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CANADA.

COPY of a DESPATCH from Lord Goderich
to Lord Aylmer.

(Lord John Russell.)

Ordered, by The House of Commons, to be Printed,
11 March 1841.

128.

Under 1 oz.

C A N A D A.

RETURN to an ADDRESS of the Honourable The House of Commons,
dated 10 March 1841;—for,

COPY of a DESPATCH from Lord *Goderich* to Lord *Aylmer*, dated
13 September 1831.

Colonial Office, }
11 March 1841. }

R. VERNON SMITH.

Ordered, by The House of Commons, to be Printed, 11 March 1841.

COPY of a DESPATCH from Lord *Goderich* to Lord *Aylmer*.

(No. 63.)

My Lord,

Downing-street, 13 Sept. 1831.

I HAVE received your Lordship's despatch, dated the 15th July 1831, No. 62, recommending the introduction of certain ecclesiastics into the Seminary of St. Sulpice at Montreal, with the view of maintaining and perpetuating that institution. A similar application has been made to me on behalf of certain priests, who are strongly recommended by the community of St. Sulpice at Paris. In order to determine the proper course to be taken with reference to these applications, I have thought it necessary to review all the correspondence between Lord Bathurst and Mr. Huskisson, and your Lordship's predecessors in the government of Lower Canada, on this subject. It appears to me impossible to detach the particular question which you have brought under my notice from the more general topics embraced in that correspondence. I think, also, that it is highly inexpedient any longer to postpone the final arrangement of a subject affecting so many and such important interests; I proceed, therefore, to convey to your Lordship such instructions, as, upon a very deliberate review of the whole case, seems to me indispensable.

I find that, in the year 1827, a negotiation took place between the Rev. Mr. Roux, acting in the capacity of Superior of the Seminary of Montreal, and the late Mr. Huskisson.

That discussion terminated in an arrangement, the terms of which were communicated by Mr. Huskisson to Lord Dalhousie, with instructions to carry it into effect. Your Lordship is aware of the circumstances which defeated the execution of that design. It could answer no useful purpose to recount them on the present occasion. The legal incapacity of Mr. Roux and his associates to perform their part of the contract seems at length to have been generally admitted, and the measure would appear to have been abandoned by the unanimous consent of all the parties more immediately concerned.

I notice this ineffectual endeavour at the outset, because it is essential to show that the discretion of his Majesty's Government is unfettered by what has passed, and that it is open to them to act with the same freedom, as though the arrangement with Mr. Roux had never been made, or had been abandoned in the most express and formal manner. There can be no doubt that at this distance of time, and after all that has occurred, neither party could insist on recurring to it.

Though such is my view of the actual state of the question, I am not to be understood as desirous to escape from any of the pledges which were advisedly given by my predecessors in office on this subject, or as impeaching the accuracy of the judgment which they exercised; on the contrary, all that has subsequently occurred

occurred has only fixed in my mind the conviction that they were right in their general principle, and that but for the misapprehension under which they laboured of some of the facts, there was no part of their instructions which would not have admitted of execution to the great advantage of the province. I think, as they did, that it is an object of the highest importance to emancipate from the restrictions of the feudal law a great commercial city enjoying natural advantages so extraordinary as those of Montreal; that this tenure must impede many improvements of the greatest value which are required for the increase and security of trade, and that, if rescued from this absolute and improvident code, Montreal might rapidly assume a prominent rank among the cities of the first order on the American continent. Nor am I shaken in this opinion by the statement that the inhabitants themselves feel little solicitude on the subject. Supposing the assertion to be accurate, which I have considerable reason to doubt, nothing is more natural than that an advantage which has never been enjoyed should not be adequately appreciated. It would be superfluous to adduce arguments to show that a tenure which imposes the most burdensome charges on every change of property, and on every improvement made by the occupier, must be adverse to the prosperity of a commercial city. That individuals whose wharves and warehouses need no enlargement should find their interest in perpetuating restrictions which discourage competition, and that they should represent this selfish clamour as the public voice, is so entirely in accordance with the general experience of all countries, as to be altogether unworthy of regard. This is one of those questions on which the general principles of commercial policy may be confidently opposed to individual opinions founded on local knowledge.

I further concur with my predecessors in deprecating the continuance of an institution, which, instead of supplying the vacancies which occur in the governing body from amongst its own pupils, has been compelled to recruit its strength from the priesthood of a foreign country, closely allied to Lower Canada by many ties of language, origin and ancient subjection.

I also agree with Lord Bathurst and Mr. Huskisson in thinking it a just subject of regret, that so large and important a portion of a new country should be held in mortmain, and should be placed under the government of an ecclesiastical corporation, which, to the ordinary objections incident to the secular transactions of all such bodies, adds the peculiar difficulty of claiming its estate by so disputable a title, as scarcely to venture upon the most necessary controversy with its own tenants.

The preceding considerations, with others of a similar tendency, convince me that it would be highly desirable to carry into effect Mr. Huskisson's design, supposing that it could be accomplished without injustice to individuals, and without incurring the obloquy of an unpopular contest with a body of ecclesiastics, who enjoy a strong and just hold on the respect and attachment of society.

Were I disposed to advert with much care to the abstract question of legal right, I apprehend there would be little difficulty in establishing the title of the Crown to the Seigneurie of Montreal. On this head I find the most perfect coincidence of opinion amongst all the successive law-officers of the Crown under whose consideration the question has been brought. I am not unaware of the weight of the legal authorities which have been adduced on the other side; nor is it possible to deny the existence of many circumstances which would constitute an equitable claim to relief against the rigid application of the rules of law to this case. Still the legitimate conclusion from the whole appears to be, that should his Majesty be advised to assert his right by an action at law, it would be impossible to make a valid and successful defence.

I thus advert to the powers which I believe to be vested in his Majesty, not with any view to enjoin or to justify their exercise on this particular occasion; my design is altogether of a different, and indeed of an opposite nature. I have no measure in view by which the members of the College of St. Sulpice could sustain any loss, or by which the religious designs of that institution would in any degree be frustrated, or by which any part of their endowment would be desecrated or rendered applicable to secular objects. The members of the Seminary themselves can scarcely be more solicitous than I am to prevent whatever might seem to derogate from their just claims to esteem and confidence, or might defeat the pious and charitable designs of their foundation.

It appears to me very practicable to reconcile the general public interests to which I have adverted, with the most scrupulous regard for the interests of the Seminary of Montreal, and of the objects of their charity. It is much to be regretted that these ends should ever have been considered as incompatible; or that jealousies should have been excited in reference to a subject on which the Government had all those claims to confidence, which the perfect absence of all selfish or party objects can afford.

The purpose of my present Despatch is to instruct your Lordship to open a friendly negotiation with the existing members of the Seminary of St. Sulpice at Montreal. I am perfectly aware of the legal objections which have been made to the recognition of the corporate character in which they assume to act. I am apprized of the arguments by which their inability to bind the society at large or to enter into any valid contract are maintained; nor am I ignorant of the inference which has been drawn, that to treat with persons in such a situation is unmeaning, or injurious. With all due respect for the judgment of those with whom these and similar objections originated, I must regard them as misplaced and inconclusive.

Let the alleged incapacity of the existing members be admitted to the fullest possible extent, still it will not be denied that they are in actual possession of the seignior; that they do, in point of fact, assume the character and exercise the rights of a corporate body; or that, if litigation were unavoidable, they would be the defendants in any action which might be brought to establish his Majesty's title. If this be so, the legal discussions which have occurred respecting their capacity to surrender the charter and estates of the Seminary are quite irrelevant. If these individuals are the persons with whom it would be necessary to litigate, they must also be the persons with whom it is proper to negotiate. It is quite impossible to bring questions like the present to a close, if a course, dictated alike by justice, good-will and common sense, must be abandoned, until every technical objection is answered. Confident, as I am, that the gentlemen now composing the Seminary will give me credit for the most friendly intentions, and placing, as I do, a ready reliance on their own frankness and good faith, I think it right to desire that without any further reference to your legal advisers, your Lordship will have the goodness to take the conduct of this affair into your own hands, and to address yourself directly, and at once, to the members of the Seminary. You will acquaint them that the wish of his Majesty's Government is, that the Corporation should, in due form of law, be declared to be extinct; and that all its territorial possessions should, in the most solemn and authentic manner, be declared to be vested in the King.

You will, at the same time, acquaint them, that his Majesty will, at the moment of these declarations being made, issue a new charter for their incorporation, and endow them with revenues arising from the possessions of the Seminary, equal in annual amount to the income of which they have hitherto been in the receipt; that income being calculated upon an average of the last ten years, or upon an average embracing a smaller or greater number of years, if, for any reason, the number which I propose should conduce to an unfair result.

Your Lordship will further announce his Majesty's willingness to grant the new charter of incorporation in whatever form the members of the Seminary may think most desirable; provided, of course, that nothing be demanded contrary to law or manifestly unreasonable,—a danger which, I am convinced, there is no just cause to apprehend.

The surplus revenue which, after the completion of this arrangement, might result from the estate, could not justly be applied, except to purposes approaching as closely as may be practicable to those of the original foundation. His Majesty's Government disclaim, in the most unqualified manner, any intention of applying them to any other purpose. They do not even desire to reserve to themselves the power of selecting the specific objects towards which that surplus revenue is to be applied. To obviate every possibility of cavil on that head, your Lordship, on the completion of the arrangement, will place this surplus income at the disposal of the provincial legislature, precisely in the same manner as the income of the Jesuits' estates, with the single restriction that the fund must not be diverted from the general object of defraying the expense of education or religious instruction.

When the possessions of the Seminary shall be absolutely vested in his Majesty,

Majesty, your Lordship will cause notice to be publicly given, that any of the tenants may commute the feudal tenure for a tenure in free and common soccage, on condition of the land or buildings being charged with a permanent quit-rent, equivalent to the rights which may thus be surrendered by the Crown. The terms of commutation should, however, of course be easy, especially at first. I should anticipate that the change would proceed slowly at its commencement, and advance with rapidity as experience might prove its advantages. Even, however, should the change be much more tardy, I cannot doubt that the general revenue might be improved. There can be no reason to apprehend its diminution.

It has been urged, that the Government would thus be taking upon itself an unrequited and invidious office, and, without augmenting its own revenue, would be placed in a disagreeable relation to the tenants of the estate. I answer, first, by totally denying that opposition or contrast between the interests of the Government and of the public at large which the objection supposes. I know not what other requital, or compensation for labour, or unmerited obloquy the Government can desire, than the satisfaction of advancing the general welfare of the province; nor how that object can be better promoted than by relieving the second city of Lower Canada from burthensome charges, and at the same time making a permanent provision for the religious and literary education of the youth of the province.

But though, with a view to ends of this magnitude, neither labour nor undeserved odium must be declined, there is certainly no reason why any unnecessary suspicion or ill-will should be incurred. I therefore think it right that the management of this property should be placed in the hands of Commissioners, to be selected without any reference whatever to their supposed political opinions or connexions, but exclusively with a view to their station in society, their established characters, and their qualifications for such a trust. The expense of management ought to be very inconsiderable, because the Commissioners would be able to avail themselves of the services of the Surveyor-general, and the officers of that department. Perhaps it might be practicable to place the Jesuits' estates under the management of the same body,—a subject to which, however, it is needless to advert any further at present.

Such are the objects which I am anxious to accomplish. It remains to notice the method of carrying them into effect.

It seems necessary to the final settlement of the question, that the extinction of the ancient Corporation and the title of the King to its possessions, should be ascertained by the judgment of a competent tribunal. With the concurrence of the existing members of the Seminary, an amicable suit might be commenced for that purpose, in which, by consent of all parties, judgment might be given for the Crown. That judgment, and the issuing of the new charter, might be strictly coincident and contemporary acts.

Should it be apprehended that a decree of this nature would have such a retrospective effect as to endanger titles holden under acts of the extinct Corporation, or as to involve the members in pecuniary or other responsibilities, I cannot doubt that the provincial legislature would indemnify the parties against every such risk. Acts which have been done in good faith would of course be thought entitled to such protection.

Until I learn the result of the offer which I have thus instructed your Lordship to make, I must of course decline to authorize any addition to the existing number of the members of the Seminary.

Should the proposal be declined, I shall on every account lament that decision. In that event, your Lordship will instruct the law officers forthwith to adopt the necessary measures for obtaining the judgment of the proper tribunal respecting the title of the Crown to the Seigneurie of Montreal, and respecting the right of the existing members of the Seminary to act in a corporate character. You will, however, apprise those gentlemen, that, even should the suit be successful, it will not necessarily follow that the offer I have now made will be retracted. It will remain for his Majesty to judge whether the interests of the province would be best promoted by the assertion of his rights to the Seigneurie, or whether my present offer should be renewed. I can, however, at present state, that the single object which will in either event be pursued by his Majesty's Government will be the advancement of education and religion in Canada. I trust,

however,

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however, that the refusal of my offer is not to be apprehended. If it be accepted, the question will be settled in the spirit of mutual confidence and good-will, and at a very trifling expense of labour, time or money. Should it be rejected, the settlement must be preceded by an expensive and dilatory process, and by the appearance at least of hostility between parties on whom it is particularly incumbent to exhibit to society at large an example of moderation and mutual respect. His Majesty's Government will, in either case, be absolved from the responsibility, and my present Despatch will remain as a proof that no practical effort was omitted to avert a litigation at once so indecorous and so unprofitable.

In the spirit of frankness which has dictated the preceding instructions, I am further to desire that your Lordship will transmit to the members of the Seminary of Montreal a copy of this Despatch, without the omission of any part of it.

I have, &c.
(signed) *Goderich.*
