; but much more than the legal one-eighth was reserved for that purpose. According to Lord Durham's report, instead of one-eighth, in Lower Canada one-fifth, and in Upper Canada one-seventh, were set apart for the support of a Protestant clergy. By this violation of the law, the actual amount of the clergy reserves was made to exceed the statutory amount by about 227,000 acres in the lower province, and about 300,000 acres in the upper province, and the Canadian public was wronged to the amount of about 120,000*l.* in Lower Canada, and 160,000*l.* in Upper Canada.

The area of the clergy reserves has exceeded 3,300,000 acres. To show how utterly wrong was the statement of the right hon. baronet that this question is essentially an Upper Canadian one, I need only call the attention of the House to a return which has just been presented, which shows that in Lower Canada the area of the clergy reserves has exceeded 900,000 acres, of which above 500,000 acres are still unsold. In both provinces the clergy reserves have produced economical evils of the greatest magnitude; they consisted for the most part of lots of 200 acres each, scattered at regular intervals over the face of the townships. For a long period of time, they were uncultivated and inalienable. The Canada Committee of 1828

gave a striking description of them, "as so many portions of reserved wilderness, which had done more than any other circumstance to retard the improvement of the colony, intervening, as they did, between the occupations of actual settlers, who had no means of cutting through the woods and morasses which separated them from their neighbours." Without doubt, the framers of the Constitutional Act expected, that as the land granted to settlers was improved and cultivated, the adjoining portions reserved for the clergy would yield a rent which would make an ample fund for the maintenance of a Protestant clergy. But the Canadian Committee stated, that the one part reserved for the clergy had done much more to diminish the value of the six other parts, granted to settlers, than the improvement and cultivation of the six parts had done to increase the value of the one reserved part. For many years the revenue from the large estates of the clergy was small, and irregularly paid. In 1826 the gross produce of the revenue from the clergy estate of 488,000 acres was only 250*l.* These facts I think must satisfy the House of the incorrectness of the statement of the right hon. baronet that the question of the clergy reserves is essentially an Upper Canadian one. It is true that, before the reunion of the Canadas, that question did not produce the same degree of excitement in the lower as in the upper province, because questions of graver political importance occupied the minds of the people of Lower Canada, and distracted their attention from the question of the clergy reserves. But since the reunion, the British and Protestant members from Lower Canada have united with their colleagues of the upper province in demanding a repeal of the Act of 1840.

Sir,—For the sake of argument with the right hon bart. I will assume that the question of the clergy reserves is essentially an Upper Canadian question, yet that fact would not warrant the conclusion that the representatives of Lower Canada ought not to have power to legislate upon this subject, and that it ought to be dealt with in accordance with the wishes of the people of Upper Canada alone. For, if such a conclusion were valid upon such grounds, a similar chain of reasoning would prove that the representatives of one part of this country ought not to legislate on any question affecting

any other part of this country; for instance, that the members for Middlesex ought not to legislate on questions affecting Surrey, nor English members on Irish questions; and that all Irish questions ought to be dealt with in accordance with the wishes of Irish members alone. Such a chain of reasoning would lead not only to the immediate separation of the Canadas, and to the repeal of the union between England, Ireland, and Scotland, but to the breaking up of this empire into the minutest fragments, and would make a representative government impossible both in this country and in Canada; for all representative government is based upon the will of the majority overruling the will of the minority, and the interests of the minority yielding to the interests of the majority.

But I will however, for the sake of argument, admit, that this question ought to be dealt with in accordance with the wishes of the people of Upper Canada alone; then it would be dealt with in the manner proposed by this bill. For it was a mistake on the part of the right hon. baronet to assert that the representatives of Upper Canada were, as nearly as possible, equally divided upon the question of the clergy reserves. In making this assertion, I think that the right hon. baronet must have confounded together two distinct questions, which were debated nearly simultaneously last September in the House of Assembly. The one was a real question, the other was a party question. The real question was, whether an address should be presented to the Crown, praying that the Imperial Parliament would transfer to the local Legislature the power of dealing with the question of the clergy reserves. The party question was whether, before the House of Assembly decided the real question, the local Government ought to state its views on the subject of the final disposal of the proceeds of the clergy reserves, in the event of Parliament making the transfer in question. On the party question, the Upper Canadian members were as nearly as possible equally divided; but on all the resolutions which had reference to the real question, several of which I have just read, there was a decided majority in favour of Parliament transferring to the local Legislature the power of dealing with the question of the clergy reserves. That majority was never less than nineteen

for, to fifteen against; giving an absolute majority equivalent to sixty-nine in a house of 591 members.

Another reason assigned the other night by the right hon. baronet, the member for Droitwich, why this bill should not pass, was, that the representatives of the largest constituencies in Upper Canada were against it. I scarcely expected to hear so ultra-Radical an argument from the representative of the infinitesimal constituency of Droitwich. I will not in any way deny its force, but only the fact. I have had a careful analysis made of the population of the constituencies of Upper Canada, according to the census of 1851, and I find that the population of the constituencies represented by the nineteen Upper Canadian members who regularly voted for Mr. Hincks's resolutions amounted to 478,000; while those of the fifteen Upper Canadian members who voted against them amounted only to 340,000. The absolute majority of the Upper Canadian population in favour of Mr. Hincks's resolutions, as indicated by the votes of their representatives, was therefore 138,000.

Sir JOHN PAKINGTON intimated dissent.

Sir WILLIAM MOLESWORTH. — The right hon. baronet questions my statements. They are founded upon the division lists printed in the returns before the House, and upon the census of Canada for 1851. I ask him—Is there any better test of the opinions of a people than the votes of their representatives in Parliament assembled. The right hon. baronet says that he was informed that the opinions of the absent members were different from those of the members who voted. I am assured of the contrary. And the right hon. baronet's statements have been generally so incorrect, that I cannot place any reliance upon his authorities.

I should also state that in the British and Protestant portion of Lower Canada—namely, the eastern townships, the population of the six constituencies whose members voted for Mr. Hincks's resolutions was 78,000; and that of the one constituency whose member voted against them was 16,000.

Sir,—The other chief argument which the right hon. baronet urged against this bill—and it was the great argument of his embryo despatch—was, that after a long period of agitation the Legislature of Upper Canada had, in 1840,

assented to a bill for the settlement of the clergy reserves question; that it would have received the Royal assent but for an insuperable legal obstacle, in consequence of which Parliamentary interference became necessary; that an act was accordingly passed in the same year, 1840; that it was similar in principle to, though differing in detail from, the bill of the Legislature of Upper Canada; and that this act was accepted as a final settlement of the question of the clergy reserves both by Canada and this country. I deny that the act of 1840 was similar in principle to the bill of the Legislature of Upper Canada. I deny, also, that the act of 1840 was accepted in Canada as a final settlement of the question of the clergy reserves; and that it was not, and could not have been, so accepted, a very short history of the agitation of that question will show.

The agitation of the question, how the proceeds of the clergy reserves ought to be disposed of, commenced about the year 1819. About that period a question was raised in Upper Canada whether tithes ought to be paid to the clergy of the church of England. The Legislature of Upper Canada held that the Imperial Parliament, in making provision for a Protestant clergy out of the public lands, could not have intended that tithes should be paid; and a provincial act was passed abolishing the payment of tithes by Protestants, which received the Royal assent in 1823. During the discussion of that act the famous question was raised as to the precise meaning of the term "a Protestant clergy," which was used in the Constitutional Act. A member of the Legislature affirmed that it was as applicable to the clergy of the kirk of Scotland as to those of the church of England. This opinion was readily adopted by the members of the church of Scotland in Upper Canada. They petitioned the Colonial-office and Parliament for a share of the clergy reserves, and their petitions were backed by the House of Assembly in an address to the Crown. On the other hand, the clergy of the church of England bestirred themselves to resist the demands of the church of Scotland, and addressed the Crown and both Houses of Parliament, stating that the words "Protestant clergy" could not be extended further than the church of England without producing the greatest confusion: for they asked, "after passing

that church, where would this meaning terminate? Congregationalists, Seceders, Irish Presbyterians, Baptists, Methodists, Moravians, Universalists, would undoubtedly prefer their claims, as they were each more numerous than the Presbyterians in communion with the kirk of Scotland; and, should such claims be rejected, these sectaries would consider themselves greatly aggrieved by the refusal of what they would never have dreamt of asking, had not so trifling a fraction of the population of this flourishing province, as the two congregations in communion with the kirk of Scotland, succeeded in obtaining the same object."

The hon. baronet the member for the University of Oxford affirmed the other night, that even the most ignorant and radical member of the house could hardly deny, that the words "a Protestant clergy," as used in the acts of 1774 and 1791, meant only the clergy of one particular church, namely, the church of England. Laying claim, as I presume to do, to the honorable name of a Radical—a name borne by Bentham, Ricardo, Mill, Grote, and other eminent thinkers, whose economical doctrines are generally recognized as true by reflecting men, and have been adopted by the people of this country,—I do take the liberty of denying that the words in question meant only the clergy of the church of England, and I do so on good authority. In 1819 Lord Bathurst obtained the opinion of the law officers of the Crown as to the meaning of the words "a Protestant clergy." That opinion was not made known in Canada till about 1829. It was, "That though the provisions made by the 31st George III. for the support and maintenance of a Protestant clergy were not confined solely to the clergy of the church of England, but might be extended also to the clergy of the church of Scotland (if there were any such settled in Canada), yet that they did not extend to dissenting ministers."

This opinion was, however, partly right and partly wrong; for in 1840, in consequence of a motion in the House of Lords, a question was put to the judges of England as to the precise meaning of the term "a Protestant clergy," and all the judges, with the exception of two, met, and they unanimously decided that the words "Protestant clergy" did include other clergy than those of the church of England;

that the clergy of the established church of Scotland did constitute one instance of such other Protestant clergy; and that although they specified no other church than the Protestant church of Scotland, they did not thereby intend that, besides that church, the ministers of other churches might not be included under the term "Protestant clergy."

This decision showed that in the opinion of the judges of England (who, if they were Radicals, could hardly be called ignorant ones, even by the hon. member for the University of Oxford), the claim of the church of England to an exclusive property in the clergy reserves was not valid; that the claim of the kirk of Scotland to a share of those reserves was valid, and that the claims of the Nonconformist clergy might also be valid.

This decision appears to have been in conformity with the intentions of the framers of the Constitutional Act, for the present Lord Harrowby stated to the Canada Committee of 1828, that "Lord Grenville, who had constructed the system of the clergy reserves, had told him that it was a good deal derived from information with regard to the system pursued in the state of Pennsylvania, and that the distinction of a 'Protestant clergy' was meant to provide for any clergy that was not Roman Catholic." In fact, this was the sense in which the term 'Protestant clergy', was generally used in North America, as signifying the Nonconformist clergy as well as clergy of the church of England. It was certainly so used in the Quebec Act of 1774, for that act evidently proceeded upon the principle of religious equality, providing that the clergy of every Christian sect should be supported by tithes; the Roman Catholic clergy by Roman Catholic tithes, the Protestant clergy by Protestant tithes.

These facts shew that the people of Upper Canada had good reason for affirming that the clergy reserves ought not to be appropriated exclusively for the benefit of one denomination of Protestants; and the representatives of Upper Canada came to the conclusion, partly on the grounds of religious equality, partly because tithes had never been paid in Upper Canada to the Roman Catholic clergy, and partly because the Roman Catholics had no statutory provision for their clergy in Upper Canada, that the clergy reserves should

be applied for the equal benefit of every Christian sect, and that the best mode of accomplishing this object would be to sell the reserves, and to apply their proceeds to purposes of general education. From the year 1826 to 1839, in four different Parliaments, on fourteen distinct occasions, the House of Assembly of Upper Canada declared by large majorities its opinion that the clergy reserves ought to be sold, and their proceeds applied to purposes of general education. It passed various bills and resolutions to that effect, each of which was rejected by the Legislative Council, an anti-popular body of nominees, consisting chiefly of a faction well known by the name of the "family compact." During this period two royal commissions were issued to inquire into the grievances of the people of Canada, and both commissions reported on the subject of the clergy reserves in accordance with the views of the House of Assembly of Upper Canada. First, Lord Gosford reported in 1837 that—

"The only effectual cure for the evils occasioned by the clergy reserves was to adopt some mode of making them available to all religious sects, but that there would be many difficulties in defining religious sects, and in allotting the proportions to be given to each. Our opinion would therefore be in favour of applying the proceeds of the clergy reserves to purposes of general education."

Secondly, Lord Durham reported in 1839, that—

"The result of any determination on the part of the British Government or Legislature to give one sect the predominance or superiority, would be but to endanger the loss of the colony; that it was important that question should be so settled as to give satisfaction to the majority of the people of the two Canadas, whom it equally concerns; that he knew of no mode of doing this but by repealing all provisions in the imperial acts relating to the clergy reserves, leaving them to the disposal of the local Legislature, and acquiescing in whatever decision it may adopt." That is the object of the bill now before the House.

During the same period every Secretary of State for the Colonies under whose consideration the question of the clergy reserves was brought, declared his opinion that it was a local question, which ought, at least in the first instance, to be

dealt with by the local Legislature. First, in 1832, Lord Ripon, in reply to several resolutions of the House of Assembly of Upper Canada (declaring that the Imperial Parliament ought to pass an act for the sale of the clergy reserves, and to empower the local Legislature to apply the proceeds to purposes of general education), invited the Legislature of Upper Canada to exercise the powers given to it under the Constitutional Act to vary or repeal the provisions of the Constitutional Act relating to the clergy reserves. In consequence of this invitation the representatives of the people endeavoured to exercise these powers, but their efforts were defeated by the nominees of the Legislative Council. Secondly, in 1835 Lord Glenelg refused to comply with the prayer of an address to the Crown from the Legislative Council, in which the "family compact" prayed, in opposition to the wishes of the representatives of the people, that the Imperial Parliament should undertake the settlement of the question of the clergy reserves. Lord Glenelg refused for two reasons:—

"1. Because Parliamentary legislation on any subject of exclusively internal concern in any colony possessing a representative assembly is, as a general rule, unconstitutional. 2. Because the authors of the Constitutional Act had declared the question of clergy reserves to be one, in regard to which the initiative is expressly reserved and recognized as falling within the peculiar province and special cognizance of the local Legislature."

In 1839 my noble friend the member for the city of London refused the assent of the Crown to a bill of the Legislature of Upper Canada which, provided that the clergy reserves should be sold, and delegated to the Imperial Parliament the duty of appropriating the proceeds for religious purposes. My noble friend refused to accept for Parliament the delegated office, partly because he asserted "that the provincial Legislature could bring to the decision of this question an extent of accurate information as to the wants and general opinions of society in that country in which Parliament was unavoidably deficient." The right hon. baronet has made specific reference in his unsent despatch to the bill of 1839, as showing a desire on the part of the people of Upper Canada that the Imperial Parliament should undertake the

settlement of the question of the clergy reserves. As this was the only occasion, that I know of, on which the House of Assembly of Upper Canada consented to ask Parliament to settle the question of the disposal of the clergy reserves, I must state that this bill was passed by the 14th and last Parliament of Upper Canada, and that the House of Assembly of that Parliament did not represent the people of Upper Canada. For Lord Durham stated, in his report, that at the general election, in a number of instances, the elections were carried in favour of the Government by the unscrupulous exercise of the influence of the Government; and Sir F. Head, who was then Lieutenant-Governor of Upper Canada, boasted that he had added 40 supporters of the Government to a House of Assembly, consisting of 62 members; yet even in that packed House of Assembly, so strong was the popular feeling on the subject of the clergy reserves, that Sir F. Head failed in settling that question according to his wishes. In 1839, however, when Sir George Arthur was Lieutenant-Governor, the House of Assembly, by the casting vote of the Speaker, did pass a bill, which provided that the clergy reserves should be sold, and that their proceeds should be "appropriated by the provincial legislature for education and religion." This bill, therefore, retained to the local legislature the power to dispose of the proceeds of the clergy reserves; but the Legislative Council struck out the words "Provincial Legislature," and inserted the words "Imperial Parliament," and thus delegated to the Imperial Parliament the disposal of the proceeds of the clergy reserves. The bill so amended was carried at a late hour of the last night before a prorogation, by a majority of one in the House of Assembly. This was the only occasion I know of, in which the House of Assembly of Upper Canada consented to ask Parliament to settle the question of the disposal of the proceeds of the clergy reserves.

I now come to the bill which the Legislature of Upper Canada passed in 1840, and which the right hon. baronet, the member for Droitwich, has described as being similar in principle to the imperial act of the same year. At that period, the late Lord Sydenham was Governor-in-chief of Canada. He was very anxious that the question of the clergy

reserves should be settled before the re-union of the Canadas. To accomplish this, he exerted to the utmost his great ability and parliamentary tact; he submitted to the legislature of Upper Canada the draft of a bill, which was in substance carried, though, in the House of Assembly, by the smallest majority. It provided that one-half of the clergy reserves should be divided between the churches of England and Scotland in proportion to the number of their members; and that the other half should be divided between the other denominations of Christians in proportion also to the number of their members. That bill was therefore based nearly upon the principle of religious equality between Christian sects. Lord Sydenham was very anxious that it should become law. He declared that "It would not be possible to obtain such favourable terms for the established church or for religious instruction in any future assembly of Canada; that even to this bill insuperable objections were entertained in Upper Canada; that for many years the representatives of the people had uniformly refused to assent to an appropriation of the clergy reserve fund for religious purposes; that on fourteen different occasions, they had recorded their opinion that it ought to be applied to education or general purposes; and that their assent to such a measure as this could never again be looked for."

Unfortunately it was not in the power of the Government to give the royal assent to this bill. As soon as it was laid before Parliament, it was vehemently denounced in both houses: in this house by the right hon. baronet the member for Droitwich and his friends; in the other house by a right reverend prelate, famed for his legal lore, who raised a question as to the power of the Legislature of Upper Canada to pass it, and carried a motion, against the Government, in favour of that question being put to the judges. It was put to the judges, and they unanimously decided that the Legislature of Upper Canada had not authority to pass the bill in question. This decision was in opposition to the opinion which had been expressed by the Lord Chancellor in the debate on the right rev. prelate's motion. It showed that for at least twenty years every Governor-in-Chief of Canada, every Lieutenant-Governor, Legislative Council, and

House of Assembly of Upper Canada, and every Secretary of State for the Colonies, had been in error respecting the powers which the Canadian Legislature possessed under the Constitutional Act. The unfortunate result of this decision was, that the assent of the Crown could not be given to the bill of the Legislature of Upper Canada, and Imperial Legislation became necessary. Then there were three measures, either of which the Government might have proposed. First, it might have proposed a measure similar to that now before the House, which would have enabled the Canadian Legislature to deal with the question of the clergy reserves. Such a measure would have been in accordance with the great principle of Colonial polity, that local questions should be dealt with by local Parliaments; but in 1840 the true principles of Colonial policy were not sufficiently recognized to enable the Government to overcome the hostility which the right hon. baronet, the member for Droitwich, and his friends shewed their intention to offer to any measure which might occasion any considerable alteration in the distribution of the proceeds of the clergy reserves. Since then a great change has taken place in public opinion on the subject of Colonial Government. That change was brought about in no small degree by the discussions with regard to the Canadian rebellion and by the report on Canada, which makes the name of Lord Durham justly renowned. That report was written with the assistance of two men of great abilities, who will ever be remembered as Colonial Reformers,— I mean Mr. Wakefield and my late friend Mr. Charles Buller; to them more than to any other two persons, this country is indebted for sound views of Colonial policy with respect to Canada and Australia, and on the subject of transportation. Those views have been gradually adopted by most of the statesmen of the day,—by my noble friend, (Lord John Russell), who, in 1840, was the first really liberal Secretary of State for the Colonies, by Earl Grey, whose government of Canada was deserving of all praise, and even the right hon. baronet opposite has, in some respects, been a not unworthy pupil of the school of Colonial reform. Though the right hon. baronet sounded the other night the trumpet of his renown as Colonial Secretary with a somewhat stentorian blast, yet it

must be admitted that he deserves credit for his opinions with regard to Australia, and his intentions with reference to transportation; on the subject, however, of Canada, the right hon. baronet's mind is still immersed in Stygian darkness, and his conduct shews that he has not yet mastered the elements of Colonial polity,—that in fact, he is still the same man who, in 1840, did his best to prevent a proper settlement of the question of the clergy reserves.

Sir JOHN PAKINGTON.—I supported the act of 1840.

Sir WILLIAM MOLESWORTH.—I know you did, but you and your friends resisted and defeated the first measure which was proposed by my noble friend, and to which I will now refer. I said there were three courses which the Government might have proposed to pursue in 1840. The first I have already mentioned; the second would have been to introduce the same bill as that which had received the assent of the Legislature of Upper Canada. This course would also have been unobjectionable in principle, and it was the course which my noble friend first proposed to adopt. For he stated in his place in this House that he wished to bring in a bill as nearly as possible the same as that to which he was reluctantly compelled to refuse the Royal assent; but my noble friend was compelled to abandon this course by the opposition of the right hon. baronet and his friends. Therefore the only remaining course was for my noble friend to take the least bad bill which the Opposition would permit him to carry, and my noble friend stated in his place that a compromise had been made between the Government and the representatives of the Church of England, and the friends of the Church of Scotland. The result was, the act of 1840. That act provided that the proceeds of the clergy reserves sold before 1840, should be divided into three equal parts—two of which should be for the church of England, and one for the church of Scotland. It also provided that the proceeds of the clergy reserves sold after 1840, should be divided into six equal parts, two of which should be for the church of England, one for the church of Scotland, and the remainder should be applied by the Government for the purposes of public worship and religious education. I estimate, if this act were to continue in force, and the clergy

reserves were to be sold at the same rate as they were sold at before 1840, two-fifths of their proceeds would belong to the church of England, one-fifth to the church of Scotland, and the remainder would be applicable for the support of public worship and religious education.

A return has just been presented of the amount of the clergy reserve fund since 1840, and its distribution under the act of 1840. I have compared that return with the census of the population of Canada in 1851. I find that in Upper Canada the population in 1851 was 952,000, and that the total amount of the clergy reserve fund since 1840 has been 271,000*l.*; that the members of the church of England were 223,000, or less than one-fourth of the population, and that they have received 148,000*l.*, or more than half of the clergy reserve fund; that the members of the church of Scotland were 58,000, or less than one-sixteenth of the population, and they have received 64,000*l.*, or about one-fourth of the clergy reserve fund; that the members of the church of Rome (who have neither tithes nor other endowments in Upper Canada) were 168,000, or more than one-sixth of the population, and they have only received 20,000*l.*, or about one-thirteenth of the clergy reserve fund: and that the remaining denominations of Christians, amount in number to 441,000, or to more than four-ninths of the population, and that they have only received 18,000*l.*, or about one-fifteenth of the clergy reserve fund.

I find that in Lower Canada in 1851, the population was 890,000, and that the amount of the clergy reserve fund, since 1840, has been £32,000; that the members of the Church of England were 45,000, and that they have received £22,000; and that the members of the Church of Scotland were 4,000, and that they have received £9,000.

These facts shew that the principle of the act of 1840, was to favour the churches of England and Scotland in Canada. It was therefore contrary to the principle of the Constitutional Act of 1791, which drew no distinction between the various denominations of a Protestant clergy. It was also contrary, and not, as the right hon. baronet said, similar to, the principle of the bill of 1840 of the Legislature of Upper Canada, which divided the proceeds of

the clergy reserves nearly equally between the various denominations of Christians. It was, therefore, an attempt to settle the question of the clergy reserves by a compromise, not between conflicting and contending parties in Canada, who were deeply and directly interested in the question, but between parties in this house, whose interest in this question was only remote and imaginary. In fact, it was a compromise made in opposition to the wishes of the people of Canada, in order to gratify the idiosyncracies of that portion of the Imperial Parliament which consisted of the right hon. baronet and his friends. This cannot be denied; for my noble friend himself in 1840 declared that he did not consider it a good measure, but only a less evil than leaving the question of the clergy reserves unsettled at that moment. When the act of 1840 reached Canada, Lord Sydenham strongly condemned it. He declared,—

"That the proportion allotted to the Church of England was monstrous, and was grounded upon claims either wholly without foundation, or upon a complete perversion of previous acts of Parliament; and that the proportion set apart for purposes connected with parties not belonging to either of these two churches was miserable."

Lastly, the House of Assembly emphatically denied that the act of 1840 was ever accepted by the people of Canada as a final settlement of the question of the clergy reserves; for, on the 14th of September last, a motion declaring that the people of Canada had concurred in the final settlement of that question by the act of 1840, was rejected by a majority of fifty against a minority of eighteen. Of that majority twenty-five were Protestants, and twenty Upper Canadian members. Of the minority eighteen were Protestants, and fourteen Upper Canadian members. Therefore, the absolute majorities of Protestant and Upper Canadian members were equivalent to absolute majorities of from 90 to 100 in a house of 591 members. I find that the persons who first attempted to upset this so called final settlement of 1840 were the members of the church party themselves. In 1846 they sought to carry an address to the Crown, praying that the proceeds of the clergy reserves should be divided, apportioned, and conveyed to themselves and other denominations recognised by the act

of 1840. They obtained, from a committee of the House of Assembly, a report favourable to their project. But the House of Assembly refused to adopt that report..

Sir, I will, however, suppose, for the sake of argument, with the right hon. baronet opposite, that the act of 1840 was considered by the people of Canada as a settlement of the question of the clergy reserves. I ask—have not the people of Canada a right to change their mind upon this question? Is the right hon. baronet entitled to a monopoly of the privilege of changing opinion? Has he not changed his opinion on this subject since last year? What did the right hon. baronet say last year? In his despatch of the 22nd of April last, he abandoned the position that the act of 1840 was a final measure. He declared that "it might possibly be desirable that the distribution of the proceeds of the clergy reserves should from time to time be reconsidered, and that any proposals of such a nature Her Majesty's Government would be willing to entertain." If the right hon. baronet still holds this opinion, then the only question at issue between us is, by whom ought the act of 1840 to be from time to time reconsidered and altered? By the Imperial Parliament or by the Colonial Legislature? The right hon. baronet would say by the Imperial Parliament. But why should Parliament undertake so difficult and thankless a task? It can only alter that act in one or two ways, either in accordance with, or in opposition to, the wishes of the people of Canada. I will consider each alternation. First, I will suppose that Parliament would desire to alter the act of 1840 in accordance with the wishes of the Canadian people. In order to do so it would have first to ascertain their wishes. Now, there is only one constitutional mode of ascertaining the wishes of the people of a colony which has representative institutions, and that is to ascertain the wishes of the representatives of the people in provincial Parliament assembled; for Parliament cannot admit that petitions, however numerously signed by persons however respectable, can prove that the opinions of the people of a colony are different from those expressed by their representatives in provincial Parliament assembled. Therefore, if Parliament desire to legislate on this matter in accordance with the wishes of the people of

Canada, it would have first to ascertain the precise measure which the Canadian Legislature would pass if it had power, and then Parliament should convert that measure into an imperial act. It is evident however that the simplest mode of accomplishing this result would be to empower the Canadian Legislature to alter the act of 1840. Therefore, the only valid reason, which can be assigned why the Imperial Parliament should undertake the difficult and thankless task of from time to time reconsidering and altering the act of 1840 is, that it might be the duty of Parliament to alter that act in opposition to the wishes of the Canadian people. I do not deny that there are cases in which it might be the duty of the Imperial Parliament to legislate in opposition to the wishes and interests of the inhabitants of a part of the empire; but the only cases of that description which I can imagine, are those in which the interest of the part conflict with the interests of the whole empire, and in which therefore the interests of the part must be sacrificed to the interest of the whole. Now, do the interests of the British empire demand that the Imperial Parliament should legislate on the subject of the clergy reserves in opposition to the wishes of the Canadian people? Or, in other words, is that question an imperial or a local one?

Sir,—I have shewn that from 1791 to the present moment every authority on colonial matters has declared his opinion that the question of the clergy reserves is a local one, which ought, at least in the first instance, to be decided by the local legislature. I have also shewn that each successive authority has declared that opinion with more emphasis than his predecessor. In fact, there has been a steady progress of opinion on this subject. That progress of opinion has been the necessary consequence of the progress of the principle of religious equality. In former days it was held to be the duty of the State to encourage one form of the Christian faith, and to discourage every other form. That opinion cannot now be maintained, because all Christian sects are now admitted on equal terms into this house. Therefore, it must be acknowledged that the State is not at present entitled to interfere with the religious faith of its subjects in this country, or to attempt to induce or compel them to adopt one form of Christianity in

preference to another; and if so, then *à fortiori*, the State is not entitled to interfere with the religious faith of its subjects in the colonies, or to attempt to induce or compel them to adopt, support, or maintain one form of Christian worship in preference to another; and, therefore, all questions affecting the religious faith of our colonists, or the mode in which their faith shall be maintained—in short, all questions respecting religious endowments in our colonies, are local and not imperial questions, which ought to be dealt with by the local and not by the Imperial Parliament.

The right hon. baronet said, that if we transferred to the Parliament of Canada the power of dealing with the question of the clergy reserves, it would disendow the church of England in Canada, and secularize those reserves; and that such a disendowment would be a violation of the principle of property and a sin to which, by passing this bill, we should give our sanction. I deny this conclusion; for I contend that the principle of property requires no more than that the reasonable expectations, or the rights of existing persons to a property, should be respected, or not disturbed without full compensation. Now this bill provides that existing interests shall be respected, and it does so at the special request of the Canadian Legislature. What more can be required? The principle of property does not require that the unformed expectations and non-existing rights of uncreated persons should be respected. On the contrary, our law abhors perpetuities, as opposed to the nature of things. It forbids a man to entail his estate beyond a very limited extent; it seizes a portion of certain kinds of property as they pass from generation to generation. For precisely the same reason that a man ought not to have power to entail his estate for ever, the State ought not to entail any portion of the public estate in perpetuity. Therefore, provided that existing interests be respected, the State is not bound to respect an endowment by any obligation arising out of the principle of property, but only on the grounds of the public utility of the endowment or of the inexpediency of disturbing it. Therefore, if this bill passes, the Canadian Legislature may secularize the clergy reserves without violating any principle of property, provided that it respects existing interests. It should be remembered that, if this bill

passes, the Canadian Legislature will only acquire the same power over Protestant endowments as it now has over Roman Catholic ones. How the Canadian legislature would act, I cannot pretend to say, nor will I attempt to determine. I will only express my strong opinion that the longer you delay giving to the Canadian Legislature power to deal with this exclusively local question, the more certain you may be of the ultimate disendowment of the Church of England in Canada.

The right hon. baronet seemed to think that the secularizing of the clergy reserves would be very injurious to the Church of England in Canada. I disagree with him. I should be sorry to support a measure, which, in my judgment, would be injurious to the church of England, because individually I prefer the doctrines and discipline of the church of England, to those of any other religious denomination. But there is so strong a feeling throughout North America against religious endowments by the State, and in favour of the voluntary system, that the fact of the church of England being endowed, tends to make it an object of suspicion and jealousy, and to do it perhaps more harm than it derives good from its share of the clergy reserves.

I will only refer to one other argument which has been urged against this bill by the right hon. baronet. That argument was, that the friendly feelings which had sprung up since the re-union of the Canadas between the British and French population would be liable to be disturbed; and there would be danger of the revival of animosity and discontent among the inhabitants of Upper Canada, if they were now to be deprived of the fund for the support of religious worship which they had so long derived from the proceeds of the clergy reserves. To this I answer, that all experience shews that there is no surer mode of engendering animosity within a colony—no more certain way of begetting hatred of a mother country—no speedier process for inspiring colonists with disaffection and disloyalty, than for the imperial state to league itself with the minority of the inhabitants of a colony to defeat the wishes of a majority with regard to a strictly local question. Now if you reject this bill, you will league yourselves with the minority of the inhabitants of Canada—with the

minority of the protestant portion of the population of Canada—with the minority of the Upper Canada section of that province, in order to defeat the wishes of three different majorities.

I have now examined, and endeavoured to reply to, the chief arguments which have been urged against this bill by the right hon. baronet, the member for Droitwich. I will therefore conclude with repeating, that the real question, stripped of all matters foreign to it, which the House has now to decide, is,—will you adopt as the rule of your colonial polity that all questions affecting exclusively the local interests of a colony which possesses representative institutions shall be decided by the local Legislature? That rule should, in my opinion, be the axiom from which your whole system of colonial government should be deduced. The strict adherence to it would more than anything else strengthen and render permanent your vast colonial empire. I therefore entreat you now to apply it to the greatest of your dependencies by assenting to the second reading of this bill.