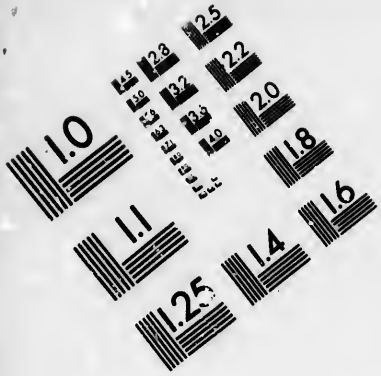

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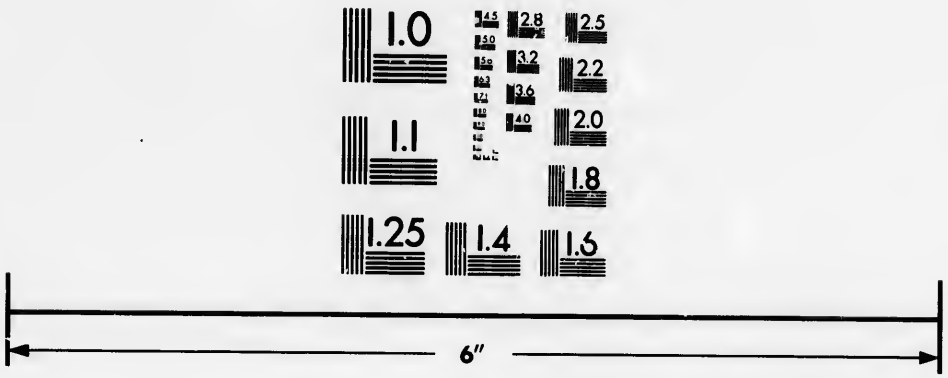

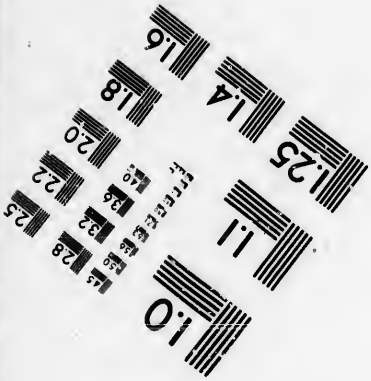

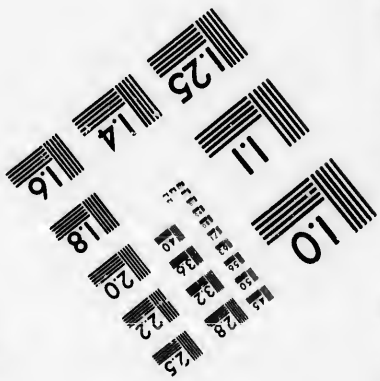

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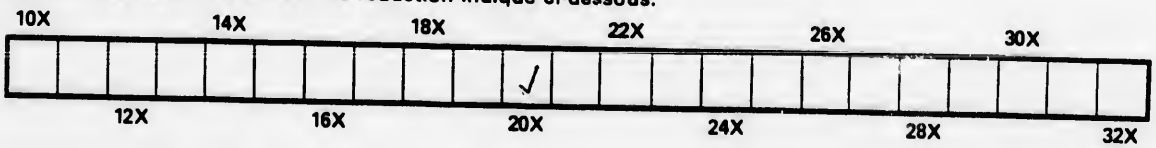

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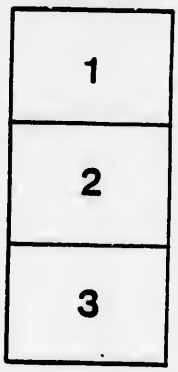

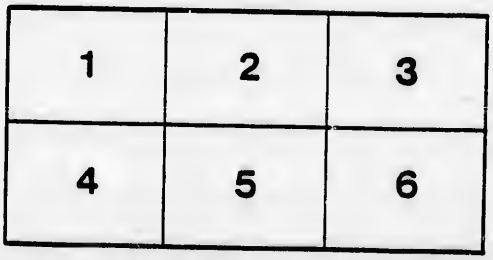

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THE GOVERNMENT OF PUBLIC OPINION.

THE MACDONALD-CARTIER AND CARTIER-MACDONALD ADMINISTRATIONS: THEIR VICTIM AND THEIR DEFENDERS.

(*To the Editor of the Quebec Guzette.*)

QUEBEC, 27th September, 1858.

SIR,—That portion of the press of Canada which usually upholds the Government of the day, is now in full blast in defence of the Governor General, upon the stand recently made by him against the Brown-Dorion Administration,—the advisers whom he had himself called to his assistance to enable him to administer the Queen's Government in this Province. Every unworthy epithet and nickname which their polite reading can supply, are unscrupulously and vindictively hurled against the members of that Administration, whilst the most extravagant expressions of laudation are lavished upon the Governor General with a view to shield him from the consequences of the constitutional blunders—not to say crimes—which he has committed against the rights of the people of this country. A storm is gathering around him not only from the press of Canada, but from that of the Lower Provinces, and of England and Scotland, and in the precise ratio of its increase rises the billingsgate in lieu of rational argument on the one hand, and fulsome adulation on the other.

Now, let us analyze the *casus belli* and reduce it to its constituent elements—*a sa plus simple expression.* The question of the choice of a Seat of Government, which appertained to the prerogative of the crown, had been very considerately and wise-

ly left to the decision of the Legislature and Government of this Province. They, after repeated attempts, were unable to arrive at any satisfactory conclusion on the subject, and they referred it back to the Home Government, praying Her Majesty to resume the exercise of her prerogative in this behalf. Instead of selecting that place, or any one of the places, which had received the greatest number of votes of the people's representatives in Parliament, Her Majesty's constitutional advisers, in an evil hour, made choice of an insignificant and newly-fledged city, which happened to be the very *lowest* in the estimation of the Legislative Assembly. Before the promulgation of this decision and the meeting of Parliament, the Administration, which had recommended the reference, had undergone important changes in its composition, and had in truth been entirely broken up, by the retirement from office of eight out of the twelve members of which it consisted at the time of the reference, namely—Taché, (Premier), Drummond, Cauchon, Lemieux, Spence, and Morrison, (members of the Cabinet,) and Ross and Smith, Solicitors General, leaving Macdonald (new Premier), Cayley, Vankoughnet, and Cartier, the sole remaining members of the Government of the reference. Upon the meeting of Parliament the new Government, after having been repeatedly challenged to announce their policy on this important question, declared that they intended to carry out the decision of the Queen. They, with the exception of four of their number, had not advised the reference. They were not, and could not be held responsible as a Government either for the reference or the decision upon it.

The members of the former Government had declared in the House that they should abstain from offering any advice tending in any way to sway the determination of this matter. Yet they permitted the Governor General, the head of the Provincial Executive, and legally and technically constituting in his own person the Government of the Province, to cross the Atlantic and to impose upon the Colonial Minister the selection of Ottawa, in contempt of the opinion of the Assembly, and after that same Minister had declared to several of

the delegates sent to England, that that locality was "*quite out of the question.*" Such is the settled belief and conviction of all thinking and unbiassed men in the Province. It was well known that the decision was most unsatisfactory, and that it would be repudiated by an overwhelming majority of the Canadian people. Nevertheless, perfectly conusant of all this, and that a new Parliament was assembled, the members whereof were in no wise committed to the reference by their predecessors, the existing Government—pressed by the same sinister influence through which a selection had been audaciously made upon *ex parte* representations transmitted to England and as yet unknown to the people of Canada, and in despite of the constitutionally expressed opinion of their representatives—the rump of the deceased Government of the reference with their new adjuncts, needlessly threw themselves into the breach to carry out the decision which had been so surreptitiously procured,—an act of folly and blind rashness, which none but a weak and tottering Administration could have been guilty of. Governor and Council combined to sow the wind—*they are now reaping the whirlwind.*

To return :—When the question of the Seat of Government came up in the House, after having been unpardonably suffered to languish during five months, the Ministry adhered to their declared policy, but with amazing magnanimity permitted their friends to vote as upon an open question. After a long and exciting debate, the claim of the vice-regal bantling was duly and formally rejected by a majority of 14. Mr. Brown thereupon moved an adjournment, and challenged the Government to receive the vote as one of confidence or no confidence, and it was so accepted. The move was somewhat out of place and premature; but it is well known that the honorable mover was entrapped by several of the known partizans of the Ministry (who had voted against them on the Seat of Government,) openly canvassing in the House in favor of the adjournment, and afterwards returning to the rescue and voting against it, thereby giving the Government a majority of *eleven.*

The following morning at ten o'clock, the Ministry announced their resignation as a consequence *of the vote upon Ottawa.*

Their declaration to stand by the act of the Home Government was a blunder, as already shewn; their resignation was blunder number *two*—not to characterise it as something more reprehensible. Mr. Brown was immediately sent for by the Governor General, and the sequel appears in the written correspondence between them, which it becomes necessary in some degree to analyze, in order to extract some light from out the darkness which envelopes it. Usually when the Queen's Representative is beached by his Ministry throwing up the reins, it is held to be a distinct avowal on their part that they are no longer in a condition to administer the affairs of the Province. He is then compelled to have recourse to others to advise him in the conduct of the Government, thus suddenly brought to a stand. He summons them to his assistance in extricating himself from the dilemma in which he finds himself. He entreats them to come to *his* rescue, as the burden lies heavily on his shoulders until he shall have accomplished this important task, when his personal responsibility ceases. It is a conjuncture eminently of mutual confidence. The high office which the Governor General occupies, and the importance of the services to be rendered to the country by him and the co-laborers chosen by himself, ought naturally to beget mutual respect and reliance, and a strong determination to fraternize, with a view to a cordial co-operation in the great work which they have undertaken, of advancing the prosperity and promoting the welfare of two millions of the Queen's subjects in this Province, constituting, as respects constitutional rights, the most important dependency of the crown. In any controversy or "misapprehension," which may arise in the course of a negotiation of this character, the Governor General has the advantage of his exalted station in shielding him from any suspicion of unfair play, in the absence of any violent presumptions to the contrary. The position is always a delicate and a difficult one, and it was rendered infinitely more complicated in the recent instance by the anomaly of a Ministry resigning immediately after receiving an unmistakeable mark of confidence from the popular Branch. From this singular feature the *bonâ fides* of the resignation has been

gravely impugned. We shall see what grounds there are for the imputation either as regards the Ministry, or the alleged complicity between them and their master.

The Governor requests that Mr. Brown's acceptance of office should be "*in writing*, in order that he may be at once "in a position to confer with him as one of his responsible "advisers." *At once*! and before he is sworn! and why "*in writing*" to this particular end? It was an unusual course, exhibiting a latent distrust at the outset. When, in the common transactions of life, men of great "acuteness," who distrust one another, are desirous of making mutual overtures, they take the precaution of receiving their reciprocal advances "in writing," in order to prevent either party from receding or backing out of his offers. This may be necessary and allowable between men who desire to arrive at a final settlement of conflicting interests, in order that the less "acute" party may not become the dupe of the other. In cases touching the restitution of stolen property, for instance, the negotiations are usually conducted in the most guarded manner, lest any one of the "high contracting parties" should be entrapped by the other. But in a matter concerning the formation of a Government, when the Queen's representative selects men of known respectability and integrity to share with him the cares of state, and by whose advice he impliedly declares he shall be governed, the same amount of precaution would not seem to be required!!

The Governor addresses himself to Mr. Brown as "the most prominent member of the Opposition." Why this designation of Mr. Brown, *in limine*, in a note to himself as a justification for sending for him? If he was the person most likely to command a majority in the House, the act of the Governor needed no such apparently limited designation. *Cela va sans dire.* If he could not carry the House with him, as the Governor himself afterwards states, the simple act of sending for him, necessarily and obviously, in the opinion of every impartial man, was equivalent to a clear and distinct understanding, on his part, to place the prerogative at the disposal of Mr. Brown and his Cabinet, in furtherance of any

constitutional remedy to be suggested by them to enable them to perform the duties which the Governor had solicited them to undertake.

Mr. Brown was sent for on Thursday, the 29th July. On Saturday, the 31st, he formally accepted the task of forming a ministry. It was well known in Toronto on Sunday afternoon (1st August,) that a cabinet had been formed, contrary, as it was currently reported, to the expectations of the Governor and his friends. On that evening, at ten o'clock, the Governor transmitted a note to Mr. Brown. In his note to Mr. B. of the 29th July, he had intimated that "his first object would be to consult Mr. B. as to the names of his future colleagues, and the assignment of the offices about to be vacated, to the men most capable of filling them!" (Let that pass—it is too flat to be commented upon.) In his note of Sunday evening, he requests Mr. B. to "communicate the (enclosed) memorandum to his future colleagues" (without having received any information as to the names or capabilities of those important personages,) "in order," he says, "to avoid all misapprehensions thereafter." Strange that there should run through the whole affair, on the part of His Excellency, such a dread or anticipation of "*misapprehensions*"!! In this memorandum he distinctly intimates his determination *not* to dissolve. When asked, he will give his reasons. He has no objections to a prorogation *on certain conditions.* In short, he begins to dictate. He has no objection to abide by their advice, provided they will first follow *his.* He points out the measures of his late Government which must be matured (before he will allow a prorogation,) "subject, of course, to such modifications *as the wisdom of either House may suggest*"! Very condescending this! "A prorogation is the act of His Excellency." So it is—and so would also be a dissolution or any other act of his; but to be constitutional, it must be previously determined upon by his sworn advisers, otherwise he, *suo periculo*, assumes the entire responsibility. On the next day, (Monday, 2nd August,) Mr. B. informs the Governor General for the first time that he has formed an administration, and is prepared to submit the

names, but declines discussing any measures, or any questions of public policy, until they shall have been sworn and constitutionally responsible for their advice. On Monday at noon they are inducted into office. On the evening of the same day adverse votes are given against the new Administration in both Houses, and on the following day the Brown-Dorion Cabinet, as a matter of course, recommended a dissolution.

Next follows the memorandum of the Governor General of the same day. This is a document *sui generis*: "His "Excellency is bound to deal fairly with all political parties; "but he has also a duty to be performed to the Queen and "the people of Canada paramount to that which he owes to "any one party, or to all parties whatsoever." "The question for His Excellency to decide is—not what is advantageous or fair for a particular party, but what, upon the whole, is the most advantageous and fair for the people of the Province!!" With the enunciation of a doctrine of this character, it is useless to follow him through this long, argumentative, rambling paper.

The Governor General—commissioned hither by his Sovereign to administer her government according to the principles and the practice of the British constitution as it obtains in the government of his Royal Mistress, and according to the well-understood wishes of the people of this Province as expressed by their delegates in parliament—constitutes himself the exponent and the arbiter of what is "most advantageous and fair" for that people, and—aping the arbitrary mandates without the sagacity of a Napoleon—reads an incoherent homily to his constitutional advisers, and arrogates to himself the power of dictating to them the course which they are to pursue, and the measures they are to propound to parliament. It is manifest that he is unacquainted with the rudiments of constitutional government. The servile press will term this personal abuse; and having no other ground upon which to make a stand in his favor, they laud him to the skies as an independent Englishman, a gentleman, and a scholar. Granted that he possesses these high attainments; but what have they to do with the question at issue?—Whether he be

English, Dutch, or Arcadian, gentleman or boor, scholar or pedagogue, is perfectly immaterial to the people of Canada; provided he possess sufficient knowledge of the attributes of an independent English statesman to teach him to respect the rights of British subjects,---sufficient *savoir vivre* to restrain him from gratuitously drawing invidious distinctions between the inhabitants of the two sections of the Province, or wounding them in their national traditions; and sufficient constitutional learning and logic to enable him to hold the helm of the vessel of state without intermeddling with the province of the Sailing Master and his crew. One word, *en passant*, upon the scholarship as evidenced in these bulletins. There are to be found in them slight errors of style and grammar, which are certainly highly excusable in a matter concocted with more celerity than deliberation, and which, in fairness, ought not to be noticed. But it is imprudent in the scribes to challenge criticism by invoking the superior *scholarship* of the author.—In the circumstance of the present crisis his penetration was at fault in not seeing that the resignation of his ministry in the face of a decided vote of confidence in their favor, was either an insult to their own supporters, or was fraught with some latent sinister design to recover their forfeited offices, thereby placing him in a false and embarrassing position. In all probability the *compte rendu* to his principals of his clumsy passage-at-arms with the Brown-Dorion administration, is accompanied with a tender of his resignation; if not, common prudence would dictate this course, as the storm of condemnation from which his ministers, past and present, are now fleeing like Mother Carey's chickens across the Atlantic, may necessitate an alternative which might render him ineligible to represent his Sovereign in any other of her dependencies.

The parasites of the topsy-turvy cabinet are blattering extensively on the supposed insult or discourtesy to the Queen in repudiating the selection of Ottawa as the Seat of Government. This act of Her Majesty is but the act of her constitutional advisers. As such it is subject to comment, animadversion, or censure by the people, quite as much as would be any other untoward exercise of the prerogative; and

its counsellors are made amenable to the bar of public opinion to answer for their advice, on the fundamental maxim that the "Queen can do no wrong." Whenever wrong is done, or gross error committed, those who are sworn to counsel her honestly and wisely are made to pay the penalty of their transgression.

The thunderer of Printing House Square, who arrogates to himself the office of supreme dictator in matters of state, has allowed himself to be drawn into the egregious blunder of casting obloquy on the people of Canada for the course taken by the Assembly on this question. When Her Majesty exercises her prerogative in respect of any appointment, such as that of the Chief Justice of the Queen's Bench, the Commander of the Forces, or any other high and important public functionary, to whom would the blame of an injudicious selection attach? To the *Queen*---say the lackeys and the thunderer, to serve their own purpose for the nonce. Should Her Majesty in such a case---instead of choosing one of the fittest men in the profession to discharge the duties of one of the highest legal functionaries in the kingdom, capriciously confer the appointment upon some unworthy favorite without character, ability, or legal standing, would not the people of England be permitted to remonstrate against such an abuse of the prerogative? In the present instance the Queen was imposed upon, and they select a city repudiated by the Legislative Assembly, and, as a natural consequence, that Body, as the guardians of the rights and liberties of the Canadian people, declines to abide by the choice. If this course be deemed *discourteous* to the Queen, it would have been equally discourteous to have disapproved of the selection of Penetanguishene, at the western extremity of the Province, or a site on the outlandish and barren coast of Labrador, its *ultima thule* on the north-east, for the same object, had such been the decision; for the choice was of course unlimited, and the constitutional right to disapprove would undoubtedly have been precisely the same. The people of this Province exercise no control over Her Majesty's imperial cabinet, but they held the colonial Administration answerable for the sin, and drove them to resign, until---like the tiny automata on a hand-organ, they faced about and slunk back to their former positions. "Insult and discourtesy" indeed! where the people's inalienable

rights are trampled upon, and the judgment of the Queen's ministers swayed by backstair influence! The "insult and discourtesy," if any there be, consist in affixing upon our Gracious Sovereign the odium of a decision which is solely attributable to the stolidity of her colonial minister and the presumption and audacity of her colonial shadow.

Canada, of all the dependencies of the Crown of England, led the van in wresting from the Imperial Government the full concession of that constitutional form and practice of government which has raised England to her present exalted position among the kingdoms of the world. Should the principles evolved in the Brown-Dorion controversy be supinely and tamely acquiesced in, the question arises, whether we have advanced or retrograded in our appreciation of that inestimable boon. If the inhabitants of Canada are true to their instincts, they will denounce this invasion of their dearest rights, and adopt such determined and energetic measures as will speedily "nail the rap to the counter," and for ever prevent a recurrence of the outrage. Public opinion is fast running in the right direction. The statesmen of England are too clear-sighted to permit the rights and privileges of colonists to be jeopardized by any empiric who happens to be decked in the uniform of Downing Street. When the tide of public opinion, backed by sound reason and impelled by a sense of wrong, sets forcibly in one direction, it is a perilous undertaking to impede or dam its onward course. The obstruction but augments its volume and its impulse, until, overleaping all bounds, its accelerated course sweeps every obstacle before it. There is wisdom in foreseeing the descending torrent, lest it overflow its natural bounds and unnecessarily and recklessly cause irremediable mischief. The democratic tendency is ever onward, and perhaps downward in the scale of society, and the impetus given to it by the follies of the minions of power may sap the pillars of our revered constitution, ere we know upon what ground we are standing. Should such unhappily be the *denouement*, the arrogance and the insipid whimperings of the Morning Chronicle, Pilot, and other servile prints, as well as the remonstrances and anathemas of just men, will be alike unavailing to stay the storm.

THE MISSION TO ENGLAND.

(*To the Editor of the Quebec Gazette.*)

QUEBEC, 11th October, 1858.

SIR,—In my last I proffered a few observations on the recent crisis, tending to bring under review the unconstitutionality of the course adopted by the Governor General towards the Brown-Dorion Administration, nicknamed by the subservient supporters of the topsy-turvy cabinet—"the Government of forty-eight hours"! *Il rit bien qui rit le dernier.* It appears now that the newly installed Premier has been deputed by his colleagues to England as a delegate to represent the interests of Canada in regard to the contemplated inter-colonial railway, and the union, federal or legislative, of the British North American Provinces. It has become rather fashionable within late years for the members of the Colonial Government to abandon the high posts assigned to them by the people, and to seek recreation in scampering across the Atlantic, under the pretext of conferring with the Home authorities on matters connected with the welfare of Canada. This, in certain important emergencies, may be highly necessary and advantageous; but we have an undoubted right to be satisfied that the individuals selected for such missions should be public men of ability and standing, and who possess the confidence of the people. The Hon. George Etienne Cartier is the statesman who has lately taken his departure for England as the delegate of this Province. I do not mean to detract from the personal reputation of this gentleman as a member of society, considered apart from his political position and character. But when the interests of this great Province are entrusted to any man, whether a member of the reigning Administration or not, the selection ought to be of a person possessing the highest qualifications for the task confided to

him, and whose antecedents are calculated to impress the Government to which he is accredited with the conviction that he is one whose nomination is acceptable to the people in whose name he acts.

Now sir, a short retrospect of Mr Cartier's political career will be amply sufficient to show that he is by no means the individual whom we should have fixed upon as our representative on this occasion. In the previous parliament he represented the county of Verchères in the neighbourhood of Montreal. He at that time filled the office of Secretary of the Province, and subsequently that of Attorney General for Lower Canada. I enter not into his fitness or unfitness for these offices, as it would be foreign to my present purpose. Mr. Cartier was a practising barrister resident in the city of Montreal. At the last general election he aspired to the representation of that city as the first commercial city of Canada; but of the six candidates who entered the arena, Mr. Cartier, with all the influence of his new position as twin-premier, was found to be the *lowest* in the estimation of the electors, who withheld their suffrages from him, preferring to bestow their confidence upon men of comparatively inferior note. Having been thus signally—indeed ignominiously for a Prime Minister—rejected by the electors of Montreal, he was constrained to fall back upon the rural and more humble constituency of Verchères, which had previously returned him as their representative. After a sharp contest, in which, it was said, every species of corruption was resorted to in his favor, he got elected by a majority of *thirty*! It will be remembered that at this time he occupied the office of Attorney General for Lower Canada, and the post of twin-premier for Canada in the Macdonald-Cartier administration, formed upon the retirement of Col. Taché (late Premier,) who complacently played into the hands of Mr. Cartier with a view to favor his promotion in the Government. His opponent at Verchères was a Mr. Préfontaine, a respectable *habitant* or farmer, but a man of little education and of no experience beyond the sphere of his humble homestead. Within the time prescribed by the recent statute, Mr. Préfontaine suc-

ceeded in serving a notice of contestation upon his Government opponent, after previous repeated attempts to this effect, in which, it is said, he was foiled by the dodging of the Minister to escape a trial. On the meeting of Parliament Mr. Préfontaine prosecuted his contestation, being apparently determined to make war upon Mr. Cartier's thirty votes, but was met by an objection taken by the latter to the recognizance, namely, that the jurisdiction of the officiating magistrate did not appear in the acknowledgment of the suretyship. The recognizance was declared insufficient, and Mr. Cartier retained his *thirty* votes and his seat in the House.

When responsible Government was conceded to Canada its reign was inaugurated under the auspices of LaFontaine and Baldwin, men of acknowledged ability, integrity, and patriotism, who would have scorned to retain their high position under such a sentence of ostracism as that so emphatically pronounced against the present premier. Every act of theirs, private and public, is a guarantee that they would have preferred an honorable retirement into private life, rather than owe their elevation to a merely nominal and fictitious majority of thirty *Esaus* who had bartered the interests of their country for a mess of pottage. The LaFontaine-Baldwin Government and every member of it, would have disdained to avail themselves of a paltry legal quibble to evade a scrutiny of *thirty* votes, and would have forthwith challenged the humble Cincinnatus of Verchères to meet them at Philippi, there to abide the issue of a fair and honorable contest. Not so the man who now presents himself on the vestibule of the Colonial office as the incarnation of the suffrages of the Canadian people—the premier of the Government of two millions of British subjects—a legal luminary with a tail of *thirty* votes, corruptly obtained over an humble tiller of the soil, who was filched of his right of contestation by a miserable objection utterly unworthy of the position of the man who had the meanness to resort to it.

The next phase in the political career of this statesman is recorded in the disgraceful shuffle for office lately perpetrated

under the sanction of Her Majesty's Representative, (who "deals fairly with all parties") by the wreck of a former Administration, which had been thoroughly routed and broken down at a recent general election upon a dissolution provoked by themselves, and who are now writhing under the lash of an indignant press and an outraged people.

The Governor General was well acquainted with the political antecedents of his Premier. He well knew that the "shuffle" which placed him at the head of the galvanized rehash of the Macdonald-Cartier Administration, was principally due to his inordinate aspirations, his overweening vanity, his narrow-minded policy, and his virgin innocence of all constitutional and statute law. This, however, is the statesman whom our "fair-dealing" Governor has despatched to the Imperial Government, charged with a mission which, however feasible and laudable in itself, His Excellency was blind enough not to see is designed as another "super-subtle" stratagem to out-manœuvre the member for Toronto, whose star, to their utter discomfiture, is now manifestly in the ascendant.

In any case it will be deemed an arrant piece of presumption in the present Government—master and crew—to have taken the initiative in a matter fraught with such important results to the people of Canada. If the assent of the Legislature and Government of this Province is to be given to a scheme for their federal or legislative union with the other British North American Provinces, it must be effected under the auspices of men possessing the confidence of the people, and not by the trickery of the charlatans of the hour, who shrunk from an appeal to their constituents, and are now banded together to cling to power, *par fas aut nefas*, and to the enjoyment of their forfeited offices. Their foolhardiness is the more reprehensible and offensive to the people of Canada in consequence of the re-election, by overwhelming majorities, of all the members of the Brown-Dorion Administration, in despite of the most strenuous efforts made in every county to defeat them by the Cartier-Macdonald party. It is impossible now to ignore

the fact that public opinion, in every county, town and hamlet in Canada, has "decerned" against the "shufflers" in unqualified terms. They possess neither sufficient influence nor daring to make any change in their beleaguered wigwam, lest the necessary resort to any one constituency of Canada should add another defeat to their previous disasters. When Napoleon placed the diadem of the Cæsars on the head of his infant son, he pronounced the significant warning: "*Gare qui la touche !*" Comparing great things with small, we have an illustration of a similar warning in this remote corner of the world in the inverse ratio of potentate and people. Dame rumour has tendered to an M.P.P. of the district of Quebec, the portfolio of the Provincial Secretary, in the room of a member of the Cabinet about to be otherwise disposed of, and it is said that after consultation with his constituents, he still hesitates to accept, or has positively declined the honor. The same authentic source points to another Representative from the same district as an aspirant for the same arduous charge, and a *pis aller* in this government dilemma; and he also is said to have felt the pulse of the people with the same blighting effect. But whether these reports be well or ill-founded, one thing is most certain, and altogether beyond the domain of Dame rumor, that as to this hapless portfolio, which has gone a-begging for two months, the universal voice of the district of Quebec among parties of every kind and hue, is, in the emphatic menace of the great Napoleon—"*Gare qui la touche !*"

THE JUDICATURE ACT,

AND THE NULLITY OF THE COURT OF QUEEN'S BENCH, L.C.

(*To the Editor of the Quebec Gazette.*)

QUEBEC, 22nd October, 1858.

Sir,—The system of Judicature lately inaugurated by the present Administration is being fully discussed among the profession and the public in a manner not to crown the "shufflers" with fresh laurels. Within a short time past we have heard it stated that some doubts have been raised touching the legal existence of the Court of Queen's Bench. Rumours of doubts upon a point of such grave importance must not, however, be permitted to continue. If they be really without foundation, they ought at once to be checked and eradicated. If they present themselves in such a shape to men of legal knowledge as to require deliberation, the attention of the constituted authorities ought to be drawn to the question without delay. Should they be found to shake the legality of that high and important Tribunal, a remedy—speedy and effectual—must be instantly resorted to, as the consequences which obviously flow from such a judicial dilemma are truly of a serious and appalling character. Let us at once, then, present to the public a brief synopsis of the Statutes creating that Court, in order to furnish the means of arriving at some correct conclusion in the matter.

STATUTES.

12 *Vic.*, *Cap.* 37.—(1849.)

(A.)

SEC. 2.—By the second section of this Statute it is enacted "That there shall be, and there is hereby established, in and for Lower Canada, a Court of Record, to be called 'the

Court of Queen's Bench,' and *to consist of four Judges*; that is to say, of a Chief Justice and three Puisné Judges, to be appointed from time to time," &c.

(B.)

SEC. 10.—Three Judges to form a quorum.

(C.)

SEC. 17.—Court to make a Tariff and Rules of Practice.

(D.)

SEC. 24.—Former Courts of Queen's Bench abolished, and "Court of Queen's Bench *hereby established*, and the Judges thereof to have original criminal jurisdiction throughout Lower Canada, and in the several Districts thereof, in like manner" as former Courts of Queen's Bench.

20 *Vic.*, *Cap.* 44.—(1857.)

(E.)

SEC. 6.—By the sixth section of this Act (in force by Proclamation from 24th November, 1857,) it is enacted that "so much of the second section of the Judicature Act of 1849, chapter 37, (vide *supra* A.,) *as limits the number* of Puisné Judges of the Court of Queen's Bench for Lower Canada to *three*, is hereby *repealed*, with the fourth section of the same Act; and in addition to the Chief Justice and *three* Puisné Judges mentioned in the said section, there *shall* be a *fourth* Puisné Judge of the said Court, to be appointed and qualified in like manner as the other Puisné Judges, and with like powers, duties and salaries."

(F.)

SEC. 8.—Tenth section Act of 1848 repealed, and quorum to be *four* instead of *three*.

(G.)

SEC. 15.—*Four* terms in appeal, and error established at Quebec; and *four* at Montreal in each year, instead of *two*.

(H.)

SEC. 18.—(Second clause):—When cause heard by *four* Judges only, and three not concurring in judgment, cause may be reheard, and when reheard, and the other Judge fifth) disqualified, Superior Court Judge may act.

(I.)

(Third clause quoted by reason of the terms used) :—" And the said section" (No. 3, Act of 1851 cap. 88) "So amended" (viz : by clause 2 of this section 18—vide *supra* H ;) " Shall be read as part of the said Act of 1851, which shall apply to the Court of Queen's Bench, *as hereby constituted*, and to the *five* Judges thereof."

(J.)

Sec. 21.—" The said Court in appeal and error, shall be a Court of error in criminal as well as in civil cases, and shall have jurisdiction in error in all criminal cases before the said Court, on the Crown side thereof," &c.

(K.)

Clauses 21 & 22, 26 to 28, 30 to 32, 60 to 62, and several others, make important changes in the jurisdiction and powers of the Queen's Bench, as constituted by the 20 Vic.

(L.)

Sec. 149.—" The provisions of this act, and those of the several acts therein referred to upon similar subjects, shall be construed with reference to each other, and as parts of the same law, and the 113th section of the judicature act of 1849, chapter 37 (vide *infra* M.) and all other provisions for the interpretation of that act shall extend to the interpretation of this act ; and the express repeal of particular provisions of former acts shall not be construed as continuing in force any other act inconsistent with this act, but any such provision shall be held to be repealed."

(M.)

(113 Sec., 12 Vic., cap. 37.)—" The interpretation act will apply to this act, and all the provisions thereof shall be liberally construed, so as best to promote the attainment of justice in every case, and no construction shall be deemed right which shall leave any provision thereof without effect," &c.

(N.)

Sec. 152,—5th Clause.—" And in like manner the coming into force of the whole or any part of this act, shall operate no change in the *local jurisdiction* of the Court of Queen's

Bench in and for any of the present districts, in the exercise of its original criminal jurisdiction, &c." : until the day which shall be named as that on which this act shall take full effect in criminal matters, in the first proclamation to be issued as mentioned in the fourth section of this act."

Such are the portions of the Statutes relating to the Court of Queen's Bench, which seem to bear upon its constitution.

It is said by those who impugn its legal existence, that in as much as the clause (sec. 2) of the statute of 1849, which enacted that this court should consist of *four* Judges, that is, of a Chief Justice and *three* Puisné Judges, is absolutely repealed by sec. 6 of the act of 1857, (supra E,) and that the same repealing clause enacts that there should be a *fourth* Puisné Judge appointed, the two statutes (being made parts of the same law, s. 149), are to be now read and interpreted as enacting in positive and distinct terms that the Court shall consist of *five* Judges, that is, of a Chief Justice and *four* Puisné Judges, and that therefore the Court cannot be legally constituted until the *fifth* Judge be appointed; precisely as if under the Act of 1849, *three* Judges only, instead of *four*, had been appointed, the Court of Queen's Bench created by that Act could have acquired no legal existence as a Court until the number of Judges directed by the Act had been duly appointed. Further, that this view of the Statute derives confirmation from the terms used in the 3rd clause of the 18th section (supra I,) which refers to the Court of Queen's Bench *as thereby established* and the *five* Judges thereof. Also, that the several sections of the same Act alluded to in paragraph K above, and which confer additional powers on the Court, are indications of the same intention, in as much as, on the supposition that these powers (some of which have in truth been already acted upon,) should remain in abeyance until the appointment of the fifth Judge, such a mass of confusion would be created as to place such a supposition entirely beyond the intention of the Legislature. It is further alleged that the clause 113 of the Act of 1849 (M. supra), which enacts that " all the provisions thereof should be liberally construed, so as best to promote the attainment of justice in

every case, and that no *construction* thereof should be deemed right which should leave any provision thereof without effect," and all the other interpretation clauses, which are loosely and raggedly drawn in and re-imbodied as so many safety-valves in the Act of 1857, afford no relief in the present dilemma, in as much as the legality of the existence of the Court itself is no question of "*construction*" of any one of the remedial provisions of the Act; and that the "provisions" mentioned in the said section 113 of the Act of 1849, have reference to the various enactments and "provisions" of the law as a remedial statute, when interpreted and about to be adjudicated upon by a Court duly and legally constituted, and have no bearing upon the question of the composition or constitution of the Court itself.

On the other hand, it must not be forgotten that we have a very formidable answer to all these objections in the fact, that the four honorable Judges appointed under the Act of 1849 have continued to exercise jurisdiction without the addition of the fifth Judge; and when it is considered that they have deservedly attained to eminence in the profession of the law, we have a strong presumption that they consider themselves to be in the full and undeniable possession of the powers and jurisdiction which they have continued to exercise. Nevertheless—amid the confusion caused by the incessant "tinkering" of the judicature system of Lower Canada for several years past—it is perfectly possible, that in the absence of their attention having been in any way called to such an objection, which naturally no one would anticipate or even dream of, a radical and serious defect in the constitution of the Court might remain unnoticed, without attaching blame to any one of those who administer its functions. We have had various innovations introduced, and proposed to be introduced into the system by men of high legal attainments and standing, which have considerably tended to enhance the proverbial uncertainty of the law. We have had the code Viger, the code Stuart, the code Lafontaine, the code Smith, the code Drummond, and last and assuredly least in excellence, the code Cartier;—and so in all probability the thing will wag until

we find a Ministry possessed of sufficient discernment to imitate the example of other countries in their mode of reforming their systems of judicature; and an Attorney General endowed with just as little egotism as will induce him to forego the empty and more than doubtful honor of transmitting his name to posterity on the back of a mere *brochure* in the form of a code of judicature, which never does, and in the nature of things never can survive his consulship. Let them have the wisdom and the patriotism once for all to appoint a Commission to examine into and consolidate the whole system, and put an end to these perpetual changes which only invest the innovator with an access of patronage dangerous to himself and colleagues, and which invariably tend to create a desire in the *new* man to overthrow the labor of his predecessor. No such feeling would exist in regard to a Commission composed of the ablest men in the profession. Their work would not be exposed to such damaging vicissitudes.

As the matter now stands, the more we seem to progress, the more in reality we retrograde. The old Judicature Act of 1794, and all the statutes of that day, were ably and elaborately drawn. Their vitality was not left to the caprice of any political empiric who chooses to pull the strings at his own convenient season in the shape of a Proclamation, for which we may rummage all the dusty corners of a lawyer's office without finding it, and which is not even to be seen in the Statute Book of the succeeding year;—thus leaving us without any reliable and ready means of ascertaining the birth-day of the bantling to which it imparts existence. There is scarcely a practitioner to be met with who will not declare that the old system, coupled with the excellent rules of practice of the late Chief Justice Sewell, were infinitely superior to all the voluminous and verbose enactments which have since overloaded the Statute Book. One thing is most certain, that the present Judicature Act, with its endless amendments of amendments, is daily and universally anathematized as the most incongruous and impracticable system with which any civilized country could be inflicted.

Now, sir, no one will rejoice more than the writer, if it can be shewn that the objections raised to the legal existence of

the Court of Queen's Bench are groundless—a consummation to be desired by every man who is capable of sinking all minor considerations in the welfare of his country and the honor of its Judiciary. For the mere mention of a doubt as to the legality of the acts of our highest criminal tribunal, under whose fiat some of our fellow men have been made to terminate their existence upon a scaffold, and despatched to a bourne beyond the reach of any declaratory Act, is of itself calculated to do infinite mischief, and imperatively demands that the veriest rumor of such a fatality should be instantly and effectually brushed away. Were the Court originally duly constituted, the acts of a Red Indian openly and publicly sitting as a member of it without commission or authority, might be held to be good; but can the principle of the judge *de facto* be made applicable to the case of a whole court not originally legally constituted? It is said *judicis est ampliare jurisdictionem*; but although *all* jurisdiction is said to have been originally a usurpation, no maxim has been handed down to us to shew that he can improvise a jurisdiction, or invest himself with the function of exercising it without express authority.

It is to be hoped that some members of the profession, whose learning and experience qualify them for the task, will devote a small portion of their time to the study and elucidation of this question. Should there be a failure to shew to the satisfaction of men versed in these matters, that the strictures thus offered to the public are without the shadow of a foundation, and that there really exist some grounds for disquietude in the public mind, the first and obvious course is for the Governor General, who represents the fountain of justice in this Province to require a full report on the subject for the use of the public, at the hands of his law officers—the Attorney General for Upper Canada, and the Solicitor General for Lower Canada —the only legal advisers within his reach at the moment; for the other two are now—one, the author of the evil, if such it be found to be, dancing attendance at the Colonial Office, on a mission foreign to the duties of his office, and the other—not yet *in esse*. This is not a point on which there need be

any shuffling as between Upper and Lower Canada. It is simply a question of the interpretation of a statute, which the Attornev General for Upper Canada ought to be, and we believe, is as capable of solving as any jurist of Lower Canada. Such a course will not impose any embarrassing task upon Sir Edmund Head who, it is said, claims to be somewhat versed in the *apices juris* as an English Barrister, and is in all probability quite competent to investigate and determine the question himself. It is really too serious a subject to be made the sport of political antagonism, or to be charged upon his Excellency in addition to the long catalogue of responsibilities which now gravitate so heavily upon his vicarious shoulders. His newly-fledged premier is alone answerable for the delinquency.

Should the views above enunciated on the present constitution of the Court of Queen's Bench be found to be just, it is manifest that important consequences must flow from them in a political point of view, which may form the subject of future comment.

PUBLIC DINNERS AND DEJEUNERS.

IS THE HEALTH OF THE GOVERNOR GENERAL A POLITICAL TOAST?

(*To the Editor of the Quebec Gazette.*)

QUEBEC, 1st November, 1858.

SIR,—In all the dependencies of the Crown it has been almost the invariable custom at public dinners and *réunions* of that nature to toast the health of the person administering the Government, as being the representative of the Sovereign, without reference to distinction of party; and this very commendable practice has prevailed even in the colonies enjoying free institutions, notwithstanding the necessary existence therein of two or more political antagonistic parties, some of them more or less at war with the colonial authorities. This custom has obtained on the very laudable ground that at the social board all allusions to politics are very properly and by necessity deemed not orthodox, and the toast has thus always been considered as non-committal, and as a mere expression of loyalty to the Sovereign, conveyed through the person of her *locum tenens*. The Queen of England, "upon whose dominions the sun never sets," has always exhibited an example of queenly propriety and constitutional forbearance, in respect of all party movements, which some of her petty Lieutenants would do well to imitate. Charles the First lost his head in consequence of his arbitrary rule and his lending himself to the machinations of party and of the "strategists" of the day. The lesson has not been lost upon his successors. The respect usually paid to the Queen's vice-gerent on all public occasions is essentially based upon the co-relative obligation of

non-interference in local dissensions. But if the head of the Government, forgetting his high position and his oath of office, descend into the arena of party strife, and make common cause with either of the belligerents against the other, he forfeits his title to respect as an impartial Representative of royalty, and the rule usually observed in this behalf is necessarily abrogated. When a person of distinction comes amongst us, like the immortal defender of Kars, whose valor and noble conduct as a British General his very enemies delighted to honor, and that the inhabitants of any city are desirous of giving him a hearty welcome, as a token of the high admiration in which he is deservedly held, everything ought to be done which is calculated to unite all parties in the common object, so as to make the demonstration as general as possible, and therefore the more acceptable to the object of it. In such *impromptu réunions*, which partake rather of a private and personal than of a public character, a long and labored list of toasts is quite uncalled for, and they ought to be restricted to that of our gracious Queen and the honored guest of the occasion. Parading "*Prince Albert and the rest of the Royal Family*," "*the Army and Navy*," *and the* "*Governor General*," before you reach the toast of the evening, is an unnecessary waste of time, and mere superfluous *bosh*, designed for a particular end. Now, sir, His Excellency Sir Edmund Head has lowered himself to the standard of a political partisan, and to such a degree that the friendly *Times* was constrained to remind him of the old adage, which has almost fallen into desuetude, that "honesty is the best policy." This is the opinion of every citizen of Quebec and of every inhabitant of Canada whose judgment is worth a straw in the matter. In the anomalous position of the Governor General with reference to the part he has lately played, it is obvious that his Health as a toast is, at the present moment, most decidedly a *political* one, and ought not to be offered at all, unless on some very great occasion, such as a banquet to celebrate some signal victory, or the completion of some great national or provincial undertaking like the Grand Trunk Railway of Canada, when its omission, as respects loyalty to the Queen, might imply a negative

pregnant. It ought not assuredly to have been surreptitiously introduced at the recent entertainment to General Williams, as it necessarily merged into an expression of political opinion. Should any individual whose notions are more orthodox than *exaltés* on these matters, find himself accidentally present when an objectionable toast of this nature is offered, he will probably rise to it, and, however reluctantly, will go through the formality of drinking to it, so as not to interrupt the general harmony, and thereby defeat the main object in view. But no one ought to be forced into such a predicament. With respect to the demonstration in honor of General Williams, I feel assured that there was not a dissentient voice in the whole community as to the propriety of this public testimonial to a gallant and meritorious soldier; but I feel equally assured that there were many who abstained from attending it under a well grounded apprehension that certain doings "above," would be aped in Quebec, and that they would be driven to the alternative either of seemingly toadying Sir Edmund Head, whose conduct they most unequivocally condemn, or of expressing their dissent in such a manner as to give pain to their honored guest, and thereby rudely to disturb the conviviality and unanimity which ought ever to prevail on such occasions. Mr. Mayor Langevin took an undue advantage of his position to preach up the Governor General in the interest of a party. In his seat in the House of Assembly he showed himself the obsequious tool of the members of a discomfited Administration, in moving a vote of want of confidence in the members of the Brown-Dorion Government before the ink was dry on their parchments, in order to favor the resurrection of the Macdonald-Cartier Cabinet and of their followers, who one and all, dared not encounter the ordeal of an appeal to their constituents. The glittering bauble of a portfolio, with the concomitant title of *honorable*, was the bait held out to induce him to sink the independence of his constituency, in upholding the eliminated "strategists."—It is said, however, that a certain M.P. from the lower part of this district, another auxiliary "shuffler," is about to walk away with the prize, as being eminently qualified, by his attainments and his ad-

ministrative capacity and experience, to fulfil the duties of a minister of the Crown. His Worship the Mayor would do well to abstain for the future from playing such a false game and compromising the political character and the honor of the citizens of Quebec. They will probably not tolerate the repetition of such a piece of impertinence. If again attempted he may expect that some will cut the Gordian Knot, and make their appearance for the express purpose of counteracting such a shallow "chisel," and assert their right to approve or disapprove in an unmistakeable manner,—a most unpleasant recourse which they certainly do not covet, but which they may find themselves forced to adopt. The toast of the Governor General and of his beleaguered Cabinet are convertible terms and essentially partizan in their character and object, and will assuredly continue to be stigmatized as such, so long as Sir Edmund Head encumbers the soil of Canada.

THE

RECENT MASS MEETING IN QUEBEC,

AND THE TRUTHFUL MINISTERIAL ORGANS.

(*To the Editor of the Quebec Gazette.*)

QUEBEC, 13th December, 1858.

SIR,—"Accuracy" is a virtue for which public journalists in general do not conceive themselves particularly answerable. "All is grist that comes to their mill!" Their province is to cater for their readers, and impart to them the various *on dits* which may be in circulation respecting public matters. They certainly occasionally make broad assertions, but even then it must be presumed that they are made, or hazarded in good faith, that is, on the supposition that they *may be* true. Sometimes however, a statement of fact is put forth under such circumstances as to render it almost impossible to believe that the maker has not some twinging doubt as to its truth. Of this character is an assertion recently made in the "Morning Chronicle" of this city,—*that once respectable journal*, as itself designates the "Montreal Herald," viz.: "that the writer knew persons who were present at the recent mass meeting in Quebec, and that he was assured *that there were not present at that meeting, at any one time, more than one thousand persons!* Now, sir, the public in general pay little attention to the discrepancies between editors as to matters of fact, especially touching the numbers present at public meetings; and in reality the importance of the occasion and the interest which it creates, depend more upon the cause and the object of the meeting, and the justice of its conclusions, than upon the numbers actually present. But really one cannot help being amazed

at an assertion like the above, published in the heart of this city, where the occurrence took place but a week before. The cause of truth as well as of charity to the person duped, entirely apart from the importance or unimportance of the fact itself, require that a correction should be given, when that is possible. Here is the certificate of the keeper of the Jacques Cartier Hall, translated from the original now in your possession.

Quebec, 10th December, 1858.

" Having been requested by several persons to state the number present at the meeting in the Jacques Cartier Hall, on Wednesday the 1st December, instant, I certify that there were at least three thousand. I have been the keeper of the Hall since it was opened. I am convinced that I am not mistaken in the number, because during last summer there was an examination in the Hall of the scholars of the Frères Chrétiens school, on which occasion I issued 863 tickets of admission for three persons each ticket, all of which were delivered in on the day of the examination, making 2,589 persons. The Christian Brothers themselves gave tickets to several families, numbering at the least two hundred persons more, thus amounting altogether to *two thousand seven hundred and eighty-nine persons*, and the Hall was not so full as it was at the meeting of Wednesday, 1st December. It could contain [illegible]ndred more on the occasion of the examination of the F[illegible]hrétiens School.

(Signed,)

OL. BIGAOUETTE.

The above establishes conclusively in the judgment of every reasonable man that there were *at the very lowest calculation three thousand persons present.* Moreover, there were many present who were so struck with the imposing appearance of the vast multitude that they went through the process of counting them in the best way in which that always difficult operation could be accomplished.—The hall, by its formation and division, afforded considerable facilities for ascertaining, ap-

proximately, the number present. We all concurred in opinion that there were at least three thousand there, viz :—

In the two side galleries, and in that fronting the stage	800
In the corresponding spaces below the galleries where the people were much more thickly crowded	1000
In the entire body of the hall, where they were so densely pressed as to render it difficult to count them (some say 2000)	1500
In and around the stage	150
In all	3450

Now, sir, if the writer of the assertion in question knows one single individual who was present, and whose word is worth a straw, who will publicly aver that there were not more than *one thousand persons present*, let him "trot him out," or bear the imputation of having gratuitously and maliciously made a statement which will not bear daylight.

As to its having been an "utter failure," it is of course a matter of honest opinion ; but the man who makes such an assertion in this community, where the meeting in question is universally known to have been the greatest triumph of the kind during the last quarter of a century, must be exceedingly credulous, or he must be the "*vrai valet du diable.*"

The Toronto organ of the reigning shufflers has the effrontery to tell his readers that the meeting consisted of "manufacturers" and "hungry men out of employment and asking for work and alms, (*manufacturers and alms seekers*!!") When Charles the Second reproached his poet-laureate with the excellence of the verses made by him in praise of Cromwell, he replied, "Poets succeed best in fiction." The paid hireling of the Leader adopts the same principle in politics. When we see the public journalists of Quebec give extended publicity to the lying calumnies of the opposition organs of Toronto, which invariably asperse the character and undervalue the

rights of the people of Quebec, upon whose industry these Quebec slanderers fatten, we are reminded of the caricature of General Jackson, who rides upon a Jackass, and Van Buren, who walks behind him, stepping in the footprints of the quadruped, and exclaiming, like the "Quebec Chronicle," "I tread in the footsteps of my illustrious predecessor!" The conduct and demeanour of the immense multitude present at the meeting of the 1st December was most orderly and respectable, and the harmony uninterrupted, save by the deafening shouts of applause with which the speakers were repeatedly greeted, and the loud and reiterated groans and hisses with which the names and acts of all and every the *dramatis personæ* of the late ministerial juggle were invariably hailed.

RUMORS OF A CHANGE OF GOVERNMENT

AND OF A DISSOLUTION.

To the Editor of the Quebec Gazette.

QUEBEC, 18th December, 1858.

Sir,—Dame rumor is now very busy with certain great changes about to take place in the Government. Messrs. Cartier, Macdonald, Smith and Alleyn are about to be shelved and their places filled up by a new batch of aspirants. Certain individuals among the Brown-Dorion party are indicated as the forthcoming incumbents. Mr. Sicotte, Commissioner of Public Works, is to construct the new ministerial edifice. He is the Deucalion who is to cast about the bones of the discarded "shufflers," in order to create a new race of conspirators who will secure to Governor Head his salary of £7,777 for a few months longer. All which rumors were floating about two months ago, with as much probability then as now.—Another *on dit*, however, is going the rounds, which though highly improbable, must not be suffered to pass without notice;—that is, that Sir Edmund Head is to accommodate the new comers with a dissolution. Now, there is no great harm in the spread of reports of change in the *personnel* of the present Administration. They are believed to be ready to betray each other on the first opportunity. They know that they stand lower in public estimation than any Government on record.—They are continually designated as a band of shufflers and tricksters; and it seems as if nothing could redeem the pack from the thousand and one opprobrious epithets which are daily applied to them by friend and foe.—That any one of the Brown-Dorion party should be such a nincom as to entertain any such overture for a moment, is a calumny which it may please the lacquey followers of the present tot-

tering Administration to disseminate, but which no man of any knowledge of human nature, or sense of honor, would credit for an instant, for two obvious reasons:—because it would affix such a stigma upon the man who would thus betray his party while engaged in a life and death struggle for the very existence of the constitution, as would eternally disgrace him in the estimation of every honest man; and because his accession to the new Government would be the mere acquisition of a lifeless trunk, denuded—*ipso facto*—of every vestige of political influence, and the object of universal contempt. There is not a single member of the late Brown-Dorion Cabinet, who would not act as men of honor would be expected to do in such an emergency, and who would not indignantly spurn any such insulting offer; and there is not to be found one solitary individual in the large and influential party who sustain them in the present crisis who does not give them the fullest credit for such honorable intentions.

The rumor as to a dissolution being accorded to any such new combination, acting antagonistically to the Brown-Dorion party, affords a practical illustration of their opinion of Sir Edmund Head's statesmanship, and of the low estimate in which he is held by his own friends and partizans.—*They* ought to be the first to denounce such an idea and to shield him from its damning consequences. However unconstitutionally and rashly he has acted in sustaining the Macdonald-Cartier cabinet;—however much he may be implicated in the conspiracy to call the Brown party to power with a view to cheat or "chisel" them out of their places in Parliament;—whatever obloquy may attach to his name for having had recourse to the impudent mockery of entrusting the formation of a Government to a member without any followers in or out of the House, a refugee from the opposition ranks who chose that seat in the body of the House which would best indicate his ductility in respect of party combinations—a *sinon in utrumque paratus*, determined to side with Trojan or Tyrian, according to circumstances, without the dread alternative of certain death which awaited the treachery of his less culpable prototype;—whatever amount of contempt may be entertain-

ed towards Sir Edmund Head for having essayed this shallow and disreputable ruse with a view to mask his "aboriginal" design to recall to his councils the *Macdonald-Cartier* faction, after having been metamorphosed into the more important and euphonic title of the *Cartier-Macdonald* administration;—however low he may have sunk in the opinion of all virtuous men by his connivance at the desecration of an oath at which he performed the dignified part of quasi-suborner, preparatory to the enacting of the disgraceful shuffle by which the Commons House of Assembly were bearded in full session, their privileges trodden under foot and the people of Canada filched of their dearest rights;—however dark and dense the cloud of iniquities which overshadow the closing days of the odious domination of the present Governor General in British America, we—his open and declared opponents, who have sworn eternal enmity to his reign,—do not believe that he could be guilty of such an outrage, not because we think there is no one among the miserable clique by which he is now surrounded who would venture to counsel a dissolution, could they escape scatheless from its consequences, but simply because we apprehend that Sir Edmund Head would not dare to perpetrate this culminating act of treason to his Sovereign, and treachery to the people of Canada.

One of two things;—either the Governor General was a concerting party to the first resignation of the Macdonald-Cartier Ministry designed as a stratagem to produce the consequences which must naturally have been expected to flow from it, and which did in fact flow from it,—in which case the hardest terms in our language are inadequate sufficiently to characterize the turpitude of his act; or he was no party to the plot—which view of the case the divine principles of charity command us to assume as the true one.—Then, upon the latter assumption, the friends for whose benefit he afterwards made shipwreck of his reputation, must have wickedly placed him in that dilemma, in order—for their own selfish ends, to drive him to summon Mr. Brown to his rescue,—an opponent whom they had plotted to destroy afterwards by the aid of a few little tools whom they had at their command, and

who were ready for any dirty work,—assisted by a few damaged followers who had escaped expulsion by legal quibbles, ministerial influence and strategy, and—"by the skin of their teeth!" and a few others who were the incarnation of every species of election fraud and of United States City Directors,—all foisted upon the floor of Parliament as a worthy phalanx to sustain a ministry of congenial birth and origin. The Governor General—having either as accomplice or victim—commanded Mr. Brown, in the name of his Royal Mistress, to assist him in administering her government in this Province, he was bound by that act, and by all the rules of honor and common justice, frankly and magnanimously to stand by him and his colleagues, and to afford them every constitutional remedy in his power to enable them to make good their position, and to shield himself from the many damaging imputations upon his fair dealing which were rife in Toronto during the crisis. By an adverse vote of the House moved by a willing instrument of the self-stultified cabinet, and carried by the votes of his fellow serfs, the Brown-Dorion Ministry were driven to resign and to demand a dissolution, which the Governor General peremptorily refused. It is now rumoured that it is to be accorded to their opponents!!

It is but simple justice to the Governor General to say that we attach no credit to this report, and that we may be combating a phantom of the creation of which he is entirely guiltless. He cannot, however, and ought not to take umbrage at our pointing out, even hypothetically, the iniquity of such an act, and the grave consequences which must necessarily flow from it.—*Forewarned—Forearmed!* Twelve months have not elapsed since he afforded to the same party the *benefit* of a dissolution, which eventuated in the total overthrow of the Upper Canada branch of the Government, and the moral defeat and political extinction of the Twin-Premier for Lower Canada; while five members of the then preceding Administration for Lower Canada, whom Sir Edmund Head and the Cartier-Sicotte clique had schemed to eliminate, were all re-elected by overwhelming majorities.

In the existing state of affairs we would ask—is there seriously a man *in* the Government or *out* of the Government who would dare to counsel the Governor General thus to "eat his own words," and to decree a dissolution for the same reasons, so to speak, upon which he had so recently refused it. It would be well before resorting to such an insane course to reflect upon its natural consequences. The Canadian people of both sections have already been the victims of misrule and the arbitrary domination of the minions of Downing street. Goaded to distraction by the repeated and not unfrequently insolent denegation of redress, they raised the standard of revolt and appealed to the arbitrament of the sword, in which they succumbed; but as a result of the insurrection, they obtained the absolute concession of constitutional government to be administered without the interference of Downing street or its cringing adherents in Canada,—a right which they indubitably previously possessed by virtue of the constitution, but which had always been unacknowledged in practice. The revolt or insurrection was put down; nevertheless calm, impartial history records that the *victory* was to the *vanquished*, and its fruits to the people of Canada, who will not now suffer the boon to be wrested from them, or its advantages to be impaired by any man, however high his position, nor by any "shuffler," however artfully he may skulk behind the scenes to conceal his individual responsibility. Let the Governor and each of his abettors beware how they or any of them abuse the authority and the privileges which the Sovereign on the one hand, and the constitution on the other have conferred upon them. Should they wilfully and corruptly violate the constitution and frustrate its honest and impartial working by means of a dissolution at the present crisis, the government of England and the people of Canada must hold them, each in his proper sphere, responsible for the act. Culprits of this stamp in other countries have been made to answer for their crimes by bringing their heads to the block, whenever the moral and constitutional guillotine of outraged public opinion failed to prove effectual. We tell them now, in order that they may be fully warned, that if any such nefa-

rious course is resorted to, the consequences may be disastrous to the peace of this country. There is a limit to all human powers of endurance.

If the inhabitants of this country should again be driven to the *ultima ratio*—the last redress of an insulted people and a constitution trodden under foot by those who are deputed hither to uphold it—the effect may be damaging to British rule on this continent. In the event of such an untoward contingency, there will never again be heard the opprobrious designations of "rebel," or "rebellion," nor a charge of treason against any one. These odious epithets will then have merged into other terms more conclusive and definite in their acceptation and results. History will record the whole affair under another name. Every loyal British subject, however, hopes that the day is far distant when the Canadian people will resort to such an alternative, or that that "gun is to be fired by a French Canadian which is to give the last echo of British dominion in North America," according to the celebrated dictum of that great prophet in his own country, Sir E. P. Taché.—Canada—as a constitutionally governed country —is the first and most important dependency of the British Crown. The Canadians are loyal from principle, loyal from a feeling of self-preservation, and loyal from a just appreciation of the sum of liberty they enjoy under the standard of Queen Victoria, but they will claim the full rights of British subjects as long as it continues to wave over them. Neither English nor French have the remotest desire to barter their freedom for the present degrading thraldom of "Imperial France," or the tyranny of the rabble sovereignties of Columbia. The retention of Canada is the retention of that great seat of empire in the vista which is larger than the whole of Europe, and which is now warmly engaging the public mind on both sides of the Atlantic, and the rights and the attachments of its people are not to be trifled with. While the distinguished nobleman who endeared himself to the Canadian people by his amiability, and his honest, inflexible regard for their rights and liberties, is extending the dominion of England and the sphere of European civilisation in the East :—

while the Earl of Elgin, for many years the constitutional Governor of Canada, is opening the vast empire of China to the commerce of the world,—the Queen's sceptre in British America must not be confided to men who pander to tricksters in order to secure a living and hoard a competency, at the expense of the justice and the honor of the Crown. The Queen's advisers have within their reach both noblemen and commoners of high standing, ability and independence of character, who are fitted to rule the destinies of a great country. By the treatment which Canada will now receive at the hands of the Metropolitan authorities will she stand as an honored British Dependency,—or writhe under a yoke. The other colonies, upon which free institutions and responsible Government have been engrafted, as well as those which look forward to those inestimable privileges, will be guided by the same beacon, and will either rejoice in the connexion, or sicken at the prospect of their future political humiliating condition. Let the colonial minister and his colleagues, whether they be Tory, Whig or Radical, look well to the key of the Queen's colonial empire in America. Let there be but one false step and away the whole fabric vanishes like a dissolving view, and nought remains but another historical illustration of the fate of Spain and Portugal. The reins of Government in the most advanced colony of the empire —the sheet anchor of English supremacy in North America, must not be entrusted to third-rate men. Their obscure baronets and Poor Law Commissioners must be disposed of amongst inferior commands. We will have no more pauper Governors in Canada. The times are too critical to risk the great interests of the nation by the promotion of mediocre or impracticable men through favoritism, or the stupid routine of a colonial roster. The advent of Sir Edmund Head to Canada was heralded by an unfavorable prestige derived from his nomination, as it was said, of a Chief Justice in New Brunswick against the opinion of his whole council. Had the colonial minister of the day been up to his duty, and had he known how to respect the rights of colonists in full possession of Responsible Government, he would have advised his Sovereign to present

a "ticket of leave" to the new functionary, and to offer her refractory Lieutenant an appointment in a Crown Colony where dictation must be tolerated, and the "smallest favors are thankfully received." In the case of Canada Her Majesty's present Secretary for the Colonies, if he conscientiously desire the prosperity of the North American Provinces, and the stability of Queen Victoria's authority in her ultra-oceanic possessions, will carefully peruse the book of the history of the last six months in this Province, and coolly and impartially reflect thereon, and if after that he deem it for the interest and the honor of his Sovereign to prolong the incumbency of Sir Edmund Head in this portion of her dominions, we can only say that we shall be greatly and painfully disappointed in the character and tact of Sir Edward Lytton Bulwer.

RUMORS OF A MINISTERIAL POLICY

ON THE QUESTION OF THE SEAT OF GOVERNMENT.

(*To the Editor of the Quebec Gazette.*)

QUEBEC, 28th December, 1858.

Sir,—The political world of Canada is almost at a stand-still. After a storm has come a calm. The resuscitated Government, upheld by the resurrectionist-in-chief and *his* constitution, still clings to the wreck in which it last foundered. The Premier, flattered by "Windsor Castle," struts his hour with all the arrogance of a *coq d'Inde*, and drives the ministerial coach with the recklessness of a ruined black-leg. Condemned by the people of Canada, and by the press of the United Kingdom, he consoles himself by telling over his rosary of *thirty* beads, presented to him by Queen Victoria, with the thirty letters of *Christophe Préfontaine, Verchères*, engraved upon them, in commemoration of the signal victory obtained by him over that opponent, and of the wonderful dodges by which he evaded any further engagement with him.—The blow aimed by the present administration at the constitution has recoiled upon their own heads. They have been reeling to and fro in search of a policy, and are now reputed to have found one on the question of the Seat of Government; and the very air is rife with rumors of dissensions in the wigwam on this point. They are to steal a plank from the reported platform of the Brown-Dorion party, and to establish the Seat of Government permanently in the midst of that blind and ungrateful constituency which ejected the premier at the last general election, and sent him away to beg, borrow, or steal *thirty* votes in the rural and humble constituency of Verchères, notwithstanding his brilliant promise to the "Free and Independent Electors of Montreal, the Commercial Metropolis of

Canada," that he would expend another sum of £100,000 of the monies of the Province in shifting, periodically, the mud and sand banks of Lake St. Peter, with a view—in despite (like his every other act) of the fiat of nature—to make Montreal the terminus of ocean, or "*salt water*," navigation. That was a great electioneering policy, and not so corrupt, by half, as many of the schemes and projects of the same man ; but the constituents whom it was designed to entrap, saw through the trick, and rejected the trickster. Now that the Victoria Bridge is about to add to the glory of Montreal by rendering it *impregnable*—"Windsor Castle" has no objections to retrieve his fallen fortunes by coming back to his first love ; but he will not accept the dictation of the Commissioner of Public Works, who, on his part, is too vain to follow the leadership of Mr. Cartier.

It behoves the members for the District of Quebec, and indeed all others who desire that the Seat of Government should be fixed in that place which is the best for the welfare, present and future, of the Province at large, and who have enough of honesty and manliness to express what they think —to pause and reflect upon the means by which the Government intend to accomplish their daring project. These are—first : by the votes of the ministerialists of Upper Canada ; secondly, by the votes of Upper Canada opposition members, to whom the choice of Montreal or Quebec (for that is the real question), is a matter of indifference, and who may be expected to be gained over ; thirdly, by the votes of the Ministerialists of the district of Montreal, as well as those of the Opposition members, who are expected to abandon every principle and to betray their party in order to deify Cartier ; and lastly, by the votes of the ministerial supporters *from the District of Quebec*,"—some of whom have already given proof of their subserviency, and who are all expected to sell their constituencies, in order to maintain that man in power, who has surreptitiously worked his way to the premiership of Canada in defiance of public opinion, and in utter contempt of every principle by which a right-minded statesman ought to be governed, and who, moreover, has betrayed a strong de-

sire, had he the power, to rob Quebec of the eminent advantages which nature has bestowed upon it, as the chief seaport of Canada,—by sinking the monies of the inhabitants of this district in Lake St. Peter ; and who, moreover, has on every occasion exerted his influence to undervalue and degrade the district of Quebec and insult its people. The M.P.P.'s of this district who, if true to their mandates and their personal honor, ought to be unanimous on the question of the Seat of Government, and to stand out manfully for the maintenance of the rights of their constituents, are :—*Alleyn*, Quebec City; *Baby*, Rimouski ; Cauchon, Montmorency ; *Chapais*, Kamouraska ; *Cimon*, Charlevoix ; *Dionne*, Temiscouata ; Drummond, Lotbinière ; Dubord, Quebec City ; *Fortier*, Bellechasse ; *Fournier*, L'Islet; *Beaubien*, Montmagny : Hébert, Megantic ; *Langevin*, Dorchester ; *LeBouthillier*, Gaspé ; Lemieux, Levi ; *Meagher*, Bonaventure ; *Panet*, Quebec County ; *Price*, Chicoutimi and Saguenay ; Ross, Beauce ; Simard, Quebec City ; and Thibaudeau, Portneuf. The members italicised (*thirteen* out of *twenty-one*) are those who, while they are known heartily to detest their premier of the *thirty* unscrutinised votes, as well as his measures and his repulsive manners, are yet expected to submit in silence to his dictation and his caprice. *Expected*, I say, because, God forbid we should attribute to all these gentlemen any settled design to betray their trusts in order to gratify the ambition and the presumption of one man ; who—sustained for a time by unconstitutional means, obstinately persists in leading the Government of Canada, (notwithstanding its most emphatic condemnation of him, his policy, and his acts,) like unto a rusty, distorted, mutilated weather-cock perched on a church steeple, and perversely indicating the wind as blowing from one quarter, while the whole world is sensible that it blows from the opposite point of the compass.

Should it appear that Cartier & Co. are seriously bent upon the scheme in question, it would be well if all the constituencies of the District of Quebec would address a peremptory injunction to their representatives to oppose to the death a measure so hostile to their just expectations.—The project of fixing

the Seat of Go ernment *at this particular moment* in Montreal, is a most audacious attempt to forestall the result of future events, in as much as the Union of the North American Provinces is rapidly advancing to its consummation under the auspices of the very men who are now said to be plotting to precipitate a decision in favor of Montreal, foreseeing that in such a conjuncture Quebec, by the common desire and for the general interest of all the Provinces, must inevitably be the Seat of Government. They expect that by a resort to the same barefaced corruption which accomplished the infamous Beauharnois Canal job they will carry Montreal for the Seat of Government of Canada, and that, like the Canal, it cannot afterwards be changed as the Seat of Government of the United Provinces, in contempt of the opinions and the wishes of the great majority of their inhabitants. Corruption stalks abroad in open day with all the unblushing effrontery of a harlot, and the question with respect to any public measure of general or local interest, affecting our political rights as a people, or our special rights as citizens, or with respect to the fitness or unfitness of any individual to fill the elective offices of member of Parliament, Mayor or Councillor, is not whether, on the one hand, the measure be desirable, beneficial, honest, wise, and patriotic, and the individuals in question the most eligible for these public trusts ; or whether on the other hand, the measure in question be a compound of rascality and selfishness, designed by a knave for some nefarious purpose, or the candidate a notorious impostor scheming for his own private interest and ambition ; but the sole question ever is—can such measure be successfully accomplished or the election of such a man secured—*per fas aut nefas* ?

Canada—one would imagine—must ever be the sport of tricksters. The advantages of Responsible Government were withheld for years from the Canadians, through the knavery and the falsehoods of officials and the family compact. One-seventh of the public lands were set apart to perpetuate sectarianism and intolerance, and the dominancy of one class of religionists over all the others by the same corrupt means, and subsequently three-fourths of their proceeds

were squandered among Upper Canada Municipalities for the sake of popularity, thus recognizing a separate Crown domain for each Section in a United Province, and completing a double act of spoliation in respect of Lower Canada. The Canadian Trade act was another instance of the same system of imposture. The Union was consummated through fraud and treachery, and within late years a clause inserted with an intention to maintain equality in number of representatives between the two Provinces, was repealed upon the suggestion of some backstair knave, without the consent or even the knowledge of the people of Canada. Responsible Government, though fully acknowledged in 1841, was afterwards attempted to be wrested from the people by hollow-vacillating whigs and metropolitan emissaries and spies. Again, in 1858 the British Constitution, after having been unqualifiedly observed in practice since the Union, is set at naught and contemptuously trodden under foot, while the traitors are said to be sustained by the Crown, and some of them are entertained at Windsor Castle as persons whom the "Queen delighteth to honor." And now a question deeply involving the welfare of all the inhabitants of Canada, and pregnant with grave consequences to the security of all the British North American Provinces, and to British supremacy in this portion of the American continent, is to be disposed of by a resort to the same smuggling—dishonest system, notwithstanding the solemn pledge of the present Government, that no move should be made by them in this matter without obtaining first a fair and unbiassed opinion from the Legislative Assembly on the subject. How long is this system of successive rascalities to last ?

THE PENAL PROSECUTIONS

AGAINST MINISTERS.

MACDONNELL *VS.* VANKOUGHNET.

(*To the Editor of the Quebec Gazette.*)

QUEBEC, 26th January, 1859.

Sir,—On the 10th June, 1857, the Legislature of Canada passed a statute intituled, "*An Act further to secure the Independence of Parliament.*" Clause *two* disqualifies certain public functionaries and officers from voting at elections of members of the Legislative Council and Assembly. Clause *three* renders ineligible as such, all persons holding offices of emolument at the nomination of the Crown.—Provision *one* of this clause exempts from its operation members of the Executive Council, and certain public officers, of whom the President of Committees of the Executive Council is one—provided they be elected while holding such offices, and be not otherwise disqualified. Clause *six* declares that any person disqualified from voting in the Legislative Council or Assembly, presuming to sit or vote therein, shall forfeit £500 for each day he sits or votes. Clause *seven* provides that, "whenever any person holding the office of Receiver General, Inspector General, Secretary of the Province, Commissioner of Crown Lands, Attorney General, Solicitor General, Commissioner of Public Works, Speaker of the Legislative Council, *President of Committees of the Executive Council*, Minister of Agriculture, or Postmaster General, and being at the same time a member of the Legislative Assembly, or an elected member of the Legislative Council, shall resign his office, and within

one month after his resignation accept any other of the said offices, he shall not thereby vacate his seat in the said Assembly or Council."

The Defendant, on the 29th July, 1858, then being a member of the Legislative Council, resigned his office of President of Committees of the Executive Council, which he held at the time of his election. On the 6th of August following, he accepted the office of Commissioner of Crown Lands, deeming himself exempt from re-election by virtue of the said 7th clause. He was prosecuted for the recovery of the forfeiture of £500, charged to have been incurred under the 6th clause, by reason of his sitting and voting in the Legislative Council after his acceptance of his second office. The legal proposition involved in this case is a very simple one. The Defendant was elected while holding one of the enumerated offices. On the 29th July—still holding the same office—he resigned it, and within one month accepted another of the said offices. Up to the period of his resignation of his first office, he continued *bona fide* (it must be so presumed,) to fill that office and to exercise the functions attached to it. When, on the 6th of August, he accepted another of the said offices, that act of acceptance is not impugned upon the ground of fraud or collusion, and it must therefore be presumed to have been made in good faith and with the full intention of discharging the duties belonging to the office. It seems to have been admitted on both sides that he has continued to occupy that office, and there is no allegation or suggestion of any act on his part, subsequent to his acceptance, of a nature to shake the good faith of that act. The case of each Defendant on these penal prosecutions must stand or fall on its own merits. The guilt of one Defendant cannot be aggravated, nor—if defective—can it be rendered complete by reason of his supposed complicity with his colleagues, in perpetrating what is called the double "shuffle." He was not prosecuted before a Criminal Court, as he and his colleagues and the Governor General might, and ought to have been, for a conspiracy to frustrate and pervert the operation of a statute, in which case the guilty acts of each might be invoked to prove

the common design. He was simply prosecuted for an alleged infraction of a statute by sitting and voting in the Legislative Council after his acceptance of another office under the Crown. He is in every particular within the protection of the statute, and was rightly absolved from all liability.

MACDONNELL *vs.* MACDONALD.

The case of this Defendant stands upon very different grounds. He resigned his office of Attorney General on the 29th July. On the 6th of August he accepted the office of Postmaster General, (for which, no doubt, he was admirably qualified,) and on the same day, and within a few hours, he tired of that office, and returned to his old office of Attorney General. He was charged with an infraction of the statute, by reason of his having sat and voted in the Assembly after his acceptance of the Postmaster-Generalship, and also by reason of his having sat and voted therein, after his subsequent acceptance of the Attorney-Generalship. His liability on the first charge must be determined by the record as submitted to the Court for judgment. There is nothing in the mere act of acceptance of the first office, (weighing it at the moment of the acceptance) which impeaches the *bona fides* of that act, and the pleadings did not charge it to have been made fraudulently or collusively. But his resignation of that office, and his acceptance on the same day, and almost in the same breath, of the office of Attorney General, causes the mind to revert back to the moment of his acceptance of the office of Postmaster General, and has a most significant bearing upon the good or bad faith of that act. It was not charged, however, that the acceptance of the first office was *fraudulent*, nor that the pretended "*holding*" of that office for a few hours was also *fraudulent*; and the court, moreover, could not decide that matter of fact, however violent the presumption in its favor, without the intervention of a jury. It is for this reason, probably, that the court could not, or rather would not, draw any distinction between the case of Vankoughnet for a single infraction of the statute, and the double infraction case of Macdonald.

In the reasons assigned by Chief Justice Draper, which certainly savour more of judicial subtlety than true skill, considerable stress is laid upon the meaning of the word "whenever" as employed in the 7th section or clause of exemption from re-election in case of the re-acceptance of office within a month. Even Dictionaries are spoken of as throwing light upon the use of this word; and since these novel expounders of legislative intention are appealed to, a few of the definitions given by some of them may not be irrelevant, Viz: Johnson qto v. "whenever"----*at whatsoever time*,----(not *as often as* :)----Knowles, Sheridan, and Walker, Ditto----" at whatever time,"----not----(*as often as* :)----Dr. Ogilvie, Imperial,----Ditto---" at whatever time,"----(not *as often as*). So that passing over the fact of the resignation of an entire ministry, and that of their places being all filled up by others, the argument that the Legislature intended by the term "whenever" to confer a perpetual right upon any one of these public officers, or upon a whole cabinet to change places *ad libitum* and *ad infinitum*, if it have no more solid foundation than the import of this word as given in *Dictionaries*, is attenuated to an inappreciable degree, if it be not altogether absorbed in the immensity of the doubt, and the irrationality of the thing itself. Were this the case of a term used in a treaty, or in a contract or other written instrument, it would be interpreted according to its usual acceptation among the people using it, that is, according to *jus et norma loquendi*. In the present instance it is the Legislature which has made use of it, and that body may very properly be permitted to have a *jus et norma loquendi*. It is a matter within the knowledge of all that the Legislatures of all the countries with which we are familiar, generally make use of the clearest and most comprehensive terms to convey their meaning, and seldom or never leave a measure of time, quality, number or degree to rest upon a single word. A variety of words and expressions are almost invariably employed in order to exclude every possible cause of doubt or ambiguity, and this is what the vulgar style verbiage. The Legislature having its own *norma loquendi*, it is right to presume that had it intended the meaning applied by the

Judges to the term "whenever," it assuredly would have said "whenever," and *as often as*. Not having done so, the clause being exceptional in its provision, cannot be extended. A power or privilege must never transcend the plain and narrow import of the terms creating it, and more especially when it is to be exercised in virtue of an exceptional clause, it cannot be augmented, altered, strained or modified in any way. This is the Law of England and of France—of Upper and Lower Canada ; and if the Hottentots have a code or system of law written or traditionary, it will be found to have been adopted there by intuition, as being of the very essence of the science of jurisprudence.

When the Legislature empowered certain persons holding high offices of state to resign one office, and within one month to accept another without re-election, it must be held to have meant and intended,—first, when it speaks in the 7th section of a person "*holding*" any one of the enumerated offices which he is about to resign, that that *holding* should be *bona fide*, and for a sufficient length of time to render that supposition acceptable to common sense ; and secondly, that the acceptance of the new office should also be *bona fide*, and designed for the greater advantage of the public service. In the case of Vankoughnet who accepted but one office, no act of his, occurring previously or subsequently to such acceptance, is invoked to impugn the good faith either of his "holding" of the first office, or of his acceptance of the second. Not so in the case of Macdonald. The short time during which he occupied his new office of Postmaster General, and the celerity with which he flew from the Department of Letters to that of Law, affords conclusive proof of the character of the act of acceptance of his new dignity of Postmaster, and his sudden resignation of the same exalted position. His acceptance in the eyes of the Law, and of reason and common sense, cannot be otherwise considered than as a deception,—an evasion,—an act done *mala fide*, and not in the least with the intent which the act itself professed, of occupying that office. In one word—it was a sham acceptance concerted between himself and the Canadian representative of sovereignty,

unmistakeably fraudulent and carrying with it no legal effect whatever. The same must be said of the " holding" by him of the same office ; that it was not *bona fide*, as contemplated by the statute, and therefore possessed no legal foundation or essence to enable him to avail himself of that " holding" as a *bona fide* stepping stone to another office.

It has passed into a proverb that " the Law abhors fraud," as nature is said to abhor a vacuum. No contract civil or religious, how solemn soever it may be in its character, or binding in its effects ; no act of the Sovereign herself, though consummated under her sign manual and attested with the great seal of the greatest kingdom of the earth ;—no deed however important in its nature and though engrossed and extended over many pages of parchment or paper, exhibiting a perfect specimen of caligraphy and adorned with all the seals and the arms of the most exalted contracting parties, and formally and solemnly witnessed by individuals of the highest standing ; in short, no act—deed—instrument—undertaking or stipulation whatever, though clothed with all the formalities of the law of the land, and contrived with all the skill and precaution of man, and executed with all the ingenuity of the devil,—can stand against the imputation and proof of fraud. In the hands of Justice, all, each and every of them, like the apple of the desert, collapse into dust, and disappear from the judicial eye as if they had never been, and are consigned to utter oblivion, save as to the odium which attaches to the perpetrators of acts reprobated by the laws of God and man. If this be the judgment of the law upon all fraudulent transactions in every civilized land, from the dawn of Roman jurisprudence to the present hour, by what other code of law or rule of morality are we to test the legality of an act done by a high public functionary deputed by the people to fulfil a public trust in which he is to sway their destinies for good or evil. The act of the defendant in accepting one public office for a few fleeting hours, and invoking the presence of the Almighty to attest the fidelity with which he swore to discharge its functions, palpably with the design of making it a mere momentary stepping-stone to the

acceptance of another and a very different office, so as to evade the provisions of an anomalous statute, without precedent or counterpart, (according to their distorted interpretation of it) in the annals of legislation or of the administration of constitutional Government, was—to all intents and purposes—in the opinion of every man whose intelligence is above the level of the untutored denizen of the forest, a false and fraudulent act ; and if there could be found, from Dan to Beersheba, a Jury of twelve men who could, with a full knowledge of all the circumstances, find otherwise, the finger of scorn would be pointed at them until the closing hour of their existence, as men whose verdict had cast an indelible stain upon the morality and intelligence of the people of Canada, and made them and the boasted trial by jury itself, the objects of the ridicule and the contempt of the whole world.

As an indication of the fraudulent character of the acts of acceptance and resignation, it is only necessary to look at the marginal abstract found opposite to the clause in question, and which for laymen at least, and therefore for the people of Canada, as well as for any Jury having a knowledge of the fact, would have been conclusive evidence of the object of the Act. It would be in vain to tell twelve honest—conscientious men empannelled and sworn to render a verdict on the question of fraud, that the marginal abstract was no part of the statute, and that the words, "*Exchange of certain offices not to vacate the seats of the persons making such exchange*" written in plain English,—meant nothing ! ! Will any one be bold enough to assert that when the government framed that statute, and when it passed through the Legislature with these words conspicuously printed in the margin, and much more frequently read than the body of the act itself;—does any one imagine that the people of Canada will believe that the clause so labelled—and forming part of a statute entitled, *An Act further to secure the Independence of Parliament !*—designed anything more than a mere exchange of one office for another, simultaneously effected for the purpose of placing one particular member of the Government in a Department

for which he happened to be more especially qualified, and this—for the greater advantage of the public service ! Or that the conversion of the late Premier, the Honorable J. A. Macdonald, one of the most eminent Jurisconsults of Upper Canada, and Her Majesty's principal law officer in that section, into a mere Postmaster and Superintendent of letter-carriers, was for the benefit of the public service ? I *assert* that when the statute was under the consideration of the Government it was repeatedly discussed by its members. That the clause rendering ineligible as members of the Legislative Council or Assembly any counsel retained by the Crown to prosecute or defend its rights, (which are those of the public,) in Courts of Law, was strongly opposed as injuriously restricting the choice of the Crown in the selection of the Advocates and Barristers best qualified for the task, and as inflicting a stigma upon the profession ; and that it was finally yielded as a sop to the democratic popularizing element in the Government.—There were also certain inelegancies of style adverted to (*disqualifying to &c.*,) which seem to have survived the strictures passed upon them. I *assert* that no other meaning than that found in the marginal abstract was ever broached or dreamt of in the mind of any one either in the Government or the Legislature, and that no more hideous monster could have been presented to the imagination of the very men who framed and canvassed the merits of that Law than the construction which they have since contended for and acted upon with so much effrontery and such gross ignorance of statute and constitutional Law. Just imagine a boat with twelve oarsmen, each in his appointed place, but possessing the privilege of making A. change places with B. when its proper equilibrium or the more regular stroke of the oars required it, and you have a fair illustration of the statute in question. But that after the boat, by their own mismanagement, had sprung a leak or been overset, and that they were seen piteously sprawling in the water, and that the unfortunate craft had been taken possession of by another crew,—the discomfited mariners should assert a right to retake possession after their bark had become derelict, is one of those

propositions which drowning men alone could catch at, and which can only be offered to the proverbial credulity of the "marines."

The Globe has been fulminating against the Judges and threatening them with the "indignation" of the people of Upper Canada on account of their decisions. The onslaughts of the Canadian "Thunderer" are more remarkable for boldness than correct taste. It is not altogether orthodox to apply the epithets---ignorant, partial, knavish and corrupt, &c., to members of the judiciary upon whom their position imposes silence, and who alone in the community are debarred the right of self-defence. The upright---independent Judge will adhere to the stern law of duty *ruat coelum*. When conscious of having discharged it to the best of his ability, he will scout the very idea of public "indignation,"—even that of the redoubtable "Clear Grits," and will laugh to scorn any man or set of men who lay siege to him after that fashion. They are by no means, however, on that account to be shielded from rebuke when well merited. But if you apply strong terms of condemnation to their acts, you must not restrict yourself to mere abuse. You must show by sound reasoning, founded on facts, that your conclusions are just. Invective and argumentation must proceed together *passibus aequis*, and in that way it is perfectly allowable to bring him down to the level of the lowest delinquent who fails in his obligations to society, or commits a violation of its laws. Of this we have had repeated examples in that country where the judiciary is upheld and respected more than in any other, and whose people fully understand how much their fortunes, their liberties, and their lives depend upon the integrity and the independence of the Bench. The reputed editor-in-chief of the *Globe* who aspires to be the "coming man," and to be the chief adviser of Her Majesty in this Province, must temper his wrath with a little moderation and decorum, and not pour vollies of abuse upon high public functionaries without at the same time demonstrating conclusively that the lash is justly applied.

The opinions herein gratuitously enunciated are, of course given with the utmost possible deference. They are subject

to correction and animadversion at the hands of any one who thinks differently. Moreover, the writer claims no exemption from supposed political bias. His leaning from the beginning —and which, in all probability, will subsist to the final *denouement*—was, and is, that the defendants ought to have been mulcted in the amount of the penalties as a salutary example to political malefactors in all time coming; and it is but right that the impartial reader should know that these views are obnoxious to the imputation of partiality towards one of the political parties now at issue. The avowal however, is made with perfect indifference as to the construction which the reader may be pleased to put upon it.

It is inferible, from the foregoing observations, that, as a matter of opinion, the parties prosecuting ought not to have withdrawn the case from the domain of fact; and ought not to have submitted it upon the mere legal skeleton contained in the pleadings. If this be accepted as the correct view, then the case is in a nutshell. It was eminently one for the province of a jury upon the question of the good or bad faith of the acts of acceptance, and of the "holding" of the intermediate offices. With respect to the judgment, however, it is sufficient that, in a penal action, a reasonable doubt should be thrown upon the case to cause the court to incline to the side of the defendants; and, in so far as regards the mere question of law involved in the pleadings submitted to the Court, the judgment—without reference to the reasons assigned in support of it—which are decidedly bad, may be correct; and an appeal may not afford any strong expectation of a reversal. But an appeal ought to be instituted and vigorously prosecuted upon other and more potent grounds than the mere hope of obtaining a condemnation against the defendants for a paltry amount of pelf. The prosecutions had a much higher and nobler aim, and the consideration of this part of the case trenches upon the conduct of the Judges, not at all in respect to what they *did* say, but what it is supposed they culpably omitted to say, in rendering their judgment.

When an unfortunate member of the community is dragged before a Criminal Court, charged with the commission of

crime, and in the face of the clearest evidence, is acquitted, the rule of law and of right and justice is, that he should forthwith be permitted to go his way without stain or reproach. The law which presumes him innocent until he is tried and convicted, must *à fortiori* hold him to be so, when acquitted by a jury of his country. The verdict is his charter for the remainder of his life against any other charge based upon the same facts. But how often do we witness the spectacle of a prisoner about to be discharged from custody after having had a narrow escape from the fangs of the law, receiving at the hands of the Judge a severe admonition, unmistakeably predicated upon his supposed guilt, and the falsity of the verdict which has just been rendered by twelve men who are still within his hearing ; and how often does the man of rigid principles shudder when he reflects upon this violation of the naked, abstract rule of right, in lecturing an individual whom the law, his master, has pronounced to be innocent, and in telling twelve men sworn to find according to the evidence, that they have given a false verdict. Nevertheless, there are occasions when we feel that this rule is "more honored in the breach than in the observance," and when we are inclined to applaud the humanity of the Judge who warns the victim of depraved habits of the consequences of continuing his career of crime. Again—we continually witness, as well in purely civil as in penal actions, a failure of justice arising from a misapprehension of the law applicable to the pleadings or the facts of the case as submitted. What is the course usually observed by Courts of Justice on such occasions ? The Judges are the appointed expounders of the law for the benefit of all the Queen's subjects who are amenable to their jurisdiction. Their duty under such circumstances (and the independent, self-reliant Judge never omits it,) is to point out the error of the remedy which has been sought and the proper remedy which the parties ought to have pursued. In the exercise of this pretorian power, he explains the principles of the law applicable to the case as disclosed, and animadverts upon the grave consequences of the facts (had they been established), for the benefit of

the suitors, as well as the maintenance of the law and the purity of the administration of justice, more especially in cases affecting the public weal, and the rights and liberties of the people. Assuming that the judges were right in their conclusion of law, but that they were of opinion that the cases ought to have gone to a jury on the question of fraud involved as well in the acceptance of the intermediate offices, as in the pretended "holding" of the same, before their agile incumbents skipped from them to their old ministerial lairs, ought not the judges to have said so? Was it not their paramount duty to have entered, even hypothetically, into the nature and character of the facts charged, and to have foreshadowed the probable or possible consequences, had a jury found against them on the allegation of fraud? It is impossible to accept the hypothesis that the judges could be of any other opinion as to the real character of the acts done. "*Res ipsa loquitur*"—*ça saute aux yeux.* Upon pursuing the various reasons assigned by the judges in support of their judgment, it is evident that Mr. Chief Justice Draper went into a long introductory argument, replete with ingenuity, if not with sound law, and embracing matters and considerations, of which the relevancy is less apparent than the desire to expatiate upon them. The views of the leading—if not the master mind, are reflected with photographic similitude and complacent accordance in the comments of the other judges, betraying previous discussion among themselves on the different points involved. Chief Justice Robinson alone alludes to a jury, but quite significantly enough to show that that phase of the case had been considered by them, and that his mind had dwelt upon its importance. They knew that the eyes of all Canada were upon them, and that they were expected not to evade the main question, but to make a full and complete "deliverance" upon it in all its bearings. The parties prosecuted before them were the highest in the land,—ministers of the Crown entrusted with the administration of the Queen's Government in this Province, and whose every act ought to have been above suspicion. They were accused of betraying the trust confided to their hands for the welfare and the happiness of the

people of this country, and of having, with the connivance of the Governor General, usurped certain high offices of state for their own selfish ends, in contempt of the constitution and of the veto of their constituents. Have the Judges thrown any light whatever upon the great constitutional question raised upon the interpretation of the statute in question, and which has so deeply agitated the whole people of Canada? They have not—they were silent. Their opinion now or hereafter, upon any such question, and in any such crisis, will be deemed for ever utterly valueless. Charged with the decision of so important a cause, involving the rights and privileges of the people of Canada, and the integrity of its constitution, they were bound to enlarge upon every phase which the case could lawfully or possibly assume under the authority of the statute in question, in order to prevent further litigation; and having done so, and while they absolved the defendants from responsibility on the law of the case as submitted, they were imperatively called upon to reprobate and denounce their conduct as utterly unworthy of men occupying their high position—a view which could have been forcibly illustrated by contrasting the doings of the Canadian ministry with the probable, nay certain course which the statesmen of England would have adopted under similar circumstances. Had they done so, they would have mantained intact the high character of the Upper Canada judiciary for integrity and independence, and would not have been obnoxious to the fierce onslaughts of the *Globe* and other prints. They would have given satisfaction to the people of Canada, who would have hailed the judgment—*dismissing their case*—as a triumph. A subscription limited to one *cent* each, would, with the rapidity of lightning, have poured in a sufficient sum to defray all the expenses of the prosecutions, and the people of Upper Canada would have rejoiced in such an opportunity of proving their zeal and their patriotism, and their contempt for the *pounds, shillings, and pence* part of the question. Had the judges adopted this manly, straightforward course, instead of idly quibbling upon the solution of immaterial provisions of the statute, there would have been no necessity for an appeal to England.

The moral verdict of condemnation against the shufflers and their master would have appeased the public indignation, and vindicated the laws and the honor of the people of Canada. After such a *victory* to the defendants so proclaimed, not the most presumptuous or the most reckless in Governor Head's ministry would ever again venture to mount the steps of their beleaguered old hospital. Its quondam inmates would have hidden their diminished heads in the most secluded spot to be found in the rural environs of Toronto. The whole fabric of government—the Governor General included—would have been paralysed—disintegrated. They would have fled the city as from a plague, their steps accelerated by certain tin-kettle appendages provided for them by an insulted public. Whithersoever they went, the scourge of an indignant public opinion would have perpetually hissed in their ears. Their abject, pitiable condition would have been their only safe-guard from indignity and insult. But the picture was too humiliating for such right honorable and honorable gentlemen on the one hand, and presented too great a triumph for the cause of truth and popular rights on the other. The judges shivered in the wind, and the defendants were absolved in silence ! ! !

It is therefore of the last importance that the case should be appealed, in order to prove that the Judges in England, while they may possibly confirm the judgment, will not imitate the Judges of Upper Canada in shirking the duty which they owed to the Sovereign who made them, and to the inhabitants of Canada whose lives and fortunes are at their disposal. We have full confidence that the former will declare that had the presumption of fraud in respect of the acceptance and the "holding" of the intermediate offices, which, morally, is so strong, been legally established by the verdict of a jury, the defendants would assuredly have been mulcted in the penalties ; and that in any case their acts and doings will be characterised as disgraceful in men standing in the position of advisers of the Sovereign and representatives of the people, and moreover a most daring violation of the inalienable rights of British subjects.