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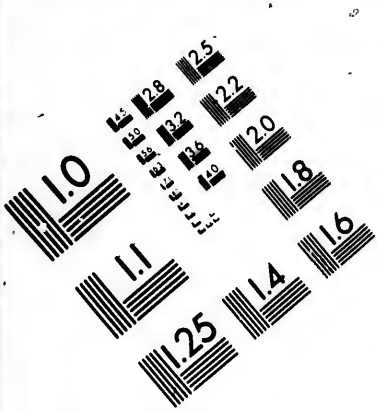

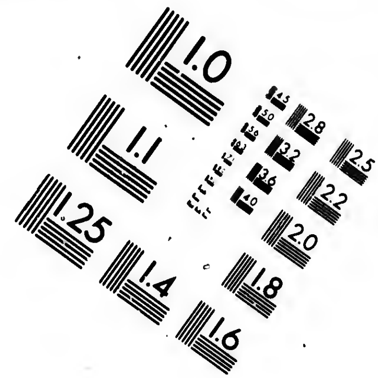

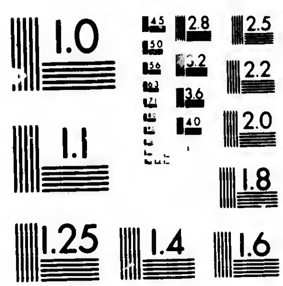

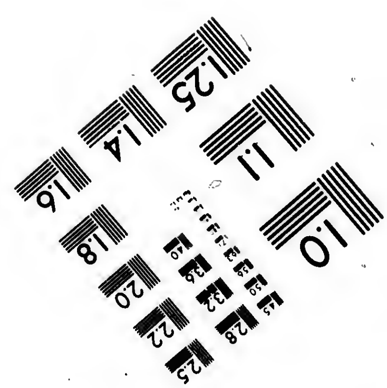

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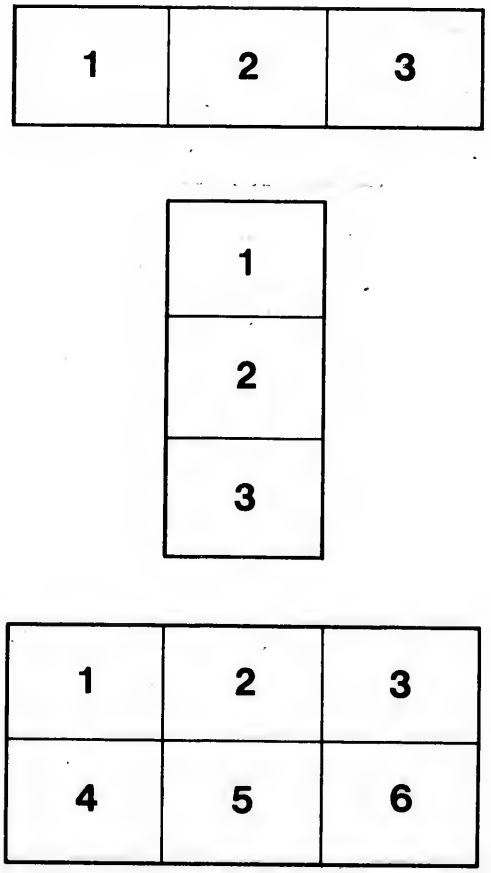

J. O. Fillteau

THE QUEBEC

POLITICAL CRISIS

NOTES AND PRECEDENTS

QUEBEC
SEPTEMBER 1879

[Dunsereau]

THE QUEBEC

POLITICAL CRISIS

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QUEBEC
SEPTEMBER 1879

THE

QUEBEC POLITICAL CRISIS.

NOTES AND PRECEDENTS.

§ 1.—On the 28th August, 1879, the Legislative Council of the Province of Quebec decided to suspend the supply bill by the following resolutions:

That an humble address be presented to His Honor the Lieutenant Governor, forwarding him the following resolutions:

1. That the Speech from the Throne at the opening of the session is a document of the highest importance, because the Government calls upon the authority of the Crown to witness the measures which it promises to submit to the Legislature; *but* that the present Government has not

realized the weight of such obligations and has treated them lightly, by refraining from submitting to the Legislature the greater number of the measures announced in the Speech from the Throne.

2. That the advisers of His Honor the Lieutenant-Governor should represent the authority of the Crown, personify the wisdom and practical experience of the executive power and possess the " necessary ability to carry out in both Houses the obligations which they publicly assumed ", not merely to their continuance in office but also to the integrity and usefulness of their legislative measures ; *but* that the present Government has put itself in disaccord with the principle of ministerial responsibility by submitting to the whim of an undecided majority, which interfered in the carrying out of its measures, and deprived it of its control of legislation, thus allowing the influence of the Executive to pass out of the hands of responsible servants into those of men who merely represent an outside will and are serving private interests.

3. That the principle of parliamentary control over the public expenditure has been forever established by the experience of several centuries and proclaimed in the Bill of Rights ; that the Legislature is jealous of such control, which is the greatest safeguard of our political rights and liberties, and that this principle is equally applicable to the payment or to the agreement to pay any sums of money, and to the remission of debts due to the Crown ; *but* that the present Government, contrary the spirit of the constitution, has involved considerable sums in the purchase of lands and in the carrying out of contracts without having consulted the Legislature, and even, in certain cases, despite the refusal of this Council to authorize such payments ; that it has remitted considerable debts which the Legislative Assembly had declared collectable, has issued special warrants for merely administrative purposes, to the extent of over *two hundred thousand dollars* in excess of the sums authorized by the Legislature.

4. That the law of the country extends its sovereign authority over those who govern as well as over those who are governed ; that the assumed power of suspending the execution of laws, without consent of Parliament, is illegal, and that mere Orders in Council suspending the operation of a statute are irregular and invalid if they have not the sanction of the Legislature ; *but* the present Government has shown a contempt for the laws, both in the manner of filling the vacancies which have occurred in the provincial representative body, and by ignoring the exigencies and formalities required by statute, and by the irregular and illegal appointment of a municipal officer wherein the Government assumed the authority of the judiciary, which had not and has not yet declared any vacancy.

5. That the declarations of a Government and the obligations it takes upon itself should always be made and undertaken in good faith, are always obligatory and sacred and bind the honor of the country itself ; *but* that the present Government has, to a great extent diverted, from its object the portion of the Consolidated Railway Fund intended for private railway companies subsidized by the Province, without having provided for the refunding of such sums and without having given any security that such encroachments shall not be renewed.

6. That the elementary principles of sound administration require that the expenditure should not exceed the revenue, and that in case of deficits arising from the yearly expenditure the Government should readjust their Budget so as to restore equilibrium, without touching the capital ; *but* that the present Government has neglected to meet such deficits out of ordinary resources and has used the capital fund for current expenditure.

7. That the Budget should be a clear enunciation of the financial measures in course of completion or inauguration, and that it should satisfy the House that the expected revenue should be sufficient to meet the declared expenditure; *but* that the present Government has failed to show to the House that the revenue at its disposal will be sufficient to meet the obligations of the Province.

Therefore that this Council, without desiring to take undue part in the different public discussions which may divide public opinion outside of this House, but with the sole object of averting from the Province the dangers which must necessarily arise from this continued maladministration, and in the exercise of its legitimate constitutional authority to insure a more efficient control over public moneys, makes this protest and representation :—1st. Because the Government has not, either by economy and retrenchment or by a judicious development of our resources, made up the deficit, but on the contrary has allowed it to increase, and because it has not been able to provide ways and means, at the same time, to meet ordinary expenditure, obligations already incurred and payments to become due on public works in progress. 2nd. Because the Government does not possess sufficient elements of confidence and strength to efficiently and usefully administer the affairs of this Province, and that the abandonment of its chief measures is an avowal that it is unable to satisfy the requirements of the country ;

And the Council, while declaring its willingness to grant Her Majesty the supplies necessary for the public service, deems it its duty to delay the adoption of the Supply Bill now before the House, until it shall have pleased His Honor the Lieutenant-Governor to choose advisers disposed to maintain his dignity by the fulfilment of the promises made in his name, to respect the spirit of the constitution and the rights of the Province of Quebec, by not incurring considerable expenses without the consent of the Legislature ; to uphold the dignity and authority of our institutions by refraining from interference in the application and execution of the law, and who will, at the same time, be able to enforce their views in the Legislature, and justify this Council in entrusting them with the management of the public funds.

The following extract from the speech delivered by the Honorable Dr. Ross, mover of the resolutions, gives a *resumé* of the reasons on which the Legislative Council based its action in suspending the supply bill :

There are various complaints against the Government, amongst them :

1o That in the administration of public affairs they have set aside the spirit and even the letter of the law :

2o In their transactions, they have violated the spirit of the constitution ;

3o They have squandered the public funds and left enormous deficits without providing for the means of making them good ;

4o They have lowered the dignity of the executive power by violating its promises or by misleading the public by false statements ;

5o They have not governed loyally and justly.

The grievances under the first head are numerous. When they delayed the issue of the writs for St. Hyacinthe for six months, notwithstanding the demand of two members, as provided by law, they could not but know that they were violating the spirit of the statute. When they appointed as Returning Officer for the County

of Chambly, a party who was not the Registrar of the county, they knew that they were violating the letter of the law, as they held the very protest of the Registrar who declared he was ready to act. When they appointed a municipal Councillor in Chambly Basin, without the formality of an order-in-council, they should have known that they were violating the letter of the law, which requires such order-in-council; all the more so from the fact that the Courts had not and have not yet declared any vacancy in that Council, and that, thus, the Government has usurped judicial functions. When they resolved to extend the Quebec railway from Terrebonne to St. Martin, they knew that the law imposed on them the obligation of bringing it from Terrebonne to Montreal. These are not visionary nor frivolous grievances. The acts complained of attack the very basis of political and social organization, and the fathers of constitutional law laid down this grand truth in the charter of our liberties itself—the Bill of Rights—when they declared "that the pretended power of dispensing with laws or the execution of laws by regal authority, as it has been assumed and exercised of late, is illegal." In the second place, the Government has openly violated the spirit of the constitution in its negotiations and contracts. The strict doctrine of responsible government imposes on every minister the obligation of causing to be authorized any expenditure he may wish to make. "The constitutional principe of parliamentary control is also applicable to advances, loans or gifts of public money to foreign powers, corporations or private persons, to the remission of debts due to the Crown." (Todd, vol. 1, p. 455). No remission by Government of loans, or of debts due to Crown, whether by foreign powors, corporations or individuals is justifiable without the knowledge and consent of Parliament. (Declaration, House of Commons, March 25, 1715). But the Government ceded to Mr. Gowen a good security of $16,000 for $5,000. They remitted certain sums due by the Quebec fire sufferers; they made a settlement on the amount due by the defaulter Ste. Marie; and all without the slightest authorization from the House. Their various purchases, amongst others, of the Gale Farm, the Bellerive property, the Vacherie, amounting to $220,000, although they bear a certain show of authority were nevertheless, in fact, an open violation of constitutional principles, for these properties were so needless that the Government does not occupy them even yet. The work on the Three Rivers loop line and on the St. Martin line, representing about $300.000, was also given out without the sanction of the Legislature. We have seen them make a bargain for the placing of an inferior apparatus on the railway at a scandalous price, and they only escaped censure by refusing to allow the House to look into the transaction. They even went so far, in the Quebec Volunteers, question, as to ignore the orders of this Honourable Council, and they paid the volunteers after this House had refused its sanction thereto. The third complaint is, perhaps, the most grievous one. While not discussing the manner in which they have allowed the *extras* accounts on railways to accumulate, we must look forward to the future which is so threatening. There are certain and unavoidable obligations in which the honor of the Province is involved. The whole list of them would be too long; a few of them are here given:

Loans to be refunded (Mr Langelier's statement)	$ 770,000
Balance on Three Rivers Loop Line	24,100
Hull Bridge and Station	284,336
Terminus at Montreal Barracks	216,743
Gale farm	140,000
Balance of Bellerive Property	42,250

Extension to Deep Water, Quebec	200,000
Duncan Macdonald Arbitration	150,000
To Complete Eastern Section—Government Estimate	898,886
To Complete Western and Aylmer Section—Government Estimate	270,121
Pontiac Line as promised	600,000
Unsettled claims of the contractor, Macdonald, on which Mr. Shanly gave no opinion, as well as the claims of Mr. Thomas McGreevy, which will necessitate further arbitration	500,000
Subsidies to Private Companies	1.000,000
Total	$4,704,436

Now, we must face the fact that our authorized line of loans is exhausted. On the 1st of July, 1879, we had in bar out of our accumulated surpluses since 1867, and of our eleven million dollars of loans, but $597,000 for railways. We are promised $500,000 over and above our claims against the Ottawa Government, and this is all the Government count upon to meet the obligations of the Province; for we know by experience that we can hardly rely on the payment of municipal subscriptions, which, after all, amount to only $1,200,000, and the Government, as a matter of fact, have not taken any means to compel the different cities to pay them. At all events, the very highest calculations and hopes of the Government do not exceed $2,297,000, as against $4,704,436 of unavoidable debts. Under the fourth head there is a considerable list of grievances. This Government, in two speches from the Throne, promised the following :—

1. The abolition of the Legislative Council.
2. The restoring of the equilibrium between receipts and expenditure.
3. The completion of the railway from Quebec to Ottawa during this session.
4. A demand for aid from the Federal Government.
5. The assertion that the municipalities had shown good will in the settlement of their accounts with the Government.
6. The leasing of the railway.
7. The reorganization of the system of Public Instruction.
8. The settlement of the Municipal Loan Fund.
9. The macadamizing of the roads.

These nine items have been abandoned without any credit to the Government, which is rightly accused of having made use of the weight which the representative of the Queen carries with him, to dazzle public opinion for a while with false state. ents. It may not be out of place to say here that instead of taking measures to court the interest of the Federal Government in our lot, the Quebec Government took the trouble to upset all constitutional ideas, by sending to His Excellency the Governor-General an address, which was equivalent to a request for the dismissal of the present Federal Ministers. It might, perhaps, be more advisable to pass over the fifth point, because the facts relating to it, although public, are partly of a personal nature and could not give to strangers a high opinion of some of our public men whose veracity and title to respect the Legislative Assembly itself wou not vouch for, notwithstanding party ties, and although there, above all, such consideration is extended to one's friends. The display of weakness which the Government has shown since the opening of the session, by retreating step by step at the faintest shadow of attack, has been, in public opinion, its death-warrant; for any Government which holds office merely for the sake of owning port folios, and which is unable to carry out its measures, has

lost its usefulness in so far as the country is concerned. Unfortunately this weakness has shown itself on subjects of the very highest importance. The Government has been compelled to break its own word, to repudiate promises given in writing to a railway company, rather than acknowledge its impotency, and without considering the financial engagements depending on this justifiable prospect; they preferred to save themselves above the ruins of some private fortune, perhaps, whose owner had trusted to the good faith of the Government. From one end of the country to the other we see marks of injustice, and the list alone of their dismissals from office during 18 months will give us an idea of what they will do during the course of another year.

On the following day, 29th August, His Honor the Lieutenant Governor forwarded to the Council, through his advisers, the following answer:

GOVERNMENT HOUSE.

Quebec, 29th August, 1879.

The Lieutenant Governor of the Province of Quebec has the Honor to acknowledge receipt of the address which was voted to him by the Legislative Council on the 28th instant, and which was delivered to him by the Hon. the President of the Council.

The Lieutenant Governor regrets that a difference of opinion should have arisen between the Legislative Council, and the Legislative Assembly, and he hopes that his constitutional advisers will find a means of reestablishing harmony between those two branches of the Legislature.

THÉODORE ROBITAILLE.

As the ministry is supposed to have suggested this answer, of which they assumed the responsibility, the wish expressed by the Lieutenant-Governor that his advisers should find *means to reestablish harmony between the two branches of the Legislature*, is equivalent to a promise made by the Government to act in this sense.

On the 2nd. September, a private member, Mr. Gagnon moved in the Legislative Assembly the following resolutions, which conflict with those of the Legislative Council and were voted by a majority of THREE:

That the constitution given us in 1867, by the British North America Act is similar in principle to that of the United Kingdom

That in the said constitution the Legislative Council and the Legislative Assembly of this province, are respectively intended to fill, within the limits of their powers, the places of the House of Lords and of the House of Commons of England.

That from time immemorial, the House of Lords in England has been in the habit of respecting the will of the popular branch of Parliament with regard to supply.

That the House of Lords has never refused the granting of supplies to Her Majesty or suspended adoption of the Supply Bill for the purpose of putting a pressure upon the head of the Executive Government, and of influencing him in the choice of his advisers.

That by the principles of the British constitution, as understood and practised for a long time, the fate of our administration rests, not with the Upper House, but with the elective branch of Parliament.

That this House has, during the present session, frequently given clear proofs of its confidence in the advisers of His Honor the Lieutenant-Governor, and ospecially in voting the supplies demanded by them.

That the said supplies have been voted to Her Majesty only because of the confidence reposed by this House in the said advisers, and that this House would not have voted the said supplies if his Honor had had advisers not enjoying the confidence of the Legislative Assembly.

That this House would see with regret, the said supplies put in the hands of advisers in whom it would not have expressed its confidence.

Then, the House was adjourned without previous notice by a vote of TWO majority. The government refused to state whether they had consulted the Lieutenant-Governor with regard to this adjournment; the Honorable Mr. Mercier contending that it was one of those cases in which they could dispense with the assent of the Crown. The government likewised refuse to accede to the request of the opposition that the legislation of the session be sanctioned, previous to the adjournment.

On the 11th September, the government reconsidered their decision, and, in consequence, the Lieutenant-Governor sanctioned different Bills in the absence of the Legislative Assembly.

§ **2**.—We proceed to set forth the different points of constitutional practice involved in this complicated situation ; because consequences, as various as they are grave, result therefrom, as shown by the following series of questions :

1. Can the Legislative Council refuse the supplies ?
2. Does the refusal by the Council place the Government under the obligation to resign or to settle the difficulty ?
3. Can the Government continue its administration without supplies ?
4. Can the Government borrow money in default of the supplies ?
5. Can the Lt.-Governor authorize expenditure without the supplies having been voted ?

6. Should the Lieutenant-Governor have been consulted on the adjournment of the Legislative Assembly?

7. Could the Lieutenant Governor legally sanction the Bills after the adjournment of the House?

8. Can the Lieutenant Governor constitutionally grant to Mr. Joly a dissolution of the House?

I.—CAN THE LEGISLATIVE COUNCIL REFUSE THE SUPPLIES?

§ 1.—In parliamentary procedure, it is wrong to say that the Legislative Council of Quebec does not occupy, to all intents and purposes, a similar position to the House of Lords. Although the Council has less power than the House of Lords as a Court of Justice and as to the privileges which may affect the liberty of the subject, it is modelled exactly on it (the House of Lords) in all that appertains to the despatch of business. The working of the one is the same as of the other, just as the procedure of the Legislative Assembly is identical with that of the House of Commons.

The General Assemblies in the colonies which are their *House of Commons*, together with their Council of State being their *Upper House*, with the concurrence of the King or his representative, the Governor, make laws suited to their own emergencies.—(BLACKSTONE, *Com.* 108.)

The Council or (as it is called) Upper House of assembly is an humble imitation of the House of Lords.

.....

The proceedings of the house of assembly in the colonies are conducted and their journals kept in a manner much conformed to those of the two houses of parliament. It will therefore be needless to enumerate particulars,

as the journals of the house of parliament are the precedents by which the Legislatures in the colonies conduct themselves. (Stokes, British colonies p. 243.)

Our own constitution imposes on us the duty of following the English precedents :—

Whereas the provinces of Canada, Nova Scotia and New Brunswick have expressed their desire to be federally united into one Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a constitution similar in principle to that of the United Kingdom (Act of British North America 1867)

Besides, our Legislature has decided to go by the English practice.

116. In all unprovided cases the rules, usages and forms of the house of commons of the United Kingdom of Great Britain and Ireland, shall be followed. (Rules and regulations of the Legislative assembly of Quebec and rule 98 of the Legislative Council.)

§ 2.—It is a fact that the House of Lords has never refused the supplies, although it has, on forty different occasions, refused Bills relating to supplies. But the Legislative Council has no more refused the Supplies than the Lords did ; it has only suspended them, and that decision is not without precedents. We read in Cox page 38 :

During a dispute in Queen Anne's reign. A. D. 1705, between the Lords and Commons about the Aylesbury Man, the Lords who had the money Bills, would not pass them until the discussion had terminated. (Burnett A. D. 1705.)

This is the only explanation that can be given to this phrase of Hume's, volume 7, relative to the year 1705 : " This important matter being settled, Parliament granted a subsidy of £50,000 sterling, and adjourned."

They proceeded then as they do to-day. There is little difference, constitutionally speaking, between a Bill granting to the Crown money which is in the Treasury and a Bill providing the means of procuring money for the Crown by a tax : for it is evident that if even millions were voted in a supply Bill, the Crown would be but little benefited, if the government measures, which were to provide for those millions were defeated. Thus, the rejection of a money Bill by the House of Lords is of very frequent occurrence.

Why has the House of Lords never refused a Supply Bill, pure and simple? Because English Governments have always had so high a sense of honor, that they have abandoned the field before being forced to such an extremity. Can any one quote a precedent showing an English ministry so clinging to power? Has a ministry which abandoned all its measures ever been allowed to remain in power? Such conduct is regarded there as dishonorable and such as which no intelligent man could support. Read some of them:

Sir Robert Peel.—I do not hesitate to say that even if that decision had been in our favour on the particular vote, I would not have consented to hold office upon sufferance or through the mere evasion of parliamentary difficulties. It is not for the public interest that a government should remain in office, when it is unable to give practical effect to the measures it believes necessary for the national welfare and I certainly do not think that even if the late vote had been in our favour, ministers would have been able with credit to themselves and with advantage to the interest of the country to conduct the administration of public affairs. (Hansard, Vol. 87—p. 1042-43.)

Disraeli.—It is advantageous for the House that they should have clear conceptions on this subject, because it is not for the honour of the House that it should be said that any body of men who did not possess the confidence of the majority are still able to conduct the affairs of the House. (Disraeli, Hansard vol. 191, p. 1704.)

Lord Brougham states, as follows, that the history of England has furnished but one example of a government thus clinging to power.

Lord Brougham.—Our government cannot work for one moment if it has not a decided majority in both houses. Lately this support has been tried to be done away with and the consequences have been deplorable. This attempt was attended by so many embarrassments to those who were guilty of it, and placed such difficulties in their way, and so discredited them THAT WE MAY SAFELY CONCLUDE THAT IT WILL BE THE LAST ATTEMPT OF THIS NATURE, AS IT WAS CERTAINLY THE FIRST (Lord Brougham: Democracy and mixed governments—p. 395, from the French Paris edition.)

The following lines seem to have been written for the Joly government. Lord Brougham speaks:

In conversation with Bishop Burnett, King William III once remarked: "I am quite sure which of all the Governments is the worst, and that is a monarchy without due power voted in the Executive; anything is better than that.—"So say I, of an impotent ministry; give me any ministry rather than that."—(Hansard, vol. 101, p. 814.)

Bagehot completes the picture:

But if those who have been entrusted with the administration of public affairs are unable to control the legislation of Parliament so as to bring it in

unison with their own policy, good and stable government will be impossible. In such case, the law makers and tax imposers are sure to quarrel with the tax requirers. The Executive is crippled by not getting the laws it needs or the money it wants, and becomes unfit for its name, since it cannot execute what it may decide upon, while the Legislature becomes demoralized by attempting to assume the reins of Government without being responsible for the consequences of its own acts.—(Bagehot, Fortnightly Review, 15th May, 1865, and March, 1866.)

They are so sensitive on this point, that any Government which was reduced to directing the affairs of the country with small majorities hastened to relieve themselves of the responsibility.

In 1741, Sir Robert Walpole relinquished power under the following circumstances: A motion implying the withdrawal of the confidence of the House of Commons was made by Mr. Pulteney: This motion was rejected but with only three votes in favor of the ministry. But Sir Robert Walpole gave up the reins of power.

In 1782, Lord North yielded to a similar pressure. Two motions were made: one by Sir John Rous, the other by Lord George Cavendish. The first declared that it was impossible for the House to give its confidence to the Government; the second was couched in terms somewhat similar to the first. The first was rejected by a majority of ten; but Lord North believed it was his duty, in spite of that majority, to tender his resignation.

In the year 1804, Lord Sidmouth was obliged to retire with a majority of 37 votes. In 1812, at the time of the first formation of an administration by Lord Liverpool, on motion of Lord Wharncliffe, then Mr. Stewart Wortley, a resolution was adopted by the House of Commons that a more extensive and a more efficient administration be formed. The majority of 4 decided the fate of the first ministry tried by Lord Liverpool.

Sir Robert Peel, pressed by circumstances, tried to remain in power with a weak majority. We relate below his perplexities according to his ministerial explanations at the sitting of the 27th May, 1841:

The natural and unavoidable consequences of attempting to govern by a minority were the consequences I met with. Upon almost every night

my proceedings were obstructed. On every committee of supply, I met with some motion which prevented my proceeding with the public business, and, at length, I was compelled to yield. While party influence and party connections remain in this country such will be the case. Without encouraging extravagant apprehensions, then, as to the overthrow of the constitution, this I say that practical experience proves to us, that the noble Lord is right that there will be great evils, absolute, unavoidable ovils, in the administration of public affairs, resulting from the inversion of the constitutional rule, and the attempt to govern without a sufficient majority in this House. (Hansard, Vol. 58, p. 817.)

Those are the reasons why the House of Lords has never been under the necessity of giving us a precedent for the refusal of supplies to a weak government.

§ **3**.—Then, the colonies afford us precedents based upon instructions given by the Colonial Office to the Governors.

On 31st August, 1867, the Legislative Council of Victoria, Australia, refused the supplies.

The governor Sir J. H. T. Manners Sutton, forwarded this resolution to his advisers, who replied to it in a memorandum dated 22nd August, asking the Governor to prorogue the Houses and to summon immediately another session to take up the supply Bill.

The Governor answered them as follows :

To the Honourable Chief Secretary.

22nd August 1867. 2.15, p. m.

With regard to the proposal that Parliament should be prorogued on an early day, in order that the Legislative Council may have another opportunity, in a future session, of considering the Appropriation Bill, the Governor would observe, without reference, however, to the policy of the advice thus tendered, that its adoption now, would, in his judgment, be premature.

And, having anxiously considered the position of the Government and his own, he would frankly inform his advisers that, in his opinion, it is desirable that HE *should at once place himself constitutionally in communication with those who have rejected the Appropriation bill*, and who have thus declined to afford to the Government the funds requisite to meet the services of the year.

(Signed,) J. H. T. MANNERS SUTTON.

The same day the Government wrote :

The Chief Secretary has submitted to his colleagues his Excellency's Memorandum of this date.

The cabinet are of opinion that inasmuch as his Excellency has not seen fit to accept the advice which his responsible advisers have felt it their duty to submit to him, and has intimated his desire to place himself constitutionally in communication with those who have rejected the appro-

priation Bill, they have no other alternative but to tender their resignations to his Excellency, and the Chief Secretary begs leave on behalf of himself and his colleagues to do so accordingly.

(Signed) JAMES McCULLOCH.

22 August, 1867,

On the 23rd August, the Governor explains more fully his views by communicating with Mr. Fellows:

.....Is scarcely necessary for the Governor to state that in refusing the advice of his ministers he had no desire to give to one political party a victory over the other, or to imply official or personal favour or disfavour for either, *but because his advisers were admittedly and confessedly disabled, by the rejection of the appropriation Bill, from conducting the administration of public affairs, as regards the satisfaction of undisputed pecuniary claims upon the Government,* in the usual and strictly constitutional manner, and the Governor therefore considered it to be his duty to invite the advice of those by whom the above mentioned Bill has been rejected.

(Signed) J. H. T. MANNERS-SUTTON.

Government Offices,
Melbourne, 23 August 1867.

Mr. Fellows refused to give his advice, because he knew that he could not form a Government, and the impossibility of any other combination finding a majority in the Legislative Assembly prolonged the crisis. In the interval, the Governor announced that he would authorize no payment that was not voted.

26th August, 1867.

.....

But the Governor thinks that the present misapprehension, and possible complications hereafter, *will be best provided against if the heads of the several Departments abstain from submitting to him any authorities other than those included among the above mentioned*.....

.....

But so long as by the action of Parliament the annual supply is withheld from the Government, the Governor thinks that he would occupy an untenable, or at least an exceptionable position, in a constitutional point of view, if he were to sanction any new contracts other than those for services, the expenditure for which has been already sanctioned and provided for by Parliament.

(Signed,) J. H. T. MANNERS-SUTTON.

In accounting for his conduct to the English Government, the Governor explains why he recalled his former advisers:

Melbourne, 26th October 1867.

.....If I had been of opinion that their opponents would, if placed in power, have commanded a majority in the Legislative Assembly *on the questions in dispute between the two Houses, I might have taken a different*

course. But it is unnecessary to discuss that contingency, for I have been unable to arrive at the belief that it was in any degree probable.

J. H. T. MANNERS SUTTON.

To the Duke of
Buckingham and Chandos

The Governor expresses the same opinion in memoranda to his ministers :

Melbourne, 29 August 1867.

If I had been able to arrive at the conclusion, or even to entertain the expectation that these objects would have been attained or promoted by a change of Government, he would have regarded it AS HIS DUTY to have *to* once definitely accepted the tendered resignations of the Chief Secretary and his colleagues, and to have called others to the Council Board.

J. H. T. MANNERS SUTTON.

Toorack 8th November 1867.

The Governor has received the memorandum of yesterday's date submitted to him by the Chief Secretary, in which he recommends, for the reasons therein stated, an immediate prorogation.

The Governor would remind his advisers that in his memorandum of the 29th August he stated to them that if he had been able to arrive at the conclusion, or even to entertain the expectation, that the formation of a new administration would remove or mitigate existing embarrassments, and promote harmonious action between the two deliberative chambers of the Legislature, *he would have regarded it as his duty to communicate his opinion to his advisers, with an announcement of his desire to call others to the Council Board.* And the chief secretary and his colleagues are, the Governor knows, aware that he retains the opinion expressed in that memorandum and that he has always been prepared to act upon it.

J. H. T. MANNERS SUTTON.

The English Government approved of the Governor's doctrine :

Downing Street, 31st December, 1867.

SIR,

I must express my approbation on the course you have adopted.....
.....

BUCKINGHAM AND CHANDOS.

To the Honble.
Sir J. H. T. Manners Sutton.

Downing Street, 1st. January, 1868.

I see no reason to disapprove the course of conduct which you have thought it necessary to adopt under the very embarrassing circumstances in which you found yourself placed.

I cannot be surprised that Council representing, as it does, so large an amount of property and intelligence in the colony should have viewed this mode of proceeding as an attempt to coerce them.....
.....

Downing Street, 1st. February, 1868.

..... *But in cases in which the law invests* you with the power of preventing the issue of public funds by refusing your warrant, or of preventing the conclusion of any contract for the satisfaction of which no money has been provided by Parliament, Her Majesty's Government are unable to relieve you from the responsibility of deciding for yourself, *according to the circumstances, whether you would be warranted in using that power in order to prevent an issue of public funds which may appear to you unconstitutional.*

(Signed),

BUCKINGHAM & CHANDOS.

To Sir J. H. P. MANNERS SUTTON,
&c., &c., &c.

Canada itself supplies us with precedents : in 1856 the Legislative Council of Canada refused the Supplies for the reasons enunciated in the following resolutions.

Resolved : — That this House not having been consulted on the subject of fixing any place for the permanent seat of government of this Province and the other branch of the Legislature having resolved upon Quebec as such permanent seat of Government ; and having, moreover, passed a Bill of supply making provisions for erecting Public Buildings at Quebec, this House feels itself imperatively called upon to declare that it cannot concur in the said Bill of supply.

This resolution was carried.

It is needless to add that these very liberals who now deny to the Council the right of refusing the supplies, returned to the charge in 1859, and left a motion to that effect in the Journals of the Council.

4.—If the Lords have not had occasion to exercise their privileges, it is none the less universally recognised, in England, that they have the right to refuse the supplies. One has but to open the constitutional authorities to be convinced of this.

The general principle which recognises in the Lords the power of controlling the supplies is defined as follows in another decree which centuries have only gone to confirm :

The king, by the advice and consent of the Lords, declared that it was lawful for the Lords by themselves and the commons by themselves to consult on the state of the realm, provided always that neither the Lords on their part nor the commons on theirs, should make any report to our said Lord the King of any grant granted by the commons and assented to

by the Lords before the said Lords and commons are of one consent and of one accord in that matter.

(Commons report, 1860, on procedure as to taxation 33.)

This quotation refers to the year 1407, eighth year of Henry IV :

On that occasion the King, in the presence of the Lords spiritual and temporal required a subsidy and the Lords, in answer, proposed a subsidy for all the laity. To this course the Commons objected as derogatory of their liberties and thereupon the King by the advice and assent of the Lords declared that it was lawful for the Lords. (Cox, p. 180.)

It is the basis of the constitutional system and by virtue of that law, " the House of Lords resolved in 1702, not to pass any money Bill sent from the Commons to which any clause was tacked that was foreign to the Bill. " (Cox, page 84). We have alluded above to the same fact in 1705.

We read in Blackstone :

It is sufficient that they have a power of rejecting (supplies) if they think the Commons too lavish or improvident in their grants.—(1 Blackstone, Com. 169).

De Lolme says :

The Lords are expected simply and solely either to accept or reject them.—(De Lolme, Constitution, book 1, chap. 4).

We read in Cox :

The language of text writers upon the right of the Lords to reject money bills is uniform. Indeed, it seems clear that the following consequences would attend a loss of the power of the Lords to reject money bills : The sending them to the House of Lords would be an idle form ; and if that form were dispensed with, the principal inducement of the Crown to summon Parliament, viz : the need of annual supplies would cease, as to that branch of the Legislature. Again if the Lords had no power of rejecting money bills, they would be the only portion of the community having no voice in the imposition of burdens borne by them in common with the rest of the community. (Cox, Institution of the English Government, p 188).

Lord Brougham exposes as follows the absurdity of wishing to refuse the Lords the right of dealing with the supplies :

Although the Lords have never renounced the right they pretend to have, as occasion may require, of taking the initiative in Bills of supply or amending them as well as the house of commons ; nevertheless in practice they have never revendicated it, and we may therefore conclude that, under our constitution, the house of commons is alone capable of elaborating a Bill of supply and that the Lords have not the right, on its being presented to them, of making any alterations thereto. BUT MUST ACCEPT OR REJECT IT AS A WHOLE ; it seems perfectly clear that this exclusive right of

the house of Commons avails it nothing while it has considerably impeded it in the expedition of public affairs by imposing upon it the necessity of examining several Bills which should go to the house of Lords, while they have nothing else to do; whence arises that acts are rejected at the ends of sessions and then brought back to the house of Commons to be amended on account of objections raised by the Lords It will by readily acknowledged that the house of Commons has nothing to gain by this pretended right and nothing is more absurd than to compare it to the judicial functions exercised by the upper house; for in the latter case the house of Commons cannot interfere in any thing: the matter takes its inception and has its completion in the house of Lords WHILE THE CONCURRENCE OF THE LORDS IS NOT LESS NECESSARY FOR THE CLAUSES OF THE BILL OF SUPPLY AND ANY OTHER CLAUSES OF ANY BILL WHATEVER. This revendication arose from violent agitation; it is based on romantic and poetic declamations and on totally exaggerated views; it also arises from the fact that things apparently the same are taken for identical: that one idea is taken for another, or that one pretends to act reasonably according to pure fancies or figures of rhetoric instead of acting according to sound logic. It must also be remarked that the house of Commons after having treated this privilege as being of the highest importance and the safe-guard of the others, has, time and time again, allowed it to be totally ignored. This happened when it was forced to abandon the absurd pretension that an interdiction to which a fine was attached was not within the province of the Lords, because it was a question of finance (Lord Brougham Democracy and mixed governments, retranslated from the French edition, p. 382.)

In England, in 1671, it was decided that the House of Lords could reject the whole supply Bill. On the 15th May 1689, a committee, appoined by the house of Commons to look into the question, reported that the house of Lords might adopt or reject the supply Bill.

....

and the Lords are not to alter such gift or grant........... or otherwise to interpose in such Bill, to pass or REJECT THE SAME for the whole. As the Kings and Queens by the constitution and laws of Parliament are to take all or leave all ....

so are the Lords to pass or REJECT ALL, without diminution or alteration. (Report of a Committee House of Commons, 9th May, 1689)

We find in Roger North's Examen upon this subject:

The Lords could not mend the least punctilio in a money Bill, though they might throw the whole out. (Roger North's Examen p. 460.)

Mr. Abbott, Speaker of the House of Commons, says, in an official conference with the House of Lords, on the 12th June, 1808.

"If the Lords differ from the Commons on this Bill, they, naturally, have they right to throw it out."

The principle of this doctrine has been maintained until now, and although the House of Lords have never had occasion to put this principle into full practice, it did

apply it succesfully on various financial measures and notably in 1860, when it drew out a part of the financial policy adopted by the House of Commons. At that session, this theory was recognized and set forth as follows, by Lord Palmerston, in the sitting of the 5th July, 1860.

But, Sir, in those memorable conferences which took place between both Houses of Parliament in the year 1671 .. .. it was admitted by the Attorney General that the Lords, although they could not originate and could not amend, had nevertheless the power to reject money bills ..... Consequently, in admitting, as the House of Commons did at that time and afterwards, in the year 1678 that the House of Lords have the power of rejecting, in the whole, as was the expression used, this House has only admitted that which it would be difficult to deny and that with regard to which, if denied, there would be no direct manner of giving effect to denial ..... It is clear that an authority whose assent is necessary to give a proposed resolution the force of law must, by the very nature of things, be at liberty to dissent and refuse its sanction To take from the Lords the power of assenting to a Bill to which their assent is now required, you would need an Act of Parliament to which they must themselves be parties, or you must by a revolutionary proceeding destroy our existing constitution.

Mr. Disraeli, in the same debate, spoke as follows:

"The second resolution is an admission, to my mind, a legal, proper and constitutional admission, of the right of the Lords to reject Bills of supply.....it appears to me that the second resolution containing as it does, not a qualified, but an absolute acknowledgement of the rights of the Lords to reject bills *on the whole*, the propriety of which could not by any one sitting on this side of the house for a moment be questioned.....I think that the second resolution with all its qualified terms, admits distinctly and deliberately the power of the House of Lords to reject money bills, and no other power for a moment have I claimed.....I think the second resolution distinctly acknowledging the right of the House of Lords to reject money Bills, is a resolution which we, as a conservative party, ought to support.

The Earl of Derby at the sitting of House of Lords on the 7th June, 1861, thus defined the powers of the House of Lords:

"It is true that there is a dispute between the two houses; but there are certainly some points which leave no room for doubt or discussion. As to doubtful points, they can only be settled by the prudence and discretion of each House respectively. But nothing is clearer nor better established than the two following points.

1. The House of Commons must bring in the Bill of supplies: 2. On the other hand, and this justifies your action of last year, the House of Lords has the right to accept or reject any money bill."

On the 11th June 1861, a committee of the House of Lords, one of whom was the Earl of Carnarvon, averred,

in a protest published in the journal of that day, that the "House of Lords might reject in its entirety a Bill of Supply, any portion whereof it might not be satisfied with, and that this act would be entirely conformable to the undeniable privilege of this House."

The Marquis of Lansdowne says :

That it had been uniformly the case since the revolution, for the grants of public money made by the other House to pass under the review of their Lordships in order to their being incorporated in an act of Legislature, could not be denied; and the noble Earl most have erroneously described the resolution of the House of Commons in 1784, when he said that it proved the practice of the House to be different. The fact was that the resolution was merely declaratory of the law of the land. It had been most truly observed by his noble friend that for the House of Commons to assume the power of voting the public money without the concurrence of their Lordships was a most injudicious precedent to set, for there could be no doubt that if those persons who aimed at our institutions and establishments could unhappily obtain the ascendency, the first step of a House of Commons constituted by them, would be to take away the Legislative privileges of your Lordships.—(Hansard, vol. 41, p. 1035).

When the Legislative Council of Victoria (Australia), refused, on the 21st August 1867, the supplies voted by a large majority of the House of Commons, the Imperial Government gave them its unqualified sanction, as to the entire constitutionality of the act ; and the despatch of the Duke of Buckingham and Chandos to Sir J. H. T. Manners Sutton, Governor of Victoria, dated the 1st January 1868, says expressly :

"I cannot be surprised that the Council, representing as it does, so large an amount of property and intelligence of the colony, should have viewed this mode of proceeding as an attempt to coerce them into sanctioning, without due deliberation, a grant of which they questioned the propriety."

BUCKINGHAM & CHANDOS.

The same opinion had been previously expressed by another colonial minister, Mr. Cardwell, in these terms :

February 26th, 1866.

The bill in question suffers the same disadvantage which it would in this country..... The Legislative Council had the right to maintain its privilege by setting this bill aside..... You should have interposed your authority when your ministers continued to collect dues, notwithstanding the judgment of the court.

CARDWELL.

II.—DOES THE HOSTILE VOTE OF THE COUNCIL IMPOSE ANY OBLIGATIONS ON THE GOVERNMENT?

§ 1.—There is no measure depending on the power of the Legislature that the government can carry out without the concurrence of the Legislative Council. The government must render an account of its conduct to both Houses, and its policy is incomplete, its authority lessened, if it be condemned by one of the branches. It should not allow such a thing to exist:

But the House of Lords has a right of advice co-extensive with that of the Commons; and to the House of Lords the remedy of a dissolution cannot be applied..... When a hostile vote has been passed against any ministry in the House of Lords,..... ..... it ought to obtain from the House of Commons a vote of a directly opposite character. Since Parliament consists of two parts and since questions of administration do not, like questions of legislation, admit of compromise or delay, if there be a difference between these parties respecting the conduct of any ministry, some means of speedily deciding that difference must be found. (Hearn, Government of England, p. 161).

....

....

In the circumstances, a ministry ought not to affect to ignore the censure of the House of Lords or to wait either for any further attack or the casual interference of some independent member to direct the opinion of the House of Commons. (Ibidem, p. 165).

Gladstone thus sets forth this doctrine :

You are dissatisfied with that vote, you who are the ministers of the Crown, you who know that no ministers should conduct the affairs of the country when stripped of the power which that vote has taken away from you ; it was for you and not for him to invite the judgment of this House in opposition to that decision in the House of Peers. However you would not do so ; and it was reserved to a gentlemen wholly independent of the administration, to the Hon. and learned member for Sheffield to make the attempt at extricating the administration from its dilemma..... And now let us mark the manner of his interposition. Has he proposed a vote contradictory to the vote of the House of Lords ? Has he thought it prudent to raise the very same issue here that was raised there? No sir, he has shifted the issue; and no man shifts the issue in face of the enemy, without a motive. I invite the attention of the House to the words of that amendment....." this House taking in consideration the general policy of Her Majesty's Government is of opinion that on the whole it is calculated to promote the best interests of the country." *On the whole* is calculated. These words *on the whole* are, I apprehend, without example in a vote of parliamentary confidence. Let me venture to put a construction upon them. I construe the words of the Honorable Gentlement in this manner ; that *on the whole* means "although I am not prepared to approve of the particular policy which the House of Lords has condemned." (Hansard, Vol. 112, p. 546, 27 June 1850.)

Lord John Russell said of the House of Lords :

The censure of the policy of a Government by the House of Lords is a matter of very great importance and can only be counterbalanced by the formal approval of the same policy, by the House of Commons (Hansard, Vol. 192 p. 105.)

And Lord Grey :

As an independent branch of the Legislature, the House of Lords undoubtedly possesses a very substantive power, which serves as a positive check upon the Lower House, when it has been induced to act with unwise precipitation. (Grey, Parliamentary Government, p. 64.)

Todd sums up the question as follows :

It is the undeniable right of either House of Parliament, to advise the Crown upon the exercise of this (dismissal of ministers) or any other of its prerogatives (Todd, Vol. I, p. 211.)

The British Colonial office imposes upon Colonial Governments the obligation of taking cognizance of adverse votes of the Council. The following is the opinion of Mr. Cardwell, Colonial Secretary :

Downing Street, 26th January 1866.

.....

I cannot, however, avoid expressing my entire dissent from that portion of your despatch in which you speak of the concurrence of the Council in Bills of supply and appropriation as merely formal in its nature, of the alleged disregard of their legislative rights as insignificant, and of their complaints as frivolous and easily refuted. *It is evidently a matter not me-*

rely formal, BUT ESSENTIALLY OF SUBSTANCE AS WELL AS FORM, to pass by the way in which you have been advised to pass by, the decision of one branch of the legislature; and the principles in issue appear to me to have been so plain, and the right rule of conduct so clear, that I cannot but regret your having deferred to the advice which you received.....

CARDWELL.

§ **2**.—According to these principles, the Government had one of two courses to take:

1° To fulfill the promise contained in the answer of the Lieut-Governor to the Council of settling the difficulty;

2° To challenge the Council and to cause the Lower House to completely reverse what the Council had decided upon.

But the Government did not keep its promise of restoring harmony, since it abruptly adjourned the House, which fact implies the refusal of the Assembly to work any further with the Council; moreover, it has, continually since, maligned the Council in the Press and at public meetings.

The CHRONICLE calls the councillors *old women*, l'ECLAIREUR, LA PATRIE, LA CONCORDE and the FRANCO-CANADIEN, "ignorant and brainless" and the Hon. Mr. Langelier at a public meeting called them "grey malefactors" (*vieillards malfaisants*). It is therefore quite evident that the Government did not wish to settle the matter.

As to the second point, the Government secured the passing, by the Legislative Assembly, of a vague resolution which bears on no particular fact.

It did not cause the Legislative Assembly to deny the following averments of the Legislative Council.

1° That the government is open to censure for having withdrawn nearly all the measures announced in the speech from the throne.

2° That the government is open to censure for holding office with a majority varying between the casting vote of the speaker and a majority of two.

3° That the government is open to censure for giving out considerable contracts, paying large sums of money, remitting sums of money, and the whole without the

authorization of the houses and, in some cases, in direct contradiction of their orders.

4° That the government is open to censure for having violated the spirit and the letter of the law in three or four acts of administration.

5° That the Government is open to censure for having violated the financial obligations of the country towards certain private railway companies.

6° That the Government is open to censure for having paid current expenses with money taken from capital fund.

7° That the Government is open to censure for having so arranged its finances, as to have only $500,000 on hand to meet payments amounting to $4,000,000, and that therefore it is subject to the reproaches of Mr. Gladstone and of the most illustrious authors, by simply evading the question instead of having fairly dealt with it.

True it is, that the Government could not have the Legislative Assembly to vote resolutions contradicting the formal accusations of the Council.

And this is where the Joly Government has placed itself in an unconstitutional position.

We know that the Government will endeavor to escape by saying: "The Legislative Council has no more authority since the popular branch, the Legislative Assembly, has passed a vote to abolish it." But did the House of Lord notice any falling off of its power from the fact that the Commons one day voted its abolition? Look at the Journals of the House of Commons? The following resolution was carried:

> Resolved, That the House of Peers in Parliament is useless and dangerous and ought to be abolished, and that an Act be brought in to that purpose.—(J. House of Commons, 6th February, 1649.)

The Joly Government could not have done better.

III—CAN THE GOVERNMENT DO WITHOUT SUPPLIES?

§ 1.—Since the two months, adjournment, the public want to know what to think of the situation. We submit some constitutional principles ruling the case and each one may draw his own conclusions. Our readers will be better able to judge of the action of the Government by the following quotation :

May, page 532.

A grant from the Commons is not effectual, in law, without the ultimate assent of the Queen and of the House of Lords. It is the practice however, to allow the issue of public money, the application of which has been sanctioned by the House of Commons, before it has been appropriated to specific purposes by the appropriation Act which is reserved until the end of the session. This power is necessary for the public service and faith is reposed in the authority of Parliament being ultimately obtained; but it is liable to be viewed with jealousy, if the ministers have not the confidence of Parliament ..... But there is an irregularity in proroguing or dissolving Parliament, before an appropriation Act has been passed; since by such event all the votes of the Commons are rendered void and sums required to be voted again in the next session before a legal appropriation can be effected.

In England, the expenditure of a farthing for ordinary purposes without a vote of the Parliament is a

thing unheard of. When the House meets after the fiscal year has expired, a special vote for a certain amount on account, has to be passed in the following manner.

But these resolutions, although they record the sanction of the House of Commons to the expenditure submitted to them, and authorise a grant to the Crown for the objects specified therein, do not enable the Government to draw from the consolidated Fund the money so appropriated. A further authority is required, in the shape of a resolution in Committee of ways and means, which must be embodied in a Bill, and be passed through both Houses of Parliament, before practical effect can be given to the votes in supply, by authorising the Treasurer to take out of the consolidated Fund, or, if that fund be insufficient, to raise by Exchequer bills on the security of the fund, the money required to defray the expenditure by such votes. The votes in Committee of Supply authorize the expenditure; the votes in Committee of ways and means provide the funds to meet such expenditure.

The manner in which the provision is made is as follows: as soon after the commencement of the session as possible, *when votes on account of the great services* have been reported, a resolution is proposed in committee of ways and means .... ; upon this resolution a Bill is founded, which passes through its various stages, and finally receives the royal assent, at a very early period of the session: and then, *but not before*, the Treasury are empowered to direct an issue of the consolidated Fund to meet the payments authorised by the vote in supply of the House of Commons. The constitutional effect of this proceeding is that, until the Queen and the House of Lords have assented to the grant of ways and means, *the appropriation of the public money directed by a vote in supply by the House of Common is inoperative* These general grants of ways and means, upon account, provided by successive Acts of Parliament during the session, in anticipation of the specific appropriations embodied in the appropriation Act passed at the close of the session, may be viewed as the form in which Parliament considers it most convenient to convey their sanction to the *ad-interim* issue of public money upon the appropriation directed by the Commons alone, *relying upon their final confirmation being obtained at the close of the session.* (Report on Public moneys, Commons Papers, 1857, Ses. ii, Vol. IX.)

The only form by which the House of Commons, alone, can ask for an expenditure of money, is by an address to the Crown by which it prays for its requirements and further states "that it holds itself responsible for the amount." This is the only credit vote that the House can give under the circumstances; which means that it binds itself to vote it at a future date.

Such addresses, says Todd, are only justifiable when there is no reason to apprehend that the supposed advance would be disapproved of by the other House of Parliament, whose concurrence is necessary to give legal effect to any measure of supply or appropriation..... (Todd, vol. I, p. 436).

The first instance in which a Sovereign refused to receive such an address from the House may be found in

Hatsell's Commons precedents, Vol. 3, p. 195. The Commons had asked George IV, then regent, on the 22nd May 1811, to pay a sum of £54,000, to Mr. Palmer, in settlement of a claim. George IV sent the following answer to the Commons. It has since served as a formula :

It must at all times be my most earnest desire to attend to the wishes of the House of Commons, and I shall be ready to give effect to them in this instance whenever the means shall have been provided by Parliament.

He based his answer on the fact that the House of Lords had already opposed the payment of this sum, and the Regent, being cognizant of such opposition, desired to impress on the Commons the necessity of securing the consent of the House of Lords, to authorize such an expenditure.

Hatsell adds, page 196 " because the Regent must know that what the Commons resolved to be due, *as of right, had been denied by the Lords to be due.* "

Todd says :

This mode of obtaining the issue of money has been improperly resorted to for the express purpose of escaping the necessity for appealing to the House of Lords for their concurrence. (Todd, Vol. 1 p. 436.)

The same answer was given by the Queen on the 21st June 1841 to an address of the House of Commons praying her to pay a certain amount to some claimants.

The following extract from *Hatsell's precedents*, vol. III, p. 206, speaks for itself. This is an authority superior even to May.

The Bills for granting the aids by duties upon land and malt had passed in December, 1783 ; and several services of the army and navy and ordnance had been then voted by the House of Commons ; but no bill had passed appropriating the produce of these taxes to those services. Upon the change of administration, before the Christmas recess, an apprehension was entertained of an intention in the new ministry to dissolve the Parliament ; and it was thought that this measure would take place soon after the meeting again, in January, 1784. A doubt arose, supposing this event to happen, and that the Parliament should be dissolved before any act was passed for appropriating the land and malt duties, whether the officers of the Crown in any department would be authorized to pay, upon account of the navy, army or ordnance. It had been usual for the treasury, whilst the session of Parliament continued, to direct the application of any of the grants to the services voted by the House of Commons in that session ; and this without any appropriation by Act of Parliament.

This they had been accustomed to do from the convenience it produced to the public service, *and under the confidence that, before the session was*

finally closed, an Act of Parliament would be passed which, by appropriating the grants to the different public services, would thereby confirm and authorize that proceeding. But if the Parliament should be dissolved and the session thereby put an end to every resolution of the House of Commons not carried into effect by a law would be done away with; the votes for the army, navy and ordnance would be as if they never had been passed, *and the officers of the Treasury and Exchequer would be left* WITHOUT EVEN THE AUTHORITY OF A VOTE OF THE HOUSE OF COMMONS, to apply at their discretion and upon their own risk the produce of the land and malt duties... This difficulty was increased by the resolution of the House of Commons of the 12th January, 1784, which was reported from a committee of the whole House and was agreed to, not only without a division, but to judge from what passed at the time, without much difference of opinion This resolution adopted those ideas of appropriation of the grants by Parliament, which I have here endeavoured to explain, and declared: "That any person who could controvert that doctrine, by applying any sum of money without the authority of the Parliament, to the public service, after the Parliament should be dissolved, would be guilty of a high crime and misdemeanor."—(Hatsell's Precedents, vol. III, p. 206-8.)

The result of this order was to prevent the Government from touching this fund with the exception of a small amount, and was all the more justifiable from the fact the supplies voted the previous year could, at that time, be applied to the following year, in case there was a surplus.

The only occasion on which the House was dissolved without the supplies being voted, was at the death of George III, in 1820. The Commons voted a lump sum and did not have time to pass a bill; but the Lords legalized matters by the following resolution:

That this House, from the state of public business, acquiesce in these resolutions, although no Act may be passed to give them effect. (Hansard, vol 41, pp. 1631–35.)

To quote a few out of hundreds of authorities on the subject:

Lord Howick: At the dissolution too, none of the sums which had been voted for the public service, were appropriated, for no appropriation act had been passed. Without such an act, by a solemn principle of the constitution, the application of those sums to particulars services, was not constitutional or legal. He readily allowed that there might be situations in which a government ought to act, without a support of the law, when the state service required its suspension; but then these situations must be unforeseen and inevitable. If a ministry, with their eyes open, placed themselves in a situation in which, on the one hand the law must be broken, or on the other the country must be endangered, it calls for the most solemn consideration of Parliament.

Mr. Bankes: He was also ready to admit, that there was no precedent for an answer like the present, but would the hon. Gentleman show him any precedent for such an address? When the opposition of the other

House to this grant was known, and that House had an equal power with the Commons with respect to grant of money—(Hear, hear,) he denied that this House, as asserted in the terms of the motion, were "sufficient" of themselves to make good a money grant. All the best writers down to Blackstone, surely not one of the least authorities, held this doctrine. The Commons, indeed, had the right to originate and appropriate. This no one denied, but it was equally undeniable, that their vote was not decisive or binding upon the public without the concurrence of the other House.—(Hansard XX pp. 350-351.)

Lord Cramsworth, chancellor of the Exchequer: The House will bear in mind that it is not only necessary that all money which is to be raised for the public purpose should be raised by the authority of Parliament—that it is not only necessary that the money so raised should be appropriated to particular services by the authority of Parliament, but the wisdom of this House, or, at any rate the usage of this House, has added a further restriction, namely, that no money, although legally raised and legally appropriated or assigned to particular services by this House, can be used without the sanction of a Bill of Ways and Means..... We are not in a condition unfortunately—I say so because in this instance the rule is attended with some public inconvenience—we are not in a condition to issue that money, though it be voted in supply without a bill of Ways and Means. (Hansard, vol.136, p. 1310.)

§ 2.—It may be seen by the foregoing quotations how impossible it is for the Government to raise the least sum. No issue is left open.

Besides, supposing it would even now wish to ask a vote of credit from the House, it could not obtain it. The supply bill is before the Legislature. It has been voted by the Legislative Assembly; it may from one day to another be voted by the Legislative Council and become law. In such a state of things how can you ask a double vote of money from the House and require it to grant money which has already been voted. Constitutional law is against it.

To give subsidies upon subsidies is not usual. In the 18th year of Henry the III, there was one member punished for pressing for more subsidies, when subsidies had been granted before in Parliament.

And note, if any new project was proposed in Parliament, for raising subsidies or supplies, the Commons usually replied thereto, that they were not instructed by their Principals in that matter; or that they durst not consent to such tax etc., without conference with their countries. (Lex. Parl., p. 117.)

IV — CAN THE GOUVERNMENT BORROW CONSTITUTIONALLY ?

§ 1.—Can the government borrow ?

The Treasury act, 35 Vict. Chap. 9, Sec. 2 Sub. Sec. 27, says :

2. The Lieutenant-Governor in Council may also, from time, to time in case of exigency arising out of failure of the revenue from unforeseen cases, direct the treasurer to effect any needed temporary loans chargeable on the consolidated revenue fund in such manner and form, in such amount, payable at such periods and bearing such rates of interest, not exceeding six per cent per annum, as the Lieutenant Governor in Council may authorize ; but such loans shall not exceed the amount of the deficiencies in the said consolidated revenue fund, to meet the charges placed thereon by law and shall not be applied to any other purpose whatever. (31 Vict. Chap. 9, 27 S. 2)

1° In the first place there must be a deficit, which does not exist in this case.

2° This loan can only be applied to obligations *created by the law ;* but wanting the bill of supply there are no obligations incurred by law for most cases.

A general loan, outside of these conditions, is absolutely forbidden.

The principle which forbids gifts or loans of money to be solicited by the Government has been further extended to forbid any person from voluntarily lending money to the crown or to any department of state, for public purposes, without the sanction of Parliament under penalty of a misdemeanour. (Todd, vol. 1, p. 454.)

It is an elementary principle of constitutional law that is universally endorsed, and which has been invariably practised that :

Resolved :—That whosoever shall hereafter lend, or cause to be lent, by way of advance any money upon the branches of the King's revenue, arising by Customs, excise or hearth money shall be judged to hinder the sitting of Parliaments and shall be responsible for the same in Parliament. (Journals House of Commons, 7th January 1680.)

The comptroller of the Exchequer in the return to the investigation instituted by the House of Commons on public moneys, in 1857, (Vol. IX, Sessional Papers of the House of Commons) says :

The Bank of England is forbidden to lend any money to the government.

Here follow more authorities :

Fox :—The measure said to be going through the country, by way of a recommendation from His Majesty to the people, to stand forth and assist the executive government with voluntary subscriptions, he had ever held to be entirely illegal, and a measure the most dangerous to the constitution of this country.....

Parliament was now sitting and yet His Majesty, by his secretary of state was now borrowing money on his subjects without the intervention of that House, when the constitution had over and over again declared that money shall not be given to the King by the people of England through any other channel than that of their representatives in Parliament. (May, Parliamentary History, Vol. 3, p. 83-87.)

Concerning a project which emanated from the English Government in 1794, to raise public subscriptions, we read in Massey's History of George III, vol. IV, p. 77.

Sheridan therefore moved the following resolution :

" That it is dangerous and unconstitutional to ask for public money, either in the way of private aid, a loan for charitable purposes or as a subscription for public purposes without the concurrence of Parliament."

The project of the Government was blameable in principle. It was unconstitutional and in no way called for. The House of Commons has the exclusive right of granting supplies for the service of the Crown ; and an immediate appeal to the public with the object of obtaining aid for their legitimate services is a violation of its rights and privileges..... The Parliament might some day refuse supplies for the increase of the army, and the next day, a royal decree might levy the funds which Parliament had refused.

It is certain that the Government dit not wish to act in an unconstitutional manner. Its object was right; but it did not take the right mear. to accomplish it. (Massey, George III, vol 4, p. 78, translated from the french pages 77-79.)

The following quotations will prove that this principle, so clearly defined, is still in force.

Lord Brougham.

Those who thus subscribe, those who contribute to raise large funds without the authority of Parliament, must be prepared to abandon the constitutional doctrines of some of the ablest constitutional lawyers and highest constitutional authorities who have ever flourished in this country ..... From the moment the sufferance of Parliament, the tolerance of the respectable classes and the political,—not to say party or factions,—zeal of some allow and persist in allowing those things to be done with impunity and without stint or control, the consequence of that will and must inevitably be, to loosen the foundations of our parliamentary constitutions and to raise up a new trade in this country, for it is driven as a trade and for money— it is driven as a trade for the base lucre of gain making the pretext as flimsy as it is stale, of patriotism, I mean the trade of constant political agitation. And be you well assured, my Lord, if that trade be continued by not being discouraged and suffered by not being checked, there never will be wanted persons to carry it on, because it requires, of all trades, the meanest accomplishments, the shortest apprenticeship..... .. My Lords, I will have this country governed by the Crown and by the Parliament (Hansard Vol., 83. p. 38.)

Lord Monteagle.—No principle was better established than that any person lending money to the Treasury or to the Crown without Parliamentary sanction committed a misdemeanour against the State. In the charter of the Bank of England a clause was introduced forbidding dealings between the Bank and the Treasury except sanctioned by the Crown with Parliamentary authorities.—(Hansard vol. 162, p. 887).

§. 2.—The Colonial office is severe in this respect. When the Victoria (Australia) Government wished to borrow money without supplies, the following remonstrance was sent to the Governor by the Colonial Secretary.

Downing Street, 26 February, 1866.

....

....

But you ought to have interposed, with all the weight of your authority,

....

..... Still more evidently was it your duty to withhold your personal co-operation from the scheme of borrowing money in a manner unauthorised by law. I say unauthorised by law, because the loan itself had not been sanctioned by the Legislature of Victoria, and because the judgment which enabled you to repay that loan, having been obtained as it was, can be regarded only as a form under colour of which the substance of the law was evaded ....

..... *As a consequence of these proceedings the Assembly has now been dissolved without an appropriation act, and the borrowing from the Bank has been continued.*

Under these circumstances it cannot, I think, be denied that any subject in the colony was entitled respectfully to approach his Sovereign, and complain that, in the one case by the wrongful concurrence, and in the other by the personal co-operation of the Queen's representative, he had been deprived for a time of the benefit of the remedy which the constitution of Victoria provided, against irregular acts of power on the part of the Executive Government. I do not see in the language of the address anything disrespectful to Her Majesty, or otherwise worthy of censure, *and I cannot but acknowledge that the complaints of the petitioners are just.*

EDWARD CARDWELL.

We give some extracts from this petition to the Queen that Mr. Cardwell said was well grounded:

We further desire to bring under your Majesty's notice the following statement made by his Excellency the Governor on the 28th September: "It thus appearing that there was no power of directly applying the Public Revenue itself to the purpose for which it was granted, the first obvious expedient to prevent the injurious consequences which would inevitably follow from the continued suspension of the Public payments, was to borrow money, if possible, for the discharge of the liabilities of government. On this point I shall only observe that.....I have the opinion of the old members of the bar that Her Majesty's local government has legally the power to enter into contracts binding on the Crown for purposes of a public nature, and necessary for carrying on the proper functions of government, including contracts to borrow money for the payment of existing legal public liabilities."

".....We are fortified in our view by the opinion of almost every barrister of standing in the Colony, that the government have not "legally the power to enter into contracts binding on the Crown, for purposes of a public nature and necessary for carrying on the proper functions of government, including contracts to borrow money for the payment of existing legal public liabilities," in the absence of an Act of the Legislature specially authorising them. (Address from certain petitioners of Victoria, December 1865.)

As may be seen, Mr. Cardwell settles the question at once. He lays down the fact that a Government cannot borrow money to meet its expenses, without the authorization of Parliament.

It is therefore possible that those who lend money to the Quebec Government are guilty of mesdemeanor and liable to lose their money.

V.—CAN THE LIEUTENANT-GOVERNOR AUTHORIZE EXPENDITURE WITHOUT A VOTE OF SUPPLY?

§ 1.—We have laid down the constitutional principles which govern a ministry without supplies; we will now look into the precedents which will show us how the English Government means that these principles should be respected. A Governor was dismissed, merely because he had allowed his Government, to whom the Legislative Council had refused the supplies, to pay the necessary expenses. The energy of the Colonial office in this instance must give us an idea of the importance which, in England, is attached to the previous sanction of every public expenditure. We have still another precedent in Victoria, two years previous to the one we have just quoted. Sir Charles Darling, the Governor, after having wisely resolved not to allow his advisers to incur any illegal expenses, allowed himself to be circumvented, and ended by allowing his ministers to borrow money from a bank and to pay the employees and contractors. Here follows the opinion of the colonial office.

Downing Street, November 27th, 1865.

..... In this state of the law, your government, with your sanction, prevailed upon one of the banks in which a "Public Account" was kept, to lend you or them certain sums of money, and to carry that money to a separate account which was to be acted upon by you or them without the concurrence of the Audit commissioners; and it was agreed that the bank should, at once, petition the Supreme Court, under the Act 28 Vict. for repayment of this loan, that your government should at once confess judgment, and that you should, thereupon, enable them to repay themselves out of the "Public Account," the amount they had placed to this new amount.

I do not quite clearly understand whether the concurrenre of the Audit commissioners was necessary, or was obtained to this repayment. But this is of minor importance. The effect, practically, was to transfer the public money out of the "Public Accounts" from which the bank could not ordinarily issue it, without the Audit commissioners, certificate, to another account entirely under the control of the government.

The money so obtained has, I understand, been applied by the Executive Government to the payment of salaries, and I suppose to other immediate purposes specified in the appropriation bill, which the Council refused to pass. I infer that it is by the extension and continuation of this process that the government has been since carried on.....

.....

Next I do not understand on what ground it can have been imagined that you were legally authorized to borrow from a private bank large sums of money on behalf of the public. No authority is alleged, and I am unable to conjecture any. The only excuse for such a proceeding would have been an overwhelming public emergency of such a nature as to justify what was not justified by the letter of the law. But as I have observed, you had already declared that no such emergency existed. And you were right, no such emergency did exist. If payments were legally due from the Crown to public officers for salaries, or to any other persons on any account, it was open to such persons to recover what was so due to them in the ordinary course of law. It was for one or the other branch of the Legislature to yield, or for both to compromise their difference. It was not for you to give a victory to one or the other party by a proceeding unwarranted, either by your commission or by the law of the colony. I must point out that by such a proceeding the Governor and the Government with the cooperation of a local bank might, at any moment, withdraw any amount of public funds from the "Public Account" to which it is countersigned by law, and place it at their own command, relieved from all the checks with which the Legislature has carefully surrounded it.

Thirdly, as to the expenditure of the moneys thus obtained, I find it difficult to suppose that by the Crown remedies and liabilities Act, the Legislature intended to enable the government to discharge, without its concurrence, those ordinary expenses of government which it reserves to itself the right to re-consider annually. It may, perhaps, be doubted whether office-holders, who are under a standing notice that their salaries are dependent on laws, annually passed by the Colonial Parliament, would be treated by the Supreme Court as having a claim upon the government indepently of any such a law. But it is not alleged that the Supreme Court was ever called upon to give judgment on the question, and you do not inform me of any law which would warrant you in paying away any public money, except under the authority either of such a judgment or of the auditors, certificate.

As at present advised, therefore, I am of opinion that in these three respects—in collecting duties without sanction of law: in contracting a loan without sanction of law; and in paying salaries without sanction of law—*you have departed from the principle of conduct announced by yourself and approved by me—the principle of rigid adherence to the law.* I deeply regret this. The Queen's Representative is justified in deferring very largely to his constitutional advisers in matters of policy or even of equity. But he is imperatively bound to withhold the Queen's authority from all or any of those manifestly unlawful proceedings, by which one political party, or one member of the party politic, is occasionally tempted to endeavour to establish its preponderance over another. I am quite sure that all the honest and intelligent colonists will concur with me in thinking that the powers of the Crown ought never to be used to authorize or facilitate any act which is required for an immediate political purpose, but is forbidden by law..... .....

CARDWELL.

January 26th, 1866.

I make every allowance for the position of the Governor of a colony who finds himself called upon by his responsible ministers, with the concurrence of the Legislative Assembly, to adopt, for the purpose of overcoming an immediate difficulty, measures, in their nature questionable, but which, in the opinion of his legal advisers, are within the letter of the law.

I cannot, however, avoid expressing my entire dissent from that portion of your despatch in which you speak of the concurrence of the Council in Bills of Supply and Appropriation as merely formal in its nature, of the alleged disregard of their Legislative rights as insignificant and of their complaints as frivolous and easily refuted. It is evidently a matter not merely formal, but essentially of substance as well as of form, to pass by in the way in which you have been advised to pass by, the decision of one branch of the Legislature; and the principles in issue appear to me to have been so plain and the right rule of conduct so clear, that I cannot but regret your having deferred to the advice which you received.....

.....

.....

CARDWELL.

Downing street, March 26th, 1866.

With respect to such a measure as that of borrowing money, in a manner unwarranted by law, for the purpose of averting a public inconvenience, I trust that I need not consider, in the case of the prosperous and intelligent community whose Government you are called to administer, what should constitute such an emergency as to justify any departure from the letter and spirit of the law. But I think it is clear that as such emergency had arisen in Victoria, *and that to raise money for the public service, either by the scheme actually resorted to of borrowing from a bank, or by any other measure not sanctioned by the Legislature of Victoria, was not justifiable.*

Sir C. Darling himself had reported to me his opinion that the difficulty with which he had to deal had been brought about by an overstrained exercise of their power on the part of both the deliberative Chambers, and that concession on either side, adopted in the true spirit of the constitution would immediately remove it. He had declared this opinion to his ministers and in connection with it had most properly expressed his deter-

mination to adopt no step not strictly authorized by law. I fully appreciate the difficulties which would have arisen from the continued conflict between the two Houses, followed as it would have been, if this borrowing had not been resorted to by a continued suspension of the payment of the salaries to the public servants, except under process of law. But, if constitutional Government is to be carried on at all, *such difficulties are to be removed by concession* made in the spirit so justly indicated by Sir Darling. *They are not to be removed by irregular acts of power.* Anarchy, indeed, may ultimately result from continued opposition between two constituted authorities, each obstinately insisting on its extreme rights. *But anarchy has come already when the Executive Government* entrusted with power for the maintenance of public order and the protection of private rights, uses that power for the purpose of illegally setting aside the authority of one branch of the Legislature and of overbearing the decision of the Supreme Court, and depriving the subject, even for a time, of that which the Court has decided to be his.....

.....

It is for you to enquire, not whether the result of any step which you may be invited to take will operate in favor of this body or of that, of one political party or another, but whether it is in itself legitimate. If it be clearly contrary to law, you will refuse compliance, and will inform your ministers that while in all lawful matters you are desirous of being guided by their advice, you have a higher and paramount duty, which i. to observe the existing law of the colony.

CARDWELL.

Downing Street May 25, 1866.

.....

As regards the disbursement of public moneys, and the borrowing of a fund for that purpose, if your legal advisers, and the Commissioner of audit are satisfied that the payments which may be in question are authorized by the law, they will, of course, be discharged in the usual manner out of the regular public balances. But if it shall again be proposed to make any such payments in an exceptional manner, without the usual certificate, and out of a fund irregularly obtained in the way in which the fund at the London chartered Bank of Australia was obtained, you will refuse your assent, and all payments out of it are illegal also.

CARDWELL.

At the time of the renewal of the crisis in Victoria on the 27th november 1877, the Government endeavoured to have the previous decisions of the Colonial office reversed. In a memorandum addressed to the governor Sir Chas. Bowen, dated 31 December 1877, the ministers say:

Your Excellency's advisers have had under their serious consideration Viscount Cardwell's despatches to Sir Charles Darling in 1865-66 especially those of 26th October 1865 and 26th January 1866, and also those of Earl Granville to the Earl Belmore, when governor of New South Wales dated 16th june 1869 and 7th january 1870 all of which have been published in these colonies. In these state papers it appears to be laid down with respect to the issue of public money, that the Governor must personally

and independently of the advice of his ministers and of the Colonial Law Officers of the Crown, ascertain what the statute law is, and what the proper interpretation of it is. No public money can be issued without his warrant and the serious and critical duty which the despatches enjoin, is imposed upon him personally of ascertaining and deciding when he can legally sign such warrants.....

.....

Your Excellency's Advisers must now solicit your attention to the fact that up to the year 1862 the custom of this country was to apply public money to the services of the year on the report of the Committee of Supply to the Assembly, without waiting for other Legislative authority whatever. In that year, the practice of sending up Supply Bills to the Legislative Council was commenced without alteration of the law, and has since been continued as a matter of public convenience. Therefore, under the same law as exists now, former Governors habitually signed warrants for the issue of public money, although the Council had not sanctioned the expenditure .....

.....

Your Excellency's Advisers desire to fix your attention upon the fact that by simply recurring to the former practice, the state of anarchy and confusion consequent on the stoppage of supply by the Council can be effectively and constitutionally avoided .....

.....

Your Excellency will note that the remedy your Advisers suggest for a serious and alarming public danger is not to suspend any laws, or to have recourse to new and unprecedented devices, but simply to revive the original and constitutional practice with respect to public expenditure

GRAHAM BERRY,
Premier.

Sir Charles Bowen forwarded this document to London. The following is the answer from the Colonial office by the present Secretary of the Colonies.

[Telegram]

February 22nd.

To Governor Bowen,

Memorandum 31st December received, also telegram from President of the Council. Your duty in this question is clear, namely, to act in accordance with the advice of ministers, provided you are satisfied the action advised is lawful. If not so satisfied take your stand on the law. If doubtful as to the law, have recourse to the legal advice at your command.. .....

.....

[By Mail]

Downing Street, 28th Feb., 1878.

SIR,

I received on the 18th instant, your despatch of the 31st December in which you transmitted a memorandum, signed by Mr. Berry on behalf of your advisers on the subject of the stoppage of the supplies arising from the dissension between the two Houses of the Victoria Legislature.

The general principles which should govern the conduct of the Queen's representative, in circumstances like the present, have been fully and clearly laid down by several of my predecessors, in despatches with which I perceive you and your advisers are familiar; and having regard to this des-

patch of the 19th September last, I should not have considered it necessary to give you any instructions on the subject, had it not been that I was desirous to preclude any possible doubt as to my entire concurrence in the opinions of those who have preceded me in this office ....

M. E HICKS BEACH.

To Governor Bowen, &c.

This proves that the principle forbidding a Governor to allow of any expenditure unauthorized by the Legislature is, under the English constitution, irrevocable.

VI. — SHOULD THE LIEUTENANT GOVERNOR HAVE BEEN CONSULTED AS TO THE ADJOURNMENT OF THE LEGISLATIVE ASSEMBLY?

§ 1.—For all practical purposes, the adjournment of the House is equivalent to a prorogation. Authorities make a distinction between a state *tempore vacationis* and a state *sedente curiâ*. By an adjournment the House is in recess the same as by a prorogation; in the same manner that absence is similar to death, in so far as personal intercourse and acts are concerned. The House once adjourned is powerless; no order can issue, no judgment can be rendered, the least act cannot be accomplished; the House, for the time being, does not exist.

The Parliament doth not give privilege *tempora vacationis, sedente curiâ*. (Modus tenendi parliamentum, Hatsell, p. 63.)

The members of a Legislative assembly, before its first meeting as well as during the interval of its sitting, have, as we shall see hereafter, some necessary privileges as such; but the assembly itself has no authority and can exercise none, except during a session, and while the assembly is duly organized for the transaction of business. (Cushing, 496.)

A protracted adjournment, we may say, is in contradiction to the Sovereign's instructions, who has called

the session for the despatch of business. So important a departure from the regular manner of administrating the public affairs is a matter of grave importance, upon which the Lieutenant Governor or, in any case, the other House should be consulted.

The duty of the Premier, in such a case, is thus laid down by Todd:

The prime minister is bound to keep the sovereign duly informed of all political events of importance, including the decisions of Parliament upon matters of public concern..... .....

So soon as the cabinet have arrived at a decision upon any important question, whether legislative or administrative, it becomes the duty of the prime minister to submit th same for the consideration of the Crown. (Todd, vol. 1, p. 231.)

§ 2.—The American constitution, which is the written exposition of the unwritten British constitution, contains the following clauses:

Neither house during the session of congress shall, without the consent of the other, adjourn for more than three days.

And this is nothing new. This provision was in force when the United States were as yet British Colonies. The following was part of the charter of the State of New-York.

Neither House has a power to adjourn for more than two days, without mutual consent; and whenever they disagree, a conference is to be held. (Charter of New-York.)

But here is something more to the point. It seems that our Legislatures have never had the right to adjourn of themselves. The Legislative Assembly of Upper Canada, in 1840, ordered the printing of a book, in which the following may be found.

A right to prevent the House of Commons from adjourning, themselves, has never been claimed in England; it is claimed however with regard to the Houses of Assembly in British Colonies. (Todd Parliamentary Law, p. 152.)

And this pretension is, it seems, in accordance with constitutional jurisprudence.

The constitutions of the English Parliament and the Colonial Assemblies necessarily differ; the latter cannot even adjourn themselves; this is done by the Governor who as representative of the king is the first branch of this subordinate legislature (Chitty Prerogative, p. 37)

Every Governor is forbid to suffer the Assembly to adjurn itself. (Stokes. British Colonies, page 242)

Here, moreover, we have the instructions sent to the then Governor. They were much more detailed than at present, as the knowledge of constitutional law was not supposed to be so diffused as it now is ; the fact being that all relating to parliamentary procedure is now omitted. These instructions read :

As Governor in chief, he is one of the constituent parts of the General Assembly of his Province and has the sole power of convening, adjourning, proroguing, dissolving the General Assembly (Instruction to Governor.)

Here is one of the numerous forms of adjournment in that sense by a letter sent to the House.

Mr. Speaker and gentlemen of the Assembly, I do hereby adjourn the Commons House of Assembly, until Monday, the eighth day of January next, then to meet for the despacth of business and it is accordingly adjourned to the 8th day of January next. Given under my hand, on this 20th day of December, 1768.

§ 2.—The Legislative Council of Victoria, laid down this theory clearly in an address recently presented to Sir J. F. Bowen, Governor of that province, dated the 21st January, 1878. It was as follows :

To His Excellency Sir George Fergusson Bowen, &c.

In the early part of the sitting of the Legislative Assembly, on the 20th December, as we have since learnt, a motion was carried that the Assembly at its rising should adjourn until the 5th February ; and at its rising the Assembly, having previously forwarded several Bills to the Council for their concurrence, adjourned for six weeks without any concert or communication with the Council..... The position of affairs as regards the relation of the two houses of Legislature and as regards the session of Parliament has thus become anomalous.

For the carrying out of Legislation it would appear to be an essential feature of Parliamentary usage that the two Houses should sit and transact business concurrently ; indeed, it is clear that the business of Legislation could not be satisfactorily carried on in any other manner between two co-ordinate chambers.

In the present instance, an adjournment until the 5th February, without reference to the Council, was agreed upon in the assembly, whilst the appropriation Bill was yet under discussion by us, the immediate consequence of which is that Bills considered to be of urgent importance are in a state of suspense, from which they cannot be rescued until the 5th February.

A Session of Parliament according to imperial usage, although nowhere delined, has its limits, as essentially recognized and as carefully observed as those of a calendar year.

In Victoria, this usage of the Imperial Parliament has been followed and the word, session, has been used in many Acts of Parliament as indicating a certain period well understood ; and even on those extraordinary occasions when, unfortunately as now, the Annual Appropriation Bill has been thrown out, the two chambers have continued to sit in conformity

with sessional arrangements and to transact the business of the country. *But there has been no precedent for the course adopted*, viz: that one chamber should adjourn for a period of six weeks or about one fourth of the term during which a session ordinarily lasts, without so much as consulting the other, or making any provision for carrying into law the measures under the consideration of Parliament, one of which for continuing an expiring law (the Toll Bills) ought to have come into operation on the 1st January.

The Legislature consisting of three orders, Her Majesty the Queen, the Legislative Council and the Legislative Assembly, is powerless to legislate without the concurrence of the three orders; *and now it may be said to be out of gear by reason of the adjournment of one Chamber, without consulting either of the other two so far as we are aware.*

And this leads us to remark that a constitution, however good and perfect in itself, may soon become inoperative and fall into disrepute, if any of the component parts refuse or neglect to perform the particular duties devolving upon them..... We desire further to bring to your Excelency's notice the circumstance that the interruption of Parliamentary proceedings, in the manner alluded to, is without precedent, and is a departure from the spirit of Parliamentary institutions, and that the Council is, in no manner responsible for the miscarriage of legislation caused thereby. (Address by the Legislative Council to the Governor, 21 January 1878.)

The doctrine promulgated by the Legislative Council of Victoria accords with the English doctrine.

The House of Lords cannot exercise any authority as a House of Parliament or as a Court of error, unless the House of Commons exists at the same time. (Lex Parl. Sir Rob. Atkins, arg. fol. 51.)

§ 4. The precedent furnished by Victoria, and the recent one given by Quebec, support the following author when he says:

The late disposition the colonies have shewn makes it appear how necessary it was that the power of adjournment should be lodged in the Governor only, and not entrusted with the Houses of Assembly. (Stokes, Page 243.)

§ 5.—From what proceeds, it must be concluded that the adjournment of one of the branches of the Legislature was a serious proceeding, and that if the Lieutenant Governor does not claim the exclusive right of adjourning the Houses for an extraordinary length of time, he should, at least, be consulted on such a subject since so much importance is attached to it and that the reasons given are so strong.

VII. — COULD THE LIEUTENANT GOVERNOR LAWFULLY SANCTION BILLS AFTER THE ADJOURNMENT OF THE HOUSE.

1° In England the presence of the Sovereign, or his or her delegate, in presence of both Houses is preremptory for the sanctioning of bills, so much so, that the preamble of all the acts passed by the British Parliament reads: "The Queen's most excellent Majesty by and with the advice and consent of the Lords spiritual and temporal, and commons, in this present parliament assembled, as follows."

Canada, which adopted the same form, altered it with the sole object, according to the statute, of abbreviating the preamble.

The 33rd Henry VIII, chap. 31 has forever established this doctrine in the following terms:

III. Be it declared by authority of this present Parliament that the King's Royal assent, by his letters patent under his great seal and signed with his hand and declared and notified in his absence to the Lords spiritual and temporal and to the Commons, assembled together in high House, s and ever was of as good strength and force.

This decree, in 1553, was confirmed, amplified and explained, by the following words:

May it please your Highness, that it be declared, by the authority of this present Parliament, that the law of the Realm is, *and always has been*, that the assent and consent of the King of this Realm to any act of Parliament ought to be given in his own presence, being personally present in the Higher House of Parliament, or by his letters patent under his great seal, signed with his hand, declared and ratified in his absence, to the Lords spiritual and temporal, *and the commons, assembled together in the Higher House* according to the statute made in the 34th year of the reign of Henry VIII. (Declaration of the House of Lords, 1553 and preamble of the act enacted on that assent.)

Sir Edward Coke, the great Parliamentary authority says:

When Bills have passed both Houses, the King's Royal assent is not to be given, except, by commission or in person in presence of both Houses.—(1st June, 1621).

The same doctrine is everywhere found.

It must be allowed that after a bill or an act has been read three times and discussed in the Houses separately, and that the King in presence of both Houses has given his sanction thereto, that it is an Act of the King and of the whole nation.—(Sir Thomas Smith Commonwealth, I, Q C, 2 p. 72, Lex. Parl. 61)

There is not a single modern author who seems to have a shadow of doubt that the Royal assent cannot otherwise be given.

§ 2.—This practice was so constantly and so strictly carried out in England that notwithstanding its inconveniences, the King never sought to evade the obligation of appearing before both Houses *assembled together*, to sanction a Bill.

If a King could have sanctioned a Bill in the absence of the Houses, the following proceeding, arising from forgetfulness would not have occurred.

On the 7th March 1785, a commission was made out and passed the Great Seal, for giving the Royal Assent to several bills; by some mistake, the Malt bill which had passed both Houses, was left out. As soon as this was discovered, from the list of bills ready for the Royal assent, notice of this error was given to the Lords, and a desire expressed that it might be rectified by issuing a new commission which was then ready. Accordingly no proceeding was had upon the first commission; but another commission, in which the malt Bill was included, was prepared and passed the Great Seal, and the bill named in it received the Royal assent the next day, the 8th March (Hatsell's Precedents, Vol. II p. 340.)

Henri VIII. was on his death-bed when a law was intended to be put in force. As he could not go to Parliament, he caused a *fac simile* of his signature to be affixed to a commission, since he could no longer write. The validity of his Bill was attacked, "Because Henry VIII had not signed the letter patent to sanction the Bill; but that one William Clerk had stamped his name thereon," (Dyers report p. 73.)

It is evident that the royal sanction rather than the permission to affix the royal signature to a commission would have been requested had it been possible.

Had it been possible for the King to have sanctioned a Bill, irrespective of both Houses, it would have been much simpler to have him so sanction it, rather than to have him sign a new commission, all the more so, that the close of the session was delayed one day.

Another more striking example still exists, and a Bill had to be sanctioned illegally in presence of both Houses, rather than that the sovereign should sanction it on his death-bed The personal sanction does not require the personal presence of the sovereign; the sanction by commission required that the commission be signed.

§ 3.—If we closely examine the reasons that have given rise to this strict legislation, the severity of English practice will be better understood. Hearn lays down the principle which governs the question.

When any legal change was desired, the commons petitioned the King to make such change, and the King with the advice of his Great Council (that is the House of Lords) assented to this request, either wholly or in part, or refused it. But it seems to have been understood that the report of the commons was a condition precedent to the exercise of the Legislative Power.—(54).

The inconvenience [illegible]al to this system soon became felt. Sometimes the statute [illegible]aterially from the petition. Sometimes it did not even resemb[illegible]ayer of the petition, but was framed in a manner directly contrary [illegible]s spirit and to the intention of the Commons ..... In the 22nd of Edward III, for example, the Commons prayed that the petitions answered in the former years might not be altered or changed. In the eighth year of Henry the Fourth an Act was passed which provided that certain of the Common House should be present at the engrossing of the Parliament roll ..... At length the Commons adopted a new expedient. They submitted for the royal assent a petition containing in itself the form of the acts.—(Hearn, Government of England, pp. 54-58).

It will be now understood that the conditions imposed under the reign of Henry VIII, that the King should sanction the bills in presence of both Houses, was suggested by the necessity for self protection. Sovereigns often kept these petitions seven or eight years, and in most cases altered them ; thus the Parliament desired to be present at the sanction, to see what was going on and to assert its right of causing to be sanctioned only what it itself had adopted. This is its privilege established and explained.

The second reason is shown in the following quotation :

The change in Parliamentary practice, from procedure by petition to procedure by bill, probably led to another equally unforeseen, but equally important consequence. In former times, as I have said, the King always shared in the deliberations of Parliament. The proceedings of Parliament seem even to have been irregular, if they were not conducted in the Kings presence. The *modus tenendi Parliamentum*, repeated y insists upon the necessity for the personal attendance of the King. It declares that the King is bound, by all means, to be personally present in Parliament. (Hearn, Government of England, 58).

The practice of presenting petitions by the Commons at the end of the session appears to have been common until the reign of Henry VIII. (Cox p. 132, note.)

In former days, the presence of the Sovereign was necessary during the whole session ; now, he may only come to Parliament to sanction Bills ; but as the necessity of his presence has been renounced on that account, it is absolutely necessary that he should be present in this case, failing which, all the labors of the session would be fruitless.

If there were a moment during the session when the three branches might not meet and be brought together, there would be no Parliament at all.

On the other hand, the Houses insist on being present in order to witness the acts of the Sovereign upon their labors.

These labors are merely preliminary discussions. Both Houses have sought to form an opinion on certain subjects. They might discuss for ever without enacting a single law. For the same reason the results of their labors are previously sent to the Sovereign. And here Parliament exercises its true

functions. The three branches joined together and agreeing on a Bill make it law.

This law is spontaneously created, because parliament there present so wills it. But is Parliament there if one of the branches is missing ? If the Governor and the Council may complete a law in the absence of the House, might not the Governor similarly dispense with the Council, and if one branch of the Legislature may be dispensed with, under the pretext that it has previously consented thereto on another occasion, could not the Council and the Assembly united pass a law as well in the absence of the Governor, under the pretext that he had previously consented thereto, by authorizing his advisers to submit the measure

§ 4.—A third reason exists, rendering the Royal assent, in presence of both Houses indispensable ; it is this :

In short, all that ever the People of Rome do, the same may be done by the Parliament of England ; which represents and hath the power of the whole Kingdom, both the head and body ; for every Englishman is intended to be there present, either in person or by proxy and attorney, of what preeminence, state, dignity or quality soever he be, from the Prince (be he the King or Queen) to the lowest person of England. And the consent of Parliament is taken to be every man's consent (Lex. Parliamentaria, p 70.)

This statute or act is placed among the records of the Kingdom, there needing no formal promulgation to give it the force of a law because every man in England is in judgment of law, party to the making of an act of Parliament, being present thereat by his representatives (Blackstone, Lex. I. chap. 2, sec. VI.)

In other words, a law is not promulgated if it is not so done in presence of the whole country. It cannot be said that every one is supposed to be represented at the sanction of Bills, if one of the Houses is absent. Now, the adjournment of one House is the officially established absence of that House and of all whom it represents.

In fact, the votes and proceedings of the sitting at which the Governor came to sanction the Bills, could not do otherwise than state such absence. They say :

At three o'clock in the afternoon, His Honor the Honble. Théodore Robitaille, Lieutenant-Governor of the Province of Quebec, having taken his seat on the throne, the clerk of the crown in chancery severally read the titles of the Bills to be passed as follows :

The votes and proceedings omit the usual form relating to the presence of the Legislative Assembly. True, the speaker was there, but merely as a citizen.

Will it be presumed that the speaker can represent the House under such circumstances, when he had not been, in any way, authorized so to do. The speaker of himself can do nothing, absolutely nothing.

The speaker is said to be not only the mouth, but the eyes and ears of the House. And hence it was, that when King Charles I commanded the speaker on his allegiance to discover certain transactions etc., in the House, he justly replied, that he had neither eyes to see, ears to hear, nor mouth to speak, but as the House shall direct him. (Lex Parliamentaria, Page 277.)

§ 5.—The Joly Government has violated these principles by advising the Lieutenant-Governors to assent to bills during the absence of one of the branches of the Legislature.

If there were not a positive rule imposing, for the sanction of bills, the presence of both Houses, we might understand that there would be a doubt in favor of Mr. Joly. But what can we set against the formal rule ? Precedents ? there are none, turn over page after page of the Journals of the House of Commons and you cannot find a shadow of a precedent for the Joly cabinet.

But we are mistaken ; some may be found not according to the model which we must copy : the British constitution. We find them in imperfect constitutions granted to distant colonies ; which means that you are not to look above but below ; we have not advanced, we have receded.

We do not pretend that the precedents supplied by the colonies are not worthy of respect. When approved by the Colonial office they become a part of our constitutional creed, but there are precedents and precedents. When the mere caprice of an Attorney General is the basis of an action, and the Imperial authorities in no way support him, no one will pretend that the example of a distant colony can prevail over the practice followed in England.

We now give the sole authority which M.r Joly could evoke, to give his fatal advice to the Lieutenant Governor. We quote:

The Sovereign informs the Legislative Assembly that he has on this day, at the Government office, in accordance with the advice of the honorable the Attorney General give the royal assent to undermentioned Acts of the *forest reserve* presented to him by the Clerk of the Parliament, in pursuance of joint standing order's.

Government Office, 18 January 1878.

Here follows the advice alluded to :

It is well known that in New South Wales, New Zealand, Queensland and other colonies, bills are assented to by the Governor, as a general rule, at the government House, or at the government offices and in the presence of the clerk of the Parliaments, but not in the presence of Parliament itself. In fact, the latter practice appears to be confined to Victoria, and there is precedent for such a course in Victoria also.

I advise that His Excellency the Governor can legally and constitutionally give the Royal Assent at the Government offices, or elsewhere, to all bills except the appropriation Bill, presented to His Excellency by the Clerk of Parliament, for Her Majesty's assent, in pursuance of joint standing orders.

Such assent should afterwards be notified by message to both Houses of Parliament, according to the precedent above mentioned and the practice in the other colonies.

Crown Law offices, Melbourne, 18th Jan. 1878.

Robert Le Poer French, At. Gen.

As an authority, this opinion, although it comes from a man of great capacity, is equivalent to saying that it was essential to take the ideas of the Hon. Attorney General Ross as an infallible rule in constitutional matters.

What is the difference between the authority of Mr Ross and the authority of Mr Le Poer French? Is it thus it is pretended that constitutional Law is framed? As we have previously remarked Mr Le Poer French, in place of relying on English practice, searched below and sought precedents in the lower colonies. He purely reversed matters. It may be an example; but certainly not an argument.

One thing principally struck us in this pretention of Mr Le Poer French. Why except the Supply Bill from this Star Chamber sanction? Is it not, rather, the easiest Bill to sanction? The fact is that a Supply Bill is sanctioned in advance by the message of the Sovereign asking for the moneys required. It is in this the sanction consists, and this is so true, that when it comes to proclaiming it law the Sovereign does not make use of the usual form of sanction. He makes an exception

and simply thanks the House for their liberality. It is not said "*Her Majesty sanctions this Bill.*" This is the form: "The King thanks his loyal subjects, accepts their benevolence and thus wills it." ("Le Roy remercie ses loyaux sujets, accepte leur bénévolence et ainsi le veult.")

To the subsidy Bill because it is the mere gift of the subject, the Queen's consent is not required for the passing of it, but as it is implied in her thankful acceptance.—(Lex Parliamentaria, p. 323).

The supply Bill is, so to speak, law from the moment the two Houses have adopted it. All constitutional authors recognize that the Royal sanction to this Bill has been given by the message which introduces it to both Houses. For what reason then does Mr. Le Poer French desire, in his mode of sanctioning, to make an exception in favor of a Bill which has no need of being sanctioned? There is but one explanation of the case. He perhaps, relied on the following authority, a very respectable one, that of Hatsell:

The message to the Commons is only matter of ceremony and not an essential form to the passing of a bill, except it is a bill of Supply. (Hatsells precedents, vol. II. p. 339.)

At first sight, this appears overwhemlingly against us. But we simply consider that Mr. Le Poer French has not understood his authority. It does not refer to the Royal Message for the sanctioning of Bills, but to the message of the House of Lords informing the House of Commons that it has concurred in the adoption of the Bills which have been sent to it.

A few lines before and after that passage explain it:

The speaker, on his return was very angry and said that on such another occasion, he would at the bar, acquaint the King and Lords that no message had been brought to the Commons, of the Lords having agreed to the bill ....As to other bills (except supply) the message of agreement is a form between the two Houses which they ought to observe towards each other, but is not an essential form. (Hatsell's Prec. Vol. II, p. 339.)

And moreover it is the only English authority on which Mr. French can rely.

Now, it is possible that such a mode of procedure does not annull the laws of Victoria; for Victoria by no means possesses our constitution. It is noticeable that both

the Governor and Attorney-General of Victoria rely on the rule of practice in force in that Colony, namely, Rule XV, which is as follows :

XV. 262. Whenever the Governor shall transmit by message to the Assembly any amendment which he shall desire to be made in any bill presented to him for Her Majesty's assent, the amendment shall be treated and considered in the same manner as amendments proposed by the Legislative Council. (Standing orders.)

It will be seen directly what difference exists between the constitution of Victoria and the constitution of England or ours. According to the English constitution it is absolutely impossible for either House to reconsider a Bill which has passed three readings. This is so true, that in order to correct a clerical error, a figure in a Bill which had been passed by the Commons, it was necessary after several days study and deliberation, simply to secretly prevail on the clerk of the Lords to commit a forgery and to substitute one figure for another, and one fine morning the House of Lords was obliged to state that it had been mistaken the previous day and that the right figure was in the Bill.

This is the rule of Parliament :

When a Bill is thrice read and passed in the House, there ought to be no further alteration thereof in any point.—(Lex Parliamentaria, p 380).

This permanent order of Victoria is based on the charter of the colony which says ;

36. It shall be lawful for the Governor to transmit by message to the Council or Assembly for their consideration any amendment which he would desire to be made in any bill presented to him for Her Majesty's Assent.—(18 and 19 Vict., chap. 55).

The constitution of Victoria does not give it a complete Parliament like that of England. (Read the charter still further.)

There shall be established in Victoria instead of the Legislature Council now subsisting, one Legislative Council and and one Legislative Assembly to be severally constituted in the manner hereinafter provided ; and Her Majesty shall have power, by and with the advice and consent, of the said Council and Assembly, to make laws in and for Victoria in all cases whatsoever.

25. There shall be a session of the Council and Assembly of Victoria once, at least, in every year. (Imperial Stat. 18 and 19 Vict., chap. 55.)

How does this give a Parliament to Victoria. The Council and the Assembly are constituted advisers of

the Governor, and he may give force of law to their advice in the same manner as the Governor gives force to the orders in Council of our ministers; no more. The Governor signs those orders in Council, when he deems fit, and they have force of law. This is in conformity with the idea of a Colonial Government, such as defined by Blackstone :

> Charter governments are in the nature of civil corporations, with the power of making by-laws, for their own interior regulation, not contrary to the laws of England, and with such rights and authorities as are specially given them in their several charters of incorporation. (1 Blackstone, 108.)

§ **6**—We do not pretend that we are still in this inferior position We believe, on the contrary, that Canada has entered a new phase of colonial politics and that our Country is a *quasi* kingdom. Our Charter gives us to understand so, when it says:

> There shall be one parliament for Canada consisting of the Queen, an Upper House styled the Senate and the House of Commons.

The definition of Blackstone does not apply to this new state of things, And, above all, this organization, which places the Queen at the head of our affairs, differs essentially from the Victoria system, in no part of which is it said that that colony enjoys a Parliament composed of the Queen, &c.

While the Legislature of Victoria is now composed only of two branches whose decisions are subject to the approval of the Governor, ours is composed of the same three branches as the English Parliament, namely :—the Queen, the Council and the Assembly. Although the public cooperation of the two branches mentioned in the Act of Victoria may be sufficient it is necessary to have the public cooperation of the three branches mentioned in the Act of Canada. In short, our Constitution is based on the English Constitution, as is set forth in the preamble to our Charter. Then we must necessarily follow the English practice and not the Colonial practice, of which our Charter makes no mention. We have a complete Parliament; we must observe the practices of a Parliament.

§ **7**.—Now let us confirm these precedents, this practice and this theory by the written law. In all which concerns Parliamentary procedure, the American Constitution, it but a *resumé* of the English Constitution. Now is insists on the necessity of the two branches of the Legislature being in session to have a Bill sanctioned by the President.

Sect. VII.—Every bill which shall have passed the House of representatives and the Senate shall before it become a law be presented to the President of the United States ..... If any bill shall not be returned by the President within ten days (Sunday excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Congress, by their adjournment, prevented its return, in which case it shall not be a law.—(Constitution of the United States).

This doctrine is further developed thus :

The signing of an enrolled Bill by the speaker or president is an official act which can only be done when the House over which he presides is in session, and a quorum is present therein for the transaction of business. (Cushing, Law and practice of Legislative Assemblies (2374)

When a law has been passed and submitted to the Executive for his approval during a recess, and which is filed, without approval, the House may direct a re-enrolment of the bill, that it may be again submitted for approval. (Cong. Holo. 1. 40th Cong. p. 512.)

1. In this case the President refused to sign the bill on the plea that it was presented to him after congress had adjourned, whereas a recess only was ordered from 30 march 1867 to 3rd july 1867. (p. 6, Digest of Parliamentary Law)

The President himself explains the reasons for this legislation,

To concede that under the constitution after the adjournment the president, after the adjournment of Congress, may, without limitation in respect to time, exercise the power of approval and thus determine at his discretion whether or not bills shall become law, might subject the Executive and Legislative department of the government to influences most pernicious, to correct legislation and sound public morals, and, with a single exception, occurring during the prevalence of civil war, would be contrary to the established practice of the government from its inauguration to the present time. This bill will, therefore, be filed in the office of the secretary of state without my approval.

ANDREW JOHNSON,

Washington, D. C., April 20th, 1867.

§ **8**. We need insist no further or this point. Even the precedent of Victoria would not justify Mr. Joly for the advice he gave the Lt.-Governor. For, after all, the Governor of Victoria signed while the two Houses

were sitting. It is with the consent of the two Houses that the clerks go to the Governor's house, to be witnesses of the official signature ; they were delegates of the Houses. But such a delegation cannot be presumed to act of itself, the consent of the deliberative bodies, who ought to assist at the ceremony, is necessary.

The speaker is subject to the authority of the House of Commons and must not contravene it in deference to the Crown ; unless the House gives him leave, he cannot even quit his chair. (Ewald, Crown and its advisers 195.)

The Commons have been always jealous of this privelege. They dismissed a Speaker who had promised to communicate a document to the King without the consent of the Houses.

Anno 1, II. 5.—The Commons presented William Sturton, their speaker, the 18th May; the 22nd of May, the said William Sturton made a speech to the King on the behalf of the Commons, and being required to exhibit certain articles in writing, he undoubtedly promised to do so.

On the 25th of May, Sir John Dorewood did on the Commons behalf deny that they had given their assent to exhibit the said article in writing.

And on the 3rd of June, the Commons presented the said John Dorewood for their speaker.—(Page 244, The Ancient Method and Manner of holding Parliament in England, by Henry Elsynge, 1695.)

—May, 1604.—No speaker from henceforth should deliver a bill, whereof the House is possessed to any whomsoever, without leave and allowance of the House.—(Resolutions of the House of Commons.)

—The speaker is said to be not only the mouth, but the eyes and ears of the House. And hence it was that when King Charles I commanded the speaker on his alligeance to discover certain transactions, etc., in the House, he justly replied that he had neither eyes to see, ears to hear, nor mouth to speak, but as the House shall direct him.—(Lex Parliamentaria, p. 277.)

It can always be strictly claimed that, in the case of Victoria, the two Houses were represented during this operation; they were in a condition to immediately legalize this irregularity. But can so much be said for the Legislative Assembly of Quebec, which was not present, nor anybody authorized to represent it in its absence ? It had not the power to consent to that extraordinary proceeding; it had no means of thinking and acting before the 28th October. It has therefore had no opportunity to correct that which might be wrong in the procedure followed.

§ 9.—It thence follows that the sanctioning of the Bills is illegal and that that operation comes within the following declaration.

If there be a restriction in a Governor's Commission with respect to particular acts and the restriction be not observed, his assent is a nullity. (Chalmers, p. 310, Colonial Opinions.)

The validity of certain laws was questioned on account of default in the form of the royal sanction, among others, a Bill under Henry VIII, and another under Henry VI, (Hatsell's Precedents, Vol. II p. 344). Although the result of those trials is unknown, judges have admitted such cases and heard the pleadings, recognizing by so doing that a breach of form in the sanction might entail its nullity.

VIII. — CAN THE LIEUTENANT-GOVERNOR CONSTITUTIONALLY GRANT A DISSOLUTION.

§ 1. The Liberals begin to spread the rumor that they will ask for the dissolution of the House. Let us see, first, if the Liberals can dissolve the House; and then, if it be necessary.

There are many things the constitution forbids the Joly Government to do, since they have adjourned the Legislative Assembly.

In the first place it is doubtful if it be capable of convening the House earlier, even by proclamation of the Lieutenant Governor. The constitutional law on this subject reads:

> It would have been inded *unusual*; because if the Parliament had been actually adjourned to the 4th of April, it would have been out of the King's power to have called them sooner; and the attempt to do so would have been therefore *illegal*.—(Hatsell's precedents, 1 vol. II. p. 34).

Il was found necessary to pass a special law in 1800 (40 George III. chap. 14) to give the Sovereign power to lessen by proclamation the delay of and adjournment of Parliament; but it is questionable if

that law be applicable here, seeing that this right of proclamation is conferred, not by prerogative, but by statute, on the Sovereign, while our charter only authorizes us to claim those privileges the Houses enjoy.

In any case, the constitutional practice for the dissolution of the House during the adjournment is, according to Hatsell :

> In all the instances that have occurred to me ..... I do not find one of a dissolution of Parliament taking place, whilst both houses or either of them, were under adjournment..... although no argument can be drawn from thence. (Hatsell's Precedents, Vol II, p. 382

> When Desborough and the council of officers had with much difficulty prevailed on Richard Cromwell to sign a commission to dissolve his Parliament, the next morning, the House of Commons having notice resolved not to go up. So that, when Fiennes, the keeper of the great seal sent for them to the *other House*, the Commons shut the door of their House, and would not suffer the gentleman Usher of the Black Rod, to come in ; and then adjourned themselves for three days, imagining that, by that time, they should consent. The Protector was so harassed by the Council of officers, that he presently caused a proclamation to be issued out, by which he did declare the Parliament to be dissolved. (Clarendon Hist. of the Rebellion, Vol. III, p. 517)

In pushing the Royal prerogative to the extreme in a case of urgency, there is no doubt it would have its effect ; but it requires, at least some extraordinary circumstance to justify it ; and as there is but one example of such a proceeding in English history, that of Richard Cromwell, we fancy the Lieutenant Governor of Quebec, would not wish to incur the disgrace of creating a second precedent of the kind.

Moreover a dissolution, under present circumstances, would completely undo the work of the session, if the sanctioning of the Bills, on the 11th September is illegal, and if the Lieut.-Governor is obliged to go through that proceeding again. It is evident such a result should not be risked and the country swamped with law suits. It would he absurd to have a dissolution which would nullify a two months session.

§ **2**.—But there are other considerations militating strongly against the step proposed to be taken by the Government of the day.

When the Joly Government will say to the Lieut.-Governor : ".We want elections," it will be an acknowledgment that they have tried all means and have failed to reestablish harmony between the two branches of the Legislature.

The right and duty of the Lieut.-Governor would be to immediately reply : " Are you sure to settle the difficulty in that manner ? Are there no other means of coming to a satisfactory conclusion ?

Let us suppose, for instance, that a general election takes place ; and that an immense majority of the Province declared itself in favor of Mr. Joly. That will not give him the supplies ? In any event, if the Council persist in their refusal, and why should they not persist like the Legislative Council of Victoria, whom the general elections did not affect and who held their ground after repeated appeals to the people ?

The means proposed by the Joly Government are therefore not infallible. But there is another means. His Honor the Lieut.-Governor, by virtue of the right he possesses to put himself in *constitutional relationship with those who have refused the supplies*, has only to say to one of the Legislative Councillors " are you capable of putting the two House in accord with each other " ? certainly." the honorable councillor will reply " if you authorize us to furnish you with other advisers who will have the confidence of both Houses." It is probable that the choice of another government which would be sustained by the two Houses will be easy. It is but right for the Lieut.-Governor to give the Joly Government any reasonable time to arrive at that result, and we must remember that liberal delays have been granted them ; but it would be unjust for the country to have to submit to the trouble of general elections, with the sole aim of retaining Mr. Joly in power, when there is so simple a mode of restoring harmony.

This mode of procedure is justified by a Canadian precedent. In 1858, the Brown-Dorion administration was refused a dissolution and the following is an analysis

of the reasons given by Sir Edmund Head, Governor General of Canada :

[MEMORANDUM.]

Toronto, 4th August, 1858.

His Excellency, the Governor General, has received the advice of the Executive Council to the effect that a dissolution of Parliament should take place.

His Excellency is, no doubt, bound to deal fairly with all political parties : but he has also a duty to perform to the Queen and to the people of Canada paramount to that which he owes to any one party, or to all parties whatsoever

The question for His Excellency to decide is not—what is advantageous or fair for a particular party ? But what upon the whole is the most advantageous and fair for the people of this province.....

.....

It is not the duty of the Governor General to decide whether the action of the two Houses on Monday night was, or was not in accordance with the usual courtesy of Parliament towards an incoming administration. The two Houses are the judges of the propriety of their own proceedings...

.....

There are many points which require careful consideration, with reference to a dissolution at the present time. Among these are the following.

An election took place only last winter. This fact is not conclusive against a second election now, but the cost and inconvenience of a such proceeding are so great that they ought not to be increased a second time without very strong grounds. "

" The business of Parliament is not yet finished. It is perhaps true that very little which is absolutely essential for the country remains to be done. A portion, however, of the estimates and two bills, at least, of great importance are still before the Legislative Assembly, irrespective of private business. "

.....

It would seem to be the duty of His Excellency to exhaust every possible alternative, before subjecting the Province for the second time in the same year to the cost, the inconvenience and demoralization of such a proceeding. "

The Governor General is by no means satisfied that every alternative has been thus exhausted, or that it would be impossible for him to secure a ministry who would close the business of the session, and carry on the administration of the Government, during the recess, with the confidence of a majority of the Legislative Assembly.

After full and mature deliberation on the arguments submitted to him by word of mouth and in writing, and with every respect for the opinion of the Council, His Excellency declines to dissolve Parliament at the present time.

EDMUND HEAD.

Toronto, 4th August, 1858.

On receiving this memorandum, the majority of the two Houses, expressed their satisfaction and approbation in unmistakeable terms.

The reasons alleged for the refusal of the dissolution are exactly the same as to-day.

1st. The legislation is unfinished.

2nd. We have just had general elections.

3rd. It is not shown that we cannot find another government capable of settling the difficulty.

There is a fourth reason under the present circumstances: "The affairs of the country have been illegally conducted since the 1st July, because no supplies have been voted and it is imperatively necessary that the present unhappy state of affairs be immediately put an end to."

The same doctrine is applied by Lord Canterbury, governor of Victoria in 1872. He told his advisers who asked for a dissolution.

Memorandum for the Honorable the Chief Secretary.

.....The fact that there has not been, since the passing of the Reform Act, any refusal by the Crown to comply with a formal recommendation by a Minister of a dissolution does not in the governor's opinion officially justify the inference which is drawn from it. And the Governor personally believes that that inference is incorrect as regards both constitutional law and constitutional practice in England, he would observe that colonial governors, although not responsible in a constitutional point of view to the Colonial Legislatures, are responsible personally and directly to the Crown, whose servants and representatives they are, and that this responsibly induces pratically, although indirectly, *qr nd local responsibtlities, more especially with regard to dissolutions*, which responsibilities have been continually recognised and insisted on by Colonial Legislatures and Colonial Statesmen of every shade of political opinion, and of which a governor could not, (even if he desired to do so) divest himself.....

.....

But although the majority in the recent decision is not of such a character as to afford, by itself, any strong reason for supposing that an administration formed from it would obtain from the present Legislative Assembly sufficient support, to enable them to conduct the public business successfully, *the Governor is not prepared, without further information on the subject, to take for granted that no such administration can be formed*; and he now informs his advisers that with the view of obtaining this information he desires to place himself constitutionally in communication with those who by the adoption of a no confidence vote in the Legislative Assembly have rendered impossible the continuance of office of his present advisers, unless the Legislative Assembly should be dissolved.

CANTERBURY.

Toorak, Melbourne, 3rd June, 1872.

Such also was the doctrine of Governor Manners Sutton, when the Legislative Council refused the supplies in 1867. He frankly declared that, instead of yielding a general assent to his advisers, he would have appealed to their adversaries if they had been able to

form a cabinet. "If I had only the hope of forming another administration," said he, "I would have considered it my duty to do so," (despatch 3rd. Nov.) On the 1st. January, 1868, the Colonial Office, at London, approved of his conduct.

All this agrees with the instructions that the colonial offices gives to its governors. It forbids them to favor any party at the expense of the tranquillity of the Province, and it authorises them to choose, where they deem best, elements to form a cabinet when they see their advisers are powerless to carry on affairs. It goes farther still, after advising them to refuse dissolution to the ministry. The following is an extract from the instructions which serve as a basis for the conduct of all English Governors.

EARL GREY TO LORD METCALFE.

If your advisers succeed in submitting to you an arrangement to which there is no objection, you ought naturally to continue them in office as long as they give satisfaction. But if the present (Executive) Council cannot propose an arrangement to you that you can accept, *your most natural step will be, in accordance with the practice in this particular cases, to address yourself to the opposite party ;* and if you can find there the elements of a satisfactory council, THERE WILL BE NOTHING IRREGULAR ON YOUR PART IN DISSOLVING THE ASSEMBLY ON THEIR ADVICE. That will be the only means of removing the difficulties, otherwise inevitable, of conducting the affairs of the country in a constitutional manner. (Grey, Colonial Policy, vol. 1 p. 510)

§ 3.—To sum up all that is in accordance with the constitutional authorities which speak for themselves. Earl Grey says :

Upon such an occasion, the Sovereign ought by no means to be a passive instrument in the hands of his ministers ; it is not merely his right, but his duty to exercise his judgment in the advice they may tender to him. And though, by refusing to act upon that advice, he incurs a serious responsibility if they should, in the end, prove to be supported by public opinion there is, perhaps, no case in which this responsibility may be more safely and more usefully incurred, than when the ministers ask to be allowed to appeal to the people from a decision pronounced against them by the House of Commons. For they might prefer this request when there was no probability of the vote of the House being reversed by the nation and when the measure would be injurious to the public interests. In such cases the Sovereign ought, clearly, to refuse to allow a dissolution. (Grey, Parliamentary Gov. p. 80).

Here is another high authority :

A valuable security against the improper exercise of this prerogative is that, before a dissolution can take place, it must be clearly approved of by

the sovereign, after all the circumstances shall have been explained to him and he shall have duly considered them. (Wellington in Peel's Memoirs, vol. II, p. 300).

Todd, speaking of complaints made by the Houses or by different members against the Government, says :

But in extreme cases, when it may be advisable to endeavour to reconcile conflicting opinions and reconciliate rival parties, we are warranted by constitutional precedent in claiming for the sovereign a right to interpose, and with the weight which belongs to his elevated position, to offer counsel and advice to any influential statesmen, irrespective of their particular standing towards the existing administration. But such an act of interposition is only suitable as a last resource to restore harmony to the body-politic. (Todd, vol. 2, p. 206).

It is not a legitimate use of this prerogative to resort to it, when no grave political question is directly at issue between the contending parties and merely in order to maintain in power the particular ministers who hold the reins of government. The dissolution in 1834 has been impeached on this ground. (Todd, vol. II, p. 406.)

Sir Robert Peel says :

Those measures having thus become law, I do not feel that we should be justified, for any subordinate consideration, for the mere interests of government or party, in advising the exercise of the prerogative to which I have refered and the dissolution of Parliament. I feel very strongly that no administration is fortified in advising the exercise of that prerogative, unless there be a reasonable presumption, a strong moral conviction indeed, that after a dissolution they would be enabled to administer the affairs of the country, through the support of a party sufficiently powerful to carry their measures.....

.....

I do not think a dissolution justifiable for the purpose merely of strengthening a party. The power of dissolution is a great instrument in the hands of the Crown, and it would have a tendency to blunt the instrument if it were employed without grave necessity. (Hansard vol. 87, p. 1042.)

This great statesman, although interested in asking for the dissolution of the House, at the time of the formation of his Cabinet, writes in his memoirs :

I shall forever remember the remark of Lord Clarendon, at the commencement of his *History of the Revolution*, on the bad effects of the untimely exercise of the right of Royal prerogative : "no man" said he, "can show me the source from whence these bitter waters we now taste flow, as these unreasonable and precipitate dissolutions of Parliament," and farther "the passion and disorder which troubles Parliament can neither be appease l nor banished by a dissolution, which is of a still more passionate nature." One may redily call to mind that Mr. Pitt did not immediately dissolve Parliament on his elevation to power in 1783. (Memoirs of Sir Robert Peel, French version, 2nd vol. pages 49-51).

I consider that no ministry ought to advise a Sovereign to dissolve Parliament, without a moral certainty that the dissolution will enable

them to continue the direction of the Government of the country, and will give them in Parliament a decided majority of active partisans.

The prospect of obtaining a stronger majority cannot justify a dissolution.

Dissolutions which come to nothing are, in general, prejudicial to the authority of the Crown. Succeeding one another rapidly, they diminish the efficacy of a powerful instrument given to the Crown for its defence.

The dissolution by the whigs in 1841 was, in any opinion, an unjustifiable act. The dissolution at the present moment would be equally unjustifiable, if the result would likely be the same.

Why should we appeal to the country? Certainly not for the mere personal interest we might have to know if we were right in submitting the corn laws. Such an appeal must determined by some principle. (Idem page 286.)

Hearn says:

Again, where no political question is at issue but the object is merely the advantage of a particular party, there is no proper case for a dissolution. (Hearn, Government of England, p. 156.)

The last of those events, indeed, is a conspicuous example of the violation of those principles which usually regulate the exercise of this prerogative. Its immediate cause was a vote of the House of Commons adverse to the Reform Bill which Lord Derby's ministry had introduced. But there was nothing in the state of the country, at that time, to render the rejected measure essential to the proper administration of public affairs. There was no such agitation as that which, in 1832, had threatened civil war. Both before this Bill and after it, other Reform Bills were laid aside without any material disturbance of the public equanimity. The parliament too, was only in its second year, and nothing since its election had occurred to excite a suspicion that the existing House of Commons did not fairly represent the sense of the nation. The ministers declared that they expected to have about three hundred supporters in the new Parliament. They could not therefore have felt a strong moral conviction that they would have a majority sufficient to enable them to carry on the government. At the time of the dissolution the state of public affairs was very alarming.....

The dissolution, then, must be regarded as a mere party measure and, as such, comes within the express condemnation of Sir Robert Peel. (Hearn, p. 159.)

The following is Gladstone's opinion:

The right hon. Gentleman speaks as if this resort to a dissolution and advice of penal dissolution—were an every day practice. What are the instances of such a resort? the case of 1841 is a doubtful precedent.....

.....Very well, if the right honorable gentleman does not take that for granted he only enables me the more broadly to question his proposition, and to ask him to show me from the history of this country, and from the great constitutional authorities, other than members of the Government of Lord Derby, where the doctrine is laid down that, irrespective of other consideration, an administration, as an existing administration, is entitled to make an appeal to the country a condition previous to its resignation of office. (Gladstone, Hansard, vol. 191 p. 1711.)

I do not lay down the doctrine that any ministry has the right to appeal to the country before resigning: but I challenge and deny the doctrine that all ministers have the right to appeal to the country .....

.....

There are two conditions, as it appears to me, which are necessary in order to make an appeal to the country by a Government whose existence is menaced, a legitimate appeal. The first of them is that there should be an adequate cause of public policy; and the second of them is that there should be a rational prospect of a reversal of the vote of the House of Commons.—(Gladstone, Hansard, vol. 191, p. 1713).

I entirely question this title of Governments, as governments, to put the country, as a matter of course, to the cost, the delay, and the trouble of a dissolution to determine the question of their own existence.....

....Therefore, I am bound to say that the only question, for the sake of which the right hon. gentleman thought fit to advise Her Majesty, in the face of great public inconvenience, to dissolve the present Parliament, with the certainty of another dissolution impending within few months, possibly six or nine months afterwards—the only question, I say, for the sake of which he gave that advice was, in truth, the question of his own ministerial existence. I do not wish to be responsible by my silence for allowing the statement of that advice to the House to pass without notice; that I, for me, do not think that the right hon. gentleman who gave it was acting in the spirit of the constitution, and I am heartily and thoroughly glad that that advice, though tendered was not accepted. (Gladstone, Hansard vol. 191, p. 1713 and 1714.)

Lord Derby says:

The Sovereign is not the mere automaton or puppet of the government of the day: she exercises a beneficial influence and control over the affairs of the state: and it is the duty of the Minister for the time being, in submitting any proposition for the assent of Her Majesty, to give satisfactory reasons that such propositions are called for by public policy, and justified by public interests. If the Sovereign is not satisfied with the advice tendered to Her—if, either from the suggestions of Her own mind, or from objections which may be suggested to Her by others filling that high confidential situation to which I have referred, Her Majesty is of opinion that she will not accept the advice of the responsible Minister of the Crown, the course of the Crown and of the Minister is equally open. The course of the Crown is to refuse to accept that advice of the Minister, and the inevitable consequence to the Minister would be the tender of his resignation. (Earl of Derby, Hansard, ch. XXX, pp. 103 and 104.)

A government should not press upon the Sovereign to grant a dissolution. The sovereign should be left quite free.

This doctrine was put into practice by Disraeli in the following manner:

But at the same time, with the full concurrence of my colleagues, I represented to Her Majesty that there were important occasions on which it was wise that the Sovereign should not be embarrassed by personal claims, however constitutional, valid, or meritorious; and that if Her Majesty were of opinion, that the question at issue could be more satisfactorily settled, or the just interests of the country more studied by the

immediate retirement of the present Government from office, we were prepared to quit Her Majesty's service immediately, with no other feeling but that which every minister who has serve the Queen must possess namely, of gratitude to Her Majesty for the warm constitutional support which she always gives to Her ministers, and, I may add—as it is a truth which cannot be concealed—for the aid and assistance which every minister receives from a Sovereign who now has had such a vast experience of public affairs. (Disraeli, Hansard, vol. 191 p. 1705.)

Here is Mr. John Bright's opinion:

The honorable gentleman asks us (by that dissolution) to lay aside the old usages of Parliament, and there is not a member who will differ from me on that point. He asks this from us in order to maintain *in office a minority who came into power through certain means which do not seem to me to be commendable.* (Hansard, vol. 191, p. 1730.)

On the other hand, Lord John Russell says:

There were two circumstances at that time; one was that, if we had dissolved parliament at that time, we should have been liable to the objection stated by Sir Robert Peel in 1846. That it would have been so understood and represented—in order to maintain a party in power, and that that was not a legitimate use of the prerogative of the Crown. In the next place, it would have been dissolving parliament before the supplies for the army and navy, and before the minister's Bill had passed; and in the state of affairs generally, I did not think it wise to advise the Crown to take such a step. (Hansard, vol. 119, p. 1070)

He says again:

But it is quite another matter when the question is whether a particular Prime minister or a particular party should remain in office. And when Sir Robert Peel, in 1846, explained his conduct in having declined to propose to, or to advise Her Majesty to dissolve this House, because it was his opinion that that was a most delicate and sacred prerogative of the Crown, and ought not to be exercised for the purpose of any individual who might be at the head of affairs, or for the purpose of any party. Now, that entirely agrees with my opinions. And when I offered my resignation to Her Majesty to dissolve the then Parliament I was acting logically. (Lord John Russell Hansard Vol. C L p. 1075.)

§ 4.—We need not make any more quotations to prove that point. It is quite certain that the government has no new fact to bring forward since the last elections which they carried on themselves at their own pleasure. They cannot even allege the abolition of the Legislative Council, as they appear to have changed their mind on that question, by not submitting a measure during this session for the abolition of that body —so, they cannot pretend that this matter is before the country. They withdrew it themselves out of discussion.

We cannot understand what the liberals wish to establish by setting forth their right to obtain a dissolution on the authority of the following quotation from Todd:—(Vol. II, p. 405).

"A dissolution may properly take place on account of the disputes between the two Houses of Parliament, *which have rendered it impossible for them to work together in harmony*, but happily there have been no cases of this kind since the complete establishment of Parliamentary Government. Whenever there is reason to believe that the House of Commons does not represent the opinions and wishes of the nation, upon this ground, ever since 1784, it has been completely established as the rule of the Constitution, that when the House of Commons refuses its confidence to the Ministers of the Crown, the question whether, in doing so it has correctly expressed the opinion of the country may properly be tested by a dissolution." At the same page, in note one, occurs the following; "It was in 1831, 1852, 1857, 1859, and 1868, upon the Irish Church question."

Todd here refers to the case of an understanding between the two Houses being absolutely impossible. But, thank Heaven, we are not in that position. Every one knows that there is a simple and speedy way of settling the question. There are in the Legislative Assembly, as it is at present constituted, the elements of a strong and able government, to which the Legislative Council is ready, to grant the Supplies. So that the dissolution of the House is not necessary to put an end to the present conflict. The Joly Government can demand it for party purposes only, and with the object of remaining in office, which is contrary to all constitutional principles.