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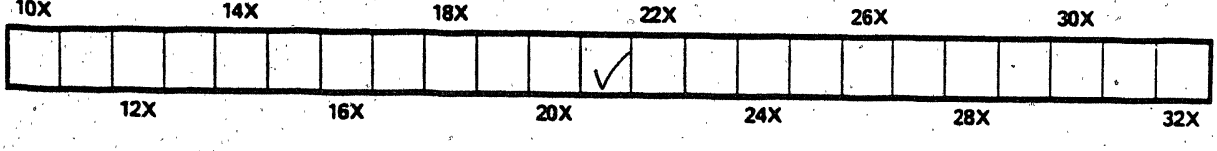

THE

REPORTS

OF THE

ROYAL COMMISSIONERS

APPOINTED TO ENQUIRE

INTO THE

STATE OF CANADA.

PRICE THREE SHILLINGS.

QUEBEC:
THOS. CARY & Co.
1837.

CANADIAN AFFAIRS.

DESPATCHES

[LATE BEFORE PARLIAMENT BY HIS MAJESTY'S COMMAND.]

Copy of a Despatch from the Earl of Gosford to Lord Glenelg.

CASTLE OF ST. LEWIS,
Quebec, 12th March, 1836.

MY LORD,

It becomes my duty to inform your Lordship that the Provincial Executive has again, for the fourth year, been left destitute of the usual legal provision necessary for carrying on the civil government, and paying the large arrears now due for past services; and thus, at the end of a session of more than ordinary length, a satisfactory adjustment of the financial difficulties of the colony appears to be as distant and more hopeless than ever. I shall in this despatch, while giving your Lordship an outline of the proceedings of the two Houses on this subject, briefly touch upon what I conceive to have been the cause and reasons that led to this disastrous result.

On the 9th of November last the accounts showing the arrears due for salaries to the public officers, and for the other ordinary expenditure of the Government, including the advance made from the military chest, was transmitted to the Assembly with a message inviting their immediate attention to the subject. These were at once referred to the standing committee on public accounts, as were also the estimates of the current year, transmitted in like manner on the 20th of the same month. But nothing further in the matter appears upon the proceedings of the House until the 5th of January, when the committee presented their third report. The subsequent steps of the Assembly up to the 12th of February, having already been detailed to your Lordship need not be here repeated. On the 20th the House went into committee on the several reports on public accounts, on the state of the Province, and on the published extracts from the instructions to the Canada Commissioners. These questions formed the subject of prolonged debates until the 26th, when the committee reported an Address to the King (forwarded by this opportunity, with a separate despatch), and two resolutions, a copy of which is herewith transmitted. In these resolutions, the Assembly, entirely passing by the question of arrears, determined to vote supplies for six months only, from the 15th January to the 15th July next, and to abstain under existing circumstances from specifying in the Supply Bill the particular funds appropriated; under a protest, however, that this course should not in future be invoked as a precedent in opposition to the resolutions of the House of the 16th of March, 1833. and 21st February, 1834. The question of concurrence being put on the resolutions, Mr. Vanfelson moved an amendment, a copy of which is enclosed, to the effect that it would be expedient to vote as well the arrears due, as the supplies required to meet the expenses of the current year. This motion was objected to by the Speaker as unparliamentary, because it was not offered in the shape of a motion, proposing some subject for deliberation and decision but in the shape of a protest, tending to censure a decision of a committee of the whole House, and further, because in matters of supply, when the decision of a committee of the whole has been in favour of a smaller sum, or a shorter period of time, it is not afterwards allowable to make any motion in the House tending to grant a larger sum, or to extend the period.

An appeal was made to the House from this decision, but it was supported on a division of 40 to 27. The resolutions were then passed, and on the 29th a bill was introduced in accordance with their principles, passed on the 3d instant, sent up to the Legislative Council on the 5th, and after a first and second reading lost on the 9th in a committee of that body, by the committee rising without reporting.

I expressed to your Lordship my conviction, before the result was known, that the partial publication in Upper Canada of the instructions to the Canada Commissioners was likely to prove a serious obstacle to the successful arrangement of the financial difficulties of the Province; this conviction, I regret to say, has been more than realized; and I can only repeat my belief, that but for that publication the arrears and full supplies would have been granted. As it is, the House of Assembly have assumed a new position, and, not complaining of the existing local administration, have made the granting of the arrears dependent on a full compliance with all the demands contained in their address to his Majesty.

In passing a Bill of Supply for six months only, it would seem that they wished to affix a limit of less than three months to the period within which His Majesty, to entitle the Provincial Executive to a further supply, must favourably decide on demands involving fundamental changes in the constitution, and the consideration of questions of a most grave and complicated description.

On examination of the lost Bill I perceive that the Assembly did not, as in 1833, attach any conditions to objectionable items, but adopted another plan for effecting their wishes for the abolition of pluralities. Where any officer held two situations, the salary of one only was voted, and the other entirely omitted, thus avoiding one of the objections made to the Bill of 1833. In other respects, however, they appear to have adopted that bill as their guide in framing the one for the present year, omitting and reducing the same items in both. Among the principal omissions not founded on the objection to pluralities are the postage account of the Civil Secretary's office, the salaries of all the Executive Councillors, of their assistant Clerk, of Mr. Justice Gale, and of one of the Provincial Aides de Camp. But to bring the whole matter under your Lordship's view, I enclose a comparative statement of the estimates and votes for 1833 and those for 1836, and a list of the different items omitted, and of those reduced in the last Bill.

It was, I understand, chiefly in consequence of these omissions that the Legislative Council declined to proceed with the Bill.

It may not be irrelevant here to inform your Lordship that the public chest will contain, on the 1st of May next, about £130,000 sterling. This sum includes upwards of £45,000 sterling arising from the Crown revenues, which, as the Assembly have not accepted the offer, conditionally made to them in my opening speech, by providing for the payment of the arrears and maintenance of the public servants pending the enquiry under the Royal Commission, may now be considered as at the unfettered disposal of the Crown. On the other hand, the liabilities of the Government at that date on account of the arrears and current expenses, exclusive of the contingencies of the two Houses of Parliament, and of the sums payable under the authority of Local Acts passed and about to be passed, will amount to about £142,000 sterling, including the £31,000 advanced from the military chest in 1834, thus showing a deficit of about £12,000. But it must be observed that the chief part of the revenue is collected from the custom duties, which flow in only during the summer months, whilst the expenditure continues equal throughout the year, so that, although the amount at present in the chest would have been insufficient to liquidate the demands against it, had the Legislature sanctioned such a measure, yet it by no means follows that at the end of the financial year in October next, the public Treasury will be unequal to the liabilities to which it may be then subject.

I have, &c.

(Signed) GOSFORD.

Extract of a Despatch from Lord Glenelg to the Earl of Gosford, dated Downing Street, 8th June, 1836.

MY LORD,

I have to acknowledge the receipt of your Lordship's Despatches of the 10th and 12th March.

It can scarcely be necessary for me to assure you that none but motives of the most urgent nature would have induced me to postpone, till the present time, the answer to those communications. I abstain from entering into an explanation of the causes of that delay, except to observe that the consideration of the posture of affairs in Upper Canada has not failed to enter largely into the deliberations of His Majesty's Government on this occasion.

* * * *
* * * *

In my despatches of July last, the general principles by which you are to be guided have been fully laid down, and the communications which I have since received from your Lordship, prove that you have clearly understood those principles, and are prepared to act firmly and consistently upon them. The confidence which his Majesty's Government have placed in your zeal and sound judgment has been confirmed by every report which they have received of your proceedings. They feel therefore that in referring to your discretion the measures now to be taken, they not only secure the great object of consistency in the proceedings of the respective Governments of the Canadian provinces, but are best consulting for his Majesty's service, and for the welfare of his subjects at large.

You will not, I am persuaded, suppose that in adopting this course, the Ministers of the Crown are seeking to shrink from the responsibility which justly attaches to them, or to impose on you an undue share of it. You will, with your wonted candour, feel that we are actuated by no other motives than the apprehension of impending measures which it is scarcely possible that we should safely direct, and you will undertake the duty thus committed to you with that fearless and single-minded determination to promote the welfare of the important province under your government, by which your administration of its affairs has hitherto been characterized.

In order that you may be able to act with the requisite freedom, it is however necessary that I should shortly explain the motives which have induced the Government to decline a compliance with the recommendation made in the Report of the 13th March, of your Lordship and your colleagues in the Canada Commission.

That Report proceeds upon a supposition, that a crisis had arrived requiring an extreme remedy; and if His Majesty's Government were satisfied that this is really the case, they would be ready to consider what would be the proper measures to be adopted in such an emergency. At present, however, they do not feel themselves called upon to give any opinion on that subject, because it does not appear to them that the extremity assumed in the Report actually exists. It is true that the House of Assembly have refused the supplies for more than six months, and have presented complaints to the Throne, calling at the same time for an early reply. But on a review of all that has passed, the conclusion seems to be warranted that the House have so acted under a misconception of the instructions issued to your Lordship and your colleagues, as Commissioners of inquiry.

I have already signified to your Lordship His Majesty's approbation of the speech with which you opened the last Session of the Assembly. The peculiar circumstances under which you assumed the Government of Lower Canada required a full exposition of the views and policy of His Majesty's Government, with reference to that country, and such an exposition was given by that speech. At the same time, in communicating to the Assembly of the Province, the substance and not the copies of your instructions, you adopted a course which was in conformity with that usually followed by the representatives of his Majesty on opening the session of Provincial Legislatures. Feeling himself called on to adopt a different course, Sir F. Head unconsciously conveyed to the public in both provinces an impression of the nature of the instructions under which your Lordship and your colleagues were acting, not merely imperfect, but materially inaccurate. The portions of those instructions quoted in my despatch to Sir F. Head, were detached from the context by which they were explained and illustrated, the object with which I wrote to Sir F. Head not demanding such illustration and explanation. When the comparatively brief epitome of them contained in your speech at the commencement of the session, came to be collated with those detached passages from the original, I do not think it a just matter of surprise that the comparison should have occasioned considerable perplexity. Unworthy and incredible as were the suspicions thus originating, it is yet a subject rather of regret than of astonishment, that in the excited state of the public mind, and in the strife of contending parties, means should have been found to propagate distrust, and to have induced a belief that the real intentions of his Majesty's Government were less just and liberal than the Assembly, judging from your Lordship's speech, had inferred them to be.

In my despatch of the 7th instant, I have pointed out what I conceive to have been the misapprehension under which the House of Assembly laboured, as to the terms and meaning of the instructions respecting the constitution of the Legislative Council. If the view taken in that despatch be correct, it is clearly just that the House should not be held to be committed to a course adopted under a misconception, but should have an opportunity of reconsidering the subject with the full information as to the views and intentions of his Majesty's Government, which they will have derived from the perusal of the whole of the instructions addressed to your Lordship and your colleagues.

The most obvious course of proceeding is, therefore, that of convening an immediate Session of the Legislature of Lower Canada, to afford them the opportunity for such re-consideration, and, with that view, I have addressed to your Lordship my accompanying despatch, of the 7th instant. In pursuance of the principle already mentioned, His Majesty's Government however, refer exclusively to your Lordship's decision the propriety of holding such a session, and the time at which it should be convened. If you should decide on taking that step, it would be premature, until the result of it should be known, to consider any other expedients, whatever might be their character.

If your Lordship should see fit to hold a session for the purpose I have mentioned, you will act according to your own judgment upon the various questions which will then arise; such, for example, as the granting or withholding any funds which the Assembly may require to meet their contingent expenses, the prorogation of the session, and even the dissolution of the Assembly, if, on mature reflection, that course should seem to you expedient. In the same manner it will be for your Lordship to decide whether sound policy will require the dissolution of the House before another meeting shall take place.

It is in the same manner referred to your own judgment to consider what may be the most judicious mode of applying to the public service in Lower Canada the future receipt from the hereditary and territorial revenue.

So long as you shall adhere to the general principles of the instructions which you have already received, it is his Majesty's pleasure and command that you should act according to your own judgment in whatever manner you may think best adapted to meet the exigencies, not of Lower Canada only but generally of His Majesty's British North American Provinces.

An attempt has indeed been recently made to urge His Majesty to an instant decision upon some of the most important subjects committed to your Lordship and your colleagues for your and their investigation and report; the attempt has been resisted, and for the best reasons.

When in the summer of 1835, His Majesty's Ministers advised the King to institute the inquiries with which your Lordship and your colleagues are charged, and declared the Report of the Commissioners must precede any decision on the main question in debate, they acted under the influence of reasons, in the force and justice of which they then placed and still continue to place, confidence. Unexpected occurrences, indeed, have subsequently affected the grounds of their anticipations as to the probable results of that mission. But although obliged to shape their course in some degree according to the pressure of circumstances, yet His Majesty's Ministers will not be diverted by the events to which I refer, from a prosecution of the general plan of conduct which they had prescribed to themselves. Adhering to the opinion that on the main questions in debate, they require for their assistance the information and suggestions to be supplied by the Reports of the Commissioners, they intend still to await the arrival of those reports, and will not consent to be hurried into premature and precipitate conclusions.

I must here observe, that the Report of the Commissioners of the 13th March cannot be taken as conveying a final and deliberate judgment formed in reference to general and permanent considerations, rather than to passing circumstances and agitations. It has, on the contrary, a direct relation to the immediate condition of the province at that moment. The Commissioners expressly state, that under other circumstances they would probably have thought it proper to defer their Report on one important subject until they had made more detailed inquiries; but that if their opinion be now required, at once and without further consideration, they must give it as there recorded.

On the topic which is immediately referred to in the foregoing remarks, and on the other main subjects of your inquiries, His Majesty's Government will expect the Report of the Commissioners, after the fullest research and deliberation, by the close of the present summer. Twelve months will then have elapsed from your arrival in Canada, a period sufficiently long for coming to a matuie judgment on all the principal questions in debate; to delay your final reports to a later period might occasion, and perhaps justify, complaint.

In my despatch of the 17th July, 1835, I have stated that your Lordship would be at liberty to apprise the public officers of the province that the Ministers of the Crown unreservedly acknowledge it to be their duty to employ all constitutional means for the protection of the public servants against the loss of emoluments earned in his Majesty's service. This communication, therefore, has probably been made to them; you will now state to them that although circumstances prevent the immediate liquidation of their demands in full, yet His Ma-

esty's Ministers do not the less admit the obligation of the judge already given for their ultimate satisfaction.

If your Lordship should, on the receipt of this despatch see it in the exercise of your discretion, to hold a session of the Assembly, and to communicate to them the accompanying answer from His Majesty to the last Address of the House, I would yet indulge the hope that on the receipt of that communication the House of Assembly may see reason to lay aside that mistrust and jealousy of His Majesty's Government which they have hitherto entertained, and to make provision for defraying the arrears, and for providing for the public service of the province but even if this hope should be disappointed, I shall not regret that the opportunity of reconsidering their decision has been offered to the Assembly. Whatever course may then become necessary will at least have this vindication, it was not taken until every other resource had been exhausted; the representatives of the people deliberately adhereing to the extreme exercise of their powers, without any complaint, either just or plausible, against the Executive Government.

If we may judge from what has passed in Parliament, it would seem that the appropriation under my instructions of the territorial and hereditary revenue will be complained of as an infringement of the rights of the Assembly, and an unlawful use of money of which they alone had the right to dispose.

The title, however, of the Crown to the funds in question, rests on the clearest grounds of usage; of the practice of all other colonies, of legal authority, and of constitutional principle. The use made by the Crown of that right on this occasion is vindicated on considerations, not merely of policy, but of justice and public duty.

As the House of Assembly, in their address to his Majesty, have expressed their hope that the Provincial Parliament will be called together for its next session at an early period, it seems scarcely necessary to suppose the case that the House may refuse to meet at all in sufficient numbers for the transaction of business; nor should I have adverted to a contingency so improbable had it been rumoured in this country that this is the course actually contemplated by the members of the Assembly. If such an event should occur, or if the House should meet and refuse supplies, it will be for you to consider whether an immediate dissolution would be advisable. And if, in reference to the state of public feeling in the province, and the probable result of such a measure, such should be your opinion, you will proceed to act accordingly. This matter is, however, in pursuance of the principle already so often noticed, left entirely to your discretion.

It appears to me indispensable to the right conduct of these affairs, that your Lordship and Sir F. Head should maintain the most constant and unreserved intercourse with each other, on every qusition in which the two provinces are jointly interested; and that you should, to the utmost possible extent, act in concert and harmony with each other. I shall immediately address corresponding instructions to that officer.

I cannot conclude this despatch without expressing to your Lordship how deeply, in common with my colleagues, I feel for the situation in which you are placed. You are called to exercise duties highly honorable indeed, but painful and ungracious. That you will be sustained in the discharge of them by your zeal for His Majesty's service, and by the conscious sense of the upright and benevolent motives by which you are animated, His Majesty's Government entertain the fullest confidence: but they do not less regret that the strength and soundness of your public principles should be subjected to so severe a test.

I have, &c.
(Signed,) GLENELG.

Copy of a Despatch from the Earl of Gosford to Lord Glenelg.

CASTLE OF ST. LEWIS, QUEBEC,
1st October, 1836.

My Lord,

In pursuance of the intention expressed in the speech with which I opened the present session, I transmitted, on Monday the 26th ultimo, a copy of His Majesty's answer to the Address voted to him by the House of Assembly on the state of the Province towards the close of the last session. This was referred to a Committee of the whole House, who have reported an Address, adopted by the House on the 30th, and which is to be presented to me on the 3d instant. By this Address, a printed copy of which is enclosed, your Lordship will perceive that the House adhere to the sentiments and conclusions contained in their Address to His Majesty, and declare that they will grant no supplies until their demands are first conceded. They add that it is incumbent on them, in the present conjuncture, to adjourn their deliberations until His Majesty's Government shall by its acts, especially by the introduction of the elective principle into the Legislative Council, have complied with what they consider the wishes and wants of the people.

Many of the members will leave Quebec this day, and a sufficient number will not remain, it is supposed, to make a quorum for the despatch of business after the 3d instant. In these circumstances it is useless to continue the session; I shall therefore prorogue the Parliament on that day, after receiving the Address. Time will not permit me now to dwell on the peculiar situation in which the affairs of this province are thus placed. His Majesty's Government must at once see the pressing necessity of taking into their serious and immediate consideration what course must now be pursued to meet the exigencies of the present crisis.

I have, &c.,
(Signed,) GOSFORD.

Copy of a Despatch from Lord Glenelg to the Earl of Gosford.

Downing-street, 20th Nov. 1836.

My Lord,

I have received and laid before the King your Lordship's despatches of the 28th of September and of the 1st, 3d and 4th October, announcing the meeting of the Legislature of Lower Canada, transmitting copies of the communications which took place on that occasion between your Lordship and the Legislative Council and Assembly, and reporting the prorogation by which the session was closed.

I am commanded by the King to signify to your Lordship his Majesty's approbation of your proceedings on this occasion. You rightly judged that to prolong the session after the Address which you had received, and the departure of so large a body of the members from the seat of government, would on every account have been inexpedient and indecorous.

It must be superfluous to assure your Lordship that these communications have engaged the most serious attention of His Majesty's Government. I shall very shortly have to address you fully in explanation of the course of proceeding which it will be necessary to adopt in order to arrest the progress of these controversies.

In the meantime your Lordship will discharge the ardiuous duty of watching over the public tranquility in Lower Canada with your accustomed zeal for His Majesty's service, and in the spirit of the general instructions which I have already had the honour to address to you.

I cannot close this despatch without observing that recent occurrences do but confirm the opinion, which I have already announced to you, that the commission, of which your Lordship is the head, should be brought to its close with the utmost possible promptitude.

I have, &c.
(Signed) GLENELG.

Canada Commissioners' Reports.

FIRST REPORT
OF THE CANADA COMMISSIONERS.

Copy of a Despatch from the *Lower Canada* Commissioners to Lord *Glenelg*.

My Lord, Quebec, 30th Jan. 1836.

On the same day on which we transmit to your Lordship a Report to which one of our body has been able to give only a qualified assent, we think it due both to your Lordship and ourselves, in this unanimous communication, to assure you that we are satisfied that every deliberation and inquiry has been conducted with fairness; and that whatever want of unity may exist in our views, is attributable to an honest difference of judgment, and not to any cause that should disturb the harmony with which our duties in this province ought to be discharged.

We enclose extracts of such parts of the minutes of our proceedings as relate to the differences of opinion which have arisen in respect to this Report.

We have, &c.
(Signed) *Gosford*,
Chas. Edw. Grey,
Geo. Gipps.

The Lord Glenelg,
&c. &c. &c.

Quebec, 23 Jan. 1836.

MAY IT PLEASE YOUR LORDSHIP.

1. We the undersigned Commissioners for the Investigation of Grievances affecting His Majesty's subjects of Lower Canada, in what relates to the administration of the government thereof, have the honor of making to your lordship our first Report.

2. We understand that your Lordship has already been informed by the Governor in Chief of the reason which retarded the meeting of the Provincial Legislature until the 27th of October. Your Lordship is also aware that in the address delivered on that occasion, his Excellency remarked that he had come into the province not merely as its Governor, but also as the head of a Commission, of which he described the general scope and objects. This statement appears to have given rise to some debate in both houses of the legislature, relative to the Commission. It was agreed that the Governor was the only authority with whom the Council or Assembly could communicate, and that to take notice of any other might compromise their rights and dignities; and the consequence of this reasoning was, that in the answer to the speech from the Throne, the Commission was not referred to at all by the Assembly, and by the Legislative Council was only alluded to in a very general and indistinct manner. The opinion thus acted upon appears no more than consistent with the views of His Majesty's Government. We never understood it to be wished that the Commissioners should be competent to hold any direct intercourse with the Legislature; and even should they, for some reason which we cannot anticipate, desire to make any communication to either house, such communication could be made by the Governor, while the real and main object of their employment would remain as it is now, merely to prosecute certain inquiries, and to report results to His Majesty's Government. For this purpose the course adopted by the Council and Assembly does not offer to us any obstacle. Several members of each legislative body have evinced their readiness to afford the Commissioners any information in their power; and we believe that it was only in their public capacity, from a tenderness for the privileges of the bodies to which they belong, that they exercised a caution which does not at all interfere with the satisfactory discharge of our duties.

3. We have thought it right to say thus much in explanation of a circumstance of which, at a distance, the importance might be exaggerated, or the true intention and effect misunderstood. We would now request your Lordship's attention to the following extracts of the speech delivered by the Governor at the opening of the session. First, in the portion of the speech addressed to the Assembly, it was said,

"I have received the commands of our most gracious Sovereign to acquaint you that His Majesty is disposed to place under the control of the representatives of the people, all public monies payable to His Majesty or to his officers in the Province, whether arising from taxes or from any other Canadian source but that this cession cannot be made except on conditions which must be maturely weighed, that to arrange such conditions for your consideration is one of the principal objects of the Commission with which it has pleased His Majesty to charge myself and my colleagues. Our inquiries into this subject shall be pursued with unceasing diligence, and the result shall be submitted with all practicable speed to His Majesty's Government; and I hope in a session to be holden in the ensuing year, I shall be able to lay before you proposals for a satisfactory and conclusive arrangement." Next, in addressing the Council and Assembly jointly, it was observed, "Of the Commission of which I have spoken to you, it will be the first and most urgent duty to prepare with deliberation and the utmost care, yet without delay, the heads of a Bill for giving up to the appropriation of the House of Assembly the net proceeds of the hereditary revenue, and to prepare it in such a form that it may be acceptable to the various authorities whose sanction it may require, or under whose cognizance it may come. In what form precisely this important concession may be finally made, it would now be out of place to discuss, but it will be necessary that two points should be secured: First, that the management of the source of that revenue of which the proceeds are to be appropriated by the House of Assembly, should be reserved to officers of the Crown, whose accounts will be open to the inspection of the Legislature of the Province; Secondly, that a provision should be made for the support of the Executive Government, and for the salaries of the Judges, by an adequate civil list."

4. The Governor further requested the House of Assembly to discharge the arrears which are due for the salaries of public officers and for the other ordinary expenditure of the government, and to provide for the maintenance of the public servants pending the inquiries of the Commission, adding, that should they place the government in this position, the surplus Crown Revenues which might afterwards accrue beyond the payments to which they were permanently liable, should not be applied to any purpose during the inquiry, except with the assent of the Assembly. His Excellency also stated that he was commanded to ask of the Assembly repayment of the advance of £31,000, issued from the military chest in the year 1834.

5. Upon this request for the means of liquidating all the arrears due by the provincial government, although it has been before the Assembly for more than three months, no definitive step has yet been taken, but we feel that we cannot with propriety defer any longer our First Report. We do not indeed conceive that His Majesty's Government would relinquish before the decision of the legislature be known, the only fund within the province from which the Crown can discharge any part of the large arrears which in the last two years have accumulated, and are now due for the service of the government, or can repay advances which in some instances have been made by public servants from their own means. or refund to the military chest the loan which was made from it by authority of His Majesty's Government; but as soon as all questions connected with those arrears shall be settled, it will probably be desired to lose no time in determining on the contemplated cession of the right of appropriating the casual, territorial and hereditary revenue. We therefore proceed to state, without further delay, the conditions we would annex to the measure.

6. First, we attach great weight to the principle which your Lordship has been pleased to lay down, that the management of the Crown lands is a part of the executive authority that could not with any propriety or advantage be assigned to a legislative body. His Majesty's Government, we doubt not, would be willing to adopt any general and salutary rules calculated to ensure a proper discharge of this important function, and it will be our duty, in a future report, to point out any improvements that may seem to us practicable in the mode of managing the hereditary revenue, and disposing of the wild lands and forests. But we think that it should be a clause of the Bill giving up the revenue, and should also be distinctly pointed out in the measure proposing it to the Legislature, that the entire management of the Crown property is to remain with the Executive, and that all the expenses of that management are to be deducted before the proceeds are given over to be appropriated by the Assembly, though a promise might be added that accounts should be laid before the Legislature yearly.

7. If an example were requisite of the necessity for the provision we have just mentioned, it would be found in the case of the Jesuits' estates. When the right of applying the proceeds to purposes of education was ceded to the Assembly in 1831, there was no declaration of the extent to which the administration of the property was reserved to the Crown, or the power retained of deducting the payments with which the estates had been previously charged; and we find that a temporary Act to regulate the management of them, as well as the salaries of the officers charged with that duty, was passed by the Legislature, and received the Royal Assent in 1832, and that another Bill, having the same effect, is now in progress in the Assembly. We allude to these measures, not with the intention of condemning them, for we have not thought ourselves called upon to examine their merits, but merely to show that in reserving the right of the Executive to manage the Crown lands, the condition cannot be too plainly stated.

8. The next topic we would notice, is the Civil List, to be applied for in giving up the appropriation of the Crown revenues. In considering this question we have not failed to bear in mind your Lordship's observation, that the amount of a proposal ought not to be measured by the value of the revenues surrendered, nor the transaction to be in any way viewed as a matter of bargain, but that we should rather endeavour to point out those objects for which, on the highest grounds of general utility, His Majesty is bound to secure a permanent provision, before divesting the Crown of funds which His Majesty may be considered to hold in trust for the public good. If we were to proceed on the principle of demanding an equivalent for what is given up, it has been maintained by some of

the parties who have given evidence before us, that we ought to claim credit for all which was at the disposal of the Government before 1831, and which, but for the passing of the Act 1 & 2 Will. IV. cap. 23. would now constitute an annual sum little short of £60,000. But we wish to establish a civil list on the single ground of public advantage, and in this point of view the amount of the revenues conceded is indifferent, for whether they be large or whether small, the sum which ought to be secured to the Government remains the same, and the surplus ought to be left to the Assembly in the one case, as much as the deficiency ought to be supplied by them in the other.

9. Having set aside, therefore, the notion of equivalence for what is given up, we have found that independently of some intermediate arrangements partaking of the nature of both, there are two ruling principles on which a civil list might be proposed. According to one, the object would be to place all the principal departments of Government in such a position that their business could be carried on without any material inconvenience, notwithstanding a stoppage of the supplies; according to the other, the object would be confined to guaranteeing some of the chief functionaries of Government against being affected in their pecuniary interests at the pleasure of the popular branch of the Legislature. The independence to be secured in the one case might be characterized as political, in the other as personal, or such as would insure individuals against being biassed by sordid motives in the discharge of difficult and occasionally unpopular duties. Amongst the plans not going the full length of either of those views, it has been suggested, by one of our own number, that permanent appropriations ought to be made for all those functions of Government of which the necessity is on all hands admitted to be permanent and invariable, whilst it might be left to the Assembly to make annual appropriations, either in the whole or in part, for all charges less obviously necessary, or of more fluctuating character; and it is said that thus the Government would not be free from considerable inconvenience on any occasional refusal to make further appropriations, while yet the country would be saved the extreme evils attendant upon the measure in its present unlimited operation. We have not, however, agreed to proceed upon this basis; and of the two principles previously laid down, we have adopted the second, because we think it more conformable to the spirit of the free institutions which, in imitation of her own, Great Britain has bestowed upon Canada, more consistent with the former proposals made on the same subject, and therefore more aagreable to the sense which public men in this Province have learned for some years past to attach to the words "civil list." If under that term we were to include a provision, not only for the salaries of a great number of public officers, but also for the contingent expenses of the departments of Government, we feel that our report would be a surprise to those before whom its propositions must be in the first instance be brought in the Province, and that the scheme would be denounced as a departure, not only from the recommendations of the Committee of 1828, and from the proposal of Lord Ripon in 1831, but also from the spirit and meaning of the declarations made by the Governor in Chief at the late meeting of the Legislature. We do not wish your Lordship to understand that a very large permanent appropriation would not be acceptable to several parties in the Province; on the contrary, it will be seen that many witnesses who appeared before us strongly urged such an appropriation. But even by its advocates the measure appears to us to be chiefly upheld as one of expediency, peculiarly recommended by the harrassing distractions of party in the Province, and not as an arrangement suited to any ordinary condition of affairs. If on such grounds as these, an extreme necessity should ever induce an application fos the means of carrying on the administration, for a while, without the aid of an annual vote, we think that the demand ought to be advanced distinctly, and on its own merits, and not be veiled under a name which in all late proceedings in this Colony, has borne a far more limited signification.

10. With this explanation of the reasons by which we have been guided, we beg to submit to your Lordship's approval the civil list, of which a schedule is annexed.—(Appendix No. 8.)

11. In accordance with all former projects of the same kind, we have not stated the Governor's salary at more than the existing rate of £4.500 per annum; but we leave it to your Lordship to consider whether, if he have none but his civil emoluments, a larger amount should not be appropriated the occupant of that exalted situation.

12. As the existing salary of a member of the Executive Council is £100 per annum, and as the full number of the board appears in practice to have been considered nine, we have inserted a sum not to exceed £900, to provide for this department of government, but we shall have occasion to make an early report to your Lordship on the subject of the Executive Council generally, and we may then find it necessary to submit new arrangements, which would materially affect the suitableness of the provisions now proposed.

13. The Civil Secretary appears to us an officer eminently fit to be included among those whose salaries should be permanently provided for. The propriety of his being able to state his opinions fearlessly on all petitions addressed to the executive government, the close and unreserved connexion he must have with the Governor in the daily conduct of business, and, we must add, the consequent necessity that he should be brought into the Province with the Governor, so as to ensure his being a person in the entire confidence of the head of the administration, all conspire to point out this public servant as one whose remuneration should not be precarious, but who should feel that he enters, without hazard to his pecuniary interests, on his arduous and responsible duties. We also propose that for his department alone, £500 should be secured for some of the smaller, but more urgent contingencies, of which the payment could not be postponed, and therefore would probably require to be disbursed by himself, out of his own means, were they not otherwise provided for.

14. Another officer, whose salary has been comprised in some former schemes for a civil list, is the Provincial Sebretary. He has charge of an important office of record, but as there is nothing in his functions of a discretionary nature, we do not see any reason to recommend that the payment of his services should be more securely provided for than that of any other officer in the province.

15. We cannot hesitate to advise that a great part of the remuneration of the Attorney and Solicitor General should be placed beyond the reach of an annual vote. Besides the generally anxious nature of their duties, they are in this province, to a far greater extent than in England, public prosecutors, having the conduct without exception of every criminal case brought into the superior courts; and they are moreover charged with the peculiarly delicate duty of delivering opinions on bills, which, after they have passed two branches of the legislature, are presented to the Governor for his approval. If, in addition to the difficulties with which they are at any rate beset, it were determined to expose them to pecuniary uncertainties of considerable amount, or to leave them open to the effects of political animosity, the decision would be contrary, as we conceive, to the plainest maxims of sound policy and good government. We therefore recommend that in addition to the law officers' salaries, which together amount to only £500, a sum of £1.800 should be secured towards their further remuneration so long as the present system of paying them by fees shall be continued. We are willing to leave any surplus of their claims above the foregoing amount to be provided for by an annual vote because in fluctuating expenses of this nature, even where the officer is one whom it is most important to exempt from dependence of a popular body for the main bulk of his income, we still think it unexceptionable, and we may even say salutary, that some part of his charges should be voted by the Assembly, and thus ensure a yearly revision of the whole, sufficient to restrain any increase of them to an excessive amount.

16. Besides the provision for the expenses of the officers of the Crown, many witnesses have insisted on the necessity of demanding that a sum should be permanently secured for the support of gaols, the expenses of sheriffs and coroners, and generally for all the expenses incurred in the conservation of the peace. It has been urged as a further reason for the measure, that there are no county or local rates, as in England, for the payment of any of these charges, and that at the present moment there is not, nor has been for the last three years, any secure provision even for the maintenance of the prisonners in the common gaols; large sums being now due both at Montreal and Quebec, either to the sheriff or to the tradesmen who have supplied the gaols with what has been required for the inmates of them. After the fullest consideration, we are not prepared to recommend any

permanent appropriation under this head. In addition to the general reasons which we have already given for not burthening our civil list with charges which have never in the Province been contemplated as coming under that name as the same has been understood since the Committee of the House of Commons in 1828, we would observe that the conservation of the peace is a matter which so peculiarly and directly concerns the inhabitants of the country, that the duty of providing for it may safely be left to the representatives of the people, and ought not in our opinion to be taken out of their hands. Should they consider that the end will be best attained by a permanent grant, it will be competent to them in this, as in other cases, to make one; but as the Goverment can have no greater interest in it than the people, we do not see why it should expose itself to the undeserved suspicion, such as might possibly arise, of its proposing the grant with any exclusive view of its own; indeed we doubt whether, even for the ease and tranquility of the Executive, it is so expedient as is assumed, to reduce to the utmost possible degree the evils to be incurred by a stoppage of the supplies; for there would then be a risk that the measure would be resorted to on less urgent occasions; and the inconvience of it might become restricted to the officers of government instead of affecting the country at large. The general confusion to be apprehended in England from a stoppage of the supplies is perhaps the chief reason why it is so seldom thought of; but in Canada it would be long before any but the officers of government would experience the effects of a refusal of the usual legislative grants, were it not for the very expenses now under consideration, by which the unpopularity of the measure, if hastily adopted, would soon extend to every dwelling in the country.

17. With respect to the duration of the civil list, we are of opinion that it should not be permanent, but be limited either for the King's life, or for a fixed term of years, not less than seven. The first period is recommended by the usage of the United Kingdom, and would preclude a question, which might otherwise arise, whether a longer term, affecting not merely His Majesty, but His Majesty's heirs and successors, could be established by any less authority than an Act of Parliament; the second period has the advantage of being more definite, and thus of allowing at its termination a more leisurely and deliberate revisal of existing arrangements than at the close of an uncertain length of time. On the whole we are disposed to prefer the nomination of a term of years properly limited, but should the duration of the King's life be more agreeable to the Provincial Legislature, we see no conclusive reason why it should not be assented to. We would not recommend that any fixed term should exceed ten years, or be less than seven, far less that the cession of the revenues should be perpetual or irrevocable.

18. In the preceding suggestion for a civil list we have not included the judges' salaries, because we think that they may most conveniently be provided for in a separate measure; of which, however, it would be necessary that the enactment should precede the completion of the other arrangements connected with the cession of Crown revenues. We believe that hitherto there has been an extensive concurrence of opinion in favour of rendering the judges independent alike of the Crown for the tenure of their office, and of an annual vote for the receipts of their emoluments. We also apprehend that the propriety of allowing to them some suitable retired allowance when incapable by age or infirmities, has been generally perceived and admitted. The real difficulty in making these high and important functionaries independent, is to name the authority by which they shall be removable in case of misconduct. For although there appears to be in the Province a wish for a tribunal to decide not only on accusations against the judges, but against all public officers except the Governor, the differences between the two Houses of the Legislature present, we are sorry to say, great obstacles to the execution of the plan.

19. The example of Great Britain would recommend the Council to be made the tribunal, and a Bill for the purpose passed both houses of the Provincial Legislature in the session of 1831-32; but the dissension between them have since become so much more rooted, that there is little prospect of seeing the measure again agreed to; and, as there is no probability that the Assembly will grant permanent salaries to the judges until a court be appointed before which they may be tried, it follows that a failure in establishing each a tribunal may involve the failure of our whole plans of adjustment. Adverting to these circumstannes, and feeling that on all subjects it ought to be our endeavour to suggest measures which, besides being salutary in themselves, should be likely to meet concurrence of the several authorities by whom they must be enacted, we thought it our duty to bestow a patient and impartial consideration on such plans as have come under our notice, for enabling impeachments to be determined otherwise than in the Legislative Council. We would not indeed in any case have been prepared to advise that the Council should not have the like jurisdiction; but, if some other unobjectionable court could have been suggested, it might have been admitted as an alternative to which the Assembly could have the option of resorting.

20. The first project which we would bring before your Lordship, is one that was intended to be founded upon certain resolutions on the independence of the judges, introduced into the Assembly at the begining of this session, but subsequently withdrawn. The mover * of these resolutions explained to us his views in person. His design was, that the judicial Committee of His Majesty's Privy Council should be the tribunal for the decision of impeachments brought against the judges by the Assembly of this Province but that such security should be taken for impartiality and justice in the previous inquest before that House, as to dispense, in his opinion, with the necessity of taking any more evidence, and to enable judgment to be given upon a view of the proceedings held upon the original inquiry. By the bill, which was framed in order to accomplish these purposes, it was provided, that upon the receipt of any report of a Committee of the House, or any petition containing charges against a judge, there should be a call of the whole House to consider whether the alleged matter, if true, were sufficient to support an accusation; and that, if the decision were in the affirmative, 24 members should be chosen by ballot, afterwards to be reduced by challenges and other modes of precedure to 12, the members so chosen to be sworn; that the House should name a chairman to preside over the other 12, and also an agent to conduct the accusation; that full notice should be given to all parties concerned; both for the accusation and the defence, with permission to be present during the whole of the investigation, and that they should respectively be required to send in lists of their witnesses, to which no addition should afterwards be allowed except with the consent of the House; and that, if after these precautions the result should be to find that there was sufficient matter of accusation, the whole House should be summoned to consider the report previously to its being acted upon; and that supposing it adopted by the House, copies of the whole proceedings, including reports, evidence and every document, should be furnished to the Governor for transmission to His Majesty's Privy Council, together with articles of impeachment preferred by the Assembly according to the usual form. At this stage of the business, it would have been lawful for the Governor, upon an address from the Assembly, to suspend the accused judge from his functions, and the judge would thereupon be deprived of all his emoluments, unless he signified his intention of demanding from the Privy Council its final judgment on the charges against him; in which case he would continue to receive his official income during one year from the date of the address for his removal, and during such future time as, upon any address from the Assembly for the purpose, the Governor might think proper to sanction. Such are the outlines of the bill which it was proposed to bring forward this session, with a view of establishing the means of deciding on accusations against the judges. We understand it was given up principally on account of the opposition which its author found reason to expect to the restriction it would have imposed on the exercise of what the Assembly consider its present undobted right—to prefer accusations. The Assembly is now at liberty to address the Crown for the removal of a judge without going through forms so nearly approaching those of a trial, and it seems doubtful whether it would part with any of this power, even by a law which in other respects might appear calculated to give aditional force to the accusation of the House. Your Lorpship will not fail to observe, that although His Majesty in Council, would nominally be the tribunal for impeachment, the accused party would merely

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have the option of resorting hither in case he should not acquiesce in the results of the investigation conducted in the Assembly. The judges would in fact be removable on an address of the Assembly, with only an appeal to the Privy Council. Thus a practical decision would be taken in the same body which originated or adopted the charge, and the plan would comprise in itself the evils incident to mixing the characters of judges and accusers.

21. As a less objectionable plan, it has been suggested, that a committee of the Assembly might take informations and examinations analagous to those taken before a magistrate in ordinary criminal proceedings, and that sworn or certified copies of the proceedings of such a committee of the Assembly, up to the stage when the accusation has taken the form of articles of impeachment, should be transmitted through the Governor to His Majesty in Council either to stay the proceedings or to appoint a commission, consisting of not more than five persons, nor less than three, one of whom should be either a judge or a barrister of 20 years' standing, either at the English or Canadian bar, to try within the Province that facts of the accusation; and that upon the conclusion of this investigation, if unafvorable, it should be lawful for His Majesty in Council either to remove the party accused, or to set aside the judgment of the commission, or to refrain from passing any sentence or issuing any process thereon. This course of proceeding would have the advantage of providing a regular tribunal, and of not blending the functions of judge and accuser. On the other hand, however, the plan would be attended with some expense and delay; and we apprehend there might be some jealousy on the part of the legal profession here to the introduction of a barrister from England; and that the Legislative Council might be expected to object to any measure which should remove from them to another tribunal the trial of impeachments.

22. Another expedient might be derived from the precedent of the Imperial Statute 26 Geo. 3, c. 57. According to the provisions of this Act, 26 Peers and 40 Members of the House of Commons are required to be chosen every session for the trial of offences committed in India, in order that from the names thus appointed, there may be selected by ballot (subject to a certain number of challenges, both from the prosecuter and the accused) five Peers and seven Commoners, to try and determine any particular case which may arise during the session. It is much to be feared that in this Province such a mixed court would be affected by the dissensions which prevail between the bodies out of which it would be selected; and that the difference of the sources from which the judges would be taken, would give rise to comparisons by others and jealousies amongst themselves, by no means conducive to the character or efficiency of any tribunal.

23. Having thus closed our enumeration of the principal plans which have been suggested for the constitution of a court to decide on impeachments, it now remains for us to submit our conclusions on the subject. Although we will not deny that the Legislative Council is in some respects deficient in the qualities resquisite in a court of justice, the reasons in favour of it appears to us so strong, that we must prefer it to any other court which could be devised for the trial of public officers. It is recommended for that purpose by the analogy of Great Britain, and by the sanction which it did once obtain from the whole present; and whatever imperfections might be alleged against it, we are persuaded that, in the main, it would answer the end of substantial justice. We have therefore come to the opinion that the Legislative Council ought to be invested with the power of deciding upon accusations against the judges, and against all public functionaries in the Province, except the Governor. We have already observed that we should not have seen any insuperable objection to the establishment of another court, to be likewise competent to try impeachments; but after the best consideration we can give to the subject, we confess that we cannot venture to state any preference amongst the the various expedients we have above described for this purpose, or to recommend any one of them as eligible. We content ourselves with having laid before your Lordship, all the suggestions which have come within our view, leaving it to His Majesty's Government to decide whether any of them be fit to be adopted.

24. If all attempts to erect a court for the trial of impeachments should fail, it might still perhaps be possible to obtain a permanent appropriation for the judges' salaries, provided the Crown should consent to divest itself of its present power to dismiss a judge by mere act of the prerogative, and should retain only the power of dismissal on an address from one or both Houses of the Legislature.

25. In order to complete all the information we can afford on the present subject, we must acquaint your lordship, that it appears once to have been held that the Legislative Council might be enabled to try an impeachment by commission from the King, without the authority of an Act of the Legislature. On the 2d of March, 1818, Mr. Justice Foucher being under accusation from the Assembly, a message was sent down to the two houses of the Legislature, signifying the pleasure of the Prince Regent, that the adjudication of the case should be left to the Legislative Council. This communication was not acted on, for reasons which we cannot state, as the correspondence on the subject between the Secretary of State and the Governor has not been left on record. On the 8th of February, 1819, another message on the same subject was transmitted by the Duke of Richmond, to the Council, announcing that in stead of a trial by that body, some further investigations, of a less formal kind, were to be made in the Province, and the results to be sent to England for decision. Upon this the accusation seems to have been abandoned by the Assembly, and Judge Foucher, after having been two years under suspension, was restored to the exercise of his functions. During the progress of this case the judges of the court of King's Bench at Quebec, delivered an opinion, of which we enclose a copy (Appendix No. 9), to the effect that a commission from the King would suffice to enable the Council to try any accusation, without any Act of the Legislature constituting them a court for that purpose. We are not aware of any objection to the correctness of this opinion, but we fear that it does not break the chain of difficulties we have pointed out; for if the Assembly refuse to grant permanent salaries to the judges until the establishment of a tribunal agreeable to its own views, its objections will certainly not be less to the Council appointed by commission than to the Council appointed by Act of the Legislature, for the trial of impeachments, and it would easily be able to render such a court inoperative by refusing to bring its accusations before it.

26. Besides the essential point of rendering their remuneration and tenure of office certain, there are some other provisions, which in the Province have been thought necessary to the independence of the judges, and on which we will briefly offer our opinion. We see no objection to an express exclusion, by law, of the judges from the Assembly and Legislative Council, and from the Executive Council. The Canada Committee of 1828 would have permitted the Chief Justice to retain his seat in the Legislative Council, nor are we prepared to condemn that opinion, but seeing that a bill for the exclusion of all the judges was carried in 1834, in the Council by a large majority, and in the Assembly unanimously, and that its confirmation has since been earnestly petitioned for by parties who cannot be suspected of hostility to the second branch of the Legislature, we cannot say that we feel any objection, which this general consent of opinion might be considered to outweight. Should, therefore, the Bill passed for the purpose in 1834 not be previously confirmed, we think its provisions might be introduced into the general measure contemplated by this Report. It is essential, however, that the incapacity of the Judges to be members of the Legislative or the Executive Council, should be confined to those actually on the bench, for we hold it most desirable that retired judges should not be debarred from sitting in the Legislative Council, or among the confidential advisers of the Governor, where they would bring knowledge and attainments not perhaps to be found in any other class of persons in the Province; and at the same time, having fixed and permanent allowances, could not be objeted on the ground of dependence.

27. Having thus stated our views on the subjects of a civil list, the independence of the judges, and a court for the trial of impeachements, we would beg to draw your Lordship's attention to the schedule annexed to this Report (Appendix, No. 7), for a statement of the charges at present borne upon the Crown revenues and of the expenses incidental to the collection of them. Those which are fixed or permanent are contained in the first division of the shedule, and amount to £2,950 17. 8. They may all, we conceive, be comprehended as expenses of management, excepting the pensions to the amount of £650 per annum, of which we shall offer more particular notice presently.

The expenses in the second division of the shedule, amounting on an average of three years to £1,353 2. 2., are of a fluctuating character; they seem to belong to the head of management, with the exception of the last entry of £62 8. 10. for the expenses of sending special messengers to New York. Setting aside this item, we apprehend that the remaining services, now defrayed from the Crown revenues, must continue to be paid from that source for the present, though we may hope they will in some measure be reduced by an improved system of management.

28. With respect to the pensions above alluded to, every consideration of justice concurs with the rule which your Lordship has prescribed for our guidance, in recommending that their maintenance should be absolutely stipulated for. We could not propose that His Majest should relinquish His revenues, without reserving a provision for the claims to which they had previously been made liable, and we cannot but share your Lordship's hope that this condition will meet with no opposition, when it is considered that the amount of the charge to be continued is small, that it will be constantly diminishing, and that although His Majesty demands security for the interests of those individuals to whom the Royal bounty is already engaged, He divests Himself of every means of hereafter rewarding public merit, except by aid of the liberality of the Assembly. For the same reasons which require that the pensions should be secured prospectively, it will be proper that if any them should be in arrear at the time when the Crown revenues are about to be given up, they should be either discharged or guaranteed before the cession takes effect.

29. In addition to the pensions expressly charged upon the revenues now to be given up by the Crown, a claim has been preferred by Mr. Herman Ryland, a very old servant of the public in this Province, for a retired allowance of £67 10. a year as treasurer of the Jesuits' estate, which was granted to him out of that property on the abolition of his office a few years ago, but has not been voten by the Assembly since the proceeds of the Jesuits's estates were placed at their disposal for purpose of education Mr. Ryand has been since the year 1804 in receipt of a pension of £500 per annum, bestowed upon him for his general services, and he has also continued to occupy the situation of clerk of the Executive Council, with emoluments amounting to £630 per annum, but the allowance granted out of the Jesuits' estates has nor been granted by the Assembly since the revenue arising from that property passed under their control. It is not necessary for us to review the grant of the pension, not to consider how far the Assembly, in the absence of any stipulation for it, was called upon in equity to continue the payment of Mr. Ryland's allowance out of the Jesuits' estates; it is enough for us to observe, that as the Crown granted that allowance by a despatch from the the Secretary of State in as binding and valid a manner as the generality of pensions or retired allowances in this Province, we can only attribute it to inadvertence that it was not secured when the monies from which it was payable were given up; and therefore submit to your Lordship that in parting with the only other revenues remaining at His Majesty's diposal, this allowance may be added to the other charges of a like nature, borne upon the same fund. We also recommend, for the same reasons, that a retired allownce to Mr. George Ryland of £45 as secretary of the late board for managing the Jesuit's estates. should be secured. The additions of these two items will increase the charges for pensions and superannuations on the present Crown revenues from £555 to £667 10.

30. The cession of the proceeds of the Jesuits' estatates to the Assembly has given rise to another sort of claim, which likewise has been brought under our consideration. The Assembly, in the Bill of 1833, which was rejected by the Coumcil, inserted only £100 instead of £200 as the salary to each of the masters of the free grammair schools of Quebec and Montreal, and at the same time required them to instruct 20 additional free scholars, thus entailing, as it is alleged, the necessity of keeping an assistant at the expense of the masters, at the same moment when their remuneration is diminished by one half. The Rev. Mr. Burrage, master of the school at Quebec, has addressed us upon this subjet. However we may regret any effect which the proposed reduction may have on the expectations with which the present holders of the situations quitted England, we do not see that there is in this case any such record of an engagement on the part of the Crown as would justify us in recommending the deficient part of the salary to be chraged upon the Crown revennes before they are given up.

31. We may take this opportunity of mentioning that we have received from Mr. Ogden a representation of his claim to large arrears due to him for his services as attorney-general. We have acquainted Mr. Ogden that we think it would be premature to enter into the particulars of his case until the decision of the Assembly shall be known respecting the general application for arrears made to them at the commencement of the present s ssion, comprising, amongst others, this very demand; but we added, that should it again rejected, we should be prepared to consider the subject, and that we do not conceive that any Report of ours in the meanwhile will have the effect of diminishing the funds from which the claim could be satisfied after investigation. This intimation we made because, as we have already stated in paragraph 5, we take it for granted that the Crown revenues will not be given up until either all the arrears due to public officers for past services be paid, or at least all question connected with them be sett'e.l.

32. As it is only intended to concede the net proceeds of the Crown revenues, we think there should be a clause providing that all rights and powers of His Majesty over the Crown property, except only the monies arising therefrom, shall remain entire. By the general words of such a clause would be affected (and we think that the attention of the Assembly should be expressly drawn to it in any message communacating the messure) the necessary reservation of the power of endowing parsonnages; of allowing the usual indulgences in land to military and naval settlers, so long as the practice shall be continued by Government; of completing any existing engagements towards militiamen; and of making whatever corrections or alterations may at any future time be necessary in the boundaraies of the Province. We also recommend the insertion of words reserving all the rents and profits of lands kept for military or uaval purposes, orheld by any military or naval department. Your Lordship will observe by the evidence, and by a Memorial which we have included in the Appendix, that the Trustees of the Royal Institution brought before us a claim that the Crown should not deprive itself of the means of granting them an endowment of land. The general reservation which we have just recommended of His Majesty's rights over the Crown lands would, in strictness, comprise this power; but we apprehed that such a grant would be viewed with great jealousy by the Provincial Legislature; and we cannot help thinking that the Royal institution should be left to be assisted by the Assembly, which we believe has always shown itself liberal in encouraging the promotion of education.

33. It is necessary to consider whether the measure recommended by the Report can be made law by a provincial statute, or will require an enactment of the Imperial Parliament. It seems, in the first place, to be pretty clear that the words of the 31st. Geo. 3, c. 31, s. 42, apply in this case, inasmuch as a concession of the whole proceeds of the sales of waste lands certainly relates to and affects the prerogative of granting the waste lands, and, consequently, that if a Provincial statute is to be passed, it must be laid before both Houses of the Imperial Parliament for 30 days, before the Royal Asssent can be givin to it, and that it will be subjet to the other provisions of the section we have quoted;—there are some words, however, in the Act 1, Will 4, c. 25, which seem to us to make it questionable whether an enactment of the Imperial Parliament is not necessary for establishing the right of any permanent appropriation by the provincial Legislature of the hereditary revenue, we mean the words in the second section of that act.

"The produce of the hereditary casual Revenues, arising from any droits of Admiralty, or droits of the Crown, and from all surplus revenues of Gibraltar, or any ott.er possession of His Majesty, out of the United Kingdom, and from all other casual revenues arising either in the foreign possessions of His Majesty, or in the United Kingdom, which shall accrue during the life of His present Majesty, shall be carried to and made part of the consolidated fund of the United Kingdom of Great Britain and Ireland."

It is enough for us to have stated these questions; the Crown law officers will, of course, be able to give His Majesty's Ministers advice respecting them, which would make it more than superfluous to offer our own.

34. We have now stated the conditions we should think necessary in giving up the right of appropriating His Majesty's casual, territorial, and hereditary revenue; and we have offered such remarks as have occurred to us upon the mode in which the measure should be carried into effect,—but in order to render our Report complete, it appears desirable that we should present the best view in our power of the extent of the cession that is to be made.

By a return from the inspector general of accounts,—(Appendix, No. 1.) the average amount of the casual, territorial, and hereditary revenues, exclusive of receipts from the North American Land Company, is shown to be £10,600 16s. 10d. and this revenue we conceive to be an increasing rather than a decreasing one.

The payments from the Land Company during the next nine years will amount to £54,000. In addition to the revenue abovementioned, we have to remark, that the appropriation of several other funds will, by the measures in contemplation, be vested more absolutely than heretofore in the Provincial Legislature, inasmuch as it was announced, in a passage we have already cited, from the Governor's speech, that His Majesty was disposed to relinquish the control of all public monies payable to His Majesty or his officers in the province, whether arising from taxes or any other Canadian source, under these comprehensive terms, must be included:—

First, The permanent aid of £5000, per annum, given to the Executive Government by the Provincial Act, 3, Geo. 3, c. 9. The application of this sum in detail would, no doubt, belong to the representatives of the people in any year in which they provided for the exigencies of the public service; but failing such provision by them, the Government has always heretofore held itself entitled to make use of the money by virtue of the words of general appropriation contained in the Act under which it is levied.

This right will now be renounced.

Secondly, The proceeds of two Provincial Acts, 41 Geo. 3, c. 13 & 14, permanently appropriated to the administration of justice and support of the civil government. The average amount of this revenue, by a return which we have obtained of all the permanent appropriations in the province, (Appendix No. 2.) appears to have been £5,995 16s. 2d. Of this fund, as well as of the one first mentioned, the Government will no longer be able to make any use, unless under a special grant from the Assembly.

Thirdly, The produce of certain customs' duties, raised under Imperial Acts, passed in the early part of the reign of His Majesty George the Third, and now remitted to England, as likewise the King's share of all custom-house seizures and penalties, also now remitted to England; the average amount of the proceeds appearing by a return from the collector of customs, (Appendix, No. 3,) to be £414 14s. 2d. per annum.

From circumstances which have already occurred, we apprehend that should there, on investigation, appear to be a net profit from the post office, the amount of it will also be claimed by the Province. The post office in all the North American Provinces has hitherto been conducted as an Imperial Administration, regulated by the Acts of 9th of Anne, c. 10, and 5th Geo. 3, c. 25, and we understand that from Upper and Lower Canada, sums to the amount of about £94,000, have been remitted to England during the last 13 years, by the deputy post-master general, from this sum, however, some portion ought to be deducted on account of the expense of the Halifax packet, though there would be difficulty in fixing the amount, especially as it may be alleged that the principal correspondence with England is carried on by way of New York, and that the Halifax packet is used for scarcely any purposes but those of Government.

The subject of the Post Office is one that has of late years been much agitated, both in Upper and Lower Canada, and an enactment, founded on the Imperial Act of 4th Will. 4, c. 7, has recently been proposed to all the Legislatures of British North America, but has not yet been adopted in any of them, and a distinct measure, originated here, is now before the Assembly of this Province. In the uncertainty that pervades every thing relating to this question, we do not think we can do more than express our opinion that should the arrangements we propose be carried into execution, the legislature of Lower Canada will claim any net profit that may be shown to arise from the administration of the post office within the Province.

We have already adverted to the necessity of expressly excepting from the proposed cession, all rents and profits of lands held by the Military or Naval departments, such as rents arising out of lands under charge of the Board of Ordnance, and particularly the rents and profits accruing from the Grenville Canal, as well as any revenues that might be derived from the seigniory of Sorel, which is a property at the confluence of the rivers Rtchelieu and St. Lawrence, purchased for military purposes, in the year 1780, with money drawn from the British treasury.

The whole revenues, therefore, which will be affected by the measures that are proposed, may be stated as follows:

1. Casual, territorial and hereditary revenue, exclusive of Land Company (Appendix, No. 1.) on an average of three years, ending October 1834,	£10,600	16	10
2. Land Company for the next nine years (Appendix, No. 1) a sum at the rate of	6,000	0	0
3. Permanent aid, under 35th Geo. 3, c. 9, (Appendix, No. 2.)	5,000	0	0
4. Proceeds of Local Acts, 41st Geo. 3, c. 13 and 14 (Appendix No 2) on an average of three years, ending October 1834,	5,995	16	2
5. Custom House duties and penalties and seizures, now remitted to England (Appendix No. 3) on an average of four years, ending 5th January 1836,	414	14	2
Total,	£28,011	7	2

Exclusive of the profits, if any, to be derived from the post office.

In order to furnish a further idea of the extent of the sacrifices not only present but prospective, which will be made by the projected cession, we also annex a list (see Appendix, No. 4), as far as the same can be made out, of all the descriptions of property belonging to the Crown in Lower Canada, as well as of the rights of the Crown, which though they are at present unproductive, may in the course of time become sources of Revenue, and to this are added returns (Appendix Nos. 5 and 6) of the quantity of lands at the disposal of His Majesty, both in the settled districts of the Province and in the portions which are not yet surveyed or inhabited.

35. For your Lordship's further assistance in considering this Report, we have appended a statement, derived from one which was made by the Receiver General up to the end of 1834, of the net revenue of the Province during ten years, and of the expenditure for the support of Government, including the expenses of the Legislature.

Your Lordship will observe that there has always been a considerable surplus, which we understand has been applied by the Legislature to general purposes, chiefly the encouragement of education and the promotion of internal improvements.

We have the honor to be, Your Lordship's most obedient humble servants,

(Signed) *Gosford,*
*Chas. Edw. Grey,**
Geo. Gipps.

(Signed) *Chas. Edw. Grey.*

Sir Charles Grey desired to make the following Entry on the Minutes.

A STATEMENT of Sir *Charles Grey*'s Difference of Opinion upon some Points of the First Report of the Commissioners.

1. I join in the main recommendation of the Report, namely, that the net proceeds of the hereditary revenue of the Crown in Canada should be carried, as in England, to the general account of the permanent revenue, and should be appropriated by the representatives of the people, with the concurrence of the other two branches of the Provincial Legislature. I go

* I have affixed my signature to this Report, subject to a statement of my difference of opinion, which has been delivered to the Secretary, to be entered on the minutes, and which, it has been agreed, shall go home with the Report.

even beyond what is expressed in the Report, in recommending that laws should be made for regulating, not only the management, but, with certain conditions, and under the guardianship of the Crown, the disposal also and conversion of some of the sources of that revenue; a subject which will very soon occupy the consideration of all the Commissioners. But these steps may be fatal if they are taken without permanent appropriations being secured to the extent which is necessary to enable the ordinary executive and judicial powers of the Civil Government to be exercised without dependence upon annual votes; and my opinions have been formed entirely upon the supposition that the whole of the arrangements are to be for a limited period only.

2. The concession of the hereditary revenue, including the proceeds of the sales of wild lands, (of which proceeds I should recommend the interest only to be annually expended) is the last step upon which the Crown can pause before entering upon a new state of affairs. I believe it to be possible, even yet, to find in the remaining rights of the Crown in Lower Canada, resources out of which the executive and judicial government might be sustained. If they are given up without obtaining permanent appropriations sufficient for the maintenance of the ordinary Civil Government, the Crown must either yield to every future demand of the Assembly, whether reasonable or not, or must ask the Imperial Parliament for a revenue wherewith to govern the Province. The concession, if made in this manner, so far from being a healing or quieting measure, would cast upon the arena a heap of new subjects for contention; and the Government, in its destitute state, would be less able than ever to controul the strife. In whatever way the concessession may be made, the management and disposal of every item of the hereditary revenue and rights of the Crown is sure to be claimed by the Assembly, either as a direct attribute of the representatives of the people, or as a subject on which it is their privilege to advise the Executive, with an expectation that their advice will always be followed. If such claims are, in any case, to be firmly, though calmly resisted, the Government ought not to be dependent upon the claimant for its very existence. I mean no offence to the House of Assembly; but only that the prevailing party in it entertains a sincere, though, in my opinion, a mistaken conviction, that as representatives of the people they are constitutionally entitled to have, in every thing, their own way.

3. I object then both to the principle and to the amount of the Civil List which is proposed in the paragraphs of the Report, from paragraph 8 to 16; and in the Appendix, No. 8. The amount, including salaries of judges, is £19,175 a year, whereas the ordinary annual expenses of the executive and judicial branches of the Civil Government are not far short of £40,000; and, with the provision made by the Report, the Government would be as incapable of existing without the annual votes of the Assembly as if there were no Civil List at all.

4. The principles on which the proposal is stated to be made, appear to me to be erroneous and at variance with those of the British Constitution. Howsoever the term 'Civil List' may have been misapplied, its proper meaning in our constitution, according to my understanding of it, is not merely the provision which is made for His Majesty's household and privy purse, but all the permanent appropriations for those functions of civil, as distinguished from military government, which, on all hands, are admitted to be necessary, and which are made permanent and stable, because it is generally acknowledged that they cannot be suspended or left in a precarious or uncertain state, or dependent upon annual votes, without mischief to the people.

5. Consistently with this understanding of the constitutional principles of a Civil List, but embarrassed by foregone transactions, I propose in existing circumstances, a condition precedent to any concession of the hereditary revenue, that permanent appropriations should be made by the Legislature to an extent which I will state, for the present only in round numbers. The last and most important item is one which, in England, there is no occasion to provide for by a Parliamentary vote; but in Canada, it has has always been paid out of the general revenue, until the recent stoppage of the issues of that revenue; and there is not the slightest probability at present of its being provided for by district or county rates. I wish further to remark that the following list is formed upon the supposition that the expenses of managing, collecting, receiving and accounting for the revenue, as provided in the Acts establishing duties of customs, and as they are now payable out of the gross proceeds of Crown or waste lands, would be independent of the Civil List.

1.	For salaries to the Governor and some other executive officers,	£8,500	0
2.	Towards the contingent expenses of their offices,	2,000	0
3.	Towards the expenses of Crown prosecutions and lawsuits at the instance of Government,	1,500	0
4.	Salaries of Judges,	10,000	0
5.	Towards the expenses of superior courts and circuits,	2,500	0
6.	Towards the expenses of the common gaols and of the general conservation of the peace throughout the Province,	6,000	0
	Total,	£30,500	0

I believe this to be scarcely sufficient for the existence of the executive and judicial branches of Government. To enable them to act with any freedom and convenience, or to enable the government to obtain any supplies for miscellaneous services, or public charities or improvements, it would still be constantly necessary to keep up a good understanding and kindly feeling with the representatives of the people; and I should wish that necessity alwas to exist. The amount proposed by me is less than what has been recommended by any of the persons from whom the Commissioners have taken evidence upon the subject of a Civil List. It is less than what His Majesty's Ministers suggested to Lord Dalhousie before 1828. It is not more than what was recommended by the Committee of 1828, nor than what was demanded by Lord Ripon; for both Lord Ripon and the Committee intended that in addition to what they required as a Civil List, the Crown should retain those proceeds of hereditary revenue which are exhibited in this Report as the main subject of the proposed concession. It is less even than the advance which it was found necessary to make from the military chest, in aid of the Civil Government, in 1834, and which was all expended upon the arrears due for the service of the Civil Government in one year, 1833. There is no item of expenditure covered by it which was not sanctioned by a deliberate and distinct vote of the Assembly in 1825. It will not escape the observation of His Majesty's Ministers, though it was not distinctly in evidence before the Committees either of 1828 or of 1834, that in the recent disputes as to public monies in Lower Canada, there has been no question about raising any new taxes upon the people, nor indeed about any supplies at all, properly so called; that the permanent revenue arising almost entirely from duties of import, or from the property or droits of the Crown, is more than four times as much as I have proposed for a Civil List, and more than three times the ordinary expenditure of the executive and judicial Government, and that there has not for many years been a session in which the Assembly has not divided amongst miscellaneous objects, and principally of its own selection, twice the amount of public money which it has appropriated to the service of the executive and judicial branches of Government.

6. Upon all that is said as to the independence of the judges in the paragraphs of the Report from 18 to 26, I have only to remark, that I consider it to be one of the very first objects of all wise legislation, that the administration of justice should be unbiassed; and that nothing could be more destructive of that object, than to expose the judges more than they are at present exposed, to loose accusation and irregular attacks, and that I do not think a popular assembly can, in any way, be made a fair tribunal for the trial of facts. My suggestion would be to make the Judges removeable by His Majesty, in three ways, for misconduct. 1. Upon the concurrent addresses of the two Houses of the Legislature. 2. Upon an accusation by the Assembly, and an inquest by a commission from the Crown. 3. By an impeachment by the Assembly before the Legislative Council, and a trial by a select number of that body, to which it should be reduced either by ballot or votes amongst themselves, or by the counsel for the prosecution and defence, striking names alternately from a list of the whole. Our Report does not express any opinionas to the Salaries or pensions of the Judges but all the evidence we

have received, is to the effect that their present salaries are not too large. It is understood, however, that a reduction of them is to be proposed in the Assembly, which, from the best information I can obtain, would be injurious, nnd would not be likely to last, but in its temporary operation might have the effect of driving some of the present Judges from office.

7. The sudden abandonment by the Crown of all right to grant pensions for services, unless with the concurrence of the Assembly, will be felt as a hardship by some of the older public servants, who, in the state of dissension into which the province has fallen, can scarcely flatter themselves that they will be favourably regarded by the Assembly. We are aware of one case in which the period of service has been 43 years.

8. I wished the Report to have been withheld until it could be ascertained, as it is likely to be within a a fortnight, whether the Assembly will vote the payment of the arrears due for the service of the Civil Government. Our recommendations on the subject of the hereditary revenue will now be divided and broken into several reports, and it will be less easy to obtain from them a consistent view either of the subject itself, or of what we advise. The necessity of subjoining these compressed and imperfect statements of dissent, forces me reluctantly t augment this inconvenience. As the only means in my power of remedying it, it is my intention as soon as possible after the decision of the two Houses upon the arrears and estimates is known, to put upon the minutes of our proceedings a full and uniform statement of the measures which, in my opinion, it would be desirable to adopt, accompanied by the draft of a Bill; and in the meantime, I abstain from noticing some points in the Report of minor importance, on which I cannot entirely agree with my colleagues, remarking merely, that with a view to the precluding of future disputes, I attach some consequence to two matters. First, that the right of altering the boundaries of the Province should be reserved. Secondly, that, in reserving the rights of the Crown to those sources of revenue of which the proceeds are now to be given up, attention should be paid to the words of the Imperial Statute of 1st Geo. 3, c. 1, s. 10.

(Signed) *C. E. Grey.*

Three extracts from the minute of the proceedings on the 30th January, 1836.

(Signed) *T. Fred. Elliot,*
Secretery.

Sir George Gipps stated, that in conseuqence of the remarks which had just been entered on the minutes by Sir Charles Grey, it was his desire to place on record the following explanation of his opinions on some of the points therein adverted to :—

1. In the remark No. 5, it is stated that every witness examined on the subject of the Civil List, recommended a larger one than that which the Commissioners have adopted; but it is not stated that the same witnesses acknowledged they saw no probability of getting a Civil List such as they desired, except by the intervention of the Imperial Parliament. Supposing, for argument's sake, such intervention ever to become desirable, it could not, I presume, be resorted to except as an extreme measure; and I would ask whether in that point of view it could be demanded by His Majesty's Ministers, on a refusal from the Assembly, to make so extensive a permanent grant as that proposed in the remarks? or whether it would not be much more likely to be obtained, and much less obnoxious, if it were made to follow the rejection of the moderate demand suggested in the body of the Report. The Commissioners, I would here observe, did not examine any witnesses for the purpose of showing that the Assembly is disinclined to an extended Civil List, because the fact seemed sufficiently known to them, from the proceedings of that body, without calling evidence to prove it.

2. The financial affairs of Lower Canada have, in my opinion, advanced to a state in which no middle course can be adopted with any prospect of success. The experiment must, I think, be made of carrying on the Government by means of annual appropriations, with the exception, that is to say, of charges of the nature of those contained in our proposed Civil List. Should the experiment fail, the British Parliament will not be less competent to interfere afterwards than now; and whilst I wish not prematurely to convey any opinion of my own on the expediency of the measure, I presume it will not be denied by its advocates, that so grave an exercise of authority would come with a better grace, and with no diminished effect, if preceded by proofs of a desire to avoid it. It should moreover, I think, be remembered that the House of Assembly never absolutely refused to provide for the wants of the Government, until (1834) the means of defraying their own contingent expenses were denied them.

3. With reference to what is stated in the same remark, No. 5, respecting the committee of 1828, and the Civil List proposed in 1830 and 1831 by Lord Ripon, I would observe, that in my opinion it was not with any intention of making the Local Government independent of annual appropriations that the Committee abstained from recommending the cession of the hereditary and territorial revenues; but most probably (seeing the parenthetical manner in which they dismiss the subject) from an impression that to change the appropriation, would needlessly disturb an existing usage considered by them of little moment; and, that Lord Ripon did not look to the funds of the Crown as a means of rendering the Government independent of annual grants from the Assembly, is clear, from the purposes to which he intended to apply them; whilst it is equally certain that the reservation of these revenues was the principal, if not the sole, cause of the failure of the arrangements, recommended by his Lordship.

(Signed) *Geo, Gipps.*

30 Jany. 1836.

Lord Gosford then made the following entry :

I have considered the different points connected with this Report, with a view to a practicable measure in this country. If higher terms than those stated in this Report be required, I see no use in submitting them here; the only mode, in my mind, by which they could be accomplished, would be by at once having recourse to the Imperial Parliament.

(Signed) *Gosford.*

True extract from the minute of proceedings on the 30th January, 1836.

(Signed) *T. Fred. Elliot,* Sec'y.

CONTENTS OF APPENDIX

TO FIRST REPORT.

SECOND REPORT.

QUEBEC, 12th March, 1836.

May it please your Lordship,

1. In our Report on the conditions to be annexed to the cession of the Crown Revenues in this Province, we expressed our understanding that the measure would not be carried into effect until the arrears due to the public servants were liquidated. The determination of the Assembly on that matter is now declared. They have voted an Address to His Majesty, in which they announce that they have postponed the consideration of the arrears, and determined to refuse any future provision for the wants of the local administration, in order the better to insist upon the changes which they require from the imperial authorities. Their utmost concession (and they desire it may not be taken for a precedent,) is to offer a supply for six months, that time being allowed to His Majesty's Government and the British Parliament to decide on the fundamental alterations of the Constitution, and other important measures included in the demands of the Assembly.

2. This Address appears to have been adopted in consequence of the Assembly's having seen certain extracts of the Commissioners' instructions, published by the Lieutenant Governor of Upper Canada, and having formed the opinion that the tenor of those extracts was not sufficiently favourable to the ends which the House calls for, as required by the public good. As we understand that the particulars of the progress of affairs in the Assembly have been conveyed to your Lordship by the Governor in Chief, and as a communication of that nature seems to fall more particularly within the province of the Executive Government than the sphere of our duties, we shall not enter here into any narrative of the order of proceedings, or any statement of the supposed views of parties in the House. We shall only observe, that the present is the first occasion on which, without any complaint of grievances in the administration, the Assembly has refused the means of conducting the Government, for the sole and avowed purpose of procuring changes in the Constitution. In the year 1833 the Assembly passed a Bill of Supply, with certain conditions, which induced the second branch of the Legislature to reject the measure, as being, in their view, unconstitutional. In the next year the House became involved in disputes with the Executive, which led them to disperse suddenly, and without taking the estimates into consideration. On the meeting of the Provincial Parliament in the ensuing year, 1835, a similar separation of the Assembly took place, for, finding that the Governor's warrant for their contingent expenses was withheld, they declined to proceed to business. In all these cases, the means of carrying on the administration of the country were rather lost indirectly, than deliberately denied by the representatives of the people. The decision is now embraced on its own merits; and the reasons for it are to be collected from the Address to the King.

3. Certainly the conjuncture is one in which His Majesty's Government might suppose that it would find some motive of peculiar urgency among those assigned by the Assembly for its determination. We are far advanced in the fourth year since there has been any appropriation of provincial funds to the use of Government; and although a sum, temporarily contributed from the British Treasury, has relieved the Civil officers, so far as to give them one year's salary during that period, the third year is passing away, during which they have not had the smallest fraction of their earnings in the service of the public. The distress and embarrassment which this state of circumstances has inflicted on the functionaries of the Province may be easily conceived. Many are living on money borrowed at an exorbitant interest; some cannot but be reduced to the verge of ruin; and to show that this suffering of individuals is not unattended with danger to the general welfare, it may be enough to remark, without painfully dwelling on private circumstances, that the Judges of the country are amongst those who are left to provide for their subsistence as best they may, after three years' stoppage of their official incomes.

This condition of affairs might naturally have been expected to terminate with the commencement of the present session. In the two previous years the supplies had failed in the Assembly, either from difference with the Governor for the time being, or from the refusal of funds for the payment of their contingent expenses; but when the Provincial Parliament last met, these grounds of dissension were removed. Your Lordship will not perceive, amongst the grounds assigned for prolonging the financial difficulties, any complaint against the existing Provincial Administration, or the assertion of any demerit in the parties who will continue to be deprived of their lawful remuneration. No local cause of quarrel is alleged, of which the settlement might be indispensable before the public business could proceed; on the contrary, it is stated openly, and without disguise, that changes of a political nature are the end in view, and that until certain acts be done, competent to no other authority than the Imperial Parliament, and comprising organic changes in the Constitution, by virtue of which the Assembly itself exists, that House will never make another pecuniary grant to the Government. Thus the public servants, no parties to the contest, are afflicted merely as instruments, through whose sufferings to extort concessions totally independent of their will to grant or to refuse. It is scarcely necessary to remark, that the objects, for the enforcement of which even such means as these are thought expedient, have never been positively refused, but have only been referred to a Committee of Inquiry, in order that, before the Executive branch of the Government undertakes to recommend changes of a very important and extensive nature, it may receive advice from persons entrusted with the confidence of His Majesty. This, however, has not proved enough. Apprehensions of delay from the Commission, and doubts of the freedom with which it will act, are expressed in the address; and the Assembly intimates, with frankness, that it will allow of no deliberation; that either its demands must be acceded to forthwith, or that it will employ its power over the supplies, to render the government of the country impossible.

In thus repeatedly marking the position taken up in the Address to His Majesty from the Assembly, we have no wish to convey any opinion, beyond what the statement of the facts implies, upon the conduct of that body; we only desire to point it out to your Lordship, distinctly and emphatically, that the choice offered to His Majesty's Government and the Parliament is between an instantaneous and unqualified compliance with the demands of the Assembly, on the one hand, or, on the other, a recourse to some other means than their liberality, for the maintenance in Canada of those administrative and judicial establishments, without which society cannot be held together.

5. Finding matters reduced to this issue, we think it our duty to address to your Lordship a Report on the subject. We feel called upon to do this, because it is stated in your Lordship's instructions, that to inquire into the financial affairs of the Province, and to aim at relieving the Executive Government and the two Houses of General Assembly from the unhappy distractions of the last fifteen years, may be deemed the main object of our employment; and secondly, because, as Commissioners for the investigation of all grievances affecting His Majesty's subjects in Lower Canada, we know not where we could turn our attention to a more urgent grievance than the unmerited distress of a numerous body of persons whose claims on the public are rejected—than the consequent embarrassment to local trade—and the appearance to the world at large of distractions calculated to injure the commerce of the Province, and prevent the influx of capital and enterprise from the mother country.

6. The demands of the Assembly are as follows:

First, The introduction of popular election into the Legislative Council.

Secondly, the direct responsibility of the Executive Council, "conformably," according to the words of the Address, "to the principles and practice of the British Constitution."

Thirdly, The immediate cession to the House of Assembly of the whole public revenues of the Province, from whatever source derived, without any preliminary stipulation for a Civil List, or for the continuance of a few life charges created on some of the hereditary portion of those revenues, before the cession of His Majesty's right to them was contemplated by Government.

Fourthly, the repeal of certain Imperial Statutes, which are described as noxious acts, comprehending, "amongst others," the Act of 6 Geo. 4, c. 59, commonly called the Tenures Act, and the recent Act passed in the fourth year of His present Majesty's reign, incorporating a Company to hold lands in Lower Canada. The other Acts alluded to under this head are not specified.

Fifthly, the admission of that essential controul in the Legislature over the management and settlement of the waste lands, which, it is observed, would be the direct consequence of the principles of the Constitution.

7. The first observation that occurs to us upon these demands is, that most of them go beyond what, by its constitutional powers or privileges, the House of Assembly can ask as a right, and that in particular the demand respecting the Elective Council involves a vital alteration of the Constitution to which alone their own Assembly owes its existence; and therefore if it should happen that in resisting such demands, the privileges of their own body should be curtailed, or even its very existence endangered, the consequence will be only such as the House has brought upon itself by engaging in the contest. In fact the parties who demand the change, do it only upon the presumption that the Constitution of 1791 can work no longer in Lower Canada, and, therefore, even with them the question merely is, in which dicection it shall be altered. So long as the pretensions of the House of Assembly were confined to matters of finance, its desire to enjoy the entire control of receipts and the expenditure of the revenue could be supported in great measure by the privileges it sees exercised in the House of Commons; and so long as they withheld their votes of money for the attainment of any object within the exercise of their constitutional rights, taken in their widest sense, their proceedings might be justified by doctrines admitted in the mother country; but in advancing to a demand unquestionably beyond their constitutional privileges, and involving the destruction of a branch of the Legislature co-existent and co-ordinate with their own, no precedent can be looked for but in the unhappy page of our history which contains the record of our civil wars. After these preliminary observations, we proceed to examine the effects

of complying with the demands of the Assembly, this being the first of the courses which appear open to the Government.

8. With respect to rendering the Legislative Council elective, it is not necessary that we should pronounce any opinion on the question taken in the abstract and general form: we shall rather confine ourselves to the subject as regards this Province. There is no doubt that the measure would occasion some real and much apparent diminution of the authority of the mother country. Lower Canada, with an elective Assembly and elective Council, would bear a considerable resemblance to the independent States in the neighbourhood; and it is probable that the administration of her affairs would, in point of fact, concentrate itself, somewhat more than at present, within the limits of the Province. We are not, however, prepared to say how far such a state of things might, necessarily and by its own nature, be either inconsistent with good government, or prejudicial to the duration of the connexion with the mother country, in a colony inhabited by a homogeneous and united people. It is enough for us to remark, that in Lower Canada, unfortunately, such is not the condition of the people. We are far from wishing to imply that those who now demand an elective Council in this Province look to shaking off the dependence on the mother country; on the contrary, it would seem a more probable supposition that they desire still to avail themselves of the protection of Great Britain, as of a shield under which their own resources might be developed, and their national existence secured, better than by the incorporation with any other state, or even by the attainment of immediate independence. But they may naturally seek for themselves all real authority in the country, and this we think would unquestionably be effected by the measure which we are contemplating; for we believe it impossible to devise any fair and impartial form of election, through which the great majority of a Council elected by any constituencies in Lower Canada could be other than of the party which dominates in the Assembly. This is precisely the result which is dreaded by those inhabitants of the province who are opposed to an elective Council. The change demanded in that respect is deprecated in the most earnest and solemn manner by almost the whole of the commercial class in the Province, and by incomparably the largest number of persons of direct British descent. Should the powers of the Assembly be augmented and consolidated by drawing the second Chamber from the same source as the first, there is a large body in this Province whose writings and declarations show, that there is no injustice or oppression to which they would not think themselves exposed. It is not willingly that we advert to the grievous distrusts which prevail amongst the different inhabitants of this Province, nor in doing so, do we wish to imply any estimation of the extent to which the impressions of either party regarding the other may be just. But we feel bound to declare our opinion, as to the probable course of events, that the English portion of the community, and especially the commercial classes, will never, without a struggle, consent to the establishment of what they consider little short of a French republic in Canada: we believe that if the measure they regard in this light were adopted, the presence of a commanding British force might become necessary to prevent a collision between the two parties. Under these circumstances, and with a population so divided, it remains to be judged whether the Government can with propriety concede a change in the Constitution, on which so serious a difference of opinion exists. For our own part, we should probably have thought it proper to defer our Report on this subject until we had made more detailed inquiries, specifically directed to the present point: but the Assembly does not admit such a course. It has appealed directly to the Imperial Authorities, and with measures which make it impossible to suspend a decision. If, therefore, our opinion be required by His Majesty's Government now, we must report, in the honest and unbiassed exercise of that free judgment which His Majesty has commanded us to employ on all matters falling under our investigation, that we do not think it advisable, at once and without further consideration, to introduce the principle of popular election into the Legislative Council of Lower Canada.

9. Having been compelled to lay so much stress on the influence of feelings connected with national distinctions, we ought, perhaps, in fairness to apprize your Lordship, that of the persons of British extraction in the Assembly, more, we believe, than half are in the habit of voting with the French Canadian party. The fact however is, that though English by birth or origin, the greater part of them do not represent English constituencies. If proof were wanting that national distinctions do exercise an influence on the course of affairs in this Province, it might be supplied in the absence of all sympathy on the part of the House of Assembly in the existing distress of the public officers. Those officers are for the most part of English origin, a fact on which, taken in itself, it is needless for us to make any comment, but which, we think, explains the treatment of the public functionaries by the members of the Assembly. If both spoke the same language, used the same habits, and had those ordinary feelings of sympathy which must follow from any familiar intercourse in private life, we do not believe it possible that one of the two could find resolution to plunge indiscriminately the whole of the other class into difficulties, not for any acts of their own, not even for any obnoxious sentiments they might hold, but in order that, by their losses, a third party might be induced through compassion to surrender objects desired at its hands.

10. Before passing on from the demand for an elective Council, we cannot refrain from mentioning our concern that the mere expression of an indisposition towards it at the outset should have been judged by the Assembly an adequate reason for arresting the course of Government, and threatening to enter into an almost mortal struggle with every authority suspected of repugnance to the favourite plan. Great Britain has dealt out privileges to Lower Canada with no niggardly spirit; she has bestowed upon the Province a constitution closely imitated from her own; and if some unavoidable defects be found to impair the analogy, it is surely no intolerable grievance that the mother country should hesitate to destroy, on that account, the general conformity of the subordinate government to her own. With that order of government which contents the mother country, she may without harshness require that the colony likewise should be content. Even to those, therefore, who are satisfied that the Council ought to be made elective, we do not think that the refusal or delay of such a measure on the part of Great Britain can constitute a valid ground of hostility to the Imperial Government. For such persons the obvious course is the one by which most great changes are attained in free governments, namely, argument, persuasion and perseverance; nor would that country deserve the name of freedom in which extensive alterations were to be accomplished by a mere sudden enforcement of opinion, not listening to dissent—not allowing of inquiry—but overbearing all liberty of discussion with a violence to which no delay would be endurable.

11. With respect to the Executive Council, we believe the general purpose contemplated by the Assembly to be, that it should be composed of persons removable at will by the Governor, and whom he should change from time to time so as to keep them in unison with the majority of the Assembly. Although we have bestowed much attention on the project, and have turned it in various lights, there appears to us, on examination, to be involved in the plan one objection which must always render it inadmissible. In England, where it is the maxim of the Constitution, that no wrong can be imputed to the sacred person of His Majesty, the responsibility of measures of state is annexed to his confidential advisers; but here the head of the Executive Government is a servant of His Majesty, responsible to the King for his conduct, and amenable as well to public opinion as to impeachment at the bar of Parliament; and it follows, that his measures ought to be under his control, in like manner as their consequences rest upon his character. But to render the Executive Councillors answerable to any but the Governor himself, would require that they should have new power proportioned to their new responsibility, and all the power conferred on them must be substracted from the Governor. It appears, therefore, to be the direct tendency of a Council, responsible in the sense we are now considering, to withdraw part of the administration from His Majesty's representative in this Province, and to abridge, to that extent, the efficiency of the functionary on whom, above all others, His Majesty must rely for retaining the allegiance of the Colony.

There are other questions connected with the Executive Council, of which the consideration will be requisite, but it is not necessary to enter into them upon the present occasion.

12. In proceeding to the remainder of the demands of the Assembly, we must observe, that as the failure of any one has been regarded as a reason to vitiate the concession of all the rest, the remarks we have made on the preceding topics render it of less immediate consequence to adopt a decision on the others.

13. It is entirely our wish that the public revenues of the Province, from whatever source derived, should be subjected to the application of the Legislature; and in every year when they have not declined to make any appropriation at all, the only exception to that rule has consisted of the proceeds of sales of lands, and licences to cut timber. Upon offering for the sake of peace to surrender that fund, and to give up absolutely the control of the other Crown revenues, His Majesty, never doubting his constitutional right to the money, made no stipulation for any prospective advantages from it; the Governor was only commanded to require security for a few life charges placed upon the land and timber fund, before a thought of abandoning it had been contemplated by the Government. The Assembly answers, in the present address, that the money must be

surrendered without any condition, and adds an intimation that, with respect to the charges which it is wished to secure, its mind is decided. We regret the continuance of a dispute with the Assembly on any question, and most of all on a question of finance; and it is painful to witness the protraction of a distressing conflict for the sake of a very insignificant sum of money; but we must say, that if the feelings of the House in this matter are so unbending that the Government must choose between standing on its rights or else betraying the honour of the Crown, and sacrificing the established interests of three or four helpless individuals, we think there can be no hesitation which is the proper course. The pensions and allowances at issue amount to less than £700, and are of a nature continually to decrease. That such a sum as this should be wrested into a ground of dissension between the Province of Lower Canada and the Government of the British Empire, is a truly mortifying consideration. But seeing the variety of matters in which the hostility of the Assembly is used as a threat to compel the Government to unwilling sacrifices, it is plain that any concession from such a motive would be fatal, and consequently that there is the more reason, in the case we are now considering, that His Majesty's Government should not swerve from a principle essential to its character for justice.

14. Next we turn to the Imperial Statutes, of which the repeal is demanded. On the repeal of the Tenures Act, 6th Geo. 4, c. 59, we have not much to add to the remarks in your Lordship's instructions, from which your Lordship draws the conclusion that His Majesty's Ministers ought not to propose to Parliament any further interference with that statute. Assuming that by the more recent Act of Parliament on the same subject, 1 Will. 4, c. 20, the Provincial Legislature is sufficiently empowered, as your Lordship appears to be satisfied that it is, to alter, amend or repeal the Tenures Act, we cannot but think it far the safest course to leave the subject entirely to the local legislature, so as to ensure a sufficient knowledge of any interests created under the Imperial Statute, which an abrupt repeal from home might injure. It has been objected, we are aware, that by leaving the subject to the Provincial Legislature, the wishes of the Assembly are liable to be defeated by a contrary opinion in the Council. This, however, is the very nature and condition of their existence. So long as the Legislature is preserved in its present form, the same credit for good intentions must be allowed to one branch as to another, and the naked fact of disagreement cannot be taken as a presumption against either. Your Lordship will observe, that we do not convey the intimation of any judgment of our own with respect to the effects of an absolute repeal of the Tenures Act; but it is precisely from the uncertainty of which the subject admits, that we are sensible of the propriety of referring it to the legislative authorities of the Province. We may, in investigating the matter of Tenures generally, return to this question. Meanwhile, if our statements in this Report be occasionally hypothetical or incomplete, we can only regret a circumstance arising from that premature discussion of almost every question of magnitude, which the address of the Assembly to His Majesty has compelled. One point at least, on which we can speak with confidence, is the repeal of the Land Company's Act, passed in the fourth year of his present Majesty's reign. Whether the institution of such companies in future be desirable, and under what restrictions, or what conditions, if any, of previous approval by the Provincial Legislature, are matters open to debate, on which it will be hereafter our duty to report the result of our investigations. Meanwhile, we have not a moment's doubt in stating, that the call for a repeal of the privileges of the existing company is inadmissible. The nature of the contract with that body seems to have been to a certain degree erroneously conceived by the framers of the address. But whatever might be its defects, to cancel from political motives the title to a large tract of property, lawfully acquired, and on which money has already been expended, would be an act of confiscation, enough to destroy every feeling of security in the Province. We do trust that whenever the Assembly may quit that attitude of hostility which it has assumed towards the Imperial authorities, it will see the necessity of receding from this demand. What other Imperial Statutes are required to be revoked, is not stated, but if the Act 3 Geo. 4, c. 119, commonly called the Canada Trade Act, be one of the number, it is, we apprehend, well understood that there would be no objection to repeal it, so soon as the Provinces of Upper and Lower Canada may provide any other means of obviating the disputes which that Act was passed to cure.

15. We find some difficulty in ascertaining the nature of that essential control over the waste lands of the Crown, which the Assembly considers would flow directly from the principles of the Constitution. In one place it is observed that the waste lands are subject to the supreme authority of Parliament, and that the Provincial Parliament is fully and "*exclusively*" invested with this authority, which the Assembly adds, that House will never willingly renounce; and with reference to your Lordship's instructions, which state upon this subject, as your Lordship will remember, that the management of the Crown lands may with advantage be regulated by statute, but that the conduct of that management ought to remain with the Government, the Assembly informs His Majesty that there is a disagreement between its own views and those of the Government. Yet in another passage it is declared, that the Assembly does not wish to interfere with the due functions of the executive authorities, and that it only claims its right to legislate jointly with the other branches of the Legislature upon subjects connected with the waste lands. Without undertaking to reconcile these apparent discrepancies, it is enough for us to observe that we entirely adhere to the principle laid down by your Lordship, namely, that the general rules of managing the Crown lands may, with propriety, be prescribed by the legislature, but that their application must be confined to the Executive; and if this be the view adopted by the Assembly, we are glad that no difference of opinion exists on the subject.

16. Having thus examined the most prominent demands of the Assembly, some at least of which it appears evident cannot be complied with, while not one can be rejected without incurring the continuance of that opposition with which the Government is at present paralysed, it remains to be considered how this effect may be counteracted. The only remaining appeal, as the Assembly itself observes, is to the high authority of Parliament; and in the ensuing portion of our remarks, we shall consider ourselves as discussing the proposals which it is open to His Majesty's Government to make to that authority.

17. Various plans, as might naturally be expected, have come under consideration at such moment. We may enumerate the principal suggestions as follows:

1st. A legislative union of the two Provinces of Upper and Lower Canada. Without entering into any other discussion of it, we would only observe, that we think that this is a question which ought not to be entertained, except with a very general prevalence of opinion in its favour in both Provinces.

2d. The erection within Lower Canada of seven or more districts, of which Montreal and Quebec should be two, and each of the others should consist entirely either of lands held by French or by English tenures; that to each of those districts or cantons municipal institutions of an elective character should be given by charters for the management of their internal affairs, and that from each of them 10 or 12 members should be returned for a House of Assembly; which, together with a Legislative Council and a Governor, should constitute the Legislative of the Province. If the principle of election could ever be applied to the Legislatif Council, it would probably be through the means of such municipalities as are contemplated in this proposal. With respect to the whole plan, we wish to say no more at present than that it would require too much time and arraugement to fit the emergency.

3d. An amendment or suspension of the Act of 1 & 2 Will. 4, c. 23. This Act provided that the customs' duties levied under the statute of 14 Geo. 3, c. 88, the Treasury; and the present proposal is to alter the Act, either by entirely suspending its operation for a limited term of years, or else by enacting that until the several branches of the Provincial Legislature can agree in the exercise of the power of appropriation which it confers, that power shall be exercised by those who had it before.

18. A measure of this nature appears to us the best which the exigency of the case admits. We do not deny that it will curtail powers we should wish to see vested in the Assembly; for we admit that a power of refusing, as well as distributing, an appropriation, would properly belong to them. But we have already observed, that when the Assembly provoked a contest, with the subversion of the existing Constitution in view, the fault became their own should the re-

sult lead to injury to their privileges instead of those which they assailed. The step we have proposed is the very mildest, adequate to relieving the Government from its pecuniary embarrassments. The amount of the revenues under the 14 Geo. 3, received into the chest since the last appiopriation to the support of Government, would suffice, in conjunction with the Crown revenues, to discharge the whole of the arrears due to the public servants ; and by the return hereto annexed, your Lordship will see, that from an average of four years, the future application of these two classes of revenue in the same manner may be expected to meet the ordinary expenditure of the public service. Thus the Government will be placed in a condition to subsist, without the necessity of immediately assenting to every change of the Constitution which the Assembly may demand ; while yet the control of that body over the other portions of public revenue, and the multifarious and important nature of the powers which it will still retain, will afford very cogent motives to the Government to attend to its wishes, and cultivate its good will.

19. So great indeed will be the powers remaining to the Assembly, that doubts have been suggested whether the alteration of the 1 & 2 W. 4, c 23, though it may abate the immediate difficulties of the Province, will be of any permanent avail. In this point of view it is observed, that the Assembly may continue its war upon the co-ordinate branches of the Legislature with more violence than ever ; that the resumption of the duties under the 14 Geo. 3, c. 88, will only restore the Government to the same position in which it maintained an unsuccesful conflict with the Assembly in former years ; and, therefore, that it would be better at once to advance a step further, and suspend the Constitutional Act of 1791, for a limited number of years. However startling the proposal, it is said that many arguments may be adduced in its support—that not only it will be more decisive, but that, being more evidently based on the difficulty of working the free institutions of Great Britain in a country disturbed by the jealousies of a divided population, the proceeding would be less offensive to the other Colonies of Great Britain than a mode of action from which it might be inferred that, in other cases equally, a refractory Assembly would be deemed liable to a curtailment of privilege.

20. We cannot, however, undertake to recommend such a plan. Independent of the general objections to any course which would not be merely unpopular, but utterly unconceived by the community at large before its adoption ; of which therefore neither the advantages nor the defects have been exposed by the light of Public discussion, nor the extent of probable opposition to it indicated, we shrink from the measure on a view of its own merits. We are persuaded that a local assembly is a benefit essential to good government in a Province such as Canada, and even though deprived of some of its other attributes, we think that a body armed with powers of debate and remonstrance, affords the best security for a just administration of the executive authority.

21. The plan which we recommend, namely, alteration of the 1 & 2 W. 4, is not destitute of the advantages of previous discussion, and whether or not it might leave room for serious opposition, unquestionably it would cure the evils now most urgent. It must be remebered that previously to the time when the revennes in question were ceded, they fell short of the wants of Government, and hence the Assembly triumphed by its control over an indispensable supplement ; but resumption of these revenues now, would give the Government as much as its existencerequires, and would thus really modify its complete suspension We know not whether we may venture to expect it, but it is proper to hope, that the reasoning may be mistaken which assumes that the Assembly will push to further extremities a desperate contest with the Imperial power. By the measure under consideration it would, for the first time, learn that the mother country may exercise another office besides that of yielding, and that when there has been every recent mark of respect and concession on one hand, it may be prudent to meet it with some forbearance on the other. If this should not be the issue, but, on the contrary, the Assembly should drive the mother country to either renewed efforts of control, or else the abandonment of every part of the Constitution which the third branch of the Legislature may invade, it will be time enough to determine upon the measures required by such an emergency, when their necessity shall be proved by the event, and not upon its mere apprehension.

Your Lordship will see that in the foregowing remarks we have not adverted to a dissolution of the Legislature. Amongst the many subjects of which we have been forced to a prematnre discussion, by the unhappy nature of recent portions of the session, we will not allow ourselves to be carried into any remarks on the representation of the people, or the efficiency of public opinion in this Province. We will merely say, without comment, that we cannot at this moment recommend a dissolution of the Provincial Parliamnet.

We have &c.

(Signed) GOSFORD,
CHAS. EDW. GREY.*
GEO. GIPPS.

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* Previously to signing this Report, I have delivered to the Secretary a statement of my difference of opinion as to some parts of it, together with the draft of a Bill referred to in the statement ; in order that both of these may be entered upon the minutes of our proceedings, and may go home with the Report

15th March 1836. (signed) *Chs. Edw. Grey.*

EXTRACTS of the MINUTE of PROCEEDINGS on Monday, 14th March, 1836.

Sir *Charles Grey* delivered in the following paper.

1. The single measure to which I would advise His Majesty's Ministers to have recourse at the present juncture, is to procure from the Imperial Parliament, without any delay, an enactment of which the substance should be, that where the different branches of the Provincial Legislature of Lower Canada have been or shall be unable, from disagreement, to exercise the power which it was intended to transfer to them by the 1 & 2 Will. 4, c. 23, that power shall be exercised by those who had the exercise of it before.

2. As the Commissioners are unanimous in recommending this, it is very reluctantly that I qualify my signiture to this second Report by any notice of dissent ; but it is necessary that I should do so to preserve a consistency, without which my opinions must be worthless. The Report enters rather loosely, as it seems to me, into a discussion of the most important objects of our Commission, which discussion is shown to be immature by the uncertainty and incompleteness of the conclusions in which it results. I should have deemed it sufficient to have marked in our Report, on the present occasion, the absolute incompatibility of the demand of the Assembly with our instructions, and then to have recommended rather more fully and distinctly than we have done, the step which we all think ought to be taken. Upon the Report as it has been settled, I am obliged to remark, that there are sentiments and opinions interspersed in it which I do not entertain ; and that of the reasoning, and even of the narrative, there are parts in which I am not able to concur.

3. The objections against substituting popular election for the appointment by the Crown of the members of the Legislative Council, are presented much more dubiously in the Report than they are impressed upon my mind. I think there would be many advantages in establishing a different arrangement of districts within the Province from that which exists at present, and with municipal institutions for the management of their internal affairs; but it will be found, upon examination, that this would not necessarily involve a repeal of any portion of the Act of 1791 ; and I certainly do not recommend it with the view of its leading, as the Report suggests, to the introduction of an elected Legislative Council for the Province.

4. There is a great deal of the reasoning in the Report as to an Executive Council to which I cannot assent, though I agree in thinking that it would be pernicious to establish either by enactment, or by the instructions of His Majesty's Ministers, any rule that the Executive Council should from time to time be changed, so as to keep it always *en suite* with the majorities of the Assembly. It ought to be borne in mind, that it is the Government of a Province which is in question, and that there are certain relations with the Empire which are to be preserved. With a view to these, the appointment of some of the Executive Council ought to be made in England, whilst a larger nnmber might be appointed by each successive Governor, for the period of his own government, comprising the leading men of all parties in the Province ; and of these, two or three at a time only might be summoned to each ordinary Council held for the despatch of business. This would enable the Governor to have the counsel of those who, at the moment, should be in possession of the chief influence ; and to bring together those whose opinions, though different, should approximate.

5. I will not enter further into the subject of the Tenures Act, than to observe that the 1 Will. 4, c. 20, does not enable the Provincial Legislature so far to alter the provisions of the Tenures

Act; as to prohibit changes from the tenure on fief to that of soccage, which is what the Assembly demands. The repeal of the Land Company's Act is put out of all question by our instructions.

6. As to the wild lands, it is pretty clear that the real meaning of the address is, that instead of the Crown lands and wild lands being subjects which can only be taken up by the Houses of Legislature upon message from the representative of the Crown the Assembly asserts a right of passing bills respecting these and all other hereditary Crown revenue or property, whenever it may please to do so, and of addressing the Governor on the subject, and of enforcing a compliance with its address, by withholding the supplies necessary for the subsistence of the executive power.

7. Having thought myself obliged to make the preceding statements, I will add to them some corroborations of the recommendation into which the Report resolves itself, but which does not appear to me to be placed by the Report on its strongest grounds.

8. The duties imposed by the 14 Geo. 3, c. 88, were not affected by what is called the Declaratory Act of 1778. Whatever opinions, at one time or another, may have been entertained, this is now a settled principle of legislation for the British colonies an instance of which may be seen in a statute so recent as that of 3 & 4 Will. 4, c. 59, ss. 10, 11. The Act, therefore, of the 1 & 2 Will. 4, c. 23, did not recognise a pre-existing right of the Provincial Legislature, but was meant to permit the exercise by the three branches of that Legislature in conjunction, of a power which was before lawfully exercised by officers of the Crown, under the sanction of an Act of Parliament.

9. Those duties were not only imposed permanently by the Parliament of Great Britain in 1774, for defraying the expenses of the administration of Government, and generally of Civil Government in the Province; but the particular application of them was vested in officers of the Crown; and the 14 Geo. 3, c. 88, is regarded by a party which is of great influence in the Province, not simply as a statute, but as partaking, in some degree, of the character of a public compact, upon the faith of which many persons, and especially many American loyalists, were induced to settle in the Province, who considered that a revenue at the disposal of the Crown, sufficient for all the ordinary expenses of the executive and judicial branches of the Government, was an essential and indispensable element of order and of peace.

10. It was rather hastily concluded in 1828-29, that as the revenues at the disposal of the Crown in Lower Canada then fell short of the expenses of the Civil Government, the Government was altogether in a state of pecuniary dependence on the Assembly. The fact is, that if the contingent expenses of the two Houses of Legislature had been deducted from the estimates, and a few retrenchments had been voluntarily made, which were afterwards compelled by the Assembly, the executive and judicial branches of the Government might even then have been sustained without any absolute necessity of recurring to the annual vote of the Assembly. The duties under 14 Geo. 3, c. 88, were gradually increasing, and at the moment of the passing of the Act of 1 & 2 Will. 4, c. 23, they had actually, by that increase, released the Government from its difficulty, if not from its perplexity, and constituted, with the other monies at the disposal of the Government, a fund more than adequate to all the expenses of the executive and judicial branches.

11. The course of proceeding as to the hereditary revenue and civil list of the United Kingdom, which was adopted for the first time, I believe, on the accession of His present Majesty, was the example probably which induced the Secretary of State for the Colonies, in 1831, to give up the power of appropriating the duties of the 14 Geo. 3, c. 88, without securing by the same, or by a synchronous enactment, an adequate list of permanent appropriations for the support of the Civil Government. But although the Commons of the United Kingdom, after the concession of the hereditary revenue was made by one enactment, did not hesitate to provide permanently by separate and subsequent statutes for the Civil Government, experience shows that the Assembly of a Province, distracted as this is by parties, ought not to be subjected to the same temptation. It is better to appear over cautious, or even suspicious, than to hazard the stability of a Government; and at all events, as the Act 1 & 2 Will. 4, c. 23, conferred a power which was to be executed by three parties, it would not have been superfluous to have provided against the contingency of the parties not being able to agree, or of the power, for any other reason, not being exercised. This is no more than what is done in the ordinary transactions of private life, as where a matter is referred to the arbitration of two or more, or where anything is to be done by the appointment of a party who may omit to make any.

12. The urgent difficulty of the present moment, and the peculiar applicability of the remedy to the crisis, might, without overcharging them, have been more forcibly stated than in the Report. Sir James Kempt, in the Report of the 1834 Committee of the House of Commons on Lower Canada, pp. 111-113, acknowledged that he could not undertake to govern Lower Canada, without having the duties of the 14 Geo. 3, c. 88, or some equivalent revenue placed permanently at his disposal. The necessity of discharging the arrears, and the circumstances by which the faith of Government is pledged to this measure, might have been more fully detailed; the progress and increase of the mischief arising from the present state of affairs more pointedly expressed; and the attention of His Majesty's Ministers might have been drawn to the strong, though justifiable, measure of the Legislative Council's having stopped the greater part of the money bills, to prevent the money due for the services of the Civil Government from being dissipated in miscellaneous appropriations.

13. The bill which I would submit to His Majesty's Ministers for the purpose of its being laid before the House of Commons upon the present emergency, is neither a repeal nor a suspension of the 1 & 2 Will. 4, c. 23, nor can it even be called an amendment so properly as a supplementary enactment, which, as it seems to me, ought to have been an original clause of the Act; and it would leave the three branches of the Provincial Legislature at liberty to exercise at any time, in the whole or in part, the power conferred on them by the 1 & 2 Will. 4, whenever they can agree in doing so. I deliver to the Secretary to the Commission a draft of that bill to be sent home herewith.

14. I am not aware of any other practicable method than that which we have recommended, of at once discharging the arrears due for the administration of justice and service of the Civil Government, and of sustaining the executive and judicial branches in the discharge of their respective functions, unless indeed the Imperial Parliament should think fit to advance what might be necessary for these purposes out of the revenues of the United Kingdom, as in fact it was wont to do, until the Province offered to take the whole on itself. It is questionable, perhaps, in more instances than that of Canada, whether it would not be both politic and just that the mother country should provide for a share of the expenses of the Governor and Executive Council of a Province, on the ground that a part of their duties at least are the management, not of the internal affairs of the Province, but of the relation between the Province and the Empire. If Parliament were to authorize only a loan, it might be secured to an amount more than sufficient for the occasion, upon the hereditary revenue in Canada, and on the proceeds of the sales of wild lands. These suggestions, however, are made only to meet the case of unforeseen objections existing against taking the course which we have pointed out. In preference to any other remedy, I recommend distinctly and decidedly the supplementary enactment set forth in the preceding paragraph; and that although annual *accounts* should be laid before the Assembly by the Government, of the application of the monies thus to be placed at its disposal, nothing should be included in any *estimates* for which an appropriation by the Assembly is not really necessary. A great deal of the present misunderstanding in Canada, as to revenue and finance, will be found to have grown out of a practice of observing no accurate or steady distinction between accounts and estimates.

15. I cannot express as I should wish the importance which ought to be attached to a prompt use of the opportunity which is presented by the address of the Assembly to His Majesty. If it is missed the Government will go rapidly down stream: if it is rightly, by which I mean temperately, but firmly, used, I see nothing in Canadian affairs which, with skill and forbearance, is not capable of adjustment. The proposal to Parliament of such a bill as we have suggested ought not to be clogged or encumbered by any other measures of Canadian policy; but probably before it can have passed into a law the Commissioners may be prepared to recommend definite and practical measures—

1. For alterations in the Executive Council.
2. In the Legislative Council.
3. For the establishment of municipal districts.

Of these the two first might, according to my opinion, be effected by instructions issued by His Majesty in Council to the Governor, the third by a provincial statute, if the two houses of Legislature could be brought to agree in it.

16. I wish to close my remarks by a statement that I am decidedly adverse to a repeal of the Act of 1791, which is spoken of in the Report. This measure would not be really disagreeable to any of those who from any motives, however discordant and various, desire to change the relations of the Province with the mother country, but to a certainty it would throw the Canadas into confusion, and would be held forth to the world by some as a justification for a declaration of independence.

(True extract.) (Signed) *T. Frederick Elliot.*

EXTRACT of the MINUTE of PROCEEDINGS on Monday, 14th March, 1836.

Sir Georges Gipps stated that in conformity with the course of proceeding prescribed to the Commissioners, in their instructions of the 17th of June, 1835, No. 2, par. 11, he desired to place upon the Minutes some remarks connected with, and arising out of, their second Report, and he accordingly handed to the Secretary a paper, of which the following is a copy:—

1. In the Report which we have this day adopted there is nothing to which I decidedly object; but it does not appear

to me to contain so clear and comprehensive a review of the subjects which must now force themselves on the consideration of Government, and of the Imperial Parliament, as will be expected of us now that we have been upwards of six months in the country, and I am therefore desirous of placing on record, in a more decided manner, my own views and the opinions which I have formed on some of the points at issue. It may indeed be said, that the question as to what is now to be done, is a narrow one, and that we should not travel beyond it; but I cannot help thinking that more will be looked for from us, and that the occasion is one in which a general review of the political state of the country is called for.

2. I join in the main recommendation of the Report, namely, that as an immediate measure, recourse must be had to a suspension or alteration of the 1 & 2 Will. 4, c. 23; and I do so, because, whilst I think the demands of the Assembly cannot be complied with, I know no way by which the means of paying the public servants, and of carrying on the Government, can be procured, except by the resumption of the revenues of the 14 Geo. 3, unless, indeed, the Imperial Parliament should be disposed to furnish the money, which I think very improbable; or that it be determined at once to suspend the Constitutional Act of 1791. This latter course is one which I cannot take upon myself the responsibility of advising, though in some respects I think it would be hardly more objectionable than the suspension of the Act of Will. 4, whilst it would unquestionably be more efficacious. I am indeed very far from regarding the resumption of the revenues of the 14 Geo. 3, as a safe, easy or efficacious measure, and it is only with the greatest reluctance that I can contemplate a course of proceeding which will take from the representatives of the people their now acknowleged privilege of disposing of all monies raised within the Province by taxation. A thorough conviction that there has been on the part of the Government a sincere desire to avoid the necessity of such a coercive measure, and that the Assembly have brought it on themselves by their own violent and unconstitutional proceedings, can alone reconcile me to its adoption. I do indeed feel that it is necessary, and therefore I cannot refuse to take my share in the responsibility of advising it.

3. I cannot, however, concur in the opinion entertained by one of my colleagues, that the non-insertion in the Act of the 1 & 2 Will. 4, of a clause authorising an appropriation by the Treasury, in default of any being made by the local Legislature, was either an oversight or an omission to be deplored. I consider that Act to have been passed in consequence of the opinion broadly expressed by the Committee of the House of Commons in 1828, that "the real interests of the Province would be best promoted, by placing the receipt and expenditure of the whole public revenue under the superintendence and control of the House of Assembly;" and I conceive that the measure was intended to carry with it a full recognition of the principle, that England ought not to interfere in the internal pecuniary concerns of the country; a principle which I believe to be just and proper. I must even add that I can see no good reason why the hereditary revenue was by the Committee excepted from the rule, or why it was not in 1831 conceded with the rest, conceded, I of course mean, in exchange for a civil list.

4. And although I do not mean to deny that an Act of appropriation, like any other Act of Parliament, to be complete must be enacted by the three branches of the Legislature, I am firmly of opinion that the practice which has obtained in England, of vesting the control over the whole revenue, not only primarily, but virtually in the representative branch of it, is a salutary one, and conducive to good government; and I believe that the practice would be no less salutary in Canada than in England.

5. In being forced, then, by the pressure of present circumstances, to recommend a deviation from this wholesome rule, I would earnestly desire that it should be done in the least objectionable manner; and I think it would be less objectionable to suspend the operation of the 1 & 2 Will. 4, for a definite period, say three or five years, or until some stated conditions (such, for instance, as that of paying up all arrears, and providing a civil list) should be complied with, than to suspend it in the indefinite way that would be effected by an additional enactment, providing that in any year in which the *three* branches of the local Legislature could not agree in the appropriation of the revenues, they might be appropriated by the Treasury, or, in other words, by the Governor, who is *one of the three*. Such an enactment, if not limited as to time, would have the effect of excluding for ever any efficient control on the part of the popular branch of the Legislature; and even if limited to three, five or seven years, would seem to carry with it the acknowledgement, that the Legislative Council is to have as much weight in the disposal of the public money as the Assembly, which is what, in my opinion, it ought not to have; I believe it to be absolutely essential for the preservation of harmony between the several branches of any Legislature, that the duty or privilege of controlling the public expenditure should be exercised by one of them only; had this principle been recognised in Canada, I believe that most of the dissensions of the last 20 years would have been avoided, and the mutual respect for each other's privileges, so necessary for the well-being of the whole, have been maintained, which is now so unhappily and so utterly destroyed.

6. With respect to the working of the measure, which in default of any other we have been forced to recommend, I cannot entertain the hope, that unless combined with others of a very firm and judicious, but at the same time healing character, it will prove either efficacious or safe. The Assembly, by the suspension of the Act 1 & 2 Will. 4, will be deprived, it is true, of a portion of its power, but it will still remain in possession of ample means of thwarting the Government, and these means we may expect to see it exert with an unscrupulous hostility. The suspension of this Act is moreover the measure which they expect, for they had due notice of it in 1834, and for which they, to a certain extent, are prepared. The Assembly, even when deprived of the revenues of the 14 Geo. 3, will retain its control over funds nearly twice as great as those in the hands of the Executive; and although the House may not have power to dispose of them at its discretion, it will at any rate be able to lock them up, and especially to prevent the application of them to any purpose favourable to the Government or to the interests of the British party. It may also refuse to pass bills required by the commercial interest, such for instance as bills for the renewal of the charters of the Quebec and Montreal banks, both of which will expire in July 1837. When I consider, therefore, the bitter hostility, or rather fury, with which the Assembly will be animated, against the the British Government, and against British interests; the invectives which, under the direction of its pratised leaders, it will pour forth against England; the power it will possess of spreading disaffection within the Province, and inviting interference from without, I am at a loss to imagine how the Government can be carried on with advantage, and I cannot help fearing that we shall ultimately be driven to abandon the country with all the shame of failure upon us, or to maintain it at a cost infinitely beyond its value.

7. It may be said, on the other hand, that I have drawn an exaggerated picture of the difficulties which the Government will have to encounter; that these difficulties will be found to melt away under a firm yet liberal and impartial administration; or that a sense of patriotism, or even of self-interest, will lead parties to act in harmony; and this, more especially should the sense of Parliament against their recent proceedings be unequivocally pronounced; all this may, I admit (and sincerely do I hope it) come to pass under a wise and firm administration, but nevertheless I cannot but feel an apprehension that will be otherwise, and entertaining such a feeling, I think it right to express it.

8. The effect, too, that the measure will produce upn the people, and especially on the House of Assembly of the Upper Province, is a matter of very important consideration. The English of Lower Canada look, and I apprehend with reason, for support from the Upper Province, should they ever be engaged in a contest of a national character with the French Canadians; but in a contest growing out of a measure such as that now under discussion, the course to which the democratic portion of the population of Upper Canada, or even the House of Assembly might take is to me doubtful, to say the least.

9. And so in Lower Canada, should a contest ever arise (as but for the presence of the English authorities and English troops I believe it would) between the French Canadians and the English, I believe that all parties speaking English, including settlers for the United States, would

unite with the latter, and probably in the end prevail; but so long as the contest can be made to appear as one, not of nationality, but of political principle, the Americans and a portion even of the British will be on the democratic side. It is the policy of the leaders of the majority in the Assembly to give the dispute the character of a contest between the aristocratic and the democratic principle, rather than one of nationality, and they have succeeded to a great extent; for, of the members from the town ships, where there are no persons of French, but numbers of American origin, nearly as many vote with the French party in the Assembly as against them, and if to the persons thus returned by the American or democratic interest be added the Englishmen who are sent to the Assembly by French constituencies, we shall find that of the twenty two individuals with English names, or of English origin, who have seats in the Assembly, thirteen generally vote with the French party, and only nine against them. It is, I believe, the apprehension that their democratic allies of British origin would change sides, should the dispute become one purely of nationality, that renders the leaders of the French party desirous of remaining for the present under the protection of Great Britain.

10. It is by considerations such as these, that I am led to adhere to the opinion expressed in the Report, that even were all the demands of the Assembly conceded it would not necessarily follow that the connexion of the country with England would be broken, or the duration of it materially abridged. I would myself even go farther, and say that if the question only were, by what means the sovereignty of England over Canada could be prolonged for the greatest possible period. I think it would probably be done by keeping the country as much as possible French; but although the first duty of every person employed under the Crown should be, and is, to preserve the integrity of the empire, I think I may be permitted to say that it is not to be aimed at by such means. It is not bare empire, but the raising up an enterprising, happy, and enlightened population, and spreading as far as possible over the globe our own laws, our language and our institutions, that I look on as the legitimate ends of colonization; especially when undertaken on the scale that is alone suited to North America: and in the pursuit of such a course, we should not, I think, be deterred by the apprehension that our colonies may eventually become independent; rather should we accustom ourselves to look upon it as the natural termination of the connexion. In Canada, however, at the present moment, the larger portion of the inhabitants of British descent entertain feelings of affection and reverence to the mother country, and next to a subjection to the French party, dread a separation from England as the greatest evil that could befal them. If, therefore, it be not desirable to render the country more French than it is, for the purpose of prolonging a dominion that would be scarcely more than nominal, neither would it be consistent with our honor to abandon it altogether if in so doing we must desert the interests of a large portion of our immediate fellow countrymen, who desire and deserve our protection.

11. A withdrawal of the protection of England would, I believe, lead to an immediate struggle between two races, and indeed I can scarcely doubt that, but for the presence of an overwhelming force, the same consequences would ensue were even the present demands of the Assembly complied with; and, as in this case, the English party would probably be the agressors, the power of Government would have in the first instance to be directed against men who are not only our fellow subjects, but for the most part the natives of our own isles. The apprehension of this would alone be sufficient to prevent my entertaining the idea of an immediate compliance with the demands of the Assembly, even if those demands were far less extravagant than they are. I wish, however, here to put on record more distinctly than is done in the Report, that my chief objection to a compliance with their demands, at least with such of them as do not involve a violation of the pledged faith either of Government or the Parliament, would not apply to a case in which similar changes were demanded by an equal majority of an homogeneous people. I consider that it is unwise to endeavour to put out of sight the fact that there is on the continent of America a leaning towards elective institutions, and that this will continue, and must increase in intensity so long as the republics of America continue to exhibit the marvellous display they now make of energy and advancement.

12. And of the Legislative Council of Lower Canada, I would repeat in the language that has been addressed to a former Secretary of State, that "in a country where the people are becoming every day less disposed to respect any authority that does not emanate from themselves, the members of it stand only as nominees of the Crown," without any of those reverential ties to bind them to the people, which are derived in the old countries of Europe, and particularly in England, from the early establishment of an aristocratic maxim, from the historical and traditional recollections which attach themselves to our feudal and chivalrous ages, and above all from the splendour of their high rank and riches. With no such holds on the affections of the people to compensate for the want of respect and of moderation towards them evinced by the other House, it is difficult to conceive how they can ever regain the position they occupied before their dissensions with the Assembly, or when the full power over the public purse shall have been recognised as an attribute of the Lower House, (as I at least think it must,) how the Council can avoid sinking into insignificance, how it can act as an efficient check on the more popular body, or as a barrier between it and the Throne. An elective Council would bear probably less of affection and of deference to the person of the Sovereign or his representative than the present Council of Lower Canada; but it would have, at any rate, more power to support his authority whenever it might be disposed so to do; even its right to participate in the control of the public purse might be maintained (should circumstances require it, though I think that they would not) on the grounds of their being, as well as the Assembly, the representatives of the people. The local Government seems to me to have leant hitherto for support too much on the Legislative Council, and taken too little pains to gain adherents in the Assembly, the consequence of which was, that when, towards the end of the late administration, the Assembly had become the most powerful of the two, there was not in it (nor is there indeed now) a single member connected with the Government, or one in any way pledged to the support of its measures. I would add, that although there has never been in the Assembly, since the commencement of the constitution, more than a proportion of about one English to three or four French Canadians, the policy of conciliating the French party, or of gaining adherents amongst them by a show of confidence, or by appointments to office, seems seldom to have been adopted; on the contrary, as far as I can make out, it seems that in earlier times the Government acted on the expectation that the English population of the Province would shortly outnumber the French, and then become dominant in the Assembly, as well as in the Executive and the Council.

13. I think our Report is deficient in not stating, as we ought surely by this time to be prepared to do, how far the Legislative Council may, in our opinion, admit of modification; and the more particularly so as in the event of Canadian affairs being brought in the present session before Parliament, it may be desirable to dispose at once of all questions for the settlement of which the intervention of the Imperial Parliament is necessary. At present no legislative councillor has the power of resigning his seat, nor is there any way of removing, except by an Act of the Imperial Parliament, a person who may have become a bankrupt, or even of forcibly depriving of his seat a public defaulter or other delinquent. The idea thrown out in the Report of making persons who had filled certain municipal offices legislative councillors for a term of years, is, I think, a modification of the elective principle that might be advantageously introduced. As yet there are but two municipalities in the country (those of Quebec and Montreal.) But if the chief magistrates of those towns, on the completion of their term of service, were to become of right legislative councillors for an equal term, I think it would add at once consideration to the municipal office, and popularity to that of a councillor.

In the same manner, in the event of the establishment of a university, I do not see why the superior, or some officer of it, might not be a legislative councillor, or that one or more legislative councillors might not be elected by the fellows of the university to serve for a definite term of years. So also any other public bodies, say the advocates practising at the bar of Quebec and Montreal, might elect each one legislative councillor, and the chambers of commerce at Quebec and Montreal each one; and if in this way six or eight persons could be elected, I do not see why five more might not be chosen by districts to represent the agricultural interests; say two for each of the districts of Quebec and Montreal, and one for that of Three Rivers, by means of a double election; that is to say, that each parish might send a deputy or deputies to the chief town, and that the deputies should there elect a councillor; and to whatever might be the number of councillors got together by these various means of election, it might not be unreasonable to stipulate, that an equal number should be added by the King or his representative; the whole to serve, not for life, but for a period of seven years, and to be renewed, not all at once and in a body, but individually, as each individual should complete his term of service. This idea, I beg to say, is merely thrown out for consideration in the event of its being found absolutely necessary to make some alteration in the constitution of the Council.

I will conclude my remarks on the Legislative Council by saying that, in my opinion, no attempt to improve it by the addition of new members from the popular party would be successful. It would require ten or a dozen new members to produce a sensible effect; and they could, I fear, only be obtained by taking from the Assembly the more moderate o the dominant party, and thus making it worse than it is.

14. Neither on the subject of the Executive Council does our Report, I think, express an opinion sufficiently explicit, considering that we have been six months in the Province.—As the Governor, in his speech of the 27th October last, declared the present constitution of the Executive Council to be vicious, and promised an alteration in it, I think we may be expected by this time to have adopted some settled opinions respecting the alterations that are required in it. I look upon the demand for a responsible Executive Council, that is to say, for a Council responsible to, or in other words, removable of the Assembly, as one of a more moderate democratic nature, and which, if granted, would form a step towards independence greater even than that of making the Legislative Council elective, because, in such case, the measures proposed by the Executive to the Legislature would soon come to be considered as the measures of the Executive Council, and not of the Governor, and consequently his responsibility to the authorities at home would be weakened. To preserve his responsibility I consider it very desirable that the method in which measures are now proposed to the Assembly should not be departed from; I mean the method of proposing them by message, instead of having them introduced by a member of the Executive Council, as by a minister of the Crown. Should this latter course ever be adopted, the Executive Councillor proposing the measure will come to be considered as responsible for the success of it, and in such case it will be difficult to avoid falling into the practice of England, and causing him to resign in case of failure. For these reasons, as well as for others that I am prepared to state whenever the subject of the Executive Council is brought more immediately under the consideration of the Commissioners, I am of opinion that it will be dangerous to make any extensive alteration in the constitution of it. I would wish, however, to see an extensive change in the personal composition of it, on the principle set forth in the Governor's speech of the 27th of October last, and I think the number of its members might be advantageously reduced from nine to seven. I should add that, as the Executive Council exists only under the King's prerogative, no legislative enactment will be required to make the alterations in it that are required.

15. I think that our Report is further deficient in not stating what our prospects of success were before the events had occurred in Upper Canada, which led to the adoption by the Assembly of the recent address to the King, and to the loss of the supplies. In doing this it would certainly have been necessary to advert in our Report to some of the proceedings of the Government, with which, as Commissioners, we have no concern, but we must at least be supposed cognizant of them, and therefore I do not think that, to make mention of them, would have been improper.—Our Commission had avowedly its origin in a desire to conciliate; and I therefore apprehend that our duty was to follow, as far as possible, a middle course, or one of mediation between the extreme parties by which the country was distracted. We found however these parties so bitter in their hatred, so divided, not only by political and social habits, but also by religion and language, and so unmeasured in their expressions of contempt for each other, that we (or rather I should say I) soon perceived, or thought I perceived that our only chance of doing good was by keeping the great questions, by which I mean the questions, above all, of an elective legislative Councilor, and a responsible Executive one, as far as possible out of sight, until, by the general measures of the Government, an improvement could be effected in the public mind and some few friends at least gained to it in the Assembly.

The demand for an elective Council had been made by the French party so unanimously and so decidedly that we could not expect men, who stood pledged to it, to turn round on a sudden at our bidding and give it up; all we could venture even to hope was, that they would do so when we had proved to them that they could have a security for good government without it. Had we, on our first arrival, declared that the question of an elective Council was absolutely a forbidden one, we should have failed *in limine* with one party, for we have now the best reason for knowing that there would in such case have been no session of the Assembly; had we, on the other hand, spoken of our instructions as more favourable to the democratic party then they were represented in the Governor's opening speech, we should not only have sinned against the truth, but have driven perhaps the English party to violence. I do not think we were ever at liberty to publish our instructions *in extenso*, but had we even done so, no good effect would, in my opinion, have been produced by it. The course which we pursued was so far succesful, that there was every reasonable prospect, up to the 9th of the last month, that the arrears of the last three years and supplies of the current year would have been granted. We have the most complete assurances that on the 7th of last month such a determination was provisionally adopted at a private meeting of the persons of most influence in the Assembly, the question being then to come on in the house on the 11th. On the 9th, however, the extracts from our instructions, which had been published in Upper Canada, reached Quebec, and the course of their proceeding was immediately changed. An exaggerated degree of importance was attached to the disclosures by some of the party who had only with reluctance, and from the fear of showing weakness by a division, consented to give the supplies: and their leader, who had only been waiting for an opportunity to renew the excitement of past times, gladly, and but too successfully availed himself of the opportunity. The question of paying the arrears was entirely set aside; the supplies voted only for six months, and a new address to the King and both Houses of Parliament carried by the same majority that had carried those of 1834 and 1835. On this occasion, too, we saw the minority reduced to the old number of eight, though it had on the question of the supplies, in spite of the untoward circumstances under which they were brought forward, been carried to 35 against 47. That the new friends of Government should however have thus voted, does not much surprise me, for although the men who had been gained to its support might willingly have allowed the question of an Elective Council to stand over, and even might have voted against any proposal to bring it forward again needlessly, they could not (as they say at least) when forced to a division, refuse to vote in favour of those principles to which they had in former times so solemnly, and so repeatedly pledged themselves. It is true that they might have absented themselves, and it is to timidity rather than to a want of inclination that their not having done so is, I believe, to be ascribed, for however bold or reckless the majority of the Assembly may be when acting *en masse*, the examples of fortitude or independence in individuals are unfortunately very rare.

Without desiring then to exaggerate the evil consequences of the disclosure of our instructions at so critical a juncture, I think I am justified in saying, that if the supplies had been obtained, and the interval that must have elapsed between the present session and the next been well employed in following up the line of policy to which the Government stood pledged, there would have been a fair chance in the next session of its having a majority in the Assembly. But circumstances are now essentially changed, and the only prospect of success from any measure that can be adopted, short of a suspension of the constitution, rests in my mind upon the probability that the Assembly will be inspired with some awe should such a measure pass unanimously or with little opposition through the House of Assembly.

The House of Commons is (whatever may be their outward expresions of loyalty) the only authority in England that they now look upon with respect.

(True extract.)

(Signed) T. Fred. Elliot.

Extract of the Minute of Proceedings, on Tuesday the 15th of March, 1836.

Lord Gosford desired the following entry to be made:

As this Report has elicited supplementrry remarks of considerable length from my colleagues, I think it right to mention, on my part, that I have not signed it without great regret, but that I feel it too plainly called for by the extreme necessity of the case.

(True extract)

(Signed) T. Fred. Elliot.

STATEMENT of the sums now due on account of Arrears for the Expenses of the Civil Government and the Administration of Justice in the Province of Lower Canada, as also the probable Amount of the same Expenses for the current year.

Due to the military chest for an advance applied to complete payments up to 10th October, 1833, ...		£31,000	0 0
Due to the officers of Government, and for the contingent expenses of the same, for the two years 1834 and 1835, exclusive of the expenses of the two Houses of the Legislature, ...		77,960	9 4
Estimated amount of the expenses of the current year, exclusive of the expenses of the Legislature, or of any charges for which special provision has been made by the Assembly, ...		52,000	0 0
		£160,960	9 4
By amount of monies now in the chest, and at the disposal of the Executive, the the same being either the product of the hereditary, casual and territorial revenue, or of other funds considered as at the disposal of the Crown, £45,749 0 10			
N. B.—In this sum is included a small balance of £480 15s. 10d. remaining out of the advance of £31,000, made from the military chest.			
By estimated amount of the same revenues for the remainder of the current year, ...	16,000 0 0		
		61,749	0 10
Deficiency,		£99,211	8 6

STATEMENT of the Net Proceeds of the Duties and Licenses levied under the 14 Geo. 3, cap. 88, since the last Appropriation by the Legislature, for the support of the Civil Government and Administration of Justice.

Net proceeds (after deduction of the proportion due for Upper Canada) for the year ended 10 October, 1833, ..	£24,317	18 6
Ditto for the year ending 10 October, 1834,	24,106	1 11
Ditto for the year ending 10 October, 1835,	31,115	3 7
	£89,539	4 0
Probable amount of the same for the year ending 10 October, 1836, ..	30,000	0 0
	£119,539	4 0
Deficiency in Civil Expenditure, as stated above, ...	99,211	8 6
Surplus,	£20,327	15 6

(Signed) *Jos. Cary*,
I. G. P. P. Accounts.

Quebec, 15 March, 1836.

Statement of the Expenses of the Civil Government and Administration of Justice in Lower Canada, for Four Years, from 1832 to 1835, inclusive, as also the sums which would have been at the Disposal of the Government if the Revenues of the 14 Geo. 3, c. 88, had not been given up.

YEARS.	Expenses of Civil Government and Administration of Justice, including the Arrears now due, but exclusive of the Expenses of the Legislature.			Hereditary, Casual and Territorial, including Land and Timber Fund.			Permanent Appropriations by the Legislature.			Revenue of the 14th Geo. 3.			REVENUE. TOTAL of the preceding Revenues.		
	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
1832	188487	13	0	50931	6	1	41245	17	5	123070	5	2	£188487	13	0
1832	42867	10	3	8744	4	10	10594	19	3	33581	1	2	215247	8	8
1833	40613	7	1	9171	6	1	10380	5	1	34317	18	6	52870	5	3
1834	47811	14	8	11266	10	5	10120	10	7	24106	1	11	53819	9	8
1835	*51194	12	0	†21749	4	9	10200	2	6	31115	3	7	45493	2	11
													63064	10	10
Total Expenditure (as in the first column).....													£188487	13	0
Surplus in Four Years.....													26759	15	8

* In the expenditure for this year is included a payment of arrears to chairmen of quarter sessions, and a large compensation for land to the Ursuline nuns, constituting altogether a sum of £3033 0s. 9d. not forming any ordinary or recurring kind of expenditure, which should be taken into account on striking an average.

† In this year's receipts is included a payment of £5944 11s. 9d, from the British American Land Company. The whole of the payments of the Land Company must be completed by the year 1844; and the average payments in each year up to that time will be £6000, exclusive of interest on outstanding instalments.

(signed) Jos. Cary, I. G. P. P. Accounts.

Quebec, 15 March, 1836.

A BILL to be intituled "An Act to provide against difficulties which have arisen in the exercise of the powers conferred by an Act passed in the 2nd year of the reign of His present Majesty," and intituled "An Act to amend an Act passed in the 14th year of the reign of His Majesty King George the Third, for establishing a Fund towards defraying the Charges of the Administration of Justice, and support of the Civil

Government within the Province of Quebec in America."

Whereas by an Act passed in the 14th year of his late Majesty King George the Third, intituled "An Act to establish a Fund towards further defraying the charges of the Administration of Justice and support of the Civil Government within the Province of Quebec in America," it was amongst other things enacted, that from and after the 5th day of April, 1775, there should be raised, levied, collected and paid unto his said late Majesty, His Heirs and Successors, for and upon the respective goods thereinafter mentioned, which should be imported and brought into any part of the said Province, over and above all other duties then payable in the said Province by any Act or Acts of Parliament, the several rates and duties therein mentioned (that is to say) for every gallon of brandy or other spirits of the manufacture of Great Britain, 3d.; for every gallon of rum or other spirits, which should be imported or brought from any one of His Majesty's sugar colonies in the West Indies, 6d.; for every gallon of rum or other spirits, which should be imported or brought from any other of His Majesty's colonies or dominions, 9d.; for every gallon of foreign brandy, or other spirits of foreign manufacture, imported or brought from Great Britain, 1s.; for every gallon of rum or spirits, of the produce or manufacture of any of the colonies or plantations in America, not in the possession or under the dominion of His Majesty, imported from any place except Great Britain, 1s.; for every gallon of molasses or syrups, which should be imported or brought into the said Province in ships or vessels belonging to His Majesty's subjects in Great Britain or Ireland, or to His Majesty's subjects in the said Province, 3d.; for every gallon of molasses or syrups, which should be imported or brought into the said Province in any other ships or vessels in which the same might be legally imported, 6d.; and after those rates for any greater or less quantity of such goods respectively: and it was thereby further enacted, that all the monies that should arise by the said duties (except the necessary charges of raising, collecting, levying, recovering, answering, paying, and accounting for the same,) should be paid by the Collector of His Majesty's Customs into the hands of his Majesty's Receiver General in the said Province for the time being, and should be applied in the first place in making a more certain and adequate provision towards paying the expenses of the administration of justice, and of the support of the Civil Government in the said Province, and that the Lord High Treasurer, or the Commissioners of of His Majesty's Treasury, or any three or more of them for the time being, should be, and they were thereby empowered from time to time, by any warrant or warrants under his or their hand or hands, to cause such money to be applied out of the said produce of the said duties towards defraying the said expenses; and it was thereby enacted, that the residue of the said duties should remain and be reserved in the hands of the said Receiver General for the future disposition of Parliament. And whereas the said Province of Quebec hath, since the enactment of the said Act, been divided into the two Provinces of Upper and Lower Canada. And whereas also, by another Act passed in the 2nd year of the reign of His present Majesty, and intituled "An Act to amend an Act of the 14th year of His Majesty King George the Third, for establishing a Fund towards defraying the Charges of the Administration of Justice, and support of the Civil Government within the Province of Quebec in America," it was amongst other things enacted, that it should and might be lawful for the Legislative Councils and Assemblies of the said provinces of Upper and Lower Canada respectively, by any Acts to be by them from time to time passed and assented to by His Majesty, His Heirs and Successors, or on his or their behalf, to appropriate, in such manner and to such purposes as to them respectively should seem meet, all the monies that should thereafter arise by or be produced from the said duties, except so much of such monies as should be necessarily defrayed for the charges of raising, collecting, levying, recovering, answering, paying and accounting for the same. And whereas the dissensions which unhappily have arisen between the Legislative Council and Assembly of Lower Canada have hitherto defeated the intention with which the last-mentioned Act was passed, and have made the same wholly inoperative within the said Province of Lower Canada since the 10th day of October which was in the year of our Lord 1832, during which time the said Legislative Council and Assembly of the said last-mentioned Province have been unable, from disagreement, to exercise the powers which it was intended by the said last-mentioned Act to have transferred to them: BE it therefore enacted, that whenever it shall appear that 12 months have elapsed without any Act or Acts of Appropriation having been passed by the Legislative Council and Assembly of Lower Canada, and assented to by His Majesty, wherein it shall have been particularly set forth and shown that there has been an appropriation made of the whole of the monies which shall have arisen or been produced from the said duties, and which shall have been paid into the hands of the Receiver General of the Province, previously to the passing of such Act or Acts of Appropriation, it shall be lawful for the Lord High Treasurer, or the Commissioners of His Majesty's Treasury, or any three or more of them for the time being, or for the Governor of Lower Canada under his or their directions, to cause the whole or any part of such monies which shall have so arisen and been paid to the said Receiver General, and which shall remain unappropriated, to be applied in the like manner and to the same purposes as the said Lord High Treasurer or Commissioners might have applied them, or cause them to have been applied, if the afore-mentioned Act of the 2d year of the reign of His present Majesty had not been passed.

II. And whereas it has not been customary to keep the said monies arising from the said duties separate and apart from the other monies in the public treasury or hands of the Receiver General of the said province of Lower Canada; but since the 10th day of October, which was in the year of our Lord 1832, no Act of Appropriation whatsoever has been passed, nor any general provision has been made, by the said Legislative Council and Assembly of the said Province of Lower Canada, under which the

monies which have arisen from the said duties, and which have been paid into the hands of the Receiver General of the Province, could have been regularly applied either in payment of the expenses of the administration of justice or the support of the Civil Government; and the salaries of the Governor, the Judges, and many other officers and servants of the Government of the same Province, have consequently fallen in arrear and now remain unpaid, and the necessary expenses of the Officers of the Government, and of the courts of law, have been supplied on credit, and the prisoners in the common gaols have been in part sustained by advances made by the sheriffs or by tradesmen, or other persons, out of their own proper monies or goods, and much inconvenience and distress has been in divers ways occasioned, to the interruption of good government and order in the said Province of Lower Canada, and to the hazard of the public peace. And whereas the revenues of the province of Lower Canada during the whole time last aforesaid have been and still are much more than sufficient to provide annually for all the expenses of the administration of justice, and support of the Civil Government thereof; and for want of the due appropriation of the said revenues, they have accumulated to a large amount in the hands of the Receiver General of the said Province: Be it therefore enacted by the King's most excellent Majesty, by and with the consent, &c., that it shall and may be lawful for the said Lord High Treasurer or Commissioners of His Majesty's Treasury, or any three or more of them, or for the Governor of Lower Canada under his or their directions, from and out of any unappropriated monies of the revenues of Lower Canada, which now are, or hereafter may be, in the hands of the Receiver General of the said province, to take, issue and apply to such purposes as are hereinafter stated any sums not exceeding on the whole the amount of the monies which have arisen or been produced, or shall arise or be produced, from the said duties in the said Act of the 14th year of the reign of His late Majesty King George the Third mentioned, between the 10th day of October which was in the year of our Lord 1832, and the 10th day of October now next ensuing, and which shall have been paid into the hands of the said Receiver General of the province, and which, if the said Act of the 2d year of the reign of His present Majesty had not been passed, might have been applied by the said Lord High Treasurer or Commissioners of His Majesty's Treasury, in defraying the expenses of the administration of justice, and the support of the Civil Government of the said Province of Lower Canada.

III. And be it further enacted, by the authority aforesaid, that the sums so to be taken and issued as last aforesaid, shall be applied, first, in discharging all such arrears and sums of money as shall be found to be due and owing, in the manner herinafter stated, on account of the administration of justice and support of the Civil Government in the Province of Lower Canada; and secondly, in repaying to His Majesty's Commissary General in the said province the sum of thirty-one thousand (£31,000), being the amount, without interesd, which, since the said 10th day of October in thet year of our Lord 1832, has been advanced by the said Commissary General, under the authority and direction of His Majesty's Principal Secretary of State for Colonial Affairs, in aid of the Civil Government of the said Province. Provided always, and it is hereby declared and enacted, that whatever services have been rendered, or whatever expenses have been incurred, in the administration of justice, or support or service of the Civil Government of the said Province, since the said 10th day of October in the year of our Lord 1832, by or with the sanction or approbation of the Governor of the said province, shall be deemed and held to be a sufficient consideration in law to authorize the Governor of the said province for the time being, out of the monies so to be taken and issued as last aforesaid, to apply and pay, as for a debt or debts due in respect of such services or expenses, all such sums as the Governor of the said Province might lawfully have paid, or caused to be paid, in respect thereof, if a certain Act, passed by the said Legislative Council and Assembly of the Province of Lower Canada in the 2d year of the reign of his present Majesty, and intituled "An Act to make Provision for defraying the Civil Expenditure of the Provincial Government for the present year," had been re-enacted or continued so as to have made or kept the provisions thereof applicable and in force for the defraying of the civil expenditure of the Provincial Government in each and every year since the passing thereof, and until the 10th day of October now next ensuing.

IV. And whereas it is the true intent and meaning of this Act to provide only, that in those cases in which, from disagreement, the Legislative Council and Assembly of the Province of Lower Canada have hitherto been unable, or shall hearafter be unable, by and with the assent of His Majesty, to exercise the power which was intended to be transferred to them by the said Act passed in the second year of the reign of His present Majesty, such power shall be exercised by those who had the exercise of it before. And whereas it is expedient to prevent any misunderstandings as to the application of the monies arising from the said duties which are imposed by the said Act of the fourteenth year of the reign of His Majesty King George the Third: BE it therefore enacted, that nothing in this Act shall extend or be construed to extend to prevent the Legislative Council and Assembly of Lower Canada from appropriating, at any time by any Act to be by them passed, and assented to by His Majesty, His Heirs or Successors, or on his or their behalf, the whole or any part of the monies arising from the said duties, which shall not have been appropriated under the provisions of this Act by the said Lord High Treasurer or Commissioners of the Treasury, or by the Governor of Lower Canada acting under his or their directions; and that when-

soever any part of the same shall be appropriated by the said Lord High Treasurer or Commissioners of the Treasury, or by the Governor of Lower Canada under his or their directions, a full and true account thereof, with as little delay as conveniently may be, shall be laid before the Assembly of the said Province by the Governor thereof, and also before the House of Commons of the Imperial Parliament of the United Kingdom of Great Britain and Ireland, by the said Lord High Treasurer or Commissioners of His Majesty's Trearury.

Extract of Minute of Proceedings on the 15th of March, 1836.

With reference to the Bill drawn by Sir Charles Grey, Sir George Gipps desired to make the following remarks:

The effect of this Bill (if passed into a law) will be, that in any and every year, without any limit as to time, in which the Legislative Council and the Assembly cannot agree upon an appropriation, thd Governor may make one of his own authority, and will be the same as if a law were made in England, that whenever the Lords and Commons could not agree as to the way in which the public revenue was to be disposed of, a very considerable portion of it might be disposed of at the pleasure of the Executive.

It is quite evident that such a law would entirely destroy the peculiar privilege enjoyed by the Commons of controlling the expenditure of the revenue; and for this reason I feel it necessary to subjoin the heads of a Bill that would meet the present crisis in a manner more suited to the views I entertain of the constitutional privileges of the representatives of the people. I think it better that they should be deprived *in toto* of these privileges for a limited time, than curtailed in them for ever.

(True extract.)

(signed) *T. Frederick Elliot.*

Whereas by an Act passed in the 14th year of the reign of his late Majesty King George the Third, intituled, &c. &c. (*here set forth the title and enactments of it;*) and whereas another Act was passed in the 1st and 2d year of the reign of His present Majesty, intituled, &c. &c. (*here set forth the title and enactmennts of it*); and whereas notwithstanding the authority so given to the Legislative Council and Assembly of Lower Canada, no appropriation (or no sufficient appropriation) has been made of the revenues arising from the said duties and licences, or of any other revenues, to the support of the Civil Government and the administration of justice within the said Province since the 10th of October 1832, and that in consequence thereof various sums of money are now due to the officers of Government and to other persons, for arrears of salary, and for the contingent expenses of Government, since the said 10th of October 1832, by reason of which many meritorious servents of His Majesty have suffered and are now suffering distress, and the well-being of the society within the said Province is endangered:

Be it therefore enacted, &c. &c., that immediately on the passing of this Act, it shall be lawful for the Governor in Chief, or the Lieutenant Governor, or the person administering the government in the said Province of Lower Canada, to issue his warrants on the Receiver General of the said province, and for the Receiver General, on the receipt thereof, to pay out of any monies that may be in his hands on the passing of this Act, or which may be afterwards received by him, such sum or sums as may be necessary to defray the arrears which, as aforesaid, were due on the 10th of October last past, or which may be due at the passing of this Act; and also to repay to the Lords Commissioners of His Majesty's Treasury the sum of £31,000, advanced from the military chest in the said province to the Receiver General, in aid of the Civil Government thereof, and for the payment of salaries not provided for by the Legislative Council and House of Assembly.

Provided always, that the sums for which warrants shall be so issued shall not, in the whole, exceed the proceeds of the duties and licences imposed by the aforesaid Act of the 14th Geo. 3, actually paid into the hands of the Receiver General since the 10th of October, 1832.

Provide also, that no salary shall be included in any such warrant that was not provided for in the last general Act of Appropriation, passed in the said Legislative Council and House of Assembly, or in some special Act of Appropriation, since the year 1824; and that no charge for contingent expenses shall be included in any such warrant that has not been included in one or more of the Estimates laid before the House of Assembly of the said province since the 10th of October, 1832.

And whereas it is expedient to suspend in the province of Lower Canada, for a limited time, the aforesaid Act passed in the 1st & 2d Will. 4, intituled, &c. &c.; Be it further enacted, that the said Act shall be, as far as the same relates to the Province of Lower Canada, suspended, until the 10th October that will be in the year 1840.

Provided nevertheless, that in every year after the passing of this Act, during the term for which the aforesaid Act of the 1st & 2d of the reign of His present Majesty is suspended, a statement of the entire receipts and expenditure of the province shall be laid before the House of Assembly within 15 days after the day of its meeting.

[*There is no Appendix attached to the Second Report.*]

THIRD REPORT.

Quebec, 3 May, 1836.

May it please your Lordship,

1. In our Report of the 12th March we introduced some remarks on the responsibility which, in the Address from the House of Assembly to His Majesty, dated the 26th of February, 1836, it was proposed to attach to the Executive Council; but we did not enter upon the consideration of any other question connected with that institution. The discussions which have since arisen upon the same subject in Upper Cadada, and the difficulty which the Governor in Chief must experience in filling up his Council, so long as any question respecting it remains unsettled in this Province, induce us to think this a proper time to offer to your Lordship a

general Report of our views on the Executive Council. For this purpose we shall advert briefly to the origin and history of that body, and to its existing functions, and shall then state the complaints which have been preferred against it, the various remedies that have been proposed, and the alterations which we are ourselves prepared to recommend.

2. The existence of a Council to advise the Governor in the conduct of affairs may be traced back to the first establishment of a Civil Government in this Province, under the authority of Great Britain. The Royal Instructions to General Murray, dated the 7th of December, 1763, commanded him to name a Council, consisting of four principal functionaries therein specified, and of eight other persons chosen from amongst the most considerable inhabitants of the Province; and directed that the body so appointed should have all the powers and privileges usually enjoyed by the Councils in His Majesty's other plantations. Under the authority of this instruction, the Council seems to have exercised the function of deliberating on any matters of administration referred to it by the Governor, and also of assisting him in framing regulations for the peace, order and good government of the Province. The Statute of 14 Geo. 3, c. 83, established the Council in a more formal manner, and directed that it should consist of not more than 23, nor less than 17, persons, empowered to concur with the Governor in making laws for the good government of the Province. The members of this Council appear to have been consulted also as advisers on administrative questions, but to have kept separate records in that capacity; and whilst, for the purpose of making laws, it was necessary that a majority of the whole should be present, five was constituted, by the Royal instructions, a quorum for other business. However distinct the functions of the Council, in its legislative and executive capacity, we believe that, generally speaking, no separation, as to the personal composition of it, had, up to this time, been effected in the American Colonies, though, in a work first published in 1764 by Mr. Pownall, who had been Governor of Massachussett's Bay (Pownall's Administration of the Colonies, ed. 5, vol. i. c. 4, s. 5,) the advantages to be derived from such a separation are pointed out. In Canada, the Council created by the Constitutional Act in 1791 was purely legislative, being designed to form one branch of a legislature resembling, as near as circumstances would admit, the Parliament of Great Britain; and a Board to advise the Governor was only alluded to incidentally, under the designation of "such Executive Council as shall be appointed by His Majesty for the affairs" of the Province. A Council of this nature was accordingly appointed by the Royal instructions to Lord Dorchester, dated the 16th of September, 1791; and the number of its members fixed at nine, with a salary to each of £100.

3. We find that of the nine persons named in Lord Dorchester's instructions to compose his Executive Council, six were also members of the Legislative Council; and that of the whole number of executive councillors who have been sworn in up to the present time, amounted to 42, 20 were also legislative Councillors; and not more than eight, or at most ten, did not fill salaried offices under Government, either at the date of their appointment to the Council, or at some time while they continued in it. The names in Lord Dorchester's Council stood alternately English and French; and of the eight councillors who were actually sworn in (the ninth, Mr. Lymburner, being absent from the Province,) four were of French extraction, and four of English. This precedent, however, was early departed from, for the three next appointments were of persons of English origin; and it appears that of 31 persons named as Executive Councillors, between the years 1793 and 1828, 25 were English or of English extraction, and only six were French Canadians; and even of these six, one was Mr. Speaker Papineau, whose appointment seems to have been founded on the office he held as Speaker, and to have lasted but a short time. (See Appendix, No. 1, note 5.) Since 1828 three persons only have been appointed, and they are all French Canadians.

4. Upon the foregoing statement there are two remarks which we cannot refrain from making. In the first place, we think it much to be regretted that, at the time of conferring the Constitution on Canada, although the separation between the functions of the Legislative and Executive Councils was duly recognised, yet the faulty practice of making them nearly identical, as to personal composition, was still adhered to; and that, whilst two-thirds of the Executive Council were selected from one branch of the Legislature, the expediency does not seen to have been felt of taking any members from the other, so that the Executive Authority thus early showed a tendency to lean for support rather on the Legislative Council than on the representatives of the people; a bias which, lasting, as it has done, in an undiminished degree, to the most recent times, cannot but have exercised a most unfavourable influence on the course of affairs.

5. We have, secondly, to draw your Lordship's attention to the small proportion of French Canadians introduced into the Executive Council. The course by which persons for the most honourable and ostensible situations in the Government were selected only from one portion of the population, cannot, in our opinion, be too deeply deplored; and however natural it may have been, under the circumstances in which Canada became a British possession, yet, as soon as the attachment of the Province was considered to be secured, and the inhabitants to be worthy of the free institutions of Great Britain, it is difficult to conceive any good cause for the practical exclusion of one class from the chief offices of the country. On the contrary, when so powerful an engine was established, as a House of Assembly, of which the majority could not reasonably be expected to consist of any other description of persons than the majority of the people, there were the strongest motives to aim at interesting that class in the Government, to hold out to them such prospects of public employment as might constitute an inducement to acquire the proper qualifications for it, and in short, to train them by every means to the wise and moderate use of the great powers bestowed upon them.

To the neglect of this policy, combined with the alienation which was previously mentioned of the Executive Authorities from the Assembly, must, we believe, be ascribed a large share of the embarrassments of the present time.

6. We have already observed that the number of Executive Councillors, named in the Royal instructions to Lord Dorchester, and to whom salaries were ordered to be paid, was nine. Additional or honorary members were introduced as early as the year 1794; but although appointed by mandamus, they had no salaries. It has subsequently been the custom for the Governor provisionally to appoint honorary members, who are supposed, however, not capable of sitting in the Court of Appeals until they are confirmed by the King. The salary of each ordinary member is £100. per annum.

The Clerk of the Council has a salary of £550. and about £85, fees; and an Assistant Clerk has £182. 10s.

7. Of the functions of the Executive Council, the most comprehensive description is, that they are required to give their opinion or advice to the Governor whenever it is asked for. There are some cases in which, by the provisions of Statutes, imperial or provincial, or under his commission or instructions from His Majesty, it is incumbent on the Governor to act either by and with the advice, or with the advice and consent of the Executive Council; and we have annexed a statement of these cases (Appendix, No. 2.); but in far the greater part of the businesss of Government he is at liberty to receive advice or not as he pleases; and if he does take the opinion of the Council, to proceed in opposition to it without entering his decision, or assigning its reasons on the Council books.

8. Notwithstanding, however, the want of any cogent rules for recurring to it generally, there are two or three extensive matters, of which the right of the Council to take cognizance has always been well established. Up to 1826, when the office of Commissioner of Crown Lands was created, the Executive Council had the whole superintendence of the business of land granting: it still retains the direction of it in some cases, and is commonly referred to by the Governor in any disputed matters arising in or out of the disposal of the Crown or Wild Lands. The Council has also been charged from the earliest times with the duty of auditing the public accounts. Another old and most important attribute of the Executive Council is that of hearing appeals from the courts of law, which function, in like manner as it had belonged to the former Council of Quebec, was allotted to it by the 34th section of the Constitutional Act, and subsequently regulated by the Provincial Statute 34 Geo. 3, c 6.

9. The council can assemble only on summons from the Governor, and cannot sit as such without his being present. It may and frequently does sit in committee to consider matters referred to it by the Governor, and these committees go through almost all the labour of the financial and land business of the Council; but their proceedings require to be confirmed by a regular meeting, with the Governor present, before they can be acted on. The members of Council have not the right of recording their opinions individually, or of entering protests on their minutes (*see* Appendix, No. 1, note 2,) and they are sworn to secrecy without any exception or reservation. A copy of the oath is annexed (Appendix, No. 3.)

10. Of the Executive Council, composed as we have mentioned, and exercising the functions which we have just endeavoured to describe, a very general impression exists that it is inadequate to any useful end, and all parties agree in objecting to it, though probably not on the same grounds. The complaints against it were, however, until very lately, less earnestly urged than against many other real or alleged grievances. The subject was not dwelt upon in the petitions brought before the committee of the House of Commons on Canadian affairs in 1828, though the number of office holders in both Councils, and the connexion between the two, were all alluded to among the grievances of that time. In the 92 resolutions of 1834, the composition and irresponsibility of the Executive Council were complained of, as well as the secrecy with which its functions, and even the names of the members, were said to have been withheld from the Assembly. The numerously signed petitions to His Majesty from Quebec and Montreal, in the early part of the year 1835, expressed regret that the Executive Council had become so defective, both in the number of its members and in its composition, as not to answer the purposes of its institution. The wasteful or partial grants which the Council was considered to have sanctioned, while the disposal of the Wild Lands was under its control, has formed another ground of dissatisfaction with it. And there does not appear to be any difference of opinion respecting the unfitness of a Board of this nature to act as a Court of Appeal, as well as the impropriety of its doing so in cases where grants or leases, made under its own authority, are concerned.

11. After this enumeration of the defects complained of in the Council, we shall now proceed to the remedies which have been suggested.

12. The House of Assembly, in their answer to the Governor's speech at the opening of the late session, and in their subsequent Address to His Majesty, dated the 26th February 1836, expressed their desire for a "constitutional responsibility," of the Executive Council, based on the practice of the United Kingdom. We have already had occasion to advert to this proposal incidentally in our report of the 12th March, but a recapitulation of what we then advanced, and some further examination of the project, may not be superfluous here, especially as the subject has excited such keen interest in Upper Canada since the time when we last noticed it. On that occasion we observed, that while in England it was a maxim of the Constitution that no wrong could be imputed to the sacred person of His Majesty, the head of the Executive here was a servant of His Majesty, responsible to the King and to Parliament for his conduct; that therefore it was necessary that his measures should be under his control, in like manner, as their consequences rested upon his character; that to render the Executive Council responsible to any but the Governor himself would demand the allotment to them of new powers commensurate with their new responsibility, and would require a corresponding diminution of the powers of the Governor; that thus the direct tendency of a Council, responsible in the sense we were then considering, was to withdraw part of the administration from his Majesty's representative in this Province, and to abridge to that extent the efficiency of the functionary on whom, above all others, His Majesty must rely for retaining the allegiance of the Colony.

13. We would now remark further, that the question is not between responsibility and irresponsibility absolutely, but only as to a peculiar sort of responsibility which it is wished to attach to the Executive Council. The weightiest responsibility which can attach to any man in matters of a public nature, for which he is not punishable by law, or by loss of office, is the accountability to public opinion, and from this the Executive Councillors are not even now exempt, though in consequence of the rule of secrecy (which we shall presently propose materially to relax), they are not so much open to it as might be wished—They are already amenable to the Courts of Law for any offence legally punishable, which may be brought home to them; they would also, we apprehend, be made amenable to the jurisdiction of any court which may be established for the trial of impeachments against public functionaries; and they are liable to be dismissed by the same authority which appoints them. These different liabilities constitute a responsibility, than which we know not what other is borne by any public servants.

14. But if the Councillors were rendered accoun-

table for the acts of Government, and accountable not to the Executive authority by which they are appointed, but immediately to the House of Assembly, we think that a state of things would be produced incompatible with the connexion between a colony and the mother country. The Council having to answer for the course of government, must in justice be allowed also to control it; the responsibility, therefore, of the Governor to His Majesty must almost cease, and the very functions of Governor, instead of being discharged by the person expressly nominated for that high trust, would in reality be divided among such gentlemen as from time to time might be carried into the Council by the pleasure of the Assembly. The course of affairs would depend exclusively on the revolutions of party within the Province. All union with the Empire, through the head of the Executive, would be at an end; the country in short would be virtually independent; and if this be the object aimed at, it ought to be put in its proper light, and argued on its proper grounds, and not disguised under the plausible demand of assimilating the Constitution of these Provinces to that of the mother country.

15. We have hitherto considered the question, as it undoubtedly is understood in this Province, of a Council appointed for the purpose of directing in a manner agreeably to the Assembly the conduct of Government. It appears indeed, in a recent report of a committee of the Assembly in Upper Canada, dated 14th April, 1836, that the demands of those who call in that Province for an increase of the powers of the Council have latterly been represented, more moderately, as a proposal that the Governor should be required only to take the previous advice on public affairs of a Council which should enjoy the confidence of the people as manifested by their representatives. Even this proposal, however, will be found to involve no trifling incongruities. It is true that the Governor, being left a free agent by this plan, would retain his responsibility to the King; but for that very reason it would be incumbent on him not to yield, except on the clearest conviction in his own breast, any of his opinions on matters of moment to the Empire at large. As examples of these subjects, we may mention all questions affecting Imperial statutes, or the relation of the Province to Great Britain, or the preservation of the due prerogative of the Crown. So far as regards this Province, if the questions be examined by which it has lately been agitated, it will appear that very few of them do not fall under one or other of these heads. Unless, therefore, circumstances should happily be such that the views of the Governor and of the Assembly on the topics we have mentioned coincided, the only result of insisting on his, upon every occasion, taking the advice of a Council to be always kept in harmony with the majority of the Assembly, would be to surround the Governor with Councillors whose advice on the most interesting subjects he would be bound by his duty and his allegiance to overrule. The impediments to Government, and the irritation that such a state of things must produce, need not be pointed out. It could not be long before the next step would be taken, of calling for a Council which should control as well as advise; and we have already remarked, that such a Council (depending both as to its appointment and its removal on the pleasure of the Assembly) would be nothing else than an independent Government, carried on under the mockery of a nominal Governor appointed from England.

16. The fact is, that the persons who attempt to draw a direct parallel between the constitutions of Canada and England seem to forget that the Government of one is national, that of the other provincial; and in the arguments which we have heard advanced in favour of a responsible Council, both in this and in the sister Province, the important distinction seems to have been lost sight of, which must of necessity exist between an independent country and one that is subordinate to another. Canada has, we apprehend, a right to the British constitution, as far as it is possible for that constitution to have its operation in a subordinate country; but more than this, so long as Canada remains a Province of the Empire, it cannot have. The Legislature of Canada is incapable of making laws repugnant to the laws of Great Britain; and as the constitution under which they have their political existence is an Imperial Statute, it follows that they cannot make any alteration in that constitution without the consent of England; but in matters not repugnant to the laws of England, and in things respecting their own internal rights, property and jurisdiction, their Legislature (the King, or his representative, being of course a part of it,) is under no such restrictions. It would be easy to deduce from this distinction alone the reasons why the King's representative cannot be placed in a position with respect to the Provincial Government, similar to that which the King is placed with respect to the Government of England.

17. On these grounds we are forced to discard the idea of transferring any share of the responsibility of Government from the Governor to the Executive Council; but we are still desirous, as will presently appear, that it should possess a greater influence in the Government than heretofore; and we are of opinion, that although not liable to be changed at the will of the Assembly, it should be so composed as to secure as much as possible of the confidence of the people.

18. As one means of improving the Council, your Lordship threw out for our consideration the advantages that might result from reducing its numbers; and we acknowledge that a small Council would be more conducive than a large one to promptitude of decision, to a sense of responsibility in each member, and to unreserve on the part of the Governor. But we find so general a concurrence of opinion here in favour of extending the Council, and are ourselves so much impressed with the utility of introducing into it members from different parts of the country, that we do not think it advisable to try a Council of very limited number in this Province.

19. Another plan which has been under our consideration is, that the number of members appointed by the Crown should be reduced to three or two, and that either there should be no other Council, or that the Governor should have power to appoint in the name of the King any number of additional councillors for the period of his own government; that of the entire Council thus named there should be four full meetings in a year, at which meetings the councillors should be allowed to submit to the Governor the names of persons considered by them as fit to be recommended to His Majesty for the Legislative Council, and for those offices for which the Governor is now by his instructions directed to furnish lists to the King's Ministers in England, the mischievous possibility of this liberty of recommending being perverted into a right of choosing being strictly guarded against; that on ordinary occasions the meetings should not consist of more than five or seven persons being such members as the Governor should each time choose to summon; and that the Governor should be instructed to summon the members appointed by the Crown upon those occasions on which matters affecting the relations of the Empire with the Province were to come under debate; and that every meeting should have power to refer matters, requiring investigation, to committees of any two or three members selected out of the whole body,

20. Though this plan has been suggested by one of our own body, we cannot collectively undertake to recommend it, as it appears to the majority of us to involve a wide departure from present practice without satisfying the wishes of any class in the Province. If the Council were limited to the two or three members appointed by the Crown, it would be open

to the objections which we just expressed against a very small Council, while we apprehend that its suitableness to the pro posed function of making recommendations for office would be much impaired. On the other hand, if the contemplated addition of councillors appointed within the Province were made, we should deem it objectionable on the following grounds; that by allowing the Governor to choose his councillors on every occasion out of a lage body, it would enable him on all questions to insure whatever advice he desired; that we do not see how such a plan could be carried into operation without giving offence, and creating jealousies in the Council; and that as the persons selected to attend the Governor on any particular occasion might often be insufficiently informed of the relation in which the subject under discussion stood to other objects of interest in the Province, or imperfectly acquainted with the general policy and proceedings of the Executive, a want of congruity would be very likely to make itself felt in the Councils of the Governor, whilst not even an appearance of responsibility to the public opinion on the part of the councillors would remain, as the people would not even have the means of knowing the parties by whom the advice was given. We learn from the records of the Colony, that, about the year 1778, a course of proceeding, in some respects similar, had obtained, by the Governor's exercising his discretion in calling to any meeting of the Council only such members as he chose. The practice, however, having been complained of, was put a stop to by an instruction from His Majesty to the Governor, dated 29th of March 1779, and directions were given that members of Council should be summoned to all meetings without any other distinction than that which the distance at which they resided might render necessary.

21. We have had an opportunity to see a Report, chiefly relating to the Executive Council, made to Sir Francis Burton in 1825 by M. Uniack and Mr. Vanfelson, at that time the provincial law officers, and we perceive it to have been their opinion that the Executive Council ought to be made more numerous, and include more men independent in circumstances and influential in the Colony, together with the principal officers of Gornment.

22. In the paper contained in Mr. Neilson's letter to your Lordship, dated 10th July 1835, explaining the views of the parties by whom that gentlemen had been deputed to visit England, the opinion expressed respecting the Executive Council is, that it ought to consists of the heads of the public departments, with a considerable admixture of persons independent of the Government, and of the administration for the time being; and that the members of the latter discription should not all be resident at Quebec, "but distributed over the other parts of the Province, giving to the people at large confidence, and checking cabals in the Council itself." By evidence which we received from Mr. Neilson and from Mr. Andrew Stuart, it appears that both those gentlemen adhere to these opinions.

23. Mr. Caron, the late mayor of this city, and until very recently a member of the House of Assembly, informed us, as your Lordship will observe by the Evidence appended to our Report, that although a Council resembling the Ministry in England would appear to him preferable in itself, yet under the existing circumstances of the country, he thought the simplest and most eligible mode of forming an Executive Council, would be merely to appoint to it persons of consideration, enjoying the public confidence, and to leave to the Governor the extent of his present responsibility. Mr. Caron would neither make office a recommendation nor a disqualification for sitting in the Council, but would deem the single good test to be the acknowledged merits of the individual.

24. Having thus described the various suggestions and opiuions that have been under our notice, we shall now proceed to state our own views on the subject of an Executive Council.

25. The earliest complaint which was made related, as we have already said, to the too great connexion alleged to subsist between the two Councils. On this point the Governor-in-chief has announced his intention to act upon the principle, that it is neither right, nor consistent with the wholesome separation and independence of the principal bodies of the Government, that out of the limited number of executive councillors in this Province several should hold offices under the Legislative Council and House of Assembly. The adoption of this maxim will, we presume, go to the extent of what is wished in the Province, for we do not suppose that any party would desire to render a seat in either of the legislative bodies incompatible with the office of executive councillor.

26. With respect to the presence of office-holders, in the Executive Council, no objection to it was urged by any of the gentlemen from whom we took the evidence appended to this Roport, nor, from what we can gather of the wishes of the Assembly, do we believe that in itself it would be objected to by them. On the contrary, by an Executive Council or Ministry, formed on the model of that of England, they appear to mean an executive Council composed in great part of office-holders; but then an essential feature in their plan is that the councillors should remain in office no longer than they continue in unison with the majority of their House, whereby they would virtually secure to themselves the nomination of all the chief officers of Government, and we doubt whether the presence of any great number of office-holders in the Executive Council would be acceptable to the Assembly, except upon these terms.

27. Our own opinion is, that although the holding of office under the Crown ought not to be a disqualification, yet the number of office-holders in the Council should never be considerable, probably not more than, on an average, one in four. It is to be remembered, that the Governor is at all times entitled to call upon any servant of the Crown for his best advice and assistance; and that in all matters, but more especially in those relating to his own department, this advice is given under the weightiest possible responsibility. The Governor also can make this advice available in his Council by calling an individual before it, and examinig him as to the matter in hand. In a numerous Council it will probably be found convenient, and even necessary, to have some office-holders, but we do not consider their presence as indispensable, because, in the first place, they cannot be admitted, as in England, to take off responsibility from the highest executive authority, and because, secondly, we do not think it desirable that the heads of departments should be overmuch engaged in political controversies, which might not only render frequent changes of them requisite, but retard in other ways the ordinary business of the country. We should further say that there are some functionaries whose duties are such as to render it inexpedient to place them in the Executive Council, such for instance as the Civil Secretary of the Governor and the Attorney-general. The former was introduced into the Council by Lord Dalhousie in 1820, to sit by virtue of his office; but the measure does not seem to have been repeated. The close connexion of the Civil Secretary with the Governor appears to us to furnish obvious reasons against his belonging to the Council. And with respect to the Attorney-general, as he is in the matter of public prosecutions, and in other duties, in some degree the servant of the Council, it would be somewhat incongruous that he should sit in it also.

28. After these preliminary remarks we shall submit, as succintly as we can, our propositions on the Council.

29. We recommend that it should never consist of a greater number than 15, nor (for any period exceeding six consecutive months) of less than nine. It seems prudent that this interval of six months should be allowed to obviate any difficulties which might be experienced in filling up the Council on the occasion of any change of its members.

30. We would advise that the councillors should be appointed, in the name of His Majesty, by the Governor under the Great Seal of the Province, and enter at once into all the rights of their office, but subject to confirmation or disallowance by His Majesty within a limited time, say one year.

31. For reasons before mentioned, we think there should be no exclusion of persons holding office under Government, but that in practice it would probably be expedient that the number of that description should not exceed one fourth of the whole Council.

32. We further submit that, amongst the members of Council, there should be no distinction as to powers, functions or form of appointment, excepting that members holding paid offices under Government should not receive salary as councillors.

33. We consider it desirable that the remainder of the councillors should be paid equally, not less than the present amount of £100 per annum, and that it should be proposed to the Assembly to provide for this in any permanent grant hereafter to be made by them; but should the Assembly object to the payment of an increased number of executive councillors, we scarcely think these salaries should be made an indispensable condition in any proposal

that may be submitted to them on the basis of our first Report. If all cannnot be paid, the junior members might be required to serve without salary, in like manner as the office-holders.

34. We would suggest, although of course no imperative rule can be laid down upon the subject, that in the Executive Council there should be at least one, and not more than three ligislative councillors; at least two, and not more than five members of the Assembly; some gentlemen belonging to the class of landed proprietors, and others connected with commerce; one individual at the least of the legal profession; and that of the persons chosen for the Council it should be endeavoured to take a moderate proportion from different districts of the Province, though it will be necessary that a number sufficient to ensure at all times a quorum should be resident at or near the seat of Government.

35. We think that the appointment of the councillors should not be made to last during good behaviour, nor require for its termination the assignment of any fault, but that the Governor should be able to remove them whenever, on general grounds, he might deem it advisable, reporting his reasons without delay to the Secretary of State.

36. It has been objected, that to invest the Governor with this power would give the Assembly a motive to prefer repeated addresses to him until they could procure the dismissal of any Council they might not approve; and in support of this view it is argued that the Assembly has not an equal inducement to such a course at present, because the Governor's power being as yet limited to suspending officers who are in his opinion unfit for His Majesty's service, he could not suspend any one in consequence of an address from either House, containing no allegation, further than that the person had not its confidence. We must confess that to the majority of us this argument is not convincing. The office of councillor being a political one, we do not understand why political unfitness should not be a sufficient ground for a Governor to assign for suspension under the terms of his present commission: nor can we conceive that if the Assembly were inclined to make such applications as are supposed in the objection, they would be restrained by the necessity of a reference to England. The only difference would be, that the Governor, instead of replying directly to the applications, would be obliged to answer that he would forward them to England; whereupon renewed complaints, whether justly, or not would be made, of being governed by a power 4,000 miles off, and of the interference of that power in the domestic concerns of the Province,

37. We would propose the following to be amongst the rules of the Council:—

That during the presence of the Governor at the seat of Government there shall be stated days, not less than two in each month, on which the Council shall assemble without a summons:

That it may be assembled by the Governor by special summons, as often and at such places as he may think fit:

That at each meeting of the Council every member shall be entitled to attend; and that in the issuing of summonses, no limitation shall be established save that rendered necessary by distance or difficulty of communication:

That five shall be a quorum:

That upon the internal affairs of the Province each member of the Council shall have the right of suggesting measures, or tendering advice, whether or not upon subjects introduced by the Governor; but that no measures affecting the relations of the Province with the Empire shall be discussed unless they are brought forward by the Governor.

That the Governor have the power of adjourning any question or subject of discussion, the fact of his doing so being noted on the proceedings:

That the Governor have the power of acting in opposition to the majority of the Council; but that when he adopts that determination, he shall enter it on the minutes, assigning his reasons or not as he may prefer:

That the members of the Council have the privilege of recording their dissent on the council books, with or without their reasons as they may prefer.

That no meeting of Council shall be competent to act as such without the presence of the Governor, but that he shall have the power, as now, to refer business to it as to a committee in his absence, nothing done in that mode taking the form of a proceeding of Council, until ratified when the Governor is present:

That the foregoing rule shall be so far qualified in the Governor's absence from the seat of Government as to authorize him to ratify, by letter or by any other mode that may be appointed for the purpose, any proceedings of Council which could not, without injury to the public service, be delayed:

That whatever number of members of either branch of the Legislature may be included in the Executive Council, all communications to the Provincial Parliament shall continue to be made, as now, by message:

That no oath of secrecy shall be taken, and that the members of the Executive Council shall not be considered solemnly bound to secrecy, except on occasions when the Governor may summon them expressly to form a council of secrecy, or resolve any meeting into such a council:

That before any recommendation of an appointment to the Legislative Council be sent to the Secretary of State, the Governor shall acquaint the Executive Council with it, and receive any observations they may make upon it; which observations, whether made collectively by the Council, or individually by any member or members of it, shall be transmitted to England at the same time with the recommendation of the Governor.

38. Although it must necessarily be left very much to the discretion of the Governor, we think that he ought to consult his Council far more frequently than heretofore on important acts of Government.

39. In explanation of some of the preceding suggestions, we would observe that we have advised a strict adherence to the communication with the Legislature by means of message, because, although we think that an Executive Councillor, sitting in either House, might reasonably be expected to explain and defend the measures of Government, as benig well acquainted with them, and friendly to the administration, yet it would be most objectionable that he should come to be regarded or acknowledged as an organ of the Government in the Legislature. The relaxation which we have recommended of the rule of screcy will enable Councillors to avow their personal opinions, and thus to remain far longer connected with a Government with which they might in the main concur, than if they were compelled on all occasions to suppress their dissent from measures to which they had not agreed. If a member of Council found himself in a state of continual difference with the Governor, he would, it is to be presumed, resign voluntarily; or if he placed himself in manifest and systematic opposition to the administration, he must unavoidably be removed, even if his own sence of propriety did not lead him to retire; but we do think it very desirable that, in isolated cases of difference of opinion, and especially in cases where no provincial authorities are competent to decide, valuable Councillors should not be reduced to choose between separating themselves from a Government of which they approve the general policy, or else bearing a share of what to them must appear the odium of measures which they had opposed. Seeing the wholesome tendency of allowing in this manner public opinion to weigh fairly upon the advice given by different members, we think that the Governor should resort very sparingly to his power of binding the Council to secrecy, although the occasions must be frequent where there would be need in the Councilliors of that general dircretion requisite to the character of every public functionary.

40. We apprehend that the Council must for the present remain charged with the duty of auditing accounts, as the erection of any other board of audit, or the creation of an auditor-general, is properly a subject for the consideration the Legislatnre; but it seems presumable that if the existing dissensions did not offer such considerable impediments to public business, some other system of settling the accounts of the province would be established by law.

41. There can be no hesitation in pronouncing the appellate jurisdiction entirely unsuited to the Executive Council, and full of objection. As the 84th section of the Constitutional Act conferred this jurisdiction on the Council, we are aware that it cannot finally be taken away without the sanction of the Imperial Parliament; but we would not recommend the interposition of that authority, further than may be necessary to admit of an Act on the part of the Legislature in this Province. A Bill, altering the system of

judicature, passed the Assembly this year, and was rather suspended than rejected in the Legislative Council, which would have created a regular court of appeals, to consist of four judges, invested likewise with a criminal jurisdiction This circumstance shows that the attention of the Provincial Legislature is alive to the subject; and we think it far preferable that His Majesty should be empowered to assent to any Act which may hereafter be passed in the Province, than that the British Parliament should itself enact a new law on the mode of determining appeals in Canada. If our own opinion were required, we should say that, as far as the decision of appeals alone is concerned, it would be sufficient to appoint one judge to try all appeals at Quebec and Montreal, with the provision that either party to an appeal should be at liberty, on its being set down for hearing, to require that it should be heard before associates or assessors, in which case the Governor should appoint one or two of the judges either of Quebec or Montreal to be the associate or associates, assessor or assessors, *pro hac vice*, of the judge of appeal. Although, however, this is the most eligible measure which would occur to us if the judicature of the Province remained in other respects as now, we are far from wishing to pronounce any opinion on the different arrangements which might be found convenient in a general remodelling of the judicial system; nor, as we have already said, do we recommend that our proposal, or any other, should be acted upon, unless it originate in the Legistature of Canada. Seeing the vast importance of the courts of law being so framed as to possess the confidence of the public, and to suit the wants and habits of the country, there is perhaps no matter in which it is more proper to observe the salutary maxim of not interfering unnecessarily in the domestic concerns of the Province.

We have, &c.

(Signed) GOSFORD.
CHAS. EDW. GREY.*
GEO. GIPPS.

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* I have affixed my signature to this Report. subject to a statement of my difference of opinion, which is delivered to the Secretary to be entered upon the Minutes, and which, it has been agreed.

(Signed) *Chas. Edw. Grey.*

4 May, 1836.

A STATEMENT of Sir *Charles Grey's* Difference of Opinion upon the Third Report of the Commissioners.

1. My principal objection to our present Report is, that having in the 12th, 14th, 16th and 17th paragraphs shown very forcibly and truly that an Executive Council removable at the will of the Assembly would be incompatible with the subordination of the province to the Empire, we recommend measures in the 30th, 32d, 34th, 35th, 36th and 38th paragraphs, which, taken in conjunction with the recommendation of the majority of the Commissioners in our First Report, would create the institution we have decried.

2. None of the most eager advocates of the powers of the Assembly have claimed that the Executive Council should be expressly declared by any law, or by the instructions of His Majesty to be removable at the will of the Assembly; their terms are only that, in accordance with the pratice in England, there shall always be a responsible Council, possessing the confidence of the representatives of the people, by which I understand them to mean, that, 1st, The Executive Council shall give their advice to the Governor on all matters of importance. 2dly, That it shall be in the power of the Governor at any moment to remove the whole of them from office. 3dly, That the Assembly shall have means as effectual of urging the Governor to remove a Council by whose advice it is offended, as the House of Commons has in England. Now, our 37th and 38th paragraphs recommend that the Executive Council shall have the opportunity of offering advice on all important occasoins, to which I do not object; but our 30th, 32d and 35th paragraphs recommend that the selection, appointment, and whenever upon general grounds it may be thought advisable, the dismissal also of the Executive Council, should rest with the Governor; and if the recommendation of my collegues in the First Report should be acted upon, and the Government should be left with a civil list of only £19,300, at its disposal, as the Assembly has shown that it not only has the privilege of withholding supplies, but is much more ready to use it than our House of Commons is: I am unable to discern any concession in respect of the Executive Council which has been claimed by the popular party either in Upper or Lower Canada, which would not have been yielded by our Reports, or to recognise any other virtue which would be retained by the 12th, 14th, 16th and 17th paragraphs of our present Report, than that of having illustrated the straits to which, by the adoption of our own recommendations, a Governor would be driven between the demands of the Assembly and his duty to the Crown.

3. If the embarrassments of the province arising from the abandonment by the Crown of its right of disposal of the revenues of the 14 Geo. 3, c. 83, and the denial by the Assembly of any appropriations for the service of Government, cannot be relieved by an Act of the Imperial Parliament, I should deem it to be necessary that the Governor shoul' have the power of new modelling and reducing the executive and judical establishments, so as to make them square with the resources which are still at the disposal of the Crown; and for this purpose, I would sacrifice, amongst other things, all that might be dispensed with in the establishment of the Executive Council; but according to my apprehension it would be a mistake to suppose that in circumstances which imply an adverse disposition of the Assembly, and with those cramped resources, or in any other situation than that of being provided independently of the annual votes of the Assembly with an executive and judicial establishment, adequate to the circumstances of the Province, the hands of the Governor would be strengthened by retaining in them the thread of existence of the Executive Council. As long as he may stand in need of the annual vote of an unwilling Assembly, it seems to me that he would by those means be reduced to the situation in which it is so clearly shown in the Report that he ought not, as the Governor of a Province, to be placed.

4. The Executive Council is a creature of the prerogative, as the Governor is. To the Council of Governor Murray in 1763, both an executive and legislative capacity was given; but as the legislative authority was to be exercised only upon the contingency of a general assembly of freeholders being called together, and in conjunction with such assembly, and as that event did not take place during Governor Murray's time, his Council was essentially executive, though with the power of establishing such rules of conduct as it might be absolutely necessary to declare in a newly conquered colony, in which a great portion of the old French laws survived, but into which English law was also introduced. By the commission and instructions of Governor Murray, a negative or veto was given to the Governor in all cases whatsoever; and while he was left in the ordinary routine of executive business to act by his own sole authority, several cases were distinctly specified in which the power was to be exercised only "by and with the advice and consent of the Council." These cases were:—

1. The power to summon General Assemblies of the freeholders and planters.
2. To erect courts of judicature.
3. To build fortifications and furnish them with munitions of war; and again to dismantle them.
4. To dispose by warrant of public monies for the support of the Government
5. Subject to orders or instrucsions from the King in Council, to make grants of such lands as it should be in the power of the Crown to dispose of.
6. To appoint fairs, markets, ports and barbours.

There were some other cases in which it was not expressly enjoined by the Commission, that the Governor should act only with the consent of the Council; but which were placed in such juxta-position with the case above specified that it might be inferred they were considered as matters on which it was very desirable the advice of the Council should be taken, and in some of these the instructions explicitly enjoined the Governor, though the Commission did not, to act only with their consent; such were the appointment of judges, the collation to ecclesiastical benefices, &c. The principle upon which the distinction was made between the Acts which did, and those which did not require the consent of the Council seems to have been this. Whatever the law clearly commanded to be done, the Governor was left to execute by his own sole authority; but in the most weighty of those cases in which occasion might arise for the exercise of the

prerogative, by which I mean here the discretionary power of the Crown to do what no law commands nor can compel the Crown to do, the Governor was expressly directed by the Commission to act only with the consent of the Council; and in some other instances of this nature, though their consent was not made necessary, sufficient grounds were given for resorting to, or calling for their advice.

5. The difficulty of organizing a Legislature by the authority of the Crown alone having been perceived, and that the colony was not in a fit state for the institution of an Assembly of the people, the Imperial Statute of 14th Geo. 3, c. 83, was passed, by which the King was empowered, by the advice of the Privy Council, to appoint a Council for the affairs of the Province; which Council, or the major part of it, should have power, with the consent of the Governor, to make ordinances for the good government of the Province; and by the instructions to Governor Haldimand, which directed that any five of this Council should be competent for all affairs except legislation, the Crown reconstituted an Executive Council Governor Haldimand, however, having adopted the practice of selecting such persons as he chose to constitute this Executive Council of five, received additional instructions to the effect that although he was at liberty to proceed in Council when five only were present, yet that he must summon all the members of the Council who should be resident within convenient distance.

6. The Act of 31 Geo. 3. c. 31, s. 34, which established the existing form of Legislature, provided that the Governor, together with such Executive Council as should be appointed by His Majesty for the affairs of the Province; should be a Court of Appeal, subject to such further or other provision as might be made in that behalf, by any Act of the Legislative Council and Assembly of the Province, and assented to by His Majesty, Lord Dorchester's commission and instructions gave the same power which other Governors had possessed of suspending from office those even of the officers of the colony who held their appointments directly from the Crown, but only for just cause and unfitness for His Majesty's service; and the power of final dismissal was retained by the Crown. The commission of the Governor to this day qualifies in the same way the power of suspending those who hold office directly from the Crown.

7. It will be perceived from what has been stated here, and in the body of the Report, that the Executive Council of Lower Canada has always been appointed, and that the provisions of the Imperial Statute of 31 Geo. 3, c. 31, require it to be appointed by the Crown, and that the members of it cannot at present be suspended by the Governor from office, except on the ground of unfitness for His Majesty's service; that by the same statute, the Executive Council so appointed is the Court of Appeal for the Province; that originally its consent was required in most instances of the delegated exercise of the prerogative; and that there are several important Acts of Government in which that consent is at present required in practice, such as the granting of Crown lands and making certain regulations as to commerce. I would add, that if it were well constituted, it would seem to me that very salutary effects might arise from its having the opportunity of offering advice at least, upon some other occasions which grow out of the changes which have taken place in the institutions of the Province, since the original establishment of an Executive Council. I mean, principally the intercourse and relations of the Governor with the Assembly and Legislative Council, by answers to addresses, by messages, and by the giving or withholding assent to bills. In one word, I think the Governor should always have the advice of some persons appointed by the Crown, and not dependent on the Assembly in matters which may affect the relations of the Province with the Empire. For all these reasons I would retain ultimately in the institutions of Canada an Executive Council, of which the members should be appointed and removed by the Crown, and should be liable to be suspended by the Governor only for misconduct; but I would empower the Governor to act in opposition to their advice when he should think fit to do so; and in point of numbers a very limited Council of this sort would be sufficient.

8. It is not, however, without reason, as it appears to me, that representations are made of a more numerous and more open Council being required for advising the Governor as to the internal affairs of the country. It might very much conduce to the general satisfaction of the Province, if all parts of it, and all professions and classes of men, felt that they had easy channels of communication with the Governor through his Executive Council; and if committees of such a Council, in the intervals between the sessions of the Legislature, were to be employed in digesting plans of legislative improvement, which would enable the Governor, at the opening of each session, to take a creditable and advantageous position in the progress of reform, and to preoccupy the minds of the legislators with sound matter for deliberation, to the exclusion of crudities. I would recommend, therefore, that in addition to the Executive Council appointed by the Crown, the Governor of Lower Canada should have the power of appointing any number of Executive Councillors for the period of his own government, but no longer; and that not more than five out of the whole body of the Council should be summoned to any one meeting for the dispatch of ordinary business. By having different members upon different occasions, I should expect the hostility of the Assembly to be dissipated and avoided; and I avow that I aim at this object for the reasons which would make any Council which should be removeable by the Assembly so objectionable an instrument of Government in a Province; and which reasons are so well stated in the 12th, 14th, 16th and 17th paragraphs of the Report.

9. All parties agree in deeming the Executive Council to be a bad court of appeal. The judges of the court for the most part are not lawyers, and have little technical knowledge of the laws they are called upon to interpret. They must have occasionally to sit in judgment upon grants of Crown lands made by themselves, or on other disputes arising out of the acts of government; the two chief justices, of whom one at least is not of the Executive Council, and who sits therefore under a provincial statute, not very easily to be reconciled in this respect with the 31 Geo. 3, c. 31, s 34, decide alternately the appeals from Quebec and Montreal, the one sitting in Judgment on the decisions of the other, so that on points of law on which they differ the chief justice of Montreal gives the first judgment at Montreal and the final one at Quebec; the chief justice of Quebec gives the original judgment at Quebec and the final one at Montreal, I should think it very desirable, as conducing to harmonize the institutions of the two Provinces, to form one Court of Appeal for Upper and Lower Canada, which should sit twice a year at Quebec, at Montreal and at Toronto; but at present I content myself with recommending that the King should be empowered to appoint one or more persons to constitute a Court of Appeal for Lower Canada, without their being of the Executive Council. I do not feel the objections against applying, for this purpose, for an Imperial Act of Parliament as strongly as they are stated in the 41st paragraph of the Report, because where the inconvenience is created by an Imperial Statute, I know no other constitutional or legitimate mode of remedying it. I consider that it would be an unconstitutional, irregular and dangerous innovation to encourage a practice of having bills introduced in the Assembly here which it exceeds the lawful powers of the Provincial Legislature to enact, in order that the chance may be taken of the King's Ministers obtaning an Act of the Imperial Parliament to make it lawful for His Majesty to give the Royal assent to the unlawful bill. I am aware that the Imperial Statute of 1st W. 4, c. 20, is in some degree a precedent for such a practice, but it does not appear on the face of that Act that any unlawful bill had actually passed the Council and Assembly, and was awaiting the Royal assent; if that was the case the precedent appears to me to have been a very bad one; and it may give some notion of the consequences which may be expected, if it is repeated, to mention that a bill for making the Legislative Council elective was introduced into the Assembly last session, is now completely ready to be presented again in the next session, and will certainly pass the Assembly if the practice is countenanced of allowing measures, to the enactment of which the Imperial Parliament alone is competent, to originate in the Provincial Assembly or Legislative Council.

10. As it would be necessary to obtain an Act of the Imperial Parliament for the alterations which I have recom-

mended in the Executive Council and Court of Appeals, those also which are required in the Legislative Council might be included. It is certainly desirable that the members of it should be enabled in some circumstances to resign their seats; and it would elevate the character of the Council if both qualifications and disqualifications for a seat in it were established.

11. The precise measure, therefore, which I should wish to have been recommended by our present Report is, that a bill should be introduced in the present session of the Imperial Parliament, to be intituled, "An Act for making certain Alterations in the Legislative and Executive Councils of the Province of Lower Canada;" and that by this bill it should be enacted,

1. That it shall be lawful for any member of the Legislative Council to resign his seat, and for the Governor provisionally, and for His Majesty finally, to accept and confirm the same.

2. That every member of the Legistative Council, upon the opening of each session of the Provincial Parliament, shall make a solemn affirmation, that after allowing for the payment of all his just debts, he is lawfully possessed of property to the amount of £5,000, sterling, or of an income for life of £500, sterling by the year.

3. That no member of the Legislative Council shall be capable of holding any office or appointment of emolument at the pleasure of the Crown.

4. That a conviction of any fraudulent crime or misdemeanor shall be an avoidance of the office of a legislative councillor.

5. That in addition to the members of the Executive Council who have been or hereafter may be appointed by His Majesty, it shall be lawful for the Governor of Lower Canada to appoint such and so many persons as to him may seem fit to be members of the Executive Council for the term and period of his own government, and no longer; and that by the appointment of the Governor there may be four or more full meetings in the year of all the members of the Executive Council, but that on ordinary occasions not more than five members shall be summoned to, or shall attend any meeting of the Executive Council.

6. That the Executive Council shall cease to be a Court of Appeals, and that notwithstanding the 31 Geo. 3, c. 31, s. 34, it shall be lawful for His Majesty to constitute a Court of Appeal for the Province of Lower Canada, by appointing one or more persons to be a judge or judges of such Court of Appeal, without being members of the Executive Council.

These would be all the arrangements which would seem to me to require the sanction of an Imperial Statute. The minor ones that have occurred to me, and of which some are mentioned in the Report, might be left to the judgment and discretion of the Governor, or at most would require to be pointed out by the instructions, or by the commission of the Governor.

12. It seems to me to be an object of great importance that before the next session of the Provincial Parliament the Governor should be enabled to meet them with a statement which would show that neither the Governor nor the Commissioners had been idle, but there had been some vigour of administration and progress of reform. I conceive it to be quite within the reach of the Commissioners, and of His Majesty's Ministers, to enable the Governor to state,

1. That by the measures which we have recommended in our Second Report, the arrears due for the service of the civil government have been discharged, and that the Government is provided with the means of defraying for the future the necessary expenses of the executive and judicial branches.

2. That the measures which I have now ventured to recommend, and by the steps taken by the Government in consequence of them, the Legislative and Executive Councils have been put upon an improved and satisfactory footing.

3. That by measures which I have now ventured to recommend in our next Report, the management of the wild lands and forests, and of the King's domain and other Crown property, have been regulated and improved.

4. That the Governor is prepared to recommend to the Legislative Council and Assembly a bill for establishing, for a limited term, a civil list adequate to all the necessary expenses, of the executive and judicial branches of Government, and for placing, during the same term, at the disposal of the Provincial Legislature the net proceeds of all Crown property, and all other monies payable to the Crown which arise from Lower Canada.

5. That the Governor is prepared to recommend another bill for making new divisions of the Province, and for erecting the same into municipal districts; or if that measure should not be approved by the Legislative Council and Assembly, for appointing lieutenants of the present districts, and for giving to the Court of Quarter Sessions in each an assistant barrister and a certain civil jurisdiction, and a power of levying a tax on property in uncultivated lands, to be expended in the making of roads.

13. If the Government could be placed in this position, and elevating itself above all party feelings; if a thoroughly impartial, firm and quiet conduct were to be pursued; if contented with seeing that the existing laws were throughly carried into execution, and the judicial tribunals were upheld in independence and security, it should still lend itself willingly to assist the two Houses of Legislature in making new laws, but should never let its feelings become so engaged in this task as to take any offence if new laws were not made. I should entertain only one apprehension of danger or of serious difficulty in the future conduct of the affairs of this Province. There would certainly be irritation, discontent, clamour, and abuse, and no human arts will prevent these in Canada for many years to come; but if these were disregarded, as they ought to be both here and at home, the worst that need result from any differences of opinion amongst the three branches of the Legislature would be that old laws must serve till new ones could be agreed upon.—From this description of the prospect I have made one exception. It is religion; an element which, in its volatile state, is beyond the control of governments, which is not at present in a state of greater action than is salutary and possibly may not be inflamed, but which, if it ever should become so, whether by the oppression of the Protestant or the Catholic Church, will be the signal for general confusion.

(True extract from the minute of proceedings of May 5, 1836.)

(Signed) *T. Fred. Elliot.*

EXTRACT of the MINUTES of PROCEEDINGS, 5th May, 1836.

Sir *George Gipps* desired the following Entry to be made.

1. It is my desire to place on the minutes of our proceedings a few remarks on the Report respecting the Executive Council which we are now about to forward; and as I feel the necessity of replying to part of the dissent that has been recorded by Sir Charles Grey, I will commence by so doing.

2. In his first paragraph Sir Charles omits to say that the objections in the passages he cites from the Report were against a council of control, removable at the will of the Assembly: to a council of advice, the arguments used in paragraphs 12, 14, 16, and 17, would apply with very diminished force.

3. Our objections against a council of advice, removeable at the pleasure of the Assembly, are mentioned in paragraph 15, which is not one of those cited by Sir Charles; and they amount chiefly to this, that the institution of such a council, if avowedly made removeable at the pleasure of the Assembly, would soon lead to a demand for investing it with greater powers. On the subject of this paragraph, connected, as it is, with the demands of the Assembly of Upper Canada, I shall offer some further observations before I conclude. (*See* par. 11, *infra*.)

4. It is certainly true that, under the arrangement recommended in the Report, the Assembly might, as stated by Sir Charles, stop the supplies to enforce a change in the Council; but they might do the same under any other constitution of that body, as, in fact, they have now done in Upper Canada under the existing one: and it is scarcely, I think, fair to object to any proposal whatsoever, that it does not preclude the Assembly from seeking their ends by a stoppage of the supplies so long as the power of stopping them is allowed by the constitution of the Province to that body. It might, in a similar way, be objected to Sir Charles's own plan, that if the majority in the Assembly should not approve of it (and of their liking it I confess I see little chance), they might stop the supplies until it were altered. The form of council which we re-

commend is not intended to prevent their stopping the supplies, but to take away one reasonable cause for their doing so.

5. I wish distitnctly to point out that we have recommended a council of advice, and not one of control, and that we propose to give the power of making changes in it, not to the Assembly, but to the Governor; it is true, indeed, that he may occasionally exercise this power in the hope of pleasing the Assembly; but he must be a weak man indeed if he continued to do so, after finding that it was productive of no good, and still weaker if he allowed himself to be led by his Council into measures that were contrary to his duty. I beg here distinctly to repeat, what I have often advanced in our deliberations, that if we are to retain any government over Canada, there must be some point at which our power is to be brought to bear on her. I wish to leave the management of her internal affairs, as far as possible, to her own Legislature; but the distinction between national and provincial Government cannot be entirely done away with.

6. The only other part of Sir Charles Grey's dissent to which I fell it necessary to reply, is that from the 10th paragraph to the end of it, which relates to the introduction of a Bill into the Imperial Parliament, to divest the Executive Council of the functions of a Court of Appeal, and to make some slight modifications in the constitution of the Legislative Council; and I must here beg to recall to the recollection of Sir Charles, that I not only expressed my opinion with respect to the latter, in the Minute which went home with our last Report, but that I made a specific proposition, in writing, 14 days ago, that a letter should be written to the Secretary of State by the Commissioners, recommending a measure of the sort, though not pressing it as to time. I shall now renew that proposition, in the hope that the letter may be forwarded by the next packet from New York; and in the mean time, with respect to the Court of Appeal, I will only say, that though I agree with Sir Charles in thinking that the appointment of a new judge to that court would be an advantageous measure, it is one so entirely of an internal nature, that I doubt whether it should be done under an Imperial statute.

With respect to Sir Charles's proposition for the Legislative Council, I will only remark, that to exclude, without distinction, every man from it who might hold an office under Government, would seem needlessly to cramp it; and that to make a man swear to his qualification, at the opening of every session, might appear vexatious and distrustful.

7. The remaining observations which I have to offer will have reference to the Report itself.

In it we have recommended that the Executive Council shall be increased from nine to fifteen, contrary to an opinion which I expressed in the Minute which accompanied our last Report; and I therefore am desirous of explanining the reasons which have induced me now to acquiesce in the recommendation. I am still of opinion that a council of seven, or even of a smaller number, would be a more efficient instrument of good government than a council of fifteen; but as an increase in the number of its members seems pretty generally to be desired in the Province, I think it can scarcely be wrong, in such a matter, to yield to the public wish.

It is, moreover, worthy of consideration, that, as there is no class of persons in Canada who can afford to devote their whole time to political affairs, unless adequately paid for it, few, if any individuals, are to be found who would remove from their established homes for the sake of a seat in the Executive Council; that, consequently, the members of a small Council must of necessity be chosen almost exclusively from amongst persons resident at or near the seat of Government, and that it is only by adding to their number that persons whose interests lie in the remote parts of the country, or even in the city of Montreal, can be introduced into the Council.

If it were absolutely necessary to have an unanimous Council, this increase to its number would be, I think, extremely objectionable; but, as I apprehend it will be found necessary, for some time to come, to have one of a mixed political character (though avoiding the extremes of either party), the difference of opinion amongst the members may perhaps be found less objectionable in a large Council than in a small one.

8. In this, therefore, as in every other part of the Report, I now concur; and in the few other observations that I shall now make, I beg to be understood as in no way attempting to controvert the Report, but only to express my indivdual opinion on some points in a more marked way than is done in it.

9. We have, in the 38th paragraph, stated that we think it must still be left to the Governor to decide whether he will or not consult his Council on any occasion where he is not now positively repuired to do so; and, considering the very difficult position which the Governor must continne for a long time to occupy in Lower Canada, I think it might be wrong to take away from him this discretion; at the same time, however, I feel that there are particular acts of Government in which it is desirable that he should consult them, though such has not hitherto been the practice, particularly in all appointments to or removals from office, and on all communications to the Legislature, except such as relate only to business of routine.

10. With all that is said in the Report of the impossibility of making the Council responsible for the acts of Government, and at the same time removeable by the Assembly, I entirely agree; and the reasons for it are so plain, that perhaps no farther development of them is necessary; nevertheless, as the subject is such an important one, I will venture to add the following argument:

Besides his duty to the people of the Province, which is analogous to that which the King owes to his people, the Governor has a duty or responsibility which the King cannot have, a responsibility, that is to say, to a superior power, beyond the limits of the community which he governs. It it were possible to draw a line of distinction between these two kinds of responsibility, the former might perhaps be transferred to an Executive Council; but the latter could not, at least it would be impossible, without producing confusion, to transfer it to a body existing at the will of, and punishable to the extent of dismissal by, the local Legislature. If there be any doubt of this, let us suppose that in either of the Canadas the two Houses of Legislature were to pass a bill to render the Legislative Council elective, or to abolish the land company: with what colour of justice, I would ask, could the responsibility of the Governor, in giving or withholding his assent to it, be transferred from himself to his Council? If he assented to the bill, they would be punished for it by the authorities at home; if he refuse his assent they will be punished for it by the authorities in the Province; and in the same way it appears to me that punishment would hang over them, from one side or the other, as often as any question arose respecting the alteration within the Province of any Imperial statute, or the maintenance of the relations between the Province and England as the head of the Empire, or the preservation of the due perogative of the Crown.

11. When I consider the distance at which our Report is to be read from the country to which it relates, and the difficulty of affording explanations across the Atlantic, I am led to fear that we have not, in the 15th paragraph of our Report, explained with sufficient clearness the difference which exists between the demands of the Houses of Assembly in Upper and Lower Canada.

In Lower Canada the demand is for an absolutely responsible ministry, that shall conduct the affairs of the country, and be responsible to the House of Assembly for the measures of Government in the same way that the ministry is responsible at home; but in Upper Canada they have as yet only asked that the Council should be made more efficient, and the Governor forced to consult it more frequently, leaving to him the power of overruling it, and in cases where he may do so, attaching to him the sole responsibility as at present. These demands may appear to go very little farther than our own recommendations; there is, however, I apprehend, this difference, that whilst we think it only desirable that the Executive Council and the House of Assembly should be, as far as possible, in political harmony, they look to it as an indispensable condition; and what such an indispensable condition would lead to we have endeavoured to set forth in the Report (par. 15.)

In the demands of the Upper Province there is also one feature which we have omitted to notice. In the letter which was addressed, on the 4th of last March, to the Lieutenant-governor of Upper Canada, by the six seceders from his Council, the following passage occurs:

"With the exception of matters of so weighty or general a character, as not properly to fall under any particular department, and therefore fittted for the deliberation of the Council collectively, it is recommended that the affairs of the Province be divided into departments, to the heads of which shall be referred such matters as obviously appertain to them respectively."

This recommendation was evidently made with a view to the model of England, which has so often been appealed to in the course of the argument on the subject in Upper Canada; and if the arrangement had been permitted, an administration would, I apprehend, have been established in lieu of a Council.

(True extract from the minutes.)

(Signed) *T. Fred. Elliot.*

SUPPLEMENT TO THIRD REPORT.

Quebec, 12th May 1836.

MAY IT PLEASE YOUR LORDSHIP,

With reference to the suggestion in the 41st paragraph of our Report, dated the 3d instant, that an Act should be passed to authorize the Legislature of Lower Canada to alter the constitution of the Court of Appeal notwithstanding any thing to the contrary in the Act of 31 Geo. 3, c. 31. we think it desirable to express our opinion that, in the event of any Bill to accomplish that purpose being before Parliament, or any other Bill relating to Canada in which it could be conveniently done, a clause or clauses should be introduced to effect the following objects in respect to the Legislative Council:

First, To enable members, who may be desireous of retiring from the Legislative Council, to resign.

Secondly, To empower His Majesty to remove from the Council any member who may have been convicted of any misdemeanor or other offence in a court of record, or may have become insolvent.

We did not include these objects in our recent Report, because we wished to confine ourselves in it to its proper subject the Executive Council; and with the same view of rendering each of our regular Reports as far as possible complete and separate on some one branch of inquiry, we shall probably think it right to recur to our present suggestions in any future communication on the Legislative Council. But seeing that on the one hand we are not prepared to treat of that subject generally until we shall be acquainted with the policy which His Majesty's Government, or the Imperial Parliament, may adopt towards Canada in consequence of recent events, and that on the other hand our opinions are fixed independently of temporary considerations, on some points with which it may be convenient to deal, at the same time with a recommendation we have already made relative to the Executive Council, we have briefly addressed your Lordship on the present occasion, in order to put His Majesty's Government in possession of so many of our views as it is likely will be thought fit to be brought before Parliament simultaneously

We have, &c.

(signed) GOSFORD.
GEORGE GIPPS.

I have delivered to the Secretary a statement of the reasons which make me reluctantly decline to add my signature to those of my colleagues

(signed) *Chs. Edw. Grey.*

15th May 1836.

EXTRACT of PROCEEDINGS on 14 May 1836.

Sir *Charles Grey* produced the following Statement.

A Statement of the Reasons which prevent Sir Charles Grey from affixing his signature to the Letter of the Canada Commissioners to Lord Glenelg, dated 12 May, 1836.

1. It appears to me to be an unnecessary, inconvenient and otherwise objectionable mode of proceeding, that recommendations of particular measures on which the Commissioners have made up their minds, and which together with a part of the measures recommended in one of their Reports, they think ought to be provided for by an Act of the Imperial Parliament, should be kept out of the Report, in order that, immediately afterwards, they should be made the subject of a separate and brief communication in what is called, in our minutes, a letter. All our Reports commence and end in the form of letters; but those communications to the authorities at home, which we understand by the latter term, have most of them been upon unimportant and trifling matters which it would be idle to produce as part of the proceedings of the Commission. All our recommendations as to the affairs of Canada, therefore, in our public and joint character of Commissioners, ought, as it seems to me, to be distinguished in the form of a series of numbered Reports, from our official letters upon trivial matters, which do not form any part of those affairs.

2. By the reference in this letter of the Commissioners, to the recommendation contained in the 41st paragraph of their Third Report, that the Imperial Parliament should commit entirely to the Provincial Legislature the task of constituting a new Court of Appeals, I am precluded from signing the letter without repeating, more distinctly than before, in my dissent from the Third report, and at greater length than would be convenient on this occasion, my objections to that recommendation, and I trust that a copy of the "*Bill for amending the Judicature of the Province,*" to which reference is made in the 41st paragraph of our Third report, will be sent home with the present letter of the Commissioners for the informatiou of His Majesty's Ministers. My copy of the Bill begins by "abolishing" the Court of Appeals provided by the Constitutional Act, 31 Geo. 3, c. 31, s. 34; it makes no provision for any Appeal to His Majesty in Council; it would render necessary the creation of four additional judges, without making any provision for their salaries, which would greatly add to the dependence of the Government on the Assembly; and it introduces novel, and, as it seems to me, unconstitutional provisions as to the manner of appointing all the judges in future.

3. As to the recommendations in the letter respecting the Legislative Council they are so nearly the same as those made by myself in the paper which I annexed to the Third Report, though I believe they originated with Sir George Gipps, that I have only to remark that I should apprehend some inconvenience would rise from adopting the words of the second recommendation, because, in some cases, such as trifling assaults, or incautious writings, amountiug to libel, acts which are in law misdeameanors, might or might not be a sufficieut reason for removing a legislative councillor, and then it would fall upon the Governor to report the case, and upon His Majesty's Ministers to determine at home the character and colour of the facts. For these reasons I should recommend the substitution of the words "any felony or fraudulent misdeameanor" As there is no system of bakrupt or insolvent laws in Canada, I think the insolvency of a legislative councillor would be better guarded against by my recommendation of establishing a qualification which should be re-affirmed at the opening of each session.

(signed) *Charles Edw. Grey.*

Sir George Gipps said, that with reference to the foregoing statement, he had only to express his wish that so much of the previous Minute of Proceedings on the 10th of May should be sent to the Secretary of State as related to the present question.

EXTRACT of MINUTE of PROCEEDINGS on the 10th May, referred to by Sir *Geo. Gipps*, in the foregoing Extract of the Minute of 14th May.

Sir Geo. Gipps brought forward a proposal to the following effect:

That with reference to the suggestion in the last report, of a measure to authorize the Provincial Legislature to alter the constitution of the Court of Appeals, a letter should be written to the Secretary of State, recommending that in any Bill introduced for that purpose, or in any other Bill relating to Canada, in which it could conveniently be done, a clause or clauses should be introduced to empower His Majesty to accept the resignation of legislative councillors, and to remove them if convicted of any offence in a court of record.

Sir Charles Grey desired to be informed, in what respect the proposed letter was considered to be different from a Report, and whether he would have the same opportunity which he had had in former Reports of expressing his difference of opinion.

Sir George Gipps answered, first, that Sir Charles Grey would, he supposed, have the same right of annexing an expression of dissent to this as to any other communication. Secondly, with respect to the distinction between a Report and a letter, that perhaps it resided principally in the name;

but that he thought it might be found convenient to distinguish (at least in name) between a brief and, as it were, incidental communication, such as the one he proposed, and the regular Reports of the Commissioners, which latter should, he thought, be as far as possible separate and complete on each branch of inquiry. The poposed letter would doubtless, to a certain extent, be in anticipation of a future Report, but it appeared to him better that it should be so, than that by now making a separate Report on the subject room should be given for the supposition that the Commissioners had no further recommendations to offer respecting the Legislative Council. Sir George Gipps added, that whether or not alterations of a more extensive nature are to be made in the constitution of the Legislative Council must, in his opinion, depend on the nature of the policy which in consequence of recent events may be adopted with respect to Canada by His Majesty's Ministers and the Imperial Parliamet; but that the measures now under consideration were recommended upon grounds independeut of any temporary or party politics- The difficulty that was felt in the case of the late Receiver-general was sufficiently known, and it did not seem to him improbable that one of a similar nature might arise respecting some of the present judges, whose removal from the Legislative Council is desired by both Houses of the Local Legislature, and was intended to have been effected by a Bill which passed both Houses in 1834.

Sir Chas. Grey expressed his objection to the transmission by the Commissioners, in their public and joint capacity, of what he considered to be, in substance a Report under the name of a letter, and said that he would state more fully his reasons for objecting to this course of proceeding, as well as to what was proposed respecting the Court of Appeal.

Lord Gosford was of opinion that it was proper to make to the Secretary of State such a communication as was proposed, and the secretary was instructed to prepare a draft accordingly.

(True extracts from the Minutes of 14th and 10th of May.)

(signed) *T. Fred. Elliot.*

CONTENTS OF APPENDIX

TO THIRD REPORT.

FOURTH REPORT.

QUEBEC, 17th June, 1835.

May it please your Lordship,

1. As we perceive in a pamphlet which has been published by the Agent for the Assembly of this Province, and distributed by him amongst the Members of the House of Commons, some statements of fact which, if correct, would, in our opinion, be very prejudicial to the character of the Commission, we lose no time in furnishing your Lordship with an answer to those statements.

2. At page 38 of the pamphlet occurs the passage which is subjoined :—

"When demands of arrears and supplies for the coming year were made to one of the most powerful Members of the House of Assembly, the following, amongst other statements, were made to him in order to induce him to consent to the grant. It was stated to him by one of the authorities, that if the money were given, the Commissioners could recommend, with some chance of success, all the plans of reform proposed by the Assembly ; that the Commissioners had already sent their First Report upon the finances of Canada to England, and that the Report was in every thing favourable to the demands of the Assembly."

3. With respect to the first of the statements above imputed to one of the authorities, it is plain that none of us could have made it without a gross violation of truth or duty. For no individual in the Commission has at any time entertained opinions favourable to "all the plans of reform proposed by the Assembly; and we were sent here to report impartially and independently on the various matters referred to us, not to barter the interests of the Province, or our own sincere views of them, for a grant of money from the Assembly. Your Lordship therefore will not be surprised to learn that no one of us ever made any statement of the kind alleged in the pamphlet ; neither did any one of us ever say that the First Report "was in every thing favourable to the demands of the Assembly." Your Lordship is well aware that we could not have said so with truth; but the fact is, that no such statement was made at all. The Secretary requests to be understood as participating in these denials, and in all the statements in the present letter.

4. After the passage on which we have made these remarks, the pamphlet describes the progress of the alleged negotiation, and asserts that upon the offer of certain terms by the Member of Assembly, the following answer was made by the "authorized person who spoke on this occasion." "Although your conditions are hard, they are somewhat better on the whole than the Bill of 1833 ; and such a Bill would be accepted with pleasure."

5. As this passage speaks of an authorized person, we beg leave to deny that either of the junior Commissioners, or the Secretary, ever suffered himself to be considered authorized to treat or contract engagements on behalf of the Provincial Government. This is a point on which each of us is satisfied, that by the whole tenor of his language in the Province, he has effectually guarded against the possibility of misconception. In the circumstances in which the Commissioners and Secretary were placed, they of course entered into frequent conversations with Members of the Assembly on the subjects respecting which they came to inquire, and as none of them are in the habit of keeping notes of what may pass in the intercourse of private life, it must be difficult for four persons to contradict, wholly, statements of what is supposed to have been said in that way by one of them ; but no one amongst us recollects any conversation of the general tenor of that which is set forth in the passage of the pamphlet which is now under consideration, and there are some stipulations mentioned in it, to which there is not one of us who could have expressed assent.

6. The next allegation in the pamphlet is as follows :

"It was then asked by the Member of the House of Assembly, 'How will you get the Legislative Council to accede to this Bill?' Mark well the answer of this high functionary : 'Oh, if they will not pass it, we will do without them, and will receive your money upon your address. Vote by address that which you would have voted by bill; you pass by the Council ; and we will receive and distribute the money cheerfully.'"

7. We are obliged to acquaint your Lordship that not only is the communication here ascribed to a high functionary, unfounded in any fact of which we are aware, but that it is in direct opposition to language which appears to have been held on the subject by one Member of the Commission. Your Lordship will see by a statement which has been entered on the minutes by that Member, and which at his request we enclose, that on the question being put to him in conversation, he distinctly expressed an opinion that if the supplies were granted by address, without the concurrence of the Council, they would not be accepted ; and no other Member of the Commission, or person attached to it, appears to have spoken on the question at all.

8. The next statement in the pamphlet is true.— It is correctly said that the Governor in Chief intimated his desire to enter into no communication on the question, whether or not an offer of six months' supplies by address would be accepted. What is not correct, is the statement that an opposite course was pursued with respect to the idea of granting by address the supplies for three years and a half; and your Lordship will not fail to remark that the second is the material allegation, without which the other is insignificant, except to show that the Governor acted with due circumspection.

9. These are, we believe, the principal statements of fact in the recent publication by the Agent for the Assembly of this Province. We are sorry to be obliged to contradict so many statements of that nature ; but this appears to us the almost unavoidable consequence of the method which has been adopted in the present instance. Whether or not the publication of private conversations appear to an individual permissible in other respects, there must always remain a strong objection in any considerate mind, owing to the uncertainty whether sentiments dropped in that unguarded way have been correctly understood, and can be truly repeated. The usual result is conflicting accounts by

the two parties concerned, and long and unprofitable controversies between them. It is needless to say that we shall avoid such disputes. We have deliberately, and on due recollection, conveyed to your Lordship the real state of the facts, and we should be very reluctant to trouble you with any further discussion of them. We will only observe, that if, instead of sending notes to be printed at a distance from the spot where alone they could be corrected or contradicted, any gentleman who might have wished to make a public use of any thing he gathered from one of the Commissioners, had frankly stated his object, we should have been happy to have saved him from the inacuracies which now, unfortunately, it has been our duty to point out to your Lordship. We have, &c.

(Signed) Gosford,
Charles Edward Grey,
George Gipps.

Extract of Minute of Proceedings on the 16th of June, 1836.

With reference to some of the allegations contained in a pamphlet published in London by the agent for the Assembly of Lower Canada, Sir George Gipps wished to enter on the minutes, that he remembered to have had frequent conversations with different Members of the Assembly respecting the supplies, and that on such occasions he invariably said, that if the Assembly wished to do themselves credit, they would give the whole of them unconditionally; but when it was said to him that there was certain salaries or charges which the House could not give without appearing to depart from their former resolutions, he (Sir G. Gipps) expressed his opinion that they might exclude these salaries or charges from their Bill of Supply, provided they gave them, as they then seemed inclined to do, by address at the end of the session; the essential part of the proposed proceeding being, that their Bill of Supply, though calculated on the principle of that of 1833, should not have the conditions of that Bill expressed on the face of it, or any conditions at all, but that the money should be granted "en bloc," or in the lump, as had frequently been done in former years, without even any specific appropriation of it; also that they should give by address, as a peace offering, at the close of the session, not (as is stated in the pamphlet) the money that they would have voted by Bill, but the sums which, consistently with their former resolutions, they thought they could not vote by Bill; it being notorious that the Legislative Council, so far from objecting to these salaries or charges, was most anxious that they should be defrayed.

He (Sir George Gipps) also well remembers that when he was asked whether if they gave the whole of the money by address, without passing any Bill at all, it would be accepted, he answered, he could not tell, but he thought not, and that it was proceeding that he could in no way think desirable.

He further remembers, that when the probability was mentioned of the Bill being thrown out in Council, he said, that if passed in the understanding that the remainder of the money was to be given by address, he thought the Council would not throw it out, but that, at any rate, they (the Assembly) should try; though he repeated over and over again, that the best thing they could do, even towards forwarding their own views, would be to give the whole of the supplies and arrears by Bill and without any condition at all.

Sir G. Gipps further stated, that he was anxious to declare in the most explicit manner that he never said, or authorized any person to say, that if the supplies were granted, the Commissioners could recommend, with some chance of success, all the demands of the Assembly; and that with respect to the Legislative Council in particular, he always told them, that even if no other objection existed he considered the dissensions arising from their difference of origin, to present an insuperable objection as such a measure would in all probability throw the whole authority in both legislative bodies into the hands of one party; and this argument or opinion was put by him so frequently and so pointedly, that he well remembers, on more than one occasion, the person supposed to have most weight in the Assembly expressed to him his conviction "that the Commissioners did not intend to give them an Elective Council," and therefore he (Sir G. Gipps) thought he had reason to feel surprised when, on the publication of their instruction in Upper Canada, so violent a cry of disappointment was raised by the Assembly. (True Extract.)

(Signed) T. Fred. Elliot.

Extract of Minutes of Proceedings on 16th June, 1836.

I beg to express my concurrence in this communication on the statements recently published in London by the agent for the Assembly of Lower Canada.

(Signed) T. Fred. Elliot.

(True Extract.)

(Signed) T. Fred. Elliot.

FIFTH REPORT.

SEMINARY OF MONTREAL.

QUEBEC, 24 October, 1836.

May it please your Lordship,

1. IN reference to the 54th, 55th, 56th, 57th and 58th paragraphs of your Lordship's instructions, No. 1, dated 17th July, 1835, we took advantage of our stay in the city of Montreal to inquire into the several questions connected with the right of the Seminary of St. Sulpice to the seigneury which comprises that city and the island on which it is situated. Your Lordship will see that we gathered extensive and various information on the subject; and lest we should appear to have neglected any important source of information, it is necessary to state that although their names do not appear among those who favoured us with their views, we did not fail to apply to several Members of the Assembly for any facts or opinions they might be disposed to communicate. They declined answering our questions on the ground, as far as we can understand, that the subject-matter of our inquiry could not be regulated by any authority except the Legislature, and that it ought not to be submitted to investigation in any other quarter.

2. In the following pages we shall briefly describe the present state of the Seminary, and its history, so far as is necessary to elucidate the disputed title to the seigneury of Montreal. We shall then proceed to the claims of the inhabitants to be released from the burthens of the feudal tenure, and to the nature of an arrangement that has been proposed for that purpose by the Seminary; and after a few remarks on some of the opinions we have heard upon that plan, we shall conclude with the recommendations which we feel ourselves warranted to offer, and the mode we should suggest for carrying them into execution.

3. The Seminary of Montreal consists of 20 members, who are all in Holy Orders, according to the rites of the Church of Rome, and there are four other Priests attached to it, though not regularly members of the Society. The community of ecclesiastics here, in like manner with the Society of St. Sulpice at Paris, are bound by no vow, but live together by voluntary agreement. Their establishment at Montreal is no inactive institution. They maintain, in whole or in part, a college and various schools, containing altogether 1,511 scholars; they discharge the whole parochial duties for the Roman-catholic population of Montreal and its suburbs, a population of nearly 18,000 souls; and they make extensive distributions in charity. Two of them are constantly resident at the Indian establishment on the Lake of the Two Mountains; and besides these various duties, the whole management of the farms, and other temporal concerns, is carried on by members of the establishment itself.

4. The possessions of the Seminary beyond the Island of Montreal consist of the seigneury of St. Sulpice, in the county of Assomption, and the seigneury of the Lake of the Two Mountains on the Ottawa. On the island of Montreal they hold in their own hands as their domain:—

1st. Their buildings in the city of Montreal.

2d. A farm on the Mountain of about 180 acres, used for the recreation of themselves and their scholars.

3d. A wood, of about 800 acres, at the back of the island, from which they are supplied with fuel.

4th. The farm of St. Gabriel, containing about 300 acres, situated on the western border of the town. This, though immediately adjoining the town, and extending for some distance along the line of the Lachine Canal, is still in tillage, and its remaining so is a subject of much complaint from the inhabitants of that quarter, who contend that it prevents all improvement on their side of Montreal. The ecclesiastics of the Seminary, on the other hand, declare, that they would be very willing to dispose of the land for building purposes, and that they have only abstained from doing so heretofore on account of the unsettled state in which the question of their title has been left.

5. According to the information given us by the Superior, the average revenue of the establishment, during the last five years, has been somewhat more, the average expenditure somewhat less, than £8,000 per annum currency, equal, at the ordinary rate of exchange, to rather less than £6,700 sterling.

6. For further particulars on the present state and functions of the Seminary, the number and description of its members, the places of instruction it maintains, its revenues, expenditure and possessions, we beg leave to refer your Lordship to the Satement and Tables Appendix (A).

7. We shall now recapitulate the history of the establishment in Montreal, with a view to the bearing which it has upon the question of the disputed title to the seigneury.

8. In 1663 a society which existed for the conversion of the Indians in Canada, and had derived great benefit from the co-operation of the Seminary of St. Sulpice at Paris, passed a deed of gift, conferring the seigneury of Montreal on the latter body. The moving consideration was said to be the conversion of the Indians; but besides a somewhat indefinite permission that any revenue more than actually sufficient "pour le *maintien* de l'œuvre" should be employed "pour le *bien* de l'œuvre," according to the discretion of the grantees, it was stated that any additional revenue which the grantees might derive from their own improvements, or from the clearing of new lands, should be at their own disposal.

9. In 1677, the King of France issued letters patent, by which he gave permission to the Seminary of St. Sulpice to establish a community

and seminary of ecclesiastics in the island of Montreal for the conversion and instruction of his subjects, and to facilitate that establishment, confirmed the abovementioned donation, and put forever into mortmain the lands and seigneury of Montreal, to be enjoyed by the members of the Seminary and their successors. It appears to us that the permission contained in this instrument, coupled with the previous application for it, and the establishment *de facto* of several priests at Montreal, was deemed sufficient to give existence to a new community there; but on the other hand that the title to the seigneury was confirmed, as indeed the very word confirmation seems to imply, to the Seminary of St. Sulpice at Paris, upon whom it had been bestowed by the original donation of 1663. To show that the community in Canada was understood to acquire a distinct existence under the letters patent of 1677, it may be enough to observe that from the date of their registration, as appears by M. Quiblier's evidence to us, the Seminary at Montreal began to be publicly and formally described by its own name, and that by the edicts, arrêts and letters patent enumerated in the margin, * the ecclesiastics established in this island are clearly designated to name the Registrars of the Royal Court, and to fill up vacant cures in Montreal, without the appearence of any necessity of reference to the Seminary at Paris. On the other hand, to prove that the property was vested in the entire Seminary of St. Sulpice, if the language of the instrument of 1677 do not in itself appear sufficient, we would remark that the edits and ordonnances just cited no less directly recognize the Seminary at Paris as owners of the seigneury of Montreal than the ecclesiastics on the spot as the parties to exercise certain specific functions; that in a subsequent arrêt of 5th May 1716, the Seminary at Paris is expressly named as "Seigneurs de l'isle de Montréal;" that in the whole series of edicts and ordonnances we believe there is only one which would lend any support at all to a contrary inference; that the fact was taken for granted in the memoirs and representations of the Seminary at Montreal, before they took the opinion of M. Dupin at Paris; and consequently, that although the eminent advocate, when consulted by them in 1826, endeavoured to establish a different construction, we must adhere to what to us appears the plain interpretation previously admitted by all parties. In support of this view, it may be remarked further, that the seigneury of the Lake of the Two Mountains having been granted by the Governor and intendent in 1717 to the "Seminary of St. Suplice *at Montreal*," the letters patent from the King of France sanctioning the grant confirmed it to the Seminary at *Paris*; as if showing that it was only the latter body on which the Crown was willing to confer land. And the distinction between the existence of a religious body, and its right to hold land in mortmain, is very forcibly manifested in the Royal declaration of 25th November 1743, whereby existing communities are confirmed by the King of France in their privileges generally, and are allowed to become owners of rents of fixed amount, but are expressly prohibited from acquiring any lands whatever, without letters patent from the King permitting it.

On these grounds, we adopt the conclusion that at the time of the conquest the society at Montreal had a legal existence as a seminary and a community, but that the right to the estates was vested in the Seminary of St. Sulpice at large, including the members resident at Paris and those at Montreal.

10. Having thus described what we consider to have been the state of the case at the time of the conquest, we now proceed to subsequent events.

11. On the 8th of September 1760, Lord Amherst signed the capitulation of Montreal, which has been so much cited in the discussion of the present question that it requires to be examined. The articles bearing reference to the religious communities of Canada were the 32d, the 33d, and the 34th. The first of these appears to have been proposed to secure the continuance of the female communities then existing in Canada, and was granted without reserve; the second would have secured the like advantage to the religious orders of men, but was refused until the King's pleasure should be known; the third related to all religious communities, without distinguishing male from female, and demanded that they should preserve their property. This was granted. As regards religious orders of men, the combined effect of the three articles appears to us to be, that it depended on the King to sanction or refuse their existence, but that such as might be allowed to continue, would be entitled to preserve their property. That the King has sanctioned the continuance of the Seminary will be presently shown by quotations from the Royal instructions to the successive Governors of the Province.

12. The treaty of peace concluded on the 10th of February 1763, empowered subjects of France who might not be disposed to remain in Canada under the dominion of England, to remove from the country, and sell their property, provided it were to British subjects, and within 18 months from the date of the treaty.

13. On the 29th April 1764, the Seminary of St. Sulpice at Paris passed a deed of gift, which ceded to the Seminary of Montreal, as far as by such deed it could, all right and title whatever to the seigneury of Montreal and other St. Sulpician estates in Canada. The validity of this act has been the subject of much difference of opinion. It has been very generally denied by the English lawyers who have been consulted upon it: by others it has been maintained. There seems little doubt that if the country had remained under the dominion of France, no such act could have been good without ratification by the King; but the impossibility of that condition being fulfilled after the conquest, at least by the King of France, has been argued by some to avoid the effect of its omission. However this may be, it appears by a certified extract,

* Mar. 1693; Edits & Ordonnances, vol. 1, p. 289.—May 1702; Edits & Ordonnances, vol. 1, p. 304.—June 1702; Edits & Ordonnances, vol. 1, p. 306.—Edits & Ordonnances, vol. 1, p. 339.—Arrêt of 5 May 1716, on Fortifications.—Edits & Ordonnances, vol. 1, p. 337.

f which M. Quiblier has furnished us with a copy, rom the proceedings of the Seminary of St. Sulpice Paris, that before executing the cession, a mmunication was received from the French Amassador at London, to the following effect: "My ord Halifax lui a dit que quoique le Roi d'Angleterre se fût engagé par le traité à laisser en Canada le libre exercice de la religion Catholique et Romaine, suivant les lois d'Angleterre, il ne s'ensuivait pas que des biens fonds, situés en Canada, pussent continuer d'appartenir à des Français, vivants en France, et sujets du Roi de France. Que Sa Majesté Britannique consent que les prêtres du Séminaire de Montréal continuent à en jouir, mais sans dépendance du Séminaire de Paris." Unless the correctness of the Ambassador's representation be impugned, it follows that the deed of gift 1764, whatever may have been its sufficiency point of law, was passed in conformity with what ad been stated to be the desire of the King of ngland, and that the act of transfer was sanctioned by his authority as far as the existing state f law and opinion seemed to allow. In 1774, the alidity of the Seminary's title was questioned by ir James Marriot, who was employed by the English Government to make the plan of a code of ws for the Province of Quebec. He expressed doubts of the Seminary being legally in possession, ut the Government did not act on his opinion.

14. The Quebec Act of 1774, (14 Geo. 3, c. 88,) after providing for the free exercise of the Roman Catholic religion, and for the receipt by the clergy of that Church of their accustomed dues from persons professing their religion, proceeded to enact in the 8th clause that all His Majesty's Canadian subjects, *the religious orders and communities only excepted*, should enjoy their property with all customs and usages relating thereto, and all other their civil rights, in as ample and beneficial manner, consistently with their allegiance, as before any British regulations on the subject. We think it abundantly evident from all other public documents bearing on the subject, and from the course pursued by the Government, that the exception in this clause was not inserted with any intention of confiscating the property of such religious communities as might be allowed to continue in Canada, but only on account of the very comprehensive language of the enactment, to guard against the unintentional confirmation of any civil rights, customs or usages, to any order, of which the existence might have been prejudicial in Canada. The very next document we shall have to mention seems to us to place this construction beyond doubt.

15. New instructions were given to the Governor of Canada on the 3d of January 1775, in consequence of the passing of the Quebec Act in the previous year. The 21st section related to the exercise of the Roman-catholic religion; and by the 11th head of it, it was directed that the Seminaries of Quebec and Montreal should remain in possession of all the houses and lands of which they were in possession on the 13th September 1759, and also that they should be allowed to admit new members according to the rules of their fundations, and to educate youth for the supply of the Catholic church. They were to be subject, however, like all other religious communities, to the visitation of the Governor, as well as to such rules and religulations as he should, with the advice of the Council, think fit to establish. The 12th paragraph of the same section provided for the suppression of the other religious communities in Canada, and under that direction the Jesuits and Récollets have become extinct. These instructions have continued to be given to the successive Governors of Lower Canada up to the present day. They seem to us to establish beyond question the explanation we have mentioned of the exception in the 8th clause of the Quebec Act, 14 Geo. 3, c. 88.

16. On the 3d of February 1781, the priests of St. Sulpice were admitted to do fealty and homage before the Governor for their seigneury of Montreal. They argue on many weighty authorities, that the act of fealty and homage, though it does not confer a title, goes to prevent the King's questioning it; and in this light they would consider the proceeding in 1781 a renewal of the pledge given by Lord Halifax in 1764, through the French ambassador. The Act contained a general reservation of the King's rights, not however one specially inserted on that occasion, but such as is common to all Acts of the same nature.

17. The Seminary having complained in 1789 of a claim made by the Indians to the seigneury of the Lac des Deux Montagnes, and of the nomination, by the Crown to the office of the greffier at Montreal, which the Seminary considered to be within their disposal, the question came before the provincial law officers, and elicited from them a very decided opinion against the existence of any right at all in the Seminary. Nevertheless no steps were taken against them by the Government; and very few years afterwards, the introduction of fresh priests from France was allowed in order to recruit the establishment at Montreal.

18. In 1804 and 1811, further legal opinions were delivered adverse to the claim of the Seminary, but still without any consequence.

19. In 1826, however, an application to commute under the Tenures' Act having been addressed to the Crown, as seigneur of Montreal, His Majesty's Governement seems to have come to the conclusion, that it wos indispensable to set at rest the question of the title to this seigneury; and the consideration of the subject was continued in a negotiation with M. Roux, the superior of the Seminary, which took place in 1827, but led to no effective agreement. Unfortunately, the records in the colony are by no means complete as to what passed at this period. There is, however, enough to show that although His Majesty's Government thought the bare legal title of the Seminary very uncertain, and considered it highly desirable both to put an end to the doubts on that subject, and to secure for the inhabitants of Montreal the means of enfranchising their property from the feudal tenure, not an idea was entertained of depriving the Seminary of the property they had so long enjoyed, without giving them a fair provision for their establishment in return for it. Their equitable claim to consideration was recognised at the same time that the

legal title to the property was assumed, under the successive opinions of many law officers, to belong to the Crown. And when Lord Ripon, in 1831, renewed the expression of great anxiety for the settlement of the question, it was with the same motives, and the same liberal sentiments towards the Seminary, as had been declared by his predecessors.

20. From this review of facts we draw the following conclusions :—

First, that the objects to which the Seminary at present devote their funds, are not inconsistent with the objects of their original foundation ; but, on the contrary, that the discretion left them by the gift of 1663, and the extention added by the letters patent of 1677, fully justify the employment of their funds in the education of the people generally ; and that it ought to be considered for their credit, to act as extensively as they can on their powers in that respect.

Secondly, that whether or not the legal title be in the Seminary, the King has done numerous acts which would render it very derogatory to the honor of the Crown to contest it, except for the attainment of some great public good which could not be gained by any other means. We do not wish to assert that the Crown has or has not the right ; but only that it has constantly pursued a course implying that the right would not be claimed. We do not say, for instance, that the deed of gift in 1764 was valid, but at least that there is every reason to believe that the King, by his Minister, encouraged the execution of it. We will not undertake to assert that the Seminary has legally preserved its corporate character ; but we maintain that the King has done all in his power, by his permission from time to time, to introduce new members, and by his royal instructions to Sir Guy Carleton, to show that His Majesty, as far as was within his competence, has confirmed to them their distinct existence. Nay, even as regards the main question itself, of the possession of the houses and lands, the King has by the same royal instructions, (continued as they are to the present day,) commanded that the ecclesiastics shall retain their preperty. Now, we shall not undertake, in a report of the present nature, to pronounce a conclusion on such complicated points of law, municipal and national, as have been raised in this matter ; but we do say, that after 70 years' uninterrupted possession under the British Crown, confirmed by so uniform a succession of acts tending to its recognition, to enter upon a long, and perhaps doubtful legal contest, capable, as we have seen, of being protracted by a multiplicity of arguments on both sides, could never be justified except for the sake of some great public good, not to be compassed by any other means. If the inhabitants of Montreal were to show, that so long as the property remained in possession of the Seminary, they had no hope of escape from grievous burthens, and therefore solicited the resumption of the property by the King on that ground, it might indeed be requisite to waive all objection to enforcing an extreme right by suit in court, but not otherwise. These are the views with which we approach the immediate question of the enfranchisement of Montreal from the obligations of feudal tenure. We shall only state, before passing to that topic, that the evils which might otherwise be apprehended from the uncertainty in which the title is involved, have been in great measure averted by the circumstance that fortunately the French law requires the censitaire only to look to the seigneur *in possession*.

21. It is needless to dwell on the inconvenience which must attach to the existence of the feudal tenure in a great city and its neighbourhood. The payment of a fine on every mutation of property, proportioned to its value, must obviously act as a check to improvement, and a serious obstacle to the circulation of property. Without enlarging on a point which we believe is hardly questioned by any party, we shall merely observe, that we found a very general desire amongst the inhabitants of Montreal to obtain the means of releasing themselves, on reasonable terms, from this system ; that we also found the ecclesiastics of the Seminary of St. Sulpice well disposed to effect an equitable agreement on the subject ; and finally, that we had the pleasure of receiving from all quarters such cordial expressions of regard and esteem for the character of that respectable body of clergy, as convinced us that if a satisfactory arrangement could be devised, it would not be obstructed by any want of good-will towards the present holders of theseigniorial rights in this island.

22. The burthens to be removed are the *lods et ventes*, the *cens et rentes*, and the *droit de banalité*. The *lods et ventes* consist of a fine of one-twelfth of the value, payable to the seigneur on every alienation of property held under him ; the *cens et rentes* are fixed rent, usually of very trifling amount ; and the *droit de banalité* comprises the double right of having all the tenants' corn ground at the seigniorial mill, and of not suffering the erection of any private mill on the seigniory. In Montreal it has been the custom of the Seminary to take, instead of the *twelfth* which the law allows, only a *twentieth* of the value of the property for *lods et ventes* in the city generally ; and a *sixteenth* in the country or in city-lots which do not bear on them buildings worth £500. But if compelled to recover the amount by law, the full twelfth has been exacted in all cases. The *cens et rentes* at Montreal are half a farthing par arpent in some parts, and a farthing par toise carrée in other parts of the city and suburbs, and a farthing par arpent, with a quart of wheat, in the country.

23. M. Quiblier, the superior, furnished us with a paper explaining the terms on which the gentlemen of the Seminary would be willing to commute with their tenants for these burthens, provided they were allowed to invest the proceeds in real property. Their proposals are, that the *lods et ventes* should be extinguished by a single payment, in the city generally, of one twentieth the value of the property ; and in the country, or in city-lots not bearing on them buildings worth £500, by a payment of one-twelfth, leaving each individual proprietor to choose his own time for effecting the commutation ; that the *cens et rentes* should be redeemable by a sum equal to the capital which they represent, computed according to the usual rate of interest ; and that the *droit de banalité* should cease by the same act which extinguished the *lods et ventes*, excepting that in the country there should

not be a right of erecting private mills, until the extinction of the seigneurial privileges might become general.

24. There can be little hesitation in pronouncing these proposals to be extremely liberal. We do not know whether there might be some difference of opinion as to the details, but when it is observed that with respect to *lods et ventes*, which are by far the most onerous burthen, a sum not exceeding one payment of the due, or indeed in the most important parts of the seigneury, only three-fifths of one legal payment, is proposed to redeem it for ever, the liberality of the offer becomes obvious. In those parts of Quebec and Three Rivers which stand in the same situation towards the Crown as the city of Montreal does to the Seminary, the established rate of commutation is one-tenth instead of one-twentieth, and yet there has been no complaint. The whole evidence proves that so far as regards the interests of the censitaire, and the single end of enfranchising the seigneury of Montreal, the proposal of the Seminary must be acknowledged to be advantageous and satisfactory.

25. In respect to arrears, however, some apprehension has been expressed, that once armed with an unquestionable title, the Seminary might grow rigorous in enforcing the payment of the debts owing to it, which have been represented as very large; and it has been urged that the sum to be thus collected would be so great as, in addition to the price of commuting the property throughout the Seigneury, to threaten an alarming concentration of wealth and influence in the same hands. Your Lordship will observe in the evidence, that the arrears were by different gentlemen conjectured as high as £100,000, £142,000, and even £178,000. We therefore thought it proper to request that the Seminary would favour us with an authentic statement of the case; and we learned that the amount of arrears due to it was estimated at £34,000. This certainly is no very formidable sum. And with respect to any rigour, or oppressive change of practice as to the demand for arrears, we think that the well-established character of the ecclesiastics, their regard to all the proprieties of their station, and, we might add, the interest of a body of this nature not to provoke the hostility of the city in which they dwell, afford strong guarantees against such an evil; in order, however, to quiet apprehension on the subject, we doubt not that the Seminary would readily acquiesce in some general rule precluding any harsh enforcement of old claims. At any rate it appears to us quite necessary that the payment of arrears should be a condition, without which parties should not be intitled to claim the benefit of the proposed terms of commutation.

26. Another objection which has been raised is, that the Seminary oughts not to be allowed an unlimited right of investing the proceeds of commutation in real property; and also that no final arrangement ought to be come to, without providing some regular control over the Seminary in the conduct of education, as well as admitting Protestants, if possible, to a definite share in the benefit of the extensive funds applicable to that object. Simultaneously with this objection we must advert to the impression, under which it seems to have been adopted, that the property is unquestionably the King's, depending solely on his pleasure to claim it, so that it is incumbent on His Majesty, before allowing the Seminary an indemnity, to insist on their submitting, without exception, to every regulation and condition which he might deem to be for the public interest.

27. We have already expressed our opinion how undesirable it is to attempt the assertion of the King's right by suit at law. Every consideration, in our view, concurs in recommending an amicable adjustment of the question, giving indeed to the city of Montreal those commercial advantages to which it has such strong claims, but without superfluously bringing into debate on the occasion more general changes, not mooted in any other part of the Province. Because the Seminary of Montreal has consented to one urgently required improvement, there is no reason that further alterations, which, if good, are equally to be wished in every other religious Seminary, should be exclusively urged upon this one; nor would it be consistent with the common rules of prudence that an arrangement so long desired in respect to the property of Montreal, should be subjected to the risk of being indefinitely postponed, or even of failing, by adding to it further reforms never coupled with it till it seemed on the point of succeeding,

28. Some gentlemen, however, argue, as will be seen by the evidence, that the King is bound, in good faith, to assert his title, because the Royal proclamation in 1763 promised to all settlers in the Province the benefit of the laws of the realm of England, and the advantage of obtaining from his Majesty, on the same terms as in other British Colonies, all lands which it might be in his power to dispose of. We must observe that this argument, if valid at all, is applicable not to Montreal in particular, but to every part of the Province in which any settlers may have established themselves since 1763. The answer to it is, that in 1774, when a legislative body was created in Canada, the Proclamation of 1763 was repealed by Act of Parliament, as being, in the words of the Act, "inapplicable to the state and circumstances of the said Province (of Quebec), the inhabitants whereof amounted, at the conquest, to above 65,000 persons professing the religion of the Church of Rome, and enjoying an established form of constitution, and system of laws, by which their persons and property had been protected, governed and ordered for a long series of years from the first establishment of the said Province." If between 1763 and 1774 any claims for the benefit of the laws of England, or for lands at the disposal of the Crown, had been preferred and not acceded to, there might, we apprehend, under the proclamation, have been grounds for complaint; but to quote, as if in force at the present day, a proclamation which was formally recalled upwards of 60 years ago, is we think, altogether unreasonable. If, on the other hand, the present complaint be not of a departure from the proclamation, but of the Act which annulled it, we would only say that the Act was passed long before the great majority of the present British inhabitants of Montreal or their families were set-

tled in the country, and consequently, that whatever may be their opinion of the policy which dictated it, they can have no right to complain of it as a breach of an engagement affecting themselves.

29. In reference more especially to that part of the proclamation wherein the King undertook to grant, on the same terms as in other British colonies, all lands "which it might be in his power to dispose of," it is contended by gentlemen of such influence and intelligence, as to induce us to notice an argument we should otherwise pass by, that after this declaration His Majesty had no choice, but was bound to eject the Seminary, if possible; for that the clause must be taken to apply not only to all lands which might be in His Majesty's *actual possession*, but to all which it might be *possible to reduce within his power*. We scarce know how to refute, otherwise than by stating it, a proposition by which His Majesty would be supposed to have bound himself to assail every title in the country, where there appeared any chance of being able to wrest property from the hands of the actual holders into those of the King. The obvious meaning of the promise, we apprehend, was, that the Government would grant in free and common soccage such lands as the Crown had, but not that it would enter into a general research into claims, and a general litigation against all titles of which there was the slightest doubt, in hopes of thus adding to the extent of the land which private persons might happen to wish to enjoy under the terms of the Royal proclamation.

30. For these reasons we can no more admit it to be incumbent on His Majesty, than in any way desirable, to dispute the property of the Seminary. And supposing an amicable arrangement to be advisable, we do not see how it could be effected without allowing the Seminary to re-invest part, at least, of its means in real property. They assure us that this is an indispensable condition, without which they could not consent to any adjustment; nor do we believe that the Roman-catholic community generally would be reconciled to their acting otherwise. We are fully alive to the general objections to the holding of large property in Mortmain; but these objections are not more applicable to the Seminary of Montreal than to any other religious society in the Province, and the proper mode of proceeding upon them would be by a law affecting all equally, not by a stipulation aimed especially at a single body of clergy, acknowledged on all hands to be deserving of respect and esteem. The utmost we could do is to recommend that the Seminary should be placed under a restriction, to which we have reason to believe it would not object, limiting the amount it should invest in real property, and providing that not more than one-half should be laid out in property in the parish of Montreal.

31. With respect to their plan of education, it is very possible that the whole existing system in Lower Canada may admit of amendment, and it will be our duty to lay before your Lordship as complete a view of the subject generally, as our time in the Province will allow; but in this instance again we see no reason for dealing singly or exclusively with the Seminary of Montreal. Any improvement hereafter introduced by competent authority, would of course include this, in common with other similar institutions; and being at present engaged on a question on modifying a certain form of property, we think it would be injudicious to prevent its satisfactory conclusion by needlessly uniting it with a question of education.

32. Dismissing, therefore, for the present all foreign topics, however important in themselves, we proceed to state at once the heads of an arrangement by which we conceive it would be advantageous to the public, and equitable towards the Seminary, that provision should be made for the release of the Island of Montreal from the burthens of the feudal tenure.

They may be described as follows:—

1st. Every censitaire should have the right at any time of enfranchising his lands from lods et ventes and the droit de banalité on the terms proposed by the Seminary, viz. in the city generally a payment of 5 per cent, on the value of the property; in the country, or on city-lots not bearing on them buildings worth 500*l*., 12½ per cent. In case of dispute the property should be valued by "experts" or arbitrators.

2d. Every censitaire should likewise have the power of redeeming the cens et rentes on payment of the capital which they represent, calculated at the rate of 6 per cent. interest.

3d. Seven years should be allowed for completing payment of the commutation money under the two preceding articles, interest being payable on the outstanding portion at the rate of 6 per cent. per annum. Parties prevented from making good the whole payment not be enfranchised, but should have credit in all dues for which they might become liable, after expiration of the seven years, for the sums they had actually paid.

4th. It should be allowable by mutual agreement, to charge the whole of the commutation money as a mortgage on the property, or to convert it into a quitrent, but not without the free consent of both the parties.

5th. No censitaire should have the right of claiming the benefit of the foregoing privileges without previously paying up all arrears of lods et ventes due from him, or settling for them to the satisfaction of the seigneurs.

6th. In the collection of lods et ventes and o arrears, the Seminary should be bound only to take as it has hitherto done, a 20th in the city, and a 16th in the country, where payment is made voluntarily; and as a proof that it has no design of abandoning its former leniency, it should agree to originate no suit for lods et ventes, until they had been due seven years. In case of sheriff's sale forced by others, the Seminary would of course be at liberty to exact the full amount of its claims, as at present.

7th. The title of the ecclesiastics to the seigneury of Montreal should be confirmed.

8th. They should be declared a corporation, with all powers necessary to carrying into effect the purposes herein proposed, and with power to re-invest in land or buildings within the Province any sums of money that might come into

their hands, not exceeding in the whole 120,000*l.* currency, on condition, however, that not more than one-half of that sum should be invested in the parish of Montreal.

9th. They should be empowered to invest any further sums of money that might come into their hands at their descretion in any other security except real estate within the Province or in the British funds.

10th. With an exception to be stated in our next proposal, they should retain, unconditionally, all the buildings they now occupy, and all their domain lands in the seigneury of Montreal, and these would not be reckoned in the value of the real property to which they are limited.

11th. The farm of St. Gabriel might be made an exception to the preceding article. It might be provided that it should be retained by the priests, or sold immediatly as they should prefer; but that if retained, it should be included at a fair estimation in the value of the possessions to which they are limited in Montreal, and should be vested in trustees or commissioners (half to be appointed by the Seminary), upon trust to arrange the property for the benefit of the institution, and to dispose of such parts as might appear desirable for building, on fair valuations; all the net proceeds of such arrangement, whether by sale or otherwise, being handed over to the Seminary at the end of every year. We would not say that this arrangement is altogether free from objection; but the subject is surrounded with difficulties, and we merely throw out for consideration what perhaps may be found the best solution on the whole. It would have the advantage of obviating disputes with the inhabitants of the city, and at the same time would probably result in more profitable dealings for the Seminary than they might think it proper to effect for themselves.

12th. The Seminary would, of course, remain subject to any future regulation by law, and it might be a question whether visitors ought to be appointed specially for this institution, in addition to any control under which it may otherwise fall by the discipline of the Roman-catholic church.

33. For the purpose of carrying into effect as much as may be adopted of the preceding recommendations, to or three methods have been under our consideration.

34. It has been deemed by one of the Commissioners the proper mode, that the Crown should be empowered by the Imperial Parliament to constitute the Seminary a corporation, subject to such conditions as might be required by the proposed arrangement; but we apprehend that there is no actual necessity of an Imperial enactment to give the Crown this power, and the majority of us would think the interference of Parliament very undesirable in a matter of so local and particular a character.

35. Another suggestion, coming from the Seminary itself, is, that letters patent should be issued on the sole authority of the King, enabling the ecclesiastics to hold their lands in franc-aleu, and to discharge their censitaires from the feudal obligations, in consideration of an indemnity, of which the same letters patent should authorize them to invest the amount in real property. The objection to this method of proceeding appears to us twofold, and scarcely to be surmounted unless upon more decided legal opinions than we have obtained in this country. In the first place, we doubt whether the letters patent could have power so effectually to bind the Seminary to observe the required conditions in favour of their tenants, as would satisfy the public mind of the security of the arrangement for all time to come; and next, we fear, that however plainly a bar to any suit at the instance of the Crown, this instrument might possibly not avail to prevent private individuals from attempting to dispute the title of the Seminary. We have reason to believe that the views of gentlemen at the bar would be found divided on this point; but the very fact of a difference shows that there would be ground to maintain an argument in court, and to cause more or less of inconvenience to the Seminary. Yet it is obviously no less essential a requiste of the desired arrangement, that the priest should be guaranteed against any future disquiet on the subject of their title, then that the censitarires should have full assurance of the benefits held out to them. But one party and the other ought to be certain of the advantages which they will be led to expect. For these reasons, we think that the issue of letters patent by the King might prove inadequate to the end in view; and there are further grounds on which at any rate we should feel bound to recommend another method in the first instance.

36. The present is a subject of great importance and extent, iuvolving numerous involving numerous interests of which the Local Legislature ought to be best guardian, and already taken into consideration within a few years past by one branch of that authority. We believe therefore that your Lordship will agree with us in thinking that the most regular and the safest course is to bring the matter before the same tribunal. We do not conceal it from ourselves that, owing to the unfortunate dissensions which have prevailed of late years, a reference to the Provincial Legislature will be dreaded by many who are concerned in a speedy settlement of the business, as a condemnation to great delay and difficulty, if not to complete disappointment. But it is certain, that taken in itself, this is the proper resort; and we have likewise expressed our doubts whether any other mode of effecting the object within the Province would be adequate. We advise thereof that a communication be made to the Legislature be message, proposing the desired arrangement as beneficil to the inhabitants of Montreal, acceptable to the Seminary, and understood to be approved by the higher ecclesiastical authorities; and expressing an earnest hope that no differences which may exist on their points will induce the rejection of an arrangement shown to be satisfactory to all the parties principally concerned in a subject of long anxiety and complaint.

37. We are aware that the very moment, as

we may say, when are expressing this conclusion, the House of Assembly has demonstrated feelings threatening still more difficulty in accomplishing by legislation any immediate object of public utility in the Province; but as it is obvious that such a state of affairs cannot be regarded as permanent, and that either a more wholesome condition must be restored to the Legislature, or else some very general change introduced which would evidently by its own nature qualify our view on the present point, we think it needles to alter in this Report the opinion we have already signified respecting the mode of executing its recommendations.

38. The only additional remark we have to make is, that the proceeding we have suggested would not quite embrace the whole island of Montreal. Your Lordship will observe by a Return appended to M. Quiblier's evidence, of 9th August 1836, that there are eight arrière fiefs, which are portions of land granted out to seigneurs holding under the Seminary, and not liable to be included in any contracts made by the superior of whom they hold. A Plan is annexed, in which these arrière fiefs are marked out. They are not very extensive, and only four of them come at all within the limits of the city of Montreal. We scarcely thought that it fell within the line of our duty to enter into any particular investigation respecting these properties. With regard to such of them as are within the control of religious communities, it seems probable that there would be a disposition to follow any reasonable example set by the Seminary of Montreal; and in reference to the whole of them, if it be allowable and right to make any regulation, it will of course be competent to the Legislature to do so by an authority which must be obeyed; but it is not a subject which especially concerns the Crown, or on which we wish to convey any opinion.

We have, &c.,

(signed) GOSFORD.
CHAS. EDW. GREY.*
GEO. GIPPS.

THE revenues of the seminary may be taken, in round numbers, as follows:—

SEIGNEURIE OF MONTREAL:	£
Lods et ventes, town	3,006
Ditto country	2,064
	5,070
Droit de banalité	1,112
Prodcce of domain	486
Seigneurie of St. Sulpice	640
Seigneurie of Two Mountains	969
	£ 8,277

* I have put my signature to this Report, subject to a statement of a difference of opinion, which is to accompany the Report.

GENERAL REPORT.

QUEBEC, 15th Nov. 1836.

MAY IT PLEASE YOUR LORDSHIP,

1. WE propose in our present communication to submit a General Report on those of the subjects referred to us by your Lordship's Instructions of 17th July, 1835, on which we have not yet stated our conclusions.

2. In a Report, dated the 23d of January, 1836, we described the conditions we should recommend to be annexed to a Cession of the Crown Revenues, and these involved a statement of our views on the Independence of the Judges, the Establishment of a Court for the Trial of Impeachments against Public Functionaries, the Settlement of a Civil List, and the continuance of a few Life Charges to which the funds under the control of His Majesty are subject.

3. While we continue to adhere generally to the opinions we then delivered, as being suited to any amicable arrangement for the Cession of the Crown Revenues, we have been compelled to explain in a Report dated the 12th March, and shall have to mention again, in the course of the present communication, how far we think that different financial arrangements of a more special character would be requisite, in order to meet a state of emergency, such as now exists.

4. In our Report of the 3d of May last, we submitted our opinions on the Executive Council; and in a subsequent letter of the 12th of May, we pointed out some modifications which we think might be made with advantage in the statuatory rules affecting the Legislative Council.

5. We transmit separtely a Report on the Feudal Tenures in the City and Island of Montreal, and on the Rights of the Ecclesiastics of St. Sulpice, as seigneurs of that important fief.

6. The subjects referred to us by your Lordship's Instructions of 17th July, 1835, on which it still remains for us to offer a final Report, may be enumerated as follows:

I. The Legislative Council.
II. The State of the Representation of the People.
III. The Settlement and Management of Wild Lands, and the Use and proper Limits of Land Companies.
IV. The Tenures of Land in the Province, to which must be added,
V. The Establishment of Registry Offices.
VI. The Appointment of Customs' Duties between Upper and Lower Canada, and the Canada Trade Act.
VII. The Execution of the Recommendations of the Canada Committee of 1828.
VIII. Education.

7. On the Clergy Reserves, and on some important Petitions recently recently on other matters, we shall submit our opinions hereafter.

I.—THE LEGISLATIVE COUNCIL.

1. The Constitution of the Legislative Council is not only in itself a matter of the highest interest, but one to which an additional degree of importance is now attached, in consequence of an alteration in it having been set forth in all the late proceedings of the popular party as the essential reform, without which all others would be of no avail, and the House of Assembly having gone to the extremity, within the last few weeks, of declaring that they will never resume their functions, until their demands for a fundamental change in it are complied with. A simple reference to the documents put forth by the Assembly since 1833, would be sufficient to prove the reality of their determination in this respect; while a reference to documents produced before the first Committee of the House of Commons, and to others, which emanated from the Assembly previously to 1833, would prove that up to that year no formal demand for a fundamental change in the Constitution of the Council had been made.

2. Without entering into an examination of all these records, we may observe, that on the 28th of January, 1831, an address from the Assembly to the Governor, signed by Mr. Papineau, the Speaker of the House, contained an assurance to the following purport:—"It will be our earnest desire that harmony may prevail between the several branches of the Legislature, that full effect may be given to the Constitution as established by law, and that it may be transmitted unimpaired to our posterity." And towards the close of the same year, a Bill passed the House of Assembly constituting the Legislative Council a court for the trial of impeachments, without any demand being put forward that it should be made elective. The conciliatory Despatch of Lord Ripon, dated 7th July, 1831, was, moreover, received in the Province in a manner that might have seemed to encourage the hope, that a more harmonious state of public feeling was on the point of being restored.

3. But, notwithstanding these appearances, the hostility which had long existed between the two legislative bodies was not really abated, for on the 8th of March in that very year, 1831, two resolutions were carried in the Assembly (though they were afterwards struck out of a petition to the King, into which they had been designed to be inserted), declaring that "the appointment by the Executive of legislators was fatal to the tranquillity and prosperity of the Province, and incompatible with good government." On the 29th of March also, the Council, on their part, placed on their journals a series of resolutions aimed at the most important privileges of the Assembly, and particularly at the one that, after a contest of many years' duration, they had just succeeded in establishing; we mean the exclusive right to control the financial concerns of the Province. And it is not unworthy of remark, that in the very first of these resolutions, they lay down as a positive law, a practice which (however salutary) rests, we believe, in England only on a resolution of the House of Commons, adopted like any other of their standing orders, at their own discretion, and revocable at their own pleasure. By a subsequent resolution, the Council likewise assumed to itself the dangerous right of judging what the contingent expenses of the representatives of the people ought to amount to.

4. With these signs, therefore, of a continued hostility before us, we are disposed to ascribe the fact of no formal demand for an Elective Council having been made before 1833, simply to the expectation entertained by the popular party, that in consequence of the recommendations of the Committee of 1828, very essential alterations in the composition of the Council were on the point of being effected. An alteration was indeed produced in 1832. The judges ceased to take any part in its proceedings, and 13 new members, unconnected with the Government, were added in the course of the year; but that these new nominations were unsatisfactory to the Assembly, and that the disappointment they felt at the alterations in the Council, was the cause of their fresh proceedings against it, may be inferred from the fact, that in the next session of the Legislature was voted the first address in which a demand for an Elective Council was put forth. The nature of the expectations that had been raised in the minds of the prevailing party in the Assembly, respecting the nomination of these members, may probably be correctly gathered from the 92 resolutions of 1834, and particularly from the 24th of them, in which it is asserted that "such of the recently appointed councillors as were taken from the majority of the Assembly, and had entertained the hope that a sufficient number of independent men, holding opinions in unison with those of the majority of the people and of their representatives, would be associated with them, must now feel that they are overwhelmed by a majority hostile to the country." We certainly do not think that either the recommendation of the Committee of 1828, or anything that subsequently issued from a competent source, warranted an expectation that the Legislative Council was to be made entirely to harmonize with the feelings of the Assembly; nevertheless, that something of the kind was expected by the popular party does seem beyond dispute. We do not feel called on to pronounce an opinion on the propriety of the appointments in question: and the less so, as they were narrowly scanned in the cross-examination of Mr. Morin, before the Committee of 1834; but we may, we think, venture to say, that whilst they satisfied the terms of the recommendation made by the Committee of 1828, as far as the matter of pecuniary independence of the Crown was concerned, they scarcely produced an alteration in the political character of the body to which the new members were aggregated.

5. Having thus, for the sake of showing the actual state of the question, referred to the latest proceedings in this controversy, we shall now, in order to enable us to report, according to your Lordship's Instructions, our opinion how far the Legislative Council of Lower Canada has answered the purpose for which it was instituted, proceed to take a short retrospect of a few of the leading points in Canadian history, and of the changes in the policy by which it has been governed since it became a portion of the British Empire.

6. The principle on which the Province of Quebec was governed for the first 11 years subsequent to 1763, seems to have been that of making it entirely British. The laws and language of England were to be introduced into it; and whatever might have been the harshness in the first operation of the change, it is no doubt probable that, could it have been steadily persisted in, the present state of the Province would have been far more easy and settled than we find it.

7. During the progress, however, of the contest in which England became engaged with her Colonies, this system was (doubtless for sufficient reasons) departed from; the Quebec Act of 1774 restored the old civil laws of the Province, secured the virtual supremacy of the Catholic religion, and though it gained for the English Government the affections of the people, tended, as far as an Act of Parliament could, to prevent the adoption by them of English manners and English institutions We have no means of ascertaining, with any correctness, what might have been the number of persons of British origin, who, during the period of 17 years, up to the next change of the Constitution, settled in Lower Canada; but it is certain that by far the greater number, both of loyalists from the old colonies and of emigrants from home, passed (as it was natural that they should) beyond the limits of a country thus occupied by a people whose laws and language were foreign to them, and fixed themselves in what is now the Upper Province, where, moreover, a climate less rigorous than that of Lower Canada invited them.

8. By the separation of the Provinces, effected in 1791, this state of affairs was confirmed and perpetuated. Nearly everything that the extended territory of Quebec had contained of English, was then collected into a distinct body, and Lower Canada was again forced, we may say, by Act of Parliament, to be French. A Constitution, too, was, under these circumstances, given to it, confessedly on the model of our own, in which the House of Representatives was endowed with powers analogous to those of the House of Commons, whilst, from the very nature of things, the great majority of the members of this House could be no other than French Canadians. In scarcely any instance since the existence of the House of Assembly, has the majority of French Canadians over English been so little as two to one; and, of late, it has far exceeded that proportion. We have even heard the speeches of the minister of the day referred to, to prove that it was his intention to keep the Province French; a construction, however, which we consider erroneous. Mr. Pitt always expressed his desire that Lower Canada should become ultimately English, though he thought the best means towards that result was not to do violence to the predilections and customs of the original inhabitants; and it was certainly, we apprehend, no part of his plan to discourage English settlers. For many years, indeed, after the establishment of the Constitution of 1791, a vague sort of idea seems to have existed, that by the introduction of new settlers, the numerical disproportion between the two races would be made to disappear, and the English even to predominate; and so, perhaps, in spite of all opposing circumstances, they ultimately may; but the progress has been much slower than was expected, and at the present moment the highest calculation of the inhabitants of British descent does not make them more than one-fourth of the whole.

9. The House of Assembly was not slow to perceive the importance of the functions which had been assigned to it by the Constitution; the Government alone was slow to preceive it, or, if perceiving, to acknowledged it, and to proving with prudence for the consequences. Instead of shaping its policy so as to gain the confidence of that House, it adopted the unfortunate course of resting for support exclusively on the Legislative Council. The existence of a majority of French Canadians in the Assembly seems to have been thought a sufficient reason that there should be a majority of English in the Council; for the principle observed in the first nominations, of making it of equal numbers. French and English, was early departed from, and thus the Council and Assembly were constituted on antagonist principles almost from the commencement.

10. For a number of years the Council, keeping as it did, in close union with the Executive, prevailed; but in process of time the inherent force of a popular Assembly developed itself, and in the great contest that ensued about money matters, the Assembly came out completely successful. During this financial struggle, continued as it was for more than a quarter of a centuray, it was only natural that sother collateral cause of difference should arise, and if we were to examin into these, we believe we should also find that in every one of them the Assembly has carried its point. As a few instances we will mention the right of the House to accuse and bring to trial public officers; their right to appoint an agent in England and their right to control their own contingent expenses; their demand for the withdrawal of the Judges from political affairs or from seats in the Legislative Bodies or the Executive Councils, and for the surrender of the proceeds of the Jesuits' estates. All these are points on which contests have taken place between the two Houses, and in every one of them the popular branch has prevailed, and the Council been successively driven from every position it had attempted to maintain. The Assembly, at the same time, by attacking abuses in the Administration, and bringing charges against numerous officers of the Executive, succeeded scarcely less in exposing the weakness of the Government than that of the Council. Both the Council and the Government have been worsted in many a struggle that they never ought to have engaged in; and if the Assembly has, in consequence, grown presumptuous, we apprehend that such is only the ordinary effect of an unchecked course of success.

11. In the course of these protracted disputes, too, it has happened that the Assembly, composed almost exclusively of French Canadians, have constantly figured as the assertors of popular rights, and as the advocates of liberal institutions, whilst the Council, in which the English interest prevails, have, on the other hand, been made to appear as the supporters of arbitrary power, and of antiquated political doctrines; and to this alone we are persuaded the fact is to be attributed, that the majority of settlers from the United States have hitherto sided with the French, rather than the English, party. The Representatives of the counties of Stanstead and Missiquoi have not been sent to Parliament to defend the feudal system, to protect the French language, or to oppose a system of registrations. They have been sent to lend their aid to the assertors of popular rights, and to oppose a Government by which, in their opinion, settlers from the United States have been neglected, or regarded with disfavour. Even during our own residence in the Province, we have seen the Council continue to act in the same spirit, and discard what we believe would have proved a most salutary measure, in a manner which can hardly be taken otherwise than to indicate at least a coldness towards the establishment of customs, calculated to exercise the judgement and promote the general improvement of the people. We allude to a Bill for enabling parishes and townships to elect local officers, and assess themselves for local purposes, which measure, though not absolutely rejected, was suffered to fail in a way that showed no friendliness to the principle.

12. It may be, perhaps, scarcely necessary to observe, that, in our opinion, the prosperity of a country, or the facility of governing it, cannot be advanced by making two branches of its legislature the antagonists of each other; and although the system of checks and balances is often considered the peculiar feature of the British Constitution, we hope there are not at present any elements of discord in it of the nature of those which unfortunately exist between the two branches of the Canadian Legislature. The British Government is not, on the one hand, a mere machine sustained by one power, and owing its regularity to the due subordination of all its parts, neither is it, on the other, a system of antagonist forces, keeping each other in order by ther mutual repulsion. It is a system, we would rather say, of bodies, which, though in their origin they acted repulsively on each other, have been brought into harmony by a conviction of slow growth, that to combine is better than to compete; and we would say that they are now withheld from attempting the destruction of one another, not so much by the artificial aid of checks and balances, as by the mutual forbearance which a long experience has shown them the necessity of exercising, and by the constant action on them of an enlightened public opinion.

13. If we were simply to inquire how far the Council has acted beneficially as a balance to, or a check on, the other branch of the legislature, we should, we fear, be forced to confess that it has hardly been an efficacious one. By its support to the Local Government it retarded undoubtedly, but did not ultimately prevent, the acknowledgement of the right of the Assembly to control the whole expenditure of the Province; and there can scarcely now be a doubt that if the dis-

pute had been brought to an earlier termination, an adjustment more favourable to the Executive might have been effected. If, on the other hand, we were to inquire in what degree the demands of the English have been advanced by its means, we doubt whether we should not find that the advocacy of the Council has tended rather to defeat, than to promote, the measures which the commercial classes have demanded, and continue to demand, with the greatest earnestness; for instance, the commutation of tenures. the establishment of registry offices, the settlement of the wild lands, and the facilitating of commercial intercourse.

14. In the revision and correction of Bills sent up to them by the Assembly, we have no doubt, however, that the Council has often rendered valuable services to the country, and has no less fulfilled one, perhaps, of its peculiar functions, by its rejection of measures which the Constitution would not admit, thereby relieving the Representative of the King from the duty of withholding the Royal Assent to them: such as Bills in which the Assembly encroached upon the Royal Prerogative, tacked to their grants of money conditions deemed in England unparliamentary, or took it upon themselves to attempt the repeal of a British statute. Much obloquy has also, we must assert, been unjustly attempted to be thrown on the Council for the rejection of Bills sent up to them late in the session, when there were no longer the means of forming a House in the Assembly to take into conideration any amendments that might be made on them.

15. We have as yet only spoken of those causes of imperfection in the Upper Chamber which were of an adventitious nature, depending upon the mixed quality of the population, or growing out of the false position which the Council assumed, when it charged itself with the duty of supporting the political ascendency of a minority; to which we might have added, the damage it received from the frequent and injudicious compliments that were in former times paid to it at the expense of the Assembly, in the speeches at the prorogation of Parliament, or on other public occasions. We have still to notice the more essential disadvantage, that highly respectable and well qualified as are many of the individuals who might be found to fill the place of councillors, yet in a new country, where there are no distinctions of title, and few of fortune, it is difficult for the mere nomination of the Crown to confer upon any person sufficient importance to maintain him with effect in the position of a legislator; that in such a country the people will be little inclined to respect any legislative body which does not emanate from themselves; and that this effect must be enhanced in Lower Canada by the example of the powerful States which flourish so immediately in her neighbourhood.—For these considerations, though we feel ourselves forced to pronounce our opinion against the expediency of an Elective Council, we would by no means be understood as opposed to the institution on principle, so far, at least, as any country in America is concerned. We will even say, that under more favourable circumstances, at an earlier time, or had less animosity been excited, we can conceive that good might have resulted from the introduction of a principle of election; by appointing a class of electors with a raised qualification, and also providing, in order to secure a due permanence of interest in the Province, that the individuals to be elected should be possessed of a substantial quantity of real estate; but we cannot advise the experiment now.

16. The division of parties, confirmed as it is, and rendered conspicuous and more likely to last, by a difference of race, the violence that has been aroused, the almost uncontrollable power the measure would confer on the party which has lately risen into so great ascendency, but has not yet, we fear, learned to enjoy its advantage with moderation; all are facts which combine to make us think it undesirable that an Elective Council should be bestowed upon Lower Canada. The concession of it in the present excited state of public feeling would afford a triumph to one portion of the population, which, we have no hesitation in saying, would be fraught with danger.

17. The maintenance, on the other hand, of the principle on which the Council is actually constituted, affords no triumph to either party; it is but the maintenance of that Constitution, which, five years ago, all parties in the province were emulous in praising; it is but the maintenance by England, in one of her favoured Colonies, of institutions modelled, as far as they can be, on her own. Great Britain, in giving those institutions to Canada, intended to bestow upon it the best gift that was in her power, and it is not yet proved, at least we have yet seen no proof that, under existing circumstances, a benefit would be derived from changing them.

18. We are extremely unwilling on this or any other occasion, to say anything that might be considered as disrespectful towards the House of Assembly of Lower Canada, or towards that large body of the people who form the constituents of its majority. There is one assertion, however, which we cannot pass over without sacrificing the integrity of our own purpose; the assertion, we mean, so often repeated, that a change in the constitution of the Legislative Council is deemed by the whole population of Lower Canada, without distinction of origin, and that the only opponents of it are the holders of office and their dependants. We are forced in justice and in truth to state that this assertion is unfounded. The great majority of the people of direct British discent, while they are firmly united in opposition to an Elective Council, are nearly as unconnected with the holders of office as are the body of French Canadians; and the office-holders themselves, beyond the sphere of their own immediate duties, are little remarkable for anything but the exemplary patience with which they have borne the severe sufferings inflicted on them by the Assembly. We do not know where any persons are to be found of British descent who enjoy any influence in society, and at the same time wish for an Elective Council; whilst of the higher class of French Canadians, there are several who have no desire for it. And if we look to the poorer classes of the community, we shall find, that the feeling is equally intense, to say the least, in the British population, against the proposed change, as it is amongst the French Canadians in favour of it. The French Canadians of this description, or by far the greater part of them, give their whole confidence to their leaders; and when we consider how often they have been exposed to hear assertions that the Executive Government is corrupt, that the eminent individuals who have been their Governors have robbed the public treasury, and that in the distribution of Wild Lands, the settled inhabitants of the country have been denied their due proportion, we cannot but suppose that such representations must have their influence in urging many to assent to the demand for a change in the Constitution. But we have greatly misunderstood the character of the Canadian "habitans," if they do not, in general, cherish a feeling of loyalty to the King, and a sentiment of gratitude for the undisturbed enjoyment under their present Government, of all they hold most dear; of their ancient habits, their laws, and, above all, of their religion.

19. Indeed, any stranger unacquainted with the political dissensions of the Province, might well ask in amazement for the cause why French Canadians should quarrel with British protection. Though a majority in Lower Canada, they form not only a very small minority in the immense family of North America, but even a minority in the British parts of it. Surrounded as they are becoming every day by superior numbers of a race more enterprising in their habits than themselves, speaking a different language, and following a different creed, it is scarcely possible to suppose that if the protection of the Home Government were withdrawn, they could avoid being swept away by the torrent that would pour in upon them. Had Canada in 1776, or even in 1812, become a State of the American Union, no one can doubt that she would have been ere this less Canadian than she is.

20. Turning now to the consequences of an Elective Council, we are not to suppose that the party now so violent in demanding it would sit down in quiet thankfulness and submission if it were granted. It is looked to we must consider, not as an empty name, but rather as a means towards further ends.—Neither are we left entirely in the dark as to what those ends may be. We will not enter upon the field of conjecture as to the various steps which might mark the progress of their demands, but simply point out that two at least have already been announced, which, it appears to us, while England has a shadow of authority, it must be impossible, because dishonourable, to grant.

21. The first is, the Repeal of the Tenures' Act. without a gurantee for the titles that have been acquired under it; the second, the Abrogation of the Charter of the Land Company; and to these, though it be of minor importance, we may add the sacrifice of three or four individuals to whom, either as compensation for abolition of office, or in consideration of meritorious services within the Province, pensions have been assigned out of the Canadian funds by the Crown. It is true,

indeed, as we have heard suggested by some of those who prefer such demands, that England might make compensation to the parties injured, and that the amount of such compensation would be too small to be felt; but unless that can be proved, which we think cannot, namely, that the power of the British Parliament and of the King was exceeded in any of these Acts, we can imagine nothing more derogatory to the supreme authority of the nation than receding from them on such dictation.

22. There are other demands, too, which we believe to be so incompatible with the unity of the Empire as to be almost equally inadmissible, One of them is the demand, that the whole local affairs of the Province shall be conducted by a Ministry responsible to, or, in other words, removeable at the pleasure of the House of Assembly. They do not indeed ask that the Governor should be made directly and professedly responsible to them, but they require that he shall be supposed to be always acting under the advice of his Ministers; by which mean it si sufficiently plain, that though shielded from responsibility to the Assembly, neither could he remain responsible towards the King and the Imperial Parliament. We trust that we have, in our separate Report on the Executive Council, sufficiently exposed the impossibility of granting this request, and maintaining, at the same time, the dependence of the Province on Great Britain. There mightcontinue to exist a sort of federative union between them with some degree of duty annexed to it from the weaker to the stronger power; but the relation of dependence, one on the other, would, in our opinion, be destroyed.

23. Whether, in the progress of a colony towards entire self-government, some intermediate state of this sort might not be devised, we will neither affirm nor deny. The means by which a colony can be advantageously released from its state of dependence, and started into being as a nation by the voluntary act of the parent state, is an unsolved problem in colonial history, and one in respect to which we have not been asked for our advice. We consider that it is our duty to look at Canada as a portion of the British Empire, and as long as she is such, we think it would be idle to aim at bestowing on her powers incompatible with that state. To Canada institutions have been given analogous to those of England, but they can be analogous only, and not identical, because the conditions of the two are not the same; a republic might place itself voluntarily for a time under the protection of a monarchy, but it would appear to us a codtradiction to say that it could form part of it.

24. When we look at what Canada is, and still more when we think on what, but for her political dissensions, she might be, we must deny that the condition of a British colony is an unenviable one; every inhabitant of it, if he be of an ardent or aspiring character, has a wider field for the exercise of his ambition (being a British subject) than he could have under any other dominion in the world; and if content with the humbler occupations of life, there is no part of the globe where he can pursue them more safely than here, or with a more certain prospect of his industry finding its reward. There is no country in which taxation is lighter, or individual security greater; none more exempt from physical or moral evil; and to the enjoyment of this state one condition only, and by no means an onerous one, is attached, that of a due submission to the easy authority that protects and upholds it.

25. Having thus shown that we cannot recommend a compliance with the demands of the Assembly, we feel that it is necessary for us to offer some suggestions on the mode of carrying on the Government of the country under the opposition which has been threatened, should the wishes of that House not be acceded to.

26. With this view, the first consideration to be attended to consists of the accumulated claims of the public servants. Not only are these claims in themselves of the most urgent nature, but His Majesty's Ministers have so unequivocally pledged themselves to their discharge, that no scruple ought, we think, to prevent our avowing the opinion, that until they be liquidated, the Government must not expect to command the respect of the Province. We do not see how this payment could be better effected, out of the Canadian funds, than by an enactment in England similar to what we eccommended in our Second Report, authorizing the Local Government to make use of the sums accumulated in the provincial treasury since the passing of the 1st Will. 4, c. 20; and to apply, for a limited time, the proceeds of the 14 Geo. 3, c. 88, to the support of the civil establishment.

27. Should His Majesty's Ministers not deem it expedient to apply to Parliament for the Bill which we have proposed, or should it not be well received by the House of Commons, there will be no way that we are aware of by which the publi servants can be paid their arrears, except by a grant fro the House itself. But supposing those arrears discharged, a the funds still within the control of the Provincial Government would be adequate to the payment of the Civil List, which w in our First Report recommended, and would even leave small surplus applicable to any other urgent expenses; we will not undertake to assert that, under such circumstances, i would be found impossible to carry on the administration, eve though Parliament should decline to make any provision for the future by Imperial Authority. In that case, however, it would at least be indispensable that resolutions should b passed, such as we shall presently suggest as advisable, a any rate, in order to impress the Provincial Legislature clearl with the sentiments of Parliament on the leading questions i debate.

28. Another grave consideration is the fate of the Acts about to expire. The recent declaration of the House Assembly, that they will adjourn their sitting until their demands are granted, leaves scarcely room to hope that it will be possible to get the various temporary Acts which will terminate in 1837, renewed by the Local Legislature in time to prevent the confusion which must arise from their expiration. Amongst these Acts there are several of great importance; those, for instance, which constitute the charters of all the banking companies in the Province; and also one under which the courts of law in the townships are regulated. We are not yet sufficiently acquainted with the exact amount of inconvenience that might be felt in the Province from the non-renewal of these Acts, to pronounce an opinion on the propriety of continuing them by an Act of the Imperial Parliament. We think it right, however, here to state the probability of a short Bill being wanted to continue, for a year, at least, the Acts that will expire in 1837. When one branch of the legislature has declared that it will suspend its sitting until the Constitution to which it owes its existence is changed, we think it will be admitted, that if ever Imperial intervention would be justified for local purposes, it is now.

29. With respect to both the preceding topics, and, indeed, to the affairs of the Province generally, we cannot too strongly express our opinion that the effect of any Acts passed in the Imperial Parliament, will mainly depend upon the majorities with which they are carried through the House of Commons. The very same measures which, passed by a considerable majority, might restore tranquillity to the Province, would, perhaps, only increase agitation if passed with difficulty; and we need scarcely say, that if any proposals of a decided and comprehensive character be introduced, and fail, matters would be rendered worse than they are. It is from such a view of the case that we are almost tempted to say, that the best measure for Canada will be that which can be passed through Parliament, and especially through the House of Commons, by the largest majority.

30. Whatever else be done in the Imperial Parliament, we apprehend that it is highly desirable that resolutions should be passed by both Houses, expressive of their opinions on the main points at issue. Everything has already been said, in order to bring the popular party to moderation, that can be said, either in the name of the Government or the King, but the Houses of Parliament have not yet spoken to them; and it may, perhaps, be thought that they should do so in a friendly and warning voice, before they proceed to any important step of legislation. This course, moreover, would have the advantage of letting the predominant party in the Assembly know the exact state of opinion respecting their demands, in the only body whose authority they at the present moment show any disposition to look on with respect. We would, of course, wish to see any resolutions proposed with the present object, couched in the most liberal terms towards Canada, but we would respectfully suggest that they should be firm, as well as liberal.

31. It might be expressed as the opinion of Parliament, that Canada should be left to govern itself in everything that concerned its own internal affairs; but that while it remained a dependence of the British Crown, it was impossible to grant to it institutions incompatible with the unity of the Empire.

The right of the Crown to the uncultivated lands should be asserted, and the legal possessions of the Land Company declared inviolable.

A willingness might be expressed to repeal the Tenures Act, provision being made for the security of titles under it.

An opinion might be pronounced against the Elective Legislative Council, on the ground that the state of the Colony would not allow of it

A Local Administration analogous to a Ministry, such as would destroy the responsibility of the Governor towards the King and the Imperial Parliament, should be refused; for the reason that it would be inconsistent with the connexion with the mother country.

32. Whilst we have above pointed out a few specific measures which seem open to the choice of Government in respect to the claims of the public servants, and the fate of the provincial laws about to expire, we cannot conclude without acknowledging that great doubts may exist, whether a total suspension of the Constitutional Act might not be a less objectionable measure than any partial revocation of or interference with, privileges which have been conferred on the Provincial Legislature, even though it should extend only to privileges recently conceded, or to those which the House of Assembly acquired under an inferred engagement which it has not as yet fiulfilled. The arguments for or against such a measure, as far as they rest on abstract grounds, or on general political reasoning, may be as well understood in England as in Canada, and we do not perceive in the state of parties or of public feeling in the Province, any peculiar circumstances other than are known to your Lordship, which it is necessary for us to point out as bearing on the question.

33. We, of course, offer the preceding recommendations, or rather suggestions, without departing from what we have already advised respecting the Executive and Legislative Councils in our Third Report, and in our letter of the 12th of May last; and we cannot refrain from expressing our anxious hope, that in the future selection of individuals for either of these important bodies, the greatest care and caution will be exercised. An early addition to the Legislative Council will, we think, be found desirable.

We do not, however, enlarge upon this part of the subject, because it appears one on which advice may more appropriately be offered by the Governor-in-chief in his executive capacity.

II.—THE REPRESENTATION OF THE PEOPLE.

1. The next subject to which we have to request attention is the Representation of the People, on which your Lordship's Instructions to us are contained in the 73d, 74th, 75th and 76th paragraphs of the Despatch No. 1, dated the 17th July, 1835. The complaints on this head proceed from the inhabitants of British origin. After stating that the powers of the Assembly had been exercised by the leaders in that body with a sprit of exclusion and proscription against His Majesty's subjects not of their own origin, and even against those of their own origin who were not disposed to support them in their views, the Petitions to His Majesty, in 1835, proceed as follows:

"Your Petitioners humbly represent that at the late general election this spirit of exclusion and proscription has been carried to the extent that, although the population not of French origin amounts to more than one fourth of the population, it has not been able to return more than 14 members of the choice of the electors, or representing their views and interest, out of a House composed of 88 members, and that the whole of the population not of French origin in the cities and counties of Quebec and Montreal, although they nearly equal the French polutation in number, have not been able to return one member of their choice out of 12.

"This result, which, in fact, leaves a population having great and permanent interests in the Province, and contributing a very large proportion of the public revenue, without even the power of being heard in the legislature of the country by any person of their choice, or responsible to them, has been facilitated by an unjust and faulty distribution of the elective franchise; by including the new and growing settlements of persons not of French origin in counties where that origin predominates, and where their votes are lost; and by the incessant and systematic efforts of the leading characters in the House of Assembly to depress and vilify the population not of their origin, with a manifest tendency to subject their persons and property, and the whole country, to the arbitrary rule and control of these characters, through the instrumentality of a majority acting and held together under the impulses of national prejudices and feelings."

2. The complaints on this subject are also set forth, with great particularity, in a statement delivered to us by Mr. Gibb, who appeared before us on behalf of some of the associations whence the above-cited petitions emanated. Mr. Gibb did not allege evils without offering a suggestion of measures by which he would ask for their removal; and although we are not able to lend our support to his recommendations, we shall have frequent occasion to refer to the clear and elaborate exposition in which they are embodied.

3. Before entering into details, it is necessary to offer one remark of a general nature upon the complaint that, although the population of British origin forms, as they assert, though it is denied by their opponents, more than a fourth of the population, it does not return nearly a corresponding number of members. On this subject we must observe, that in any country it must be exceedingly difficult to bestow on a minority, consisting of a given proportion of the people, living interspersed among the rest, the exact share of representation which their ralative numbers would entitle them to. So far as they are gathered into separate communities, which in Lower Canada is the case in the district called the Eastern Township, it is easy to confer upon them their due number of representatives; but where the two parties are mixed, as in other parts of the Province and in the cities, it is not possible, by any usual plan of voting, to secure to them a weight exactly proportioned to their numbers. A want of correspondence, therefore, between the numbers of representatives and the numbers of the two races in Lower Canada, would not, in itself, constitute a proof of unfairness; and the merits of the existing system can only be determined by observing whether, in the details and local arrangements, justice is done.

4. By a Table which we have appended to this Report (Appendix Representation, No. 1,) and to which we would invite your Lorkship's attention, as calculated to elucidate the inquiry generally, your Lordship will observe that, according to the census of 1831, the number of the population was, 509,591, while that of representatives was 88, producing an average proportion of 5,791, souls to each representative. The census does not exibit the numbers of each race, nor will the classification according to religion answer that purpose, because of the numerous Irish settlers who are Romain-catholics, and also because of the acknowledged incorrectnes of the consus in this respect; but we believe that out of the cities, and with some other exceptions that will appear in the course of our statements, the division into seigneuries and townships must be admitted to be as fair a guide as can be obtained for trying the equity of the alterations made in electoral districts in the year 1829. The inhabitants of the seigneuries may, for general purposes, be reckoned as French by origin; the inhabitants of the townships as English. Now, it appears by the Table to which we have just referred, that in the counties composed exclusively of seigneurial population, or containing a majority of that description of inhabitants, the proportion of people to each representative was in the former 6,201, and in the latter 6,883; and that in counties containing a majority of population settled in townships, or composed exclusively of such inhabitantants, the proportion of people to each representative was 3,394, and 3,543. Thus the inhabitants of counties in which the townships predominated had nearly twice as many representatives, in proportion to their numbers, as the inhabitants of counties principally or entirely seigneurial. We only mention this fact for the purpose of showing that it would be erroneous to suppose that any certain inference against the present electoral system is to be drawn from general considerations. We shall now proceed to examine that system more minutely.

5. The first divison of the country into counties was made under authority of the Constitutional Act, by Sir Alured Clark, in a Proclamation issued on the 7th of May 1792. This division was, as to territorial extent, extremely unequal, being apparently based upon no other principle than that of the then existing population. Thus, for instance, the Isle of Orleans, containing only 69 square miles, was made a county of itself, and three other counties were established which contained only about 200 square miles each, whilst others were made of a size entirely disproportionate,

as, for instance, Huntingdon, which contained about 1,200 ; Richelieu, 2,200, and Buckingham, nearly 6,000 square miles. These extensive territories, too, consisted either en-tirely, or for the greater part, of land fit for cultivation ; and if we turn to the counties composed princi pally of barren lands, we find some of still larger extent. That of York contained upwards of 35,000 square miles, and Northumberland perhaps not less that 80,000.

6. It is evident that such a system of division, however fair itmight have been in 1792, was of a nature to require alteration as the country became more densely peopled. The increase of population in the townships, where the loyalists from the former colonies and emigrants from the United Kingdom had settled, caused applications to be made, urging their right to be duly represented in the Assembly ; and accordingly, after various unsuccessful attempts at legislation, a bill was at length agreed to by the two Houses of Legislature, and received the Royal assent in 1829. It forms the Statute 9 Geo. 4, c. 73. This Act did not make an entire new division of the Province, but only went to increase the representation by dividing the great counties, and leaving the small counties as they were :—

Ten counties were left unaltered, and therefore still form - - - - -	10
Seven were divided, each into two, and consequently now form - - -	14
Two were divided, each into three, and consequently now form - - -	6
One (Richelieu) was divided into - -	4
One (Buckingham) was divided into - -	6
	40

Thus the 21 old counties were increased to 40 ; of which seven, as will be seen by the Table forming Appendix No. 1, either contain a majority, or consist exclusively of population resident in townships.

7. By an examination of its provisions, we are led to infer that the framers of the Act of 1829, proceeded on the principle of leaving unaltered all the counties in which the population was less than 20,000 ; of dividing into two all those of which the population was more than 20,000, but less than 30,000 ; and into three or more, those of which the population exceeded 30,000 souls. The only exceptions we can find to this rule appear to have been made in favour of the remote and very extensive counties of Northumberland and Gaspé, which were each divided into two, though their population was comparatively small. The circumstance of new names having been given to most of the counties whose limits were not changed, may, perhaps, have given rise to an idea that much more extensive alterations were effected. The table No. 2, in the Appendix, shows the old and new names of the counties, as well as the population of each.

8. The principle on which representatives were allotted to the new counties appears to us to have been, in the bill as it left the House of Assembly, to give one member to each county of which the population was supposed to be less than 10,000,with the exception of the county of Megantic, which, as the population was supposed to be very small, was annexed to that of Beauce ; two members to those which were supposed to have a population exceeding 10,000, but falling short of 15,000 ; and three members to all which had a population above 15,000 ; though, probably, from their having no accurate census before them, the allotment, if such were the rule, was not quite correctly made. There was no provision in the bill by which errors in this respect might be amended, nor was there any for an increase of members corresponding to a future increase in their population.

9. This part of the bill, however, was entirely altered by the Legislative Council, and, in lieu of it, a general provi sion inserted, that all counties should have two members, whose population then amounted to 4,000 or upwards, or should afterwards amount to that number ; and that those under 4,000 should have one member only untill they should attain that number. It was generally supposed that these amendments would have caused the rejection of the bill by the Assembly, but, contrary to expectation, the amendments were adopted without discussion. The county of Megantic is the only one that now remains entitled to no more than one member ; and the general effect of the alteration made by the Council is, as far as we can judge of it, to give six representatives to those counties in which a township population prevails, more than they would have had under the ill as it left the Assembly, and five less to those which are principally inhabited by French Canadians. It is, perhaps, worthy of remark, that no alterations of importance were made by the Council in that part of the bill which related to the new division of counties ; some few townships only being taken from the county of Drummond (the name of which in the original bill was St. Francis) and given to the county of Sherbrooke.

10. We may remark, that before this measure reached the Legislative Council, one on the same subject had originated in that House likewise. The bill which,emanated from thence proposed to leave the original 21 counties unaltered, except by detaching from them the townships and a few seigneuries in which a British population was supposed to predominate ; and, in this method, it went to create 18 new counties. Four of these were to be to the north of the St. Lawrence, and in the neighbourhood of the Ottawa ; one was to be formed out of the lands which have since been made the county of Beauharnois ; and 13 new counties were to be formed out of what are usually called the Eastern townships, with the addition of a few seigneuries near the Province line and on the Richelieu, inhabited principally by persons of British descent. Each of these new-formed counties was to have one representative so soon as it should attain a population of 1,000 souls, and two when the population should reach 3,000. The bill was sent down to the Assembly, and there read for the first time on the 6th February 1829, but was not further proceeded with.

11. In delivering our opinions on the Act of 1829, as it passed the Legislature, we shall, in great measure, throw them into the shape of comments on Mr. Gibb's statement, both because he has expressed his views with considerable distinctness, and because, as he appeared on behalf of a large body of those who remonstrated against the state of the representation, it may be presumed that the objections he urges are generally current.

12. The first remark of Mr. Gibb, on the Act of 1829, was as follows :

" Complaints have been made with regard to this division. Territories inhabited principally by persons of French origin have been divided into numerous small counties, when others where a large body of those of British origin resided were so divided, that by joining that territory with another more numerous in French inhabitants, the votes of the British were rendered ineffectual.

The county of	Laprairie contains -	238 square miles.
——	Acadie - - -	250 —
——	Beauharnois - -	717 —

The population of the latter is nearly one-half of British and Irish descent. The census of 1831 estimates the total number of souls of that county at 16,857, of whom 9,349 only were Catholics, including Irish, and the remainder, 7,508, were Protestants. These last and the Irish included in the number of Catholics will make up nearly one-half of the county."

13 On this statement we have to remark, that the four smallest counties now existing are not new counties created by the Act of 1829, but old counties remaining unaltered ; viz : Orleans, Montreal, Chambly, (formerly Kent) and Verchères (formerly Surry). It may possibly be wrong to allow them to continue unaltered, but it would be a mistake to suppose that they were created by the new division, in order to give an undue preponderance to the population of French origin. Acadie and Laprairie are the two smallest counties created by the new division. and Laprairie, the smallest of of the two, is larger than the largest of the above-named four. Acadie, Laprairie, and Beauharnois formed the old county of Huntingdon ; and though Beauharnois was made so much larger than the other two together, we see no reason for believing that this was done with any unfair intention, for the county of Beauharnois could not conveniently have been made smaller without dividing the seigneurie of the same name, and placing parts of it in different counties. Acadie and Laprairie might, it is true, have been united in one county, instead of being formed into two ; but in that case the extent of it would have been, as we have already seen, more than double that of some of those which previously existed, and its population nearly three times as great as that of the average of other counties.

14. With respect to the county of Beasharnois, we have further to remark, that the population in it of British or of Irish descent, we have good reason to believe, either exceeds already that of French descent, or must shortly do so. The county comprehends four townships and only one seigneury,

and for this a commutation of tenures has been obtained under the Act of 1825. It, moreover, is a property on which there can be no doubt that every encouragement will be held out to the establishment of British settlers. If either party have to complain in Beauharnois, it is likely that instead of about 7,500 persons of British origin liable to be outvoted by a French populatlon, it is, or will shortly be a popula tion of between 7,000 and 8,000 French Canadians, liable to be outvoted by a majority of British descent; but, as we have already said, such occurrences must be unavoidable where the different classes are much intermixed, and we are glad to think, that there ought not to be any real opposition of interest between them to give the fact importance.

15. Mr. Gibb's next observation is:

"The county of Two Mountains contains upwards of 6,500 inhabitants of British or Irish origin, but they are outvoted by a large majority of French."

16. The county of Two Mountains and the county of Ottawa were formed out of that portion of the great county of York, which lay to the east of the Ottawa river. The fact stated by Mr. Gibb is, we believe, correct, but we do not see how this portion of territory could have been divided into two counties in a manner more advantageous to the British population. According to the census of 1831, the population of the townships contained within the whole district to be divided was 7,814, and that of the seigneuries 17,865; and it has been divided into two counties, of which the members for one (Ottawa) are returned by a majority of English; and those for the other (Two Mountains) by a majority of French Canadians; it does not seem, therefore, that any very glaring injustice has been committed, even though one of the seigneuries, (Argenteuil) comprised in the county of Two Mountains, is known to contain a considerable British population. Instead of two, however, this portion of territory might, perhaps, without injustice to the rest of the country, have been divided into three or even into four counties, as Mr. Gibb, in another part of his paper, has proposed; indeed, it appears to us that an improved division might be made of all the counties in this part of the district of Montreal, that is to say, the part that lies north of the Ottawa and the St. Lawrence. But it could not have been done without making greater alterations in prior boundaries than it was the intention of the Act in 1829 to effect, the alteration on that occasion being confined, as we have already observed, to those counties which, from their size, required division, and leaving integral and untouched those which were not so large and populous as to require change. Terrebonne (formerly Effingham) was one of these, and it could not have been kept entire had an alteration of the kind we have alluded to been effected.

17. Mr. Gibb concludes his objections to the existing division with the following remark, accompanied by an enumeration of counties and towns in support of it:

"French majorities exist also in the cities of Quebec and Montreal, and the towns of Three Rivers and William Henry, and in every county in the Province where lands are held under seigneurial tenure, and these occupy the entire borders of the Rivers St. Lawrence, Richelieu and Ottawa, excepting only the county of Ottawa on the last-named river."

18. This statement we believe to be correct, except in so far as the case of Beauharnois might call for some qualification. In the seigneurial counties, where French Canadians form the vast majority throughout the whole, they constitute, as Mr. Gibb truly alleges, a majority within each, nor do we see how it could have been otherwise. It is also probable, that in the cities and towns they still retain a majority of votes. But that even at this moment they have no very confirmed preponderance may sufficiently appear from the keenness with which some of the principal elections in the cities have been contested; and whatever may be the case at present, these are obviously the places at which the superiority in number of the French Canadians is least likely to be enduring. As soon as the scale turns, they will be under the same inconvenience of which the English complain now, and we apprehend that it is one, as we have already said, inherent in all existing plans of election. If it admit of cure, it is only by a suggestion we shall presently mention, but which is too new, we conceive, in its character to be fitted for immediate adoption by a whole people, and too recently proposed to render it discreet, that it should be recommended without allowing more time for the light necessarily thrown on such topics by public discussion. *(Vide infrà,* par 27.)

19. On the whole, we arrive at the opinion that the division of counties and towns in 1829 cannot justly be charged with unfairness. Although the counties to the north of the St. Lawrence and of the Ottawa appear to us susceptible of an improved distribution, we have already observed that it could not have been effected by the Act of 1829, without departing from the basis on which that measure was constructed. And in like manner, while it appears an obvious impropriety that the Isle of Orleans, with a territory of only 69 square miles, and a population of only 4,349, should be allowed to return two members, yet, when it is remembered that this was the direct consequence of a general provision, not objected to otherwise, we think that any impression of unfairness must disappear. By the Bill, as it left the Assembly, only one member was allotted toOrleans, and it owed the other to the general rule inserted by the Council, expressly with a view to the advantage it must, on the whole, confer on the new British settlements, that counties with a population of more than 4,000 should return two representatives.

20. We now come to the examination of a plan proposed by Mr. Gibb, on behalf of the English inhabitants of Montreal, for an alteration in the division of counties. Mr. Gibb proposes: 1st, to unite some of the smaller counties, in which the inhabitants are almost exclusively of French origin, so as out of the five counties of Acadie, Laprairie, Richelieu, St. Hyacinthe and Rouville, to form only three, separating, however, a small portion of the last named county, for the purpose of throwing it into the neighbouring one of Missisquoi, as the population of that part of Rouville is said to be of British origin; 2d, to subdivide the most extensive of the present counties where the land is held in free and common soccage, so as out of the seven counties of Ottawa, Missisquoi, Shefford, Stanstead, Drummond, Sherbrooke and Megantic, to form 14. The effect of this arrangement would be to diminish immediately the number of members returned by the seigneurial counties by four, and to augment ultimately the townships' representation by 14.

21. The population of the seven counties which Mr. Gibb would divide, was, according to the census of 1831, collectively, ... 29,921

Mr. Gibb would add the southern part of the county of Rouville, ... 4,775

And the parish of Sylvester, in the county of Lotbinière, this parish being said to contain a majority of English inhabitants, ... 1,323

Making a Total population of ... 36,019

Dividing this into 14 counties, the average population of each would be 2,644.

The population of the five counties which Mr. Gibb proposes to condense into three, was, in 1831, as follows:

Acadie	11,419
Laprairie	18,497
Richelieu	14,149
St. Hyacinthe, ...	15,366
Rouville	18,108
	77,539
Deduct part of Rouville, added to Missisquoi	4,775
	72,764
Average if reduced to three counties	24,255

Thus the three counties formed by Mr. Gibb's process of condensation would each contain nearly ten times as many souls as would be contained in each of the 14 that he would form upon his principle of division.

22. Such being the result of our examination of Mr. Gibb's proposal, we are forced to come to the conclusion that it is one we cannot recommend; though, at the same time, we do not think the actual division of the Province and apportionment of members, viewing it substantively, and not merely as a further division of counties previously laid out, is altogether free from objection.

23. A difference of opinion may naturally enough arise as to the best principle on which a territory can be divided into counties or electoral districts, but we are inclined to think that the least objectionable one for a country in the condition of Canada, with a considerable extent of unoccupied land, and in increasing population, would be to divide it, as far as natura

boundaries and circumstances would permit, into counties of nearly equal extent, or rather, perhaps, into portions apparently capable of supporting a nearly equal population, and to allot to these divisions a number of representatives calculated to increase, up to a certain point, in proportion to the number of their inhabitants. This, in fact, would be proceeding on what has been often alluded to in discussions of Canadian affairs, under the name of the compound basis of territory and population. A considerable advantage of such a division would be, that, when once established, it might remain for a long while unaltered; whereas, we believe it to be generally admitted, that the system now adopted in Lower Canada must be one of constant alteration. For instance, although we cannot go the length of saying that the time is yet arrived for dividing the great county of Sherbrooke into two or more counties, there can be no difficulty in hazarding an opinion that the time will very soon come when it ought to be done, and that, sooner or later, the same will be the case with several others, such as Ottawa, Megantic, &c.

24. Another good argument for an early division after the manner we have mentioned, is that a distant and recently occupied country has a reasonable claim to some favour in respect to representation, or to have more members allotted to it than its population alone would entitle it to, because a new district may be expected to have more wants than an old one, and at the same time to have fewer facilities of a general kind for making those wants felt by the Government or the Legislature. But as we know of no rule by which any definite proportion of extent to population has yet been established, or by which an excess in the one can be held to compensate for a deficiency in the other, and as we are not ourselves prepared to lay one down, it is out of our power to say whether the principle in question has or has not been sufficiently adhered to in this Province. That it has not been entirely overlooked, however, is evident from the fact, that in the seven new counties (being the same which Mr. Gibb would divide into 14) the average number of constituents to each member or representative is now about 3,500, whilst in the old counties the average is about 6,500, and in the district of Gaspé, which is the most remote from the seat of Government, the average is as low as 2,578.

25. Finally, whatever may be our opinions in the abstract on the best method of laying out a territory for the first time, we cannot forget that the remodelling of a long established settlement is a very different undertaking. It may be easy to carve out existing allotments, as was done in Lower Canada in 1829, into smaller divisions, but entirely to obliterate the boundaries familiar to the people, and attempt an entirely fresh distribution of the country, is an effort almost too large to be expected in ordinary times of any Legislature, and certainly too complicated to be executed without the risk of creating many more jealousies than it can remove.

26. We have entered with great detail into the state of the representation, on account of the importance which has been attached to the subject by one portion of the population. It now remains for us only to state that we cannot make any specific recommendations on the subject. There is no case established, in our opinion, for appealing to the authority of the Imperial Parliament; and even if the whole of the objections which we think well founded were removed, the effect would be very trifling, and scarcely go to alter the relative strength of parties in the House of Assembly; we, therefore, think it best that such alterations as may be required should be brought about by the influence of fair discussion, acting on the sense of justice of the Legislature, than that any attempt should at present be made to hasten it in the only constitutional way in which it could be done, namely, by a message from the Throne to the House of Assembly.

27. Before quitting this part of the subject however, we wish to mention a view of the subject which is taken by one of the Commissioners. Fearing that the adverse feelings of the British and the French Canadian parties are not likely to subside, and that wherever the latter have a majority, however small, there will be no chance of the minority being permitted under the established and usual law of voting, to elect a representative, he is of opinion that the most practical remedy would be to limit each voter to one vote, no matter how many representasives should have to be elected, and that it would be advantageous to give to each electoral district, which according to the census of 1831 had a population of 15,000 and less than 20,000, three representatives; and to those which had 20,000 and less that 25,000, four; and to those which had 25,000, five; and that the cities of Quebec and Montreal should each constitute only one electoral district. He does not think this alteration would be agreed to by the Assembly of Lower Canada, and he would not recommend any application to be made to the British Parliament for this object alone; but if it should become necessary for the Parliament to make a general adjustment of the affairs of Canada, which should still leave only one Legislature for the whole Province, he proposes that a Bill or clause should be introduced to effect the alteration in the laws of election which we have mentioned. An idea of this kind was thrown out for the first time, if we are rightly informed, in the late session of Parliament in England, in reference to the Irish Corporation Bill. We confess that some such plan would appear to us the best method of protecting the sentiments of a minority in the state from being almost altogether merged, by the operation of elections, if those of a majority perhaps not much exceeding it in numbers. No mere territorial divisions could ever secure with equal accuracy or with equal permanence a correct proportion between the number of representatives and the number of voters participating in the same opinions. But the proposal, as we have already had occasion to observe, is very new; and the majority of us think that it is peculiarly one on which public opinion ought to have time to form itself before any positive step be taken. We are also unable to agree that the Imperial Parliament could properly interfere for the purpose. In order to repress too eager or too ambitious a pursuit of change in the Constitution which it has bestowed upon Lower Canada, the controlling authority of Great Britain may justly be exerted; but to apply it to enforcing an innovation, avowedly on the presumption that the Local Parliament would not consent to it, and with the certainty that the people could give it no welcome, as it would be perfectly strange to them, would appear to us quite contrary to the spirit in which the Supreme Legislature ought to make itself felt in this Province. We deem it enough, therefore, to throw out a statement of the proposition, but to leave its success to the chance of its either finding immediate favour in Canada itself, or being hereafter so far supported by the experience or deliberations of other countries as to lead to its adoption here also.

28. We now revert to Mr. Gibb's statement, for the purpose of considering some remarks and suggestions which he has offered on other points connected with the representation, besides the arrangement of electoral districts.

29. On the subject of qualification, Mr. Gibb submits that in the cities of Quebec and Montreal the qualification of electors should be doubled; but we have heard no reason to suppose that the change would be of sufficient importance, or of such evident advantage as to render it worthy of being made the subject of an express recommendation from the Throne to the Legislature.

30. Mr. Gibb further recommends that a qualification should be established for representatives as well as electors, which is not the case at present. This is a point so much in dispute (as far as the general principle is concerned,) that we fear we must dismiss it in the same way as the last suggestion, by saying that though even it be desirable, it is hardly fit to be made the subject of a recommendation from the Throne. It is certainly conformable to ancient practice in England to require a qualification as a sort of security, that persons only who have some stake in the country should be called on to legislate for her interests; but on the other hand we would not willingly attempt to refute the doctrine which teaches, that the only proper qualification is that of possessing the confidence of the persons represented. It is observable also that in the United Kingdom the practice on this head is not uniform; for in Scotland no qualification at all is required, while even in England, where the law demands it, it has never been rigidly or successfully enforced.

31. Mr. Gibb next proposes that the wages of members (which are fixed by law at two dollars per diem), if continued at all, should be paid by a levy on the districts they represent, instead of out of the general funds of the country. We are of opinion that in a new country where few people are found who can afford to give their time to public affairs without remuneration, the allowance of wages is reasonable. On general principles we agree that the payment ought rather to be raised by the district, for it would tend to produce watchfulness over members, and a greater appreciation by constituents of the value of public time; but finding the other system of making the payment out of the common revenue of the country established in

Lower Canada, we do not think that a change is so important as to render it necessary that it should be particularly urged on the Legislature by the Government.

32. A general registration of votes would no doubt have the advantage of conducing to shorten elections, and to render disputed returns less frequent; but the requisite machinery of the system would not be easily suplied in this Province, the expense would be considerable, and we know not how far the country would be disposed to bear it.

33. The plan of making elections simultaneous throughout the whole country is a distinct suggestion, on which we will only say that we think as many considerations might be urged against it as for it, and that under the law as it now stands, we believe so wide a discretion is left to the Governor with respect to the commencement of polls as would enable the Executive to make any approach to the proposed course which circumstances might show to be really desirable.

34. The establishment by law of a fixed time of the year for the meeting of Parliament is a proposal which will probably, on the face of it, be sufficiently seen to be inadmissible.

35. With respect to the complaint on part of a recent election law, 4 Geo. 4, c. 28, s. 27, by which co-proprietors are excluded from voting for any property, unless they be co-heirs, we must say that we think the enactment a partial one, calculated to bear unjustly on the commercial interest, and to favor one class at the expense of another; the provision, however, can fortunately have no more than a temporary existence, as it is contained in an Act of which the King's disallowance is expected to be signified, and which at any rate expires in 1840.

36. As connected with the constitution of the Assembly, though not immediately with the state of the representation, it seems to us a serious inconvenience that the existing law of the Provincial Parliament requires 40 members, or only 4 less than a moiety of the Assembly, to be present to constitute a House. The consequence is that it has constantly happened of late years, that before the Governor has desired to prorogue the Parliament, its proceedings have ceased for want of a sufficient attendance of members of the Assembly; and as the custom has prevailed of not sending up some of the most important measures to the Legislative Council unil a very late period of the session, the Council, after the stoppage of proceedings in the Assembly, has had only the alternative of adopting without amendment, or of rejecting the bills. The large number which must be present to constitute a quorum also contributes to depress still further the influence of any minority; and to enable the majority to deprive it, we may almost say, of its Parliamentary privileges, by rendering the transaction of business impossible, except when it may suit the convenience of the stronger party to allow of it. We have little hesitation in offering an opinion that an advantage to the public would be derived from fixing a lower quorum.

37. Having now gone through with great minuteness all the proposals which have been brought forward for an alteration in the election laws of the country, we are led to conclude that though there may be many things in them capable of amendment, and one or two instances in which the allotment of members to electoral districts, or the distribution of those districts, are not such as could be wished, there is no sufficient case made out for any specific recommendation from the Throne to the Provincial Legislature, and still less for any interference on such a subject by the Imperial Parliament.

III.—THE WILD LANDS AND KING'S DOMAIN.

1. On the important subject of the Wild Lands, we shall commence by examining the complaints made by the Assembly, and shall offer our views on the best method of carrying on the settlement of the country, as well as endeavouring to guard against the monopoly of lands by speculators; we shall then proceed to make our observations on the agency by which the management of the Crown Lands and Wild Lands is conducted; and shall conclude with expressing our opinions on the effect of the Land Company, and on the expediency of such institutions in general.

2. The principal complaints on the part of the Assembly may be comprised under the following heads:—

That the Wild Lands have been made a source of revenue independent of the Assembly:

That they have been lavishly granted to favourites and dependants on the Government:

That the old inhabitants of the Province are shut out from any hope of obtaining them on the terms they like, or on the tenure to which they are attached:

That a large tract of them has been assigned to a Land Company, contrary, it is said, to the privileges of the Provincial Legislature.

3. Before examining these complaints separately, we must make some remarks on the assumption implied in the last of them. The claim of the House of Assembly to direct and controul the management of the Crown or wild lands seems to be founded on abstract principles rather than on any particular act of the British Parliament, or any analogy derived from British practice; and the only way in which any serious argument can be maintained in favour of what they claim, may perhaps be set forward somewhat in the following manner: That in any new discovered or newly occupied country the land belongs to the Government of the nation taking possession of it, and that settlers in it, so long as they retain the character only of emigrants from the mother country, can claim no more than what has been granted to them as individuals; but that when a distinct boundary has been assigned to them, and they come to be incorporated into a body politic, with a power of legislation for their internal affairs, the territory within their boundary becomes, as a matter of right, the property of the body politic, or of the inhabitants, and is to be disposed of according to rules framed by their Local Legislature, and no longer by that of the parent state.

4. This proposition rests, as we understand it, entirely upon abstract grounds, and we believe that we are authorized in saying that it never has been entertained by Great Britain or any other colonizing power. That the ungranted lands in any colony remain the property of the Crown has, on the contrary, we believe, been the universally received doctrine in Great Britain, and although the Constitutional Act does not expressly assert a right of which its framers probably never contemplated a doubt, the lands of the Province are mentioned in the 36th clause as being thereafter to be granted by His Majesty and his successors. While, therefore, we are quite ready to admit, that in the disposal of the ungranted lands the interests of the first settlers ought never to be lost sight of, and also that the wishes of the Local Legislature should be consulted, provided they are made known to His Majesty in a constitutional manner, we cannot recognize in any way the abstract principle set up for it in opposition, not merely to the general laws and analogies of the British Empire, but to the clear meaning of the Act by which alone the body preferring the claim has its existence. It must, we apprehend, be the main object in every scheme of colonization that the parent state should have the right to establish her own people on such terms as she may think fit in the country colonized; and at present perhaps her North American Colonies are more valuable to England as receptacles for her surplus population than in any other way. We cannot, therefore, believe that England will consent to a doctrine that will go to place at the discretion of any Local Legislature the terms on which emigrants from her shores are to be received into her Colonies. An argument is, we are aware, occasionally adduced, that at the time when the Province of Quebec was divided into Upper and Lower Canada, an intention was exprersed of separating the French from the English settlers, and giving the Lower Province to the former, whilst the Upper one was to be exclusively reserved for the English. We, however, believe, that though the idea of separating the people of different origin might have weight with the framers of that Act, they never had in view any greater separation than one that should have the effect of confining the French tenure of lands, the French civil law, and the special privileges conferred on the Roman Catholic religion, to the Lower Province; and that it could never have been intended that England should give up her right to regulate as she might think proper, the settlement of the unoccupied parts of the country. Some of Mr. Pitt's speeches prove the reverse.

6. Whilst, however, we thus unhesitatingly assert the right of the Crown of Great Britain to the disposal of the ungranted lands, we are no less desirous of explaining ourselves on one or two principles, subject to which we consider that it ought to be exercised.

7. First, we think that though a revenue may very properly be drawn from the wild lands, they should not be disposed of solely, or even principally, for the sake of revenue, and still less for the sake of a revenue with which to make in ordinary times the Executive independent of the Local Legislature; and, secondly, that whatever revenue is derived from them should be applied to the uses of the Province, and, like all other revenue, be placed under the control of the Local Legislature, so soon as that legislature shall have made provision for certain permanent expenses of the executive government in a manner satisfactory to the parent state, or shall have provided a satisfactory civil list. Until this be done, however, we cannot but regard this revenue as at the disposal of the head of the parent state, both because it is in no way to be considered as a tax on the inhabitants, and because it would be inconsistent with the dignity, or rather with the duty of any state, to allow a government to be carried on in its name, without taking some security for its efficiency. We scarcely think it worth while to notice the argument, that the King cannot have a right to the whole of the wild lands, because he has expressly reserved to himself a seventh of them only; the reservation of this seventh, under the name of Crown reserve, was only a regulation of manage-

ment, and has been revoked by the same authority that made it.

8. These are the impressions with which we proceed to the more detailed consideration of the complaints that have been made of the administration of the wild lands within the province of Lower Canada.

9. With respect to the first complaint, that they have been made the source of revenue independent of the Assembly, it is evident that, under our view of the subject, this was very properly the case, so long as certain definite revenues were taken by the Executive for the maintenance of the civil government, and the deficiency made good by Great Britain. When, however, a compact was proposed by which the whole expenses of civil government were to be borne by the Province, and the revenues theretofore at the disposal of the Crown were to be placed under the control of the Local Legislature, in exchange for a competent civil list, we think it would have been far better that the revenues derived from the sale of wild lands, and from other similar sources, under the name of hereditary, territorial or casual revenues, had not been excepted, and that the attempt had not been made to separate from the territorial revenue the monies derived from the sale of wild lands and from licences to cut timber. We have in our first Report proposed that all the revenues of the Province, or all monies derived in any way from a Canadian source, should be placed at the disposal of the Local Legislature so soon as a very moderate civil list shall be permanently provided, and we entirely adhere to that recommendation.

10. With regard to the improvident or partial grants which form the subject of the second complaint, we know not how we can more fully express our opinion of the justice with which it is made, than by saying, we adopt your Lordship's own view on the subject. The circumstances under which the grants were made, may be pleaded in extenuation of their evil, but the fact of their being prejudicial cannot, we apprehend, be denied.

11. With respect to the third complaint, that the original inhabitants have no means of obtaining land on the tenure which alone they like, we are anxious to express our opinion that, as the people of French origin in Lower Canada have long since been admitted to all the rights of Englishmen, they are not only as much entitled to a share in the wild lands as any other class of our fellow-subjects, but that they have, as the first occupiers of the country, a peculiar claim to an extension of their grants, when such extention is rendered necessary by their increasing numbers. We certainly would not recommend the creation of new seigneuries on the model of the old ones, nor do we think we should meet the wishes of any part of the Canadian population, if we were to propose to make new grants subject to the payment of the feudal dues, called *Lods et Ventes* or the *Droit de Banalité*. We are well aware that the system of quit-rents has failed very generally in British settlements, and we undoubtedly, *cæteris paribus*, prefer a tenure of free and common soccage to any other; but it should, we think, be borne in mind that the desire so strong in British settlers to possess an undivided interest in the land they cultivate, is scarcely felt by Canadians of French origin; and that, as they have been always accustomed to the payment of a small ground-rent, they might not object to take new lands, if freed from the feudal burthens, subject to some increase of rent; and also that such rents might successfully be collected from them, notwithstanding the difficulty experienced with person less accustomed to a similar system, especially if new parishes could be laid out, to which bands of related families might remove, with the sanction and under the care of their spiritual pastors. We are aware that great objections might be urged against the introduction of a new tenure of land in a country where difficulties already exist in consequence of a diversity of tenures, and we also feel the necessity of granting no greater advantages to settlers in one district than another, or to settlers of one class more than to those of another. We therefore do not wish that any attempt of the sort should be made solely on our recommendation. We desire merely to express an opinion that, in the event of such an arrangement, or any other of a similar nature, being proposed to the Executive by those who are better acquainted with the wants and wishes of the Canadian population than we can pretend to be, and sufficient security be given against the evils that we have hinted at, the proposition should be received with willing attention by the Government; and in this we apprehend we are doing no more than following up the principle that was sanctioned by Lord Ripon, when, in the last paragraph of his Despatch of the 21st November, 1831, he invited the House of Assembly to offer their advice to the Government in the management or disposal of the wild lands.

12. We are aware that there are yet in the seigneuries very extensive tracts of unoccupied lands, as appears in the memorandum we place in the Appendix No. 4, and also that the crowded state of the old settlements in them is in great part to be attributed to the genius and habits of the French Canadians, which prompt them to remain in this crowded state rather than remove to new localities or mix with new neighbours; but, on the other hand, it is to be remembered that great portions of the unoccupied parts of the seigneuries are decidedly unfit for settlement; and that with respect to the better lands, the seigneurs being able, since the old laws of the country have fallen into disuse, to demand their own terms for them, settlement is scarcely more easy on them than on the wild lands of the Crown; to which considerations it may also be added, that by the operation of the Tenures' Act, some of the best of these tracts have already been converted into soccage lands, on terms highly advantageous to the seigneurs, and that more of them may be expected to follow the same fate as commutations become more easy.

13. On the complaints that have been made by individuals respecting delay in giving out land patents, and the amount of the fees charged upon them, our opinions will appear in the observations we shall have to submit upon the departments concerned in managing the Crown lands and wild lands.

14. A copy of the last regulations issued by the Secretary of State for the disposal of the wild lands, dated 7th March, 1831, is placed in the Appendix, together with the directions of August, 1834, respecting military and naval settlers. We approve of these regulations. It is a common complaint, we must allow that land is too dear; but we are by no means convinced that it would be for the general or the permanent advantage of the settler to make it cheaper. The arguments adduced in Lord Ripon's Despatch, addressed to Lord Aylmer on the 21st of November, 1831, are, in our opinion, very powerful; and since that Despatch was written, the acquisition of land has been much facilitated to the poor emigrant, through the instrumentality of the North American Land Company. The Company will not, we apprehend, sell cheaper than the Government; on the contrary, it will perhaps sell much dearer; but it will offer to the settler, and indeed does now offer, as we shall have occasion hereafter to explain, advantages of another kind, which the Government never can. The result, therefore, of the consideration which we have given to this subject is, that in the present mode of disposing of land there are but two particulars in which we would recommend a change.

15. We think the practice of accepting payment of the purchase money of land by instalments decidedly objectionable. The collection of the instalments is very expensive; the collection of the interest nominally charged on those which are unpaid has been found impossible; and though the land becomes legally forfeit for a breach of the engagements on this head, it is not surprising that in case wherein the whole population of settlements is often involved, so extreme a remedy has never been resorted to. The tendency of the system is to lead people to purchase more land than they want, to disperse the settlers over a wider tract than they can beneficially occupy, and to bring them all into the predicament of a popopulation of debtors, with the probability of long remaining so. And even were the indulgence less injurious than we think it is, the operations of the Land Company may be expected to drain off the greater number of emigrants of the poorer class, being that class for whose convenience credit may be supposed to have been allowed. Another evil is, that parties who wish to cut timber are enabled to bid at the auctions and pay a first instalment, then cut the timber, and give themselves no further concern about either the land or the instalments. In this manner they get the timber at about a shilling an acre, and find it answer better than to buy a licence; so that there is a double loss, the Government loses in the timber fund, and, according to established custom, a period ensues, during which, from the uncertainty as to the title, the land can neither be bought nor used. These considerations induce us to recommend that the Government sales of wild lands should continue to be made by auction as at present, but for ready money.

16. The other point on which we would suggest some modification is the regulation that persons desirous of obtaining land in places not already surveyed, must previously pay for the expense of survey, and the price of the land be fixed according to its quality and situation. The operation of this rule is to discourage enterprise, and cause dissatisfaction to persons who, in remote parts, being unable to have a survey without great expense and trouble, find themselves reduced to choose between appropriating without title the lot of wild land they want, or letting it remain waste, to the loss of the neighbourhood and the advantage of no one. And even those who may be in a position to pay for a survey, are exposed to great delay by this regulation. If any person wish to occupy unsurveyed land or surveyed land in townships or districts where no auction shall have taken place for two years before, nor be determined to be held within six months to come, we think he should be allowed, on paying half the current price of wild land, (for instance, at present, about half a dollar an acre), to receive from the office a memorandum of his payment, and to take possession; and the regulation ought to be that when the survey shall have come up to him, and one-third of the land in the township been disposed of, either by auction or to other settlers, on the same terms as those on which he holds his own, he should have notice to complete his purchase, by paying half a dollar per acre more; or, in the event of the average price of land sold by auction in the townships being less than a dollar, by the payment of such a sum per acre as shall make up that average price; and in the event of his not doing this within a year, he should be subject to the land being put up and sold by public auction at the upset price of half a dollar, in which case, whatever it should fetch beyond half a dollar per per acre, should be paid to, or retained for, the party who made the original deposit and received the memorandum of its payment. Notice should, moreover, be given by the Crown agent that, in the event of two or more individuals being desirous of occupying unsurveyed land on these terms in the same township or district, the Government can only guarantee to them their respective quantities in the order in which they have lodged their applications; but that, in the event of there being a deficiency, their deposit money on the quantities deficient will be returned to them.

17. This arrangement, it may be presumed, would only be made use of by persons of some capital, who might propose to occupy and improve so much land as would make it an object to them to be sure of a right of pre-emption at the upset price, whenever the regular progress of settlement might overtake them. On the other hand, the majority and poorer kind of settlers, where no regular survey existed, would probably be content to take possession of the land for themselves without any licence at all. This is the class so expressively termed squatters; and we confess we cannot think them a race to be discouraged; for in the more remote parts of the forests of this country, it is impossible for a man to establish a human habitation, and not do more good than harm. In respect then to them, we recommend that, although they should not have an established right of pre-emption of the whole of their lands at a fixed price, like those who had taken out a licence, they should have preference at the general price to the extent of 25 acres, and should not be ejected, even from the remainder, without a fair allowance for their improvements. This, we believe, would be very much inconsistency with the existing practice, as we are informed that it is usual either to permit an actual occupant to buy his lot, if he have the means, at the general upset price of the district, or otherwise to give him a consideration for any addition he has conferred on the value of the land.

18. Notwithstanding the general nature of the instruction that the land should be sold at auction, a practice seems to have arisen with respect to land that had once been put up and not bought, of disposing of it at the upset price to settlers who might desire to purchase in the intervals between the public sales. An indulgence of that nature is permitted by the Secretary of State, in his regulation, dated 15th August, 1834, to military and naval officers settling in the colonies, and we think that it is proper in their case; not that we can admit that any one class ought to be more considered than another as to the mere saving of time, but because, from the nature of the allowance made to officers in acquiring land, it is of more importance to them than it can be to any others, that the price should be fixed. It is fair to presume that the motive of extending further the modification was to avoid delay and inconvenience to individuals; but seeing the risk there always is of the abuse of any such discretionary proceedings, and the discontent and complaints which they commonly produce, we think it better to adhere strictly to the system of public competition, which is so much the surest test of purity in the administration of the lands. We are glad, therefore, that, with the exception made by the Secretary of State in behalf of military settlers, the present Governor in Chief has established an unqualified conformity to the rule on this subject, providing at the same time for the accommodation of settlers by directing that sales should take place once a month, instead of at the longer intervals which had previously been customary.

19. In considering the settlement of a new country, the attention cannot fail soon to be drawn to the endeavours which have been so common to prevent the retention by individuals of large tracts of land without getting them into cultivation. Various attempts have been made with this view in different countries and at different times, but we believe that none of them have been successful. There were several arrêts of the King of France to prevent persons from keeping lands in Canada in a wild state, but they did not preclude the practice. The English Government subsequently sought to attain the same object by imposing certain duties of settlement, and latterly by the establishment of a Court of Escheats, all of which have hitherto been found ineffectual. The project of a tax on wild lands in Lower Canada has also been debated, especially by the House of Assembly in the year 1834, but none has hitherto been established.

20. In the United States there are, if we are correctly informed, neither settlement duties, nor any tax imposed for the purpose of forcing people to cultivate their lands, but every one is free to hold as much as he chooses, and as long as he chooses. Wild lands are, however, subject to assessment, not because they are unproductive or uncultivated, but for the reason that they constitute property, and that all property, be its nature what it may, is equally considered to be rateable and taxable.

21. In Upper Canada, too, uncultivated lands are by a Provincial Act (59 Geo. 3, c. 7,) rateable like other property for local purposes. Each acre of cultivated land is assessed at 20s., and each acre of wild land at 4s., without further reference to its marketable value: and the magistrates at quarter sessions have the power of ordering rates to be levied not exceeding in any year one penny in the pound on such valuation. Under this law, therefore, the utmost tax that can be levied on 1,000 acres of wild land will be 200 pence, or 16*s.* 8*d.* per annum. Notwithstanding the moderate amount of this tax, land is, we understand, frequently taken in execution for the non-payment of it; but whether it operates as a check to any extent on the spirit of speculation in wild lands is very doubtful.

22 In Lower Canada there are not as yet assessments for local purposes; should they ever be established, and the lands be rated for such objects as the maintenance of roads, schools, &c., we think it would be right that wild lands owned by individuals should be included amongst the rest; but we cannot help doubting the expediency of subjecting them to a tax solely because they are uncultivated; and where they have been purchased unconditionally and *bonâfide* paid for, we think it would be unjust. In cases where lands have been granted on conditions of settlement duties, and that those duties have not been performed, the substitution of a tax in their stead would not perhaps be objectionable in principle, but it would be found difficult in practice, and would create an invidious distinction, without being sufficiently extensive to produce any important advantage. The measure under the consideration of the Assembly in 1834, was for a general tax on land, as in Upper Canada, whether cultivated or uncultivated. We think that the subject is essentially one for the treatment of the Local Legislature; and in the meanwhile we would merely observe, that, as will more fully appear when we come to speak of the Court of Escheats, the danger against which all these remedies have been directed, does not appear to us so great as has been so generally assumed in the formation of the new settlements.

23. With a view to ascertain the extent to which the acquisition of great tracts of wild lands by individuals had been carried, we obtained the Return in the Appendix No. 3; but it is very defective, owing to the practice which existed up to 1826 of making grants from the Crown to bodies of fictitious persons. The lands were assigned to one man, as a leader, with a number of nominal associates, who only lent or sold their names to the principal, without any real intention of settling, in order that he might be enabled to acquire more land. We need scarcely say that the mere difficulty of procuring a correct statistical return is one of the least of the evils which so pernicious a practice was calculated to produce.

24. From the subject of wild lands, we now propose to pass to that of the domain of the Crown; and we would premise, that the distinction between the two appears to have been uniformly maintained. They have always been under separate management, and the revenues derived from them been considered to belong to distinct fund; but although it is not unnatural

that two such different offices as those of settling the wild lands, and of managing the Crown property in the most anciently occupied parts of the country should have fallen into different hands, we confess we do not see therein a sufficient reason for the distinction that was made in the destination and appropriation of the funds arising from the two sources, both being equally, in our opinion, parts of the territorial revenue, as we have already stated in par. 9. Whatever practice be observed with regard to one of them in point of finance, ought, we think, to be extended to the other.

25. The domain of the Crown, in the sense in which the term at present is received in Canada, applies only to property in which the Crown has seigneurial estate, consisting almost entirely of reservations of rights upon land or of revenues growing out of it. They consist of the *Droit de Quint*, being the fine of one-fifth the value, payable to the Crown on every alienation of lands held under it *à titre de fief*; of the *Droit de Lods et Ventes*, a fine of one-twelfth, payable in a similar way on every alienation of lands held under the Crown *à titre de cens*; and of the rents which have been reserved to the Crown on certain grants below high-water mark on the River St. Lawrence. Comprised in the same department, also, are the forges of St. Maurice, which are at present under lease for a term of ten years from March, 1834, at 500 *l.* currency per annum, and the tract of country styled the King's Posts, which is under lease for twenty years from July, 1822, at the annual rent of 1,200 *l.* currency.

26. On the revenue arising from lots below high-water mark on the St. Lawrence, we have to observe, that nearly all the wharfs and quays in the town of Quebec, and some in that of Three Rivers, are constructed on ground thus conceded by the Crown, and there would be little difficulty, we believe, in proving that these grants have in many cases been made on terms much less favourable to the Crown than might have been obtained. A remarkable instance of the kind attracted the notice of the present Governor soon after his arrival in the Province, where a lot subsequently ascertained to be worth 1,293 *l.* was on the point of being parted with for 764 *l.* Whilst all existing bargains of this nature must of course be maintained, we conceive that in future, except where proprietors of the neighbouring lands may claim a reasonable indulgence on the principle conceded in Mr. Stanley's Despatch of the 10th September, 1833. (*see* Appendix No. 9), the full value of such lots may with propriety be required in as great a degree as when any other property of the Crown is parted with for the convenience of the public. It will be seen by a letter, dated 4th July, 1833, (Appendix No. 9), from Mr. Ryland, who held for many years the office of Civil Secretary in the Province, that there is in the neighbourhood of Quebec an extensive tract of the shore or beach of the St. Lawrence, over which the riparian proprietors have no equitable right; and in looking into the case we have just alluded to, we have not found that the circumstances under which the parties applying for the water lot had acquired the adjoining strip of land were such as to constitute a claim for indulgence, on the principle laid down by Mr. Stanley. Of the indulgence to be so granted to the riparian proprietor, we do not see who can be the judges except the Governor and his Executive Council, subject, of course, to the approval of the Secretary of State.

27. The Inspector of the King's Domain was not until very lately charged with the duty of collecting these rents, but every holder of a water lot was left to make his payment to the Receiver-general entirely at his own discretion; and it is not surprising that under such a system great numbers of them were found in arrears, as will be seen to be the case by a Return which we annex (Appendix No. 2). By an instruction, dated 17th February, 1836, the present Governor has charged the Inspector General of the King's domain, as above intimated, with this duty, and it is therefore to be hoped that more regularity will prevail in future.

28. The greater part of the property held *en roture* under the Crown is situated in the towns of Quebec and Three Rivers, and the proprietors are consequently under the same liability to the payment of *lods et ventes* to the Crown that the inhabitants of Montreal are to the priests of the seminary of St Sulpice. By regulations established since the year 1826, certain facilities have been afforded to the censitaires or tenants of the Crown in Quebec and Three Rivers for the conversion of the tenure of their lands into that of free and common soccage, but the terms are not so favourable as those which have been proposed for Montreal by the seminary of St. Sulpice. According to the former, the commutations take place upon payment of 10 per cent. on the value of the property; according to the other no more than five per cent. would be required under similar circumstances. In the event of any arrangement being concluded between the seigneurs and censitaires of Montreal, such as we have recommended in our Report of the 24th of October on that subject, we think it will be only right that the inhabitants of Quebec and Three Rivers should be allowed equal facilities of enfranchising their lands. In the meanwhile, however, we must point out the great amount of arrears which appear to have accrued in this branch of revenue, forming no less a sum, according to a Return we have placed in the Appendix No. 1, than 31,000 *l.*; and notwithstanding the opinion we entertain, that whenever the great object of extinguishing feudal dues can be extensively furthered by a sacrifice of revenue on the part of the Crown, such sacrifice ought to be made, we do not see any reason for it when no object of such general utility is to be promoted. Without attempting to lay down any specific proposition on the rules to be observed in the collection of those arrears, or of the accruing revenue under the same head, we must observe, that it is a subject well worthy the attention of the Executive Government, and one on which by possibility it might be necessary to apply for the aid of the Provincial Legislature.

29. We now proceed to state our view on the departments concerned in the management of the wild lands and Crown property in this Province.

30. A distinct officer is entrusted with the collection of the revenues of the King's domain, bearing the titles of "Inspector-general of the King's Domain," and "Clerk of the Land Roll." The question has naturally occurred to us, whether this department ought not to be comprehended in, or at any rate made subordinate to, that of the Commissioner of Crown Lands, and we have come to the conclusion that such an arrangement would be advantageous. We would not press this as a matter of immediate necessity, but whenever a new appointment to the situation may be required, or a favorable opportunity may otherwise present itself, we think the general superintendence of the King's domain and of the wild lands should be entrusted to the same person; by which means not only a wholesome subordination will be established conducive to uniformity and despatch, but also some saving in respect to salary may be effected. The present emoluments of the Inspector general of the King's Domain appear, by a statement in the Appendix No. 7, to be about 325 *l.* sterling per annum; and even though it might be requisite to appoint a clerk expressly to this duty under the Crown Commissioner, his salary need not exceed that of an ordinary clerk of the first class.

31. We also feel it necessary to notice the office of Surveyor-general. The duties and responsibility of this officer were materially reduced by the appointment, in 1826, of a Crown Commissioner. The Surveyor-general is no longer charged with any serious responsibility, nor has he ever had the conduct entrusted to him of any extensive scientific operations. His principal duties at present are, to give directions for such surveys as may be required of him by the Crown Commissioner, to furnish technical descriptions of all lots of land intended to be granted by patent, and to keep a record of the same, in which duty he may be said to act in some degree as a check on the Crown Commissioner. The surveys are, however, executed, not by his immediate officers, for he has none (except two clerks), but by country surveyors, who are paid by the job or by the day; and as the check is instituted only for the purpose of securing accuracy in the technical descriptions of the lands granted, and in the registering of them, and not on any part of the money transactions of the Crown Commissioner, we do not see but that it might be rendered equally, or even more, efficient though the Surveyer-general were placed in subordination to him. Should any extensive surveys ever be undertaken by the Province, similar to the surveys in Great Britain and Ireland, which are in course of execution under the Board of Ordnance, an officer of a higher rank would be required for the performance of them; but whilst his duties are limited as at present, there appears no reason on the score of rank why the Surveyor of Crown lands should not be subject to the authority of the Crown Commissioner. As this change, however, is one of detail, we would only recommend, as we have done in the case of the Inspector of the King's domain, that it should be carried into effect when a convenient opportunity for so doing present itself.

32 The patents conferring titles to land still pass through a great number of offices, and are subject to what we must consider needless forms; but we are released from the necessity of saying much on this subject, as a proposition has already been submitted to your Lordship by the Governor in Chief in a despatch, dated 28th July, 1836, in which it is our duty to state that we entirely concur. Should the Governor's recommendations be adopted, the office of Auditor of Land Patents will be abolished, and the formality of having the patent nominally drawn up by the Attorney-general's department be dispensed with; and should moreover the Surveyor-general's department be placed under that of the Crown Commissioner, as we have already expressed our opinion that it ought to be, the whole business of passing a patent will be confined to the Crown Commissioner and the Provincial Secretary, acting of course subject to the controlling power of the Governor, who, in the event of any complaint of unnecessary delay, will be in a position to ascertain the truth of the charge, and apply a proper remedy. Before quitting this subject, it is no more than just to repeat the observation contained in the Governor's despatch above cited, that in the parts of the United States where there are lands to be disposed of, as in Michigan, Illinois, Missouri, Mississippi, the delay in obtaining a patent is much greater than in this province, a notification being generally made at public sales that purchasers will not receive their titles for two years. This is rendered necessary by the great pressure of business in the land department of the United States.

38. With respect to fees, the Schedule which we annex (Appendix No. 8), will show that they are scarcely to be considered exorbitant, being, on an ordinary grant of 100 acres of land, only 2*l.* 7*s.*, and on one of 1,000 acres, only 3*l* 3*s.* 7½*d.*; and by the alterations proposed by the Governor, these sums will eventually be reduced respectively to 1*l.* 10*s.* and 1*l.* 19*s.* Unless fees are to be abolished altogether, we do not see how they can reasonably be reduced much lower; and when we consider the difficulties which have so long existed in obtaining payment of the salaries of public officers, we cannot undertake to recommend that any of the few who now derive a remuneration, in whole or in part, for their services in fees, should be placed on another footing.

34. With respect to the Court of Escheats, we do not think that the grounds, origin and nature of the institution could be more perspicuously set forth than in the Report we have obtained from the gentleman who presides over it, Mr. Cochran (Appendix No. 14), to which Report, accordingly, we beg leave to refer your Lordship. We cannot, however, agree in the result to which it would lead, namely, that the court ought to be maintained and put into active practice.

35. In the first place, we are inclined to think that the evil against which principally the existence of the court is directed has been much exaggerated. The word "monopoly" especially appears to us misapplied. There may exist a good deal of speculation, but there can be no monopoly of wild land in Lower Canada, even if we speak only of land in reasonably favourable situations. The article is too abundant, and capital too scarce, to admit of monopoly; and as to speculation alone, we confess that we do not see that any very great evils have resulted, or can result from it. It is impossible to deny that grants of land were formerly very improvidently made, or that the feelings of dissatisfaction which were excited by a system of favouritism exist to this day; or, lastly, that as far as the marketable value is concerned of the lands so given away, the Province has been a loser, but when we have have said t is, we believe we have summed up the amount of the evil. There are many, we believe, of the present holders of wild land, who would be glad to sell at the same price that land is sold by the Government, if they could find purchasers. When, moreover, we find it remarked in the able Report we have under consideration, that such a court as exists here is not equally wanted in the United States or Upper Canada, where the soil and climate are better, and capital is more plentiful, we cannot help drawing the obvious inference that it is the inferior soil and climate, and the want of capital, and not any monopoly of lands, which is the impediment to cultivation in Lower Canada; and inasmuch as no revesting of land in the Crown will supply climate, soil or capital, we are not inclined to think that a Court of Escheats ever has promoted cultivation or ever will. The fact must be stated that, in Lower Canada, physical circumstances afford a much plainer reason for the slow advancement of cultivation, than any perverse disposition of individuals to accumulate property without rendering it productive.

36. We are far, however, from meaning to say that no case exists in which it is desirable that there should be means of making the owner of waste lands come forward. Grants in former times were thought so lightly of that they were taken, in some instances, by persons who left the country and cared no more about them; and under the vicious system of paying by instalments, as we have already mentioned, purchases have sometimes been made, and one instalment paid for the sake of cutting the timber, and then nothing more been thought of the land. In this way there may be a good deal of land derelict, or of which the owner is not known. It is true that by the reservations in the patents public roads may be made over any lands without the leave of the owner, but this is far from removing all the evils of land being left without a master and in a state of wilderness; and where it is left to any considerable extent, we can readily believe it to be desirable that a remedy should be attainable.

37. The powers, however, conferred on the Court of Escheats are far more extensive than would be requisite for this purpose alone. The case merely of lands left derelict, and obstructing settlement or public improvement, might easily be met by a provincial enactment, should the Legislature think it expedient, providing that, after due notice and citations had been published, and no claimant had appeared within a reasonable time, to be named in the Act, the lands should be vested in the Crown. Seeing the long course of years during which the Government has acquiesced in an almost universal neglect of the duties of settlement, and the number and extent of the possessions which would be affected now by an enforcement of forfeitures for breach of the dormant conditions, it can hardly be questioned that any indiscriminate measure of that kind, to act retrospectively, would be most harsh; and, we may add, it would be unjust if the proprietors of soccage lands only were proceeded against, while the holders of wild lands in the seigneuries were allowed to escape, in consequence of the old laws respecting duties of settlement in them having been allowed to fall into disuetude. But if a choice be allowed of the cases for prosecution, we do not hesitate to say that the powers conferred upon the Court of Escheats are greater than any government ought to possess or venture to accept. With the mere exceptions of the sales made within the last few years, all the soccage lands in Canada have been granted on condition by the Crown; and there is hardly a landowner in the townships against whom the Attorney General might not file an information, and by a notice in the Gazette call upon him to prove before an inquest of office, that the conditions of the original grant of his estate have been performed, without provision for costs if the Atterney General should fail, and without any limitation of time within which the information is to be filed. And although the Executive, with a proper sense of the utter unfitness of such a discretion as this, might attempt, to lay down the semblance of a rule by declaring, as has been proposed, that proceedings should only take place when public inconvenience was occasioned by the lands not being improved, we think it will be apparent how indefinite and arbitrary must be the application of such a principle in practice. In the case of water and beach lots, granted upon condition, or lots upon which reserved rents were charged, yet stronger objections might be urged; but we do not state them because we cannot adopt the opinion that the Court of Escheats was intended to have jurisdiction in respect to grants of that nature. Such being the reasons which seem to us to exist against the use of the Court of Escheats, as regards the past, we will not deny that, with a very precise limitation of the time within which it should be put in force against property, and a steady and general application of it to all cases of default equally, such an institution might be useful for the future, if the system of granting lands upon condition were still to be continued. It might be wanted under that method, as a sort of supplementary arrangement to keep parties to their engagements. But since the mode of disposing of land by sale has been established, and since we cannot think that conditions could with any fitness or advantage be attached to titles to be acquired in that manner, there is no room for deriving the prospective benefit we have mentioned from the Court of Escheats.

38. We come to the conclusion, therefore, that it ought not to be put into activity, and that there would be no objection to revoking the enactments by which its creation was authorized, although, as they are merely permissive, there is not any reason for doing so, unless the repeal of the statute in which they are embodied (the Tenures' Act, 6, G. 4, c. 59,) should hereafter be thought proper on other grounds. In recommending that the institution should not be rendered effective, we cannot but regret the hardship with which the conclusion is likely to press upon the present Commissioner, Mr. Cochran. This gentleman, after having held for some years the office of Civil Secretary, the most laborious and one of the most important in the Province, was placed in the Executive Council, and received various offices, from which collectively, he derived an income of a little more than £1,000 per annum. One by one, in the progress of the reforms recently introduced, these situations seem on the point of being taken away from him, without the shadow of an imputation on his integrity or ability, but merely by the nature of the places he happened to occupy. In making a recommendation, therefore, which is calculated to strip him of his last employment of much emolument, we feel bound to render this testimony to the merits of the individual, and to remark that, to any consideration due to him for past services, we conceive that the the Report we have annexed from him, proves that he adds the further claim of eminent capacity for public business.

39. We have not failed to turn our attention to the question suggested to us by your Lordship, whether it would be expedient to form a board for the management of the whole of the Crown property, somewhat on the model of that of the Commissioners of Woods and Forests in England; but we confess that, in the discharge of this very important function, we think more is to be gained by concentrating than by dividing responsibility, and that there are many reasons why an imitation of the system in England would not be successful in this Province.

40. It now remains only for us to speak of the Land Company, and in doing so we are happy to be able to express an opinion, founded on actual observation, that it is effecting much good in the country. When we lately visited the

scene of its operations, we found that upwards of 200 families during the present summer had been located in one direction; and this number will probably be much increased before the close of the season. The total number of persons settling in the townships will, it is expected, in this year, exceed 5,000, which is a very much greater number than in any preceding year. The Company have adopted the very judicious plan of providing employment for all settlers willing to work. They assist each settler to clear his land, and build for him, if he choose, a log house on it at a fixed charge; and they also provide, and will continue to do so through the winter, all necessary supplies at a reasonable cost. These are the advantages we had in view when we said, in paragraph 15, that the Land Company would probably continue for a considerable time to attract all settlers of the poorer class, as it offered facilities to them which the Government could not; by which, of course, we meant facilities or advantages that it would not be prudent or proper for the Government to offer. If any of its officers were to be entrusted with such discretionary powers, it would be scarcely possible to provide against the abuse, or at any rate against the reputation of the abuse of them. And here in reference to the objection which has been urged against the creation of a Land Company, that it delegates to private individuals some of the functions which ought to be exercised by Government, we must observe that it does not in our opinion, delegate to others those functions which can, but only those which cannot, be advantageously exercised by the Government.

41. With respect to another objection urged against the institution of Land Companies, viz: that they tend to draw out of the country, in the shape of profits, wealth that ought to remain in it, we think it enough to remark, without stopping to seek a reply from more general principles, that if the members of such companies carry away their profits, it will only be because they have previously brought in their capital, and that the latter operation, or the introduction of the money, is positive and immediate, whereas the other is more remote, and necessarily much less extensive than the first. If the effect of the company were such as to prevent, or even to check the introduction of any other capital than its own, there would, we allow, be some force in the objection; but we are thoroughly convinced that the contrary is the ease, and that not only is there no reason to suppose that the shareholders will for a long time to come derive greater profits from their investments than what ordinary capitalists may reasonably look for in this country, but also that other capital will be attracted to and fixed in this country, in greater quantities, and at a much more rapid rate than would be the case if no company existed.

42. Whilst we feel ourselves thus bound to express our opinion of the manner in which the Company appears to us to act beneficially for the Province, and we believe for all interests in it, we must not conceal from ourselves, nor from your Lordship, that there are some points in which it may not altogether be free from grounds of apprehension as to its ulterior effect. There does not appear to be, either in the Charter or in the Act of Parliament by which the Charter was confirmed, any limit introduced as to the duration of its privileges, or any precaution against the retention by it for an immoderate period, of large tracts of country. These seem to us to be in themselves defects. But whatever inconveniencies might possibly arise from them, they are unquestionably very remote, and could not accrue till far beyond any times for which great solicitude need now be felt.

43 Besides the existing Company, we have been called upon by your Lordship to report our views on the propriety of creating any additional companies of the same nature in Lower Canada, or on the limits to which the Imperial Government should confine itself in any such exercise of its authority. We have little hesitation in saying that we think one Company of this nature sufficient for the Province, especially as it appears to be essential that the Government should retain sufficient land in its own hands to prevent the possibility of the Company's ever obtaining a real monopoly. So long as the Government has land at its disposal, it can always, by throwing a greater or less portion of it into the market, prevent the exaction by the Company of an exorbitant price for what they hold; but this power can exist only so long as the Government has land under its control; nor would the competition of different bodies answer the same purpose, as they might, and most probably would, combine; and for these reasons, though we have expressed our concurrence in the arrangement that sales of wild land should be made more frequently than hitherto by the Government, we by no means intend to recommend that larger quantities of it should be sold; on the contrary, we think that the quantity brought to market should be regulated by the demand, meaning thereby the demand for purposes, not of speculation but of actual settlement; and also that sales should be diminished in the event of the Land Company's continuing to be itself the principal purchaser, as it appears to have been on late occasions.

44. We see no objection to the pecuniary terms of the agreement with the Company. The general nature of the bargain was that they should pay 3s. 6d. an acre for all reserved lands of the Crown, or, in other words, for all lands which, though uncultivated, were in the neighbourhood of and interspersed with improved lands, and 3s. per acre for the tract or block of land that was altogether unimproved, and therefore inaccessible; and on this basis (an allowance being made for barren lands and land covered with water to the extent of 96,000 acres,) the whole sum to be paid by the Company was fixed at £120,000. It was also part of the agreement that half this amount, or £60,000. should be expended by the Company, under the direction or with the approval of the Government, in making roads and other improvements, either on the lands sold or in the neighbourhood of them. With respect to this last condition, it may not be superfluous to remark that, although, as far as regarded the settlement of the country, it was without doubt one of the most advantageous parts of the transaction, and in every point of view deserving of approbation, we think it must be leemed an appropriation of so much of the proceeds of wild lands; so that if at any future time the application of those land revenues should be conceded to the Assembly, it should not be competent to the Government to enter into any new agreements of the same nature without the consent of the Legislature. The case might be different in England, where we believe that it is customary to apply, at the discretion of the Commissioners of Woods and Forests, some portion of the rents derived from Crown lands to purposes of improvement, and only to bring the proceeds to account after the amount of such outlays has been deducted; but, as we have already said, we cannot venture to recommend, amidst the jealousies and discontents of this Province, that the practice of the English department of Woods and Forests should be taken as a model for Lower Canada. The whole of our observations, however, on this part of the agreement, which we entirely approve in the existing instance, would only apply to the contingent case of another Company being created, and of the Crown revenues having been previously given up.

45. Your Lordship will find in our Appendix some Returns connected with the management of the Crown property, to which we only think it necessary to refer by naming them.

1. Arrears of Revenue in the King's Domain.
2. Arrears of Revenue arising from Water Lots.
3 *(a, b* and *c)*. Return of all Grants and Sales since the Conquest, exceeding 5,000 acres; and of all Grants of Townships half or quarter Townships, to Leaders of Associates.
4. Memorandum of Amount of Conceded and Unconceded Lands in the Seigneuries.
5. Return of Surveyed Crown Lands.
6. Return of Unsurveyed Crown Lands.
7. Emoluments of the Inspector of the King's Domain.
8. Schedule of Fees on Land Patents under the existing Tariff, and under one proposed by the present Governor.
9. *(a, b* and *c)*. Despatches and Letters on the Management of Water Lots.
10. All Sales of Crown Lands in the years 1834, 1835 and 1836, up to the present Month.
11. All Sales of Clergy Reserves for the same period as above.
12. Abstract of the Land Accounts of the Commissioner of Crown Lands from 1832 to the latest date to which they can be completed.
13. Abstract of the Timber Accounts of the Commissioner of Crown Lands from 1832 to the latest date to which they can be completed.
14 *(a* and *b)*. Reports on the Court of Escheats by the Commissioner of the Court, and by the Attorney General.
15. Regulations for the Sale of Lands.

IV.—TENURES OF LAND.

1. In reference to the 49th and following paragraphs of our instructions, we now return to the subject of tenures of land. We have already submitted a special report on the important questions connected with the seigneurial rights over the city and island of Montreal, and we shall notice separately, under the head of Registry Offices, several laws and customs much complained of by the commercial class, which, though long associated with the French institutions of Lower Canada, are not necessarily a part of them. On the present occasion we have, in the first instance, to offer a few remarks, in obedience to your Lordship's commands, on the comparative effects of the feudal tenure, and that in free and common soccage; we shall then advert to the complaints which have been made of the Imperial Statutes passed with a view to facilitate the commutation of tenure;

and shall conclude by expressing our own opinions on the best means of contributing to that end.

2. There is little difficulty in perceiving a marked difference between the people who live on the lands held under the two prevailing tenures of this Province, but it is not so easy to determine how much of this is attributable to their law of property, and how much to other circumstances. Much, for instance, of what is observable in the French Canadians, who are the principal occupants of the seigneurial lands, must be ascribed to the stock from which they are sprung, to the spirit of their religion, and the extent to which they are devoted to it, and much also to the political circumstances in which they have been placed upon this continent. On the other hand, many of the peculiarities which characterize the English and Anglo-American settlers are to be accounted for by difference of race and other causes distinct from mere law. If the seigneurial population be frequently too dense, crowded, if we may use the expression, in the midst of almost unbounded space, the chief reason is probably to be found in the customs of the people attaching them to their usual residence, and binding them by many links of social and religious interest to remain with the same community in which they are brought up. And when the settlers of the other class spread themselves to great distances, and are content often to form solitary establishments in the heart of the forest, it is not assuredly the nature of a tenure, but the restlessness of their race, their solicitude to acquire, and comparative indifference to society, which prompt them to make efforts so opposite to the habits we have just before described.

3. With respect to the incidents of the two tenures, we will make a few summary observations. The modes of conveyance under the French customs are simple, expeditious and cheap, and if they were open to objection on the score of secrecy, that objection is removed in the townships by the establishment of a system of registry under the Provincial Act 10 & 11 Geo. 4, c. 8. We may also state, that the French rules of descent are much preferred to the law of primogeniture by the people of all origins on this continent. By a Provincial Act passed in 1829 (9 Geo. 4, c 77,) to remedy in part what were stated to be the evils of the Tenures' Act, it was enacted, that conveyances of soccage lands might be made either according to the law of England or by notarial act, according to the laws of the Province; and thus whatever advantage there may have been under the former system in this matter is preserved to the inhabitants of the townships. But with respect to the descent, the same Statute merely provided retrospectively, that where a proprietor of soccage lands had died without partitioning his land by will or otherwise, it should be inherited according to the old laws of the country; so that, in the absence of any such enactment respecting the future, we presume that the law of England must prevail, as was directed by the Tenures' Act, and that the rule of primogeniture ought to be in use. It is, however, we are informed, repudiated by the inhabitants of the townships, principally as we are inclined to think, from an attachment to the other custom of having a division made amongst the family, though possibly in part also from a want of sufficient knowledge of what the law really is. We need scarcely say how desirable we think it that the present contradiction between the desires, and even the practice, of the people, on the one hand, and the law, on the other, should be terminated, and that the rules for the succession of their property should be adapted to their wishes. Whilst, however, we look thus favourably on the application of the French methods of conveyance and descent to the tenure in free and common soccage, we would anxiously exclude their law of hypothecation from that class of lands. By the 3d and 4th sections of the Provincial Act above cited, it is provided, that all mortgages and hypothèques previously created on soccage lands, according to the laws of the Province, should be valid, and that all such mortgages and hypothèques should be valid in future, provided the lands subjected to the claims be specially set forth in the instrument creating them. So far as deeds are necessary to the making of mortgages, their speciality and publicity are secured in the townships by this enactment taken in conjunction with the Registry Acts; but according to the French law many hypothèques can be formed without any deed at all, and we fear that it is susceptible of doubt whether, under the clauses we have just quoted, the latter class of mortgages may not still extend to lands holden in free and common soccage. The nature of these mortgages and their inconveniences will more fully appear in our Report on Registry Offices. In the meanwhile we will merely throw out the remark, that it might be beneficial, were it only to quiet doubts on the subject, expressly to exclude by provincial enactment such claims from taking effect on lands in free and common soccage, unless created by deed, and thus subjected to the salutary regulations which have been provided respecting incumbrances imposed by the method in the townships.

4. The feudal tenure, as it was first introduced into Canada, appears to us to have been in some particulars well adapted to the settlement of a new country, and its advantages for that purpose were strongly insisted on by many persons of weight and consideration in the Province, who appeared before a Committee of Assembly on the subject of wild lands in the year 1820. The seigneurial system offered the poor settler easy terms for the acquisition of a permanent interest in the soil, and at the same time operated by other circumstances (independently of the character of the people, which had the same tendency,) to prevent the early dispersion, which is an evil usually to be apprehended from too great a facility in obtaining lands; it also imposes on the seigneur certain important duties towards his censitaires, and in that manner conferred on the latter advantages (at some probable expense, we must admit, to their self-reliance) which no settlers in the English Colonies ever enjoyed. But the time has passed when these would be felt as benefits; the same circumstances that may originally have been useful to prevent dispersion, can now only serve to increase too great a concentration of the people; the duties imposed on the seigneurs necessarily carried with them correlative privileges, which must daily become more unsuited to the condition into which the Province is advancing; and the advantage of the low ground-rent is in our mind outweighed by the heavy fines on alienation. We are aware that if an individual have not occasion to part with his property he may suppose himself a pure gainer by the small rent, and believe that he escapes the operation of the check upon transfers of estate, but in reality he must suffer by the prevalence of the impediment all around him. The uses of an easy relinquishment of land by those who find themselves unable to cultivate it advantageously, and of its easy acquisition by those who are better prepared to carry on the undertaking, in short, the uses of a free circulation of property in land as well as in anything else, are too important to be sacrificed without the inconvenience being general. Improvements will languish and difficulties will accumulate in neighbourhoods where all are placed under a strong discouragement to sell their land at moments when prudence would otherwise dictate it; and although the pressure of the tax may not fall distinctly on each, the effect on the community will be too great to allow of gain to the individual.

5. We believe, however, that the injurious tendency of heavy fines on the transfer of property, as well as of other obstacles to its free transmission, are beginning to be generally acknowledged, and that in reality there is less difference on this point than might at first sight appear, so that if the evils of the feudal tenure had not unfortunately been seized as topics for political declamation, and thrown into the general mass of subjects of party contest, they would probably receive an early remedy by common consent. In the views now expressed by leading Canadians of French origin, there is no desire whatever to perpetuate the onerous parts of the tenure, and the people have been moved in some cases to represent the inconvenience. In a petition addressed to the House of Assembly in 1834, from the seigneury of Lotbinière, it was prayed that thenceforward *lods et ventes* should only form a mortgage on the land next after any mortgages which might exist at the time when they fell due; we have seen notice of meetings in the country this year, at which the *lods et ventes* have been more decidedly condemned; and some of the public prints, supposed to be more particularly connected with French Canadian interests, have recently dwelt upon the inconveniencies of the burthens as they now exist. A Committee of Assembly, also, in 1834, in a Report to which we shall advert more particularly hereafter, exhibited a feeling very favourable to the extinction, on reasonable terms, of the burthens of the seigneurial tenure.

6. Having been led to this brief statement of the disposition which appears to exist on the subject, we shall proceed without further delay to consider the objections that are made to the British enactments passed with a view of facilitating commutations.

7. The first provision on the subject consisted of two clauses of the Canada Trade Act (3 Geo. 4, c. 119, s. 31 & 32), by which His Majesty was empowered to agree with all seigneurs for the commutation of their dues to the Crown, and also to commute with such censitaires as held immediately of the Crown, and to regrant both to one class and the other their lands in free and common soccage. It was soon perceived to be a capital defect in this arrangement, that while it provided a means for the release of all seigneurs from their feudal obligations to the Sovereign, no censitaires had the benefit of the law except the few who held immediately of the Crown. The 6 Geo. 4, c. 59, commonly called the Tenures' Act, was then passed, by which it was enacted, that when a seigneur had commuted with the Crown, his censitaires should in like manner be entitled to demand from him a commutation on terms to be assessed, if necessary, by arbitrators, and that all the lands thus released from feudal burthens should be converted into free and common soccage, and in order to remove doubts which were recited to exist as to the incidents of that tenure in Lower Canada, it was declared that they should be the same as of the like tenure in England. This last clause, however, we may remark, appears to be so expressed as to have only a prospective effect. There were some other enactment comprised in the same Statute on miscellaneous matters, but the foregoing are as many as related to tenures.

8. On the two laws we have above described, complaints have been made on the following grounds;

1st. That the subject of tenures is one of internal arrangement, in which the Imperial Parliament ought not to interfere

and on which it could not possess sufficient knowledge to legislate without falling into error.

2dly. That the Act of 1825, in a part of it purporting to be declaratory, established a law different from what had prevailed in practice, and unsettled various rights of property.

3dly. That it was far too favourable to the seigneur, whilst it did very little for the censitaire, as the latter could not under it demand a commutation of tenure, except in cases where his seigneur had previously commuted with the Crown; also, that it went to deprive the censitaire of a right which he formerly possessed to claim any unconced lands in a seigneury on the same terms as those on which lands had previously been conceded; and further, that that in cases where the seigneury was held in mortmain, it afforded no hope to the censitaire of ever being able to obtain a commutation, for a surrender of the estate into the hands of the Crown being a necessary preliminary to its being regranted in free and common soccage, and the seigneurs holding in mortmain being precluded from making such a surrender by their inability to alienate, they could never take advantage of the Act.

9. With respect to the first objection, we think there is reason for it, and that the interference of the Imperial Parliament in matters of this nature ought if possible, to be avoided. As an example of the inconvenience which it is liable to create, we may state that, most probably from an insufficiency of local knowledge in the framers of the measure, it has been found lawful to commute for the unconceded parts only of seigneuries in two cases out of three that have occurred under the Tenures' Act. This circumstance was alluded to in the 57th Resolution of the House of Assembly in 1834, and the explanation of it is, that in those cases the parts for which commutations were obtained were held, not under the original grant, but under distinct titles as augmentations to the seigneuries first granted; and it is remarkable that these very tracts which now are discharged from all settlement duties, seigneurial or otherwise, would have been subject to forfeiture under the French law for having no settlers on them. The seigneury of Beauharnois, belonging to the Right Hon. E. Ellice, is the only one in Canada on which the subtenants or censitaires have as yet acquired the right to enfranchise their own land under the clause which was introduced for their benefit into the Act of 6, Geo. 4. c. 59.

10. The second objection was also, in our opinion, well founded. The words of the 9th clause of the Tenures' Act, which is the one commonly, though not quite accurately called declaratory, would lead to the supposition that it was intended to be prospective only; but it makes no reservation of many existing rights of a hipothecary character which must have been liable to be affected by the passing of this enactment, and questions arose whether the mortgages of the French civil law, conveyances according to the French forms, and inheritances which had taken place by their rule of partition, were valid. We conceive, too, that the unqualified introduction of the English law of real property was at any rate not suited to the circumstances or to the wishes of any class of the people. The Provincial Act, 9 Geo. 4, c. 77, was passed to remedy these inconveniences, but not, we regret to say, effectually, as we have already had occasion, in part 3, to state the confusion that continues to prevail on many points, as well as to mention the nature of some of the further provisions that would appear to us expedient. Doubts, moreover, have existed whether this Provincial Act is not invalidated by the Royal assent having been given to it after the period fixed by the Constitutional Act. The question will be found very well stated in the Evidence appended to this Report (Evidence on Tenures. Solicitor General). We believe that the validity of the Act has been recognized in the Court of King's Bench at Montreal, but nevertheless as there is much room for difference of opinion, and as the subject is of great importance, it would, perhaps, be convenient to set it at rest by legislative authority. This, however, must be a question for the discretion of the Provincial Legislature. There would probably be admitted to be an incongruity in an Imperial Statute to declare what was or was not law by Provincial enactment; while, on the other hand, a local Act, purporting to decide that a former one passed by the same authority was valid notwithstanding a contravention of the rules prescribed by the Constitutional Act of 1791, would be at the least equally objectionable; but we cannot doubt that these difficulties might be got over, should the Legislature of the Province deem it advisable, by something in the nature of a re-enactment of the bill of 1829, with such provision as might be considered requisite to secure rights and immunities acquired in the interval; and to such a measure the Royal assent could be immediately signified, by virtue of the Imperial Act 1 Will. 4, c. 20. The same opportunity might also be taken of introducing the amendments, should they be thought eligible, which we have suggested respecting mortgages and succession.

11. The third objection of the Act having been too favourable to the seigneur, whilst is conferred little or no benefit on the censitaire, is also, we think, founded in fact, though we do not consider it open to the further objection of having deprived the latter of any right of which he could avail himself at the time the British Act was passed. This is a question, however, on which such various opinions have been expressed, that we shall describe the state of the case as far as we have been able to ascertain it.

12 The concession of a tract of land "*en seigneurie*" or "*à titre de fief*," under the French system, though it conferred upon the grantee an estate of inheritance, gave him only a very qualified right of property in the soil. The seigneuries were generally of vast extent, frequently containing several hundreds of square miles, and the seigneurs, instead of being the absolute proprietors of them, might be looked upon rather as the Agents of the Crown for their settlement; for after any seigneur had selected a domain for himself, he was under the obligation of conceding all the remaining parts of his grant to any of the King's subjects who might demand land of him, on terms which were generally specified in his patent It is a common supposition in the Province that there was a fixed rate of concession for all the seigneuries in the country, but this is not the case; the rate is not the same in all grants, whilst there are some in which no rate at all is mentioned. All the grants, however, that we have seen impose on the grantee the obligation of conceding his lands "*à titre de redevances*," that is to say, upon the usual seigneurial tenure, without exacting from his subtenant any thing in the nature of price or gratuity for the concession, and the Intendant, or Intendant's Court, had the power of stating what those redevances should be, in cases where the terms of them were not specially set forth in the grant of the seigneury. Infractions, however, of this general condition appear soon to have occurred, and the practice to have obtained amongst the seigneurs, both of refusing concessions for the purpose of retaining wild lands in their own possession, and of exacting premiums on their grants, or, in fact, of selling the lands It is against such practices that several arrêts of the King of France were issued, particularly those of the 6th July 1711, and 15th March 1732, under which the censitaire could, up to the time of the Conquest, obtain a remedy against his seigneur in the court of the Intendant. There are several udgments of the Intendant or of the Superior Council of Québec on record in the Province in such matters*, but as after the cession of the Province the office of Intendant ceased to exist, there was no longer any tribunal, except the Court of King's Bench, before which cases of the sort could be carried, and the laws gradually fell into disuse, probably owing to the expensiveness of proceedings in the King's Bench; so that, long before the passing of the Tenures's Act, seigneurs had in general established the practice of asking any price they liked for their concessions, or of refusing them altogether, if they preferred to keep their lands in a state of nature. The last proceedings of the Court of King's Bench of which we have any knowledge took place about eighteen years ago, and will be found described in the Evidence. (Evidence of Solicitor General.)

13. A feeling of discontent on the subject has been kept alive amongst the seigneurial population, of which examples may be seen in petitions presented to the House of Assembly from various censitaires on the 16th of March, 1825, and in 1834 from those of the seigneury of Lotbinière, pray-

* We have been only able to refer to the original Record in one case, the others having been, as it is said, destroyed by fire. *See*, however, Introduction to second volume of Edits and Ordinances.

Page XXXIII. Arrêt of 29 May 1773.
— L. Judgment of 28th June 1721.
— LXXV. Judgment of 25 Jan 1738.

The above three are in favour of censitaires; there are vast numbers of judgments against them under the other arrêt of 6 July 1711, which by the Solicitor General is said to have been also frequently enforced since the Conquest.

ing for the re-establishment of the ancient laws of the Province. On the whole, we are not surprised that some dissatisfaction should exist; first, on account of the old laws having fallen into disuse, although that of course is a matter for which the Executive Government cannot be considered to be especially accountable; and, secondly, on account of the favour that was shown to the seigneurs, instead of the censitaires, in the passing of the new laws in 1823 and 1825. It was doubtless with a view to securing the Royal interest in the quint, that commutation between the Crown and the Seigneur was made a condition precedent to any relief to the censitaire; but we think that it was nevertheless unnecessary; and the way in which it was calculated to exclude from all benefit the censitaire in seigneuries held in mortmain, was in itself no small objection to the enactment in a country where so large a portion of seigneurial property is in the hands of religious communities. That no inconvenience has arisen in this particular respect is, we believe, attributable solely to the fact of the laws having remained to this day almost a dead letter. Only three instances have occurred of commutations under it between seigneurs and the Crown, and no instance whatever of a commutation between a seigneur and a censitaire. The only commutations on the part of censitaires have occurred in the towns of Quebec and Three Rivers, where the lands were held *en roture* from the Crown, without the intervention of a seigneur. The Return in Appendix No. 1, will show all the commutations which have taken place under the British enactments, and the terms on which they have been effected.

14 Having thus concluded a review of the Tenures' Act, we beg to submit our opinion that, in order to make a sufficient provision for the commutation of tenure, the censitaire should be able to commute, even though his seigneur may not have done so. The censitaire, and not the seigneur, is the person who has the principal interest in the land, and the class to which he belongs is by far the most numerous, and, consequently, we may perhaps be permitted to add without offence, the one in whose well being that of the province is most inseparably and certainly involved.

15. The present state of the law does not even admit of voluntary commutations between the seigneur and censitaires. We believe that there are few who would not be willing to remove this bar to enfranchising the lands by agreement, and that the only question on which there would be much difference is, whether the censitaire should be empowered to demand the change as a right.

16. In favour of allowing of voluntary commutations, we are happy to be able to refer to a report of a Committee of the Assembly in 1834. In consequence of a resolution of the House, declaring it to be expedient that further and more effectual provision should be made for the extinction of feudal burthens, a Special Committee was appointed, and brought in its Report on the 1st March, 1834, to the following effect:—That the existing restrictions on commutation by private contract between the seigneur and censitaire should be removed by law, an indemnity being secured to His Majesty for the dues which the Crown would lose by such enfranchisements of land, and that the benefits of the arrangement should be extended to seigneuries held in mormain.

17. In the recommendation on behalf of the tenants of lands in mortmain, we need scarcely say that we entirely concur; but with respect to the *droit de quint*, or rather to the proposed compensation for the *droit de quint*, in cases of voluntary commutation between seigneurs and censitaires, we would humbly venture to submit that it would be better to give it up. It has already been recommended by the Committee of the House of Commons in 1828, that this right should not be suffered to stand in the way of commutation. A remission of it in cases where the agreement was effected between the seigneur and his tenant would be considered as an act of grace to the seigneurial population; and when the small produce of it is considered, the loss would be of little importance in a financial point of view, either to the Crown or the Province. If the impediment which is presented by the *droit de quint* were thus surmounted, nothing would be more easy than the arrangement of voluntary agreements between seigneurs and censitaries for the discharge of lands from the dues and services of their actual tenure. The diminution which would thus be made in the value of the seigneur's wife's dower would require to be considered; but we cannot suppose that some satisfactory provision on this head could not be introduced into any well digested measure.

18. Should it further be judged desirable to make the commutation compulsory on the seigneur at the demand of the censitaire, we do not see any great difficulty in the way even of such a course. With reference to the means of securing fairness in the arbitrators, or *experts*, who would in that case be necessary, we would request attention to the answers we received from the Attorney General and the Solicitor General to questions put to them on that subject [see Evidence]. And if any additional security to the seigneur should be deemed requisite, though we by no means undertake to assert that it would be so, it might, perhaps, be afforded on the principle of the *droit de retrait*, one of the conditions of the feudal tenure, by which, in order to prevent fraudulent misstatements of the price, a sort of right of preemption is afforded to the seigneur, whenever lands on his seigneurie pass by sale from one person to another. In the same manner, it might be provided, in cases of commutation, that the seigneur should have the right of taking the land on payment to the censitaire of a sum which should be fixed at a certain number of times the amount of that awarded to him by the *experts*; so that in setting the system in operation, it would only be necessary that the Legislature should fix how many times the one sum should be a multiple of the other. For instance, supposing that one-tenth of the selling price of the property were assumed by the Legislature after inquiry to be an equitable rate for the fine on commutation, the seigneur might be empowered, if dissatisfied with an arbitration, to purchase the property on payment of a sum of money equal to nine times the amount of the compensation awarded to him. A memorandum will be found in the Appendix No. 1. in illustration of our meaning, liable of course in any practical measure to be corrected as to its results by the far more various and complete information of the Local Legislature.

19. In the preceding observations we have not taken into consideration the *cens et rentes* or any feudal burthens beyond *lods et ventes*. The *cens et rentes* being a fixed payment, they may either be left as a charge on the property, or the value of them be calculated, so as to redeem them at so many years' purchase; the others are so trifling that the payment of compensation for the *lods et ventes* under the award of arbitrators might reasonably be made to cover them all.

20. There is every reason to hope that, whenever a better understanding may be established between the Local Legislature and the Provincial Government, there will be no objection on the part of the former to pass some measure for the gradual discharge of lands from feudal duties and services, if not in a manner obligatory on the seigneur, at least by voluntary agreement; and whenever such a measure may be passed, we have no hesitation in saying that, in our opinion, the Tenures' Act of 1825, and the clauses in the Trade Act of 1822, which relate to tenures, should be repealed; of course, making it a condition of the repeal that all titles and advantages acquired under either of the Acts, are to be held valid.

21. On the subject of the Court of Escheats which was created by the Tenures' Act, our opinions have been offered in the 34th and following paragraphs of our Report upon the Wild Lands.

22. Before we quit the present subject, we think we should allude to a proposal which has been under our notice, that any land for which a commutation of tenure has been obtained, should thenceforward be held *in franc aleu roturier*, or *franc aleu simple*, in lieu of free and common soccage. If considered simply as a tenure, we believe *franc aleu* to be equally good with free and common soccage, but the difference would be, that whilst under the Tenures' Act free and common soccage lands are still subject to the incidents of the English law, the lands held in *franc aleu simple* would be subject to the incidents of French law. In the Report, to which we are now immediately proceeding, on Register Offices, we shall have to point out some of the most prominent evils to which land under the *coûtume de Paris* is subject; such, for instance, as the determinate *hypothèques* created on it in favour of married women, minors, and interdicted persons, but at the same time, we are not without hope that the chief part of these evils may be got rid of; and, should this be the case, and a general system of registration be established, we can see no objection whatever to the proposal of substituting *franc aleu roturier* for free and common soccage. The truth is, that if that were done as regards *franc aleu*, and on the other hand, free and common soccage divested, as we have suggested it should be, of the rule of primogeniture, there would not remain any appreciable difference between the two. In the meanwhile, however, and until something be effected to remedy the present evils of the *hypothèques* created by the French law, or *coûtume de Paris*, we do not think it would be advisable to substitute in any way *franc aleu* for the English tenure of free and common soccage.

V.—REGISTRY OFFICES.

1. The want of Registry Offices has long been one of the principal complaints set forth by the population of English or kindred origin, and more especially by the persons who compose the commercial interest in the Province of Lower Canada. In consequence of the want of a registry, and the indeterminate character of mortgages, or of claims having the effect of mortgages under the French law, it is alledged, and we believe with justice, that it is impossible to discover the encumbrances which may exist upon real property, and consequently that it is unsafe either to buy real property or to lend money on its security in the Province. The impossibility of obtaining money, even when good security under a

different state of the law might be offered for it, is also said were doing (*See* Evidence given by Mr. J. Fraser before to operate very prejudicially on the owners of fixed property, the Committee of the Legislative Council, 1836.)

who see their estates frequently taken from them and sold in execution for a trifling debt, which it would have been easy for them to discharge if capitalists were not deterred by the state of the law from lending money.

2. On the other hand it is maintained by some, that the introduction of Registry Offices would be productive of more evil than good; that the trouble and expense of them would be very considerable, and the consequent exposure of private affairs, not only unpleasant but mischievous; and that, in consequence of the numerous claims which, under the law of the Province, take precedence of mortgages, a registry would not of itself afford the desired security, but that it would be necessary, in order to make it efficient, to alter great part of the law of the land, and the very part of it to which the people are from long habit most attached, and which they understand the best, the part on which all their domestic arrangements depend, which regulates their marriages, makes a provision for their offspring, ensures the due guardianship of minors, and protects the interest of those who are incapable of acting for themselves.

3. In order to put this in a clearer point of view, it must be explained that the word "hypothèque" has a far more extensive meaning than that of "mortgage" in England. The English mortgage, as is well known, is a conveyance of the legal estate, whilst hypothecations, under the Civil Law, are effected in several other forms, and sometimes without any form at all. In Canada, hypothèques are implied by far the greater number of pecuniary obligations which an individual can lie under, not only such as he has contracted voluntarily before a notary, but the most important of those which devolve upon him from his station in society, as well as all which may be imposed upon him by any judgment of a competent court; and, according to these three general distinctions, hypothèques have, by some writers, been divided into conventional, legal and judicial.

4. These different sorts of mortgage effect the whole of a man's posessions, and extend not only to all property which he had at the time of contracting the obligation, but to all which he may subsequently acquire. There is nothing to secure their publicity, but, on the contrary, the law even favours secrecy by imposing it on notaries before whom hypothèques are passed; so that a person who has been in long passession of an estate, and believes it quite secure, is liable to find it suddenly wrested from him by the production of a deed, the existence of which he had no means of discovering at the time he acquired it. The evidence appended in this Report contains ample statements and illustrations of the inconvenience arising from the circumstances we have just described.

5. The evil is the more unqualified in Lower Canada, because the Criminal Law of England having been introduced, while the Civil Law remains as before, the punishment which was applied by the French Crimiual Code to persons making false declarations that their estate was free from incumbrance, has ceased to exist. It is disputed how far this law (denominated Stellionnat) was efficienent in France, and certainly the frequent complaints and reforms attempted of the system in that country, would appear to show that the check was far from adequate; but whatever may have been the extent of its operation in Lower Canada, it is wanting. A Bill for establishing it passed the Assembly this year, but late in the session, and did not reach a decision in the Legislative Council. We would not be understood to convey any opinion on the merits of the law of Stellionat; our object here is merely to note the fact that it does not exist in Canada.

6. We will now mention some of the most prominent in each of the three classes of hypothèques above-named.

7. Conventional hypothèques. In these are comprehended not only what we call mortgages, but every other species of obligation, bond or security that a man can voluntarily enter into or acknowledge, provided he do so formally before a notary. As an instance of the extent to which they are carried, we find it in evidence before a Committee of the Legislative Council, that a certain country merchant was in the habit of calling in a notary at the end of every year, and causing all his customers to pass acts before that functionary for the balance of their year's accounts, every one of which acts had the force of a general mortgage upon the property of the persons passing it, though perhaps none of them might have been aware of what they

8. Legal hypothèques, called also "tacit."

In this class are comprehended all the obligations on property that the simple action of the law imposes upon a man as a member of society. The most important of them may be enumerated as follows:—

1st. The dower of his wife, unless barred by an antenuptial contract.

2d. Security to his ward, in the event of his being appointed guardian to any minor, which he may be without his own consent, the office being, in many cases, compulsory.

3d. The same obligation in the event of his being named curator, that is trustee or administrator of any interdicted person, which office likewise may be compulsory.

4th. The obligation of an heir entering on his inheritance subject to the payment of the debts of the person from whom he received it, or "*sans bénéfice d'inventaire.*

5th. And, lastly, the liability of public servants for the due performance of their trusts.

The wife's dower, moreover, is the inheritance of the children of the marriage, and consequently an entail is created by it as well as a life-interest. The customary dower is one half of all the real property possessed by the husband at the time of contracting the marriage, and of all that he may acquire by inheritance afterwards.

9. Judicial hypothèques. These comprehend all judgments given against a person in a competent court of justice; and they have each the force of a general mortgage on the whole of his property. They are registered, however, in the office of the prothonotary of the court, and must necessarily have, to a certain extent, a publicity which hypothèques of the other two classes need not have.

10. From the preceding review, it is clear that the extent of vague, general and undetermined hypothèques, is immense and it seems obvious that the number of husbands, guardians, curators and persons accountable for public monies, must far exceed borrowers of money upon mortgage.

11. This state of the law has not continued without some attempt to remedy the inconveniences arising out of it. An Act was passed by the Local Legislature in 1829 (9 Geo. 4, c. 20), for the discovery of secret incumbrances, and for the confirmation of titles to persons acquiring real property by purchase. This measure was intended to provide a substitute for the old process of "Décrêt Volontaire," or voluntary sheriff's sale, by which means, though in a more expensive manner, a good title might previously have been sought for; and the Act was in great measure modelled on an edict published in France in 1771. Under its provisions a person applying to the Court of King's Bench for a confirmation of title, must go through certain formalities, and advertisements must be issued for a certain length of time after which, if no opposition is made, a confirmation is obtained from the Court, securing the proprietor against secret incumbrances, save those which may have their origin in dower, or in the rights either of married women or heirs in entail or, lastly, in rent or feudal dues to the seigneur.

12. This Act has been extensively called into operation and decidedly productive of good, but it is still much short of what is required. In the first place, as by its nature it is confined to cases of sale, it can only be useful to the actual purchaser of real property, and can afford no security to the lender of money on mortgage; nor can the difficulty be surmounted by a fictitious sale, for no such proceeding could be resorted to on seigneurial land, without giving to the seigneur a claim to the heavy fine of one-twelfth on the mutation of property. In the next place, an important class of tacit or legal mortgages, as above-stated, remains unextinguished. And lastly, the time requisite to obtain a confirmation of title, even without opposition, is not less than four months at an expense of at least £10, which expense and delay must of course be largely increased by opposition.

13. In order to complete a view of the law as it at present stands in the Province, it is necessary to state, that by local Act 9 & 10 Geo. 4, c. 77, mortgages on soccage lands were made special; and by the 10 & 11 Geo. 4, c. 8, offices were established in the five counties of Drummond, Sherbrooke, Stanstead, Shefford and Missisquoi for the registration of all deeds or instruments affecting immoveable property held in free and common soccage and all such deeds or instruments then existing were required to be registered within 12 months from the

passing of the Act, and future deeds were not to be valid until enregistered. The same provisions were extended to the counties of Ottawa, Beauharnois and Megantic, by a subsequent Act of 1 Will. 4. c. 5; and to the counties of Two Mountains and Acadie by the 4 Will. 4. c. 5. All these Acts, however, as they are confined to lands held in free and common soccage, go but a small way towards attaining a general system of registration; and, moreover, by a practice too common in this country, they are all temporary, and expire in 1838; so that if the legislation of the Province be subjected to the suspension threatened by recent pooceedings of the Assembly, they will fall to the ground. It is needless to point out the confusion which must ensue in the rights of property in the townships, should such prove to be the event.

14. In addition to the Acts above recapitulated, we may observe, that, notwithstanding the popular objections we have already alluded to as being urged against Registry Offices, and others of a more latent nature, to which we shall subsequently advert, the necessity has been repeatedly admitted by both branches of the Legislature, of giving more publicity to acts passed before notaries, and of affording greater security to creditors having claims on real property.

15. In 1823 the House of Assembly resolved to take into their consideration "The passing of a law for the public registration of instruments conveying, charging or affecting real property, with a view of giving greater security to the possession and the conveyance of such property, and to commercial relations in general." In December of the same year a Bill passed the Council, and was committed in the Assembly, "For the enrollment (*insinuation*) of deeds and instruments affecting property by way of mortgage or hypothèque."

16. Early in the year 1825 the House of Assembly resolved, "That it was expedient to provide that more ample publicity to certain acts passed before notaries bearing mortgage (*hypotheque*) be afforded in district subdivisions."

17. In 1826 the House of Assembly resolved:—

"1. That every purchaser of real property has the indubitable right of ascertaining what charges and mortgages encumber the property which he is purchasing.

"2. That every creditor is entitled to ascertain what real property of his debtor is liable to the payment of his credit, and the charges and mortgages with which such property is encumbered,

"3. That the existing laws do not give purchasers of real property any means of ascertaining what charges and mortgages encumber the property which they are purchasing,

"4. That the existing laws do not give creditors any means of ascertaining what real property of their debtors is liable to the payment of their credits, nor what are the charges and mortgages which encumber such property.

"5. That from the want of means of procuring for purchasers a knowledge of the charges and mortgages which encumber the real property which they are purchasing, and for creditors a knowledge of what real property of their debtors is liable to the payment of their credits, and what are the charges and mortgagos which encumber such property, there have resulted, and do daily result, frauds, destructive of all confidence, the ruin of *bonâ fide* purchasers and creditors, the depreciation of real property, contempt of the laws, and the deterioration of public morals in this Province.

" 6. That it is expedient to make legislative provision for giving to purchasers of real property the means of ascertaining the charges and mortgages which encumber the property they are purchasing, and for giving to creditors the means of ascertaining what real property of their debtors is liable to the payment of their credit, and what charges and mortgages encumber such property."

A Bill founded upon these resolutions was read twice, committed, and dropped.

18. In February 1827, a similar Bill, " For making privileges and mortgages public, and for the security of creditors and purchasers of real property," was introduced, and likewise failed.

19. Seeing, then, the just and liberal views expressed by the Assembly more than 10 years ago, we think it fair to presume that the want of any satisfactory provisions on this important subject should be attributed to the state of political dissention in which the Province has continued since 1823, and to the fact that the question has unfortunately always been considered one of party, rather than to a desire in any part of the Legislature to adhere to institutions no longer fitted to the intelligence of the age and the wants of the people.

20. We regret that we cannot make this statement without adding that there are, nevertheless, some symptoms of a latent apprehension that the ultimate effect of the introduction of Registry Offices will be to deprive the present landholders, of French origin. of a portion of their possessions in the seigneurial counties on the banks of the St. Lawrence, and transfer them to British settlers. It certainly is very probable that the introduction of Registry Offices, and the facilitating commutations of tenure, may have the effect of introducing a greater number of English settlers into the seigneuries; but we cannot admit the supposion that such a result would be disadvantageous to the population of French origin already established there; on the contrary, we should confidently expect that the flow of capital into these districts, and the emulation consequent thereon, would lead to the improvement of their agricultural system, the development of the resources of the country, and the ultimate advantage of all classes of its inhabitants. We think the inhabitants of the seigneuries could not fail to derive benefit from a system that would tend to arise the value of property, to supply the wants of agriculture, and to affcrd to landholders a prospect of obtaining loans of money at a lower rate of interest.

21. There is, however, we must confess, one discouragiug feature in the prospect, which we would mention, not for the purpose of exciting ungenerous or unjust suspicions against any class, but as an illustration of the manner in which unequal laws are liable to operate with a like injuriousness to all parts of the community, as well those to whose benefit they might, at first sight, appear conducive, as the rest. By the Act of 1774, confirmed in that particular by the one of 1791, Roman-catholics in all the seigneuries are required to pay a tithe to their clergy of one twenty-sixth of their produce in corn, whilst Protestants aie exempt (partly by the same Acts and partly by custom) from any payment of tithe whatever. That such an inequality, in the law must tend to create a desire, not only on the part of the receiver, but also on the part of the payers of tithe to keep Protestants out of a parish, is sufficiently obvious; for, if half of the lands in any parish were to pass into the hands of Protestants, the support of the Catholic clergy would fall, of course, with very increased weight upon the occupiers of the other half. Until some alteration be made in this respect, it cannot be expected that any measure will be well received which is supposed to promote the introduction of Protestants into the seigneuries.

22. Having thus reviewed the existing state of the law, and adverted to the disposition of the Legislature, we have to express our opinion that a very efficient improvement of it, and the introduction of a system of registry, is most desirable. In France, in Louisiana, and, we believe, in every country where the law originally admitted of such extensive hypotèques, some thing has been done to correct the evil of them, by registration. An account of the main features of the reformed system in France may be found in the Appendix, in the Evidence of the Solicitor General, and in a paper communicated to us by Mr. Walker, a distinguished member of the bar at Montreal. In the latter paper also, is contained an account of the law, as it has been ameneed in Louisiana.

23. In this province a Bill was passed by the Legislative Council during the present year, but lost in the Assembly, containg provisions to the following effect:

To make mortgages and hypothèques of every kind special, except such as should be created by judgment in a court of law.

To abolish customary dower, and require that in marriage-settlements on the wife or offspring, any immoveables to be charged should be specially described, and the s m of money for which they are pledged be set forth.

To extend the Provincial Act of 9 Geo. 3, c. 20, so as to extinguish by the same process every des-

cription of incumbrances, save only of heirs in entail, seigneurial dues, or such as may be reserved in the act of confirmation itself.

A copy of the bill, as well as of the Committee's Report, and evidence on which it was founded, is contained in the Appendix.

24. And in Mr. Walker's paper above referred to, as well as in some clear and able letters published by Mr. Badgley of the Montreal Bar, under the signature of "Civis," will be found a detail of various other alterations proposed as improvements of the existing law. We do not think it necessary to describe them here. They will be seen very well stated by their authors themselves in the Appendix.

25. Our notice has further been drawn to a suggestion, that although the establishment of a complete system of registry in the seigneuries may be attainable, the custom of the Province in respect of encumbrances of land, might be improved by being somewhat assimilated to that of England; for instance:

That conventional hypothèques should be made to consist always of a conveyance of the legal estate, with an equity of redemption, or of a deposit of the title deeds with a like equity, or of a confession of judgment.

2ndly. That judgments should be docquetted, as in England, under the statute of 4 and 6 Will. & Mary, c 20.

3rdly. That for legal hypothèques and customary dower, should be substituted a power in the King's Bench of each district, to assign reasonable maintenance to widows, to appoint guardians in the manner in which it is done by the Court of Chancery in England, and to do other acts for obtaining those ends, by the pledging of a specific portion of a man's lands, which now are provided for by causing all his estates, present and future, to be pledged secretly and generally, and for a contingency which may never arise.

26. Inasmuch as the subject is one which we cannot at present recommend to be dealt with except by the Provincial Parliament, we think it needless to enter into a comparison of the merits of the several suggestions that have been made. It seems to us enough on this occasion to submit our opinion that the present system is highly objectionable; that the establishment of a well-digested law of registry is very desirable, and that an early opportunity after the restoration of union and efficiency to the institutions of the Province, this subject should be strongly recommended from the Throne to the attention of the Provincial Legislature.

VI.—APPORTIONMENT OF CUSTOMS' DUTIES BETWEEN THE TWO PROVINCES, AND EFFECTS OF THE CANADA TRADE ACT.

1. We have inquired into this subject, in obedience to the directions contained in paragraph 83 of our Instructions. The disagreement between Upper and Lower Canada on the subject of revenue, led to the project of reuniting the Provinces in 1822; and, when that was abandoned, to the Canada Trade Act. Under this Act, the duties of customs being levied entirely at the ports of Quebec and Montreal, are afterwards divided between the two Provinces by arbitrators appointed for the purpose once in every four years.

2. The difficulties that would arise on the subject of customs' duties were foreseen and urged by Mr. Lymburner, when the division of the Provinces was still only a project; and they did commence within a twelvemonth after the separation took place. At first, however, and for several years afterwards, they were met by a series of agreements between Commissioners appointed from time to time by the two Legislatures, according to which agreements Lower Canada imposed many fresh customs' duties, but Upper Canada was always admitted to a definite share of their produce. This proportion was progressively increased from one-eighth to one-fifth of the revenue. But in 1819 the subsisting agreement between the two Provinces having come to an end, it was found impossible to form a new one; claims, moreover, of the Upper Province had grown up for certain arrearages, and had already been for some years in dispute; and when Commissioners were called together in 1821, they were obliged to separate without effecting any thing, and manifested their impression that any further attempts to negotiate would be fruitless. Petitions were then presented to His Majesty from Upper Canada, and the matter, accompanied by an infinity of labour and contention in the two Provinces, was carried into the Imperial Parliament, where it brought on, as we have above stated, an attempt to unite the Provinces, and afterwards the Act of 3 Geo. 4, c. 119.

3. The following are the awards that have been made under this Statute to Upper Canada:—

For arrear due at the time the Act was passed, and for the subsequent period up to the 1st July, 1824, one-fifth of the whole duties.

For two periods of four years, from 1st July, 1824 to 1st July, 1832, one-fourth of the same.

For four years, from the latter date to the present time, one-third of the duties.

The next period for making an award will be in Spring 1837. These arbitrations are all supposed to have been made on the basis of population only, and it does not appear that data exist on which to proceed according to any other principle. The awards are not, we believe, satisfactory to either party; and it will be seen by the Evidence of the principal officers of customs (Mr. Jessop and Mr. Hall) that they consider the Upper Province to receive at present more than its due proportion.

4. During the last Session of the Legislature of Lower Canada, an Act, called "The Inland Customs' Act," was passed, (6 Will. 4, c. 24,) into which a clause was introduced for the purpose of ascertaining the exact quantity of goods passing from the Lower to the Upper Province, by means of the custom-houses established on the two principal lines of communication, the St. Lawrence and the Ottawa: a copy of the clause is placed in the Appendix. In the opinion, however, of Mr. Jessop and Mr. Hall, the enactments are insufficient to attain the object in view; and even though the act were amended in the way suggested by them, we think it extremely doubtful whether both provinces would be satisfied with an arbitration based upon the result, or prefer it to the present mode of proceeding on the basis of population only.

5. As Upper Canada can obtain a communication with the sea only through Lower Canada, or some of the United States, she would probably, if we suppose her for a moment in the condition of an entirely independent state herself, be made to pay, in some way or other, for the privilege; as, for instance, by a transit duty on the merchandize which would have to pass through a foreign country in order to get in or out of her territory. And if Upper and Lower Canada had both been independent states when they disagreed about the apportionment of these duties, one of three things must have happened: the intercourse between them must have been suspended, and the external commerce of the Upper Province turned through a less convenient channel, or they must have sought the arbitration of a friendly power to settle that for them which they could not settle for themselves; or, finally, they must have gone to war about it. We cannot, therefore, but consider it fortunate for both provinces, that the right, or rather the duty, of interference existed in, and was exercised by Great Britain, as the head of the empire to which they belong.

6. In the part of the Trade Act, therefore, that relates to arbitration, we can see nothing to complain of. It appears, indeed, that Upper Canada cannot claim her share of any British duties, except those levied under the Act of 14 Geo. 3, c. 88, and we have not been able to discover a reason for the exclusion; but by a Report we annex from the collector of customs (Appendix No. 1,) the amount affected does not seem to be considerable, and unless there be some better ground for it than we can hear of in the Province, we doubt not it will be readily removed at the first convenient opportunity. With the exception of this defect as it certainly would seem to be, although the information we can obtain on it is too scanty to allow us to offer a positive opinion, the principles on which the clauses respecting arbitration are framed seem to us equitable: England had no object of her own in view in the enactments, and there is no idea of enforcing them a day longer than is necessary for the good of the parties concerned.

7. There are, however, other clauses in the Bill, which, although they may be equally justified by the necessity of the case, are, nevertheless, open to more serious objections at first sight; we mean the 28th and 29th sections, by which the Lower Province is virtually deprived of the power of

altering the duties levied in her ports ; and neither Province has the power singly of increasing or taking off any impost. The prohibition extends to all duties of customs levied under the authority of the Provincial Legislature ; it therefore has had the effect of making permanent taxes which were only imposed for a limited period, and has even recalled into existence some that had expired when the Act was passed. The "*ad valorem*" duties of 2½ per cent., imposed by the Provincial Parliament on certain goods, by the Act of 55 Geo. 3, c. 2, would have ceased in 1823, had it not been for the operation of the clauses in question, under which they have been continued to the present day ; and by the retrospective effect of the Act, other duties on tea, wines, spirits, and molasses, which had expired in 1819, were revived, and have been equally continued ever since. They were levied under an Act of 53 Geo. 3, and amended by 55, Geo. 3, c. 3, both Provincial Acts. To illustrate the operation of the inconvenience in the other direction, we may remark that the Legislature of Upper Canada had occasion to apply in 1824, for an increase of duty on several articles, but was refused.

8. Since the whole of the revenue of Lower Canada is, with few exceptions, raised by duties of Customs, the House of Assembly is by the operation of the Trade Act essentially cramped in the exercise of one of the most important functions of a representative body. They have a larger revenue than they want for any of the ordinary purposes of government, without the power of reducing it by taking off taxes ; and this superabundant revenue is consequently applied by them to many purposes, which perhaps, in their own opinion, and certainly in ours, would be better provided for either wholly or in part by local assessments, such for instance as the expenses of gaols, the maintenance of schools, and the repair of highways. bridges, &c. ; and thus it happens that the inhabitants of parishes or districts are first prevented from having in their own hands the management of the affairs in which they are immediately concerned, and then reproached by their political opponents with an incapacity for public business. We cannot help making these remarks, because we think that, in the present particular at least, the leaders of the popular body have shown a laudable desire to get out of what has been called the French system, a system which made the Government everything and the people nothing ; and that their opponents have laboured, and are still labouring, to perpetuate the vices of a condition, the evils of which, as far as they hurt themselves, they are ever loud in denouncing. We need scarcely say that we allude to the frequent failure of bills for the election of township and parish officers, and for the management of other matters of local concernment.

9. Every reason therefore concurs to make us wish that each Province could be enabled to raise and regulate its own revenue, but the difficulties that stand in the way are greater than we have heard any good suggestion how to surmount. While we should be happy to see any plan by which the two Governments could be made independent of each other in this respect, we are forced to acknowledge that we cannot propose one. We adopt the conclusion then that the necessity of the present arrangement justifies its continuance ; and that until a better method can be pointed out of guarding against the confusion and disagreement which preceded the Trade Act, it could not be repealed without far more injury than benefit to the Provinces.

10. Before we leave the subject of the trade of Canada, we feel it right to notice a hardship, of which complaint has, we think, with reason, been made to us. Cattle, grain, potash and other articles of agricultural produce are admissible in Canada, free of duty, from the United States ; but the same articles, if of Canadian growth, are charged with a heavy duty on passing into the States. It was represented to us in the townships that persons crossing the frontier, for business or for pleasure, were sometimes charged with a duty for the horses on which they rode ; and we have even heard it asserted that, in the case of a person who happened to possess property on both sides of the frontier, an attempt had been made made to charge him with duty when he removed his cattle from one pasture to the other.

11. With respect to the general state of duties, we would beg to refer to the evidence of the officers of customs, and to point out that they agree in thinking that the tobacco duties require alteration.

VII.—EXECUTION OF THE RECOMMENDATIONS OF THE CANADA COMMITTEE in 1828.

1. In the 84th and 85th paragraph of your Lordship's Instructions, the question proposed to us is : "Whether the recommendations of the Canada Committee of 1828 have, to the full extent of His Majesty's authorty and legitimate influence, been carried into complete effect, or whether there is any, and, if any, which part of their advice which it yet remains with His Majesty to execute ?" And in calling upon us for this inquiry, your Lordship has put us in possession of a Minute by your immediate predecessor, embodying the result of an investigation into the same question while he held the seals of the Colonial Department.

2. After carefully examining into the subject, the principal point on which we can find that any doubt could be raised on the question proposed to us, is the fulfilment by the Government of the recommendations respecting the Legislative Council. The opinion expressed by the Committee was, that a more independent character should be given to the Council, that the majority of its members should not consist of persons holding office at the pleasure of the Crown, and that any measure which tended to connect this branch of the Constitution more intimately with the interests of the Province, would be highly advantageous. If these recommendations are satisfied by the appointment of a large number of new councillors, none of them dependent on the Government for their income, but all living by their own means, and possessing property or engaged in pursuits connected with the general interests of the country, we have to report that the advice of the Committee has been followed. But if, on the other hand, their words be taken to imply that a change ought to have been made in the political character of the body, we can only repeat that we observed in paragraph four of our preceding Report on the Council itself, that there does not appear to have been an alteration effected in that respect. We, however, have already remarked in the passage in question, that there is no ground to assume that the committee intended it to be understood that the Council should be made to harmonize in every respect with the Assembly. On the Judges' seats in the Council the advice of the committee has been executed. With respect to the Chief Justice, however, it may be doubtful whether, when the committee recommended that he should be left in the Council, because his presence there might "be occasionally useful." it was contemplated that he should be continued there as Speaker.

3 Having made these observations, in order to guard against any misconstruction on the preceding topic, we have to state that, after our investigations on the spot, we can confirm the general accuracy of the statements in Lord Aberdeen's Minute, and, consequently, the accuracy of His Lordship's conclusion, that His Majesty has, to the utmost extent of his constitutional power and influence, fulfilled and displayed his willingness to go beyond the recommendations of the Canada Committee in 1828.

4. In this declaration we would not wish to be understood as conveying the result of a general review of the whole conduct of Government since 1828, or an unqualified approval of every thing that has passed subsequently to that period, but simply a statement of the fact that the Executive Government has done all within its power to fulfil the advice of a Committee of the House of Commons, which was admitted, at the time, to present a just, impartial and liberal view of what was requisite for the good of the Province.

VIII.—EDUCATION.

1. We feel that we ought not to close our General Report without saying a few words on the state of Education in the Province, though we regret that it is not in our power at present to go into the subject at any length.

2. On the 21st December 1829, a Despatch was addressed to the Secretary of State, by Sir James Kempt, to which we would refer (Appendix No. 1), as exhibiting a correct view of the means of public instruction then existing in Lower Canada ; since which time, although great liberality has been evinced on the part of the Provincial Legislature, and a strong desire to advance the cause of general education manifested by the Executive, we regret to say that the progress has not been, as far as we can judge, such as might have been expected. The entire proceeds of the Jesuits' estates have been dedicated by Government, since the date of Sir James Kempt's despatch, to the

advancement of education; and a total sum has been appropriated to the same purpose by the House of Assembly, of £172,519 5s. 9d., being on an average £24,645 14s. 3d. per annum, or about one-fifth of the total revenue of the Province. The Royal Institution, partly owing to the extensive operations carried on by the Legislature through different channels, and partly from other circumstances, has fallen into neglect, and we fear that any attempt to revive it or make it efficient would be unavailing. The allowance of £2,000 per annum for the support of its schools. continued to be made by the Legislature up to 1832, but in the latter year the grant was reduced to £1,265., and has since been discontinued altogether. The schools, however, under the management of the institution, may still, under certain conditions, receive the allowance that is made generally to all elementary schools in the Province.

3. By the Despatch which we have referred to it will be seen, that an Act was passed in 1829, for the encouragement of elementary education, which was to be in force three years; and we find that Acts were passed, amending and explaining its provisions, in the two following years, 1830 and 1831. In the latter year, also, a Standing Committee was appointed in the House of Assembly, to report, from time to time, on all subjects connected with education, by which Committee, renewed, as it has subsequently been, at the commencement of every session, several very valuable Reports have been presented to the House. The views entertained in them appear to us generally so judicious, that we can only lament that they have not been more extensively acted on by the House to which they were addressed.

4. The system established in 1829, was further continued, by successive enactments, to the 15 May in the present year; but a Bill which would again have continued it failed in the late session, so that the elementary schools are left for the present without any support from the Government. We find that as the grants made by this Bill were far more extensive than in any that went before, and would, in the whole, have amounted to nearly £40,000., it was thrown out by the Council, principally on the ground that if it had passed, sufficient money would not have been left in the Provincial treasury to discharge the long arrears of salaries due to the public officers. In the Report, however, which the Committe of the Council made on this Bill, additional reasons for rejecting it are set forth, based on the ill success of the former grants, on the danger of liberality degenerating into prodigality, and on the extent of the powers that the Bill bestowed upon county members. A copy of this Report, and of certain resolutions founded upon it by the Council, is placed in the Appendix No. 3.

5. But though this Bill was lost, two others respecting education were passed; one under which special grants were made to particular schools or colleges to the amount of £7,620 sterling; another by which Normal schools, or schools for the formation of teachers, were established in the cities of Quebec and Montreal.

6. We have placed in the Appendix an extract from Lord Aberdeen's Despatch of 1 January 1835 (Appendix No. 2), explaining the grounds on which the Royal Assent was refused to a Bill that had passed in 1834, for very generally conferring a corporate capacity on all institutions for education in the Province. A Bill of somewhat a similar nature, but framed apparently with an advertence to Lord Aberdeen's objections, was passed this year, but it received some amendments in the Council, and was not returned to the Assembly till after there had ceased to be a quorum in attendance.

7. The general system of elementary education established by the successive enactments we have described, commencing in 1829, may be stated as follows. The whole Province is divided into school districts, which, under the Bill that expired in May last, amounted to 1,344, and by the Bill which was lost in the first session of this year, would have been increased to 1,657, notwithstanding the repeated comments of the Standing Committee of the Assembly upon the excess in their numbers. In each district a school may be established at the discretion of the visitors, and an additional one for girls in each parish; a parish generally containing several districts. Every school may receive from the funds of the Province a grant of £20 per annum, provided no greater charge than 2s. per month is made for the education of each scholar, and that 20 scholars, at least, have been in regular attendance during a certain portion of the year. In any school where there are not less than 20 scholars paying this sum for instruction, the trustee have power, under certain restrictions, to admit a proportion of poor children gratuitously. Half the expense of erecting school-houses is often granted, provided such ha does not exceed £50. The sum of 10s. per annum is allowed to be distributed in each school by the visitors, in prizes or rewards amongst the children.

8. Visitors are appointed for each county, consisting of the following persons: the resident members of the Legislative Council, the members of Assembly returned by the county, the superiors and professors of all colleges in it, the presidents of all societies for promoting education; to whom are added in each parish, but for the parish only the minister of the most numerous religious denomination, the senior justice of the peace, and the senior militia officer. These visitors (or any three, or latterly two, of them) are required to visit annually all the schools in their respective counties, and must certify all the documents which are necessary to obtain the various grants of money which have been enumerated; public examinations are also to be held by them once a year.

9. In each school district, moreover, there are three trustees, chosen by persons qualified to elect members of the Assembly, and empowered to hold the property which may belong to the school, and to receive benefactions and bequests, within certain limits, notwithstanding the laws of mortmain.

10. The Bill of 1836 further went to authorise school districts to assess themselves, with the consent of a majority of the persons qualified to vote at elections for Members of Parliament, for the erection of school-houses or the support of schools; and the Bill also provided for the establishment of one superior or model school in each parish, the master of which might be paid out of the public funds a salary of £50 a year, provided an addltional sum of £20 were raised for him by the parish.

11. That the system of which we have given this rapid outline has been much abused, is sufficiently shown in the valuable Reports which we have already mentioned of the Standing Committee of the House of Assembly. The principal defects seem to have been, the want of a central board or authority to direct and control the working of the system, a want of qualification in the teachers, and the want of attendance in the children; the want of sufficient exertion on the part of parents in general, arising perhaps from the too prevalent impression that the education of their children is a matter of concern for the Government, and not for themselves; and, lastly, the want of power to raise money for the support of schools, even where there might exist amongst the majority of the inhabitants a desire to subject themselves to assessments for the purpose. The Standing Committee, in their first Report for 1836, expressly state that the liberality of the Legislature in support of some societies "had paralyzed their efforts instead of stimulating them."

12. The failure of the Board of Education, which was instituted under the name of the Royal Institution, might at first be regarded as a fact tending to discourage any future plan for the creation of a central authority, to be entrusted with the control of all establishments for elementary education in the Province; but we think that errors were committed in the formation of that Board which would now be avoided; and if we are not deceived in the hope we entertain that the laudable efforts, lately begun, to introduce a general system of education in Ireland are proceeding successfully, we would recommend that the fullest information respecting the working of that system should be sent to Lower Canada; for where such abundant proof exists of a willingness to engage in the generous enterprise, we cannot doubt that any hints to be derived from successful practice in other countries would be well received*. We are happy to be able here to add, that the Report of M. Cousin on the state of education in Prussia, as well as several works on the subject of education in the U. States, are beginning to attract notice in the Province.

* Since this passage was written in our Report, we have had the satisfaction of learning that the Rev. Mr. Holmes, one of the Roman-Catholic clergy in this city, and a very intelligent and active member of the seminary of Quebec, has gathered much information on the subject in Ireland during a visit to Europe in which he is now engaged, with a view to the promotion of education.

13. We do not think that the system of supporting schools entirely, or even principally, out of the general revenue of any country is a good one. We think, on the contrary, that the funds for elementary education should be supplied from the following sources:

First.—From a general assessment on all property within the parish or school district, on the principle that as education is a matter in which the public good is concerned, every inhabitant ought to contribute to it in proportion to his means; and also because the expenditure of money, raised in part by local assessment, is likely to be better superintended and more carefully watched by persons on the spot, than the expenditure of money supplied entirely out of the general revenue.

Secondly.—By a grant from the public purse of the Province, which grant, however, should never exceed the amount of what is levied by local assessment. The general revenue in Canada being sufficient, and more than sufficient, for all ordinary expenses of Government, it is but reasonable that a portion of it should be applied to reduce the amount of local assessments.

Thirdly.—By payments from the children themselves, or rather from their parents, for the reason that what people get for nothing they are apt not to value highly.

14. With respect to the superintendence of the elementary schools, we think trustees and inspectors should be elected by the rate-payers in each parish or school district, who should correspond with, and be in subdordination to, a central board established in each of the districts into which the Province is divided. In Quebec and Montreal, we think that the board ought to be composed, at least in the commencement, of the persons who have been already constituted a committee for the management of the Normal schools, and that in the other districts boards should be formed, as nearly as possible on the same principle. The control exercised by the visitors appointed by the recent Acts of the Legislature, has been, as far as we can judge, neither satisfactory nor efficient. That it was insufficient to check jobbing and malversation, appears to be admitted in the Reports made to the Assembly, whilst the possible employment for political purposes of the patronage, which was afforded by it to members of the Assembly, is objected to, and we conceive not without reason, by the Council.

15. With respect to the very important question, how far elementary schools should be charged with the duty of affording religious instruction, we must confess frankly, that we have not sufficient information to enable us to express a decided opinion. As a general principle, we cannot hesitate to declare, that as it is highly important that such schools should be as comprehensive as possible, so is it, in our opinion, desirable that the religious instruction imparted in them should embrace only such general doctrines as all who are Christians may agree in; but whether a plan of this sort would be suitable to the present state of Lower Canada is a question on which we are not prepared with an answer. There is a deep sentiment of religion spread, we believe, over the whole population of the country, and we are happy to bear testimony so cordially as we can do, that it is accompanied with fewer feelings of acerbity of the followers of one creed towards another, and particularly of Protestants towards Catholics and Catholics towards Protestants, than perhaps in any country where distinctions so marked and so numerous exist. From this we might not unreasonably be led to expect that a system of education founded on the truly Christian principle of toleration and general charity would not be unattainable; if we further, however, venture to express a hope that such a plan may be prosecuted to completion, we feel that in doing so we ought to add, that the best chance of its being realized may, as far as we ourselves are concerned, depend on our here dismissing the subject, rather than attempting to prescribe to those who must be engaged in the great and gratifying work of carrying it into execution, the means that they are to employ.

16. Upon the subject of the higher class of schools we cannot enter at present; though, as we have received applications for assistance from the Trustees of M'Gill College in Montreal, we must prepare ourselves to do so hereafter; as also to turn our attention to the subject of the establishment of a university in the Province, to which all classes of its inhabitants might resort for the attainment of the higher branches of education, and the general cultivation of science. This latter we believe to be an object of earnest desire amongst persons of influence in the Province, and one which, we apprehend, is every way befitting the care of the Imperial as well as the Local Government.

We have the honor to be your Lordship's most obedient humble servants.

(Signed) GOSFORD,
GEO. GIPPS,
CHAS. EDWD. GREY.*

A MINUTE delivered to the Secretary by Sir *Charles Grey*, upon signing the Sixth or General Report of the Commissioners, on Thursday the 17th of November, 1836.

I. The Reports of the Commissioners have been drawn up in pursuance of their instructions, by the Secretary to the Commission.

For this purpose papers have been supplied to the Secretary by the Commissioners upon which, when any material difference of opinion has appeared, it has been determined by the Secretary's bringing it to the notice of the Commissioners, and when it has not been waived, by taking the decision of the majority of the Commissioners. Somes differences of opinion have been dependent, perhaps, on temporary circumstances, aad the posture of affairs at the moment, and the course of events has obliterated some of these, and Ithink it will have that effect upon others. But in comylying with our instructions by signing the General Report, it is necessary that I should in some way obviate the usual inference which might be drawn from the signature.

I shall be excused for not critising expressions, political sentiments or general principles which may not correspond with my own; and for avoiding even in our recommendations a pointed controversy with my colleagues. I shall fully satisfy my own wishes upon the present occasion, when I shall have opportunities of giving any fuller explanations which may be required, if I can so indicate my views that they may be available for any good purpose, and may prevent the supposition of my having come to conclusions which I disapprove: and I would rather leave any opposition of opinions to be perceived in the general tenor of our statements, than fix attention to it by marked comments.

II. There are three powers, by one or other of which legitimate changes may be made in the method of government, the laws and institutions of the Province; namely, the prerogative and executive power of the Crown, the power of the Provincial Legislature, and that of the British Parliament. The Instruction of His Majesty's Ministers direct the attention of the Commissioners chiefly to the redress of grievances, which may be effected by the first two powers; and although it has struck me that there have been occasions when a timely application to the House of Commons might have saved some trouble, I should regard it in present circumstances as a wise resolution, to make, either no application to the Imperial Parliament, or one for a comprehensive and permanent adjustment. At the same

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* I sign this Report subject to a statement of a difference of opinion, which is delivered to the Secretary to go home with the Report.

(Signed) *Chas. Edw Grey,*
17 November, 1836.

time I am obliged to say that I have no hope of the troubles of the Province as it is at present constituted, being settled by the existing Canadian Legislature. A year's residence in the country has convinced me that without a perpetual dissension, the British in Lower Canada cannot legislate in forensic affairs for the French Canadians, nor the French Canadians for the British, or for a province and a river which are the heart and life-blood of the British American commerce and colonies; nor is there any chance that, under the present laws of election, the two parties will be so blended in the Houses of Legislature as to make those bodies effective instruments of imperial government.

Two courses appear to me to be open for the choice of His Majesty's Ministers. The one that of exercising firmly tho' temperately the powers of the Crown, and developing its resources, by which, without affecting the existence or privileges of the Houses of Legislature, but without expecting from them much assistance for some time to come, I think that the Government might be carried on, and all interruption of public tranquility might be prevented; the other that of laying the affairs of Lower Canada before the British Parliament, with comprehensive views, and for great and permanent objects, which would bring interests so many, so various, and of so much weight to bear upon the principal questions as to sustain beneficial measures by their combined support, and to put down any vexatious opposition which should be advanced under frivolous pretexts or on formal grounds.

III. To bring before His Majesty's Ministers the information which might enable them, without further inquiry, to form an immediate judgment and to act upon it, it seems to me that the final Report of the Commissioners should comprise the following divisions of the subject.

1. The circumstances which led to the Commission; the tenor of it; the instructions by which it was accompanied, and those which have since been sent to the Commissioners; and the resolutions, petitions and representations which have been brought to their own notice, or have been addressed to the Governor-in-chief, or to His Majesty or to the Imperial Parliament since the issuing of the Commission.

2. The form of Government and system of laws in Lower Canada.

3. The most important statistics of the Province.

4. The parties and conflicting interests.

5. The real causes of the present discontents, and the extent to which they have a reasonable foundation.

6. The principles, general rules, and most obvious facts, which ought to be kept in view in the Report of the Commissioners.

7. The Executive Council.

8. The Legislative Council.

9. The House of Assembly.

10. The Civil List.

11. The King's Domain and hereditary revenue of the Crown.

12. The wild lands and forests.

13. The clergy reserves.

14. The British North American Land Company.

15. Emigration.

16. The aboriginal tribes or indians.

17. The judicial branch of government: the proposed institution of a Court of Impeachments; the Court of Appeal; the Court of Escheats; the fees of the officers of the courts.

18. The police, the prisons, and the conservation of the peace.

19. The law of real property; the lands in possession of the Roman Catholic religious Communities; the incidents of tenure in free and common soccage; the right of commuting the tenures *en fief* and *en roture* into soccage; the *disme* or tithe; the inconveniences of the seigneurial tenure; the proposals for the general establishment of offices of land registry, to obviate the mischief of secret incumbrances, and of the French law of hypothèque; the law respecting aliens.

20. The seigneury of Montreal and the King's censive of Quebec.

21. Institutions for religion and education.

22. The apportionment between Upper and Lower Canada of the receipt of import duties; and the question as to a union of the two Provinces.

23. The means by which effect might be given to the improvements required under each of the preceding heads of policy. Of the organization of townships and parishes for local purposes; and the establishment of subordinate legislatures or municipal districts.

24. The future instructions of governors.

25. The just limits of imperial legislation.

26. The relations of the Province with foreign states.

Of these divisions of the Report, from the 7th to the 22d inclusive, a subdivision might be made under the following heads:

1. The instructions of the Commissioners.

2. The complaints which have been made on the particular subject of inquiry.

3. A narrative of the circumstances of which a knowledge is requisite for the right understanding of the subject.

4. The real extent of the grievance.

5. The plans which have been proposed for the remedy of it.

6. The recommendations of the Commissioners.

To fill up this outline more time would be wanted. For six to ten months might be sufficient for Lower Canada, but inasmuch as it is one of the most essential considerations that the affairs and interests of the British North American colonies on the Gulf and river of St. Lawrence should be regarded as one whole; and that the instructions of no one province should be such as to disturb the peace or impede the improvement of the others, it seems to me that, after finishing their enquiries in Lower Canada, some of the members of the Commission, with the advantages of recently acquired information, might go forward into Upper Canada, New Brunswick, Nova Scotia, Newfoundland and Labrador, and might be required also to visit such of the United States as are conterminous to the British territories, for the purpose of informing themselves accurately of some of their institutions; bearing in mind the wise and appropriate suggestion of Mr. Burke, in the debate of the 11th May 1791, that "the great examples to be considered were the constitutions of America, of France and of Great-Britain. To that of America great attention was due, because it was of importance that the people of Canada should have nothing to envy in the constitution of a country so near to their own*."

In this minute I do not consider myself entitled to touch any other of the subjects I have enumerated than those on which opinions have been expressed by the Commissioners in the present or in some former Report.

IV.—THE EXECUTIVE COUNCIL.

Without meaning to say anything in disparagement of individuals, I think there has been some foundation for the complaints, that the Executive Council has not comprised amongst its members a sufficient number of persons residing occasionally in different parts of the Province, or who have been of sufficiently various qualifications, acquirements, connexions, professions and occupations, but has consisted principally of holders of office under Government, resident in Quebec, and has been almost ostentatiously blended with the Legislative Council.

I would suggest that instead of the Executive Council, constituted as it is at present, the Governors in chief should be empowered at all times to appoint provisionally such and so many persons to be Executive councillors, during the periods of their own government, but no longer, as to them may seem meet, such appointments to be subject to confirmation by His Majesty, and to cease entirely and be vacated by every vacancy in the office of governor in chief; that the President of the court of appeal (to be constituted as hereinafter is mentioned under the head of "The Judicial Branch of Government, &c.) should be, *ex officio*, a member of the Executive council*; that the existing members of the Executive council should retain their seats for the period of the present governor in chief's government, in like manner, and

* This may appear at first sight, to be the reverse of what was proposed by me on a former occasion; but what is stated in a subsequent part of this Minute, under the head of "Judicial Branch of Government," &c. will show that the object is the same, namely, that the Court of Appeal should consist chiefly of the most experienced of the legal profession, and that they should not previously advise as to the expediency and propriety of measures, on the legality of which they are afterwards called upon to decide. The reason for recommending that which I now propose is, that if necessary it may be effected by the power of the Crown alone, without calling upon the British Parliament.

upon the same conditions, as if they were newly appointed by him, but that no person holding any office or appointment, the duties of which require that he should collect or receive uncertain amounts of public money, and should account for the same, nor any person holding any office or appointment other than that of Speaker under the Legislative Council or House of Assembly, shall at any time hereafter be appointed to the office of Executive councillor; that with the exception of the Registrar or Secretary to the council, and his clerks or messengers, no salary or emoluments of any sort shall be attached to, or connected with the office of Executive councillor, unless it should be enacted by the Canadian Legislature to establish some salaries or emoluments for the members of the council during the life of His Majesty, or for a term of years not less than seven.

That no person after being appointed an Executive councillor, shall, during the period for which he has been appointed, be dismissed from office by the Governor otherwise than as now, provisionally, and on account of being unfit for His Majesty's service.

That in the month of January in every year, there shall be one full meeting of the Executive council, to which all the members shall, if possible be summoned, which meeting shall continue as long as to the Governor in chief shall seem fit; and for the purpose of supplying vacancies in a Legislative Council with a fixed maximum of numbers, it shall be the first duty of every such meeting to prepare a fresh list of 10 persons duly qualified (according to the recommendations under the head of "The Legislative Council") to hold the office of Legislative Councillors, and who shall be known to the persons who recommends them to be willing to accept the same; and that thereupon the list of the by gone year shall be superseded and cancelled.

That except upon the occasion of the one full meeting in January, it shall not be necessary for the Governor to summon more than four members to any one meeting, of whom the President of the Court of Appeal, if he be known to be within 10 miles of the place of meeting, shall be one; but that the President shall not in any case be required or be competent to advise as to the mere expediency of any measure, or in any other matters than matters of law, or questions as to the compatibility of any proposed measure or proceeding with the constitution of the Province, or its relations with the United Kingdom; and that on such points the Governor may always require, or the President may give, the advice in writing, which advice it shall be lawful for the Governor to lay before either House of Legislature.

That one of the Executive Council shall from time to time be appointed provisionally by the Governor, and finally by His Majesty during pleasure, to be Auditor-general of the revenue and of all public accounts, and shall be paid an annual salary of £400 out of the proceeds of the hereditary revenue, and £600 out of the duties collected under 14 Geo. 3, c. 88, and other Acts imposing duties of customs, by virtue and under the authority of the words in the 1 & 2 Will. 4, and other Acts, to the effect that the monies shall be appropriated by the Legislature, except so much of such monies as shall be necessarily defrayed for the charges of raising, collecting, levying, recovering, answering, paying and accounting for the same.

That it shall be lawful for any meeting of the Executive Council to refer any matter to one, two or more members of the Executive Council to consider and report thereon to the Governor in Chief in Council, and that once a year a reference shall in this way be made for the purpose of obtaining a General Report upon the state of the Province, and especially upon all alleged grievances, Report shall be sent home to His Majesty's Ministers

Finally, that the Executive Council shall no longer be a Court of Appeal, or that its functions in that respect shall be regulated according to the plan proposed in this Minute, under the head of the "Judicial Branch of Government," &c.

By these alterations, the whole of which I conceive to be within the prerogative and lawful authority of the Crown, it would appear to me, that the objections which have been made to the present composition and functions of the Executive Council would be answered: that the Governor in Chief would be enabled to bring into his councils the most eminent persons of the Province of every profession and class; might acquire an increased influence in every part of it, and open easy channels of communication with himself to every order and description of its inhabitants, whilst, without giving to the members of the Council any undue immunities or privileges from responsibility, the Governor could scarcely be put to the inconvenience of having to change the whole of his advisers upon a demand of the Assembly.

In the present posture of affairs, it is of some importance, also, that this plan, at the same time that it would provide for an efficient audit of accounts, would be compatible with some reduction of those estimates for which it is held that annual appropriations by the House of Assembly should be obtained.

V.—THE LEGISLATIVE COUNCIL.

I am convinced that no change in the composition of the Legislative Council would satisfy the Assembly which should not reduce the Council to a state in which it would support the measures to which the Assembly has pledged itself by the 92 resolutions, and by its last address to His Majesty; and that no plan of electing a Legislative Council could, for a long time to come, as the Province is at present constituted, have any other result than that of creating a French Canadian majority in both Houses, the proceedings of which would so threaten the mercantile and British interests with vexatious laws as to produce immediate irritation, and gradually a deep-rooted discontent and alienation of affection from the United Kingdom. The Government, instead of holding the poor advantages even of its present position, would be brought into collision with the two other branches of the Legislature united against it. Either it is unnecessary to yield more at present to the importunities of the Assembly than reason recommends, or it would be impossible to refuse anything afterwards, however unreasonable.

That the Council should be firmly opposed to the demands of the Assembly, seeing what those demands are, so far from being a disposition which is to be blamed or lamented, is necessary for the prevention of confusion; it would be produced at once by taking from the Council this character. The British interests are scarcely at all represented in the Assembly, and it is only the different organization of the Council, and its appointment by the Crown, which enables it, without any danger to liberty, to check and stop the evil which may be bred from the forms of our constitution when filled up with the crude and discordant materials of an infant state. I do not pretend, however, to say, that a British majority in the Council, and a French Canadian majority in the Assembly, will make a good and efficient Legislature for the Province, but only that this is less injurious than to make two French Canadian Chambers. In the one case the Government may have to stand still, but in the other it would go to ruin. Whatever line of policy may be resolved upon for the affairs of Canada, whatever partial changes in the structure of the Government or of the Province may take place, I would recommend instead of the principle of election, that of an open recommendation be made use of for the construction of the Legislative Council for the general legislature of the Province. This principle of recommendation might be brought to bear in one of the two ways, either by having a large and open Executive Council, of which it should be the duty to prepare annually for the information of His Majesty's Ministers, and, perhaps, even to publish, a fresh list of persons fitted to supply vacancies in a Legislative Council with a fixed maximum of numbers; or, if the commercial towns of Montreal and Quebec had good effective charters given to them, and if the rest of the Province was divided into at least three municipal districts, with a view of leaving to the French Cananians their own laws and regulations and judicial tribunals, and to the British theirs, the election of individuals to the municipal councils and principal offices of these towns and districts would be so many recommendations of the parties to the notice of the Crown for the occasions of vacancies in the number of members of the Council of General Legislature for the Province. I think it would be desirable to provide further, that every member of the Legislative Council, upon the opening of each session of the provincial Parliament, should make a solemn affirmation that, after allowing for the payment of all his just debts, he is lawfully possessed of property to the amount of £5,000, or of a life income of £500 by the year.

That not more than one-tenth of the members of the Legislative Council should be capable at any one time of holding any office or appointment of emolument at the pleasure of the Crown; and that no member should be capable of holding any office or appointment in or under which he should have the receipt or collection of uncertain amounts of public money for which he should liable to account.

That it should be lawful for His Majesty to revoke and cancel the appointment of any member of the Legislative Council, upon his being convicted of any crime or misdemeanor, and that it should be lawful for any member of the Legislative Council to resign his seat, and for the Governor provisionally, and for His Majesty finally, to accept and confirm the same.

VI.—THE HOUSE OF ASSEMBLY.

The principal complaint which is alledged against the constitution of the House of Assembly is, that by a new arrangement of electorial districts in 1829, under the Provincial Act of 9 Geo. 4, c. 73, if the six counties of Megantic, Missisquoi, Ottawa, Shefford, Sherbrooke and Stanstead are excepted, which return 11 members, all the rest of the population of Lower Canada were either placed or left in the minorities, as compared with the French Canadians. Such, I believe, was the fact. The census of the population of the Province taken in 1831 shows that, in every other of the electoral districts but those six counties, the majority of the population were Roman-catholics; and though amongst these, in some districts, there was a class of Irish, I am not aware of any in which they were so numerous as to make the population of British origin a majority of the whole; if in any, it was in Drummond, a township county, which had then a scanty population, returning one member to Parliament, and has only lately exceeded the number of 4,000. The population of the whole Province was given by the census of 1831 as rather more than 500,000, out of which the number of French Canadians, at the time of this census, cannot be rated so high as 400,000; but by the arrangement of electoral districts they were empowered to elect 77 members out of 88; that is to say, they, being less than four-fifths of the people, were enabled to return seven-eighths of the representatives. To state it according to another fact: they being in a minority in 69 out of 319 subdivisions, according to which the census was taken, or in more than one-fifth of the whole, yet, of the electoral districts there were left in a minority in six only out of 46, or less than one-seventh. To put it still more forcibly: not so many, perhaps, as 2,000 of the French Canadians out of 400,000 were left in a situation to be out voted by those of a different origin and religion; but more than 50,000 out of 100,000 of the rest of the population remained liable to be outvoted by the French Canadians. These may appear in England to be trifles; but they are not so. Few cases could better illustrate, by its consequences, the political truth, that in representative governments it is essential to the well-being of all parties, and to none more than the numerical majority, that the minor parties and interests should have means, in proportion to their numbers at least, of being heard in the Legislature. If this had been the case in Lower Canada, the indignation and impatience of the British party, and especially of the commercial interest, would have been less; they would not have renounced all desire to sit in the Assembly; the mutual repulsion of the two "origins" would not at this moment have been quite so strong. If there had been a steady opposition party of about 20 in the Canadian House of Assembly during the last seven years, the proceedings of that Chamber might either have been more moderate or fully appreciated.

There have been at times such indications of more considerate views being entertained by some of the French Canadia majority than by others, as to lead me to believe, that on some important occasions a considerable portion of them might have acted with a temperate opposition party of respectable strength, if it had existed. The Assembly would thus, perhaps, have avoided the reproaches which are now cast upon it, and the disfavour with which it is regarded, for its repeated refusal of the appropriations necessary for the support of the executive and judicial branches of Government in their ordinary functions; for its informal condemnations of several of the judges; for its demands from the Crown of impossible concessions; for its declarations of the invalidity of Acts of the Imperial Parliament, upon which extensive rights of property depend; for its entertaining Bills of which the Provincial Legislature is not competent to make enactments; and, finally, for its recent declaration, which has been regarded as a resolution that, unless it can enforce its demands for a change in one of the principal branches of the constitution, it will no longer assemble for the purposes of legislation.

I have no inclination to urge these charges against the Assembly. Many causes, operating through a long series of years, have brought matters to the pass at which they now are: and great allowances are to be made for the feelings of the French Canadians of all classes and descriptions, still more for the circumstances in which they are involved. They are not more to blame than any policy would be which should fix them in their present false position. They represent the numerical majority of Lower Canada, it is true; but that Province is one of five British American Colonies, the principal one, the only one which possesses both banks on any large portion of the River St. Lawrence, which is the common property of them all; it includes the principal fortification, and is, in fact, the citadel and key of the whole. But all the rest of these provinces are inhabited by a population almost entirely of British origin; the Protestant religion is decidedly predominant in them; the laws, institutions and manners are British; the pursuits chiefly commercial. The persons of that class who are within the boundaries of Lower Canada are supposed to amount to 150,000; and being in communication, on all sides, with the other colonies and the United States, every pain which they sustain vibrates through the kindred and surrounding population. All these circumstances combined would not, in my opinion, at all justify any measure by which the French Canadians should be obliged, against their own consent, as they have been in some other cases on the North American continent, to give up their peculiar laws and institutions.—But is it reasonable or possible within a British Province, so situated, that they should constitute the two Houses of Legislature? Placed in the curule chairs of the capitol of British America, the task which they would be required to perform comprehends interests, and I may say destinies, for the guidance of which a diversity of objects of pursuit and interest, a difference of religion, law, customs, manners and language, and a general want of community of purpose and sympathy of feeling, on either side, much more than any want of talent or of good intention, would unfit them. The Assembly is, even now, in this extremity; and its extraordinary sallies and determinations indicate a struggle with something which it cannot compass, and a sense of its being impossible that it should rule the policy of the United Kingdom on the American Continent; yet no other station compatible with its distinct existence is provided for it. Even the superiority of numbers of the French Canadians over the rest of the population within the boundaries of Lower Canada is gradually and, I believe, surely decreasing. In 1831 they were four to one; now they are not more three to one. As they lose their numerical advantage, however, they feel the necessity of being more united and energetic. The British party believe the French Canadians to be now not more than 450,000, and that themselves are 150,000; yet, at the last general election, the British Protestant and mercantile interest could not return one member out of eight for the cities of Montreal and Quebec; and the British party in the divisions of the House of Assembly has not numbered more than from 8 to 11 out of 88. In such a state of things, and considering the adverse temporary interests and bitter feelings of the two parties, and the measures threatened by the Assembly, it is a natural consequence that the British should regard the prospect of any change in other branches of the constitution being conceded to their opponents with irritation; they would do so with despair, if they did not feel the impossibility of its being permanent. Another defect in the constitution of the Assembly, besides that arising from the system of elections, is, that the existing law requires 40 members to be present to constitute a House. This obviously aggravates the grievance to those of British origin, of being inadequately represented. If they returned members in proportion to their numbers, or if the Assembly could act with a less numerous House, they might sometimes bear a tolerable proportion to the whole number present; but as matters stand, they are upon all occasions necessarily insignificant. Another consequence is, that it has almost always happened of late years, that before the Governor has desired to prorogue the Parliament its proceedings have ceased, from the want of sufficient attendance in the Assembly to constitute a House; and as an usage has prevailed of not sending a considerable part of the Bills to the Legislative Council until a very late period of the session, the Council, after the stoppage of proceedings of the other House, has had only the alternative of adopting without amendments, or of rejecting the Bills *in toto*.

The present qualification of electors for counties is one which, without any system of registration, affords an easy opportunity for deception at the poll; and it is alleged that many unqualified persons vote, and that other irregularities are frequent at the elections.

However difficult and delicate might be the question, as to any steps being taken by a Governor, or by His Majesty's Ministers, for the removal of these grievances, it certainly is by no meas impossible, nor very difficult, to state provisions by

which, even if the constitution were to remain in other respects unaltered, they might be remedied, provided the Legislative body were ready to enact them.

A system of registry of votes might be established without any extraordinary difficulty. A qualification involving residence as well as notoriety of property within the electoral district, might be required; and the presence of one-fifth of the members of the Assembly might be declared sufficient to constitute a House.

To give a fair opportunity to the British population of having a share in the representation proportionate to their numbers, a new division of counties has been proposed as the only remedy; but there would not be any chance of carrying that measure through the Provincial Parliament, nor, even if the Imperial Parliament should be obliged to interfere, could it be expected to entertain the discussion of provisions, the subject of which would so much depend upon minute facts and details of so local a character, that they scarcely could be ascertained with accuracy anywhere but in Canada.

There are two ways, by either of which the object might be more easily effected, and which rest upon a principle much more than upon any local facts or circumstances. The one, that of increasing considerably the number of representatives, and giving one to every two or three parishes or townships. This plan prevails in Vermont, one of the adjoining states of the American Union, in which there is a representative for every township. The other course, and the one which I should prefer, would be to leave the electoral districts as they are, or to make them larger, by the consolidation of some of them, and to give more representatives to the more populous ones, so as to proportion, in some degree, the number of representatives to the number of registered voters, but to allow to each voter only one vote, no matter how many representatives might have to be chosen for the electoral district.

Unless by acting on one of these two principles, or by dividing the Province into new districts, with distinct municipal constitutions, and the power of making laws for their internal affairs, I know not how a minority of the people, where party feelings run so high, can have its fair share of representatives, a point of such essential importance to prevent the majority from oppressing or harrassing, by partial and imperious laws, the less numerous parties. It is a conviction of its being a vital principle of freedom, that minorities should be represented, that leads me to suggest an innovation which I do not expect will be received with favour, though I know it to be susceptible of forms which would secure the most exact proportion between the numbers of voters of different parties, and the number of their representatives. It is so certain that no change whatever, which should be favourable to the British party, would be agreed to by the Provincial Assembly at present, and it appears to me that it would be so mischievous to agitate insulated points of Canadian policy in the British Parliament, that I am induced to recommend, upon the whole, that if the necessity of going before the Imperial Parliament should not arise out of other circumstances, the present unequal state of the representations should be borne with.

The evils, however, of which it is productive, and the difficulty of finding a remedy under the present structure of the Province, impress more deeply the settled conviction on my mind, that nothing less than a change, as decided as that of 1791, will effectually remove the impediments which now stand in the way of good government. I am anxiously desirous, however, to mark the distinction between an alteration of the constitution and a suspension of it. The necessity for the first will be manifest ere long, and, if it depended upon myself, it should take place now; but I would remove nothing until something better had been provided. There should be additional supports for liberty and for the laws before the old ones were displaced; and I know of nothing which can occur that would reconcile me to the Province being left, even for a day, without a constitution.

VII.—THE CIVIL LIST.

The declarations of the Assembly, in the short session which ended on the 4th of October 1836, must have satisfied most persons that it is very desirable to use lawful means, if there be any, of paying the arrears of the Civil List, and of carrying on, without an absolute dependence on the votes of the Assembly, those executive and judicial functions of the Government which are provided for in the United Kingdom without the annual appropriations of the House of Commons, and which are necessary for the protection of the lives and prosperity of the people. An enactment, that when the two Houses of the Provincial Legislature have been unable to agree as to the mode of appropriating the duties which, until very lately, were appropriated by the Crown alone, that the power of the Crown shall revive for the particular occasion, would provide both for the payment of the arrears of the civi list, and for the future expenditure of the Government; but in order that there may be a larger choice of expedients, and inasmuch as it is plainly unadvisable to apply to the British Legislature upon single points, I shall proceed to state some other means by which it seems to me that the case might still be met without the necessity of an immediate application to Parliament.

The arrears, by the 10th of April next, will have amounted, perhaps, in round numbers, to £150,000 or £120,000 beyond what can be discharged out of the annual proceeds of the hereditary revenue, and other monies which are at the disposal of the Executive. But to an amount considerably exceeding this, there will be in the Receiver-general's hands the proceeds of duties of customs, which are considered to require for the disbursement of them an annual Act of Appropriation. These, probably, by the refusal of the Legislative Council and of the Government to give their sanction to any other appropriation of them, will be retained in the Receiver-general's hands until the Assembly applies them to the discharge of the arrears, and there may be retained yearly, in the same way, additional monies which will be sufficient to cover interest on the principal sum. An amount is in this way secured, which, with a reasonable Legislature, insures the means of discharging ultimately the arrears, or of repaying with interest any sums which may be advanced by way of loan to His Majesty's Government in Lower Canada, for the purpose of discharging them; these, however, cannot be made available otherwise than by the concurrence of the three branches of the Provincial Parliament. In the meantime I am not aware of anything which need prevent His Majesty's Government from borrowing, upon the security of the wild lands and forests, and of the King's domain and hereditary revenue of the crown, a sum sufficient to discharge what has been repeatedly acknowledged to be due to the ordinary executive and judicial officers. If the matter were before Parliament, and if the resources which are under the management of the Commissioners of Woods and Forests in England should admit of it, I would recommend that an enactment should be proposed to empower and direct the Commissioners to advance, from time to time, by way of loan to His Majesty's Government in Lower Canada, upon the security of the wild lands and forests comprised within the boundary line of that province, and being at the disposal of the Crown, any sum not exceeding in the whole a fixed sum of £150,000 or £200,000, to be repaid in 10 years with interest, at the rate of four or five per cent. per annum; of which sums a sufficient portion should be applied as soon as received, for the complete discharge of the arrears of the civil list, and statements and accounts of the management of the wild lands and forests of Lower Canada might be submitted annually during the 10 years, or until the payment of the loan, to the in-

spection of the Commissioners of Woods and Forests in England. Of course it would be necessary to stipulate that this mortgage or pledge should not prevent the disposal of the wild lands by the Government of Lower Canada, according to the established regulations; but subject to these, security would be amply sufficient. I should deem this to be a satisfactory provision for the liquidation of the arrears, and if the plan were to be steadily persisted in, I should look forward with some confidence to the whole transaction being closed before the 10 years had elapsed, by the Canadian Legislatures approving of it, and appropriating the monies retained in the Treasury to the repayment of the loan. If the present state of the affairs which are under the management of the Commissioners of Woods and Forests in England, should not admit of such a loan being made, or if it should be thought inexpedient that the Imperial Parliament should enter at present into the subject of Canadian affairs, I do not conceive that ministers would find any difficulty in obtaining the loan at any time from other quarters upon the same security. Supposing the arrears to be disposed of and settled, the principles on which a provision might be made for the necessary expenditure of the executive and judicial functions of Government seem to me to be, first, that until a civil list is established by an Act of the Legislature, it is lawful for the Crown, without any vote of appropriation by the Assembly, to apply the whole hereditary revenue and proceeds of the sales of wild lands in paying the executive and judicial officers of Government, and to apply also, as it has hitherto done, to the same purposes, the sums permanently appropriated by the Assembly to the general uses of the Civil Government. These different revenues taken together, according to the statement in the Appendix to the first Report of the Commissioners, amounted, in the year 1834, to more than £28,000, if the payment of the Land Company is taken into account.

Secondly, I apprehend that the superior courts of justice have a lawful power of establishing such reasonable fees as will in themselves provide for the unavoidable expenses of the courts, and afford the subordinate officers a reasonable remuneration for the duties they perform; thirdly, that the inhabitants of the townships, parishes, counties or districts of Lower Canada require at most only the permission of a Canadian Legislature, to enable them, by self-assessment, to form a system for the conservation of the peace in their own neighbourhood, and for the prosecution of felons; and that until such permission is obtained, a moderate assistance from the hereditary revenue would probably enable them to attain the same objects under the direction and with the countenance of the executive power. If, upon these suppositions, an examination is made of the civil establishment of Lower Canada, with the object of ascertaining, first, what part of it is now, or may lawfully be, paid out of the public revenues before they are handed over to the Receiver-general; secondly, for what parts of it any permanent appropriations have been made by the Legislature; thirdly, what offices of appointments may be abolished or consolidated; fourthly, to what offices and services the monies which are lawfully at the disposal of the Executive may, for the purposes of Government, be most effectually applied; and lastly, what others may be provided for the fees on law proceedings, or by voluntary assessments imposed upon themselves for local purposes, by the inhabitants of the subdivisions of the provinces; it will be found that a sufficient civil establishment for the protection of life and property, and for the ordinary functions of the executive and judicial branches of Government, may be supported in Lower Canada, without any extraordinary revenue or aid from the annual votes of the Assembly, though not without considerable inconvenience. I trust I shall not be supposed to wish that the necessity should continue for the Government acting, as it were, on the defensive, and resting on the resources of the Crown alone; but I consider the possibility of its doing so to be so certain and clear, that it is unnecessary to enter at any length into a consideration of other resources to which I conceive His Majesty's Ministers and the Government of Lower Canada might lawfully have recourse. The expenses of postage in the Secretaries' office, which are estimated at £1,300 per annum, might be saved by an arrangement with the Post-office; it would deserve an inquiry which would be better conducted in England than in Canada, whether the net revenue, if there be any, derived from Canadian postage, might not be carried to the account of the hereditary revenue in Canada, and whether this might not also be done with a trifling revenue arising out of the old Crown duties, which are now understood to be carried to the account of the consolidated fund in England?

There are several ways in which the wild lands and forests, Crown lands and rights of the Crown, especially as they regard the banks or bed and navigation of the St. Lawrence, and the other great rivers, might, without doubt, be made to produce a larger revenue than they do at present, if means could be provided of supplying capital to them under skilful and economical management; and it appears to me that it not only would be objectionable, but that on many accounts it would be both just and expedient that a part of the salaries of the heads of Government in territories dependent on the British Crown should be defrayed out of the British Treasury, for the reason that the Governor at least is an immediate officer and servant of the Imperial Crown, and that a part of his duties are not merely provincial, but consist in preserving and conducting the relations of the dependent territory with one empire.

No necessity, however, would exist at present for resorting to these means. It is unwillingly that, even in the present circumstances of Lower Canada, I exhibit in any form distinct from the co-operation of the representatives of the people, the permanent resources of which the principles of the British constitution supply for the maintenance and execution of the laws; but the occasion demands it; and for this reason, above all others, that whatever alterations may be required, it shows it to be unnecessary that the constitution which has been given to the Province should be either annulled or suspended.

VIII.—THE KING'S DOMAIN AND HEREDITARY REVENUE OF THE CROWN.

Two Papers, namely, No. 1. (A.), and No. 4, of the Appendix to the First Report of the Commissioners, have already exhibited to His Majesty's Ministers a statement of the hereditary revenue of Lower Canada. Although I conceive the property of the Crown in the domain to be a distinct thing from the prerogative of the Crown as to the wild lands and forests, it appears to me that, whether any division into legislative districts takes place or not, the receipt and management of the whole might be advantageously consolidated and brought under one department, of which the principal officer, though his duties would be of a very important character, yet, as a person in the receipt of uncertain amounts of public money, and liable to account for the same, ought, according to the opinion I have expressed under the head of "The Executive Council," to be incapable of being a member of the Executive Council, Legislative Council, or House of Assembly, and should be required to find sureties to a sufficient amount. If it should be necessary to apply to the Imperial Parliament on other accounts, I would recommend that an enactment should be proposed that the officer above mention, under the controul of the Governor in Council, should have the powers which by the British Statutes are vested in the Commissioners of Woods and Forests in England; but that an account should be rendered half-yearly to an auditor-general of accounts, to be appointed as I have stated, under the head of the "Executive Council." There is not any probability at present of the House of Assembly of Lower Canada assisting in giving a more effective control of the domain to the officers of the Crown. If the suggestion which I have made under the head of "The Civil List," as to the wild lands and forests being made available as a security for a loan, should be acted on, it might deserve consideration whether the King's domain should not form a part of the security. But at all events, if Canada is to be saved from a dissolution of Government, one of the points to be most carefully watched is the retention and improvement of the hereditary revenue, permitting not the less the annual proceeds of it to be thrown for a given period into the general revenue, whenever the representatives of the people will appropriate for the same period a sufficient portion of that revenue to the support of the executive and judicial branches of Government.

IX.—THE WILD LANDS AND FORESTS; THE BRITISH AMERICAN LAND COMPANY.

I cannot perceive any ground for raising a question as to the right of disposal of the wild lands and forests. The forty-second (42d) section of the 31st Geo. 3, c. 31, by which its present constitution was given to Canada, has prevented all doubt. The prerogative of the Crown is not only asserted, but His Majesty is even precluded from giving the Royal Assent to any Bill of the Provincial Legislature which may affect that prerogative, until it has been submitted for 30 days to both Houses of the British Parliament. My present object therefore is only to recommend a little more strongly than my colleagues have done, a simpler and easier method of exercising in this respect the power of the Crown. I have not heard any complaint of the manner in which the licences to cut timber are granted, or that in this respect any new regulations are required. But as to wild lands, I would do away with nearly the whole of the existing system of sales by auction, of payment by instalments, and the consequent keeping of accounts, and of compelling parties who wish to settle upon unsurveyed lands to wait till the survey is made, and to pay the expenses of it. Of course many persons who find employment and emolument under the existing system, will be inclined to uphold or even to extend it or render it more artificial; but it is complicated, ineffective, expensive, dilatory, founded on wrong principles, and stands in the way of settlement instead of promoting it.—The first thing to be done is to remove the prejudice of harm being done either to the Crown or to the people as a body or to individuals, by grants of wild lands being made to others. This is contracted from the habitual impression in old countries of the value of land. But in countries abounding with desert tracts every one is benefitted by the grant made to others. There is no want of waste land; and if there was, cultivated land is better than waste, and either the one or the other is just as easily to be bought after grants made as they were before. When a revenue indeed is raised from the sales of wild lands, they cannot be given away without depriving the Treasury of the amount they would have brought at auction; but that is the whole extent of the evil. Some few instances may be found of individuals who desire to invest a sum of money in waste lands, and to keep them waste, and to wait till, by the surrounding improvements, an increase of value is given to the purchase; and in a colony, there will always be some cases in which waste land is bought, and is afterwards neglected and forgotten, so that the owner cannot easily be found: but these instances are never so common as really to create a public inconvenience, and may be entirely prevented by some very simple expedients, which are in use in the United States. The real interest of the people is that cultivation should go forward as speedily as it can, without detriment to morals and civilization. To promote this, it is desirable to make it as safe and as easy as possible to apply capital to land; and instead of obstacles being thrown in the way of enterprize or even of speculation, every facility should be afforded to them. We could not do better than adopt at once the method which in the United States seems to answer all main purposes, and to give satisfaction to that vast and not easily contented community. It has been productive of a very considerable revenue, and I have heard no complaint against it, except, that it is attended with a great deal of speculating in land, the evil of which, beyond that of speculating in merchandize or in the funds, I have been unable to discover. In conformity with what I believe to be the general outline of that plan, I would propose that an office should be opened at each of the towns of Quebec, Three Rivers, Montreal, Hull, William Henry, and either at Kamouraska or in Gaspé, and of course that an officer should be appointed for each. The surveys now in the offices of the Surveyor-general and the Commissioner of Crown Lands should be divided amongst these, and the further surveys of the waste lands of each district should be proceeded in and completed with as much expedition as possible. No payment by instalments should be allowed, but land should be sold, if required, in parcels of 50 or even 25 acres. One uniform price should be set on all wild lands, by which means the good lands are sold first, and the settlement and cultivation of these brings up the prices of the inferior spots in the neighbourhood. The present upset prices at the auctions are too high; that of the United States, which is a dollar and a quarter, would also be too high for the less genial climate and less fertile tracts of Canada. I would recommend that at first, and for the present, the price be fixed at a dollar; it might, perhaps, be lowered after the best lots had been disposed of at this rate. The utmost facilities and simplicity of arrangement should be established as to

the mode of obtaining a grant. A plan should lie in the office, on the face of which every one should be able to see what surveyed lands are granted, and what are vacant: when his own mind is made up, a purchaser should have nothing to do before obtaining his certificate of purchase but to produce and pay as many dollars as he wants acres of ungranted and surveyed land; and the certificate, drawn up according to an uniform precedent, should be handed to him without further expense, or delay or difficulty of any sort, a duplicate being of course prepared and registered in the office. The period required for perfecting the patent is not of much consequence, if the certificates of purchase are duly registered. I would venture further to recommend that in the patents the Crown should waive the reservation of mines and timber; it never yet in this colony has produced anything for the Crown, and yet it is to the owner of the land an unpleasant qualification of his estate. If any one wishes to occupy unsurveyed land, he should be allowed, upon paying half price, that is, half a dollar an acre, to lodge in the office a petition for the land, and memorandum of his payment, and to take possession; and the regulation ought to be, that, on the survey coming up with him, he should have notice to complete the purchase within a given time, on pain of having the land put up and sold by public auction at the upset price of half a dollar, in which case, whatever it should fetch beyond half a dollar per acre, should be paid to or retained for the party who made the original deposit and lodged the petition. If this plan were strictly adhered to, the whole duties, including the accounts, would be extremely simple: the money should be paid in quarterly to the Receiver-general, and carried to the land and timber fund; the accounts and the register of land sold should be sent quarterly or half-yearly to the Auditor-general, and the Provincial Secretary, who should register the grants and have them published in a Gazette, in which also all persons taking possession of unsurveyed lands should be obliged to publish, or pay for the publication of the particulars of their petition, deposit and occupation of the land. A Gazette in Canada might be made extremely advantageous for this and other purposes, and in some departments, and under an accurate system, it might almost render other records useless.

X.—THE JUDICIAL BRANCH OF GOVERNMENT; THE PROPOSED COURT OF IMPEACHMENTS; THE COURT OF APPEALS; THE COURT OF ESCHEATS.

The circumstances in which the Judges of Lower Canada are placed are deplorable. They hold their offices during the pleasure of the Crown. Their salaries, though they might be lawfully paid out of the hereditary revenue, have been allowed to depend on the annual appropriations of the Legislature. These are far in arrear, and great inconvenience, to say the least of it, has in some instances been the consequence. The party feelings of the two races are so exacerbated, that many of the French Canadians repose little confidence in the British Judges—the British as little in the French. There is an eagerness on each side to push new Judges of their own party on the bench; each dreads its coming into the undivided possession of the other "origin." Two languages are indiscriminately employed in the Courts in interpreting and inforcing two systems of law, diversified by the provincial statutes, which for the most part enacted only for a few years at a time, to be then varied or suffered to expire, or in some cases to be simply renewed. The profession of an advocate comprises the whole business which, in England, is divided between the two professions of barrister and attorney or solicitor. The duties of the notaries are distinct. There are a great many, in proportion to the whole numbers of the French Canadian advocates and notaries, who are members of the House of Assembly; and for some years no session has passed without the appointment of committees to inquire and report as to the conduct of some of the Judges; charges are made and evidence is brought forward without the presence of the party accused, and addresses are preferred to the Government, vilifying the characters of those on whose integrity, impartiality, learning and sense of justice, property and life are allowed daily to depend. These papers are necessarily despatched to the Home Government. For a time the judge who is arraigned must keep himself ready for a voyage to England; sometimes he is called upon to defend himself, sometimes the attack dies away, sometimes it is repeated annually. For the sake of that independence which is necessary for uprightness, it seems to me that the very first application of the proceeds of the hereditary revenue should be the steady and punctual discharge of the salaries of the judges, and that their tenure of office should be as nearly as possible the same as it is in England, and that by some well-considered declaration on the part of His Majesty, in the form of instructions to the Governor, or a message to the House of Assembly, the irregular warfare against them should be discouraged, whilst other modes should be proposed of hearing and deciding any considerate and formal accusations. The Assembly has long been calling for a Court of Impeachments, but has latterly appeared to have resolved to be satisfied with no other court than their own House. I see no difficulty which would be felt by a wise legislature, in constituting a very respectable and sufficient court out of the Legislative Council by taking annually five members from that body by lot, and allowing the Governor to appoint a president, who should be either another member of the Council or a judge or professional lawyer of 20 years' standing. Such a court should not be capable of awarding punishment in any other manner than by a recommendation that the party accused should be removed from office. It is to be remembered that provision is to be made only for that sort of accusation which is properly tried by impeachment, on account of its not being easily tangible by law; when a heavier punishment is called for, the accusing party should be referred to the ordinary courts of justice. This tribunal of impeachments, like other remedies which I have had occasion to propose, will not, I fear, be established by the existing Legislature of Lower Canada. The Court of Appeals is another part of the judiciary system which requires alteration. By the imperial statute of the 31 Geo. 3, c. 31, s. 34, it was made to consist of the Executive Council, appointed by His Majesty, but subject to such further or other provisions as might be made by the Provincial Legislature; and the Provincial Act of the 34 Geo. 3, c. 6, s. 23, enacted that the Governor and Executive Council, with the two Chief Justices, or any five of them should constitute the court. Under this Act the Chief Justice of Montreal sits in the court, without being a member of the Executive Council. All parties agree in thinking that this is not as good a Provincial Court of Appeals as they might have. The principal objection is, that the members of the Executive Council are not only not professional lawyers, but in some other respects are not the fittest persons to sit as judges, inasmuch as they must necessarily, in

the conduct of the affairs of the Province, become connected with the subjects in which they have to pronounce judicial decisions. Parties who, for whatever reason, suppose themselves to be not favourably regarded by the Government, will not be persuaded that they must not be viewed with disfavour by the members of Government, though sitting in a judicial capacity. A striking instance of the jealousy of the French Canadians in this respect, extending even to so grave and considerate a body as the ecclesiastics of the Seminary of Montreal, is afforded by Mr. O'Kill Stuart's report of the case of Fleming against the Seminary of Montreal (O. Stuart's Reports, Part ii. p. 184), in which a rule on the appellant was obtained to show cause why the opinions of two members of the Court of Appeal should not be reckoned as one, on account of their being brothers-in-law, and the point was earnesly supported upon grounds of French law by two gentlemen who were afterwards placed on the bench. Another objection made against the Court of Appeals is, that each of the two Chief Justices having to decide upon the cases tried by the other, some opinion must in course of time be pronounced which makes that law in the first instance, in each Court of King's Bench, which will not be held to be law upon appeal. In a former paper I suggested that His Majesty should be empowered to appoint judges of appeal who are not members of the Executive Council, and that it might be a source of advantage to both Provinces, if there was only one court of appeal for Upper and Lower Canada. I am still of that opinion, and ultimately I should hope to see a court of this sort entirely distinct from the Executive Council; but in the meantime, as a measure which may be carried into effect by the sole authority of the Crown, I would recommend that the other alteration in the Council being made which I have suggested under the head of the Executive Council, all the judges of the superior courts of both Provinces should be appointed members of both Executive Councils, but with the understanding that it is for the purpose only of forming a Court of Appeal in each; and at the fixed times for holding the two Courts of Appeal, each of which, I apprehend, might even now sit at any place within the Province for which it is held, as many of the whole number of judges should be summoned as with convenience could attend. The provincial statute of Lower Canada, 36 Geo. 3, c. 6, s. 23, would not present any obstacle to this arrangement, and though, unless some fresh enactment should be made, the members of the Executive Council who are not lawyers would still be entitled to sit as members of the Court, it is probable that they would not claim the privilege; and if they did, the presence of several judges would draw the superintendence and decision of the causes into their hands. In this way, besides the advantage to be derived by the Judges of each province having frequent opportunity of comparing the laws of the other provinces with their own, an impartiality and freedom from connexion with the previous proceedings in the cause would be secured as to some of the judges at least, and the tribunal would resemble in principle the constitution of the court of appeal of the Exchequer Chamber in England.

The Court of Escheats in Lower Canada is an anomalous institution, though not without precedent in British America. I am of opinion, perhaps more decidedly than my colleagues, that it never ought to be brought into operation; that in the present state of Lower Canada it would be impossible to make it act with impartiality; that it would be difficult in many instances to find jurors whose own estates would not be liable to be taken from them by inquests similar to those on which they would be called to sit; that a forfeiture of an estate for non-performance of conditions is not an escheat nor a forfeiture, properly so called, or of such a class that it can be adequately tried by inquest of office; that if the patents of the Crown are to be revoked, the appropriate form of proceeding is *scire facias*.

XI.—THE SEIGNIORY OF MONTREAL.

I agree with all that is said in the Report of the Commissioners as to the extent of inconvenience which is occasioned to the inhabitants of Montreal by the tenure *en roture*; as to the advantages which would be obtained by putting the possessions of the seminary upon some better understood and more solid footing; and, unless ill-advised assertions of a legal title in the seminary, should render this course necessary, as to the inexpediency of the Crown asserting, by legal proceedings, a claim to the valuable property which under its authority has been enjoyed by the ecclesiastics of the seminary for 76 years; as to the fairness, in most respects, of the terms on which the ecclesiastics have propossd to give their assent to a commutation of the seigneurial dues, and as to the esteem and respect in which those gentlemen are held by all classes of society at Montreal. But I deem it to be incumbent on me to state a more decided opinion upon the title of the seigneury than that which is expressed in the Report, and in some respects a different one.

The ecclesiastics of the seminary of St. Sulpice at Paris had been established a community of Roman Catholic priests in 1645; and in 1663, an association which had subsisted for some time for the conversion of the Indians of New France, made to them, by a registered contract in Paris, a donation of all their right of property in the Island of Montreal, upon condition that the domain and property of the island should be inseparably united to the seminary.

In this instrument the seminary declared their domicile to be at Paris. In 1677, the King of France, by letters patent, gave permission to the above-mentioned community to establish a community and seminary of ecclesiastics in the Island of Montreal, whither they had already sent some priests, and intended to send more to the number of 14; which new community was to be for the conversion and instruction of subjects of the crown of France; and to facilitate this establishment, the king confirmed the donation of 1663, and put for ever into mortmain the *lands and seigneury of Montreal*, as consecrated to God, and to be enjoyed by the members of the seminary and their successors, free of all rights or claims of the crown, from which they were declared to be released.

As it seems to have been stated in 1826, as the opinion of M. Dupin,* a very celebrated Parisian lawyer, that the effect of these letters patent was to give the lands and seigneury to the new community at Montreal, it is necessary to remark, that the tenor of the letters patent is not, of themselves, to establish the new community, but only to give authority to the community at Paris to establish it; and that so far from separating the seigneury from the community at Paris, the letters patent confirmed the donation of 1663, which in distinct terms forbad any such separation. Some public documents of a later date put it beyond all doubt, that the community at Paris retained its seigneury. An edict of 1693, recites the title to the entire seigneury of "the ecclesiastics of the seminary of St. Sulpice *of our good city of Paris*," and mentions the documents which *they* derive from the administration of justice, which forms a considerable part of the foundation of *their* seminary in the island. Other letters patent of 1714, prove the same thing. An arrêt of the council of state of 15th May, 1716, describes the ecclesiastics of the seminary of St. Sulpice, *at Paris*, as seigneurs of the Island of Montreal, and recites another arrêt of 1711, for reuniting to the domain of the said seigneurs certain lands formerly conceded by them. The instrument of 1764, executed by the seminary at Paris, under the authority, it is said, of the British Ministers of the day, and accepted by the seminary at Montreal, established the same point. Therefore, notwithstauding the opinion of M. Dupin, I consider it as clear and certain that, at the time of the capture of Montreal in 1760 by the British army, the right of property to the seigneury of the island of Montreal was in the community of the ecclesiastics of the

* See Report of a Committee of the House of Assembly of Lower Canada, 1 March, 1834.

seminary of St. Sulpice at Paris; but although no formal instrument is now to be found by which it was done, it appears by the words of an arrêt of 1702, and another of 1716, that the Parisian community, under the permission given by the King, had established a community at Montreal, somewhere between 1677 and 1702, most likely immediately after the letters patent of 1677: and the arrêt of the 5th May 1716, which imposed a tax of 2,000 livres upon the seminary at Montreal for the repair of the fortifications, styled that seminary the "seigneur *direct*" of the island. In 1760, therefore, at the time of the surrender of Montreal, there were two communities, the one domiciled at Paris, who were the seigneurs of the island of Montreal, and the community at Montreal who were in the actual occupation of the seigneury, and in the immediate receipt of its revenues, but who had been created by, and were subordinate to, the community at Paris, and to whom it was a legal impossibily that the Parisian community could have transferred the whole of their seigneurial rights. The Montreal community being the creation of the other, could not well, in its corporate capacity, have been a member of it without some reconstruction of the parent society, which does not appear to have taken place; but it seems that all the individuals of the Montreal community were members of that at Paris. They exercised the right of appointing the registrar or greffier of the King's Court at Montreal, and their own places of residence were exempt from the jurisdictions of the King's Courts: *See* 1 Edits & O. p. 289. By the capitulation of Montreal† in 1760, a demand made in article 33, that "the communities of Jesuits and Récollets, and *the house of the priests of St. Sulpice at Montreal*, should be preserved in their *constitutions and privileges*, was, by the general commanding the British army, "refused, until the King's pleasure be known." But by the 34th and 35th articles, it was granted that all the communities and all the priests should preserve their moveables, the property and revenues of the *seigneuries and other estates which they possessed* in the colony, of what nature soever they were; and that the same estates should be preserved in their privileges, rights and exemptions. By the definitive treaty of 10th February, 1763, Canada, with all the right of the crown of France, was ceded to His Britannic Majesty, who, by the 4th article, agreed to grant the liberty of the Catholic religion to the inhabitants of Canada, and to give the most effectual orders that his new Roman Catholic subjects might profess the worship of their religion, according to the rights of the Romish church, as far as the laws of Great Britain permitted. His Britannic Majesty further aggreed that the French inhabitants or others who had been the subjects of the most Christian King, in Canada, might during the period of 18 months, retire with all safety and freedom wherever they should think proper, and might sell their estates, provided it should be to subjects of his Britannic Majesty. At this point it is desirable to consider in what position the two communities of the seminary at Paris and the seminary at Montreal were left by the capitulation and the treaty. General Amherst, when he assented to stipulations respecting the permanent enjoyment of immoveable property, which could not be construed otherwise than as extending beyond the period of the war, allowed the limits of a capitulation to be exceeded, and it does not require any argument to show that conditions granted by a general cannot be valid to any extent beyond what the laws of the nation for which the general is acting, will permit. This indeed was intimated in the answer to the 41st and 42d articles of the capitulation, and more distinctly in the 4th article of the definitive treaty. But inasmuch as it is certainly within the authority of a general to grant to a stipulating party the property in their moveables, and as General Amherst's assent respecting the permanent enjoyment of real and immoveable property, was blended in the same article with that respecting moveables, if the British Government meant to repudiate any of the stipulations respecting the permanent possession of real estate, it was incumbent on them to do so at the first opportunity, or at all events in the definitive treaty. Not having done so otherwise than by expressing, what must always have been implied, that the liberty of the Catholic religion was not to exceed what the laws of Great Britain permitted, it seems to me that, subject to that proviso, the 33d and 34th articles of the capitulation of Montreal have always been binding, in honor at least, as lasting conditions; and that they must be looked to even now as a part of the grounds on which all claims respecting the seigneury of Montreal must be argued. From this opinion, however, I exclude those words in the 34th and 35th articles which relate to "privileges" and "honors" of estates, as repugnant to the 33d article, which referred all "privileges" to the pleasure of the King. Two somewhat discordant stipulations then were to be reconciled after the ratification of the definitive treaty. By the one the constitutions and the privileges, as far as Canada was concerned, both of the community of Paris and of that of Montreal, were made dependent on the King's pleasure; by the other the communities and priests were promised the permanent possession of their seigneuries, as far as the laws of Great Britain permitted, but with the liberty to sell their estates within 18 months to any subject of his Britannic Majesty, under which term were included those Roman Catholic inhabitants of Canada who should choose to remain there, and give their allegiance to the British Crown. Now the point on which the whole case turns is, whether the laws at that time permitted the recognition in Canada of the constitutions of the seminary of St. Sulpice at Paris and of the seminary at Montreal, or of either of them; and it seem to me that it did not, which makes it unnecessary to take any notice of the question which might otherwise arise, according to recent decisions, respecting the rights of aliens to hold

† It must be remembered that the capitulation of Montreal did not take place until a year after that of Quebec, so that the demands of the garrison, probably, were in seme degree foreseen, and the remoteness of the province both from England and from France, and the difficutly of bringing to the notice and understanding of the authorities in Europe the interests of the inhabitants of Canada, may account for, and perhaps justify, the fact that the capitulation rather resembles a set of preliminary articles of peace than the mere capitulation of a town. It certainly has been considered, both in Canada and in England, as having effect beyond the occasion on which it was made. It is publised ot the head of the volume of Public Acts, which is regarded as comprising the fundamental laws of the colony, and is referred to in the opinions of the Crown law officers, even in recent times, as bearing on the present interests of the parties to the questions respecting the seigneury of Montreal.

real estate in Canada. The two constitutions of the seminary at Paris and of that at Montreal, as they are disclosed to us in the letters patent of 1677, and every other document which relates to them, equally established the temporal pre-eminence, authority and jurisdiction in Canada of a corporation domiciled at Paris; and in this respect each of those constitutions was incompatible with the supremacy of the British Crown. I know not how the constitution of a corporate body can in law be so separated into parts, as that one of its pervading principles can be vicious and void as repugnant to the universal law of the Empire, and the others stand good: and as the constitution of the seminary at Montreal appears to have been in substance that it should occupy the property and discharge vicariously the duties of the Parisian community, under its directions, I come to the conclusion that the definitive treaty of peace of 1763, determined and put an end, as far as Canada was concerned, to the powers and rights of the seminary at Paris, and to the corporate capacity and legal existance of the seminary at Montreal, excepting that both were to remain capable for 18 months to dispose of their property if the members of them should choose to do so. Having stated this opinion, which, I am confident, it is better for all parties should be distinctly brought forward, I am desirous of stating, with equal plainness, that the 34th article of the capitulation having been in no way repudiated by the treaty, nor qualified otherwise than by a restriction of the liberty of the Roman catholic religion to what the laws of Great Britain would permit, and the objects and purposes of the seminary having always been considered to be laudable and beneficial, the Crown appears to me to have been bound, according to every generous construction of the law of nations, to give, within that limit, to those ecclesiastics of the two seminaries who remained in Canada, as full an enjoyment of the ordinary seigneurial profits of what had been their property or their possessions, as they had before, and this not merely for their natural lives, as private and unconnected individuals; but, seeing that the objects of the seminary had been praiseworthy, to give it to them as nearly as might be in the same manner as they would have enjoyed it if the constitution of their community, which was now at an end, had continued to subsist as a legally recognized institution. This would not include such franchises as the appointment of the greffier of the King's Court at Montreal, nor an exclusive jurisdiction within their own walls and within the farm of St. Gabriel, both of which they had enjoyed, and have since at one time claimed; but it would, by a liberal instruction, include and account for the permission, which was given to them by the Crown, to admit new persons (even foreigners) into their society: and I feel some confidence that if the whole subsequent history of the possession and the claims of the seminary on the one hand, and of the conduct of the British Crown on the other, not only towards this seminary, but towards the other ecclesiastical Roman-catholic communities of Lower Canada, be examined from this point of view, they will admit of a consistent explanation which cannot otherwise be obtained. In this separate Minute, which does not lay claim to the authority of a report of the commissioners, it would be considered superfluous for me to go minutely through the whole series of subsequent events, but in the opinion which I have expressed, I have had in view:

1. The Proclamation of October 1763.
2. The Instructions to Governor Murray, 1763.
3. The Letter of Monsieur de Guerchi, of 1764; given in the 1834 Report of the Assembly of Lower Canada.
4. The Instrument of 1764, executed by the St. Sulpicians at Paris.
5. The difficulties stated by Sir James Marriot, at p. 122 of his Report of a Plan of a Code of Laws for the Province of Quebec, 1774.
6. The statute of 14 Geo. 3, c. 83, s. 14.
7. The Instructions to Governor Carleton, 3d January 1775.
8. The Act of Fealty and Homage on the part of the Seminary, 1781.
9. The claims on the part of the Seminary, and opinions of the Crown Law Officers in 1789.
10. The introductihn of some Priests from France in 1794, and upon subsequent occasions, with the sanction of the British Government.
11. The assumption by the Crown of the property of the Jesuits and of the Récollets, and the proceedings from 1770 to 1801. respecting an intended grant to Lord Amherst of the Jesuits' Estates. (*See* the Report, with an Appendix, from a Select Committee of the House of Commons in 1817, on the Regulations of Roman catholics in Foreign States)
12. The Opinions of Crown Law Officers on questions respecting the Seigneury in 1806 and 1811.
13. The Instructions to the Governor in Chief, Sir George Prevost, in 1811.
14. The case of ——— Fleming, against the Seminary of Montreal, which is taken notice of in Mr. O'Kill Stuart's Reports. part 2, p. 184.
15. A correspondence and negociations which have been going on at intervals for nearly the last 20 years between the Seminary and the Provincial Government and the Colonial Office, during which the opinions of the Law Officers have been taken both in England and Canada.
16. An Address to His Majesty from the House of Assembly of Lower Canada, in 1830. (*See* Journals of the Assembly of that year, p. 259; and Return to an Address of the British House of Commons, 30 June 1830.)
17. A Report of a Committee of the Assembly, dated 1st March 1834. (*See* Appendix to the Journals of that year, I i.)

With the view which I have taken of a subject involving such abundant materials for serious differences of opinion, and adverting to the sentiments expressed in the address to His Majesty from the House of Assembly of Lower Canada in 1830, which I have reason to believe are still entertained by that body, I cannot recommend that the affairs of the seigneury of Montreal should at present be brought before the Provincial Legislature, which I have no doubt would take up, in the spirit of the Address of 1830, the whole details of any proposed arrangements, both as they regard pecuniary questions and the system of education. I would propose that the opinion of the Crown Law Officers in Eng-

land be asked, whether the Crown, without the authority of Parliament, can coustitute the ecclesiastics of the seminary a community for the purposes of education, confirm to them their possessions, and at the same time and in such a manner that it may be easily enforced, impose a legal obligation that they will, on stated terms, release the inhabitants of the seigneury from the obligations of the tenure *en roture*. In Canada, of late years, more than one Roman catholic college has been incorporated, either by Letters Patent under the seal of the Province or by the Provincial Legislature; and if no insuperable objection exists against this being done, for the Seminary, with the condition which I have specified, I would recommend that, after the official correspondence which has taken place, the Crown should forego not only its claims to the seigneury, but any claim which might arise out of the droit d'indemnité, or subsequently out of the droit de quint or de relief.

CONCLUSION.

The foregoing notes will have shown that there are a great many intricate and troublesome affairs, which must in some degree be settled, or at least put in train, before a wholesome and efficient state of government can be re-established in Canada, or the Home Government can be relieved from the vexation und pain of perpetual remonstrances. But they will not have expressed the conviction under which they were written, unless they shall have also shown that it would be best if now, but that at all events ere long, there must be a reconstruction of the constitution of the Province. All the facts and circumstances which in 1791 recommended the policy of dividing the Province of Quebec, have grown up again, as it might have been fore seen that they would, and they are now in greater force than ever in Lower Canada. An immense tract of unoccupied country having been included within the boundary line of the Province, it is difficult to conceive in what manner, unless by some very rapid assimilation of the French and English races, which has not in any degree taken place, a recurrence could have been avoided of the inconveniences which characterized the era of 1791. The minister of that day, in the debate of the 11th of May, on the Quebec Government Bill, stated to the House of Commons that "there was no probability of reconciling the jarring interests and opposite views of the inhabitants, but by giving them two Lagislatures. It was conceived that this form of government was best adapted to put an end to all difficulties of a legal sort, and to render the regulations more useful to the subjects of that country. He believed that there was such a rooted opposition of interests, that if there was a constitution consisting of a House of Assembly, in which the parties might be nearly balanced, the consequence, at least for a long series of years, would be a great degree of animosity and confusion. If one of the parties had a great ascendency over the other, the party having the superiority was very unlikely to give satisfaction to the other party. It seemed to His Majesty's servants the most desirable thing, if they could not give satisfaction to all descriptions of men, to divide the Province, and to contrive that one division should consist as much as possible of those who were well inclined towards the English laws, and the other, of those who were attached to the French laws. It was perfectly true, that in Lower Canada there still remained a number of English subjects, but these would hold a much smaller portion than if there was one form of government for every part of the Province. It was in Upper Canada particularly that they were to expect a great addition of English inhabitants. The consequence was, that if it was not divided from the rest, the Canadians forming a majority of five to one, the grievance would be every year increasing in proportion as the population increased. The division of the Province might be liable to some objections, but on the whole it was subject to fewer than any other measure.*" There is scarcely a sentence of this passage which, if the occasion on which it was spoken was not known, might not be supposed, by any one resident in Lower Canada, to have been a statement of some British Minister, in relation to the difficulties of the day that is passing over our heads. It seems, indeed, to have been expected at that time by Mr. Pitt, that the French population would increase as fast as that of British origin: whereas it has happened that the British in the two Provinces have increased more than tenfold, or from the number of 30,000 or 40,000 to nearly half a million whilst the French Canadians are less than four times their number at that date; and whereas they are said to have been as five to one in the whole of the old province of Quebec, they now are not supposed to be more than three to one in even Lower Canada. But this is so far from invalidating thes Minister's prediction, that "if the Province was not divided, the grievance would be every year increasing," as to have shown that the birth of it did not depend on the accident of the greater or less increase of the one population or the other. If no division had taken place, the present day would have exhibited the whole inhabitants of the old province of Quebec arranged in two parties of nearly equal numbers, and perilously opposed to each other. The division has, up to this time, prevented so extreme a danger; but from the old roots a similar state of circumstances to that which was alleviated in 1791 in the old province of Quebec, has been reproduced Lower Canada; and instead of weakening the French Canadian party by an advance to a balance to a balance of numbers, the more rapid increase of the British seems to have the effect of compacting them into a harder mass. as if to resist the dissolution with which they are threatened. The jealousy with which they watch over the preservation of their laws, customs, manners and language, is the same as ever, and the same remedies are required for the state of repulsion and antipathy towards each other (no gentler terms will convey the truth) in which, as far as all questions of internal policy are concerned, the two parties exist; nor would the change be a difficult one to effect. It is not without a due sense of the grave and momentous considerations which are connected with the task a altering a constitution that I say this; but if the Act of the 31st Geo. 3, c. 31, be divested of its ecclesiastical provisions, it will be perceived thst it is not a very difficult or complex structure, yet might serve as a precedent for what would be now wanted. To discern the occasion for bringing forward such a mea-

sure, to be sure that the innovation is suited to the emergency, are the points at which the risk is run; and, with a consciousness of that which I incur, I venture to propose that Lower Canada be divided into several subordinate Legislatures, with one general and controlling one. To each of the towns of Quebec and Montreal a charter should be given, calculated to suit a place of commerce. Sherbrooke and Hull might each be the seat of municipal Legislature for all the contiguous soccage lands, and Three Rivers of one for the whole seigneurial lands of the Province; and there should be a provision that commutations of either tenure into the other might take place upon the borders of the adjoining districts, and that upon such occasions the land should be added to that district of which it should have been subjected to the prevailing tenure. In these subordinate Legislatures the Council or Upper Chamber might be appointed as the councils or upper chambers of the English municipalities are, by election, without any violation of the principles of the British constitution, whilst I would cautiously and firmly guard and preserve to the Crown the right of appointing the members of the Upper House of the general Legislature. It seems to me that in the alteration all parties would find their account; and if we could recall to life the statesmen who debated in 1791, on the affairs of Canada, it would be found to coincide with the principles to which they looked; its consonance with the words of Mr. Pitt I have shown. The pervading laws of election and representation, and of criminal justice, the preservation of soccage tenure and of the British laws of property in the districts of Sherbrooke and Hull, the unimpaired power and dignity of the Crown, would be an adherence to the British constitution; the federal character of the subordinate districts, an adoption, to a small extent and on a reduced scale, of the spirit of American institutions; the security of the Roman-catholic religion, and of the ancient civil law and customs of Canada, and of the seigneurial tenures, a preservation of the institutions of old France, of which he was to so great an extent an admirer, which would satisfy Mr. Burke's recommendation, that something should be drawn from the constitutions of all those three states: nor if he could at this day extend his care to Canada, would Mr. Fox desire that the principle of electing the Upper Chamber should be now extended further than to the subordinate Legislatures.

The commercial interest of Canada would acquire the prevailing influence which it ought to possess in the ports of Quebec and Montreal. The British American Land Company relieved from the attacks on its stability and credit, with which it is now assailed, would rapidly colonize and establish in social order and prosperity the eastern counties. The townships on the Ottawa, surrounded by at least as fine a country, and having the advantage of immediate access to a river second only to the St. Lawrence, might soon rival the possessions of the company.

The French Canadians, who would retain on both sides of the St. Lawrence a solid territory of much greater extent, population and agricultural improvement, than any of the others, with an undisturbed enjoyment of their religion and laws, would have only themselves to blame, were they not to maintain a footing of at least perfect equality with all their compatriots. My hope would be, that when the two races ceased to be opposed to each other upon questions of interest and domestic regulation, they would begin to feel the advantages of co-peration on all subjects of common interest; and would desire to be assimilated and to support an union from more generous schemes of politics, than the succession of quarrels which has marked the history of Lower Canada for the last quarter of a century.

The moving and most immediate cause of the animosity which exists, is the apprehension which each entertains that its adversary meditates destructive designs against its interests and institutions, and this feeling is exacerbated as the parties approach to a balance of strength.

The French Canadians proclaim their settled determination to have the charter of the British American Company annulled, and never to recognize the Tenures' Act, by which the British law was declared to be an incident of soccage tenure, and on which the title to so many soccage estates depends. The British, on the other hand, urge on too eagerly the general adoption of registry offices, with the scarcely-concealed expectation that it will lead to the dissolution of the seigneurial system, and to an extensive transfer of lands: in which is involved the whole structure of the civil law of the French Canadians, and the temporal interests of the Roman catholic priesthood.

There are pretensions on either side which must be repressed; let this then be effected by placing each system under the care of its separate and peculiar Legislature; the alarm will subside, and with it the greater part of the hostility; and I should not despair of the adverse parties being immediately capable of acting together in a general Legislature for the greater objects of mutual interest, especially such as regard the navigation of the St. Lawrence and the revenue, and the settlement of those vast tracts of wild land and forest, in which all its subjects have an equal claim on the Imperial Crown to be allowed to participate.

Though I would not have it attempted immediately, Upper Canada might perhaps be inclined to come under the same system at no distant period, and ultimately perhaps, the other provinces of British North America.

That general Legislature of which I have spoken, might be constituted of a Governor-in-chief, a Legislative Council appointed by the Crown, and a Lower House, consisting in the first place, of 10 members from each district, and of 10 more for every successive 100,000 of population in each district, so that a district containing 209,000 would send 20 members in the whole, one of 300,000, 30 members, and so on, It would be a matter of secondary importance where the general Legislature should sit, but it would probably be found advantageous that it should not be either at Quebec or Montreal, and the town of William Henry, at the confluence of the Richelieu and the St. Lawrence, combines many advantages of a central and very defensible position, and of easy and rapid communication with Europe, either by the way of New

York or Halifax; and, as it is situate in a small domain of the Crown, there would be facilities for constituting it at once a distinct and peculiar jurisdiction. I will not go further into the details of a measure which I scarcely should have thought myself at liberty to suggest, if the opinions which I have felt compelled to state as to the unfitness of the exisiing Legislature for the great and varions and important functions assigned to it, did it not appear to me to require that I should point out some other course by which the inhabitants of Lower Canada may have a Legislature capable of acting for their benefit. I have pointed out two plans; one, that of an economical, cautious, restricted government, contenting itself with maintaining the laws and public tranquillity, not expecting any assistance from the Legislature, but relying on the limited resources of the hereditary revenue; the other that of proceeding to reconstruct the Canadian Legislature, with somewhat different arrangements, but according to the leading principle of the Act of 1791, and with a view to tha introduction of improvements which were then recommended, but not attained; but, above all other considerations, with a design to strengthen the connection with the United Kingdom, at the same time that securities are given to the French Canadians for the preservation of all their ancient institutions that are dear to them. By either of these plans it seems to me that the Province may be governed; that by the latter its prosperity may be incalculably augmented. But that if there were to be an attempt to rule it by the means of two majorities of French Canadians in the Houses of Legislature, it would not be long before it would be manifested that such an administration of affairs is incompatible with the interests of British America.

* The very short time which circumstances permit me to dedicate to this Minute must be my apology for many defects of arrangement and expression; but the main propositions which it is intended to set forth, are the fruits of reflection, and the deliberate conclusions to which my mind has come.

(Signed) *Chs. Edw. Gray.*

17th November, 1836.

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* To complete the explanation of the points on which my opinion is different from that which has been expressed in our Reports by the other Commissioners, the Minute was intended to have comprised the subjects of,—

1. British American Land Company.
2. The Law of Real Property; including,
   - (*a*) The possessions of the Roman-catholic religious communities;
   - (*b*) The incidents of the tenure in free and common soccage;
   - (*c*) The rights of commuting the tenures *en fief* and *en roture* into free and common soccage;
   - (*d*) *Dîme* or tithe;
   - (*e*) Inconveniences of the seigneurial tenure;
   - (*f*) The proposals for the establishment of Registry Offices, and the inconveniences of the French law of hypothèque.
   - (*g*) The law respecting aliens.
3. Institutions for religion and education.
4. The apportionment between Upper and Lower Canada of proceeds of duties of import, and the question of an union of the two Provinces.

My notes on these points are prepared, and require only to be copied; but it has been impossible that this should be done in the interval which has elapsed between the completion of the Report and the hour at which it is necessary that it should be despatched, in order to go to England by the New York packet of the 24th instant.

I propose, therefore, to put into the hands of the Commissioners, before I sail for England, some additional notes on the subjects above mentioned.

(Signed) *Chas. Edw. Grey.*

17th November, 1836.

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*Statement delivered by Sir George Gipps to the Secretary, 15th December, 1836, to be placed upon the Minutes of the Commission and transmitted to the Secretary of State.

I am desirous of entering, as shortly as I can, on our Minutes, a few observations on the paper that was delivered by Sir Charles Grey to the secretary, on the day on which the last Report of the Commissioners was forwarded to England.

The fact of Sir Charles Grey's not having signed any of our Reports without an expression of dissent, is, I think, calculated to produce an impression that a wider difference of opinion between Sir Charles and the other Commissoners has existed, than in reality is the case: my object, therefore, in the present entry, will rather be to point out the cases in which the Commissioners are agreed, than those in which they disagree. I shall enter into no detail on any subject, not only because a difference of opinion on minor points is of but little importance, but in order that, by confining my remarks to the leading features of each case, I may run the less risk of misrepresenting the opinions which I suppose to be held by Sir Charles.

Finance.

On the subject of Finance, Sir Charles, I believe, agrees with the other Commissioners, that the first thing to be done is to pay the public officers, as we all think, that until they are paid, the King's authority cannot be respected in the province. He agrees, also, that if their arrears are to be paid out of Canadian funds, there is no better way of doing it than by resuming, under authority of a British Act of Parliament, the funds which, up to 1831, were at the disposal of the Crown, and which were only then relinquished in the confident expectation, I may almost say under an implied promise, that a competent civil list would be provided by the local legislature.

Sir Charles thinks, and so do his colleagues, that money sufficient to pay the public servants might be obtained on the credit of the Crown Lands; but his colleagues do not particularly recommend this plan, because they think, if borrowed without a guarantee from the British Treasury, it would not be obtained on advantageous terms, and if done under the guarantee of the British Government or Imperial Parliament, it would seem to them nearly the same thing as if Parliament were to authorize the payment in any other way, or out of funds of its own.

Sir Charles further agrees with the other Commissioners in thinking, that if these arrears of salaries were once got rid of, the government of the province might by possibility be carried on, even though the Imperial Parliament should be indis-

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* This Statement was written after the departure of Sir Charles Grey for England, who cannot therefore be assumed to acquiesce in the view therein given of his opinions.

posed to authorize the future application by the executive of any revenues beyond those which have, since 1831, been at its disposal. But in order to do this, Sir Charles would rely principally on an enforcement of some of the prerogatives of the Crown not usually put in action; the stricter collection of the hereditary and territorial revenues; the exertion of some powers inherent, as he says, in all courts of justice to exact fees sufficient to cover their own expenses, and a strict interpretation of those revenue laws under which deductions may be made from the sums collected, not only of the expenses of collecting them, but also of accounting for them. The other Commissioners, rather than see the executive driven to support itself by such means, would ask for a declaration from the Imperial Parliament, of the terms on which the provincial government is to be conducted, believing, or at any rate hoping, that any firm expression of the opinion of Parliament, and especially of the House of Commons, though conveyed only in the shape of resolutions, would be received with respect by the Province; and the other Commissioners do not think that any attempt at government by the means recommended by Sir Charles would be successful, unless some expression of the opinion of the House of Commons were made in support of it.

On the next financial question, viz., the amount which ought to be provided for a civil list, after the immediate difficulties respecting the arrears of public officers shall have been removed, and some degree of harmony restored between the different branches of the Legislature. Sir Charles Grey is of opinion, that a larger civil list will be required than the one recommended in the First Report of the Commissioners; his colleagues, however, adhere to their former recommendation, and the more so as they think it to be in harmony with the measures which either already have been, or which are on the point of being recommended to some of the sister provinces in North America.

2. Legislative Council.

The Commissioners all agree in not recommending a compliance with the demand for an elective council, though some would object to the measure absolutely, and others only under present circumstances.

They also agree in some minor recommendations, having for their object to enable Legislative Councillors to resign, or in certain cases to be removed by his Majesty. They further agree in thinking, that the Legislative Council, either in whole or in part, ought to be declared a court for the trial of impeachments.

With respect to the appointment of Legislative Councillors, Sir Charles Grey has proposed (apparently as a sort of substitute for popular election) that recommendations of persons fitted for the situation, should be made by the Executive Council; but he submits this proposal, if I understand him rightly, only in the event of the Executive Council being constituted on a new plan, also proposed by himself. The other Commissioners have not joined in the recommendation of the last-named plan, neither do they think it would prove advantageous to relieve the Governor from the principal responsibility for the appointment of proper persons to the Legislative Council. The other Commissioners, on the supposition that no greater change will be made in the constitution of the Executive Council than the one they have recommended, think that the nominations made by the Governor, of persons for the Legislative Council, should be submitted to the Executive Council before they are transmitted home, and that either the Executive Council as a body, or the members of it individually, should make such observations as they might choose on the nominations; but they think the plan of making such nominations to originate with the Council, would relieve the Governor from much of the responsibility which now seems properly to attach to him, without giving to the appointment of Legislative Councillors any of the popularity derived from the principle of election.

Sir Charles Grey is perhaps inclined to view, with more indulgence than his colleagues, what he nevertheless allows to have been the faults of the Legislative Council; and in the additions hereafter to be made to it, he would make, perhaps, his selection somewhat (though not essentially) different from what the other Commissioners would think proper.

For my own part, I do not hesitate to declare, that though I would not go the length of making the Legislative Council harmonize entirely with the present feelings of the Assembly, or proceed on the principle of making the Council and Assembly two bodies, in which the interests of the French Canadian party should entirely predominate, I do strongly feel the necessity of adding to it men of a popular as well as independent character.

The opinion I now express may perhaps be considered somewhat at variance with what I stated in the concluding part of the 13th paragraph of an entry made by me on our Minutes, on the 14th March 1836, and transmitted to England with our Second Report. Events, however, have occurred, both in this province and the neighbouring one, since last March, to make me look not only with less apprehension than I then did on the consequences of a vigorous measure, but also with more hope of support for any measures of Government from a considerable portion of the French Canadian party, provided only that such measures shall be adopted under the sanction of the British Parliament, and especially of the House of Comommons. I expresed in March last, an apprehension that no good would result from an attempt to improve the constitution of the Legislative Council by the introduction of new members into it from the popular party; and I should be still of this opinion, if it were proposed as a single measure; but if adopted as part of a system of measures, and done under the sanction (any way expressed) of the Imperial Legislature, I should hope for a good result from it.

3. House of Assembly and State of the Representation.

On this head, perhaps, a greater difference of opinion exists between Sir Charles and his colleagues, than on either of the two former ones; but even here we are all agreed, that though the English inhabitants may not have the share in the representation that their numbers would entitle them to, the means do not exist within the province of procuring

it for them, if a sense of justice in the House of Assembly itself will not afford it.

Sir Charles undoubtedly considers the degree of disadvantage which the English inhabitants labour under as much more serious than I do; and he also considers the Act, by which a change in the representation was effected in 1829, much more objectionable than I do. I am prepared to maintain that an impartial view of both these subjects is taken in the Report.

Sir Charles, in enumerating the counties in which the English interest prevails, omits Drummond, Beauharnois and Gaspé. Drummond elected, in 1830, a staunch constitutionalist (Colonel Heriot), and there is no doubt that the same gentleman might have continued to represent the county to the present day, had he not resigned his seat, which he did on the 31st of January, 1833, without waiting for a dissolution of the Parliament.* The political principles of his successor (an Irishman) were not known when he was elected, and though he has since voted with the majority in the House of Assembly, had it been known that he would do so, it is generally supposed he would not have been elected; lastly, at a new election, held within the course of last month, on the occasion of the county becoming entitled to asecond member, a constitutionalist has been returned as I may say, by acclamation, though he only came forward on the very day of the election.

The circumstances respecting the county of Beauharnois are accurately stated in our Report; I will therefore only add that, from the best information I could collect on the spot, especially from Mr. Ellice's agent, I have every reason to believe that the persons in it of English origin do form at the present moment a majority, and even did at the period of the last general election. Beauharnois was always considered by the English party as in their interest, until by some mismanagement, as it would seem, on their part, it returned members who voted against them; in proof of its being so considered, I might refer to the evidence taken on the subject of the state of representation prior to the passing of the Act of 1829 (*vide* Appendix to Journals of the House of Assembly, 1829, G. G.), and to the Bill which in the same year was introduced into the Council, which, though it professed only to be a bill to give representatives to the townships, would have made Beauharnois a new county, with exactly the same limits as were afterwards assigned to it by the Bill that passed both Houses.

The omission of Gaspé by Sir Charles seems more worthy of notice, as it not only always has, but does actually at present return one Englishman, who is a staunch constitutionalist, and another gentleman, Mr. Le Boutillier, a native, I believe, of Jersey, who, though not so fixed in his political opinions as his colleagues, voted against the 92 resolutions in 1834, against the address to the King in 1835, and for the supplies in 1836, and who decidedly is not a regular adherent of the political majority of the Assembly. Before 1832, the population of the county of Gaspé entitled it only to one member, but he was always a constitutionalist. In the district of Gaspé, which since 1829 has been divided into the two counties of Gaspé and Bonaventure, there is a mixture of British, French Canadians, Acadians or French emigrants from Nova Scotia, and of settlers from Jersey and Guernsey, and it is so remote that it is difficult to ascertain which party prevails, but undoubtedly the French Canadians do not form a majority of the whole. If the Canadians and Acadians are to be considered as one party, and the British and Jerseymen another, the latter will probably be found to preponderate in the county of Gaspé (proper) and the former in Bonaventure.

Sir Charles omits to draw any attention to the important fact, that of the 11 members which he admits to be returned by majorities of British origin, three are in the habit of voting with the Anti-British majority. The six counties which he enumerates as the only ones where British majorities exist are Ottawa, Sherbrooke, Shefford, Megantic, Stanstead and Missisquoi; but the two members for Stanstead, and one of the two returned for Missisquoi, vote with the majority in the Assembly, which facts are mentioned and accounted for in the Report. It is also not unworthy of remark, that according to the census of 1831, the population of these two counties (Stanstead and Missisquoi) was 19,107, whilst the population of the other four was only 19,257.

One reason that the inhabitants of English origin have fewer members in the Assembly than their numbers would entitle them to, evidently is, that they are not so firmly united as the French Canadian party is. They have doubtless been more united latterly than at any former period, but there is still an American party, or a party composed principally of settlers from the United States, that is opposed to them.

If the whole population of English descent were as compact, and under as effectual management as the French Canadians showed themselves at the last general election, there can be little doubt that they could at the present moment return 16 or 17 members instead of eight. They ought to be able to command majorities in

Sherbrooke, which returns	2
Shefford	2
Drummond	2
Megantic	1
Stanstead	2
Missisquoi	2
Ottawa	2
Beauharnois	2
Gaspé	2
	17

There is, moreover, another county, Bonaventure, in the district of Gaspé, which might perhaps return a constitutionalist. At an election too that has occurred since the last general one, the English party returned a member for the Upper Town of Quebec, and though accidental circumstances probably con-

* About the same time (or 11th February, 1833) the Solicitor General resigned his seat for Three Rivers; had he not done so, it is generally believed that, on account of his personal popularity, he might have been re-elected at the last general election.

tributed to the event, a constitutionalist of liberal principles would at another general election have, I think, a fair chance of success, not only in the Upper, but also in the Lower Town of Quebec, and probably even in one of the wards of Montreal. It does not seem therefore at all unreasonable to suppose that if the population of British origin were firmly united, they could return even as many as 18 or 20 members, though this would be the very utmost that they could do, out of a Hause that will hereafter consist of 90.

With respect to the portion of the British population mixed with the French Canadians in the seigneuries, Sir Charles agrees with the Report in thinking that their is no way in which any influence can be given to them by the introduction of some novel principle, as for instance, by confining each elector to one vote, and by making the electoral districts larger than they are. Now the Report does not declare itself unfriendly to this principle, and I, for my own part, should be glad if, after fair discussion, an adaptation of it could be made to suit the province; but to ask that, as a first attempt, it should be forced by the Imperial Parliament on Lower Canada, would, I must confess, appear to me rather unreasonable.

A Table is appended, which I have prepared to show how the principle might be expected to act, of giving to each elector one vote only, or any number of votes less than the number of representatives to be returned.

Sir Charles Grey, after all, seems to conclude that not even the Imperial Parliament can effect any improvement in ahe representation of the province, without making an essential alteration in the constitution of it, and accordingly, Sir Charles suggests, as an ultimate remedy, the division of the province into five or more municipal districts. The proposal for making the electoral districts much smaller than they are at present, in imitation of what has been done in the neighbouring state of Vermont, and thereby greatly increasing the number of representatives, will, I apprehend, find little favour with any party.

4. Excutive Council.

On the subject of the Executive Council, a decided difference of opinion certainly does exist between Sir Charles and his colleagues; but as the different grounds on which we form our seperate opinions have been sufficiently stated in our Third Report, and in the papers that were sent home with it, I shall make here only one additional remark, which is, that if all the Executive Councillors are to go out of office on the removal of a Governor, the first act of every Governor will be to appoint new ones, and that he will thus have to determine on the relative claims to his confidence of all the men of influence in the province before he can have had time to become acquainted with any of them.

5. Wild Lands.

The only difference of any importance between Sir Charles and his colleagues respecting the management the Crown lands is, that Sir Charles would entirely do away with the system of selling by auction, which the other Commissioners would retain. When Sir Charles says that we could not do better than adopt the American system, he appears to have overlooked the fact that a sale by auction forms a part of their system. It is only what remains unsold at public auction that is afterwards sold at the fixed price of $1\frac{1}{4}$ dollar per acre, in the United States.

This portion of the American system*, I confess, I should be disposed to recommend for adoption in Canada, were it not for the consideration, that in a country where accusations are so readily entertained against public officers, I think the only security in the disposal of the wild lands that can put the officers of the executive above the suspicion of a want of integrity, is the rigid observance of the rule of selling every thing by public auction.

6. Court of Appeals, and Court of Escheats.

Upon these two points there does not appear to me any further difference of opinion than that his colleagues cannot concur with Sir Charles in recommending that there should be but one Court of Appeals for the two provinces. In matters growing out of the French Civil Law, or "Coutume de Paris," it does not seem to me probable that the French Canadians would look upon the English judges of Upper Canada as competent to decide. Inter-provincial jealousies might also arise from such an arrangement, which it would seem the duty of a prudent government to avoid.

7. Seminary of St. Sulpice.

Upon this point all the Commissioners are agreed in thinking that the effect of the conquest of the country was to leave the Seminary of St. Sulpice entirely dependent on the pleasure of the Crown for its continuance; and we are also agreed that though so placed at the discretion of the Crown, and without any legal claim to the continued enjoyment of the former possessions of the society of St. Sulpice, the branch of that society which was established at Montreal had an equitable claim on the Crown for the continued enjoyment of them. We are further agreed that the Crown has, by a long series of Acts, extending from the conquest to the present time, so far confirmed these possessions to the existing seminary of Montreal, that under existing circumstances, nothing but the most urgent necessity,—a necessity, that is say, stronger than any that has been yet shown to exist, could justify His Majesty's Government in seeking to re-establish the King's rights in a court of justice. One slight shade of difference only appears to me to exist amongst the Commissioners on all these points, which is that in estimating the various circumstances that combine to form an equitable title in favour of the seminary, Sir Charles would give somewhat more weight than his colleagues to the 34th article of the capitulation of Montreal.

There may be probably some more recondite points of difference between the statements in the Report, and the more elaborate one made by Sir Charles, but I must confess, that neither in conversation, nor in the perusal of his paper, have I been able to discover them.

The Commissioners are moreover of one opinion

* The practice, that is to say, of selling at a fixed price any land that remained unsold after having been exposed to public auction.

as to its being desirable to conclude an arrangement on the terms offered by the seminary; and it is only as to the means by which the arrangement can be carried into execution that there is any essential disagreement. The other Commissioners think it not only desirable that the adjustment should be effected under the authority of the Local Legislature, but that it would be wrong to seek the settlement of it by other means, until such an attempt has been made and shall have failed. Sir Charles, I believe, thinks, not only that there is no chance of its being effected by bringing the matter before the Assembly, but that new obstacles to an adjustment will be created by appealing to that body.

8. Changes in the Constitution of the Province.

The Commissioners have not, in any of their Reports, recommended a change in the fundamental principles of the constitution, though in the 32d paragraph of their Report on the Legislative Council, a doubt is expressed, whether a suspension of the Constitutional Act might not be judged less objectionable than the specific measure recommended by them; the meaning of which is (at least the meaning in which I understood it when I subscribed to it), that it may be doubtful whether, on general political grounds, it is not better to suspend for a time, either in whole or in part, the Constitutional Act of 1791, upon the broad ground that the dissentions arising out of antipathies between Canadians of French and those of British origin, have rendered the working of the constitution impossible, than to break in, even in appearance, upon a principle which, since the declaratory Act of 1778, has been constantly looked on as a leading rule in the policy of England towards her colonies, the rule, that is to say, of leaving them to dispose as they please of their own money.

Upon this point I must confess I have still some doubt, and also some apprehension, as to the result of a measure that should repeal or suspend the 1st & 2d Will. 4, c. 23, though less certainly than I had in the month of March last, when I hazarded some speculations in the 6th, 7th and 8th paragraphs of a Minute appended to our Second Report, upon the way in which any legislative Act that should resume the proceeds of the 14 Geo. 3, c. 88, might be received in the province. Many circumstances have occurred to make me look with less apprehension upon the consequences of a repeal of the 1 & 2 Will. 4, c. 23, now than I did in last March; the progress that has been made in gaining the good will of all but the extreme party in the Assembly, is of course one of these, and I should not now be afraid to resort to a strong measure, provided only it could be passed through Parliament in a decided manner.

The project, however, brought forward by Sir Charles Grey for an alteration in the constitution, is quite of a different nature; and though it has often been spoken of by the Commissioners amongst themselves, is one on which they have not ascertained the opinions of any leading party, or even of any leading individuals in the province.

The measure recommended by Sir Charles would have the effect of breaking up the province of Lower Canada into five or more districts or divisions, each of which should have a qualified jurisdiction, or some inferior legislative powers of its own, whilst a general legislature would régulate the affairs that were common to all, so that the whole province would form a sort of federal union, and bear a resemblance, in miniature, to the neighbouring States of North America. Of these five subordinate districts or states, the population of two, viz. Sherbrooke and Hull, would be almost entirely of British origin; the former might contain about 50,000 inhabitants, but the latter not more than from 12 to 15,000. Three Rivers would be almost entirely French Canadian, with any amount of population that might be thought proper to give to it as by giving to it more or less territory, the population might be made anything not less than 50,000 or more than 130,000.

In the municipalities of Quebec and Montreal, the French Canadian interest would also prevail, however small might be the extent of territory annexed to each city, and the superiority of this interest would be more or less permanently secured, in proportion to the extent of territory over which the municipality was made to extend.

Whether it may not be prudent ultimately to make some arrangement of this sort, is quite a different question from that of its immediate adoption. Like the project for the re-union of Upper and Lower Canada, it is, I think, a measure that never ought to be resorted to without its being first demanded by a considerable proportion of the people. It is therefore one that requires time and discussion; and whatever may be, its merits, and particularly as laying the foundation for a more extended federal union of all British America, it is evidently not of a nature to meet the immediate emergeucy which we have to provide for.

Of other projects for a different territorial arrangement, it would also be premature for me to speak on this occasion; but whilst upon the subject I may perhaps be permitted to observe, that the idea of annexing the island of Montreal to Upper Canada for the sake of giving it a sea-port, would seem to me an act of very questionable justice. Montreal is the shiping port of a district of Lower Canada, which contains a population not much (if at all) inferior to the whole population of Upper Canada; and though the banks of the St. Lawrence might offer many favourable situations for the foundation of a new commercial city (as, for instance, the point where the Richelieu falls into it), it would appear to me a strange sort of justification for taking away the present town from the people of Lower Canada, to plead that they have the power of building another. A fairer sort of arrangement might be, I think, to declare Montreal an absolutely free-trading port, making it contribute to the general revenue, in some other shape, an equivalent for the loss that would be sustained by the remission of import duties on all articles consumed within it; or if this could not be done for the whole city or island, to do it for a portion of it that should be well divided from the rest.

In the concluding part of Sir Charles Grey's paper, he intimated an intention of furnishing some furrher observations on the subjects that he then left untouched, such, for instance, as commutation of tenure, the establishment of registry offices, the ap-

portionment of duties between the two provinces, the state of education, &c. &c. In the expectation of receiving this supplementary paper, I have waited until the present moment to make the entry of my own remarks; but as it has not yet come to hand, and we have reason to believe that Sir Charles has sailed for England, I do not think it right to incur any longer delay in entering my present Minute, and requesting that it may be transmitted to England.

[This Minute is accompanied by a set of Tables (four in number) showing the portion which the minority ought to form of the whole constituency, in order to return any required number of Representatives less than half of what the whole constituency returns.

The Tables are complex and we cannot conveniently introduce them, we therefore confine ourselves to the explanation of this scheme as given by Sir George Gipps, it is as follows :—]

By the ordinary method of giving to each elector as many votes as there are representatives to be returned, it is well known that a majority (however small) may return them all. If four members are to be returned by a constituency of 1001 electors, and each elector have four votes, a majority of 501 may return the whole four, and the minority of 500 remain unrepresented. But the Tables show that if each elector had only three votes instead of four, a minority of 3-7 of the whole constituency would suffice to return a member; if they had only two votes, a minority of 3-6 would do the same; and lastly, if they had but one vote, the Table shows that a minority of 1-5 would be enough.

Applying these numbers to the case above supposed of a constituency of 1001 electors, a minority of 3-7 of 1001 will be 429; but here, as there is no remainder after the division by 7, *one* must be added, and instead of 429 we must say 430. Again, if the electors have but two votes each, 2-6 of 1001 will be 334; and lastly, if the electors be limited to *one* vote, a minority of 1-5 of 1001, or 201, would be sufficient to return one member.

It thus appears that if each elector were limited to one vote, the minority would in fact acquire more than their due weight, for in the latter case we see that 1-5 of the electors would be able to return 1-4 of the elected.

This advantage would be still greater if only two representatives were to be elected instead of four, for in such a case a minority of 1-3 of the electors would be able to return one half of the elected. In a constituency of 1001 a minority of 334 would be able to return one member, and consequently have as much weight in the representation as the majority of 667.

It is in order to reduce this undue advantage to the minority, that it has been stated as advisable, in any adaptation of this plan of voting, to make the electoral districts, and the number of members returned by each, larger than at present. If the districts were so arranged as to return five or six members each, the advantage to the minority would almost disappear.

The Appendix to the General Report contains the following documents and evidence :—

Representation—
- State of the Representation of Lower Canada.
- Table showing the Division of the Province, before and after the Provincial Act 1829.
- Written statements and oral testimony of J. D. Gibb, Esq. on the Representation of the People.

Wild Lands—
- Arrears of Revenue in the King's Domain.
- Arrears of Revenue arising from Water Lots.
- List of Grants in Free and Common Soccage where the quantity exceeds 5,000 acres to one individual or Company.
- Amount of conceded and unconceded Lands in the Seigneuries.
- Return of surveyed Crown Lands.
- " of unsurveyed do.
- Emoluments of the Inspector of King's Domain, (averaging £360. per annum.)
- Present and proposed Fees on Land Patents.
- Despatches and Letters on the Management of Water Lots.
- Statement of all Sales of Crown Lands in 1834, 5, and 6, to October.
- Statement of all Sales of Clergy Reserves for the same period.
- Abstract of Land Accounts.
- " of Timber do.
- Two Reports on the Court of Escheats, from the Commissioner of Escheats and from the Attorney-General.
- Regulations for the Sale of Wild Lands.

(The foregoing Documents are all signed by the Officer at the head of the Department from which they are severally furnished.)

Tenures—
- Memorandum for estimating an Equitable Rate of Commutation.
- Evidence of Attotney-General, Ogden.
- " " Solicitor-General O'Sullivan.
- " " F. A. Quesnel, Esqr, K. C.
- Attorney-General's Report of Commutations in Beauharnois, &c.
- Return of all Commutations under the Act 6 Geo. 4th, c. 59.
- Petitions of the Executive Committees of the Constitutional Associations of the Northern and Southern Divisions of the County of Sherbooke.
- Petition of Executive Committee Constitutional Association of the Southern Division of Sherbrooke.
- Evidence taken at Sherbrooke.

Registry Offices—
- Evidence by the Attorney-General.
- " by the Solicitor-General.
- " by Messrs. Moffatt, Penn and Day.
- Paper on Hypotheques by Mr. Walker.
- Report, and Evidence, of Special Committee Legislative Council, on Hypotheques.
- Bill for making Mortgages special.
- Letters by W. Badgley, Esq. on Registry Offices.

Canada Trade Act—
- Statement of Duties collected at Quebec and Montreal from 1831 to 1836.
- Evidence of H. Jessopp, Esq. (Collector at Quebec.)
- " of W. Hall, Esq. (Collector at Montreal.)

Education—
- Sir James Kempt's Despatch on Education, 21st December 1829.
- Extract of a Despatch from the Earl of Aberdeen, dated January 1835, on a reserved Bill for the encouragement of Education.
- Resolutions and Report of Committee of the Legislative Council on Education, 15th March, 1836.

[The evidence on the various subjects above stated occupies 160 pages of foolscap folio, in small pica type.]