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CANADA.

COPIES  
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RELATIVE TO THE  
AFFAIRS OF CANADA.

[Presented to Parliament by Her Majesty's Command.]

Printed, by The House of Commons, to be Printed,  
15 August 1839.



Bibliothèque Nationale du Québec

CANADA.

Correspondence relative to the Affairs of CANADA.

Ordered, by The House of Commons, to be Printed, 15 August 1839.

(No. 124.)

COPY of a DESPATCH from Lieutenant Governor Sir *George Arthur*, K. C. H.  
to the Marquess of *Normanby*.

Government House, Toronto,  
24 May 1839.

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Sir G. Arthur to  
the Marquess of  
Normanby,  
24 May 1839.

My Lord,

I HAVE the honour to transmit to your Lordship the accompanying address to Her Majesty, from several gentlemen, inhabitants of this province, who have acted in the capacity of commissioners for the construction of the St. Lawrence Canal, complaining of the aspersions cast upon them by certain paragraphs in that part of the Earl of Durham's Report on the Affairs of British North America, which relates to Upper Canada; and maintaining that their conduct in the discharge of their public duty, as such commissioners, has furnished no just grounds for the High Commissioner's conclusions, which they consider to be of a nature calculated to injure them undeservedly in the public estimation.

Circumstances which every person must regret, no matter where the fault lay, obliged the Earl of Durham to conclude abruptly his personal investigation of matters connected with the state of Upper Canada, and, with all his Lordship's desire to do what was right and just, he has, unavoidably perhaps, fallen into some inaccuracies, founded on erroneous information.

This observation applies, I sincerely believe, to the remarks contained in the Earl of Durham's Report which have given rise to the present representation; and I am persuaded that his Lordship would have readily relieved the commissioners from the imputation which they feel so deeply, had it been possible for them to have appealed to him.

The commissioners were all gentlemen of high integrity of character, who, I am convinced, would neither have been themselves parties to any job, in the offensive acceptation of that term, nor have consciously allowed any abuse on the part of the contractors.

I have, &c.  
(signed) *Geo. Arthur*.

To the Queen's Most Excellent Majesty.

May it please Your Majesty,

We, Your Majesty's faithful and loyal subjects, inhabitants of the Province of Upper Canada, humbly request permission to bring under Your Majesty's consideration an injurious passage in the Report recently made by Your Majesty's "High Commissioner for the Adjustment of certain important Questions depending in the Provinces of Lower and Upper Canada, respecting the form and future Government of the said Provinces."

In the 68th page of that Report, as printed and laid before Parliament, his Lordship the High Commissioner, in noticing the measures taken by the Legislature of the Upper Province for overcoming the natural impediments of the navigation of the River St. Lawrence, takes occasion to make the following remarks:

"It then commenced the great ship canal, called the Cornwall Canal, with a view of enabling ships of considerable draught to avoid the Long Saut Rapids; and this work was at an immense outlay brought very far towards a completion. It is said that there was great

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great mismanagement, and perhaps no little jobbing in the application of the funds and the execution of the work."

As commissioners to whom the Government and Legislature of the Province saw fit to entrust the construction of the St. Lawrence Canal, we feel, may it please Your Majesty, that we have been wronged before Your Majesty and the British nation by the manner in which the Earl of Durham has in this passage animadverted upon our conduct. We cannot silently submit to the imputations upon our character, which his Lordship has not scrupled to promulgate in England, without having been at the pains to inquire during his rapid tour along the frontier of this Province, whether there was in point of fact any mismanagement or jobbing in the proceedings of our Board. Until we saw it stated in his Lordship's Report, we had not the slightest reason to suppose that there were persons who called in question the propriety or honesty of our conduct as commissioners, and it is not without the deepest emotions of surprise and mortification that we discover calumnies never published in this Province, patronized, and in an indirect manner recommended to the credence of the British people by a nobleman prominent among the public men of England, and lately occupying the distinguished post of Governor-general of Your Majesty's possessions in this continent. But lowly as may be our station when compared with his Lordship's exalted position, we feel it our duty to assert an equality with the proudest of the peers who surround Your Majesty's throne, in all that relates to integrity of conduct.

In the common affairs of life, all classes and orders of men are bound to the observance of the same moral rules; by all should character equally be prized, and though we happen to be but humble individuals, inhabiting a distant colony, we yet wish to enjoy the respect of our fellow-subjects in the United Kingdom, to whose eyes the Earl of Durham's Report (erroneous as respects the St. Lawrence Improvements) has been submitted, and knowing and asserting as we now do that no semblance of a foundation exists for the stigma set upon our conduct as commissioners of this Province, we are impelled by the highest considerations to approach with reverence Your Majesty's throne, and submit our complaint against the injustice which we have received at the hands of Your Majesty's late High Commissioner in Canada.

The Legislature of Upper Canada, by an Act passed in the third year of his late Majesty's reign, declared its intention to improve the navigation of that part of the River St. Lawrence which lies within the provincial limits, by the construction of canals and locks at certain places along the river upon a scale of considerable magnitude, and it made a liberal appropriation for that object.

The commissioners for superintending this important work, who were selected from both the parties then existing in the Province, and named in the Act, were the Honourable Thomas Clark and the Honourable John Hamilton, members of the Legislative Council, and George Longley, Jonas Jones, Philip Van Koughnet, Hiram Norton, and Peter Shaver, esqrs., of whom the three last named were members of the House of Assembly.

Mr. Clark having declined the office, the Honourable John Macaulay was appointed in his stead by a commission from his Excellency Sir John Colborne, at that time Lieutenant-governor of the Province, in pursuance of the mode prescribed by the Act for filling vacancies in the Board.

After a survey of the river from Johnstown to Cornwall, the commissioners, pursuing the views of the Legislature, after repeated and careful examinations by the most eminent engineers, British as well as American, that could be met with, contracted, in the year 1834, for the completion of a canal for overcoming the most formidable difficulty upon the river, viz., the Long Saut Rapid, and ground was broken upon this line of improvement in the latter part of that year. The work, which extends westward from Cornwall upwards of 11 miles, was divided into 27 sections, and offered by public advertisement, during a considerable time, to the general competition of such persons as might desire to contract for its performance. On the day appointed for accepting the offers for contracts for sections of work, and the construction of six locks upon the line of the canal, it appeared that not less than 479 tenders had been made by various parties. After a careful examination of these tenders, the commissioners publicly acceded to the proposals of 21 distinct parties, with whom contracts were immediately concluded in due form.

There was a numerous attendance of persons at Cornwall on the day when the tenders were opened (some of whom came from the United States), and the whole proceeding was conducted in so fair and open a manner, that no room whatever was left for any suspicion (and in fact no suspicion was entertained) that the slightest partiality was shown in distributing the contracts among the individuals or companies whose tenders had the best claim to a preference.

The next step taken by the commissioners, after letting out the work in distinct divisions, was to engage the most trusty and skilful persons to superintend and regulate its execution. Finding no British engineers within their reach in whom they could fully confide, they engaged the services of Benjamin Wright, esq., who enjoyed the highest reputation in the United States, as a consulting civil engineer, to attend the call of the Board on all occasions of peculiar importance; and they employed Mr. J. B. Mills, who was bred to his profession in the State of New York, and was well recommended, to perform the duties of resident superintending engineer.

The Board itself met regularly once a month to inspect the work and accounts, and assembled more frequently when circumstances required it. On all these occasions their proceedings were open, and recorded on the minutes by their secretary. Their accounts underwent a strict investigation at their monthly meetings, and no expenditure of money was

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suffered to be made except upon an estimate prepared by the resident engineer, and approved by the Board.

The funds appropriated by the Legislature for the construction of the canal were drawn from the receiver-general by the president from time to time as they were required, and were immediately deposited in the bank of Upper Canada. They never came into the hands of the Commissioners, but were paid to the contractors and other claimants by the secretary, upon the cheques of the president on the bank; and for every disbursement vouchers were taken, of which the original remained in the commissioners' office, and the duplicate, with a copy of the minutes of the proceedings of the Board, and a detailed statement of expenditures was annually submitted to the Lieutenant-governor, and by him, in pursuance of the statute, communicated to the Legislature. In this manner full publicity has been given to the whole of our proceedings.

Upon the resignation of Mr. Mills, as resident engineer, Major Phillipotts, of the Royal Engineers, was appointed to succeed him, and under that officer's immediate superintendence the work has been since conducted.

The first president chosen by the Board was Mr. Jones, who continued to act in that capacity until his elevation to a seat in the Court of King's Bench, in the year 1837, when Mr. John M'Donald, who has since become a member of the Legislative Council, took his place as president; Mr. M'Donald had been previously appointed a member of the Board, upon Mr. Macaulay's resignation.

James Sampson, esq., was appointed a commissioner to supply the vacancy occasioned by the resignation of Mr. Justice Jones, and James Morris, esq., was appointed in the place of Mr. Norton, one of the commissioners originally named in the Act, and a member of the House of Assembly, upon his resignation and removal from the province. In consequence of these various changes the Board now consists of the following members: John M'Donald, esq., of Gananoque, member of the Legislative Council, president; John Hamilton, esq., of Queenston, member of the Legislative Council, and named in the Act; Philip Van Koughnet, esq., of Cornwall, member of the Legislative Council, and named in the Act when a member of Assembly; Peter Shaver, esq., of Matilda, member of the House of Assembly, named in the Act; George Longley, esq., of Augusta, named in the Act; James Morris, esq., Brockville, member of the House of Assembly; James Sampson, esq., Kingston.

Under the system pursued it will be evident that not a shilling of the Legislative appropriation was expended without the authority of the Board specially declared, and duly and formally supported by a regular voucher.

The commissioners were allowed by the Act 20 s. a day while they were on duty, to cover their expenses, and to this extent only did they receive any portion of the public money for their own uses.

If the Earl of Durham, while in this country, received information from any person that we had been concerned in jobbing, his Lordship left us in entire ignorance of it. In whatever quarter the calumny adverted to in the Report may have originated, his Lordship, if he himself believed it, should, we humbly venture to think, have called us to account.

If he did not believe it, we are at a loss to conceive what good purpose could be served by its circulation over the empire.

To our great disappointment and mortification, his Lordship while in Upper Canada, notwithstanding our solicitations, neither inspected the canal, which is admitted to be the most stupendous work of the kind in America, nor instituted any inquiry into our conduct or management.

If he had at that period received any charges against us, we should have been rejoiced to have been allowed an opportunity of meeting and disproving them. We should then have challenged, as we now freely and fearlessly do, the whole population of Upper Canada, to show that we have in any one instance diverged from the line of our duty as honest and faithful servants, in our capacity of commissioners.

Not a single contractor, or other person in any way connected with the canal, has hitherto found just reason to complain of the Board, nor do we imagine that any ever will. The principle on which the business of the Board was conducted placed its proceedings beyond the reach of suspicion or cavil among the individuals by whom the commissioners were surrounded.

Nevertheless, Your Majesty's late High Commissioner has been pleased to intimate to Your Majesty, that in our application of the public funds committed to our care, there has been "perhaps no little jobbing," and the noble Earl has thus done us an injury, which Your Majesty's Petitioners would fain hope his Lordship, on further consideration, may find that his honour and his dignity may require that he should acknowledge and repair.

But his Lordship informed Your Majesty, that "It is said that there was great mismanagement in the application of the funds, and in the execution of the work." Upon this point we would respectfully observe, that if his Lordship had seen fit to make due inquiry while he was in the country he would probably have satisfied himself that the rumours on which he has built the charge of mismanagement were without solid foundation. The commissioners were of course guided by the advice and estimates of engineers, and in works like the canal at the Long Saut, the uncertainty of estimates is proverbial.

It has already been said that the contracts were let in an open manner. Alterations in the line of the canal, found necessary by the engineer in the progress of the work, combined with many unfavourable contingencies of a nature which could not be foreseen,

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tended to swell the amount of actual disbursements considerably beyond the amount of the original estimate.

Nevertheless, there has been no misapplication of the funds, for the money is all satisfactorily accounted for, as it has been all regularly disbursed on work done, or services honestly rendered in pursuance of fair agreements. Nor has there been any mismanagement in the execution of the work; for it is evident to all men who may choose to inspect the work, that it has been executed in a manner which can scarcely be excelled.

In England itself, where science is so exact, method so perfect, and competition so active, we believe that engineers as well as contractors frequently contrive to make ample fortunes in the construction of canals and other public works; whereas upon the Long Saut Canal, neither contractors nor engineers have obtained more than a moderate remuneration for their labour.

We humbly entreat Your Majesty's gracious indulgence towards Your Majesty's petitioners, who have ventured thus to submit to Your Majesty this necessary vindication of their conduct and character, which they have had the pain to find assailed by a hand from which a blow was not to have been expected.

Your Majesty's petitioners therefore beg leave humbly to state to Your Majesty, that they have acted faithfully and justly as commissioners, and that they do not merit the imputations contained in the Report made to Your Majesty by the Right honourable the Earl of Durham; and humbly assuring Your Majesty of their true loyalty, and of their most fervent wishes that Your Majesty may enjoy a lengthened reign of happiness and glory over a prosperous and united empire, Your Majesty's petitioners will ever pray.

(signed)

*Jonas Jones.**John M' Donald.**John Hamilton.**John Macaulay.**P. Van Koughnet.**George Longley.**Peter Shaver.**James Sampson.**James Morris.*

Toronto, 4th day of May 1839.

Gentlemen,

Government House, 9 May 1839.

THE Lieutenant-governor has directed me to acquaint you, in reply to your communication of the 4th instant, that he will avail himself of an early opportunity of transmitting the petition which you have been induced to address to Her Majesty, to the Secretary of State for the Colonies.

Reposing, himself, the highest confidence in your integrity and zeal for the good of the country, his Excellency very much regrets that any observations should have been introduced into the Earl of Durham's Report, founded on erroneous information, respecting the conduct and management of the work of the St. Lawrence Canal, which you consider injurious to your characters, and extremely painful to your feelings.

At the same time his Excellency has the fullest assurance, that whenever the true facts of the case shall be fairly brought under the notice of the Earl of Durham, there will be the strongest disposition on the part of his Lordship to view them with the strictest impartiality, and the most rigid regard to justice.

I have, &amp;c.

(signed)

*R. A. Tucker.*Prov<sup>t</sup> Secretary.

To the Honourable Mr. Justice Jones, and the other Gentlemen who have acted as Commissioners for the Construction of the St. Lawrence Canal.

COPY of a DESPATCH from Lieutenant Governor Sir *George Arthur*, K. C. H.  
to the Marquess of *Normanby*.

(No. 138.)

Government-House, Toronto,  
10 June 1839.

My Lord,

I HAVE the honour to forward, for your Lordship's information the printed copy of the "Report from the Select Committee of the Legislative Council of Upper Canada, on the Report of the Right honourable the Earl of Durham, Her Majesty's late Governor-in-Chief of British North America."

I have, &amp;c.

(signed)

*Geo. Arthur.*

Sir G. Arthur to  
the Marquess  
of Normanby,  
10 June 1839.

REPORT from the Select Committee of the LEGISLATIVE COUNCIL of *Upper Canada*, on the Report of the Right Honourable the Earl of *Durham*, Her Majesty's late Governor-in-Chief of British North America.

The Select Committee to whom was referred the Report of the Right Honourable the Earl of *Durham*, Her Majesty's late Governor-in-Chief of British North America,

Respectfully submit the following Report :

IN discussing the Report of Her Majesty's late High Commissioner on the Affairs of Upper Canada, your committee are fully aware that their observations cannot be understood by your Honourable House as conveying any censure on Her Majesty's Commissioner, who commences by informing Her Majesty that his information respecting the state of Upper Canada had not been acquired in the course of his actual administration of the government of that Province, a fact to which the Report itself bears ample testimony. His Lordship observes, that "it is very difficult to make out from the avowals of parties the real objects of their struggles, and still less easy is it to discover any cause of such importance as would account for its uniting any large mass of the people in an attempt to overthrow, by forcible means, the existing form of government." From the first part of this paragraph, it appears that the political parties into which the province is said to be divided have no very strong ground for complaint, otherwise some definite description thereof would doubtless have been given to his Lordship; who, in the latter part of the same paragraph, insinuates that a large mass of the people of Upper Canada were desirous of overthrowing the Government, a fact totally unknown in this Province, and already sufficiently refuted by the conduct of the people. His Lordship then informs Her Majesty that Upper Canada "has long been entirely governed by a party commonly designated through the Province as the 'family compact,'" and that, "there is in truth very little of family connexion among the persons thus united." Why then should his Lordship give his assistance in the dissemination of any such erroneous idea as that title has been used to propagate? His Lordship does not appear to have understood that the object of the press in adopting the term of "family compact," as a name by which to designate "the bench, the magistracy, the holders of the high offices of the Episcopal Church, and a great part of the legal profession, the possessors of nearly the whole of the waste lands of the province, the people all powerful in the chartered banks, and sharing among themselves, almost exclusively, all offices of trust and profit," intended to impress their readers with the idea that a close family connexion did exist among all the persons in authority throughout the Province, and that if it were not so understood, the force of the epithet would be altogether lost; for throughout his Lordship's Report, "the family compact" is blazoned forth with studious pertinacity, although the inaptness of the title had been previously admitted.

The High Commissioner next endeavours to show that all persons of education, and more especially members of the learned professions, ought rather to settle in the United States than in Canada; a surgeon, for instance, because he must show that he is duly qualified before he can be permitted to practice within this province; an attorney, because he is not permitted to practice therein as a barrister; and a barrister, because he is not allowed to act as an attorney.

Your committee are of opinion, that in all these regulations the Legislature has shown a proper and praiseworthy desire to prevent ignorant pretenders to medical and legal knowledge disturbing the animal economy or social condition of Her Majesty's subjects. Then comes his Lordship's list of British grievances, which is altogether remarkable; he complains of the banking system, in which he says the Canadian party are supreme, (a large portion of the stock in the most ancient of the chartered banks is, however, owned by persons residing in England,) and further asserts, that the influence of the banks "is said to be employed directly as an instrument for upholding the political supremacy of the party" (Canadian). Your committee happen to have the means of personally knowing that the chartered banks have most studiously avoided political connexion with all parties. Your committee find introduced as one of the grievances, "that under the system of selling land pursued by the Government, an individual does not receive a patent for his land until he has paid the whole of his purchase-money." Why should a contrary course be pursued? That is not shown. The High Commissioner then wanders into Illinois, and gives a vivid description of the peculiar advantages to be derived by English folk who may become domiciled in the Republic. If indeed his Lordship had not qualified his opinions with the assertion that, "but few cases in which the departure of an Englishman from Upper Canada to the States can be traced directly to any of these circumstances in particular," alluding to the British grievances before mentioned, your committee would have supposed that the peculiar functions of Her Majesty's High Commissioner were not those detailed in his commission, the more especially as these hitherto unheard-of grievances are quoted as the cause of the decreased immigration from the parent State; and throughout the Report comparisons are constantly drawn unfavourable to Her Majesty's possessions in North America.

Your committee having exposed a few of the inconsistencies in the first pages of his Lordship's Report, deem it unnecessary to enter more fully into its details, the conflicting character of which, as compared with his Lordship's other productions, is sufficiently set forth in the report of the committee on the state of the Province, appointed by the House of Assembly; observing, however, that his Lordship sums up the Upper Canadian grievances

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in the great practical question of the clergy reserves. Your Honourable House has so recently had this question under discussion, that your committee refrain from any commentary on his Lordship's statements regarding it; but your committee cannot avoid observing that, however unintentional, his Lordship's remarks are evidently calculated to cast odium on the Established Church of England, which, like every other respectable body throughout the colony, has been constantly assailed by the party misnamed reformers.

Adverting, now, to his Lordship's great panacea for all political disorders, "Responsible Government," your committee beg to observe, that a liberal-minded Englishman, sincerely admiring the great principles of the British constitution, would naturally be desirous of extending them, theoretically and practically, to all people living under the dominion of the Crown; and, at the first view, would be apt to ascribe any evils which were found to exist in any portion of the empire, to the absence of those political institutions, which he is bound to uphold in the administration of public affairs in the metropolitan and supreme government.

It is in this manner we must account for the adoption, at first sight, by many statesmen, of the principle that the officers administering the government should be under the same popular control in colonies as the like persons necessarily are in those societies where powers of supreme legislation, by means of popular administration, are found to exist; but it is to the practical impossibility of preserving colonial relations on such a plan, that we must attribute the fact, that notwithstanding all the changes produced by the struggles of party, or the alternations of conservative or liberal politics in England, no statesman, armed with the authority, has as yet attempted to introduce the principle of responsibility of government to the people into the colonial system.

After an attentive and disinterested consideration of this subject, your committee are led to the conclusion, that the adoption of the plan proposed by the Earl of Durham, in which this is the prominent feature, must lead to the overthrow of the great colonial empire of England.

The control exercised by the popular will over the administration of affairs in Great Britain, and over the choice of persons by whom the Government shall be conducted, is founded, not upon theory, but upon the practical necessity of carrying on a Government according to the will of that power in the constitution which, right or wrong, can most effectually control it. Simple responsibility of the executive functionaries, and their liability to answer for misdemeanors or mistakes, existed in England long before the popular branch of the Legislature assumed its present powers; and, in fact, the trial and punishment of ministers, or, in other words, their actual responsibility was much more frequently exhibited when the sovereign was independent of the people, than since the British constitution has been, by the necessities of the Crown, moulded into its present form.

This latter responsibility the colonists have; it is now proposed to bestow on them the former.

No one can be blind to the fact, that it is amongst those who advocate the doctrine that colonies are useless and burdensome, that responsibility of the Government to the people finds its warmest supporters. Lord Durham holds a contrary opinion, and yet he advocates popular government.

That the colonial possessions of England are of immense importance, and essential to the continuance of her greatness and prosperity, few, we believe, are prepared to deny. In support of that opinion, your committee will, however, quote a favourite expression of the Earl of Durham, after his Lordship had seen the Canadian possessions of the Crown, and become sensible of their value—"England, if she lose her North American colonies, must sink into a second-rate power."

According to the present system, the governor of a colony exercises most of the royal functions, under the general direction of the ministers of the Crown; he is strictly accountable for his conduct, and for the use he makes of the royal authority; he recommends for office persons in the colony, or appoints those selected by the minister; and he endeavours to conduct his government according to the policy of the imperial Cabinet, with a view to the present prosperity and future greatness of a country in which England has a deep interest; and above all things, with the intention of preserving, against all opposition, the unity of the empire.

To enable him to fulfil these great duties, it is obviously his interest, and that of his advisers, to keep on his side the popular voice of the colony, and to avoid giving occasion to discontent; redressing real, and dissipating, by temperate discussion, all imaginary grievances.

According to the system proposed by the Earl of Durham, the advisers of the Lieutenant-governor would not be officers who, in accordance with the policy of the Home Government, endeavour to aid the Lieutenant-governor in conciliating the affections of the people; but they must be the creatures of the prevailing faction or party in the Assembly; advising the governor altogether with the view to the wishes of the House for the moment, regardless of the opinions of the supreme Parliament or those of the imperial Cabinet, and having (though nominally subordinate) the power of forcing all their measures upon the governor.

The colonial governor must, in this case, be left without discretion or responsibility, and follow whatever changes may occur; in his colony he could take no directions from the minister of the Crown, nor, indeed, communicate with the supreme Government, unless in the terms dictated by his responsible advisers, to whose directions he must submit, far more completely than the sovereign to the advice of the Cabinet. The real sovereign and the supreme Cabinet are lost sight of and forgotten in the administration of public affairs in the colony;

colony; and thus the responsibility to Parliament, which in England is produced by and consistent with the powers of supreme legislation, being introduced into a colony where the supremacy in the legislative body does not exist, the weaker body, in fact, is, by a political fiction, made the stronger. The dependency of the colony is at an end; and while the sovereign no longer possesses a confidential servant in the colony, the ministers of the Crown, who are responsible for the preservation of colonial connexion, lose all authority to fulfil the duties of their office.

Either this must be the course pursued by a governor, with responsible advisers, or he must think for himself, independently of those advisers; and, as a matter of course, throw himself for information and advice upon irregular and unknown sources. In such an event, the responsible advisers resign; they have, perhaps, a majority in the provincial Parliament, but they may, notwithstanding, be very wrong. Then comes a dissolution of the provincial Parliament, and, perhaps, an expression of public opinion, by a bare majority, against the Government, and probably inimical to the interests of the empire. Who, then, is to yield? The Government must, in fact, retire from the contest, whether right or wrong, or carry on public affairs without any advisers or public officers.

This cannot be done; so that, after all, the governor of the colony must be responsible to the prevailing party in the colony; and, so far as the empire is concerned, he becomes the sovereign of an independent realm, having no discretion, and therefore no responsibility.

Under such a system, colonial dependence would practically be at an end. If it be resolved, then, to force upon us an independence not yet courted, why subject the colonies to the few miserable years of transition from monarchy to democracy, which must inevitably follow? Why subject the colony to the dissensions of party? Is it to foster a spirit of undying enmity among a people disposed to dwell together in harmony and peace? Far better would it be to unite them at once to an empire which, though rival, and perhaps inimical to England, would in such case interfere sufficiently between contending parties to save them from each other.

If England withdraw her influence, and leave her governors to be the shuttle between colonial parties, no loyalty now existing among any of these parties, will prevent their seeking another influence in the neighbouring republic, to replace the one needlessly withdrawn; and as the French of Lower Canada sought the alliance of their ancient enemies, the Anglo-American population of the neighbouring states, to give them the means of overwhelming the British population, for the time left without the countenance or support of the British Government, so will the losing party in either colony seek some external influence to aid their cause. England refuses the umpirage, and there can be no doubt but that it will be readily offered, before many years, to the United States.

Ireland and Scotland had once independent legislatures; but never, when under the British Crown, had they anything approaching to governments responsible to their respective people; yet the government of them became impracticable the moment it approached to a participation of equal political rights, and they were united with England; because government in the different parts of an empire must be conducted with a view to some supreme ruling power, which is not practicable with several separate and independent legislatures.

The plan of the Earl of Durham is to confine the functions of the local legislatures to affairs strictly colonial, but this limitation of powers is not practicable under his Lordship's system.

It is perfectly true, that it is not for the interest of England to maintain a continual struggle with the local Legislature, for the purpose of upholding any class of persons in the colonies, as the servants of the Crown; but it is no less true, that the honour and interests of the empire are intimately involved with local administration; and that if governors of colonies are to be left unsupported by the imperial Government, and to have their advisers chosen for them by the prevailing party, the usefulness of the governors must be at an end; there must either be continual collision between them and the other public servants in the colonies, or the governors must yield up their judgments and consciences to the keeping of the factions which agitate the countries they are appointed to govern.

In small communities, the future is continually sacrificed to present convenience; but the very temporary nature of the interests which influence the politics of a country like this, with a changing population, with no barriers between the inception of public will and its expression; the comparatively little personal influence held by any, from considerations of property or personal attachment; the ephemeral character of the topics which sway elections, and elevate men for the moment into public favour, with almost a certainty of sinking with the reflux of the wave which lifted them into view, operate against the growing up of that steady influence capable of giving stability to politics, or of defining the views of party. The people are individually essentially free; free from landlords, free from employers, free from the influence of great wealth, as well as from that of high station in the few; every man does as it seems best in his own eyes. The consequence is, that it is scarcely possible to know, for any continuance, what the views of the prominent parliamentary men are, except on a few questions: no considerable number of them think alike; and all, by turns, find themselves in a minority many times during a parliamentary session.

This state of things does not arise from any modification of political institutions, but from the individual independence of the population, caused by the ease with which landed property is acquired. In England, political leaders think for the people; in America, the people think for the Members of Parliament; and as the people is not bound to consistency, like individuals of note, its appetite for change, and for the proposal and attempt to carry

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absurd and extravagant measures, is, and must be, gratified, from time to time, *non obstante* the consistency of politicians.

The same course of politics is found in the United States, where the President, the Senate, and the House of Representatives, constantly find their measures negatived by each other, and where members are constantly instructed by their constituents according to the popular whim of the hour. We, therefore, do not find what is strictly called executive responsibility, or necessity of continual accordance of Government with the popular voice; and measures have, even between the short intervals of the presidential elections, time to be popular and unpopular, two or three times over. The French Canadian party form, perhaps, the only political combination in America with consistency of principle; and this is because they have leaders who direct the general opinion. They are, consequently, the only party whose representatives could by any possibility lay down any tangible principles upon which they would conduct a government. In this Province, as in the United States, popular will must influence the conduct of Government in all things, not essentially wrong or chimerical; and in these the Government must be strong enough to resist, and be known to have the power of resistance for a sufficient time, to permit more cool and quiet consideration on the part of the constituency.

A curious example of this species of legislation is found in a discussion which has occupied a great part of the present session, on the absorbing topic of the clergy reserves. It has been taken up and discussed upon principles of liberality and concession on all sides; the parties, unable to agree upon any mode of appropriation, have, as a final measure, referred the issue to the imperial Parliament.

It would be almost impossible to enumerate the various modes of distribution proposed, with and without the approbation of Government, on this question, which would undoubtedly, in English politics, be considered one upon which the existence of a ministry must depend. Suffice it to say, that almost every member had a plan of his own; some had two or three plans fresh from their constituents; yet, strange to say, the House could not agree; that is to say, there was a number sufficient to negative every plan proposed, and to prevent the reference of the matter to England, up to the last day of the session.

In this paradoxical state of affairs, which of the contending parties should form the colonial cabinet?

This, or something approaching to it, not being an unusual condition of politics, it may easily be supposed that few, if any, persons possess sufficient influence to conduct affairs; and from this state of things, it is to be presumed, has arisen the practice in all colonial governments with legislatures, of the governors standing as mediators between parties, yielding and leaning to the popular voice, but resisting it with the authority of their office when it was manifestly in error.

It must be supposed that had the system proposed by the Earl of Durham been long since adopted, the popular will would have prevailed to a far greater extent than heretofore, and yet most of the practical evils found in the colonies have arisen from measures popular at the time of their enactment.

The preservation of the French language, laws, and institutions, and the consequent perpetuation of the contest between the races, so strongly deprecated by the Earl of Durham, was a popular measure, and must have prevailed even more injuriously, and even destructively, under a responsible government.

The concessions of public lands to U. E. loyalists and their children, to militia, and other grantees not resident upon the lands, which now form an acknowledged public grievance, were popular measures; the persons who benefited by them being the population of the country, and those who complain of them not being yet arrived.

The parliamentary grants for local works, and the disposal of funds by commissioners named by the Legislature, and the abuse of this patronage, are evidently founded upon, and rising out of, the parliamentary influence sought to be made supreme, and are evils which might have been greatly exaggerated, but could not have been lessened by responsible government. In fact, they prove that governors should oftener take the responsibility of resisting the popular voice than they have been hitherto accustomed.

The very change in political sentiments, produced by the constant introduction of new population from Great Britain, shows that legislation in these colonies ought to be conducted with some view to the interests of those not represented in the Legislature, but who may soon form the great mass of the subjects of the Crown in America. A responsible cabinet must, however, look exclusively to the party of the day, and in its favour neglect the great future interests of the Province.

In short, local and sectional interests are felt too strongly and directly in elective bodies, in small communities, to permit of consistent legislation on general principles; and the objects to be gained during the short period for which the majority hold their influence are of too much consequence, compared with distinct general results; to permit of the perfectly unchecked course which would result from responsible government.

Although the points are few in which it is the interest of England directly to interfere with local and internal affairs in the colonies, your committee are at a loss to conceive how, in a government so independent as this is proposed to be made of England, these few points can by any means be excluded from the control of the local parliament; a disagreement with the cabinet and Legislature on the subject of foreign trade, immigration, disposal of lands, or any of the excluded topics, will just as readily induce a stoppage of the supplies, with all the consequences, as any of the questions within the range of local legislature; and if we can suppose cases in which the interests of the empire and that of the colony should be

be different, it is vain to expect that any set of public servants who should espouse the general interests, could continue in authority.

Even in the question of peace and war, excluded alike from local legislation in the several states of America, as in the colonies, we have seen how nearly in the States of Michigan, New York, and Maine, the prevalence of popular opinion produced a terrible national war: how the arm of Government was paralyzed, and the licentious and outrageous conduct of the populace encouraged by local authorities, because of the influence of this excluded and forbidden question, upon the elections of local governors and local legislatures; and it cannot be questioned that little more exacerbation of the public mind in Upper Canada, would have caused such a desire for reprisal and retaliation, as would have placed any local responsible cabinet, desirous to maintain peace on the border, in direct collision with the popular voice.

A stronger instance of the necessity for interference in local affairs than the recommendation of the British Government for a merciful course towards the prisoners presented, could scarcely have occurred, for it has justly been observed, that the honour of England would suffer if life were taken unnecessarily. But to prevent its being taken to a much greater extent than has been permitted required much firmness in the advisers of the Government, and much reliance on their part on the Imperial Authorities for support in the humane course recommended by them.

To conclude this subject, your committee would observe, that so long as England holds sway in the colonies, there will be a majority seeking for power in the provinces, and a minority for justice and protection and impartial government. The moment the provincial magnates are made supreme by the proposed system, interference to do justice will be a breach of faith; and let it be recollected, that if England refuse the umpirage between contending parties, there is a power at hand, ready and anxious to join with either, and watching for the favourable opportunity.

From these reasonings, it appears evident, that the expenses of military defence in Canada are not to be avoided by a partial independence, or by anything short of abandonment. These expenses have not been incurred in consequence of any want of popular concessions; they have been caused by the unprincipled and outrageous conduct of the border Americans, which can only be held in check by military defences, or by the influence of British power upon the American people, through their government.

Referring to the causes of the late insurrection, your committee would observe, that it is not to be contended that the influence over the public mind, caused by Sir Francis Head having placed the question at issue in such a light as to show political evils arising from the reform system so strongly as to produce the change in the elections of 1836, could either produce or excuse rebellion. The question at issue involved consequences of vital importance; nor could the rebellion be produced or excused by comparisons made by the public, to the disadvantage of the reformers. The only pretence amongst all those urged, having any colour of argument, is the alleged corruption at the elections, and the influence then obtained by Government. But this pretext seems, upon examination, as unfounded as the others: a people who will permit themselves, in a country in which the elective franchise is so widely diffused, to be bribed or influenced into returning an overwhelming majority to parliament, are not the most likely, therefore, to rise in rebellion against their own decision; and as to the fact of corruption on the part of the Government, so far from there being any means of attempting such a course, it is with great difficulty that the Government can find the means of carrying on itself, without any such expensive interference with the rights of electors. If the assertion were not too absurd for dispute upon it, reference might be had to the returns from the public offices, and to the proceedings in the Assembly, in which the reformers were invited, in vain, to sustain any one of these accusations, as a full refutation of the charge of corrupt interference influencing the elections.

That dissatisfaction prevailed amongst the defeated party, as in all other cases, is admitted; and that the elected members did not possess the confidence of those who voted against them, was to be expected; but that the successful majority were thereby driven into despair of good government, or were discontented with their own mode of putting members of their own choice into power, is not only contradicted by the argument that the remedy would always be in their own hands, but by the fact of the enthusiastic loyalty with which the populace of the country, chiefly those who formed the majority in the late elections, rallied round the very men and the governor, by whom, according to the complaint of the reformers, they had been disappointed and betrayed. Your committee are of opinion, that the proximity of the American frontier—the wild and chimerical notions of civil government broached and discussed there—the introduction of a very great number of border Americans into this province, as settlers, who, with some most respectable and worthy exceptions, formed the bulk of the reformers, who carried these opinions so far as disaffection—together with the existence of actual rebellion, and the expectation of a general rising in Lower Canada, emboldened a portion of the minority to rise in rebellion in this province, in the hope of achieving the overthrow of the Government, with foreign assistance.

Is it because reformers, or a portion of them, can command the sympathies of the United States, and of Lower Canadian rebels, that the internal affairs of a British colony must be conducted so as to please them? Where would the colonial government have looked for support and defence in its time of real danger, had proscription and discouragement and

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disregard been the portion of those who had shown, at the elections, that they were willing to sacrifice a portion of popular influence to the great object of retaining British connexion.

How painfully must such men be excited, at reading, in Lord Durham's Report, what appears to be a justification of the course taken by the disaffected, without one word of approval to those who risked and endured so much in defence of British supremacy. In what manner, we ask, did the dominant party make use of the occasion to persecute or disable the whole body of their political opponents? Who were the numbers of perfectly innocent men thrown into prison, and who suffered in person, property, and character? And what severe laws were passed in Upper Canada, under colour of which individuals, very generally esteemed, were punished without any form of trial?

That some unauthorised individuals were prone to insult those whom they viewed, at the moment, as a fallen enemy, must have been the case. That the individuals thus insulted may have felt themselves aggrieved and annoyed, cannot be doubted; that a great many were thrown into prison (against whom the clearest proof of high treason was in the hands of the magistracy,) but who were released without trial, a mercy which they most thankfully accepted, can easily be proved. That they were perfectly innocent, could only have been placed beyond dispute by a trial, but in the cases of the great number of individuals arrested, there were not only good grounds of suspicion, but means of proof of guilt, and it would be far indeed from being the interest of the parties themselves to provoke an inquiry.

It is true, that magistrates, sometimes looking to the circumstances of their own immediate neighbourhoods, rather than to the policy of the Government at large, proceeded with more zeal and strictness than the case demanded; but what good reason for complaint has the criminal arrested for high treason, in the discovery that the magistrate, by whose authority he is arrested, has a political leaning different from himself?

It is stated in Lord Durham's Report, that it was generally believed that the pardon of Samuel Lount and Peter Matthews was solicited by no less than 30,000 of their countrymen. The number of petitioners, men and women, who petitioned for these criminals appear upon examination to be 4,574; such exaggerations necessarily refute themselves.

It is one of the most distressing effects of the publication of the Earl of Durham's Report, that his Lordship thus seems to condemn the execution of these men. If they really ought to have been spared, the publication of such a sentiment from one in high authority, cannot restore them, but it must give rise to feelings on the part of their friends and their political party who may never have imagined such a possibility as the escape from punishment of every one of the leaders of a rebellion which inflicted so much calamity upon the Province, but who will now think that had the Earl of Durham been in this Province, high treason would have been considered much in the same light as a riot at an election.

Your committee having animadverted on the principal topics in the Report of the High Commissioner beg, ere they conclude, to observe, that as regards Upper Canada, Lord Durham could not possibly have any personal knowledge, the period of his sojourn in that Province being of such very short duration. Your committee regret that his Lordship should have confided the task of collecting information, to a person who, be he whom he may, has evidently entered on his task with the desire to exalt the opponents of the colonial government in the estimation of the High Commissioner, and to throw discredit on the statements of the supporters of British influence and British connexion; that he should, in such an attempt, have laid himself open to severe censure, was to be expected. Your committee have, however, through a feeling of respect for Her Majesty's Commissioner, refrained from commenting on his Report in the terms which they honestly avow they think it merits, confident that their forbearance will meet the desires of your Honourable House, and be equally in accordance with the wishes of the family compact hereinbefore mentioned.

All which is respectfully submitted,

*J. S. Macaulay, Chairman.*

Committee Room, Legislative Council,  
11th day of May 1839.

