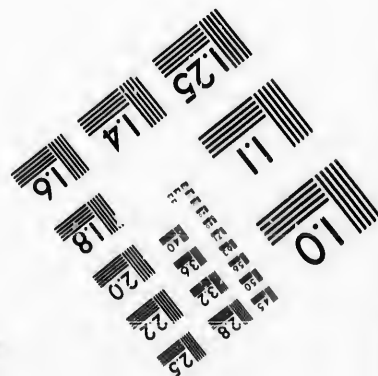
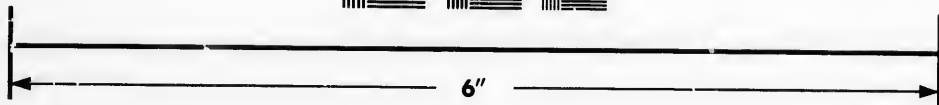
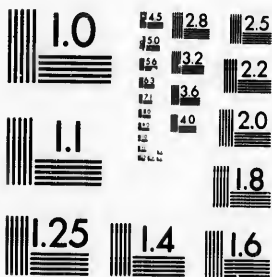


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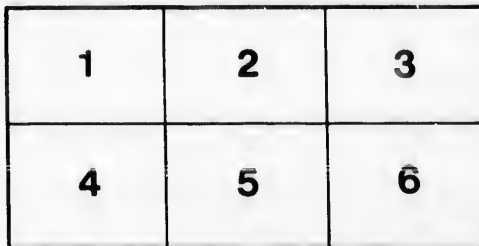
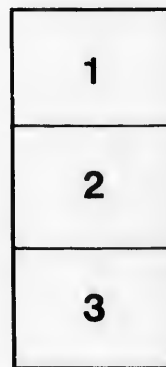
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“SHOULD LORD DURHAM BE
IMPEACHED?”

LONDON :
GILBERT & RIVINGTON, PRINTERS,
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“ SHOULD LORD DURHAM BE
IMPEACHED?”

THE QUESTION CONSIDERED
IN
AN APPEAL
TO THE
ELECTORS OF THE HOUSE OF COMMONS.

BY A FREEHOLDER.

LONDON:
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PATERNOSTER ROW.

1839.

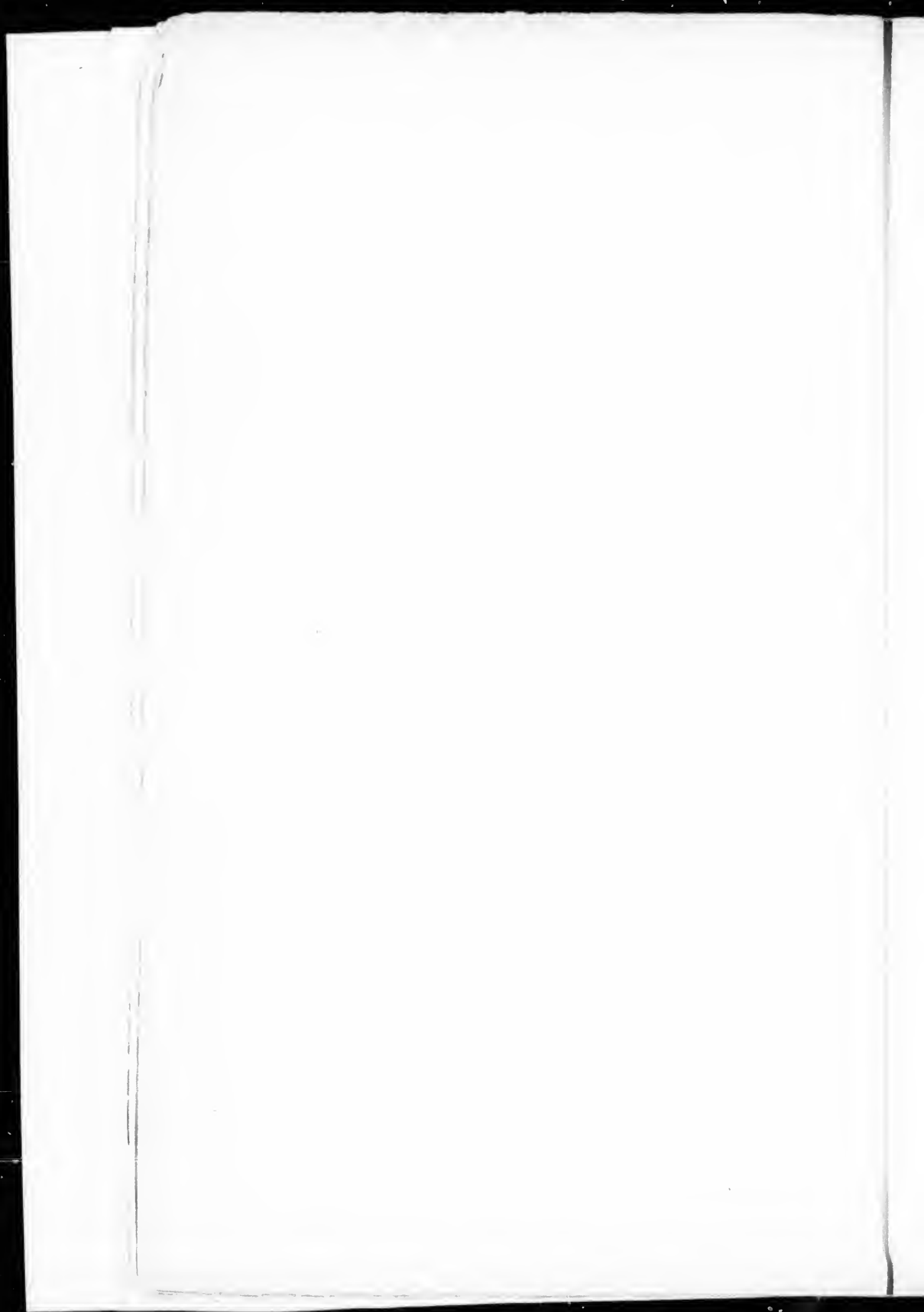
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PREFACE.

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It seems necessary to say that all objections, as that the following considerations are premature, and that they prejudge the question before the facts are all out, are obviated by the way in which the subject is treated. The statute, whereby Lord Durham's power was constituted, is open to the public, and so is the Act of Indemnity which caused his resignation; and surely no subsequent oral statements of his Lordship can be allowed to vary his own solemn written instrument, the public, *official* declaration of his mind,—I mean the proclamation which he issued in the Canadian Gazette on his resignation!



"SHOULD LORD DURHAM BE
IMPEACHED?"

BROTHER ELECTORS!

THE constitution has entrusted you with the power and responsibility of choosing such a Parliament as shall represent the national mind; upon you therefore eventually rests the decision upon this question, as upon all others which may relate to the public welfare: and as the subject to which this question refers, and the facts which it involves, cannot be blinked, but must be brought up for public judgment, it behoves you well to consider thereon in time, in order that your minds may be fully made up, in case of a general election taking place, which present circumstances would seem to render very probable.

I presume that most of you are aware of the facts of the case up to the present time. You all know under what circumstances Lord Durham undertook the high office he went out to Canada to execute, and how and for what causes he chose

to give it up, and return home without executing the same; and the questions now for your considerations are—whether under all the circumstances of the case, he was justified in so doing? And, if you should think that he was *not* so justified—whether he ought to suffer any greater punishment than the general expressions of disapprobation which may be passed on his conduct in Parliament, or in common society?

When the news arrived, a year ago, of the sad state of things which had taken place in Lower Canada, and the total disorganization of social order which was likely to ensue, not only in that province, but in all our adjacent colonies, with the better part of the people only one feeling existed, of deep regret at the circumstance, and of a firm determination not to allow those portions of our empire to be dismembered from the government of the mother country. We were all ready to admit, that there had been gross mismanagement in the affairs of those colonies; we all agreed that every measure should be adopted to restore order, by restoring good and equal government; so that a recurrence of the recent catastrophe might be avoided by destroying the causes which led to it. In order to meet the extraordinary difficulties which surrounded the subject on every side, extraordinary measures were taken; and to carry these measures into effect, the country anxiously looked out for fit and appropriate agents. It happened,

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and as was thought then most fortunately, that an individual was at hand, who had been tried by the country in some important services, and who had justly entitled himself to its confidence, by the manner in which he had performed them. He was a man of high rank in the country, and yet without the popular prejudice, which generally without distinction attaches itself thereto; moreover he was a man of enlarged capacities, fully alive to the wants of the times, and fully aware of what the people require of their public servants; and when, added to all these desirable qualifications, we say that he had been known to sympathize with the political struggles of the people, against those who too long had domineered over them, it surely was not without reason, that the country was well pleased that such a person undertook the divine office of ministering for public security—of standing between the yet living embers of expiring liberties, and the deadening influences of lost political rights, and of staying the damning plague of social disorder, and the ruin of public freedom in one of our most important colonies. Lord Durham was this person. With the full confidence of the country, and with a full reliance on his own capabilities, he went out to Canada; armed with powers so great, that only the necessity of the case would tolerate them; he had great ends in view, and he had great means at his command to reach those ends. And that this may more de-

cidedly be seen, let us refer to *his own words*, as they appear in his own proclamation, issued on his resignation. "I did not," says he, "accept the government of British North America *without duly considering* the nature of the task which I imposed on myself, or the *sufficiency of means* for performing it." "I did not shrink from assuming the awful responsibility of power thus freed from constitutional restraints: in the hope that, by exercising it with justice, with mildness, and with vigour, I might secure the happiness of all classes of the people, and facilitate the speedy and permanent restoration of their liberties." It appears from this, and much more that might be cited, that he was quite aware that he had great means in his power of doing good in the station wherein his country had placed him; and, from what follows, it will also appear that the ends to be effected by him were great too, and that he thought them practicable. "To encourage and stimulate me in my arduous task, I had great and worthy objects in view. *My aim was* to elevate the province of Lower Canada to a thoroughly British character, to link its people to the sovereignty of Britain by making them all participators in those high privileges, conducive at once to freedom and order, which have long been the glory of Englishmen. *I hoped to confer*, on an united people, a more extensive enjoyment of free and responsible government, and to merge the petty jealousies of a small com-

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munity, and the odious animosities of origin, in the higher feelings of a nobler and more comprehensive nationality." Again,—“When I sought to obliterate the traces of recent discord, I PLEDGED MYSELF *to remove its causes, to prevent* the revival of a contest between hostile races, to raise the defective institutions of Lower Canada to the level of British civilization and freedom, *to remove all impediments to the course of British enterprise* in this province, and promote colonization and improvement in the others; and *to consolidate those general benefits* on the strong and permanent basis of a free, responsible, and comprehensive government.” Surely, if any thing be plain, this is the language of a man conscious of the greatness and usefulness of his undertakings, and *confident of his own powers* of carrying them into effect. In other parts of his proclamation he talks of his plans as “a large system of measures” for “a great object,” “a great and beneficent purpose,” and of “the *vast benefits* which his entire policy *promised and had already in a great measure SECURED!*” Nay, before he concludes, he goes out of his way to repeat, even to weariness, the great good which he had in his power to do, when he owns the sorrow which his not doing it had caused him. When a man has done wrong himself, in conjunction with others, how apt is he to refer the sorrow which he feels to the account of something *not* done which he might have done, instead of to something done, which *he*

has done ; and to throw impliedly the guilt of what has been done upon those who may have been participators in the act, instead of taking it upon his own shoulders ; although he knows that, as far as *he* is concerned, he is as much guilty as if he had been the only actor in the transaction. Thus my Lord Durham naturally will not allow that he is in anywise the cause of the stoppage of the good which he acknowledges he had in his power to do. The passage referred to is the last that shall be quoted of those which are brought forward as *conclusive* upon Lord Durham, and *estopping* him from denying that he felt himself capable of being of great use to his country, by undertaking the management of our affairs in the North American colonies. It is this : “ You will easily believe that, after all the exertions which I have made, it is with feelings of deep disappointment that I find myself thus suddenly deprived of *the power of conferring great benefits* on that province to which I have referred ; of reforming the administrative system there, and eradicating the manifold abuses which had been engendered by the negligence and corruption of former times, and so lamentably fostered by civil dissensions. I cannot but regret being obliged to renounce *the still more glorious hope of employing unusual legislative powers* in the endowment of that province with those free municipal institutions, which are the only sure basis of local improvements and representative liberty,—of establishing a system of general education,—of

revising the defective laws which regulate real property and commerce,—and of introducing a pure and competent administration of justice. *Above all*, I grieve to be thus forced to abandon *the realization of such large and SOLID schemes of colonization and internal improvement*, as would connect the distant portions of these extensive colonies, and lay open the unwrought treasures of the wilderness to the wants of British industry and the energy of British enterprise.” So far, then, out of his own mouth, my Lord Durham stands convicted: he himself acknowledges, that he not only had great hopes of doing much good, but that he felt himself equal to the doing of it;—nay, more, that he *had partly succeeded in so doing!* In the Proclamation above mentioned, we have seen he speaks of “the vast benefits which his entire policy promised, and *had already, in a great measure, secured;*” and in an answer which he made to the Plymouth address, after his arrival in this country, he repeats the same thing,—“*I have received more numerous testimonies of regard from all classes in the North American provinces than ever before were presented to any of their rulers.*” . . . “*I had conciliated the esteem of a great and powerful nation, in which were to be found all the elements of danger or security to our North American possessions: I had seen commerce and enterprise reviving, public confidence restored, AND THE FIELD AT LENGTH LAID OPEN FOR ME, where I could raise a constitutional edifice worthy of the British name, and*

resting on such broad and comprehensive foundations as would *ensure the good government of the colonies*, and the *perpetuation* of their connection with the British crown." Now, mark what follows! "In this career of, I humbly, but fearlessly venture to assert, COMPLETE SUCCESS, I have been suddenly arrested." We now come to the main point of what we are about,—whether the reason which Lord Durham assigns for stopping short in this great career of usefulness, "*when the field was at length laid open*" for his exertions, is sufficient to justify him before you? In other words, whether, when he found by experience that he *could* do what he went out to do, having met with "*complete success,*" *as far as he went*, he shall be allowed with impunity to give up the going on with the same in the way he has done? You all know why he resigned; because he thought that a certain Act, *particular and confined in its nature*, and relating to a matter done in only one of the provinces under his care, was of such a nature as to strike at the root of his entire policy, and therefore to make *all* his future exertions for good useless! We have nothing now to do with the motives of the persons who got that Act passed. Let us admit that it originated in the morbid jealousy of a man who, in a public point of view, cannot be termed otherwise than a political bankrupt; that it was fostered by the cordial cheers of the opposition, ever ready, and naturally ready, to seize upon any thing which might, no matter at what sacrifices to the country,

produce a discomfiture in the ranks of their adversaries ; let us grant that it was cowardly taken in hand by the Ministry,—a weak and imprudent Ministry, ever bringing on measures it cannot carry through, because they are not its own measures, and part of a uniform system, but thrust upon it by circumstances, and taken up by chance, as the feeling of the day may be, and not upon principle, and, therefore, ever weak and vacillating ;—let us assume all this, *for it is all true* ; but is it enough to justify Lord Durham ? Nay, how does *he himself* speak of this Act, which has produced such extraordinary results ? Why, he acknowledges that no imputation whatever was meant to be cast on the *substance* of his policy, but merely on a “petty *technicality*” therein. “It is also very satisfactory to me,” says he, in his Proclamation, “to find that *the rectitude of my policy has HARDLY been disputed at home*, and that the disallowance of the ordinance proceeds from no doubts of its *substantial merits*, but from the importance which has been attached to a *supposed technical error* in the assumption of a power, which, if I had it not, I ought to have had.” And so, because the public has *not* found fault with the general conduct of one of its servants in the execution of a high office, has *hardly disputed* the same, has expressed no doubts of its *substantial merits*, but HAS found fault with a *petty technicality* therein (rather, a mere excrescence thereof, particular in its nature, local and confined in its operations, and temporary in its

endurance); is this sufficient to justify such a public servant, at the instigation of his own personal feelings, to throw up his entire policy, when the country had already reaped some of the benefits thereof, was anxiously looking for more, and was universally expecting him to continue the same? Brother electors! this is a matter of great national importance, and, as such, gives it all the consideration it deserves. Such conduct does not appear to be right. It would not be tolerated in private society; as a matter, viewed in relation to civil law, it is a breach of contract and actionable; and why another rule should prevail in public matters, where greater interests are at a stake, does seem strange indeed! Because in ancient times public servants used to be punished for doing well, is that any reason why in our times public servants should not be punished when they do *ill*? Has Lord Durham, under all the circumstances of the case, done well or ill? That is our question;—not a mere political question, but a *great moral question*; and it is for you, the parliamentary electors of this country, to pass a *moral judgment* thereon. Was there no other course for Lord Durham to pursue than to resign in the way he has done? How much higher would he have stood in our eyes, how much good might he have done, how much of evil prevented, if, when the Act of Indemnity arrived at Canada, instead of making it the plea to give up his post as he has done, he had stood by his duty, and written home

to the government to the following effect :—“ You have acted badly to me, but I will not therefore act badly to my country ; I will stay here, *and do what I CAN*, although I may not do what I *could* have done, if you had not been so weak ; I will not permit ‘the benefits which my policy promises, nay, which it has in a great measure *secured*’ to these provinces, to be blasted by your home party quibblings at my ‘*technical errors.*’ To me *personally*, I candidly tell you, your conduct is most annoying. It is a deep disappointment that I am *curtailed* in my career of usefulness ; but I am not quite cut down ; I can yet do something for my country, and this feeling ‘throws into the shade all the *personal* considerations, which can attach to the treatment I have received ¹ ;—I have told you what I think of your conduct, and *I leave to you the odium of recalling me in the midst of all my active operations for the general welfare!*” If Lord Durham had acted in this manly way, would not all our sympathies have gone along with him, and all our scorn have been pointed at his enemies ? He might have found a precedent for such doings, and in the case of one from whom he need not have been ashamed to have taken a lesson. When the Duke of Wellington was *in the midst* of carrying out his *great measures in Spain*, for the deliverance of that country, and thereby for the preservation of the rights of Europe, he was per-

¹ See his answer to the Plymouth address.

petually annoyed by the ignorant interference of the home government, which attempted to chalk out little plans for his great mind to work upon, and to censure and dispute what he, in order to effectuate his purposes, had thought fit to do. This, added to the daily thwartings he met with from the Spanish authorities, and the apparent impossibility of being able to do his duty properly, would seem to have been enough to sanction any wish he might have expressed to give up his post and retire, when he was thus impliedly deemed to be inefficient. But what did the Duke of Wellington do? How did *he* address the piddling intermeddlers? "I am my country's servant, not yours: if you can't let me fight my battles in my own way, come and fight them yourselves!" The gentlemen took the hint, and left the Duke alone; and he went on with the good work he had begun; and, thinking of his country, and not of himself, manfully marched to victory; and now he has got his exceeding great reward. This is not mere fiction, but a matter of history: the official despatches of those events are published, the pages of Napier are open to your inspection: *read, and contrast!*

There is another thing, existing only in surmise it is true, yet which, if it *be* true, casts a dark shade indeed over the whole business of Lord Durham's return. It is well known, that when Lord Durham was induced to take upon himself the arduous office of governing Canada, people talked in the following

way : " What a capital hit the Whigs have made ! how adroitly has Lord John Russell got rid of Lord Durham ! " You may remember how he then stood with respect to the ministry : he had just returned from Russia, and was assuming an aspect rather threatening to the places of certain members of the government ; moreover, there was a strong party in the country who would have well liked to have seen him *Premier* : he himself not being without ambition, nor altogether free from a notion that he had been rather lordly banished on some previous occasions. However, he went to Canada notwithstanding, and, of course, took his thoughts along with him. Now, it is just probable that these may have taken the following form when he got there : " 'Tis true, I am lord paramount over all this country, and have it in my power to do much good here ; but I *might* have been Prime Minister of England, and then how much greater good could I have done ! " When musing in this way, it is just possible that Charles Buller might have come in, and have taken up the burthen of his royal master's song in the following strain : " My gracious Lord, to be your chief secretary anywhere I am most content (it is much better for me than my circuit practice—*aside*) ; but, as we were saying yesterday, don't you think as *Home Secretary* I could serve your Lordship (and myself—*aside*) much better ? " It is just possible, I say, that a dialogue of the above nature may have taken place in Canada : rumours of such a thing are afloat :

and then we can easily account for *our future ministers* seizing hold of the least possible plea for coming over the waters to be ready for any emergency. *Our future ministers!* Electors! you I mean, the electors made so by the new constitution under the Reform Bill, look to it in time!—*Who* are these *future* Ministers? For the most part, needy men and untried politicians; but we can get over that: they are, however, hostile to the interests of us the present constituted Electors of the House of Commons! Ten-pound Voters, they hate *you!* If *they* come into power, mind, *you will get swamped!* One of their latest advocates, a pretended friend of the people, calls *you* “the smooth-tongued simpering creatures of the counter and the till,” “the slaves of low grovelling prejudices,” whose chief delight is “to ape the worst fashions of the silliest portions of mankind,”—“the small gentry of the shop who keep their children as ignorant as themselves.” Men of the middle classes of society, to whom has been entrusted, by the wish of the country, (as expressed through their organ the Ministry of 1832,) the great responsibility of choosing a Parliament to guide the affairs of our vast empire, will you put up with these sort of men as your rulers? who say that you must be low-minded because you are shop-keepers! As if cringing was an incident to shop-keeping of necessity! Why, is not every man who lives by exchange a shop-keeper? Is not the soldier such, who gives up his time and exertions

for his pay? Is not the lawyer such, who exchanges the labour of his mind for his fees? Is not my Lord Brougham, ex-chancellor of England, such, who, for the pension which we pay him by our taxes, gives in exchange the assiduity of his tongue for the good of the people? (nay, is he not a retailer of very dear articles, above the market price?—this, by the way, for your consideration at some future time!) Well, because there *may* be cringing shopkeepers, are you *all* therefore to be *swamped*? Because some mean men in Bond Street have “their hearts set a fluttering when a lady’s carriage is at their door,” or, “stand not upright, when a lord is in their presence;” because some shopkeepers in higher quarters may cringe and gloze before a King when they are in office, and insult a Queen when they are out of office,—are there no manly shop-keepers, no honest and upright statesmen? For the few who are bad, are the rest to be insulted, and their privileges destroyed? Look to it then in time, shopkeepers of England! See well *what* these men are, before you let them get upon your backs, and put the bridle in your mouths! Ten-pound Voters, don’t be swamped *with your eyes open*! As for *you*, the other great branch of the new constituency, the Fifty-pound Voters of the counties, I need not at any length inform *you*, that the warrant is already made out for your execution, and has been for some time in the pocket of Charles Buller, Esq.,

Chief Secretary to the Earl of Durham, and the *future* Home Secretary of England! *You* are considered as the dead-weight of the Reform Bill, and to fling you overboard will be the first duty of the patriotic crew! Instead of looking upon you as the *ballast* of the good ship of the State, AS YOU ARE, they say you are the grand stoppage to the working of the vessel, and as such you must go to David Jones!! Look to it then, Yeomen of England! See what they are after *in time*! Use your native shrewdness, your plain and homely reasons. Don't be humbugged in an open market! Take care how you use your power WHILST YOU HAVE IT! How should you like to see your broad lands and grassy meads covered over with the slavery of a manufacturing population, tall smoking chimneys take the place of your village spires, and the whole of merry England become, as your enemies openly wish it may, the Manchester of the world! What will become of *you*, think you, and of your wives and of your cherry-cheeked daughters *during the change*, WHEN THE TRANSITION IS TAKING PLACE!! I dare not picture to you what I can see would be your case. Therefore, yeomen of England! for your own sakes, for the sakes of your families, for *all* our sakes, look to it *in time*, I beseech you! We have been carried somewhat from our purpose, in the zeal to show you what will be your fate if you suffer my Lord Durham to triumph in *that* which may have been, after

all, the *real reason* of his resignation; but our immediate object is with that act of his, whatever may have been the cause of it; and whether that cause was the implied censure in the Act of Indemnity, or the ambition of Lord Durham for the Premiership, from all that has been said he appears to be equally culpable, for having made great *public* interests subordinate to his *personal* feelings, thereby cruelly betraying the confidence of his country, which it had so largely, so generously, so absolutely reposed in him: and now, in the last place, we are to consider whether he shall do so with impunity; and if not, what punishment is provided by our constitution for such transgressors against the public welfare¹.

When an individual is injured in his property, whether by a breach of contract or by a tort on the part of another, he has a remedy by an action at law, whereby he gets a compensation in the shape of damages: when the peace of society is injured

¹ It will be seen that nothing has been said about the *consequences* which followed upon Lord Durham's resignation in Canada; the renewal of civil discord, the blood which has been shed, the lives which have been lost, and the piteous sorrow which must have ensued thereon in many a family circle,—above all, the proclamation of *martial law*, which hands over the lives of citizens to the tender mercies of a rampant soldiery: all these, though they tend to raise heavy damages indeed against my Lord Durham, have nothing to do with the thing we are now considering,—his unjustifiable resignation of the office which the country had put into his hands.

by any outrage on its rights at the hands of a criminal, the public is satisfied, and its future quiet guarded against by the process of indictment and the punishment consequent thereon: so also, in a political point of view, when the state is injured, and the national mind aggrieved by the conduct of any of its servants, whom it may have placed in high trust and authority, the wisdom of our constitution has provided a method, whereby satisfaction is rendered to the nation by the punishment of the individual who may have committed the offence, and a warning is held out to all future persons, who may be placed in the same or similar situations, to restrain them within the bounds of their duty by the fear of what they are to expect if in any way they transgress the same. This method is by the high process of Parliamentary Impeachment. It is, as it were, a state-indictment, found by the grand inquest of the Commons of England, against any great public officer, who, *in their discretion*, may be deemed guilty of any crime *or misdemeanour* in the execution of his office and the duties which appertain to it. It is laid down by the highest constitutional authorities¹ that it is a remedy quite *general* in its nature. It is not at all confined in its application to any particular acts of transgression, but lies, so to speak, wherever and *against whomsoever the Commons choose to bring it*. There is an ignorant

¹ Sir W. Blackstone, Burke, &c.

idea afloat, that it can only be brought against a person who is indictable for what he has done at common law: this limitation militates against the whole theory of this high privilege of the Commons, besides being wrong in point of fact;—who does not know that Ministers have, before now, been impeached for signing improper treaties? Yet it would be too much to say that an indictment could be brought for signing an improper treaty! The truth is, that the process of impeachment is quite *extra-ordinary* in its nature. I do not say that it is paramount, but that it is altogether *collateral* to, and not in any way affected by, the ordinary law. It is not regulated by its precedents, either as to the way in which it is brought, or as to the objects for which it is brought. This point in our constitution may be considered as settled ever since the trial of Warren Hastings. The effect of that trial (protracted as it was for petty party purposes) being to bring this ancient and most useful right of the people into odium, and thereby, perhaps, into future neglect, did not escape the great political foresight of Burke, who, at the request of those who managed the impeachment, drew up the famous Report which was the result of the inquiries of a Committee into the causes of the delay attending the trial. It is there demonstrated, in the clearest way, by constitutional precedent, that the delay had arisen from the *unconstitutional interference* of the common

law, as to evidence and other matters attending the process. This most able work of its most able author may be safely appealed to on the subject; lawyers may read it with advantage on many points of law; and members of the House of Commons may use it as a safe guide, when it becomes their duty to make use of the extraordinary privilege which it was the object of Burke to perpetuate in their hands. But there is one thing necessary to render this high instrument of public justice available for the purposes for which it was instituted. Its object being not merely to punish an individual, (which would be a paltry thing indeed!) but to produce a great moral effect on the community, that object can only be gained by there first existing in the community not only a mere party, or a mere political, but a great moral, feeling on the subject. The public at large, or, at any rate, that part of the public to which is given the trust to choose a representation of the national mind, must be so impressed with the guilt of its servant in the transaction under notice, and with the evil which will ensue to future times, if his conduct be allowed to go without public censure, as that the moral judgment which it shall pass on the offender, shall act with such power upon those whom it may elect to form the House of Commons that they shall be forced to carry that judgment into execution in the only way, that to effect its proper

object, it can be done, and that is by the process of impeachment. This, whatever be the punishment, however trivial, which in the result it may affix to the offence, performs its constitutional function by the act of its being brought. When the articles of impeachment are brought up to the House of Peers, even if nothing else should be done, enough will have been done to pass a great public censure on the conduct of the individual who may be the subject of the impeachment; and enough will also have been done to warn future public servants that they are not to act with regard to their public duties as they please with impunity. This is all I want to be done to my Lord Durham; not to afflict the man,—the individual; but to go good to the whole, whereof he is but an insignificant member. The fact of his being a person of high qualities rather goes to render him less excusable, and to make that, which should be the only object of the impeachment, viz. the moral effect to be produced thereby, the more useful by the punishment taking place in his person.

Electors of the House of Commons! you are the persons whose more immediate duty it is to pass that moral judgment, which the circumstances of this case requires. I have now done with the subject; how far it has been treated by me in a way coinciding with your views, you are the best judges: only give me credit for sincerity. Well, then,

what do you think? Is my Lord Durham *justified*
in what he has done or not? How say you, guilty
or not guilty? *Consider* your verdict!

Your humble servant,

A FREEHOLDER.

erham *justified*
ay you, guilty
!

ervant,

FREEHOLDER.

's Square, London.

