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COPIES or EXTRACTS of any CORRESPONDENCE
received from *Nova Scotia, New Brunswick,*
Prince Edward Island, and *Newfoundland,* relative
to the Constitution of the Legislative and Execu-
tive Councils of those Colonies.

(*Mr. Hume.*)

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

[*Price 1 s. 4 d.*]

447

NOVA SCOTIA, &c.

RETURN to an ADDRESS of the Honourable The House of Commons,
dated 20 February 1839;—for,

COPIES or EXTRACTS of any CORRESPONDENCE received from *Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland*, relative to the Constitution of the Legislative and Executive Councils of the Governments of those Colonies, or to their being made Elective, or to any Change that has been required by any Branch of the Legislature of those Colonies to be made to the said Councils, within the last Eight Years; also, to any Change that has been made, or directed to be made in them, or in any Mode of appointing New Members of the said Councils.

Colonial Office, Downing-street, }
26 August 1839.

H. LABOUCHERE.

(*Mr. Hume.*)

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

[*Price 1 s. 4 d.*]

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NOVA SCOTIA.

NOVA SCOTIA.

— No. 1. —

No. 1.

COPY of a DESPATCH from Viscount *Goderich* to Lieutenant-Governor Sir *P. Maitland*.

Sir,

Downing-street, 7 Dec. 1830.

My attention having been directed to the constitution of the Councils in the provinces of Nova Scotia and New Brunswick, with the view of giving them a more independent character, by introducing a larger proportion of members not holding offices at the pleasure of the Crown; I have to request that you will report to me, in the event of its being considered desirable to increase the number of the council in the province of Nova Scotia, how far it may be practicable to find a sufficient number of persons of respectability of this description, whose services may be employed advantageously as councillors.

I have also to acquaint you, that in future it is proposed that the puisne judges of the province should not be admitted to seats in the Council.

I have, &c.
(signed) *Goderich*.

— No. 2. —

No. 2.

(No. 2.)

EXTRACT of a DESPATCH from Lieutenant-Governor Sir *P. Maitland* to Viscount *Goderich*, dated Halifax, Nova Scotia, 17 January 1831.

THE December mail has brought me your Lordship's despatch of the 7th of that month, calling upon me for information as to the practicability of improving the constitution of the Council of this Province, and giving it a more independent character by introducing a larger proportion of members not holding office at the pleasure of the Crown.

Previous to the resignation of your Lordship's predecessor in office, I was informed (not officially) that the measure of establishing a distinct Legislative Council in this colony had been more than once pressed on the attention of His Majesty's Government, and I received an intimation that my sentiments on this question were desired, and I had only hitherto deferred submitting any detailed plan in the hope of being able to furnish the Secretary of State with more accurate information on some points, than my short and interrupted connection with the affairs of this Province had yet enabled me to supply.

I must beg leave to premise, before submitting to your Lordship any observations on the projects, that I am aware of no feeling of dislike to the constitution of the Council, deserving to be called the public feeling, having at any time been manifested here. There has undeniably been some expression of dissatisfaction, but it has been for the most part confined to the speeches of some members of the Assembly, and the columns of one or two of our numerous weekly journals; but the general opinion has not been unfriendly to this body. The individuals that compose it have been respected as such, and as a body they have not been thought to exercise their functions otherwise than conscientiously and wisely.

It must, however, be admitted that the dissemination of the Report of the Committee of the House of Commons, and the other published documents on Canadian affairs, has excited, as well here as in other colonies, the expectation of a change, which in the case of the Canadas has been represented of such importance as to be necessary to the well-being of the colonies; and this expectation

NOVA SCOTIA.

tation I cannot recommend your Lordship to disappoint, for it cannot be reasonably expected that a state of things which has been so unreservedly condemned by such authority will long continue to be acquiesced in in any of the colonies, however complacently it may be regarded or quietly submitted to at present.

Whether the contemplated measure of increasing the Council, in the manner suggested by your Lordship's despatch, will fulfil the expectations I have alluded to, will doubtless appear to your Lordship a point very deserving of serious consideration, but I shall not deal fairly by your Lordship, or His Majesty's Government, if I did not express my apprehension that it may not, for it will not remove the ground of the main exception taken to the Council, that, as a body, it occupies two distinct places in the constitution, and combines in itself functions which it is held, ought here, as in England, to be kept separate. I think, moreover, it is but reasonable to anticipate that the public mind in this colony being once directed to the object of legislative reform, will scarcely fail to expect, that when a change shall take place in a state of things, long held to be established, it will be such a change as will bring the constitution of this as near as that of any other colony to the great model in the mother country.

The constitution of this Province was not bestowed like that which is enjoyed by the two Canadas under the same statute, the 31st George 3, by an Act of the British Parliament, nor like that which has been granted to some other colonies, by a specific charter from the King; what it derives from Royal authority is to be found only in occasional instructions, transmitted as circumstances require to successive governors; amongst these instructions so transmitted, it is not strange that some should contradict others, nor that those of an early date should assign functions to the two Houses of the Legislature, very different from those which are exercised by the corresponding bodies of the mother country, and it was long ago considered desirable by the highest legal authority in this Province, that whatever was right and conformable to the British constitution in the existing state of things, should be established and placed beyond the reach of controversy by the sanction of an imperial statute; "objections," it was affirmed, "having often been made in the Assemblies to the Royal Instructions, as not obligatory on them, but on the Governors only."

I have stated these things, because whatever course may be decided upon, whether that of simply increasing the Council, or that of going to the full extent of conferring by imperial statute, such a constitution as the Canadas enjoy, it will be so momentous in its consequences to this peaceable and happy colony, that I cannot but feel anxiously desirous that your Lordship, before coming to a decision, should be made thoroughly acquainted with the state of things in the Province. For this purpose I transmit the enclosed papers, and for the same reason I have judged it right to commission Mr. Justice Halliburton, the senior puisne judge of the Supreme Court, to proceed to England with this despatch. Mr. Halliburton has for many years rendered himself useful to the colony, by taking an active and useful part in its legislative proceedings, during which he was in full possession of the confidence of my three immediate predecessors; and I have no hesitation in introducing him to your Lordship, as a person whom your Lordship may safely consult in all matters connected with the interests of this Colony; and had I no other reason for selecting him on this occasion than the letter from the Secretary of State, conveying his unqualified approbation of the manner in which Mr. Halliburton had executed a service of a very delicate nature, I should have thought that sufficient.

— No. 3. —

No. 3.

(No. 8.)

COPY of a DESPATCH from Viscount *Goderich* to Lieutenant-Governor
Sir *P. Maitland*.

Sir,

Downing-street, 1 March 1831.

I HAVE the honour to acknowledge the receipt of your despatch of the 17th January last, respecting the separation of the Executive and Legislative Councils in Nova Scotia, and the proposed addition to the representation of the province.

I am

I am too well aware of the great importance of these two questions to the welfare and tranquillity of the province, and to the good understanding which at present prevails amongst the different branches of the government there, to have any desire to disturb this satisfactory state of affairs by any alterations in the present system which might not be desired by the province itself.

I am at the same time disposed to think that you have given a wider interpretation than was intended to my letter of inquiry on the propriety of separating the Executive from the Legislative Councils; and although I am happy to avail myself of the experience of Mr. Halliburton to acquire information from him respecting the affairs of the province, yet I should not have thought it necessary to require the presence of any one from Nova Scotia on the present occasion.

In regard to the Council, after having consulted with Mr. Halliburton and Mr. Archibald, I am not of opinion that it is advisable at this moment to effect any change in the condition of the Council beyond making some addition to the number of the members. I am therefore to request that you will report to me your opinion as to the propriety of increasing the Council to the number of 15 members, and that you will transmit to me the names of such persons, not being in the employment of Government, as you may consider most eligible, from their character and attainments, to belong to that branch of the legislature. With respect to the vacancy caused by the death of the late attorney-general, I am to request that you will fill it up by the appointment of the person whose influence as a landed proprietor would point him out as most fitted for that situation.

The increase in the number of the representation of the province, or any further alteration in the Council, will, if necessary, become matter for future consideration.

I have, &c.
(signed) *Goderich.*

— No. 4. —

No. 4.

COPY of a DESPATCH from Lieutenant-Governor Sir *P. Maitland* to
Viscount *Goderich.*

Government House, Halifax,
6 June 1831.

My Lord,

YOUR Lordship having done me the honour, in your Despatch of the 1st March, to require my opinion as to the propriety of increasing the Council of this province to the number of 15 members, I have given my best consideration to the subject, and after reviewing all the circumstances that have occurred to me, as connected with the question, I have no hesitation in stating that the proposed augmentation would, in my opinion, be decidedly advisable.

In the same Despatch I am desired to fill up the vacancy in the Council, caused by the death of the late attorney-general, by the appointment of the person whose influence as a landed proprietor should point him out as most fitted for the situation. With the exception of the gentleman already in the Council, I believe Mr. Henry A. Cogswell to be the wealthiest landed proprietor we have, and that he derives from his possessions, character and intelligence a corresponding share of influence in the community. His residence is fixed in the town of Halifax, and he holds the office of Registrar of the Court of Chancery; but I have ascertained that he is willing to resign this office, and I know not that his having held it ought to be considered as an obstacle to his appointment. His legal knowledge and readiness in transacting business are calculated to render him very useful in the Council, as the casual absence of the judges causes the want of these qualifications to be much felt. I do not foresee that any material business is likely to require the attention of the Council before your Lordship's sentiments on this subject can be received; but should any such occur, I shall consider myself as fully authorized to appoint Mr. Cogswell to the vacant seat.

In obedience to your Lordship's commands, I transmit the names of three other persons considered by me as eligible, from their character and attain-

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ments, to seats in the Council. The gentlemen I am about to name have extensive family connexions, and are in the habit of associating with many respectable and intelligent persons, who are little known in what is thought the highest class of society here, a class (I mean not the slightest reproach to its members in the observation) which has undeniably not increased its very limited circle in proportion to the increase and advancement of the province. I am inclined to believe, however, that the appointment of the persons I shall name will not be viewed with any degree of dissatisfaction by the class of society to which I have just alluded, and that they would form an addition to the Council, which would be greatly approved of in the colony.

Mr. Peter M'Nab is the proprietor of a valuable and extensive island about two miles from the town, where he resides among his tenantry.

Mr. James Tobin is a Roman-catholic, a merchant in affluent circumstances, of sound understanding and good judgment.

Mr. Joseph Allison is the President of the Chamber of Commerce, and probably possesses more mercantile information than any other person in the province; and his services at the Council Board would be very valuable.

None of these gentlemen have applied for appointment, nor are they aware of my intention of recommending them to your Lordship.

I have, &c.

(signed) *P. Maitland.*

No. 5.

— No. 5. —

(No. 18.)

COPY of a DESPATCH from Viscount *Goderich* to Lieutenant-Governor
Sir *P. Maitland*.

Sir,

Downing-street, 7 July 1831.

I HAVE the honour to acknowledge the receipt of your despatch of the 6th June last, in which you state your opinion that it would be expedient to increase the number of the Council of the province of Nova Scotia to 15 members, and recommending the following gentlemen as an addition to that board, which would be very generally approved of in the colony, viz.

Mr. Peter M'Nab,
Mr. James Tobin,
Mr. Joseph Allison.

I have to acquaint you, in reply, that his Majesty has been pleased to approve of the appointment of those gentlemen to be members of the Council of Nova Scotia; and I am to request that you will direct the usual application to be made for their mandamus at my office.

I have, &c.

(signed) *Goderich.*

No. 6.

— No. 6. —

COPY of a DESPATCH from Lieutenant-Governor Sir *P. Maitland* to
Viscount *Goderich*.

Government House, Halifax,
26 August 1831.

My Lord,

IN reference to your Lordship's despatches of the 1st of March, and 7th July, I have the honour to inform your Lordship that His Majesty's approval of the appointment of Messrs. Cogswell, M'Nab, Tobin, and Allison, as members of the Council of this Province, has been duly notified; and that I have directed those gentlemen to make the usual application for their mandamuses.

I have, &c.

(signed) *P. Maitland.*

— No. 7. —

No. 7.

(No. 51.)

COPY of a DESPATCH from Viscount *Goderich* to the Officer administering the Government in Nova Scotia.

Sir,

Downing-street, 8 December 1832.

IN carrying into effect the recommendations of the Committee of the House of Commons on the subject of the Councils in Upper and Lower Canada, my attention has also been directed to the composition of that branch of the legislature in New Brunswick and Nova Scotia, particularly to the custom that the Executive and Legislative Councils, though distinct bodies, should consist of the same individuals.

To this practice I think there are several objections which induce me to believe that it might with advantage be departed from; the circumstance of the same gentlemen being members of both Councils has a tendency, I think, to prevent either from discharging with effect the duties which ought to devolve upon it.

The Executive Council should consist of a small number of gentlemen, including perhaps one or two influential members of each branch of the legislature, with whom the governor might confidentially consult upon the executive business of the government. To this council it would not be proper to nominate any of the judges; the chief justices in Upper and Lower Canada having retired in deference to the opinion which had been expressed by the House of Commons on the subject.

The Legislative Council, on the other hand, should principally consist of gentlemen independent of and unconnected with the government, and selected from the principal inhabitants of the province, and those having the greatest stake in its welfare. The Council appears to me at present too numerous to be usefully consulted by the governor in the administration of affairs, whilst it is not sufficiently so, and has too close a connexion with the executive government, to enable it to possess the weight and authority which should belong to it as an independent branch of the legislature.

It appears to me, therefore, desirable that the members of the Legislative Council should be increased, and that its members should cease to be necessarily members of the Executive or Privy Council; while at the same time the latter should consist of only five or six members, and be composed of one or two members of the present Council and of the Assembly, and those of the chief officers of government whom the governor might think it desirable to include in it.

I am also of opinion that, with the exception of the chief justice, the judges ought not in future to be appointed members of the Legislative Council.

Having communicated with Sir A. Campbell on the subject, he has entirely concurred in the propriety of introducing in the Council of New Brunswick the alteration to which I have adverted in this despatch, and His Majesty has been pleased, at my recommendation, to establish, by commission under the great seal, two distinct and separate councils in that province, the Executive Council consisting of five members, whilst the Legislative will at present be increased to about 14 members.

I am therefore desirous of obtaining the sentiments of yourself and his Majesty's Council on the subject. If a similar measure should be considered desirable in Nova Scotia, and likely to promote the interests of the province, and to be acceptable to the inhabitants, I should be ready to advise His Majesty to grant a similar commission for Nova Scotia.

I have, &c.

(signed) *Goderich*.

NOVA SCOTIA.

No. 8.

— No. 8. —

COPY of a DESPATCH from Mr. President *Jeffery* to Viscount *Goderich*.Government House, Halifax,
20 March 1833.

My Lord,

I HAVE given much attention to your Lordship's despatch of the 8th December 1832, No. 51, the receipt of which I had the honour to acknowledge on the 27th January; but as I have not deemed it advisable to bring the subject of it officially before the whole body of the Council, during the sitting of the Legislature, I am not yet prepared to comply with your Lordship's requisition for their sentiments, and my own, upon the expediency of introducing in the Council of this Province the alterations lately adopted in that of New Brunswick.

My intention was to take the opinion of the Council on the proposed measure at the close of the session; but as, by recent intelligence from New Brunswick, the change in the constitution of that Province does not appear to have given satisfaction, a disinclination would probably be entertained here to the immediate adoption of a similar measure; and the agitation of the question at the present period might, in my humble opinion, have a tendency to disturb the peaceful state of the colony.

Under these circumstances, I shall deem it prudent to withhold your Lordship's despatch from the Council until I am honoured with your Lordship's further instructions for my guidance.

I have, &c.

(signed) *Thos. N. Jeffery*.

— No. 9. —

No. 9.

(No. 5.)

EXTRACT of a DESPATCH from Mr. President *Jeffery* to the Right honourable *E. G. Stanley*; dated Government House, Halifax, 8 March 1834.

THE House of Assembly have also had under consideration the present constitution of His Majesty's Council, and have passed resolutions, declaring "the Council to be defective, because its Members combine legislative and executive powers; and that, in the opinion of the House, a Legislative Council distinct from the Executive Council, and more extensive in numbers than at present exists, may, with great advantage to the public interests, be selected from His Majesty's loyal subjects in this Province." A committee has been named to prepare an address to His Majesty on the subject, or to report a Bill, as they may deem the preferable mode of accomplishing the object.

In my reply to Viscount *Goderich*'s despatch of the 8th December 1832, requiring the sentiments of myself and His Majesty's Council, upon the propriety of introducing into the Council of this Province the alteration then recently adopted in that of New Brunswick, I stated my reasons for considering the agitation of the question to be at that period inexpedient, and I mentioned that I should therefore take the liberty of withholding his Lordship's despatch from the Council until I should be honoured with further instructions, which have not been received.

I shall now, however, deem it my duty to lay the despatch before them; and I hope to be soon able to communicate with you, more fully and satisfactorily than I can at present, on a subject which involves so many serious considerations.

— No. 10. —

COPY of a DESPATCH from Mr. President *Jeffery* to the Right honourable
E. G. Stanley.

No. 10.

Sir,

Government House, Halifax,
7 May 1834.

IN a despatch which I had the honour to address to you on the 8th March last, I mentioned that as the subject of the constitution of the Council in this Province had come under discussion in the House of Assembly, and a committee of the House had been appointed to prepare an Address to the King, praying that two Councils, executive and legislative, might be established, I should deem it my duty to submit to His Majesty's Council, Viscount Goderich's despatch of the 8th December 1832, (which, for reasons formerly explained, had not been communicated to them,) requiring their sentiments upon the expediency of such a measure; and I have now the honour to recommend to your attention the enclosed extract from their minutes.

As this paper enters fully into the subject, I have but to express my own concurrence in the Board's unanimous opinion that the proposed separation of the executive and legislative functions of the Council would be attended with many and very serious evils; and I therefore earnestly hope that the reasons adduced in support of that opinion may convince His Majesty's Government of the propriety of permitting Nova Scotia, until better prepared for a change, to retain its ancient constitution.

I have, &c.
(signed) *Thos. N. Jeffery.*

Enclosure in No. 10.

Encl. in No. 10.

In Council, 6th May 1834.

THE President laid before the Board a despatch from the Right honourable Viscount Goderich, dated Downing-street, the 8th December 1832, requiring the opinion of the Council upon the expediency of establishing in Nova Scotia two separate councils, executive and legislative, composed for the most part of different individuals.

After giving their best consideration to this important communication, the Council would gladly have declined offering any opinion upon a subject which appears to be nearly connected with themselves and their office. But as this Board, from its establishment in the year 1749 to the present day, have not been accustomed to shrink from any duty committed to them by His Majesty or His Government, because it was difficult or unpleasant, they will proceed at once to give, with frankness, the result of the best judgment they have been able to exercise upon this question, which they have felt to be one of some delicacy.

If the theory of the constitution were alone regarded, the example in the parent country would prompt them to say, such a separation of the Executive from the Legislative Council as is proposed, would be desirable; but it is manifest that the difference in the condition of the two countries is so great, that no parallel can be preserved: and looking at the subject practically, they perceive at once very serious objections to the proposal.

The intention of the Government is, without doubt, to nominate to the Legislative Council sensible and well educated men, possessing large landed property, separated from office, and having influence in the different counties in which they reside: upon a supposition that such men would be likely to concur with the most respectable majorities of the House of Assembly in all questions which affect the great interests of the country, and so preserve harmony in the Legislature. But, unhappily, such men are not to be found in the several counties of Nova Scotia; and even if they could be found, there is much reason for believing they would not be more ready than the members of the present Council to concur with the House of Assembly in such objects as have sometimes been differently entertained in the two Houses. If the personal allusion may be excused, it may be remarked that the discernment of Sir James Kempt, when Lieutenant-governor of Nova Scotia, and anxiously looking for such persons as have been described, placed two members of the present Board in the Council, because he was satisfied they answered the description as completely as any individuals that could be found in the colony. But it is well known, and the minutes of Council supply the information, that these individuals, wholly unconnected with office, whose independence in every respect has never been questioned, have been uniformly opposed to the views of the House of Assembly on each of those few occasions when a difference of opinion in the two branches of the Legislature has given dissatisfaction to the lower house, and excited their complaints. It is only on account of the difficulty, or rather the impossibility of finding more persons in the different sections of the province, with all the qualifications which these possess, that the number of the present Council has not been increased. In selecting individuals therefore to fill a more extensive legislative council,

NOVA SCOTIA. a different description of persons must of necessity be taken, and the most eligible that could be found would be so many of the best members of the House of Assembly as would be required, or of the fittest candidates for seats there, whose services would be more important and more valuable in that House, which could ill spare them, than in the other, and whose appointment to the Council would therefore be an injury to the House of Assembly and to the province.

The Government, it is believed, look forward to an increase of strength and influence in the Legislative Council, as the natural result of the proposed alteration. But those in Nova Scotia, who desire the change, are loud in their complaints that the Council are already too powerful. The Government therefore must be disappointed in their expectation, or the dissatisfaction of those in the colony who desire the change must be increased, as soon as that change is effected; and either of these consequences is very undesirable.

But perhaps a more serious objection will be found in the effect that has been produced in those colonies into which the measure has already been introduced. The present state of the Canadas supplies such objection in full force. The measures of their legislative Councils, for some years past, have given rise to more complaint and invective than were ever known under the more ancient constitution of the colonial councils. These complaints, indeed, have been so multiplied that an elective council, which would inevitably lead to a republican constitution, is boldly insisted upon by the complainants as the only effectual remedy for their alleged grievances.

In New Brunswick the experiment has been recently made, and instead of affording general satisfaction, has created unusual discontent in that peaceable province, which will not be easily allayed, unless by a return to the ancient system.

The records in the Colonial Office will show whether Nova Scotia, under its present constitution, has been more or less quiet and contented, and easily governed than those colonies into which a different constitution has been introduced, while the testimony of its governors and the journals of its council will show what part that body, as at present constituted, has had in promoting the welfare of the people. The Board will be excused from saying more on this point, but they earnestly request the reference and the comparison may be made by His Majesty's Secretary of State.

If it should be alleged as a reason for making the proposed alteration that some desire for it has been expressed, it may be observed that change of any and of every kind will never be without advocates, while discontented and self-interested men form a part of every community. There has been no evidence that the measure is generally desired in the colony, and if some, or even many, wish for it, it is not probable that all these will be satisfied if the change should be accomplished. There will be ten expectants for every appointment that will follow; nine-tenths of these must therefore be disappointed, and thus discontent will be increased. The subject has indeed been under discussion in the House of Assembly, where the first mention of it has led some of its advocates, and even His Majesty's Solicitor-general, among others, to express a desire for an elective Council; with total disregard or forgetfulness of the obvious fact, that the balance of the constitution would at once be destroyed, when no intermediate body would be left between the representative of the Crown and the representatives of the people. But it is believed that the subject has never yet created much interest in that House, although several of its members have been named as expectants of seats in the Executive and Legislative Councils.

All these considerations lead to the conclusion that the suggested alteration should not be hastily made, even if the acts of the Council, or the character and conduct of the individuals who compose it, were obnoxious to objection. Whether they are so obnoxious may be easily ascertained by the Secretary of State from the discerning individuals now in England, who have been Governors of the colony, but have ceased to be connected with it; and these distinguished persons, when giving their testimony to the character and usefulness of the Council, as now constituted, can easily state whether the Board, although ready and anxious at all times to promote the objects of the Government when they could conscientiously promote them, have ever flinched from offering their honest advice, when they have been so unfortunate as to differ in opinion from the representative of their Sovereign.

A due regard to all the circumstances which have now been mentioned, and to many others which need not be enumerated, has satisfied the Council that it must be desirable to retain in the Province its ancient constitution, which hitherto has neither been inconvenient nor unsuccessful. It may easily be altered at a future day, when the colony shall be more ripe for such a change, if the new constitutions which have been introduced into the adjoining colonies, should, notwithstanding the inconvenience which now attends them, ultimately prove to be superior, in practical effect, to those for which they have been substituted; but the Council are impressed with a conviction that at present the proposed change is unnecessary, and would prove not only useless, but injurious; and they feel confident that this explicit declaration of their opinion will at least be received as evidence of the honesty with which their advice is given, whether called for by His Majesty's Government, or by His Majesty's representative in the province.

If more than has already been stated were wanting to strengthen the opinion which the Council have now expressed, a full confirmation of it would be supplied by the very extraordinary measures which have recently been adopted in the House of Assembly in Lower Canada, where indulgent compliance with unreasonable claims has created a habit of yielding on one side, and a habit of complaining and demanding on the other, until ultimate objects are now avowed, which fill every loyal subject with regret and alarm; and the dis-

contented

contented have boldly declared, with revolutionary violence, that one of the most favoured and happy colonies of the most indulgent monarch in the world, must be converted into a republic. NOVA SCOTIA.

Having now performed the duty which has been laid upon them, the Members of the Council have only to add, with every feeling of respect, that if His Majesty's Government should not be satisfied with the view they have taken, and with the reasons they have adduced in support of that view, the same feelings which have always influenced this Board will prevail. Nothing can be more foreign from their wish than to be impediments in the way of any measure which His Majesty or His Government may deem essential to the welfare of the colony; and therefore, as it has been their uniform and only desire, in their present station, to be instrumental, according to their ability, in promoting the honour of His Majesty, and the benefit of the province, they are ready to retire from that station whenever it may be thought their retirement will conduce more effectually than their continuance, to those important objects.

A true extract from the minutes.

Council Chamber, Halifax,
7th May 1834.

(signed) *Ruperto George.*

— No. 11. —

(No. 65.)

No. 11.

EXTRACT of a DESPATCH from Major-General Sir *Colin Campbell*, G. C. B. to Lord *Glenelg*; dated Halifax, 9 March 1837.

As I think your Lordship will be desirous to know how things are going on here since the meeting of the Legislature, I shall as briefly as possible state to you their proceedings.

The House passed several resolutions, animadverting upon the construction of His Majesty's Council, and the disposition evinced by some of its members to protect their own interests and emoluments at the expense of the public; and also asserting their right to control and distribute the casual and territorial revenues of the country, &c.; which resolutions were passed by considerable majorities, but not without much opposition, and a committee was appointed to draw up an address to His Majesty, embracing the substance of these resolutions.

The Council, however, very temperately, but firmly, sent a message to the House of Assembly, in consequence of their attack upon some of their members; and I am happy to inform your Lordship that the Assembly, finding they had gone too far, have rescinded the whole of their resolutions, as well as the appointment of the committee who were to prepare their address. So that I now hope that things will proceed in a more calm manner, and that the business of the Province will be attended to.

It is evident to me, from the temper of the House, that before the conclusion of the session, an address will be drawn up to His Majesty, praying for a reconstruction and separation of the Council, and for the surrender of the casual and territorial revenues. I trust, from what has occurred, that it will now be done in moderate and proper terms.

I hope, before the end of the session, to be also enabled to submit to your Lordship the names of fit and proper persons to be added to the Legislative Council, and also the names of those individuals whom I consider the most eligible and proper to form the Executive Council of this Province, as it is evident that the reconstruction and separation of the Councils cannot be much longer delayed, without causing dissatisfaction and excitement, which it is desirable to prevent, particularly as two separate and distinct Councils are now established in the other North American Provinces.

The papers which I have the honour to enclose are the copies of the messages and of the resolutions alluded to in this despatch.

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Enclosures in No. 11.

Enclosures in
No. 11.

(No. 1.)

In the House of Assembly,
2 February 1837.

On the motion of Mr. Doyle, the following Resolutions were passed unanimously:—

Resolved, That the practice hitherto pursued by His Majesty's Legislative Council in this Province, of excluding the people from their deliberations, is not only at variance with that of the House of Lords, in England, and that of several of the Legislative Councils in the other British North American Colonies, but contrary to the spirit of the British constitution, and injurious to the interests and liberties of this country.

Resolved, That while this House have no desire to deny to the upper branch of the legislature the right enjoyed by the representatives of the people, and sanctioned by public opinion, of closing their doors during the discussion of questions of order and privilege, and on particular occasions when the public interests may require secret deliberation; yet they should fail in their duty if they did not express to His Majesty's Council the deliberate conviction of those they represent, that the system of invariable exclusion pursued for a series of years, is fraught with much evil, and has a tendency to foster suspicion and distrust.

Resolved, That this House is prepared to provide for the expenses which may be incurred for the accommodation of the public in the Legislative Council Chamber.

On motion of Mr. Doyle,

Resolved, That a conference, by committee, be desired with the Council, on the general state of the Province; and that, upon such conference, the Committee of this House do communicate the foregoing Resolutions to the Committee of the Council.

Ordered, That the Clerk do request such conference.

(No. 2.)

In the House of Assembly,
4 February 1837.

A MESSAGE from the Council, by Mr. Halliburton.

Mr. Speaker,

The Council have directed me to deliver to this Honourable House a Message, which is in writing:—And he read the said message at the bar of the House, and afterwards delivered it into the House, and then withdrew. The said message was again read by the Clerk at the table of the House, and is as follows:—

Council Chamber, 4 February 1837.

Resolved unanimously, That a message be sent to the House of Assembly to inform them that the Council cannot continue the conference to which they consented yesterday, as it commenced on the part of the House by a breach of the privilege of the Council, and a violation of parliamentary usage, which prohibits one House from interfering with the internal regulations of the other.

The British constitution does not confer a right upon any person to be present at the deliberations of any branch of the legislature, of which he is not a member. The rights of an Englishman are not held by so precarious a tenure as the courtesy of any of his fellow-subjects; and it is notorious that the only mode of gaining admission to the House of Lords is by procuring a special permission from a Member of that House, which may be either granted or withheld at the pleasure of the person to whom the application is made; and it is thus obvious, that it is asked and received as a courtesy, and not claimed as a right. But although His Majesty's Council do not admit the right, they have for some time had under consideration the expediency, of adopting the example of the two Houses of Parliament in the mother country, who now very generally refrain from enforcing the standing orders, which preclude strangers from being present at their debates.

Although this practice is not unaccompanied by inconveniences, it is productive of much good. It gives to members of the legislature an opportunity of explaining the reasons which induce them to support or oppose the measures under discussion with greater publicity; and may thus not only shield themselves from misconstruction, but may also remove much misconception, relative to those measures, from the public mind.

His Majesty's Council have this subject still under consideration, and will come to such decision upon it as they shall deem most conducive to the public good; but they cannot permit the House of Assembly to interfere with their deliberations upon it. The best interests of the country require that each branch of the legislature should scrupulously preserve that independence which the constitution has bestowed upon it, and which would soon be destroyed if either were to allow the other to interfere in the regulations of its own House.

His Majesty's Council have seen by the journals of the House of Assembly, that the House has this session departed from the pious usage which has ever prevailed in this country and the parent state. They regret that their coadjutors in legislation do now discuss and decide upon the various measures which the public interest brings under their consideration without offering up their united supplications for the aid and guidance of Him from whom alone all good counsels and all just works do proceed; but deeply as they may deplore this, they feel that they have no right to interfere; and the subject is only alluded to, to show that if such interference of one House with the regulations of another could ever be proper, His Majesty's Council might be more justified in reminding the House of Assembly of the duty of adhering to the ancient and Christian practice of daily and unitedly imploring the Divine blessing upon our gracious Sovereign, and their own deliberations, than the House of Assembly can be in applying to His Majesty's Council to adopt a practice new in this country, and which, notwithstanding its many advantages, has had its attendant evils wherever it has been introduced.

(No. 3.)

His Majesty's Council perceive, by the journals of the House of Assembly, which the Council have this day received, that the House have passed several resolutions conveying accusations against His Majesty's Council, and, among others, one declaring that some of the Members of His Majesty's Council have evinced a disposition to protect their own interests and emoluments at the expense of the public.

His Majesty's Council admit that it is not only the right, but the duty, of the House of Assembly, to propose any alteration in the institutions of the country which they think would prove beneficial to the people; but they cannot admit the House to have any right to pronounce the members of the Council to be guilty of acting from corrupt motives; and if they have evinced a disposition to protect their own interests and emoluments at the expense of the public, their motives must be corrupt.

That decorum which regulates the intercourse of society would not long be preserved in private life, if in the transactions of the legislature, where a more ceremonious observance of it ought to prevail, one branch should be permitted to commit so great a violation of it upon the other, without expostulation or resistance.

His Majesty's Council trust that the House of Assembly will, upon further consideration, perceive that a resolution containing such accusations against a co-ordinate branch of the legislature is inconsistent with those rules of decorum.

His Majesty's Council would deeply deplore the evils the country would sustain from an interruption of the public business. They trust that the House of Assembly would equally deprecate such an event; and they therefore earnestly hope that the House will feel the propriety of rescinding this resolution, as His Majesty's Council feel that if they were to continue to hold communication with the House while that resolution remains unrescinded, they would justly forfeit their self-respect, as well as the respect and confidence of the public.

It therefore now remains with the House of Assembly to prevent any interruption of the public business; and the Council repeat their earnest hope that the House, by an act of justice, will enable the Council to co-operate honourably with the House in carrying forward the business of the session, and bringing it to a harmonious and happy issue, with all possible benefit to the people and to the Province.

— No. 12. —

(No. 77.)

No. 12.

EXTRACT of a DESPATCH from Lord *Glenely* to Major-General Sir *C. Campbell*, G.C.B. dated Downing-street, 30 April 1837.

YOU give me reason to infer (Despatch, 9 March 1837) that the Assembly desire such a change in the constitution of the Legislative Council as would bring it into correspondence with the system at present in force in the Canadas and in New Brunswick.

It is of course understood in the province that in all the British colonies possessing representative assemblies, except the Canadas and New Brunswick, the Council is a single chamber, called at different times to the discharge of legislative functions, and to the duty of assisting in the administration of the executive government.

The separation of this body into two distinct chambers, the one legislative and the other executive, is an experiment which was first tried in the Canadas by the Act of 1791, and repeated in New Brunswick in the year 1832. So far as I have been able to judge, the result of this innovation has not been such as

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to exclude very serious doubts respecting its real usefulness. It may well be questioned whether the maintenance of the existing constitution of the council of Nova Scotia would not be the best mode of subjecting that body to a direct and effective responsibility, and of securing to each of the two houses of legislature its just weight and legitimate influence in the deliberations and measures of the other. His Majesty, however, is graciously prepared to act on this question in conformity with such advice as shall be deliberately tendered to him by the representatives of the people of Nova Scotia, because the King will not refuse to his people in that province every participation in the institutions of the other provinces of British North America, which their representatives may regard as conducive to the general good, and because his Majesty is convinced that their advice will be dictated by more exact and abundant knowledge of the wants and wishes of their constituents than any other persons possess or could venture to claim. I willingly abstain from entering on the discussion of the alternative of an Elective Council, suggested in one of the rescinded resolutions. It is unnecessary for me to say more on this subject than to express my conviction that the suggestion was thrown out by the Assembly rather as a possible compromise of a supposed difficulty than as expressing any fixed opinion that the evils of which they complain would be remedied only by so essential a change in the constitution.

The objections made by the Assembly to the actual composition of the Council are but too well founded, and whether that body shall retain its present form or shall be resolved into two separate chambers, it must undergo a very comprehensive change in its component parts.

It is now for the first time disclosed to me, and, as I have reason to think, it was never understood by any of my predecessors in office, that in this small body there have been included several gentlemen united together in one commercial partnership, that the members have been almost without exception from the inhabitants of Halifax or its vicinity, and that the great majority of them are all members of one religious community, which is stated to be the least numerous of any of those into which the population of Nova Scotia is divided. It is impossible that distinctions so invidious should not be productive of serious discontent; especially must this be the case when peculiarities of religious belief are assumed as the ground of admission or exclusion.

In the list, which you propose to transmit for his Majesty's consideration, of gentlemen qualified to sit in the Council of Nova Scotia, it will be your care to introduce the names of persons connected with all the great interests, agricultural, commercial, manufacturing, or professional, existing in the province. You will also, as far as possible, propose candidates connected not merely with the capital but with the other principal towns, and with the rural districts. Your recommendations will be altogether uninfluenced by any consideration of the relation in which the proposed councillors may stand towards the Church of England, or any other society of Christians; it will indeed be your care to avoid, as far as possible, such a selection as may even appear to have been dictated by motives of this description; and it may therefore be necessary that you should advert to differences of religious opinion amongst the various candidates for this honour, not as constituting any criterion of eligibility, but as a security against the semblance of undue favour to any particular church.

If the information on which the House of Assembly proceeded shall prove to be accurate, it is not improbable that the necessity may arise, not merely for the introduction of many new members, but for the exclusion from the list of councillors of some of the gentlemen at present holding seats there. I advert to this subject the more readily, because, as no charge has been preferred against any individual, such a change, if really essential to the establishment of public confidence in this body, will be made without the infliction of any reproach or unmerited pain on any of the gentlemen who may be immediately affected by it. Thus, for example, I do not think it defensible that more than one member of the same commercial house should sit at the council board; and if it be true that this rule has been violated, the retirement of one or more members of any such firm will not, I trust, be regarded, as it will certainly not be designed, as a personal slight or degradation.

The next in order of the questions raised by the Assembly is, whether the chief justice should retain his seat in the Council. On this question I do not anticipate

anticipate any serious difficulty. In the event of the separation of the Council into two distinct chambers, it is His Majesty's pleasure that neither the chief justice nor any of his colleagues should sit in the Executive Council.

Even if that change be not made, the King thinks it right that neither the chief justice nor any other judge should be present at any of the proceedings of the Council in its executive capacity. The principle to be steadily borne in mind and practically observed is, that all the judges, including the chief justice, should be entirely withdrawn from all political discussions and from all participation in the measures of the local government, or of any persons who may be acting in opposition to it. It follows that, even in legislation, the chief justice and his brother judges should take no part whenever (as must often happen) the adoption or rejection of a law may involve some question of party politics. The only motive for retaining the chief justice in the Council would be, that he would probably contribute to the general improvement of the permanent laws of the province with a greater extent of experience and knowledge than any other member of that body; but it may fairly be questioned whether this advantage can be acquired consistently with that security which His Majesty is most anxious should be taken against any of the judges being drawn into the political discussions of the country. Perhaps the wisest course would be, that which prevails in some of the colonies eastward of the Atlantic, where the judges are excluded from the local legislature, but are required to revise every Act before it is finally passed, and to report their opinion whether it is framed in such a manner as to secure the attainment of the objects which the Legislature may have in view. The benefit of judicial knowledge and experience is thus obtained without any sacrifice of judicial independence. These, however, are questions on which His Majesty desires to act in conformity with the deliberate opinion of the people at large, and with the benefit of the advice of their representatives.

— No. 13. —

(No. 78.)

No. 13.

COPY of a DESPATCH from Lieutenant-Governor Sir *Colin Campbell*, G. C. B. to Lord *Glenelg*.

Government House, Halifax,
5 June 1837.

My Lord,

I HAVE the honour to acknowledge the receipt of your Lordship's despatch of the 30th April, in which your Lordship, in anticipation of an address from the House of Assembly, places me in possession of instructions for my guidance on the several topics which my communication of the 9th March had prepared your Lordship to expect would be shortly brought, in that form, under the consideration of His Majesty's Government by the Assembly.

I have since had the honour of transmitting to your Lordship the address in question, with the observations of His Majesty's Council upon it, and a few remarks of my own on that part of it which relates to the contemplated change in the constitution of the Council.

In these documents, the last subject is so fully entered into, that your Lordship will probably have little difficulty in deciding upon the question whether the legislative reform to be introduced into this Province shall be to the extent desired by the House of Assembly, that is, a division of the Council into two separate chambers, or shall simply consist, for the present, as I have ventured to recommend, of an addition of four or five new members, as legislative councillors only, and of the exclusion, as your Lordship suggests may be necessary, of some of those who now have seats at the Council Board.

Finding by your Lordship's despatch that it is very doubtful whether the experiment of separating the Council into two distinct chambers, which was first tried in the Canadas, and subsequently repeated in New Brunswick, has, in either case, been attended with the expected benefit, and also that it may well be questioned whether the maintenance of the existing constitution of the Council of Nova Scotia would not be the best mode of subjecting that body to a direct and effective responsibility, and of securing to each of the two Houses its just weight and legitimate influence in the deliberations and measures of the

NOVA SCOTIA. other, I would fain hope that our constitution, which has hitherto worked well, may not suddenly undergo any very essential alteration.

Your Lordship will, I think, perceive, on reading the observations of the Council, that there is hardly any real ground for the dissatisfaction which is said to exist in the Province, and that the grievances complained of by the Assembly are for the most part theoretical; and I feel persuaded that the change contemplated to remedy them, if adopted, will be found here, as it has, I believe, proved elsewhere, full of practical injury. In colonies where it is wholly impossible to find or form materials for anything like the House of Lords, it is hardly possible to imagine a plan by which the deficiency can be so well supplied or atoned for as by the union of legislative and executive power in a carefully selected body of the most respectable and influential members of the community, well acquainted with all the concerns of the country. Their connexion with the government is the best attainable substitute for an aristocracy, which can never exist in these colonies. As a check to the democratic influence which is rapidly growing here, they will no doubt often be obnoxious to the democratic branch of the legislature; but it is wise and wholesome to place them thus between the representative of the Crown and the representatives of the people. When the Council is changed, and its executive and legislative characters are sundered, the King's representative must be prepared to encounter the whole of the odium, when any check is offered to the views of the Assembly, however wild those views may be.

I should have no other observations to offer on the subject at present, had not your Lordship intimated that, even if no division of the Council take place, His Majesty would still think it right that the chief justice should not in future assist in the administration of the executive government.

I trust I shall not be considered as presuming to urge the slightest objection to a full compliance with the Royal will, when I state, as I feel it my duty to state, that, however wrong it may be in theory for the chief justice to take any part in the executive proceedings of the Council, great benefit has in fact resulted, for more than 50 years, from the circumstance of the chief justice being *ex officio* senior member of the Council. During that period, there have been three chief justices, and it was never even whispered that political bias affected the judicial conduct of any one of them: they have all been eminently useful in the Council, and equally distinguished on the bench. The holder of this office must always possess intellectual attainments of a superior order, and have the best means of acquiring, in the discharge of his circuit duties, that intimate acquaintance with every part of the country, and with all classes of its inhabitants, which, united with his general and professional knowledge and habits of business, render him the most efficient member of the Board.

Of the present chief justice, it is enough to say that his integrity and talents are universally acknowledged, and that it would be impossible to find in the Province any one so well qualified to preside in the Legislative Council. In this, therefore, I trust he will be permitted to remain, even if his exclusion from the other be deemed expedient.

The papers alluded to in your Lordship's despatch, explaining the principles on which His Majesty has been pleased to authorize a settlement of the financial question of New Brunswick, not having been sent, I have written to Sir John Harvey for copies of the more recent parts of your Lordship's correspondence with his predecessor and himself on the subject, and I shall take care to govern myself by those principles in any similar arrangement into which it shall become my duty to enter with the legislature of this Province; nor shall I fail to attend to your Lordship's instructions in preparing the list which is expected from me of gentlemen eligible as councillors.

I have, &c.

(signed) C. Campbell.

— No. 14. —

(No. 71.)

No. 14.

COPY of a DESPATCH from Lieutenant Governor Sir *Colin Campbell*, G. C. B.
to Lord *Glenelg*.

Government House, Halifax,
1 May 1837.

My Lord,

My despatch of the 9th March will have prepared your Lordship for the Address of the House of Assembly, which I now have the honour to enclose, representing various grievances under which the inhabitants of this Province are said to labour, and praying His Majesty, as a remedy for them, to grant an elective Legislative Council, or to separate the Executive from the Legislative Council, providing for a just representation of all the great interests of the Province in both, and securing the responsibility of the former to the Commons.

This Address, containing several charges against the Council, I felt it to be my duty, in justice to that body, to lay a copy of it before them, for otherwise they would have had no opportunity of noticing it officially. The Council have in consequence presented an address to me, accompanied by various observations on such of the charges of the Assembly as are not of too general a nature to be refuted, and urging numerous objections to any wide departure from the ancient constitution of the Province. I have also the honour to enclose these two documents, with the several papers annexed to them, and request that your Lordship will be pleased to lay them at the foot of the Throne, with the Address of the Assembly.

Viewing the subject theoretically, important advantages might be expected from the establishment of two distinct Councils; at the same time I cannot but think that the arguments used by the Council against the actual adoption of the measure deserve serious attention.

As far as I am myself concerned, I should prefer things to remain nearly as they are, for I have had every reason to be satisfied with the conduct of my Council, as well in their legislative as executive capacity, and I feel persuaded that any material change in the constitution of that body, however well considered the plan of its improvement might be, would not diminish the dissatisfaction which at present exists. An addition of four or five, however, to the Council, as legislative councillors only, would, I think, be desirable, and would naturally lead, under improved circumstances, to the formation of a distinct Legislative Council. This is all the change that I can recommend at present; but should your Lordship be of opinion that the time is arrived for assimilating the constitution of this Province to the constitutions of the neighbouring colonies, your Lordship may rest assured that I shall cheerfully assist your Lordship in making the necessary arrangements for carrying the measure into effect before the next meeting of the Legislature.

I have, &c.
(signed) *C. Campbell*.

Enclosure in No. 14.

ADDRESS of the House of Assembly to the King, complaining of the Constitution of His Majesty's Council, and other Grievances; with an Address of the Council to the Lieutenant-Governor, and their Observations in reference to the Address of the Assembly.

Encl. in No. 14.

TO THE KING'S MOST EXCELLENT MAJESTY.

The humble Address of the House of Representatives in General Assembly,
for the Province of Nova Scotia.

May it please Your Majesty,

We, Your Majesty's dutiful and loyal subjects, the representatives of Nova Scotia, while approaching the Throne to ask for a redress of grievances, tender the assurance of the unabated attachment of those we represent to Your Majesty's person and Government. The people of Nova Scotia, when anything trenches upon their rights, or retards their prosperity, turn to their Sovereign, as the father of all his people, wherever their lots may be cast; and whose affection is not diminished by distance, nor bounded by the four seas of Britain, but extends to the most remote limits of his empire, rearing, wherever practicable, institutions favourable to freedom, and fostering that love of justice, that nice sense of the relative duties

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duties of the Government and the governed which distinguishes the parent state. Nor is their confidence in Your Majesty diminished by the reflection that in early life you visited Nova Scotia, and in maturer years have sanctioned those vast reformatory changes at home, which embolden them to seek for a revision of their institutions, and the introduction of those checks and guards, without which they feel that private happiness and public liberty can never be secure.

In the infancy of this colony its whole government was necessarily vested in a governor and council; and even after a representative assembly was granted, the practice of choosing members of council almost exclusively from the heads of departments, and persons resident in the capital, was still pursued, and with a single exception has been continued for the last 30 years. The practical effects of this system have been in the highest degree injurious to the best interests of the country, inasmuch as one entire branch of the legislature has generally been composed of men, who, from a deficiency of local knowledge, or from the natural bias incident to their official stations, were not qualified to decide upon the wants or just claims of the people, by which the efforts of the representative branch were, in many instances, neutralized or rendered of none avail.

Among the many proofs that might be adduced of the evils arising from the imperfect structure of the upper branch, it is only necessary to refer to the unsuccessful efforts of the Assembly to extend to the outports the advantages of foreign trade, to the enormous sums which it was compelled, after a long struggle, to resign for the support of the customs establishment, to the difficulties thrown in the way of a just and liberal system of education, and to the recent abortive attempts to abolish the unconstitutional and obnoxious fees taken by the judges of the Supreme Court.

While the population of this province is composed, as it appears by the last census taken in 1827, of 28,659 members of the Episcopal Church, and 115,195 Dissenters, which proportions may be assumed as fair at the present time, the appointments to the Council have secured to the members of the Church, embracing but one-fifth of the population, a clear and decided majority at that Board. They have now in that body nine members. The Presbyterians, who out-number them by about 9,000, have but two; the Catholics, who are nearly equal, but one; while the Baptists, amounting by the census of the same year to 19,790, and the Methodists to 9,498, and all other sects and denominations, are without any of their members in a body whose duty it is to legislate for all. The Catholic bishop has no seat at the Council Board, and clergymen of that and other denominations are, as they ought to be, excluded, yet the bishop of the Episcopal Church has been since the year 1809, and still is a member.

Your Majesty will readily perceive that, whether designed or not, the mere circumstance of one body of Christians having such an overwhelming influence in the Legislative and Executive Council, has a tendency to excite a suspicion that, in the distribution of patronage, the fair claims of the dissenting population, founded upon their numbers, respectability and intelligence, are frequently overlooked. This is not the only objection urged by the people of Nova Scotia against the composition of the Council, and to which it is our duty to call Your Majesty's attention. Two family connexions comprehend five of its members, and until very recently, when two of them retired from the firm, five were copartners in one banking establishment; to this latter circumstance has been attributed the failure of the efforts of this Assembly to fix a standard of value and establish a legal currency.

The people of this province have for years asserted, and still most respectfully assert, their right to control and distribute the casual and territorial revenues of the country, whether arising from the fees of office, the sale of lands, or the royalty paid upon the produce of the mines, as also the amount of the old Crown duties. The lands of the province are in effect mortgaged to pay to the commissioner a salary out of all proportion to the duties he is called on to perform. Since his appointment in 1831, 5,624 *l. 8s. 10d.* have been received on account of 107,923 acres of lands sold, and the whole amount, except 216 *l. 8s. 0½d.* has been taken to pay the Commissioner and defray the expenses of the department, while all the mines and minerals of the province are held under a lease for 60 years by a wealthy English company, without the consent of, and independent of all control by, the representatives of the people.

Apart from the mere question of judges' fees, this Assembly is convinced that the presence of the chief justice at the Council Board has a tendency to lessen the respect which the people ought to feel for the courts over which he presides, while the position occupied there by the collectors of the customs and the excise is also unwise.

Though this Assembly might illustrate the evils arising from the structure of the Council by other examples, sad experience has taught them that it is not always safe to attempt to convey to the foot of the Throne representations that are disagreeable to its members. A year's revenue, and all the appropriations, were sacrificed in a protracted struggle with the upper branch in 1830; and during the present Session the Assembly found itself compelled, by a regard to the public interest, to rescind a series of resolutions, passed after grave deliberation, and comprehending many of the topics touched on in this address. The evils arising from the structure of the Council are heightened, and rendered more injurious by the practice adhered to by that body, of shutting out the people from their deliberations. This practice they still maintain, although it is opposed to that of the House of Lords in England, that of the Legislative Councils of Lower Canada, New Brunswick, and Newfoundland

foundland, and notwithstanding the murmurs and complaints of the people for a long series of years, and the representations and remonstrances of this Assembly. NOVA SCOTIA.

While this House has a due reverence for British institutions, and a desire to preserve to themselves and their children the advantages of the constitution, under which their brethren on the other side of the Atlantic have enjoyed so much prosperity and happiness, they cannot but feel that those they represent participate but slightly in those blessings. They know that the spirit of that constitution, the genius of those institutions, is complete responsibility to the people, by whose resources, and for whose benefit, they are maintained. But in this colony the people and their representatives are powerless, exercising upon the local Government very little influence, and possessing no effectual control. In England, the people, by one vote of their representatives, can change the ministry, and alter any course of policy injurious to their interests; here the ministry are Your Majesty's Council, combining legislative, judicial, and executive powers, holding their seats for life, though nominally at the pleasure of the Crown, and often treating with indifference the wishes of the people and the representations of the Commons. In England, the representative branch can compel a redress of grievances by withholding the supplies; here, they have no such remedy, because the salaries of nearly all the public officers being provided for by permanent laws, or paid out of the casual and territorial revenues, or from the produce of duties collected under Imperial Acts, a stoppage of supplies, while it would inflict great injury upon the community, by leaving roads, bridges, and other essential services unprovided for, would not touch the emoluments of the heads of departments in the Council, or of any but a few subordinate officers of the Government.

As a remedy for these grievances, we implore Your Majesty to grant us an elective Legislative Council; or to separate the Executive from the Legislative Council, providing for a just representation of all the great interests of the province in both; and by the introduction into the former of some members of the popular branch, and otherwise securing responsibility to the Commons, confer upon the people of this province what they value above all other possessions, the blessings of the British Constitution.

17 April 1837.

George Smith, Speaker.

TO His Excellency Major-General Sir *Colin Campbell*, Knight, Commander of the Most Honourable Military Order of the Bath, Lieutenant-Governor and Commander-in-Chief in and over the Province of Nova Scotia and its Dependencies, &c. &c. &c.

THE ADDRESS OF HIS MAJESTY'S COUNCIL.

May it please Your Excellency,

His Majesty's Council feel it to be their duty to offer their sincere thanks to Your Excellency for communicating to them the Address of the House of Assembly, containing complaints against the constitution and conduct of the Council of this Province.

If His Majesty's Council believed that any serious grievances existed in this retired but peaceful colony, they would gladly co-operate with the House of Assembly in humbly representing them to His Majesty, with unbounded confidence in the gracious inclination of their Sovereign to redress every wrong.

But deeply interested as they are in the prosperity of a province, which is the home of themselves and their families, they look with anxiety upon every proposal to make important changes in the constitution of a colony which has hitherto had abundant cause for contentment, and whose happiness they are unwilling to hazard by any experiments that might endanger its institutions, or diminish the prosperity and peace which it now enjoys.

It cannot be expected that every part of the conduct of any legislative body should give universal satisfaction; and when the Council have differed from the House of Assembly upon the expediency of any measure which the House have originated, it is neither unnatural nor unusual for the disappointed supporters of such measures to complain of the body by which it was rejected.

The Council cannot be called upon to vindicate their conduct against general charges, which in their nature are incapable of refutation, and can only be met by the general character of the accused.

To the opinion of their proceedings entertained by the intelligent and upright members of the community, the Council look without apprehension.

Upon those parts of the Address which contain anything like specific complaints, the Council have felt themselves called upon to make some observations, which they do now submit to your Excellency, with a request that you will have the goodness to transmit them, with the Address of the House of Assembly, to His Majesty's Principal Secretary of State for the Colonies; and they humbly hope that when that high officer lays that Address at the foot of the Throne, he will inform the Sovereign that his faithful and loyal Council in Nova Scotia are prepared to vindicate their conduct, and to answer every charge that can be brought against them.

Brenton Halliburton,
President.

20 April 1837.

OBSERVATIONS of His Majesty's Council for the Province of *Nova Scotia* on the Address of the House of Assembly of the Province to His Majesty.

THE first complaint stated in the Address is, that members of Council have been chosen almost exclusively from the heads of departments, and from persons resident in the capital, who, from a deficiency of local knowledge, or from the natural bias incident to their official stations, were not qualified to decide upon the wants or just claims of the people.

It is not necessary now to consider whether it was wise to select members of Council from the heads of departments or not, as no recent instance of such selection has taken place.

The chief justice, the bishop, the collector of the customs, and the collector of imposts, are now the only public officers at the Board, and nearly 20 years have elapsed since the last was appointed; the eight junior members are all gentlemen unconnected with the government by any other office than that of member of the Council. It seems difficult, therefore, to assign any reason for bringing that forward among the list of grievances.

The residence of the members of the Council in the capital is next complained of.

If the King's representative were now called upon to supply the names of gentlemen residing in the country, qualified to become legislative councillors, who would be willing to perform their duty without remuneration, His Majesty's Council are of opinion that his Excellency would feel great difficulty in making such nomination.

To the various charges contained in the third clause of the Address, it may be observed, that the opposition made by the Council to extend to the outports the advantage of foreign trade, is confined to the representations which they made on the 16th May 1834, and submitted to His Majesty's Government.

That Report was founded on the conviction that the extension sought for by the House of Assembly would have the effect of counteracting the provisions of the Act of the Imperial Parliament for regulating foreign trade, facilitate smuggling, diminish the provincial revenue, injure the fair trader, increase the expenses of the customs department, and operate injuriously upon British and colonial shipping.

For a statement of these views the Council refer to the representation hereinbefore alluded to, by which it will be seen that although they were opposed to the general extension of the free port system to the whole province, they did not advocate the confinement of it to Halifax only.

That the Council took any part in determining upon the amount of the sum which the House of Assembly states it was compelled to resign for the support of the Customs establishment, is distinctly denied. The Council only concurred in the Bill which the House of Assembly passed, to give effect to the arrangement which now exists.

The Council are at a loss to know to what the House of Assembly allude, in stating that the Council have interposed difficulties to the introduction of a just and liberal system of education. The Council are, and ever have been, earnestly desirous to promote liberal education; but as that cannot be done without the provision of funds adequate to the object, it is the province of the House of Assembly, and not of the Council, to provide them. The Council would readily concur in any judicious system which the House of Assembly would originate to promote so desirable an object.

The Council deferred the consideration of the Bills sent up by the House of Assembly, to abolish the chief justice's fees, because they would not legislate upon a subject which, if brought under their consideration at all, should have been brought before them in their judicial and not in their legislative capacity.

All the chief justice's predecessors in office had received those fees, except for two years, during which a commutation was given for them to that officer by law, out of the public treasury, and no provision was made in these Bills for any such commutation.

If any grievance existed, a remedy should have been sought by law here, and had the decision proved unsatisfactory, an appeal lay to His Majesty and His Privy Council in England.

But the House of Assembly, without seeking for redress in a court of law, applied directly to His Majesty; and the answer to their Address, as communicated by the Right Honourable the Secretary of State for the Colonies, should have prevented the House of Assembly from introducing this subject as a grievance chargeable upon the Council.

The next complaint is, that while dissenters in this province are much more numerous than the members of the Church of England, nine churchmen are members of the Council, and only two Presbyterians, and one Catholic, leaving the numerous body of Baptists and others altogether unrepresented.

The first observation that suggested itself in reply to this complaint is, that the Council are not the representative branch of the Legislature, and if it were, it is quite a new principle of representation to classify all the religious sects in the country, and apportion the representatives who are to compose a legislative body according to the relative number of each.

The language of liberality has recently been, that men should be selected for the discharge of political duties without reference to their religious creeds, but this liberality it appears must not be extended to the members of the Established Church.

His Majesty's Council are confident that, with the exception of the bishop, who rarely attends their meetings, not one gentleman was ever called to the Council on account of his

being a member of the Church, but solely because the Governor for the time thought him an eligible person.

Admitting the relative numbers of the various religious sects in this province to be correctly stated in the Address, the people themselves have not acted upon this new principle of representation, for it will be found that a much greater number of churchmen have been elected, and are now members of the representative branch of the Legislature, than this principle would warrant.

The numerous body of dissenters in this province contains many persons of intelligence and respectability; but His Majesty's Council think it right, in order to vindicate the conduct of the Governors who recommended the several members who now sit at the Board, to state, that a great number of the loyalists who settled in this province after the American Revolution were churchmen. Among these were men of education and comparative affluence, who were then better enabled to bestow a liberal education upon their children than those who were struggling for a subsistence in a new country, and hence it arose that a greater proportion of churchmen have often been found qualified to fill public stations, than a mere reference to their relative numbers would have led us to assume; but this accidental superiority is fast wearing away; and all recent appointments show that the Government cannot be justly charged with any undue preference to members of the Church. Neither of the three last appointed councillors, before alluded to, are churchmen. The master of the rolls, the attorney-general, the solicitor-general, the clerk of the Crown, are all dissenters, and have been appointed within these few years to their respective high offices, and the patronage of the government will be found to have been exercised as it respects other minor appointments, without any reference to the religious creed of the various candidates for office.

The present period, therefore, appears to have been not very opportunely chosen to bring forward the presence of so many churchmen at the Council Board, as one of the prominent grievances of Nova Scotia.

If His Majesty's Council could entertain any other feeling than that of deep regret, at the attempts which have been made to excite discontent in this hitherto happy and peaceful province, they would be gratified to discover this proof of the difficulty of finding real grievances here.

The framers and supporters of this address have devoted a great part of the session to this subject, yet this prominent grievance remains unsupported by a single fact—not one instance of partiality for churchmen in the exercise of patronage has been adduced; but His Majesty is told that he will readily perceive that the mere circumstance of one body of Christians having such an overwhelming influence in the Council, "has a tendency to excite a suspicion," that in the distribution of patronage the fair claims of the dissenting population are frequently overlooked.

It is worthy of remark, that four of the churchmen now at the Board were appointed by governors who belonged to the Church of Scotland (Lord Dalhousie and Sir James Kempt), while the three dissenters recently called to the Council, owe their appointments to Sir Peregrine Maitland, a zealous member of the Church of England.

If the framers of this address are ignorant of the past history of the province, it is presumptuous in them to approach the Throne with any representation upon this subject. If they are acquainted with it, they must then know either that this abuse of patronage has or has not taken place. If it has, they should have stated the instances; if it has not, it is not only unjust to the Council, but disrespectful to His Majesty, to endeavour to excite suspicions in the royal breast which they themselves know to be unfounded.

In connexion with this complaint is the intimation of dissatisfaction, because the bishop has a seat in the Council. To this complaint the reply is easy. The bishop of the Established Church is *ex officio* a member of the Council by the appointment of His Majesty, because that church, with its Liturgy, and rites and ceremonies, was introduced into this colony at its first settlement by the royal instructions, and was afterwards established by law, in the first session of the first General Assembly convened here. The bishop is its natural and most proper representative. Its interests often require explanation and protection in the legislature, and such have uniformly been furnished when necessary, to the satisfaction of the Council, and, as they confidently assert, without injury or just cause of dissatisfaction to any other denomination of Christians.

It is true that two family connexions comprise five members of the Council. Two of them, however, are unconnected with the other three, and the journals of the Council will show that those who are so connected differ in opinion from each other quite as often as any other members.

In respect to the complaint that five members were copartners of one banking establishment, it may be observed that one of them was a member of the Council before that copartnership was formed; another was a merchant, extensively concerned in business, who was shortly after called to the Board to fill a vacancy, at a time when there was only one other commercial member of the Council. When His Majesty's Government at home were induced to think it injudicious to continue to appoint judges of the Supreme Court to be councillors (an opinion which has certainly produced serious inconveniences in Nova Scotia and New Brunswick), it was thought necessary to select some other person of legal acquirements, and a retired barrister was preferred to any gentleman of the law engaged in practice. After the restrictions upon Roman-catholics having seats in the legislature were removed at home, it was considered right to call a gentleman professing that religion to the Council in this province, and an influential member of that profession was accord-

ingly selected. When His Majesty's Government had signified their pleasure that no addition should be made to the number of persons holding official situations at the Board, a gentleman was selected from the mercantile part of the community, who was then at the head of the Chamber of Commerce, and therefore deemed a very proper member to call to the Council.

These gentlemen, it is true, were at one time all members of one banking establishment, but no reference was made to that circumstance at the time of their respective appointments. They were chosen because they were all men of property and standing in the country, and two of them have for some time withdrawn from that copartnership. For the accuracy of this statement a reference is respectfully requested to a despatch from Sir P. Maitland to Lord Goderich, dated 6th June 1831, relative to these appointments.

To the statement that the failure of the efforts of the Assembly to fix a standard of value and establish a legal currency, has been attributed to the presence of so many bankers in the Council, it may be briefly replied that those measures failed on account of their own intrinsic defects.

The Bill sent up by the House of Assembly, would have given a marketable and nominal value to coins, far above their intrinsic value. This was opposed by the whole Council as impolitic and unjust. In that opposition the bankers joined, although any increased nominal value given to coins would have been beneficial to them.

His Majesty's Council do not feel called upon to make any observations upon the claim of the House of Assembly to the King's casual and territorial revenue. Whenever it shall be His Majesty's pleasure to make or to listen to any offer respecting it, to or from the Assembly of Nova Scotia, the Council will then, and not till then, feel themselves justified in entering upon that topic.

They cannot, however, pass over this branch of the address, without adverting to the complaint it contains against the present mode of disposing of the Crown lands in this province. If the existing system is found to be objectionable, His Majesty's Council are not chargeable with introducing it. They beg leave to refer to the annexed copy of a report of a committee of the Council to show how strenuously they opposed it when it was first suggested by His Majesty's Government at home.

It is next asserted that the presence of the chief justice at the Council Board has a tendency to lessen the respect which the people ought to feel for the courts over which he presides.

The Council cannot agree in this opinion. On the contrary, they think that its tendency is directly the reverse. Nor if he were removed from that situation, do the Council see who could be selected with equal advantage to the public to preside over their deliberations. If it is essential for a member of the legal profession to hold that situation, and the Council think it is, none can be supposed more free from objection than a person who is at the head of the judicial establishment of the country, and who is every day in the habit of investigating and expounding the existing laws.

The chief justices of this province have been presidents of the Council since its formation. The present chief justice has for upwards of 20 years combined the offices of judge and councillor, and no instance has been adduced, even in the debates upon this address, of his ever having allowed political feeling to bias his judicial decisions. The usage is in strict analogy with that of the House of Lords and of all the legislative councils in America; and so far is it from being the case that all judges ought to be excluded from the legislature, that at this very time the chief justices of the superior courts in England have seats in the House of Lords.

It is next said that the appointment of the collector of the customs and the collector of the excise to the Council Board is unwise.

Upon this the Council would observe, that the office of collector of the customs in every colony is one of very great importance and responsibility. Upon him devolves the duty of enforcing those laws which are made for the regulation of the general trade and commerce of the empire, and which frequently come in conflict with local interests in the colony. His Majesty's Council are of opinion, that it will be injudicious to take any step which will tend to diminish the influence and importance of the person who holds this office. It is the interest of the Government to uphold such an officer, who cannot be expected to act with becoming independence where his duty brings him into conflict with influential men in the colony, if his office is deemed to be a disqualification for a seat at the Council Board.

The knowledge of the laws relating to the trade of the empire, with which he must make himself familiarly acquainted, renders him a most valuable member in the discussion of all fiscal questions, and the Council have no hesitation in stating their opinion, that his exclusion would be most unwise.

As it respects the collector of excise, there are not the same forcible reasons for his having a seat at the Board solely on account of his office. But the Council respectfully submit to the consideration of His Majesty's Government, whether it would be just to exclude from the Board a gentleman of his respectability, both in public and private life, merely because he is, in the language of the day, an office holder.

It may suit the views of those who are desirous of assimilating our institutions with those of our republican neighbours, to join in the opposition to the appointment of office holders to seats in the Council; but these feelings and principles are not congenial with those which should predominate in the bosoms of all who love and revere the British monarchy. On this side of the Atlantic the representative branch is so thoroughly
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embued with the democratic principle, that unless the Crown retains some influence in the upper branch of the legislature, it will be impossible to counteract the progress of republicanism.

This observation is not designed to cast any reflection upon the House of Assembly, but merely to state, that from its organization it does contain so great a portion of the democratic principle, that if a mixed form of government is to be retained, some principle supporting monarchical institutions must be sought in the other branch, from which, therefore, the higher officers of the government should not be systematically excluded.

The address next alludes to the difference which arose between the House of Assembly and the Council, in the year 1830. Many gentlemen who now sit at the Council Board were not then members of the legislature; but the proceedings of that session were vindicated at the time, and, as the Council believe, to the satisfaction of His Majesty's Government.

To the observations respecting the events of the present session, the Council reply that they did not require the House of Assembly to rescind their series of resolutions, but merely those expressions in one of them, respecting the members of His Majesty's Council, which a regard to decorum should have prevented from appearing upon their journals.

As it respects the Council deliberating with closed doors.

That practice has ever prevailed in this Province, and until lately in all the other colonies in British North America.

The Council of Nova Scotia would, probably, have followed the recent example of the Councils in some of the other Provinces before this time, had it not been for the improper interference of the House of Assembly.

The Council think that His Majesty will see with some surprise the extent of the claim made by the House of Assembly in the latter part of their address. The request to have an elective Legislative Council, and the desire to render the salary of every officer of the Government subject to an annual vote of that body, by which the House of Assembly will have it in their power to withhold support from those public functionaries, the performance of whose duties are essential to the maintenance and regulation of civil society, unless the other branches of the Legislature uniformly yield to their dictates, are demands so utterly inconsistent with the principles of the British Constitution, that the Council feel it would be improper for them to waste the time of His Majesty's Government by making any observations upon this part of the Address.

In answer to the alternative proposed by the House of Assembly, of separating the Executive from the Legislative Council, His Majesty's Council beg leave to refer to the opinion which they were formerly required to give upon that subject by the Right hon. Viscount Goderich, when Secretary of State for the Colonies.

A copy of that opinion, extracted from the proceedings of the Executive Council of the 7th May 1834, is hereunto annexed.

The sentiments of the Council upon that important subject are not only unchanged, but have been strongly confirmed by subsequent events in His Majesty's North American Colonies, where great pains have recently been taken by persons unfriendly to monarchical institutions to excite discontent. These innovators, however, are aware that if they were plainly to express their wishes, they would defeat their own plans, for the great body of the people are loyal subjects, and would indignantly reject any direct proposal that would lead them to swerve from their allegiance to their Sovereign. These designing men therefore endeavour to induce them to believe that they are deprived of the rights of Englishmen, that they have not equal political power with their fellow subjects at home, that the Councils are arbitrary bodies appointed by the Crown, and although called the upper branch of the legislature, have no resemblance to the House of Lords.

Now it is unquestionably true that the Councils have little, very little, resemblance to the House of Lords; and it cannot be doubted that every attempt to create a body in the colonies that shall resemble the House of Lords will prove a failure; the greatest of which, however, would be that of an Elective Council. Precluded then by our situation in the colonies from having among ourselves anything approaching to that august body, we should look to the general origin of colonial constitutions.

Most of them, and that of Nova Scotia among them, were founded upon the King's instructions, issued upon the responsibility of the Ministers of the day.

Those instructions in the first instance committed the government of the colony to the Governor, and a Council therein named; with directions, however, that whenever the population should become sufficiently numerous, a House of Assembly should be elected by the people to represent them, which House of Assembly, in conjunction with the Governor and Council, should then become the Legislature of the Province, and be authorised to pass laws for the regulation and government of its inhabitants. Under this constitution, every person residing in this Province has settled himself here; and unless some positive infringement of it has been made which affects his rights, he has no legitimate cause of complaint.

If, however, this constitution can now be improved, it would be as unwise to refuse to improve it, because those who seek such improvement may not have a positive legal right to it, as it would be imprudent to hazard a change in order apparently to improve its theory, without the prospect of any practical good.

It must here be repeated that these observations are not addressed to those who are desirous of vesting all power in the democratic branch,—they will think every measure that has a tendency to introduce republicanism to be a practical good,—but to those who are

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desirous of assimilating our institutions as much as possible to those of the British constitution, it is asserted that a Legislative Council created in addition to and distinct from the Executive Council, would bear no more resemblance to the House of Lords than the present Council does, and that it would only increase the machinery of the constitution, and render it more cumbrous, without producing any real benefit to the Province.

From the extent of the elective franchise, and the freedom which every elector possesses to exercise his own opinion in the choice of a representative, the people are as fully represented as they can be in any country where universal suffrage does not prevail. No measure can now pass of which their representatives disapprove, nor could any measure pass of which the Government disapproved, if there was a Legislative Council concurring with the House of Assembly in the adoption of such measure. For so long as we form a part of the British empire, the King's representative here must not shrink from putting a negative upon any act contrary to his instructions, or to the views he and his Executive Council entertain, upon any subject in which the local interests of the colony clash with the general interest of the empire.

But if a new body, neither elective, hereditary, nor executive, were created, it would bear no analogy either to the British or colonial constitutions.

The fluctuating state of colonial society, the universal division of the property of a deceased person among his children or relatives, and the general feelings and habits of the people, prevent the growth of aristocracy among us. We cannot therefore found any branch of the legislature here upon aristocratic principles; our laws must be enacted by those who represent the feelings and wishes of the great body of the people, and those who constitute the government of the country: and let the machinery of colonial legislation be rendered ever so complex, these after all will be the two, and the only two, principles that can be introduced into it.

The interposition of the Council between the Governor and the House of Assembly is judicious; they form a part of the community, and their families, their property, and their descendants will be affected by the laws they consent to enact, while their connexion with the Government will naturally render them desirous of upholding the King's authority.

Thus we have a Governor to represent the Crown, a House of Assembly fully representing the people, and a Council interested in supporting both.

Neither the result of the experiment made upon the Canadas in the year 1791, nor that more recently tried in New Brunswick, is such as to induce thinking persons among us to wish for its extension to Nova Scotia.

His Majesty's Council feel the embarrassment of thus advocating the continuance of their own body, with all its executive and legislative powers, and they therefore in conclusion, would observe, that the greater part of the members now composing it were selected from the community, and summoned to the Council Board without any solicitation on their part. A large majority of them are unconnected with the Government by any office; and although not insensible to the honour that was conferred upon them by their Sovereign when he called them to his Council, they are quite willing to retire into private life, whenever he shall deem it right to dispense with their services: but while they retain their seats, they are urged by a sense of duty to vindicate their own characters, to preserve the rights of the body to which they belong, and to give their opinions respectfully but explicitly to His Majesty's Government, upon a subject so deeply affecting the interest of all the King's subjects in his Province of Nova Scotia.

(signed)

*Brenton Halliburton.**C. R. Prescott.**John Nova Scotia.**Samuel Cunard.**T. N. Jeffery.**H. H. Cogswell.**H. N. Binney.**P. M'Nab.**Enos Collins.**James Tobin.**S. B. Robie.**Joseph Allison.*

20 April 1837.

DOCUMENTS referred to in the preceding Observations of His Majesty's Council.

OBSERVATIONS of the Privy Council of *Nova Scotia* on the Address of the House of Assembly of that Province to His Majesty on the subject of the Free Ports and Foreign Trade.

Extract from the Minutes of the Proceedings of a Privy Council, held at the Council Chamber in Halifax, on the 16th May 1834.

THE Board resume the consideration of the Address of the House of Assembly on the subject of the free ports and foreign trade; and conceiving that it does not contain all the views which should be presented to His Majesty's Government, to enable them to form a correct opinion upon this important subject, request the President to transmit to His Majesty's Principal Secretary of State for the Colonies the following remarks upon the Address for such consideration as they may appear to merit.

That, from the nature of the trade and the amount and character of the population of this province, the productions of foreign countries cannot, with advantage to the best interests

rests of the colony, enter very largely into our market for domestic consumption. That the warehousing such articles to any very great extent, for exportation to other countries or colonies who possess similar privileges of foreign trade, cannot, in the regular course of commerce, be attended with much success. One of the advantages contemplated from the warehousing system in these northern colonies was an extensive carrying trade in the productions of the United States, for the supply of our West India possessions; but the existing scale of duties on those articles has not been found sufficiently favourable to such mode of importation to influence the carriage of any considerable portion of those supplies through the warehouses in the northern provinces. It is therefore at least problematical whether more than three free ports are required for beneficial purposes in this province. It is possible that a more advantageous arrangement of such ports might be made; but when the nature of the trade is considered, the number of ports cannot, we think, fairly be deemed insufficient. The Address deduces, as the very encouraging inferences to be drawn from the establishment of numerous warehousing ports in the province, that the revenue will be increased, its collection facilitated, and smuggling suppressed. Could these objects be attained, it would seem very desirable; the only question then remaining for adjustment would be the effect to be produced upon the agriculture and other branches of industry and commerce of the province. But the inferences intended to be drawn are not, in the opinion of His Majesty's Council, borne out by experience. Since the opening of the free ports of Sydney and Pictou, the aggregate of the public revenue in these ports has diminished, as will be seen by reference to the annexed comparative statement of the amount of duties received there during five years previous, and a like period subsequent to the opening of the ports. It may also fairly be inferred that the articles warehoused in these ports have diminished the quantity which would have been warehoused in Halifax, by which the imperial duties have been diminished, which would make the loss of the general revenue of the province much greater than appears by the comparative statement. It is admitted that the trade has increased; the conclusion is inevitable that the making a port free increases the facilities of smuggling, which can only be prevented by an expensive increase of the custom-house officers. In addition to the foreign trade carried on with the United States from Sydney, an illicit trade with St. Pierre and Miquelon in French commodities is carried on to a considerable extent; and foreign productions in many of the outports of the province can be procured at a much less rate than in Halifax, an evil which now extends to the diminution of the revenue in Halifax, by the clandestine introduction of such articles from the outports.

The object which His Majesty's Government had in view by the establishment of free warehousing ports appears to have been to permit a general intercourse in foreign and British ships between foreign countries and the capital or principal ports of the colonies; but it would be found impracticable to extend the privileges of free ports beyond this limit, in consequence of the heavy additional expense it would occasion for the support of the various subordinate officers of the customs, nor can it be perceived by His Majesty's Council that such extended foreign intercourse would be found either beneficial or necessary in this colony; indeed it must be evident that such trade would prove injurious to our navigation, by giving to foreigners a great portion of the carrying trade now enjoyed solely by colonial vessels. But if His Majesty's Government shall see fit to grant the limited privileges of warehousing ports, now possessed by several of the outports in the colonies, to an additional number of those ports in this province, where the imports of flour and other articles are required for the consumption of the inhabitants, such regulation would, in the opinion of His Majesty's Council, prove more conducive to the general interests of the province, than by opening the ports generally, as sought for in the Address. His Majesty's Council also beg to remark, that in one county, where there is now an officer of the customs and a collector of excise, the whole colonial duties collected for several years past has not paid the expense of the officers; and, from its local situation, little better success can be anticipated from increasing the facilities of trade, by opening ports there. The same remark, to a less extent perhaps, may apply to many other parts of the province, which so abounds with rivers, creeks, and landing places, that an expense amounting to one half of the revenue, would be insufficient to secure its faithful collection. His Majesty's Council have, with much regret, but with a sense of imperative duty, stated the foregoing views, as they are extremely anxious that all the benefits of a fair and free commerce should be indiscriminately extended to all parts of the province, so far as the same can be done consistently with an efficient control of the revenue, due protection to the fair trader, and the safeguard of the people from the demoralizing effects of illicit traffic. It should also be borne in mind that most of the articles imported from the United States for consumption operate injuriously upon the interests of the agriculturists and artisans of this province, or upon the importation of the manufactures of the United Kingdom.

Having presented this view which they entertain upon the subject of the Address, His Majesty's Council indulge the hope that before His Majesty's Government shall determine upon granting the prayer of the petition *in extenso*, commissioners may be appointed to take evidence upon all the points connected with the trade of the province, which His Majesty's Government may deem necessary to enable it to come to a just conclusion in what mode the commerce of this colony can be regulated, to promote the best interests of all the inhabitants.

In respect to that part of the Address which relates to the arrangement and expense of the custom-house establishment, His Majesty's Council do not conceive it necessary to make any remark until the other parts of the Address have been decided upon by His Majesty's Government.

NOVA SCOTIA. COMPARATIVE STATEMENT of Duties received at *Pictou* and *Sydney, Cape Breton*, from 1824 to 1828, and from 1829 to 1833 inclusive, Five Years previous and Five Years subsequent to opening them as Free Warehousing Ports.

	King's.			Provincial.			TOTAL.		
	£.	s.	d.	£.	s.	d.	£.	s.	d.
Pictou, 1824 to 1828	-	-	-	1,462	14	2	7,252	3	4
Sydney, 1824 to 1828	-	-	-	885	1	6	5,964	6	1
							15,564	5	1
Pictou, 1829 to 1833 -	-	-	-	2,238	14	11	4,139	11	2
Sydney, 1829 to 1833	-	-	-	2,093	-	2	3,034	19	10
							6,378	6	1
Pictou, previous	£. 8,714	17	6				13,506	6	1
— subsequent	6,378	6	1				15,564	5	1
Loss	£. 2,336	11	5				Loss £.	2,057	19
Sydney, previous	£. 6,849	7	7						
— subsequent	7,128	-	-						
Gain	£. 278	12	5						

REPORT of a Committee of the Privy Council of *Nova Scotia*, relative to the proposed Alterations in the Mode of Granting Lands in this Province.

Extract from the Minutes of the Proceedings of a Privy Council, held at the Government House, in Halifax, on the 23th July 1826.

THE Committee of His Majesty's Council, to whom the regulations which have been adopted in Upper Canada for granting lands were referred, report,—

That they have carefully perused these regulations, and they submit the following considerations upon the subject to his Excellency and His Majesty's Council.

1st. The situation of Upper Canada differs widely from that of Nova Scotia. The former is an extensive colony, containing an immense body of valuable land, remote from the sea, and agriculture must ever form the primary pursuit of its inhabitants.

Nova Scotia is comparatively a small colony, surrounded by the sea, abounding in harbours and inlets from the ocean; and although it contains a great quantity of very valuable land, the wealthiest part of its population is, and ever will be, commercial.

In Upper Canada, therefore, it may be expected, that as its inhabitants acquire wealth they will be disposed to invest it in the purchase of lands, either from the government or private individuals; but in Nova Scotia capital may be more profitably employed in commerce, and few persons will be met with who will be disposed to invest it in the purchase of wild lands.

In confirmation of this opinion, the Committee refer his Excellency and the Council to the well-known fact, that the large grants which were injudiciously made some years since, of the most valuable lands in the province, to the different individuals who had influence with the government of the day, still remain in the hands of the grantees or their representatives; and although procured for the express purpose of selling them, a very small portion of them have as yet been disposed of, and even that portion at prices which have not realized the expectations of the grantees.

2d. In Upper Canada, we are informed, that regular surveys have been made of the lands in general, and that large reserves have been made for the Crown in situations which render the reserved lands valuable. In Nova Scotia no such system was adopted. When His Majesty's Government first attempted the settlement of this province, it was considered a cold, inhospitable, barren country (only calculated for the abode of fishermen), but few would undertake to settle in it, and those who did were encouraged to do so by extensive grants in whatever situations or form they deemed most eligible; the consequence of which has been that not only the most valuable land in the province has been already granted, but what remains to the Crown lies in remote situations, where none but the poor who are unable to purchase will submit to live.

The Committee think they may safely assert, that there has not been a single instance for 20 years past, in which any person possessing capital has planted himself in the wilderness,

ness, and devoted that capital to the cultivation of wild land; during that period a vast body of the wilderness has been reclaimed, but these improvements have been chiefly effected by the efforts of emigrants, who were compelled by their poverty to submit to the toil of subduing the forest, and partly by the poorer part of the native population. Some of the grantees of the large tracts have expended money in clearing a part of their land, but in no case have they received a return to encourage them to proceed.

Under these circumstances, the Committee conceive that no price could be procured for the wild lands which now remain to the Crown in Nova Scotia, sufficient to pay the expense of the survey of them, which must be made prior to the valuation contemplated in the first article of the Upper Canada Regulations; in confirmation of this opinion the Committee refer his Excellency and His Majesty's Council to the Order made by his late Majesty, of the 3d February 1774, for the sale of the wilderness lands in Nova Scotia. At that time a large portion of the best land in the Province belonged to the Crown, and convenient plantation lots were laid off in the most eligible situations, and advertised for sale at public auction; but although these lots were set up at 6*d.* per acre, and due notice given of four months as by the said Order directed, there were no bidders for them. The expense of the survey, preparatory to the sale, was defrayed by His Majesty's Government; and the system of granting lands in the usual manner was resumed, which your Committee think would be the case if the experiment should be again tried in this Province.

The Committee have no doubt but that these regulations may be very beneficial in such colonies as Upper Canada, New South Wales, and countries where the Crown still retains a great quantity of valuable land; but they venture to suggest the propriety of continuing in this Province the system which has been hitherto pursued, of granting lands gratuitously with the usual reservations, as the interests of the Crown in the wild lands in Nova Scotia is so much diminished, that the Government would derive little benefit from the change.

The system which now prevails might undoubtedly be improved, and the knowledge which the local government possess may enable them to remedy some inconveniences which now exist; but an entire change of that system might create confusion and discontent, without producing any corresponding benefit. The Committee, therefore, report as their opinion, that the proposed regulations are inapplicable to the present state of Nova Scotia; and that the very trifling pecuniary advantage which might probably be gained by its adoption, would not compensate for the dissatisfaction which it would excite among that description of persons who are almost exclusively the applicants for grants of land.

It is not easy for those who reside in Europe to form a correct opinion of the difficulty of subduing the wilderness, and reducing it to a state of cultivation. The wild lands which adjoin populous settlements may indeed be cultivated to advantage by those who already possess farms which yield them a subsistence, but no land so situated now belongs to the Crown in Nova Scotia. The ungranted lands lie in very remote situations, and the man who plunges into the woods almost invariably struggles with hardships to which nothing but poverty would compel him to submit. It has hitherto been the object of Government to afford every encouragement to this hardy class of useful settlers, to whose efforts we are indebted for the improvements of the country. They cannot purchase; and if wild land is not granted to them upon the easy terms on which they have hitherto procured it, they will be both unwilling and unable to continue their labours.

Committee Room, Halifax,
11 February 1826.

(signed)

Charles Morris.
Brenton Halliburton.
S. B. Robie.

REPORT of a Committee of the Privy Council of *Nova Scotia*, on Viscount *Goderich's* Despatch, dated 8th December 1832, relative to a Separation of the Legislative Council from the Executive Council.

Extract from the Minutes of the Proceedings of a Privy Council, held at the Government House, in Halifax, on the 7th day of May 1834.

THE President laid before the Board a despatch from the Right honourable Viscount *Goderich*, dated Downing-street, the 8th December 1832, requiring the opinion of the Council upon the expediency of establishing in *Nova Scotia* two separate Councils, Executive and Legislative, composed for the most part of different individuals.

After giving their best consideration to this important communication, the Council would gladly have declined offering any opinion upon a subject which appears to be nearly connected with themselves and their office; but as this Board, from its establishment in the year 1749 to the present day, have not been accustomed to shrink from any duty committed to them by His Majesty or his Government, because it was difficult or unpleasant, they will proceed at once to give with frankness the result of the best judgment they have been able to exercise upon this question, which they have felt to be one of some delicacy.

If the theory of the constitution were alone regarded, the example in the parent country would prompt them to say, such a separation of the Executive from the Legislative Council as is proposed would be desirable; but it is manifest that the difference in the condition of

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the two countries is so great, that no parallel can be preserved; and looking at the subject practically, they perceive at once very serious objections to the proposal.

The intention of the Government is, without doubt, to nominate to the Legislative Council sensible and well-educated men, possessing large landed property, separated from office, and having influence in the different counties in which they reside; upon a supposition that such men would be likely to concur with the most respectable majorities of the House of Assembly, in all questions which affect the great interests of the country, and so preserve harmony in the legislature. But unhappily such men are not to be found in the several counties of Nova Scotia; and even if they could be found, there is much reason for believing they would not be more ready than the members of the present Council to concur with the House of Assembly in such objects as have sometimes been differently entertained in the two Houses. If the personal allusion may be excused, it may be remarked, that the discernment of Sir James Kempt, when Lieutenant-governor of Nova Scotia, and anxiously looking for such persons as have been described, placed two members of the present Board in the Council, because he was satisfied they answered the description as completely as any individuals that could be found in the colony. But it is well known, and the minutes of the Council supply the information, that these individuals, wholly unconnected with office, whose independence in every respect has never been questioned, have been uniformly opposed to the views of the House of Assembly, on each of those few occasions when a difference of opinion in the two branches of the legislature has given dissatisfaction to the Lower House, and excited their complaints. It is only on account of the difficulty, or rather the impossibility of finding more persons in the different sections of the Province, with all the qualifications which these possess, that the number of the present Council has not been increased. In selecting individuals, therefore, to fill a more extensive Legislative Council, a different description of persons must of necessity be taken; and the most eligible that could be found would be so many of the best members of the House of Assembly as would be required, or of the fittest candidates for seats there, whose services would be more important and more valuable in that House, which could ill spare them, than in the other, and whose appointment to the Council would therefore be an injury to the House of Assembly and to the Province.

The Government, it is believed, look forward to an increase of strength and influence in the Legislative Council, as the natural result of the proposed alteration. But those in Nova Scotia who desire the change, are loud in their complaint that the Council are already too powerful. The Government therefore must be disappointed in their expectation, or the dissatisfaction of those in the colony who desire the change must be increased as soon as the change is effected, and either of these consequences is very undesirable.

But perhaps a more serious objection will be found in the effect that has been produced in those colonies into which the measure has already been introduced. The present state of the Canadas supplies such objection in full force. The measures of their Legislative Councils for some years past have given rise to more complaint and invective than were ever known under the more ancient constitution of the colonial Councils. These complaints indeed have been so multiplied, that an Elective Council, which would inevitably lead to a republican constitution, is boldly insisted upon by the complainants, as the only effectual remedy for their alleged grievances.

In New Brunswick the experiment has been recently made, and instead of affording general satisfaction, has created unusual discontent in that peaceable province, which will not be easily allayed unless by a return to the ancient system.

The records in the Colonial-office will show whether Nova Scotia, under its present constitution, has been more or less quiet and contented and easily governed, than those colonies into which a different constitution has been introduced, while the testimony of its governors and the journals of its Council will show what part that body, as at present constituted, has had in promoting the welfare of the people. The Board will be excused from saying more on this point, but earnestly request the reference and the comparison may be made by His Majesty's Secretary of State.

If it should be alleged as a reason for making the proposed alteration, that some desire for it has been expressed, it may be observed that change of any and of every kind will never be without advocates, while discontented and self-interested men form a part of every community. There has been no evidence that the measure is generally desired in the colony; and if some or even many wish for it, it is not probable that all these will be satisfied if the change should be accomplished. There will be 10 expectants for every appointment that will follow; nine-tenths of these, therefore, must be disappointed, and thus discontent will be increased. The subject has indeed been under discussion in the House of Assembly, where the first mention of it has led some of its advocates, and even His Majesty's Solicitor-general among others, to express a desire for an Elective Council; with total disregard or forgetfulness of the obvious fact, that the balance of the constitution would at once be destroyed, when no intermediate body would be left between the representative of the Crown and the representatives of the people. But it is believed that the subject has never yet created much interest in that House, although several of its members have been named as expectants of seats in the Executive and Legislative Councils.

All these considerations lead to the conclusion that the suggested alteration should not be hastily made, even if the acts of the Council, or the character and conduct of the individuals who compose it, were obnoxious to objection. Whether they are so obnoxious may be easily ascertained by the Secretary of State, upon reference to the discerning individuals

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viduals now in England who have been governors of the colony, but have ceased to be connected with it; and these distinguished persons, when giving their testimony to the character and usefulness of the Council as now constituted, can easily state whether the Board, although ready and anxious at all times to promote the objects of the Government when they could conscientiously promote them, have ever flinched from offering their honest advice, when they have been so unfortunate as to differ in opinion from the representative of their Sovereign.

A due regard to all the circumstances which have now been mentioned, and to many others which need not be enumerated, has satisfied the Council that it must be desirable to retain in this province its ancient constitution, which hitherto has neither been inconvenient nor unsuccessful. It may easily be altered at a future day when the colony shall be more ripe for such a change, if the new constitutions which have been introduced into the adjoining colonies should, notwithstanding the inconvenience which now attends them, ultimately prove to be superior in practical effect to those for which they have been substituted; but the Council are impressed with a conviction that at present the proposed change is unnecessary, and would prove not only useless but injurious; and they feel confident that this explicit declaration of their opinion will at least be received as evidence of the honesty with which their advice is given, whether called for by His Majesty's Government, or His Majesty's representative in this province.

If more than has already been stated were wanting to strengthen the opinion which the Council have now expressed, a full confirmation of it would be supplied by the very extraordinary measures which have recently been adopted in the House of Assembly in Lower Canada, where indulgent compliance with unreasonable claims has created a habit of yielding on one side, and a habit of complaining and demanding on the other, until ultimate objects are now avowed, which fill every loyal subject with regret and alarm, and the discontented have boldly declared, with revolutionary violence, that one of the most favoured and happy colonies of the most indulgent Monarch in the world must be converted into a republic.

Having now performed the duty which has been laid upon them, the members of the Council have only to add, with every feeling of respect, that if His Majesty's Government should not be satisfied with the view they have taken, and with the reasons they have adduced in support of that view, the same feelings which have always influenced this Board will prevail. Nothing can be more foreign from their wish than to be impediments in the way of any measure which His Majesty or His Government may deem essential to the welfare of the colony; and, therefore, as it has been their uniform and only desire in their present station to be instrumental, according to their ability, in promoting the honour of His Majesty and the benefit of the province, they are ready to retire from that station whenever it may be thought their retirement will conduce more effectually than their continuance to those important objects.

— No. 15. —

(No. 88.)

EXTRACT of a DESPATCH from Lord *Glenelg* to Major-General Sir
Colin Campbell, G. C. B., dated Downing-street, 6 July 1837.

No. 15.

I HAVE the honour to acknowledge the receipt of your despatch, dated 1st May 1837, No. 71, with the addresses to his late Majesty and to yourself, which it encloses.

The Assembly having deliberately expressed their opinion that the welfare of the Province would be promoted by creating two councils instead of one, Her Majesty defers to their judgment on that question, not indeed without some distrust of the soundness of the conclusion, but convinced that it is a topic on which the greatest weight is due to the advice of the representatives of the people. The Queen can give no pledge that the Executive Council will always comprise some members of the Assembly, but commands me to state that the circumstance of any candidate for that honour possessing that share of public confidence which his election as a member of the Assembly indicates, must of course be considered as enhancing his claims to be preferred to those who, in other respects, may not possess higher qualifications for this trust. The principle on which councillors should be selected is explained in my despatch of the 30th April. You will, with the least possible delay, transmit to me a list of the names of such gentlemen as may appear to you best qualified to compose the Legislative and the Executive Councils of Nova Scotia.

Her Majesty has observed with regret, the discussions in which the Council and Assembly have recently become involved. That regret, however, is materially qualified by the observation that their differences do not relate to any vital and cardinal principles, but are such as may be entertained by those who

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are yet prepared to co-operate in the pursuit of the one common object, the public welfare.

I shall best testify my respect for those branches of the Legislature by declining to enter on these controverted questions, persuaded as I am that the means of reconciliation will be more readily discovered without the intervention of any third party; and that this happy result cannot long be deferred in a case like the present, where both parties are animated by a lively zeal for the public good, and both are directed by wisdom and experience in the prosecution of that purpose. You will communicate to both branches of the Legislature this despatch, and my despatch of the 30th April, as containing the answer which Her Majesty is pleased to return to their address.

— No. 16. —

No. 16.

(No. 93.)

EXTRACT of a DESPATCH from Lieut.-Governor Sir *Colin Campbell*, G. C. B. to Lord *Glenely*; dated Government House, Halifax, 26 August 1837.

I HAVE had the honour to receive your Lordship's despatch, No. 88, of the 6th July, in which your Lordship, after signifying Her Majesty's acquiescence in the instructions conveyed in your despatch of the 30th April, for my guidance on the questions embraced in certain resolutions of the House of Assembly which I had transmitted to you, and replying to some of the demands of the House of Assembly that had been since preferred in a more specific shape in their recent address to the Throne, directs me to communicate both these despatches to the Council and Assembly, as containing the answer which Her Majesty has been pleased to return to that address.

The separation of the Council into two chambers having been determined upon, in compliance with the expressed opinion of the House that that measure would promote the welfare of the Province, it has become my duty to submit, for your Lordship's approbation, the paper which I have the honour to enclose, being a list of the persons who appear to me to be the best qualified to compose the Executive and Legislative Councils.

In preparing the lists of councillors, I have borne in mind your Lordship's instructions, and have made the best selections I can.

I consider that the Executive Council should consist of seven or nine, and the Legislative Council of seventeen members; but I would not recommend that the number in either should be limited in the Royal Instruction, though no addition thereto should on any account be made without the previous sanction of the Secretary of State. I think also it should be provided, in the case of the nomination of a member of Assembly to the Executive Council, that his seat at the Board should become vacant on the dissolution of the House, or on his ceasing to be a member of it.

Concluding it to be your Lordship's intention that all the members of the present Council should belong to one or the other of the new chambers, (for otherwise much discontent would be created,) I have framed the lists accordingly; though some of the present Council would probably be disposed to retire into private life, if allowed to retain their present rank in society; and I would recommend that it be left optional with them to do so, with that privilege.

At first, a majority of the legislative councillors will be resident in Halifax, though connected with the country by property or birth: but as vacancies occur, opportunities will offer of supplying them from the rural districts, which will then, I trust, be better able than they are at present to afford suitable persons for the office.

I have not failed to advert to the exception taken in your Lordship's despatch against the presence of more than one member of the same commercial house in the Council. Of the three members of the Halifax bank, who are now councillors, one, Mr. Cogswell, is named as an executive councillor; and though the other two, Mr. Collins and Mr. Tobin, are both included in the Legislative Council, I cannot anticipate that any disadvantage or dissatisfaction will arise from the circumstance, and I am unwilling to omit either; the latter because

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he is a Roman-catholic, and the only gentleman of that persuasion qualified, as far as I can learn, for the office; and the former, because he being many years Mr. Tobin's senior at the Board, might feel hurt were a preference given to a junior councillor. One of them, however, will probably retire spontaneously; but to be excluded would inevitably occasion mortification.

In my despatch of 5th June, I strongly recommended that the chief justice should remain as president of the Legislative Council; though I would hardly have done so had I then adverted to a passage in your Lordship's despatch of the 30th April, where, referring to his continuance in the Legislative Council, your Lordship states that this is a question "on which His Majesty desires to act in conformity with the deliberate opinion of the people at large, and with the benefit of the advice of their representatives;" for, if the chief justice were named in the new instruction as president of the Council, he would shortly be subjected to the pain of a removal, it being certain that the communication of your Lordship's despatch to the Assembly would be immediately followed by a declaration of their opinion, which in fact has been already pronounced, that the chief justice ought to take no part in the legislative proceedings of the Province.

Whom to recommend in his place, I know not. Mr. Robie, who for many years was speaker of the Assembly, would be the best substitute; but he, I apprehend, would not accept the office. The same objection which applies to the chief justice is, I suppose, equally applicable to the master of the rolls; and the attorney-general, who otherwise might be selected for the distinction, is the speaker of the Lower House; but he might, perhaps, be willing to resign his seat in the Assembly if promoted to the president's chair in the Council.

— No. 17. —

(No. 101.)

No. 17.

EXTRACT of a DESPATCH from Lord *Glenelg* to Major-General Sir *Colin Campbell*, G.C.B., dated Downing-street, 31 October 1837.

I PROCEED to the real subject of your despatch (26 August 1837, No. 93), namely, the composition of the Legislative and Executive Councils.

Your suggestions have been formed avowedly on the conclusion that it was my intention that all the members of the present Council should belong to one or other of the new Chambers. Anxious as I am to avoid whatever may tend to unnecessary offence or discontent in any quarter, I cannot satisfy myself that it would be right in the present instance to act on the rule to which you presumed that I should adhere. I feel it to be a duty, in the composition of the two Councils, to make that selection of individuals which I have reason to believe would be least open to just exception, and which would afford the most satisfactory proof of the desire of Her Majesty to entrust the duties attached to members of the respective Councils to gentlemen entitled to the confidence of the great body of the inhabitants. In omitting, however, from the new lists any gentlemen who are members of the present Council, I wish it to be distinctly understood that nothing can be further from my intention than to inflict on them any pain, or subject them to any reproach or discredit. To avoid any such suspicion, Her Majesty has been graciously pleased, in accordance with your suggestion, to intimate Her desire that they should retain their present rank in society on retiring into private life. With the very imperfect personal knowledge which I have of the qualifications of different candidates for seats in the Council, I could not venture to submit any final advice to Her Majesty on that subject without the support of your authority. It is at the same time extremely desirable that the separation of the existing Council into two bodies should take place without further delay, and under these circumstances I feel that the safest course which I can adopt is to convey to you Her Majesty's authority at once to appoint provisionally to each of the Councils those gentlemen whom you consider best qualified for the discharge of the respective duties which will devolve on them.

You will of course inform me without delay of the selection which you make in pursuance of this instruction, and of the grounds on which it has proceeded; and in case you should find it unnecessary provisionally to appoint the full number of which the Councils are intended ultimately to consist, you will at

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the same time transmit to me the names of other gentlemen from whom the vacancies may be supplied. With respect to the Executive Council, you will carefully adhere to the following principles :

1. That not more than one-fourth be public officers.
2. That the members be drawn from different professions and different parts of the Province, and
3. That they be selected, not only without reference to distinctions of religious opinions, but in such a manner as to afford no plausible ground for the suspicion that the choice was influenced by that consideration.

With reference to the presidency in the Legislative Council, Her Majesty is pleased to confide that duty to the senior member for the time being, with the exception of the bishop and the members holding offices of emolument under the Crown. This arrangement is recommended by the experience of other British colonies.

You will communicate to both branches of the Provincial Legislature a copy of this despatch, as explanatory of the principles by which The Queen has been guided in the measures actually adopted by Her Majesty.

No. 18.

(No. 103.)

— No. 18. —

EXTRACT of a DESPATCH from Lieutenant-Governor Sir *Colin Campbell*, G. C. B. to Lord *Glencly*, dated Government House, Halifax, 16 December 1837.

I HAVE the honour to acknowledge the receipt of your Lordship's despatch of the 31st October, No. 101, relating to the reconstruction of the Councils of this Province.

I have also been honoured by your Lordship's despatch, marked "separate," of the same date, explanatory of the reasons by which Her Majesty's Government have been precluded from adopting the lists submitted by me for the Executive and Legislative Councils, but which could not properly be included in a despatch which is hereafter to be laid before the Provincial Legislature.

I have communicated the former despatch to the Council, and as the instructions conveyed in it require me to take immediate steps for establishing two separate Councils, and it being thus incumbent on me to discontinue consulting with the old Council, as a body, I took the occasion which their meeting for the last time collectively afforded to express my thanks for the ready and valuable assistance which I have at all times derived from them, in the administration of the affairs of this Province. They have since presented an Address to me, of which, and of my reply, copies are inclosed. I have felt it but justice to the highly respectable and influential gentlemen who formed this Council, to bear my testimony to their zealous and discreet endeavours to uphold the Royal authority, and to advance the interests of all classes of people in this province; and I earnestly trust that though, as a body, this Council no longer exists, it will be permitted to me and to the public to have the benefit of the continuance of the services of most of its members (four having retired, or being excluded,) in one or other of the new Councils.

Many of the gentlemen whom, under the authority of Her Majesty, I propose to summon as Executive or Legislative Councillors, residing at a distance from Halifax, and there not having been time since the receipt of your Lordship's despatch to ascertain whether or not they will consent to act, I am not prepared to report to your Lordship, by the present mail, the selections I have made; but the arrangement for the provisional establishment of the new Councils will be complete before the meeting of the Legislature on the 25th of January, and will be such, I trust, as to show that I have strictly adhered to your Lordship's instructions, and as to obtain the approbation of the inhabitants generally, and the confirmation of Her Majesty.

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Enclosure in No. 18.

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Encl. in No. 18.

To His Excellency Major-General Sir *Colin Campbell*, K. C. B. Lieutenant-Governor and Commander-in-Chief in and over the Province of *Nova Scotia* and its Dependencies, &c. &c. &c.

WE, the President and Members of Her Majesty's late Council in *Nova Scotia*, cannot terminate our official connexion with your Excellency without offering you our best thanks for the kindness and urbanity with which all your intercourse with us has been characterized; and we beg leave to assure your Excellency that we part from you with feelings of gratitude, respect, and deep regret.

In reviewing our legislative conduct, and also the advice which we have from time to time been called upon to give to your Excellency, and to your predecessors, we have the satisfaction to feel that we have been actuated by a sincere desire to advance the best interests of the people, to uphold the Royal authority, and to consult the comfort and the dignity of the representative of the Sovereign. We retire with an earnest hope that those who may be appointed to perform the several duties which have heretofore devolved upon us, may be more successful than it may be presumed we have been in accomplishing these desirable objects.

With ardent wishes that health and happiness may attend your Excellency, Lady Campbell, and your family, and that whenever you retire into private life you may carry with you the thanks and approbation of our Sovereign,

We have, &c.

(signed) *Brenton Halliburton*,
Chief Justice,

And the whole of the Council.

To the President and Members of Her Majesty's late Council in *Nova Scotia*.

Gentlemen,

I CANNOT adequately express the regret I feel at being deprived of your valuable services as members of Her Majesty's late Council in this province; and I assure you that I shall ever entertain the liveliest gratitude for the kind and friendly advice which I have invariably received from you individually and collectively since I arrived in *Nova Scotia*.

Although our official connexion has terminated for the present, I am persuaded that you will continue to be actuated by the same desire which you have ever evinced to uphold the Royal authority and the laws, and to promote the prosperity and welfare of your native land, in which you all possess so great a stake.

I return you my sincerest and warmest acknowledgments for the kind wishes which you have expressed towards Lady Campbell, myself, and family, and it will be a source of pride and gratification to me when I retire into private life, if, by meriting the continuance of your good opinion, I should be so fortunate as to carry with me the approbation of my sovereign.

Government-House,
Halifax, 15th December 1837:

— No. 19. —

(No. 116.)

No. 19.

COPY of a DESPATCH from Lord *Glenelg* to Major-General Sir
Colin Campbell, G. C. B.

Sir,

Downing-street, 4 January 1838.

I HAVE received your despatch of the 16th December 1837, No. 103, enclosing the address presented to you by the late Council of *Nova Scotia*, at the eve of their dissolution, and the answer which you returned to that address. It affords Her Majesty's Government much gratification to receive the high and well-merited testimony borne by the Council to your public character and services. Her Majesty's confidential advisers desire to be understood as adopting the expressions of respect and gratitude towards the members of the late Council with which your official connexion with them was terminated.

I have, &c.

(signed) *Glenelg*.

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No. 20.

(No. 104.)

— No. 20. —

COPY of a DESPATCH from Lieutenant-Governor Sir *Colin Campbell*, G. C. B.
to Lord *Glenelg*.

Government House, Halifax,
18 December 1837.

My Lord,

HAVING consulted the law officers of the Crown as to the best mode of carrying into effect Her Majesty's commands, as conveyed in your Lordship's despatch of the 31st October, for the establishment of two distinct Councils in Nova Scotia, I do myself the honour to inclose a copy of a letter from them, in which it is recommended that I should issue two commissions under the Great Seal of the province, appointing, provisionally, to the Executive and Legislative Councils respectively such persons as I shall deem proper; and, supposing it to be your Lordship's intention to adopt, in the present case, some form similar to that resorted to on the like occasion in New Brunswick, they strongly advise that the letters patent, or other documents requisite for formally recognizing and effecting the separation of the Council, which your Lordship may propose to transmit, may be forwarded with the least possible delay; as many Acts to continue the revenue, and other important laws, which will expire on the 30th March, will before that time require the concurrence of the Legislative Council; and as the Executive Council may also at an early period be called to fulfil functions of importance to the public and individuals.

I trust, therefore, that I shall receive by the February packet the letters patent, or any other document that your Lordship may deem necessary for the more formal establishment of the new Councils, which in the meanwhile will be constituted, provisionally, under the Great Seal of the province.

The additional instruction to the Governor-in-Chief, or the warrants of mandamus confirming the appointments of the gentlemen nominated by me to these Councils, may be subsequently forwarded, when your Lordship shall have had time to consider the selections I have made. The letters patent sent to New Brunswick merely establish two distinct Councils, allotting to each its respective functions, but not naming any individuals to office.

Observing, however, in that document that the quorum of the Executive Council is fixed, I would beg leave to suggest that, as I propose, with your Lordship's approbation, that this Council in Nova Scotia shall consist of 12 members, and as four of these, owing to their distant residences, will seldom be able to attend, five members be deemed a quorum here.

I have, &c.

(signed) *C. Campbell.*

Encl. in No. 20.

Enclosure in No. 20.

Sir,

Halifax, 18 December 1837.

In doing ourselves the honour to comply with the desire of His Excellency, which you communicated to us to-day, we cannot suggest any course which, under the circumstances of the case, appears to us better adapted to carry into effect Her Majesty's instructions as conveyed to his Excellency by his Lordship the Principal Secretary of State for the Colonies, than the issuing by his Excellency of two Commissions under the Great Seal of the Province, for appointing provisionally to the Executive and Legislative Councils respectively such persons as his Excellency may deem proper.

Supposing that it may be the intention of his Lordship the Principal Secretary to adopt on the present occasion some form similar to that pursued in New Brunswick, we take the liberty of intimating our opinion that it may be very desirable for his Excellency to receive as early as may be convenient the letters patent, or other documents requisite for formally recognizing and effecting the separation of the two Boards of Council in this province, which it may be his Lordship's intention to transmit, as many important laws expire on the 30th March, which, with other Acts of the Assembly, before that time will require the concurrence of the Legislative Council; and the Executive Council also may at an early period

period be called to fulfil functions of importance to the public and individuals; and we perceive that the letters patent by which the separation of the Boards was effected in New Brunswick, were framed without reference to individual members to office.

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We have, &c.

(signed) S. G. W. Archibald,
Attorney-General.

J. W. Johnston,
Solicitor-General.

— No. 21. —

(No. 128.)

COPY of a DESPATCH from Lord *Glenelg* to Major-General Sir
Colin Campbell, G.C.B.

No. 21.

Sir,

Downing-street, 8 February 1838.

I HAVE had the honour to receive your despatch of the 18th December, No. 104, reporting the steps which you had taken for effecting the separation of the Executive and Legislative Councils of Nova Scotia, and suggesting that the letters patent for this purpose should be sent out as early as possible.

Under ordinary circumstances I should have advised Her Majesty to direct the immediate issue of letters patent, establishing the Councils of Nova Scotia; but as the Earl of Durham has been appointed Governor-general of the British Provinces in North America, it has appeared to me most advisable to insert in the commission under the Great Seal, issued to him as Governor of Nova Scotia, the necessary provisions for that purpose, and thus to save to the public the expense which would have been incurred by the issue of letters patent. The commission of the Earl of Durham is nearly completed, and will probably pass through the remaining official forms in the course of a few days.

I have, &c.

(signed) *Glenelg*.

— No. 22. —

(No. 129.)

COPY of a DESPATCH from Lord *Glenelg* to Major-General Sir
Colin Campbell, G.C.B.

No. 22.

Sir,

Downing-street, 10 February 1838.

WITH reference to my despatch of the 8th instant, No. 128, I transmit to you herewith the letters patent under the Great Seal, appointing the Earl of Durham to be Captain-general and Governor-in-chief of the Province of Nova Scotia, together with instructions under the Royal Sign Manual for his guidance in that office; I also enclose a warrant, appointing you to be Lieutenant-governor of Nova Scotia in the absence of Lord Durham from that Province.

As the commission of the Earl of Durham contains the necessary provisions for the separation of the Executive and Legislative Councils of Nova Scotia, I avail myself of the earliest opportunity of transmitting it. I trust it will reach you before the commencement of the Session of the Provincial Legislature.

I have, &c.

(signed) *Glenelg*.

No. 1.

No. 2.

NOVA SCOTIA.

Encl. 1. in No. 22.

Enclosure 1, in No. 22.

EXTRACT of a COMMISSION under the Great Seal appointing the Earl of *Durham* Captain-General and Governor-in-Chief of the Province of *Nova Scotia*.

AND whereas We have deemed it expedient that there should henceforward be two distinct Councils in Our said province of Nova Scotia for the purposes hereinafter mentioned, We do therefore by these presents grant, provide, and declare that there shall henceforward be within Our said province of Nova Scotia two distinct and separate Councils, to be respectively called the Legislative Council and the Executive Council of Our said province.

And We do hereby further direct and declare Our pleasure to be, that all and every the powers and authorities heretofore vested in or exercised by the Council of Our said province, so far as respects the enactment of any laws to be made within Our said province, shall henceforth be and the same are hereby vested in the said Legislative Council, and that all other powers and authorities whatsoever vested in or exercised by the Council of Our said province shall be and the same are hereby vested in the said Executive Council.

And We do hereby appoint and declare that the said Executive Council and the said Legislative Council respectively shall hereafter consist of such and so many members as shall from time to time for that purpose be nominated and appointed by Us, under Our sign manual and signet, or as shall be provisionally appointed by you, the said John George Earl of Durham, until Our pleasure therein shall be known: provided nevertheless, and We do hereby declare Our will and pleasure to be, that the total number of the members for the time being of Our said Executive Council resident within Our said province shall not at any time, by any such provisional appointments, be raised to a greater number in the whole than nine, and that the total number of members of the said Legislative Council resident within Our said province shall not at any time, by any such provisional appointments, be raised to a greater number in the whole than fifteen.

And We do further direct and appoint that five members of Our said Executive Council shall be a quorum for the dispatch of the business thereof, and that eight members of Our said Legislative Council shall be a quorum for the despatch of the business thereof.

And We do further direct and appoint that the members of the said respective Councils shall hold their places therein during Our pleasure, and not otherwise; and that the senior members respectively for the time being of each of the said respective Councils shall preside at all the deliberations thereof respectively, save only when you, the said John George Earl of Durham, shall be present and presiding at the deliberations of the said Executive Council; the seniority of the members of the said Councils respectively between themselves being determined by such rules and regulations as are for that purpose provided by such instructions as are hereinafter mentioned.

Dated at Westminster, 6th February 1838.

Enclosure 2, in No. 22.

Encl. 2, in No. 22.

EXTRACT of GENERAL INSTRUCTIONS, under the Royal Sign Manual and Signet, dated at Buckingham Palace, the 10th of February 1838, accompanying the Commission under the Great Seal appointing the Earl of *Durham* Captain-General and Governor-in-Chief of the Province of *Nova Scotia*.

SECOND, and whereas We have, by Our said commission appointing you Our Captain-general and Governor-in-chief as aforesaid, declared Our pleasure to be that there shall be within Our said province of Nova Scotia two distinct and separate Councils, to be respectively called the Legislative Council and the Executive Council of Our said province, with certain powers and authorities therein-mentioned, and have further declared Our pleasure to be that the said Executive Council and Legislative Council respectively should hereafter consist of such and so many members as shall for that purpose be nominated and appointed by Us under Our royal sign manual and signet, or as shall be provisionally appointed by you, the said John George Earl of Durham, until Our pleasure therein shall be known: provided always, that the total number of the members for the time being of such Executive Council resident within Our said province shall not at any time, by any such provisional appointment by you be raised to a greater number in the whole than nine, and that the total number of the members of such Legislative Council resident within Our said province shall not, at any time, by any such provisional appointment, by you, be raised to a greater number in the whole than fifteen:

Now We do hereby authorize and empower you, the said John George Earl of Durham, to nominate and appoint provisionally such persons as you shall think fit to be members of Our said Executive and Legislative Councils respectively, who shall hold their said appointments provisionally until Our further pleasure shall be known: Provided, nevertheless, and We do hereby require you forthwith to transmit to Us, through one of Our Principal Secretaries of State, the names and qualifications of the several members so provisionally appointed by you to be members of Our said Executive and Legislative Councils respectively, to the intent that the said appointments may be either confirmed or disallowed by Us as We shall see occasion."

— No. 23. —

(No. 4.)

COPY of a DESPATCH from Lieutenant-Governor Sir *Colin Campbell*, G. C. B.
to Lord *Glenelg*.

No. 23.

Government House, Halifax,
17 January 1838.

My Lord,

I HAVE the honour to transmit to your Lordship copies of the letters patent which yesterday passed the Great Seal, constituting provisionally the Executive and Legislative Councils in Nova Scotia. In the selection of the several members, I have endeavoured to attend, as strictly as circumstances have permitted, to your Lordship's instructions, though some deviation from them, which I trust your Lordship will deem unimportant, has been found expedient or necessary.

In the lists which I have also the honour to enclose, I have adverted, according to your Lordship's desire, to the difference of religious opinion amongst the various gentlemen whom I have called to these Councils respectively; and though in the Executive, consisting of 12 members, seven belong to the Established Church; and in the Legislative, consisting of 19 members, 10 are Churchmen, while 11 only belong to the many other religious communions existing in the Province, I assure your Lordship that my choice has in no degree been influenced by any undue favour to the Church of England; I have made the best selections which, having reference to the instructions sent for my guidance, I have found practicable, and with a very sincere desire to carry into effect your Lordship's intentions, and to show no partiality whatever to any particular religious creed or political opinions.

It was not my intention that the majority of the Executive Council should consist of Churchmen; and I would have named to it more Dissenters had I not ascertained that the two whom I considered as decidedly the most eligible, belonged to two separate banks, of which each had already a partner in the Council. Nor did I at first intend to call more than one, or at most two members from the Assembly; but your Lordship having pointed it out as a principle to be adhered to in the composition of this Council that the members are to be taken from different parts of the Province, I have been compelled to draw more largely from the Assembly than I purposed; as no gentleman living in the country, and not belonging to that body, would ever be able to attend the meetings of the Executive Council; and it will be but seldom indeed, that is, only while the Assembly are in session, that I shall ever even have the advice and assistance of the country gentlemen whom I have taken from that branch of the Legislature.

I have named 19 gentlemen to the Legislative Council, and would propose that its numbers should be limited to 21. Eight of its present members reside in Halifax, and the remainder are taken from the country, one having been selected from each county, except Queen's County, Shelburne, Yarmouth, Richmond, and Inverness. In the three first counties, the gentlemen who were offered seats declined to serve; and in the two last I have not been able to hear of any persons eligible.

In regard to the presidency of this Council, I apprehend that much difficulty and inconvenience may arise if it be assigned to the senior member holding no office of emolument under the Crown. In the present instance, this important office has fallen on one whose long experience as Speaker of the Assembly, and extensive legal knowledge, admirably adapt him for it; but the necessary qualifications may not always be found in the senior member; and I would therefore, recommend that the Crown should reserve to itself the right of nomination. And with respect to the Executive Council, I would beg leave to repeat the suggestions offered in my despatches of the 26th August and 16th December last; viz., first, that the seat of any member of the Assembly who may be appointed to this body shall become vacant on the dissolution of the Assembly, or on his ceasing to be a member of the House; and secondly, that the quorum should be reduced to five, for the reasons already explained.

I cannot conclude this despatch without expressing my great regret that Mr. Collins is excluded from the Council; he is the wealthiest and one of the most respectable men in the Province.

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He was formerly extensively engaged as a merchant, but has of late years devoted himself entirely, except that he holds a share in a private bank, to agriculture and the embellishment of his country residence in the neighbourhood of Halifax, where he lays out more money, and employs more labourers constantly than any 10 other gentlemen in the Province do in their private pursuits. Sixteen years ago he was about to remove with his large capital from the Province for ever, but was induced to remain by the offer then made to him by Sir James Kempt of a seat in the Council, and he is now deeply mortified by his exclusion.

I trust, therefore, that your Lordship will be pleased to appoint him to one or other of the Councils. The number of the Executive Council is now complete, but one of the gentlemen is named to it on an understanding that he is to give place if Mr. Collins's introduction into it should be approved.

I have, &c.

(signed) C. Campbell.

Enclosures in
No. 23.

Enclosures in No. 23.

(No. 1.)

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, and of the United Church of England and Ireland on Earth the Supreme Head.

To Our trusty and well-beloved Thomas N. Jeffery, Simon B. Robie, Samuel Cunard, Henry H. Cogswell, Joseph Allison, Esquires, Sir Rupert D. George, Bart., James W. Johnston, James Boyle Uniacke, Edmund M. Dodd, Herbert Huntington, Thomas Andrew Strange De Wolf, and Michael Tobin, senior, esquires;—Greeting:

WHEREAS in Our Royal consideration having deemed it expedient that the executive and legislative powers which have heretofore been unitedly exercised by our Council in Our Province of Nova Scotia should be separated, and that there should be two distinct and several Councils in Our said Province for exercising separately the said functions, to be respectively called Her Majesty's or the Executive Council, and the Legislative Council of Our said Province; We did lately through Our trusty and well-beloved Charles Lord Glenelg, Our Principal Secretary of State for the Colonies, communicate such Our Royal will to Our trusty and well-beloved Sir Colin Campbell, Knight Commander of the Most Honourable Military Order of the Bath, Major-general of Our forces, and Lieutenant-governor in and over Our said Province, and did empower and instruct him Our said Lieutenant-governor forthwith to carry such Our purpose into effect, and for that object to nominate and appoint fit and proper persons to be members of Our said two Councils in the said Province provisionally until Our further pleasure should be known;

Now know ye, that We, reposing especial trust and confidence in the loyalty, integrity, and ability of you the said Thomas N. Jeffery, Simon B. Robie, Samuel Cunard, Henry H. Cogswell, Joseph Allison, Rupert D. George, James W. Johnston, James Boyle Uniacke, Edmund M. Dodd, Herbert Huntington, Thomas Andrew Strange De Wolf, and Michael Tobin, senior, have thought fit provisionally to nominate and appoint you the said Thomas N. Jeffery, Simon B. Robie, Samuel Cunard, Henry H. Cogswell, Joseph Allison, Rupert D. George, James W. Johnston, James Boyle Uniacke, Edmund M. Dodd, Herbert Huntington, Thomas Andrew Strange De Wolf, Michael Tobin, senior, to be members of Our Executive Council aforesaid for the Province of Nova Scotia until Our further pleasure shall be made known.

And We do declare Our will and pleasure to be, that all and every of the powers and authorities heretofore vested in Our Council of the said Province, except so far as respects the enactments of any laws to be made within Our said Province, shall henceforth be, and the same are hereby vested in Our said Executive Council, and you the said Thomas N. Jeffery, Simon B. Robie, Samuel Cunard, Henry H. Cogswell, Joseph Allison, Rupert D. George, James W. Johnston, James Boyle Uniacke, Edmund M. Dodd, Herbert Huntington, Thomas Andrew Strange de Wolf, and Michael Tobin, senior; and each of you are hereby empowered and required to execute the same in the like manner, and as fully in every respect as Our said Council heretofore of right has done or might have done.

And We do further declare Our will and pleasure, that any seven of Our said Executive Council shall be a quorum, and that in the absence of Our Governor or Lieutenant-governor of Our said Province, or of the officer administering the government thereof, the member of Our said Council whose name shall stand first in the list, shall preside in our Executive Council.

Given under the Great Seal of Our said Province of Nova Scotia; witness Our trusty and well-beloved his Excellency Major-general Sir Colin Campbell, K.C.B., Our Lieutenant-governor and Commander-in-chief in and over Our said Province, this 16th day of January, in the first year of Our reign, and in the year of our Lord 1838.

By his Excellency's Command.

(No. 2.)

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, and of the United Church of England and Ireland on Earth the Supreme Head.

To Our trusty and well-beloved the Right Reverend John Lord Bishop of Nova Scotia, and Simon B. Robie, Peter M'Nab, James Tobin, Joseph Allison, Norman Uniacke, James W. Johnston, William Lawson, George Smith, Alexander Stewart, William Rudolf, Lewis M. Wilkins, junior, James S. Morse, William Ouseley, Robert M. Cutler, Alexander Campbell, James Ratchford, Joseph Fitzrandolph, and William B. Almon, M.D., esquires;—Greeting:

WHEREAS in Our Royal consideration, having deemed it expedient that the executive and legislative powers which have heretofore been unitedly exercised by Our Council in Our Province of Nova Scotia should be separated, and that there should be two distinct and several Councils in Our said Province for exercising separately the said functions, to be respectively called Her Majesty's or the Executive Council, and the Legislative Council of our said Province; We did lately, through our trusty and well-beloved Charles Lord Glenelg, Our Principal Secretary of State for the Colonies, communicate such Our Royal will to Our trusty and well-beloved Sir Colin Campbell, Knight Commander of the Most Honourable Military Order of the Bath, Major-general of Our Forces, and Lieutenant-governor in and over Our said Province, and did empower and instruct him Our said Lieutenant-governor, forthwith to carry such Our purpose into effect, and for that purpose to nominate and appoint fit and proper persons to be members of Our said two Councils in the said Province, provisionally, until Our further pleasure shall be known;

Now know ye, that We, reposing especial trust and confidence in the loyalty, integrity, and ability of you the said Right Reverend John Lord Bishop of Nova Scotia, Simon B. Robie, Peter M'Nab, James Tobin, Joseph Allison, Norman Uniacke, James W. Johnston, William Lawson, George Smith, Alexander Stewart, William Rudolf, Lewis M. Wilkins, junior, James S. Morse, William Ouseley, Robert M. Cutler, Alexander Campbell, James Ratchford, Joseph Fitzrandolph, and William B. Almon, have thought fit, provisionally, to nominate and appoint you the said Right Reverend John Lord Bishop of Nova Scotia, Simon B. Robie, Peter M'Nab, James Tobin, Joseph Allison, Norman Uniacke, James W. Johnston, William Lawson, George Smith, Alexander Stewart, William Rudolf, Lewis M. Wilkins, junior, James S. Morse, William Ouseley, Robert M. Cutler, Alexander Campbell, James Ratchford, Joseph Fitzrandolph, and William B. Almon, to be members of Our Legislative Council aforesaid, for the Province of Nova Scotia, until Our further pleasure shall be made known. And We do declare Our will and pleasure to be, that all and every of the powers and authorities heretofore vested in our Council of the said Province, so far as respects the enactments of any laws to be made within Our said Province, shall henceforth be and the same are hereby vested in Our said Legislative Council; and you the said Right Reverend John Lord Bishop of Nova Scotia, Simon B. Robie, Peter M'Nab, James Tobin, Joseph Allison, Norman Uniacke, James W. Johnston, William Lawson, George Smith, Alexander Stewart, William Rudolf, Lewis M. Wilkins, junior, James S. Morse, William Ouseley, Robert M. Cutler, Alexander Campbell, James Ratchford, Joseph Fitzrandolph, and William B. Almon, and each of you, are hereby empowered and required to execute the same in the like manner, and as fully in every respect, as Our said Council heretofore of right has done or might have done.

And We do further declare Our will and pleasure, that any of Our said Legislative Council shall be a quorum; and that the member of Our said Council whose name shall stand first in the list, with the exception of the Right Reverend the Lord Bishop of Nova Scotia, and the members holding offices of emolument under Us, shall preside in Our said Legislative Council.

Given under the Great Seal of Our said Province; witness Our trusty and well-beloved His Excellency Major-General Sir Colin Campbell, K.C.B., Our Lieutenant-governor and Commander-in-chief in and over Our said Province, this 16th day of January, in the first year of Our Reign, and in the year of our Lord 1838.

By His Excellency's command.

— No. 24. —

(No. 137.)

No. 24.

COPY of a DESPATCH from Lord *Glenelg* to Major-General Sir
Colin Campbell, G.C.B.

Sir,

Downing-street, 7 March 1838.

I HAVE had the honour to receive your despatch of the 17th January, No. 4, reporting the steps which you had taken for constituting the Executive and Legislative Councils of Nova Scotia on the principles laid down in my despatches of the dates mentioned in the margin. Before the arrival of this

30 April 1837,
No. 77.
6 July 1837,
No. 88.
31 October 1837,
No. 101.

NOVA SCOTIA. despatch the Commission of the Earl of Durham, as Governor of Nova Scotia, and your Commission as Lieutenant-Governor, had been already dispatched.

I have to convey to you my approbation of your proceedings on this important subject, and I shall take the earliest opportunity of submitting to the consideration of Her Majesty in Council the names of the gentlemen whom you have selected for the respective Councils. In compliance with your recommendation, I shall also have much pleasure in submitting the name of Mr. Collins for appointment to the Executive Council; but as you have not pointed out the gentleman whose retirement to make way for Mr. Collins had been agreed upon, and as I am not aware of any reason for limiting the number of the Executive Council to 12 members, Mr. Collins will form an addition to the list which you have sent home.

You repeat your suggestion that the seat of any member of the Assembly who may be appointed to the Executive Council should be vacated by the dissolution of the Assembly. The principle involved in such a regulation, if applicable in Nova Scotia, would of course be equally applicable in all the other North American provinces; but Her Majesty's Government are not prepared at present to introduce any change of this nature into the system. The mission with which the Earl of Durham is charged, will include a review of the principles on which the Councils of the British North American Provinces are constituted, and will advert to this, among other points connected with the subject.

I have, &c.
(signed) *Glenelg.*

No. 25.

— No. 25. —

COPY of a DESPATCH from Lieutenant-Governor Sir *Colin Campbell*, K. C. B. to Lord *Glenelg*.

My Lord,

Halifax, 5 February 1838.

I HAVE the honour to transmit your Lordship copies of the speech with which I opened the Legislature of this Province on the 25th ultimo, and the reply of the Legislative Council and House of Assembly thereto.

I have, &c.
(signed) *Colin Campbell.*

Enclosure in No. 25.

Enclosures in
No. 25.

Halifax, Nova Scotia, Legislative Council Chamber,
Thursday, 25 January 1838.

At two o'clock this day, His Excellency the Lieutenant-Governor proceeded in State to the Council Chamber, and being seated, the Gentleman Usher of the Black Rod was directed to command the attendance of the House of Assembly; the House attended accordingly, when His Excellency was pleased to deliver the following Speech:—

Honourable Gentlemen of the Legislative Council,

Mr. Speaker and Gentlemen of the House of Assembly,

My first duty, and a painful one I find it, is to condole with you on the loss which, since our last meeting, we have sustained, by the demise of his late most gracious Majesty William the Fourth, of blessed memory, whose paternal attachment to this Province, which he visited at an early period of his life, will be remembered by you with gratitude and respect.

The Throne of the British empire is now filled by his august niece Queen Victoria, the daughter of his late Royal Highness the Duke of Kent, who for many years resided amongst you, when Commander-in-chief in British America. Her Majesty's accession has been hailed, in every part of her extensive dominions, with the most enthusiastic loyalty: her youth and sex claim from her subjects their dutiful affection and support.

It

It is with deep regret I have to notice the late unfortunate events in the Canadas; but I have the satisfaction of informing you that the insurrection has been put down in Lower Canada, and that the traitorous attempt made to separate the Upper Province from British rule, has been signally defeated by the gallant conduct of its militia alone. It is true that a small and desperate band still retain possession of Navy Island; but there is every reason to believe, as measures have been adopted at the recommendation of the President of the United States for the enforcement of neutrality on the frontier, that these deluded men, deprived of all foreign assistance, will speedily be dispersed.

These rebellious proceedings have called forth in this Province expressions of indignation and abhorrence, and the addresses from various quarters which have been presented to me declare the unshaken attachment of the inhabitants of Nova Scotia to Her Majesty's person and government.

I have great pleasure in congratulating you upon the abundant harvest with which it has pleased Divine Providence to reward the labours of the husbandman, and which has diffused the blessing of plenty throughout the country.

Mr. Speaker and Gentlemen of the House of Assembly,

The provisional establishment of two distinct Councils, which has recently taken place, and the despatches which I am instructed to lay before you, afford ample evidence of the gracious attention that has been paid to the representations which you addressed to the Throne in the last Session.

I earnestly hope that this important alteration of the ancient constitution of the Province will be attended with all the advantages by which, when you advised the measure, you expected it would be accompanied.

I have directed the public accounts to be laid before you, and I trust you will find that the supplies granted to Her Majesty in the last Session have been faithfully expended. The usual estimates of the civil establishment for the present year will be submitted to you, and I have no doubt of your providing for the support of Her Majesty's Government, and for all other necessary services, with your usual liberality.

Honourable Gentlemen of the Legislative Council,

Mr. Speaker and Gentlemen of the House of Assembly,

I have great satisfaction in acquainting you, that the revenue last year has increased considerably; the receipts have been more than sufficient to meet all the demands on the treasury. I feel it my duty to recommend an economical application of our means, by keeping our expenditure within our income.

I most earnestly desire to draw your particular attention to the inefficient state of the militia; it is not at present what I wish to see it; there is all the good feeling and loyalty I could desire. As it is the constitutional defence and security of the Province, I am persuaded you will see the necessity of amending the law now in existence; and the zeal and discipline of 25,000 young and willing sons of your own families ought not to be neglected by Government and the Legislature.

It is the earnest desire and recommendation of Her Majesty's Government that you will enter upon the discharge of your public duties with that spirit of harmony in your proceedings for which the legislature of this Province has so long been conspicuous, and which has proved so conducive to the best interests of the country.

My anxious wish is to see peace, content, and prosperity prevail throughout the Province; and you may rely upon my cordial co-operation in any measure which can tend to secure and increase these blessings.

To his Excellency Major-General Sir *Colin Campbell*, Knight Commander of the Most Honourable Military Order of the Bath, Lieutenant-Governor and Commander-in-Chief in and over Her Majesty's Province of Nova Scotia and its Dependencies, &c. &c. &c.

The Address of the Legislative Council.

May it please your Excellency,

WE, Her Majesty's dutiful and loyal subjects, the Legislative Council of Nova Scotia, humbly beg leave to thank your Excellency for the Speech with which you have been pleased to open the present Session of the Provincial Parliament.

We participate with your Excellency in the painful feelings which the demise of his late most gracious Majesty King William the Fourth excited throughout his widely-extended dominions. The condescending regard which his Majesty often expressed towards this Province, as the scene where a portion of his early life had been spent, has rendered his memory dear to its inhabitants; while the important events of universal interest which have characterized his reign, will ever give to that portion of our history a conspicuous place in the annals of the empire.

NOVA SCOTIA.

We respond with the deepest emotion to the sentiments of devoted attachment and fealty to our august Sovereign Queen Victoria, which her accession to the Throne has called forth. It gives us pleasure to remember the warm interest which her late father ever evinced in the welfare of this Province, where he long resided, associates Her Majesty more readily with its inhabitants; and we feel with your Excellency that her age and sex draw around her the affections of her subjects with deeper interest.

The unhappy events in the Canadas have excited our deep regret; but we find great satisfaction in the assurance that the traitorous attempts of designing men have been suppressed. We rejoice that the gallant militia of Upper Canada met in so distinguished a manner the emergency which called their loyalty and courage into exercise; and indulge with pleasure the hope your Excellency affords us that the desperate band of wicked and misguided men on Navy Island, still found in opposition to the just authority of Her Majesty and the laws, being deprived, through the intervention of the Government of the United States, of foreign aid, may speedily be dispersed, and the miseries of violence and disorder be altogether stayed in our sister colonies.

We feel happy that the addresses from numerous parts of the province have conveyed to your Excellency declarations of unshaken loyalty to Her Majesty's person and Government. Uniting in our body members from various parts of the Province, we are enabled to assure your Excellency that such is the universal feeling of Nova Scotia; nor can we fail to use the present as a fit occasion to tender to Her Majesty, in unison with our fellow-subjects, our own expressions of similar sentiments.

In the congratulations expressed by your Excellency on the late bountiful harvest which has diffused prosperity through the land, and is the just cause of the liveliest gratitude and devotion to the Almighty Giver of all our blessings, we most cordially unite with your Excellency.

The increase of the revenue, and the faithful discharge of all demands upon the Treasury, are very gratifying. In the application of our augmented resources we shall not fail to be guided by your Excellency's recommendation for their economical expenditure.

Agreeing as we entirely do in the sentiments expressed by your Excellency regarding the state of our militia, we shall readily adopt any measures that may be devised for the improvement of its discipline and the increase of its efficiency.

No effort on our part shall be wanting to ensure harmony in the performance of our legislative labours, deeply convinced that, conducted in such a spirit alone, they will be beneficial to the Province; and your Excellency's administration of the government enables us to rely with perfect confidence upon your co-operation in every measure which may advance the interests and promote the peace, happiness, and prosperity of the people of Nova Scotia.

To his Excellency Major-General Sir *Colin Campbell*, Knight Commander of the Most Honourable Military Order of the Bath, Lieutenant-Governor and Commander-in-Chief in and over Her Majesty's Province of Nova Scotia and its Dependencies, &c. &c. &c.

The humble Address of the House of Representatives in General Assembly.

May it please your Excellency,

WE, Her Majesty's dutiful and loyal subjects, the Representatives of Her Majesty's loyal people of Nova Scotia, thank your Excellency for the speech with which you have been pleased to open the present session, and condole with your Excellency on the demise of our late gracious sovereign William the Fourth, whose blessed memory is endeared to the people of Nova Scotia by the paternal attachment he extended towards its inhabitants, among whom he spent part of his early life. The accession to the Throne of the British empire of his august niece, Queen Victoria, daughter of his Royal Highness the late Duke of Kent, has been hailed throughout her extensive dominions with rapturous and enthusiastic loyalty; and her youth and sex have no where a stronger claim to attachment than in this Province, where the memory of her illustrious father is gratefully cherished.

The regret we feel for the recent insurrection in the Canadas is mitigated by a knowledge that it has been suppressed in the Lower Province; and we feel proud that the constitutional force of the Upper Province has defeated the traitorous attempt to cast off British allegiance; and are gratified to learn that the government of the United States is determined to adhere to the pacific treaties subsisting between the two nations, and to preserve that neutrality which may leave the desperate band of conspirators encamped at Navy Island no alternative but submission to a just and indignant government.

The attachment of Nova Scotians to Her Majesty's person and Government has ever been unshaken, and recent events have only caused it to be more openly and frequently expressed.

We are pleased to hear from your Excellency that the blessings of Divine Providence have produced an abundant harvest, and that the labours of the husbandman throughout the country have been rewarded with plenty.

We

We are disposed to view the provisional establishment of two distinct Councils as evidence of the gracious attention which has been paid to the representations addressed by this Assembly to the Throne during the last session; and it shall not be our fault if this important alteration is not attended with all the advantages by which, when we advised the measure, we expected it would be accompanied. NOVA SCOTIA.

We thank your Excellency for directing the public accounts to be submitted to us; and you may rely on our disposition to provide for the necessary support of Her Majesty's Government.

We are happy to learn that the revenue has considerably increased during the past year, and that the receipts have been more than sufficient to meet all the demands on the Treasury. The recommendation of an economical application of our means, we feel is founded on an enlightened view of the wants and resources of this young country, and your Excellency may be assured that it shall be our constant endeavour to keep the expenditure of the province within its income.

The Militia Law, to a revision of which your Excellency has called our attention, was framed upon the conviction that the old system, while it was burthensome to the country, was productive of no corresponding advantage, the time which was devoted to trainings being insufficient to communicate discipline or military skill. Should we find, however, anything in the present aspect of the times, or in the events which have occurred during the recess, to require the adoption of more efficient enactments, your Excellency may rely that, while we endeavour to husband our resources, we shall sufficiently evince our anxiety to secure the peace and strengthen the constitutional defences of the Province.

At a time when neighbouring colonies are only recovering from the effects of civil strife, it shall be our pride to respond to the earnest desire and recommendation of Her Majesty's Government by entering upon the discharge of our public duties with that spirit of harmony for which the Legislature of this Province has long been conspicuous, and which has proved so conducive to the best interests of the country.

We feel assured that it is your Excellency's anxious wish to see peace, content, and prosperity prevail throughout the Province, and will labour to co-operate with your Excellency in every measure which can tend to secure and increase those blessings.

NEW
BRUNSWICK.

NEW BRUNSWICK.

No. 1.

— No. 1. —

COPY of a DESPATCH from Viscount *Goderich* to Mr. President *Black*.

Sir,

Downing-street, 7 December 1830.

My attention having been directed to the constitution of the Councils in the Provinces of Nova Scotia and New Brunswick, with the view of giving them a more independent character, by introducing a larger proportion of members not holding offices at the pleasure of the Crown; I have to request that you will report to me, in the event of its being considered desirable to increase the number of the Council in the Province of New Brunswick, how far it may be practicable to find a sufficient number of persons of respectability of this description, whose services may be employed advantageously as councillors.

I have also to acquaint you, that in future, it is proposed that the puisne judges of the Province should not be admitted to seats in the Council.

I have, &c.

(signed) *Goderich*.

No. 2.

— No. 2. —

COPY of a DESPATCH from Mr. President *Black* to Viscount *Goderich*.

My Lord,

Fredericton, New Brunswick,
1 March 1831.

I HAVE had the honour to receive your Lordship's despatch of the 7th Dec., acquainting me that your attention had been directed to the constitution of the Council of this Province, with the view of giving it a more independent character by introducing a larger proportion of members not holding office at the pleasure of the Crown, and requesting me to report to your Lordship, in the event of its being considered desirable to increase the number of the Council, how far it may be practicable to find a sufficiency of persons of respectability, whose services might be advantageously employed as councillors.

Should His Majesty's Government so determine, it is my humble opinion that, to a small extent, with due circumspection, such persons may be selected from different parts of the Province; but persons possessing qualifications highly to recommend them for such a situation are not numerous at present. It is my opinion, also, that any increase should be gradual, having some reference to the additions that may, from time to time, be made in the House of Representatives, and that, if it be the intention to remove the puisne judges from seats in the Council, the present number of members, if effective, would be amply sufficient.

In regard to the judges, as far as my own experience and judgment can decide, they have generally been eminently useful members at the Council Board; although on questions any way affecting themselves, it must be admitted that, sometimes, upon a thin attendance of members, they have had a majority against popular opinion.

I herewith transmit, for your Lordship's information, the list of Council on 1st January.

Last December we lost one member, S. D. Street, esq.; by next opportunity I shall take the liberty to recommend a person in my opinion qualified to succeed him, should his Excellency Sir Howard Douglas not have already proposed one to your Lordship.

I have, &c.

(signed) *William Black*.

— No. 3. —

(No. 5.)

COPY of a DESPATCH from Viscount *Goderich* to Mr. President *Black*.

Sir,

Downing-street, 25 April 1831.

I HAVE the honour to acknowledge the receipt of your despatch of the 1st March last, replying to my inquiries as to the state and composition of His Majesty's Council in the Province of New Brunswick. As it appears by your despatch that any increase in the number of the members at present could only be to a small extent, and two vacancies having recently occurred by the death of Mr. Street, and the removal of Captain Hurd to Upper Canada, I shall be prepared to receive your recommendation of two gentlemen unconnected with His Majesty's Government to complete the Council to the present number of thirteen, leaving any further addition to it as a subject for future consideration.

I have, &c.

(signed) *Goderich*.

— No. 4. —

No. 4.

(No. 52.)

COPY of a DESPATCH from Mr. President *Black* to Viscount *Goderich*.

My Lord,

Fredericton, New Brunswick,
25 August 1831.

I HAVE had the honour to receive your Lordship's despatch of the 25th April, acquainting me that the number of Council is to remain for the present at 13, and that your Lordship will be prepared to receive my recommendation of two gentlemen unconnected with His Majesty's Government to fill the vacancies recently occasioned by the death of Mr. Street, and the removal of Captain Hurd to Upper Canada. As your Lordship has condescended to receive my recommendation (which I had before avoided taking the liberty to make, lest interfering with the prerogative of the Lieutenant-governor, who was on the spot), upon due consideration of the consequence of such appointment, and the necessity that there should be always at or near Fredericton a sufficient number to form a quorum for the despatch of the ordinary business in Privy Council, I have the honour to submit for your Lordship's sanction the name of Peter Fraser, esq., a respectable and intelligent gentleman of substantial worth and character in this country, for a long time an active and influential member of the House of Assembly, and upwards of 30 years resident in Fredericton. The other gentleman I would propose to your Lordship is Charles Samuel Putnam, esq., barrister-at-law, grandson of the late Judge Putnam, a gentleman of the strictest honour and integrity, and in my judgment well qualified to prove an eminently useful and correct member of Council. But as your Lordship guards against persons connected with Government, it is my duty to state that Mr. Putnam at present holds the office of clerk of the Crown in the Supreme Court, but of very trifling emolument.

Should your Lordship, however, object to Mr. Putnam, if he retains the said clerkship, another nomination can be made to Sir Archibald Campbell, although no one, in my opinion, can be found who would more honourably acquit himself in that situation.

I have, &c.

(signed) *William Black*.

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BRUNSWICK.

No. 5.

(No. 10.)

— No. 5. —

COPY of a DESPATCH from Viscount *Goderich* to Lieutenant-governor
Sir *A. Campbell*, Bart. G.C.B.

Sir,

Downing-street, 29 October 1831.

I HAVE to acknowledge the receipt of Mr. President Black's despatch, No. 52, of the 25th August last, recommending two gentlemen to fill the vacancies recently occasioned in the Council of New Brunswick by the death of Mr. Street, and the removal of Captain Hurd to Upper Canada.

As I am in expectation of hearing from you on the subject of the tender made by the judges of their seats in the Council, it appears to me to be advisable, instead of selecting the persons recommended by Mr. Black, that the principle of extending the representation of different parts of the Province should, as far as practicable, be acted upon in filling up the vacancies in the Council. I am, therefore, desirous that James Allenshaw, Esq., of Charlotte County, should be selected for one of the vacancies, and I should have suggested for the other vacancy a gentleman chosen from Miramichi, if I had not been given to understand that Mr. Simonds, who is already in the Council, was formerly member in the House of Assembly for the county of Northumberland.

I am, therefore, to request that you will avail yourself of an early opportunity of submitting to me the names of such gentlemen, as you may consider likely, from their property and attainments, to fill that important situation with advantage to the Province.

I have, &c.
(signed) *Goderich*.

No. 6.

— No. 6. —

COPY of a DESPATCH from Viscount *Goderich* to Lieutenant-governor
Sir *A. Campbell*, Bart. G.C.B.

Sir,

Downing-street, 26 May 1831.

I HAVE the honour to transmit to you the copy of a letter which I have received from Mr. Botsford and Mr. Ward Chipman, two of the assistant judges in the Province of New Brunswick, tendering their resignation of the seats which they hold as members of His Majesty's Council in that Province.

I have thought it right to refer a communication of this nature to you, with a view to your reporting, after you shall have had the opportunity of making yourself acquainted with the subject, whether it would be prudent to accept the resignation of the two judges, having due regard to the real feeling of the thinking part of the community in the Province on this subject, and the means which may be found for supplying the places of the judges in the Council by individuals of sufficient weight and intelligence belonging to a different profession.

I transmit for your information a copy of the letter which I have directed my under-secretary to address to Mr. Botsford and Mr. Ward Chipman on this subject.

I have, &c.
(signed) *Goderich*.

30 March 1832.

No. 1.

No. 2.

Encl. 1, in No. 6.

Enclosure 1, in No. 6.

My Lord,

Fredericton, New Brunswick, 30 March 1831.

BEING assistant judges of this province, we beg leave to approach your Lordship on the subject of our holding seats in the Council.

There is, as your Lordship knows, but one Council in this province, both for executive and legislative purposes, and we had the honour each of us of being called to seats at this Board without any solicitation on our part.

The present state of Parliamentary opinion in England on the subject of judges being members of the colonial councils, and the manner in which the influence of that opinion is operating

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operating in the colonies, have caused us much anxious reflection. In this province endeavours are making by men who aim at being leaders of popular opinion, to instil into the public mind, that we hold our places in the Council for purposes of private interest in the way of influence and patronage, and that we combine in our persons powers legislative, executive, and judicial, in a manner altogether unconstitutional.

We are not disposed to shrink from any duties which it has been the pleasure of our Sovereign to call upon us to discharge, but we cannot forget that our first duties are those of judges, and that it must be our care to maintain, without any disparagement, that consideration and respect in the eyes of the country which the judicial character demands, and which we can confidently state the judges in this province have hitherto possessed. In this view of the subject, we feel that we ought not, in the present state of this question, to continue in our places in the Council, unless it should be the pleasure of his Majesty's government, expressed under the circumstances which now exist, that we should do so; and even as it respects your Lordship, we feel that we ought to prevent any possible embarrassment which might arise from our being in actual possession of those places, and any possible suspicion which our remaining silent might excite, that we had any personal reluctance to quit them.

Without going into further detail, we will therefore rely upon your Lordship's goodness duly to appreciate the motives which induce us, after full deliberation, humbly to tender, as we do now do, our resignation of the seats which we respectively hold in his Majesty's Council in this province, at the same time dutifully submitting ourselves to whatever may be his Majesty's pleasure on this subject.

We have deferred making this communication until the present session of the General Assembly is on the point of closing, in order that no proceedings of ours might create any difficulty in carrying on the legislative business, and there will be ample time for making any arrangements which your Lordship may think proper before another meeting of the legislature.

To Viscount Goderich,
&c. &c. &c.

We have, &c.
(signed) *W Botsford.*
Ward Chipman.

Enclosure 2, in No. 6.

Encl. 2, in No. 6.

To the Hon. *William Botsford* and the Hon. *Ward Chipman*, Judges of the Supreme Court, *New Brunswick.*

Gentlemen,

Downing-street, 26 May 1831.

I AM directed by Viscount Goderich to acknowledge the receipt of your letter of the 30th March last, tendering the resignation of your seats as members of his Majesty's Council in New Brunswick. Lord Goderich has received this communication with much satisfaction, as it contains the strongest proof of your anxiety to give up all personal considerations, when the public interests may seem to require a sacrifice at your hands. His Lordship is alive to the propriety of the motives which have led you to tender your resignation as members of the Council, and he may, perhaps, find it expedient to avail himself of the offer thus voluntarily made. He wishes, however, previously to consult with those whose duty it will become to obtain an accurate insight into the real feelings of the province on all matters connected with its internal government; and especially is it important that he should learn from those in authority in the province what means may be available of supplying your places at the Council, should it be found expedient to relieve you from your present attendance at that Board.

Lord Goderich directs me to add, that until a further communication shall be made to you, his Lordship is desirous that you should continue, as hitherto, in the discharge of your duty, the more so, as the absence of the Lieutenant-governor causes a greater weight of responsibility to fall on the members of Council.

I have, &c.
(signed) *R. W. Hay.*

— No. 7. —

(No. 5.)

No. 7.

COPY of a DESPATCH from Lieutenant-governor Sir *A. Campbell*, Bart. G.C.B. to Viscount *Goderich.*

My Lord,

Fredericton, 19 October 1831.

YOUR Lordship's despatch of the 26th May, relative to the resignation of their seats in Council of Messrs. *Botsford* and *Ward Chipman*, has been under my serious consideration since my arrival here; and although I have as yet had but little time or opportunity for informing myself of the means the Province may possess of hereafter replacing these gentlemen efficiently at the Council

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Board, I think it proper, in the meantime, to inform your Lordship, that I should much regret to be deprived of the services of two such able councillors until I have had the experience of at least 12 months to guide my judgment on a point of such importance to the government of the Province.

I shall not fail to bear in mind your Lordship's wishes and instructions on this subject, in bringing to your Lordship's notice the names of one or two candidates for the Council, whenever I am, from personal observation, enabled to make suitable selections for that high and most important office.

I have, &c.
(signed) *Archibald Campbell.*

No. 8.

— No. 8. —

(No. 2.)

COPY of a DESPATCH from Lieutenant-governor Sir *A. Campbell*, Bart. G.C.B. to Viscount *Goderich*.

Fredericton, New Brunswick,
16 January 1832.

My Lord,

IN consequence of the very long passage of the November packet, your Lordship's despatch (No. 10) of the 29th October last, did not reach me until yesterday.

In my despatch (No. 5) of 1831, I had the honour of submitting to your Lordship my reasons for wishing to defer for a time recommending any new candidates for His Majesty's Council, to replace Judges Botsford and Ward Chipman; and as two gentlemen had been recommended by Mr. Black to fill up the existing vacancies, I was led to consider that such delay would be productive rather of benefit than of inconvenience to the public service. But your Lordship's despatch, now under reply, renders it expedient that I should at once transmit a few names, which are, in my opinion, likely to be creditable and useful additions to the present list of councillors.

The subject is, however, one of too deep and vital import to the best interests of the Province, as well as to the due and most necessary maintenance of His Majesty's authority and prerogatives, to be dismissed without some observations, which my own short experience, aided by much careful investigation into the state of provincial politics and parties, have already forcibly impressed upon my mind; and I shall, therefore, with the utmost deference to your Lordship's judgment, submit my statements in that spirit of candour and sincerity which I am sure will best become me in the zealous and faithful discharge of the duties of my situation.

It cannot be doubted, my Lord, and it therefore ought not to be concealed, that there is a growing tendency in the House of Assembly of this Province, to acquire such an ascendancy in the administration of the government as would, if successful, infallibly destroy that proper balance between the Executive and Legislative branches, without which there is neither safety for the wisest and most beneficial institutions of the country, nor respect for the only solid principles upon which the gradual expansion of the resources of the land, and the permanent welfare of the people, can be promoted and insured. The inhabitants of New Brunswick are, in general, enthusiastically loyal, and warmly attached to the Government under which they live; but it is not less certain that there is growing up among their representatives a strong and influential party, deeply tinged with speculative opinions, which, if not restrained by the wisdom of a firm and independent Council, are calculated to irritate and work upon the public mind, and to lead to much and serious future mischief. I impute no bad or factious motives to the party here alluded to, but however honest their intentions, while I see that many of their favourite measures are of a nature to infringe upon the just and conservative influence of the Crown, I must be alive to the necessity of providing a sufficient and constitutional barrier against encroachments, which, independent of all colonial considerations, would bring with them a train of evils to the Province.

It

It is in this view of the subject that I attach the highest importance to the composition of His Majesty's Council, which should always be so constituted as to interpose efficiently between the representatives of the people and the authorities of the Crown, so as to form a wholesome check on innovations, and to overrule unwise legislation, without bringing the Executive into collision with the Lower House. It is for these reasons most desirable that all new members of the Council should be possessed, not only of sound principles, but of minds sufficiently enlightened and enlarged to perceive that the future prosperity of the Province mainly depends on the existence of such an intermediate body as will fearlessly do its duty on the broad principle of national utility, unswayed by any narrow considerations of mere local or party interest, and which by consistent loyalty and patriotism in all its acts will give a proper tone to the feelings of a young society, from situation peculiarly exposed to the corrupting influence of pernicious doctrines and opinions.

Men thus qualified for office from their property and attainments are, as your Lordship is aware, unfortunately not at present numerous in the Province. The two great classes of the community from which we must of necessity fill up the vacancies are lawyers and merchants, and I think it is but fair that a proportion of the latter class should be selected; but we must still, I conceive, be very careful, for reasons which your Lordship will readily imagine, not to give them too much weight and influence at the Council Board. I quite enter into the spirit of your Lordship's instructions, now conveyed to me, relative to the extension of the representation to different parts of the Province; and although I have not yet seen Mr. Allanshaw, I am inclined to think, from all I have heard of him, that he is a very proper person to receive one of the appointments.

Acting on the above principle, I would next bring to your Lordship's favourable notice the name of Joseph Cunard, esq., of Miramichi, one of the most wealthy and influential merchants in the Province, and who is in every respect, both as to education and sterling loyalty of character, very deserving of this mark of approbation from His Majesty's Government. Mr. Simonds, now in Council, although formerly member for Northumberland, and engaged for some time in mercantile pursuits in that country, is otherwise quite unconnected with it, he and nearly all his family now residing at St. John.

To replace the judges in the Council (should your Lordship deem it advisable to accept the tender made by them of their seats), I would beg to submit the names of John Simcoe Saunders and Herbert Cornewall, esqrs.; the former is the only son of the venerable the chief justice, whose whole life has been spent in devoted loyalty to his Sovereign. His son was educated to the bar in England, and is a gentleman of very considerable talents and attainments. Mr. Cornewall, Comptroller of His Majesty's Customs at St. John, is the son of the late Bishop of Worcester; he is a gentleman possessed of great information, and with the advantage of a most liberal education cannot fail to prove a very useful and efficient member of the Board.

I have already experienced some inconvenience from the want of a sufficient number of members at head-quarters to enable me, on an emergency, to form a council; and as the Bishop of Nova Scotia can only be considered as an honorary member, I should venture to suggest that an efficient one be appointed in his room, leaving his Lordship's name of course upon the list, with the privilege of taking his seat as often as he may visit this part of his diocese. For this purpose, I beg to be permitted to submit a fifth name to your Lordship, that of Major W. Robinson, of the British army, unattached; he is the son of the late respectable member of Council of that name, and a gentleman every way eligible for the situation; he is a native of the Province, and now settled near this place.

I annex a list of the present Council, with the places of residence of the different members, in order that your Lordship may be enabled to judge of the difficulty above adverted to.

I have, &c.

(signed) *Arch. Campbell,*
Lieutenant-governor.

NEW
BRUNSWICK.

Enclosure in No. 8.

Enclosure in
No. 8.List of His Majesty's Council in the Province of New Brunswick, with the Places of
Residence of the different Members.

16 January 1832.

	Residence.
The Hon. John Saunders, president	Fredericton.
The Hon. Lord Bishop of Nova Scotia, visiting this part of the diocese only once in every three or four years	Halifax.
The Hon. Judge Bliss, residing about 10 miles from	Fredericton.
The Hon. William Black, at St. John, 90 miles from	Fredericton.
The Hon. George Shore	Fredericton.
The Hon. Thomas Baillie (absent in England)	Fredericton.
The Hon. Judge Botsford	Westmoreland.
The Hon. Judge Chipman	St. John.
The Hon. H. Peters	Gage Town, 36 miles from Fredericton.
The Hon. F. P. Robinson	Fredericton.
The Hon. Richard Simonds	St. John.

(signed) A. C.

No. 9.

— No. 9. —

(No. 36.)

COPY of a DESPATCH from Viscount *Goderich* to Lieutenant-governor Sir
A. Campbell, Bart. G. C. B.

Sir,

Downing-street, 1 May 1832.

I HAVE the honour to acknowledge the receipt of your letters, No. 5, of 19th
October 1831, and No. 2, of the 16th January 1832.

In that of October 19th, 1831, you express an earnest desire not to be deprived of the services of Judges Botsford and Chipman in the Council, until you may have had the experience of at least twelve months to guide your judgment upon a point of such importance to the government of the Province, and I collect from your despatch, No. 2, of January 16th, 1832, that, after the lapse of four months, you retain the same feeling upon that subject; under these circumstances I do not wish to embarrass you by requiring that you should immediately accept the tender which they have made of their seats in the Council, but referring to what has passed of late years in some of the other North American Provinces upon this subject, and knowing the rapidity with which opinions upon such matters lay hold of the public mind in societies constituted as those Provinces are, I am persuaded that you will feel the importance of bearing in mind the great advantage which is to be found in anticipating instead of following a powerful public impulse, particularly in cases when that impulse is directed towards objects not in themselves unreasonable nor constitutionally incompatible with the regular march of the King's Government; I readily admit that in the earlier stages of colonial societies, such a body as the Council of New Brunswick, could not easily be composed in a manner consistent with its obvious functions, unless it comprised individuals who upon general grounds might not be precisely those whom it might ultimately be advisable to select. The introduction, therefore, of the three puisne judges, as well as the chief justice, may fairly have been deemed originally a matter of necessity; and it may be that the time is scarcely yet arrived when the practice could conveniently be changed. I am willing, therefore, to defer to your wishes and judgment, and to postpone for the present the practical application of my former instructions, contenting myself, upon this occasion, with pointing out to you the considerations which seem to me to dictate the necessity of making in due time the proposed alteration. It would scarcely be necessary to add that my object in proposing that the judges, with the exception of the chief justice, should no longer have seats in the Legislative Council, was my desire to add to the weight and influence possessed by that body by giving to it a character of greater independence, were it not that in consequence of the observations which you have made upon this subject my attention has been attracted to the question of how far it may be practicable to adopt further measures calculated to produce the same effect.

It has hitherto, as I understand, been the custom that the Executive and Legislative Councils, though distinct bodies, should consist of the same members.

To

To this practice I think there are several objections, which incline me to believe that it might with advantage be departed from; the circumstance of the same gentlemen being members of both Councils has a tendency, I think, to prevent either from discharging with effect the duties which ought to devolve upon it.

The Executive Council should, I think, consist of a small number of gentlemen, including one or two influential members of each branch of the Legislature, with whom the Governor might confidentially consult upon the executive business of the government; the Legislative Council, on the other hand, should be more numerous, and should principally consist of gentlemen independent of, and unconnected with, the Executive Government, and selected from the principal inhabitants of the Province and those having the greatest stake in its welfare. At present it appears to me that the Council is too numerous to be usefully consulted by the Governor in the administration of affairs, whilst it is not sufficiently so, and has too close a connexion with the executive government, to enable it to possess the weight and authority which should belong to it as an independent branch of the legislature; nor is this the only objection to the present system, the rank of a councillor being naturally an object of ambition, those gentlemen who by their conduct in the Assembly are entitled to the countenance and favour of the Government, are, by the very act by which it is conferred upon them, withdrawn from the scene where they can be most useful. For these reasons it appears to me highly desirable that the number of the Legislative Council should be increased, and that its members should cease to be necessarily members of the Executive or Privy Council, while at the same time you should be authorized to summon to the latter one or two members of the present Council, and of the Assembly, and those of the chief officers of the Government whom you might think it right to include in it. I find, upon inquiry, that there appears to be no legal obstacle to your being empowered by an instrument under the Great Seal to carry into effect the proposed alteration, and that by the records of this office there would seem to be no law which would prevent a member of the Assembly of New Brunswick from retaining his seat in that house if called to give his advice to the Governor in the Executive. I wish you therefore immediately to take into your most serious consideration the suggestions which I have now thrown out, and to favour me with the result of your deliberation, in order that before the next meeting of the Provincial Parliament, I may determine whether such a change should be adopted. You will have the goodness at the same time to communicate to me your opinion as to the gentlemen who should be added to the present Council, or who should be members of the two distinct Boards, should it be your opinion that these should be constituted in the manner I have described. To the names which you have submitted to me, I have no objection to offer, except to that of Mr. Cornwall, whom I should be unwilling to add to the Council, not on account of any personal unfitness, but because I understand that he has merely an official connexion with the colony, and because the situation which he fills is one to which some unpopularity usually attaches, while it is also one which is of course felt by the inhabitants to retain its holder in a state of dependence upon the Government.

With respect to Mr. Cunard, that gentleman seems to possess every requisite qualification, and to be well calculated, from his character, his talents, and his stake in the country, to give satisfaction to the public, and weight to the body of which he would become a member; but at the same time, I think it is necessary to observe that if the proposed alteration in the constitution of the Council should take place, I think that it would be most desirable that he should retain his seat in the Assembly and become a member of the Executive Council.

With respect to the bishop's seat, I confess that I quite agree with you in thinking that it is attended with no practical utility, and may become ultimately an object of jealousy and animadversion; although, therefore, I am not prepared at present to give you any definitive instructions respecting it, I shall bear the subject in mind, with a view to some change, whenever I feel myself in possession of sufficient information to be able to take into consideration, with a view to some practical measure, the general condition of the Church of England in the province of New Brunswick: I am bound to add, that if a vacancy were to occur in the see of Nova Scotia, I should not recommend that the new bishop should be in the Council of either Province.

I have, &c.
(signed) *Goderich.*

NEW
BRUNSWICK.

No. 10.

— No. 10. —

(No. 41.)

COPY of a DESPATCH from Lieutenant-governor Sir *A. Campbell*, Bart. G. C. B.
to Viscount *Goderich*.

My Lord,

Fredericton, N.B., 20 July 1832.

I HAVE the honour to acknowledge the receipt of your Lordship's despatch of the 1st May last, No. 36. I have taken into my most serious consideration the various important subjects therein communicated, and shall respectfully offer a few brief observations resulting therefrom.

In the first place, I have the satisfaction to state that I have never, either directly or indirectly, had any remark or complaint made to me as to the judges having seats in Council. Perhaps this may have arisen more from the high feeling of respect entertained throughout the Province for the distinguished individuals at present holding those appointments, than from approbation of the system itself; this is so far satisfactory as to the past, and I beg to thank your Lordship for your kind indulgence in allowing me to have the benefit of their counsel and experience so long. Coinciding fully as I do in your Lordship's opinion, that great advantage is to be found in anticipating, instead of following, a powerful public opinion, which, as I have already observed, does not yet manifest itself in this Province, but might, at the instigation of a few demagogues, burst forth when least expected, however much I may regret the removal of the judges from the Council, I shall not urge one word more upon that subject.

Under circumstances different from those I am about to submit to your Lordship, the removal of the judges from the Council might be seriously felt, inasmuch as there would be no persons left competent to protect the judiciary system and other legal institutions of the Province from innovation, and from those fanciful changes which have been often suggested by members of the House of Assembly; but in the list of names I have to transmit for your Lordship's approval to the Council will be found those of two eminent lawyers, viz. Messrs. John Saunders and G. F. Street, natives of this province, but educated at the British bar; gentlemen, I feel confident, fully qualified both by principle and talent, to secure to that body all the legal advice it may require in the protection of the prerogatives of the Crown and the institutions of the country.

Although the constitutional practice of the legislature of this Province in its different branches has hitherto worked well, the change contemplated by your Lordship in the division of the Executive and Legislative Councils, must, and I make no doubt will, be received as a most satisfactory improvement. As your Lordship justly observes, the inconsistency of the same members forming the Privy and Legislative Councils as a body, is an anomaly that never ought to have existed, and the sooner that it is abolished the better.

In the adoption of this change I would most respectfully recommend, in the first instance (to save expense), that the Legislative Council should be kept at its present strength, or 12 effective members; an ample proportion, it may be presumed, to the existing members of the Lower House, viz. 28, including the Speaker. This branch must soon increase by the further division of counties; as settlement and population extend, so may the other in progressive ratio. Hitherto the proceedings of the Legislative Council have been carried on with closed doors; I beg to be favoured with your Lordship's commands relative to the future continuance of this custom.

The Executive Council I would propose to consist of five, with a provision that three should form a quorum; the members to be selected from persons residing at or in the immediate vicinity of the seat of government. The nominating of gentlemen to this Council from distant parts of the country would not only be attended with much inconvenience, expense, and loss of valuable time to the individuals themselves, but from the length of time that would necessarily elapse before they could be assembled, might be highly detrimental to the public service in the event of an emergent call for the meeting of that Council. The case is different in regard to the Legislative Council; they are, as a matter of course, in attendance during the session of the Assembly, generally

rally about 50 days in the year, and the only time, under the contemplated arrangement, that their services can be required.

I have most attentively weighed that part of your Lordship's despatch suggesting that some members of the Lower House should be called or nominated to the Executive Council; and I speak advisedly when I express my apprehension that such a measure would not answer. The very circumstance of their being councillors, and in the immediate confidence of the Executive, would not only create much jealousy among the other members of the House of Assembly, but would in all probability destroy all their influence in that house, and prevent them from being re-elected to it. Mr. Joseph Cunard is the only one in the list yet brought to your Lordship's notice; and I confess that I should regret to have to try the experiment in his case, the more particularly so, as I am assured, in the present order of things, that his brother will be his successor in the Assembly, from the county of Northumberland—a gentleman actuated by the same spirited and loyal principles.

Having now, to the best of my judgment, replied to the different suggestions stated in the despatch under consideration, I shall, in obedience to your Lordship's commands, submit for your approval the names of the gentlemen of whom I propose in the first instance to form the Executive and Legislative Councils.

I have, &c.
(signed) Arch. Campbell.

Enclosures in No. 10.

Encls. in No. 10.

(No. 1.)

For the Executive Council.

The Lieutenant-governor, President.
The Chief-justice.
Mr. Thomas Baillie, Commissioner of Crown Lands.
Mr. Frederic P. Robinson, Auditor.
Mr. William F. Odell, Secretary.
Mr. George F. Street, Advocate-general.

(signed) Arch. Campbell.

(No. 2.)

For the Legislative Council.

Already in the Council:

The Chief Justice, President.
The Bishop of Nova Scotia.
Mr. William Black.
Mr. George Shore.

Mr. Thomas Baillie.
Mr. Harry Peters.
Mr. Frederic P. Robinson.
Mr. Richard Simonds.

Already approved of:

Mr. Thomas Cunard.
Mr. James Allanshaw.

Major William Robinson.
Mr. John S. Saunders.

New recommendations:

Mr. George F. Street.

Mr. William Crane.

— No. 11. —

(No. 43.)

No. 11.

COPY of a DESPATCH from Lieutenant-governor Sir A. Campbell, Bart. G. C. B.
to Viscount Goderich.

My Lord,

Fredericton, N. B., 24 July 1832.

WITH reference to my despatch of the 20th instant, No. 41, I find it necessary to offer a brief explanation of the motives by which I was guided in the selection of members for the Executive Council (List, No. 1), therein transmitted for approval.

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BRUNSWICK.

I could not select persons, competent in my opinion to become councillors, residing at or in the immediate vicinity of the seat of government who are not already members of the Legislative Council; and I also feel desirous to have at least the experience of one session to enable me to judge how that body will work on the removal of the puisne judges (should that measure be at once determined on): if satisfactorily and well, then a more complete separation of Councils can safely take place.

I have, &c.
(signed) *Arch. Campbell.*

— No. 12. —

No. 12.

(No. 51.)

COPY of a DESPATCH from Lieutenant-governor Sir *A. Campbell*, Bart. G. C. B. to Viscount *Goderich*.

My Lord,

Fredericton, N. B., 29 August 1832.

WITH reference to my despatch of the 20th July 1832 (No. 41), I beg now to state that I have had a communication from Mr. Crane, of Westmorland, respectfully declining a seat in the Legislative Council, for which I recommended him, preferring to remain in his present situation as Speaker of the House of Assembly.

Should the arrangements already proposed be confirmed, I shall take an early opportunity of submitting the name of some other respectable person for the Council in room of Mr. Crane. Here I cannot help again expressing my hope that a small Executive Council, as proposed by your Lordship, will supersede the present system of referring confidential matters to so large a body as compose the Council as now constituted.

I have, &c.
(signed) *Arch. Campbell,*
Lieut.-governor.

— No. 13. —

No. 13.

(No. 56.)

COPY of a DESPATCH from Viscount *Goderich* to Lieutenant-governor Sir *A. Campbell*, Bart. G. C. B.

Sir

Downing-street, 25 September 1832.

I HAVE the honour to acknowledge the receipt of your despatch of the 20th July last, No. 41, in which you state your opinion that the change contemplated by me in the constitution of the Province of New Brunswick, by the separation of the Executive from the Legislative Councils, will be received as a satisfactory improvement, and that the anomaly of the same members forming the Privy and Legislative Councils as a body ought no longer to be continued.

You also inform me that you conceive that the judges may now retire from the Council without inconvenience to the public service; and although no complaint has hitherto been made on the subject of the judges having seats in Council, you conceive that this may probably be attributed more to the high feeling of respect which is entertained throughout the Province for the distinguished individuals at present holding those appointments, than from approbation of the system itself.

I concur entirely in the sentiments which you have expressed with regard to the able and impartial manner in which the judges have uniformly executed the important duties which have been required of them as executive and legislative councillors; but, at the same time, I cannot hesitate in advising His Majesty to accept their resignations after the decided opinion which has been expressed by Parliament on the subject in the case of the Canadian Provinces, and in the propriety of which I entirely concur. The chief justice will, therefore, in future be the only judge retaining a seat in the Executive and Legislative Councils. You will, however, communicate to the judges, that it is His Majesty's pleasure that they retain the rank and privileges of members of Council; and in opening the next Session of the Provincial Legislature, you will

will avail yourself of the opportunity of publicly expressing to them His Majesty's thanks and approbation of their past services.

The custom you state to have hitherto prevailed of the proceedings of the Legislative Council being carried on with closed doors, is liable, I think, to considerable objection and misconstruction, and it seems to me highly desirable that in future the ordinary deliberations of this branch of the legislature should be open to the public. I wish you, therefore, privately to suggest to the members the propriety of making such a change, which, of course, can only be effected by the authority of the Council itself. Under what regulations this privilege is to be granted, and on what occasions it may be proper to suspend its exercise, will also be questions for their consideration.

His Majesty has been pleased to approve of the gentlemen recommended by you as members of the Executive and Legislative Councils, with the exception of Mr. Street, whose appointment to the Legislative Council I should rather wish to be deferred for the present, as Mr. Odell would otherwise be the only executive councillor not in the Legislative Council. I think this would hardly be sufficient to mark the distinction of the two bodies, and would make the one appear too much like a committee of the other.

The separation of the two Councils, and the retirement of the judges, is perhaps a sufficient innovation at once, and I therefore acquiesce in the propriety of not attempting at present to establish a closer connexion between the Executive Government and the Assembly, as originally proposed; I, however, still entertain the opinion that this is an object which should not be lost sight of, and which it will be very desirable hereafter to accomplish. In order to effect this, it is desirable that the public should be led to regard (as in England) the obtaining a seat in the Privy Council as an honour not incompatible with any other situation, or as disqualifying the holder from sitting likewise in the Assembly. The best mode, probably, of trying the experiment of uniting in one person the two characters, would be to endeavour to procure the election of an executive councillor as a member of the Assembly, instead of naming a person already in the Assembly to the Council. With this view, I think it would be advisable to take an early opportunity of introducing into the Executive Council some gentleman possessing such an interest in some part of the Province as is likely to lead to his being chosen one of the representatives. I trust that I shall be enabled to transmit to you by the next packet the necessary authority, under His Majesty's sign manual, for carrying the proposed arrangement into effect.

I have, &c.
(signed) *Goderich.*

(No. 58.)

— No. 14. —

No. 14.

COPY of a DESPATCH from Lieutenant-governor Sir *A. Campbell*, Bart. G. C. B.
to Viscount *Goderich.*

My Lord,

Fredericton, N. B., 18 November 1832.

I HAVE the honour to acknowledge the receipt of your Lordship's despatch of the 25th September (No. 56), by which I find that in the contemplated changes in the formation of the Council of New Brunswick, the puisne judges are no longer to hold their seats in the Legislative Council.

In my despatch of the 29th August last (No. 51), I had the honour of communicating to your Lordship that Mr. Crane, the Speaker of the House of Assembly, had respectfully declined accepting of a seat in the Legislative Council. I now beg to recommend for that vacancy A. G. Botsford, esq., the eldest son of Judge Botsford, he is a country gentleman, and one of the most zealous officers in the militia of New Brunswick, in which he holds the rank of Lieutenant-colonel, and he is reported to me in every respect well qualified to fill the situation for which he is now recommended; it would also prove very gratifying and complimentary to the feelings of the worthy judge to be succeeded by one of his family, and I have every reason to believe that such a measure would be no less acceptable to the whole county of Westmorland.

I have, &c.
(signed) *Arch. Campbell*, Lieut.-governor.

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(No. 64.)

— No. 15. —

No. 15.

COPY of a DESPATCH from Viscount *Goderich* to Lieutenant-governor
Sir *A. Campbell*, Bart. G. C. B.

Sir,

Downing-street, 7 December 1832.

I HAVE the honour to transmit to you His Majesty's commission, under the Great Seal, establishing two distinct Councils for the Province of New Brunswick. I also enclose an additional instruction, under the Royal Sign Manual, appointing the members of the Executive Council. The chief justices of Upper and Lower Canada having resigned their seats in the Executive Councils of those Provinces, in deference to the opinion which had been expressed by the House of Commons as to the impropriety of the chief justice holding a seat in the Executive Council, and as I entirely concur in the recommendation of the Canada Committee on this subject, you will at once perceive that it was impossible for me to include the name of the chief justice as an executive councillor for New Brunswick; I have, therefore, submitted the name of Mr. John Simcoe Saunders to His Majesty to fill the vacancy occasioned by the omission of the chief justice in the list of the Executive Council.

I have, &c.

(signed) *Goderich*.

Encl. 1, in No. 15.

Enclosure 1, in No. 15.

COMMISSION.

WILLIAM R.,

Our Will and Pleasure is, that you prepare a Bill for Our Royal Signature, to pass Our Great Seal of Our United Kingdom of Great Britain and Ireland, in the Words, or to the effect following:

WILLIAM the Fourth, by the Grace of God of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, to Our right trusty and well-beloved Matthew Lord Aylmer, K. C. of the most honourable military Order of the Bath, Lieutenant-general of Our Forces, greeting. Whereas, by letters patent, bearing date at Westminster, on the 6th day of July 1831, in the second year of Our reign, We did constitute and appoint you to be Our Captain-general and Governor-in-Chief in and over Our province of New Brunswick, and did by Our said commission give, grant, and commit to you certain powers and authorities, to be by you exercised in manner therein mentioned, with the advice and consent of Our Council of Our said province, as by reference to the said letters patent will more fully and at large appear: And whereas we have deemed it expedient that there should henceforward be two distinct councils in Our said province, for the purposes hereinafter mentioned: Now, therefore, know ye, that We of Our especial grace, certain knowledge, and mere motion, have thought proper to grant, provide, and declare, and do hereby grant, provide, and declare, that there shall henceforward be within our said province of New Brunswick, two distinct and separate councils, to be respectively called the Legislative Council and the Executive Council of Our said province; and we do hereby further direct and declare Our pleasure to be, that all and every the powers and authorities in the letters patent aforesaid contained, and thereby conferred on and vested in Our Council therein mentioned, so far as respects the enactment of any laws to be made within Our said province, shall henceforth be and the same are hereby vested in the said Legislative Council, and that all other powers and authorities whatsoever in the letters patent aforesaid contained, and thereby conferred on and vested in Our Council therein mentioned, shall henceforth be and the same are hereby vested in the said Executive Council. And We do further direct and declare Our pleasure to be, that all and every the provisions, clauses, matters, and things in the said letters patent contained, or which are or shall be contained in the general or other instructions therein referred to, with reference to the constitution of the Council therein mentioned, and to the number of the members thereof, and to the nomination, appointment, suspension or removal of such members, shall be and the same are hereby made applicable to the said Legislative Council, as fully as if the same and every of them were here repeated. And We do further declare that the said Executive Council shall consist of five members and no more, and that three of such members shall constitute and be a quorum of Our said Executive Council, and that such persons shall be the Members of the said Executive Council as are for that purpose nominated and appointed by the additional instructions under our signet and sign manual accompanying these presents, and bearing even date herewith, or shall be so nominated and appointed by any further instructions to be by Us for that purpose addressed to you under Our signet and sign manual, or in Our Privy Council, or through one of Our principal Secretaries of State. And we do further direct and require that every member of Our said Executive Council of Our said Province shall take and subscribe such and the same oaths, and make all such and the same declarations (to be by you for that purpose administered), as by the said recited letters patent are required to be taken or made by the members of Our Council therein

therein mentioned. And We do hereby authorize you, subject, nevertheless, to the rules and regulations in that behalf contained in the instructions aforesaid, to suspend any member of the said Executive Council from his place therein, until Our pleasure shall be known; and We do hereby declare that the respective Members of the Executive Council shall respectively hold their places therein during Our pleasure.

In witness, &c., witness, &c., and for so doing this shall be your warrant.

Given at Our Court at St. James's, this 20th day of November 1832, in the third year of Our reign.

By His Majesty's command,
(signed) *Goderich.*

Enclosure 2, in No. 15.

Encl. 2, in No. 15.

INSTRUCTIONS.

WILLIAM R.

AN additional Instruction to Our Right Trusty and Well-beloved *Matthew Lord Aylmer*, K. C. B., Lieutenant-general of Our Forces, Our Captain-general and Governor-in-Chief in and over Our Province of *New Brunswick* in America, or in his absence to Our Lieutenant-governor or Officer administering the Government of Our said Province for the time being. Given at Our Court at St. James's this 3d day of December 1832, in the Third year of Our Reign.

WHEREAS by Our Commission under the Great Seal of Our United Kingdom of Great Britain and Ireland, bearing even date herewith, We did grant, provide, and declare that there should henceforward be within Our said province of *New Brunswick* two distinct and separate councils, to be respectively called the Legislative Council and the Executive Council of Our said province: and We did further declare that the said Executive Council should consist of five members and no more, and that such persons should be the members of Our said Executive Council as should be for that purpose nominated and appointed by the additional instructions under Our signet and sign manual accompanying Our said commission: Now know ye, that We, reposing especial trust and confidence in the loyalty, integrity, and ability of Our trusty and well-beloved *Thomas Baillie*, *Frederic P. Robinson*, *William Franklin Odell*, *George F. Street*, and *John Simcoe Saunders*, esquires, do hereby constitute and appoint them the said *Thomas Baillie*, *Frederic P. Robinson*, *William Franklin Odell*, *George F. Street*, and *John Simcoe Saunders* to be the members of Our said Executive Council, and do hereby empower you to summon them to Our said Council accordingly. And We do further declare Our will and pleasure that in your absence, or in the absence of Our Lieutenant-governor of Our said province, or the officer administering the government for the time being, the member of Our said Council whose name shall be first placed on the list shall preside in Our said Council.

(No. 8.)

— No. 16. —

No. 16.

COPY of a DESPATCH from Lieutenant-governor *Sir A. Campbell*, Bart. G. C. B. to Viscount *Goderich*.

My Lord,

Fredericton, N. B., 12 February 1833.

By the December mail, which arrived only a few days ago, I had the honour to receive your Lordship's despatch of the 7th December last, transmitting His Majesty's Commission under the Great Seal establishing two distinct Councils for the Province of *New Brunswick*; and I have now to inform your Lordship that I have this day carried His Majesty's commands into effect, in every respect as therein directed. It is a measure that I feel confident will work well for the benefit of the Province, although in the establishment of this, as indeed any new regulation, many individuals (in their own estimation of their claims and merits) may feel themselves hurt at their exclusion from one or other of the Councils.

I have, &c.
(signed) *Arch. Campbell.*

(No. 14.)

— No. 17. —

No. 17.

COPY of a DESPATCH from Lieutenant-governor *Sir A. Campbell*, Bart. G. C. B. to Viscount *Goderich*.

My Lord,

Fredericton, N. B., 4 March 1833.

In the concluding part of my despatch of the 12th ultimo, I observed to your Lordship that in the establishment of any new regulation, such as that of the Councils therein adverted to, many individuals, in their own estimation of their claims and services, would, no doubt feel themselves hurt at their exclusion from

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from the one or the other of the Councils. Such has proved to be the case, and out of that feeling has emanated the enclosed address.

The Commission under the Great Seal for the formation of the two Councils, was read in my presence before the breaking up of the old one, comprehending all that I could say on the subject; my reply, therefore, to the accompanying address was, that I had received no further instructions. Some days afterwards the Council addressed me for a copy of the instructions that came with the Royal Commission for the formation of the Executive, which was immediately sent, as well as one to the Lower House on its application for the same. Some members of the old Council wish to make it appear that it was their undoubted right to be appointed to the Executive; and I am told, that notwithstanding my assurance to them, that I should transmit their address by the first mail, they intend to forward to his Majesty a separate application to the same purport.

I hope, however, to be soon put in possession of your Lordship's decision on the points in reference.

I have, &c.
(signed) *Arch. Campbell.*

Encl. 1, in No. 17.

Enclosure 1, in No. 17.

Legislative Council Chamber, Monday,
18 February 1833.

ON motion of Mr. Simonds.

Resolved, That an humble address be presented to his Excellency the Lieutenant-governor, praying that he would be pleased to inform this House, whether any, and if any, what instructions have been received, relative to the rank respectively to be held by members of the Legislative and Executive Councils of this Province, and especially as relates to the succession to the administration of the government, on the event of the death or absence of the Lieutenant-governor for the time being; for although this house entertain no doubt that the administration of the government would in such case devolve upon the senior member of either of the said Councils, agreeably to the dates of their respective appointments, yet they deem it indispensably necessary, in order to prevent the possibility of collision in a matter of so great importance, that this question should be settled so as to preclude all doubt or difference of opinion, with as little delay as possible.

Ordered, That Mr. Peters and Mr. Simonds be a committee to present the same.

(signed) *William Tyng Peters, Clerk.*

Encl. 2, in No. 17.

Enclosure 2, in No. 17.

Message to the Legislative Council, 20 February 1833.

THE Lieutenant-governor informs the Council, in answer to their address of the 18th instant, that he has not received from his Majesty's Government any instructions relative to the rank to be respectively held by Members of the Legislative and Executive Councils, nor as relates to the succession to the administration of the government, in the event of the death or absence of the Lieutenant-governor. He will, however, transmit a copy of the address of the Council, by the first mail, to England, and will in the meantime take measures for ascertaining, for the information and guidance of his Majesty's Executive Council, in the event of such a contingency arising as stated in the address, what orders have been received, or what customs have obtained in other colonies similarly situated.

(signed) *A. C.*

No. 18.

— No. 18. —

(No. 18.)

COPY of a DESPATCH from Lieutenant-governor Sir *A. Campbell, Bart. G. C. B.*
to Viscount *Goderich.*

Fredericton, New Brunswick,
11 March 1833.

My Lord,

By the detention of the mail for some days beyond the usual time of departure, in consequence of a severe snow storm, I am enabled to transmit to your Lordship some extracts from the proceedings of the House of Assembly, by which it will be seen that they have passed eight resolutions, in furtherance of their opposition to the Commissioner of Crown Lands, his department, the collection of the quit-rents, and the newly-constituted Executive Council, which, with the annexed remarks, I lose no time in forwarding for your Lordship's information.

I have, &c.
(signed) *Arch. Campbell.*

Enclosure in No. 18.

EXTRACTS from the Journal of the House of Assembly of *New Brunswick*, dated 8th March 1833.

Lieutenant-Governor's Remarks.

No. 5.—Resolved, &c., That the majority of the present Executive Council of this Province cannot have the confidence of the country, inasmuch as the first named on the list holds the office of Commissioner of Crown Lands and Forests in this Province; an office of such great power and authority as renders it incompatible with the administration of the government of the Province to which such councillor would immediately succeed, in the event of the death or absence of the Lieutenant-governor; and that the persons second and third named on the said list, hold public situations in this Province, also inconsistent with the administration of the government, to which they might hereafter succeed. And it is the further opinion of this committee, that the composition of the said Executive Council is highly unjust and unsatisfactory, by the exclusion therefrom of old and faithful councillors, who were entitled, by the former constitution, to succeed to the government of the Province, prior to any of those placed on the list of the Executive Council.

To which resolution an amendment was moved, for striking out the words "unjust and * * * * *"; and it was carried in the affirmative.

No. 5.—The exclusion from the Executive and Legislative Councils of certain persons, who estimate their own pretensions and merits at a high rate, is, no doubt, the cause of this resolution.

I shall pass by the objection made to the first-named person, his Majesty's Government having been fully aware of the public situation he holds, when he was placed first on the list of the Executive Council.

The second person on the list is J. P. Robinson, esq., a gentleman of the country, holding the appointment of auditor of the casual revenue accounts, on a salary of 300*l.* per annum.

The third named person is W. F. Odell, esq., also a native of the Province, holding the situation of provincial secretary, on a salary of 250*l.* per annum, the amount of commutation fees on the sale of land and timber not being yet fixed by the Lords of his Majesty's Treasury.

On the highly disrespectful and perhaps unprecedented language of the concluding part of this resolution it would be presumptuous in me to offer any remark; but I will here take the liberty of giving a proof of the inconsistency of the framers of these resolutions.

They object to Messrs. Robinson and Odell having seats in the Executive Council, from their holding public situations in the Province which renders such their appointments inconsistent with the administration of the government; and that the composition of the said Executive Council is highly unjust and unsatisfactory, by the exclusion therefrom of the old and faithful councillors.

Of the old council, four members are not in the newly-constituted Executive; viz. 1st. Mr. Black, mayor of the city of St. John (90 miles distant from the seat of government), which appointment yields emoluments, I believe, to the amount of from 500*l.* to 600*l.* per annum.

The second is Mr. Shore, holding the situation of clerk of the Supreme Court, giving him from 900*l.* to 1,000*l.* per annum, besides being adjutant-general of militia, on an annual salary of 75*l.*

The third is Mr. Henry Peters, a country gentleman residing at Gage Town, 36 miles from the seat of government, and holding no appointment of pay or emolument.

The fourth is Mr. Richard Simonds, provincial treasurer, on a salary of 600*l.* per annum, living at St. John.

So that by their way of viewing the subject, Mr. Peters, from holding no official situation, is the only person eligible for the Executive Council, or the administration of the government.

Not only in the majority, but in the composition of the whole of the Executive Council, I have every confidence, and I am sure that they will prove themselves worthy of that of the country.

(signed) A. C.

NEW
BRUNSWICK.

No. 19.

— No. 19. —

(No. 28.)

EXTRACT of a DESPATCH from Lieutenant-governor Sir *A. Campbell*, Bart.
G. C. B. to Viscount *Goderich*.

Fredericton, N. B., 9 April 1833.

By the last mail I had the honour to transmit to your Lordship some resolutions handed to me by the Legislative Assembly on their supposed grievances, upon which I made a few marginal remarks. Since then, they have presented me with a copy of their address to His Majesty on the same subject, herewith enclosed.

Encl. in No. 19.

Enclosure in No. 19.

EXTRACT from the ADDRESS of the House of Assembly of *New Brunswick* to His Majesty.

THE House would also most humbly but urgently pray Your Majesty's reconsideration of the constitution of the Executive Council lately formed in the Province, by which three of the first-named persons on the list hold situations incompatible with a just execution of the duty of administering the government of the Province, in the event of the death or absence of the Lieutenant-governor, and at the same time old and faithful councillors, in whom the country have long had full confidence, have thus been deprived of succeeding to the high and honourable situation, to which, by the former Royal Commission and instructions, they were entitled. And Your Majesty may be well assured that your faithful Commons of New Brunswick would never have uttered the expression of their feelings on this subject, did they not believe that Your Majesty could not have been well informed of the true state of things in this Province, and of the general dissatisfaction which this measure would occasion.

No. 20.

— No. 20. —

(No. 38.)

COPY of a DESPATCH from Lieut.-governor Sir *A. Campbell*, Bart. G. C. B.
to the Right Honourable *E. G. Stanley*.

Sir,

Fredericton, N. B., 26 May 1833.

I HAVE now much satisfaction in reporting that experience confirms the advantages I anticipated from the measure adopted some months ago of dividing the Council into purely legislative and executive ones, instead of, as heretofore, the same individuals composing and performing the duties of both situations. This measure cannot fail in its operation in being appreciated as a boon to the Province, from the facility it affords to the dispatch of all public business, and to me as Lieutenant-governor it is most particularly gratifying.

On the first promulgation of the measure alluded to, disappointed individuals endeavoured to render it unpopular, not in a public point of view, but in consequence of their own exclusion, all the members of the old Council considering themselves entitled, as a matter of course, to become members of the new Executive; and, again, by others who deemed themselves overlooked in not being appointed to the Legislative Council in room of the puisne judges.

By Lord Goderich's despatch of the 1st May 1832 (No. 36), I found myself authorized to increase the number of the members of the Legislative Council, then consisting of 12. I did not at that time avail myself of his Lordship's permission, as I was desirous of trying how matters would proceed with the old number; but the experience of the last session of the General Assembly leaves me now fully impressed with the necessity of the increase then contemplated in the Upper House, and particularly of introducing into that body some legal talent to regulate not only that body itself, but also to counteract the many improper and ill-digested measures emanating from the Lower House, which duties have been hitherto ably performed by the three puisne judges.

I now,

I now, therefore, beg earnestly to recommend the addition of four members to the Legislative Council, and to propose as such the Hon. G. F. Street (who was formerly recommended, but it was deemed advisable by Lord Goderich then to postpone his appointment, for reasons stated in the despatch referred to; this gentleman is a member of the Executive or Privy Council), Charles Jeffrey Peters, esq., the attorney-general, Robert Parker, esq., the solicitor-general, and Thomas H. Peters, esq., clerk of the peace for the county of Northumberland—all gentlemen of the highest respectability, natives of the Province, and having a great stake in it. I am aware as the Council formerly stood, having the legislative and executive duties to perform, that the Crown lawyers being members of it, would in every respect be objectionable; but now that the Privy Council duties are entrusted to a separate body, I trust there may be no objection to their being brought into the Legislative Council, where their respectability and legal acquirements cannot but prove most serviceable to the public interests of the Province, as no decision of a local nature can emanate from that body that can in the least degree interfere with the duties of their official appointments.

Should you desire any further information on the subject of this despatch, I beg respectfully to refer you to the Hon. Thomas Baillie, commissioner of Crown Lands, &c., in this Province, now in England, who is well acquainted with the subject under discussion.

I have, &c.
(signed) Arch. Campbell.

(No. 19.)

—No. 21.—

No. 21.

COPY of a DESPATCH from the Right Hon. *E. G. Stanley* to Lieutenant-governor Sir *A. Campbell*, Bart. G. C. B.

Sir,

Downing-street, 8 August 1833.

I HAVE received your despatch, No. 38, of the 26th May last, reporting your satisfaction with the result of the measure for separating the Councils in New Brunswick, and proposing that an addition should be made to the number of the members composing the Legislative Council.

In answer to this communication, I have the honour to inform you that I have had much pleasure in submitting the name of Mr. Charles Peters to his Majesty for a seat in the Legislative Council, and I shall forward, by an early opportunity, the instrument containing his appointment. With respect to the other gentlemen named in your despatch, I must decline submitting their names to his Majesty, not because I have any reason to doubt their qualifications, but because the very object of the separation of the Executive and Legislative Councils was to confer upon the latter of them a greater character of independence, by making it consist of a larger proportion of members not holding office under the Government. I shall therefore be glad to receive from you a report of such resident colonists, unconnected with office, as you feel able to recommend as qualified for a place in the Legislative Council of New Brunswick.

I have, &c.
(signed) *E. G. Stanley*.

(No. 11.)

—No. 22.—

No. 22.

COPY of a DESPATCH from the Right Honourable *E. G. Stanley* to Lieutenant-governor Sir *A. Campbell*, Bart. G. C. B.

Sir,

Downing-street, 27 July 1833.

I HAVE received and laid before the King your despatch, No. 22, of the 19th March last, enclosing certain resolutions of the Legislative Council, and also an address from that body to His Majesty on the subject of the relative rank to be held by members of the Executive and Legislative Councils, and on the right of succession to the administration of the government of the Province in the event of the death or absence of the Lieutenant-governor.

NEW
BRUNSWICK.

With respect to the latter point, I think that the existing instruments under the Royal Sign Manual are sufficient to place it beyond the reach of doubt. By letters patent, bearing date the 3d December 1832, the Council of New Brunswick was divided into two distinct Councils, to be styled the Legislative Council and the Executive Council. The Legislative Council was to have those powers of the original and joint Council which respected the enactment of laws; but all other powers and authorities whatsoever belonging to the original Council were to be vested in the Executive Council. It necessarily follows that the privilege of succeeding to the administration of the government must belong to the senior member of the Executive Council. I may add, that this provision was no more than consistent with the nature of the two bodies which His Majesty was creating in dividing the Councils. It was natural that the advisers of the Governor in the ordinary discharge of his office should be presumed to be better prepared to succeed on an emergency to the same office than those who were confined to the separate, though highly important, business of legislation.

The solution of the question referred to in the preceding observations appears to me to answer the question respecting the relative rank of members of the Executive and Legislative Councils. As the succession to the government belongs to the senior member of the Executive Council, the members of that Council ought to have precedence of all other persons, for it would be a manifest inconvenience that an officer called upon to administer the government should thereby supersede a previous superior in rank.

I have, &c.
(signed) *E. G. Stanley.*

No. 23.

— No. 23. —

EXTRACT of a DESPATCH from the Right Honourable *E. G. Stanley* to Sir *A. Campbell*, Bart. G. C. B. dated Downing-street, 7 August 1833 (No. 18.)

ON the division and composition of the Councils, I shall merely state, that I entirely approve the general principle on which the measure of separating the Councils was founded, and without further proof of practical inconvenience resulting in the particular instance than has yet been brought forward, that I think it far from expedient to disturb arrangements so recently adopted by His Majesty's Government.

— No. 24. —

No. 24.

(No. 56.)

COPY of a DESPATCH from Lieut.-governor Sir *A. Campbell*, Bart. G. C. B. to the Right Hon. *E. G. Stanley.*

Sir,

Fredericton, N. B., 15 October 1833.

I HAVE the honour to acknowledge the receipt of your despatches of the 8th and 26th August last, acquainting me with the reasons that prevented you from submitting to His Majesty the names of the gentlemen respectively holding the appointments of attorney-general, solicitor-general, and advocate-general, for seats in the Legislative Council, but, as I understand, approving of my recommendation of Mr. Thomas H. Peters for that honour.

I am also therein desired "to submit for your consideration the names of such resident colonists, unconnected with office, as I might feel able to recommend as qualified" to become members of that body.

I have now, after much consideration of that subject, the honour to lay before you the names of three gentlemen, all natives of the Province, in my opinion qualified in every respect to fulfil the important duties of legislative councillors; viz. George Henry Hazen, Esq., formerly an officer in the army, now residing upon his own property; 2dly, Thomas Carlton Lee, esq., a private gentleman, residing on his own property; and, 3dly, John Thomas Murray, esq., a very talented barrister-at-law.

I am

I am led to believe that there is a mistake in the insertion of the christian name of Charles Jeffrey, instead of Thomas H. (Peters) in the instrument, under the Royal Sign Manual, transmitted with despatch 26th August. As the former is the name of the attorney-general, whom I understood to be one of those objected to, as holding office under Government, the appointment of clerk of the peace for the county of Northumberland, held by Mr. Thomas Horsfield Peters, can scarcely be considered in the light of a government office, being merely a provincial nomination, under the warrant of the Lieutenant-governor.

I have, therefore, deemed it right to bring to your notice the doubt existing in my mind on this subject, as, should a misunderstanding exist, there will be ample time for its correction before the meeting of the House of Assembly in the latter end of January next.

I have, &c.
(signed) Arch. Campbell.

— No. 25. —

No. 25.

(No. 34.)

COPY of a DESPATCH from the Right Hon. *E. G. Stanley* to Lieutenant-governor Sir *A. Campbell*, Bart. G.C.B.

Sir,

Downing-street, 30 November 1833.

I HAVE the honour to acknowledge the receipt of your despatch No. 56, of the 15th October last, recommending *Géorge Henry Hazen*, Esq., *Thomas Carleton Lee*, Esq., and *John Thomas Murray*, Esq., as well qualified to become members of the Legislative Council of New Brunswick.

Having submitted the names of these gentlemen to the King, his Majesty has been pleased to approve of your recommendation; and I transmit herewith the necessary mandamuses summoning them to the Council accordingly.

The fees of these instruments, amounting to 9*l.* 15*s.* each, you will have the goodness to receive, and forward to Mr. *George Wilder*, of this department

I have, &c.
(signed) *E. G. Stanley*.

— No. 26. —

No. 26.

(No. 20.)

COPY of a DESPATCH from Lieut.-governor Sir *A. Campbell*, Bart. G.C.B. to the Right Hon. *E. G. Stanley*.

Sir,

Fredericton, N. B., 26 March 1834.

I HAVE the honour to transmit to you an address from the Legislative Council of this Province to the King, respecting the relative rank and privileges of the members of the two Councils, and praying his Majesty to appoint the legislative councillors for life.

Until this address was handed to me for transmission, I certainly entertained a very confident hope that the clear and unanswerable decision given in your despatch of the 27th July 1833, No. 11, would have put all further discussion of the point of precedence at rest: whether the reasons assigned for thus again agitating the question are of sufficient weight and importance to disturb existing arrangements, or to alter that decision, it belongs not to me to determine; but I cannot avoid remarking that some of these reasons go a length, and are delivered in a tone, which, without pronouncing any opinion on their character and tendency, may justly excite my surprise and disappointment; and I will add, that it must ever be deplored that such untenable doctrine as is put forth in the third paragraph of the address, should have emanated from a body so highly honoured by their Sovereign, and whose first duty it should be to inculcate reverence to the King, and willing obedience to the laws; viz. "That the Council then established (the original joint Council) constituted an efficient, independent, and permanent branch or part of the constitution of the colony, and which could not be changed or altered but by an Act of this Legislature, by and with the consent of your Majesty, &c. &c. &c."

NEW
BRUNSWICK.

It is first proper to inquire how far the Council is borne out by the instructions erecting this Province into a separate government, and upon which the above theory is grounded, in thus boldly questioning the power and authority exercised by his Majesty in the late separation of the Councils.

The constitution of this Province is formed by the commission to the Governor, and the accompanying instructions, which direct the manner in which the powers given in the commission are to be executed, namely, according to those instructions, and "to such further powers and instructions as shall be hereafter given under the King's Signet and Sign Manual, or by order in the Privy Council."

By these instructions a Council was appointed to hold their seats during pleasure, having both legislative and executive powers vested in it: this the King thought proper to alter, and by commission under the Great Seal, an instrument of equal power with the commission to the Governor, divided this Council, and established a separate Executive Council, confining the former council to their legislative functions.

This constitution, often heretofore referred to by the Council, seems to be most strangely denied and set aside by this extraordinary address, which asserts, that it could not be changed or altered, but by an Act of the Legislature of this Province!! It also declares, that the members of the Executive Council cannot be entitled to a relative corresponding rank with those of the Legislative Council, notwithstanding the acknowledged maxim, that the King is the fountain of honour and of office, and can bestow rank as he thinks fit; and also notwithstanding your answer to their former address upon the subject.

The address then most inconsistently proceeds to pray his Majesty to do what it before denied him the power of doing,—to appoint the legislative councillors for life, and to allow the members of the Executive Council to rank with them, and to succeed to the administration of the government, according to the seniority of their appointments.

It is needless to remark upon this inconsistency, or upon the observation, "made in all humility," that the separation of the Councils was uncalled for by representation or complaint from this country.

The object of the address is evidently to secure, if possible, to one or two members of the present Legislative Council the chance of succeeding to the administration of the government upon any temporary vacancy; and to accomplish this end, the Council has not hesitated to impugn his Majesty's royal prerogative as exercised in the division of the Councils, while they at the same time put forward the expressive prayer that their appointment should be for life, with the view, as it would seem, to secure themselves from dismissal, in the event of their adopting measures in their legislative capacity which might draw down upon them the disapprobation or displeasure of his Majesty; a concession which would take from the King a power, in this young community, essential to the preservation of the dignity, respectability, and usefulness of that body, namely, of removing from it any member whose conduct may have proved him to be unfit for or unworthy of so high an honour.

There are other parts of the address that may appear to call for notice; but I shall content myself with merely repeating, in conclusion, that the division of the Councils is in my opinion working well, and, as far as the Executive Council is concerned, to my entire satisfaction; nor need I scruple to add, to the advantage of the country, from the greatly increased facility, regularity, and expedition, with which all matters coming under its jurisdiction are now investigated and decided on.

I have, &c.

(signed) *Arch. Campbell.*

Enclosure in No. 26.

To The KING's Most Excellent MAJESTY.

The humble and dutiful Address of his Majesty's Legislative Council of the Province of New Brunswick, in General Assembly convened.

May it please Your Majesty,

WE have had the honour to receive, by message from his Excellency the Lieutenant-governor, the despatch of Your Majesty's Secretary for the Colonies, in answer to our Address to Your Majesty, respecting the relative rank of the President and Members of the Legislative Council and those of the Executive Council. At the time when we had the honour of addressing Your Majesty upon that subject, it was a system perfectly new to us, and had been entirely unknown to the constitution of this colony, as well as to that of the ancient colonial system, and which has been but very recently introduced by Act of Parliament into any of the colonies.

We, therefore, most humbly crave leave again to approach Your Majesty, and to offer for your royal and benevolent consideration some additional reasons and observations in elucidation and support of our claim, that the members of the two councils should respectively rank and succeed to the administration of the government, according to the seniority of their appointments, as has heretofore, from the time of the first establishment of colonial governments in North America, been accustomed.

That the Councils appointed by your late Royal Father of glorious and revered memory, upon the erection of this country into a separate and distinct Government, have invariably from that time performed, and do still continue to perform, all acts of legislation in as full and ample a manner here, as the House of Lords have done in England, conducting all our proceedings and keeping our journals strictly conformable to those of their Lordships; and have always been considered in the colony, as well by the people at large as by the House of Assembly, to stand in strict analogy in those respects with their Lordships; nor do we think that Your Majesty's Letters Patent of the 3d of December, for dividing the Council, did in any manner impugn, alter, or diminish the powers or duties of the Members of the Legislative Council, conferred upon them by your late Royal Father, but that the Council then established constituted an efficient, independent, and permanent branch or part of the constitution of the colony, and which could not be changed or altered but by an Act of this Legislature, by and with the consent of Your Majesty, although its Members have been, and still continue to be appointed during pleasure; and we take leave humbly to submit for Your Majesty's favourable consideration, whether their being appointed for life would not be more conducive to Your Majesty's interest, and that of the country, by raising them in the estimation of the public, and thereby promoting their usefulness and efficiency.

We abstain from making any additional observations respecting the Executive Council, and confine ourselves briefly to recapitulate, that as we have not been able to find, that the Members of such a Council are recognized in the Table of Precedence in England, or in that which has been adopted for the colonies; and, as it appears to bear so slight a resemblance to Your Majesty's Cabinet, either in the extensiveness or importance of its duties we therefore humbly conceive that it cannot be entitled to a relative corresponding rank in this colony.

We in all humility beg leave respectfully to represent, that the forming this Council, by breaking up by letters patent the old Council, which was constituted in the same manner, and with the same powers, conformable to all colonial councils which had been instituted from the first establishment of colonial governments in North America, was altogether uncalled for by any representation or complaint from this country against it; and it could not fail to excite feelings of great concern in the members of the old Council to observe, on the establishment of this new one, that a junior councillor was selected and placed at its head, with the intention of giving him not only rank above his seniors, but also of investing him with the power of administering this government in case of a vacancy, thus depriving them of the honourable distinction and reward which, from their zealous and faithful services to Your Majesty, they had conceived themselves entitled to expect.

We therefore humbly beg leave to lay the above brief statement before Your Majesty, and to pray that you will be graciously pleased to take the same into your paternal and favourable consideration, and to allow the members of the two Councils respectively to rank and succeed to the administration of government according to the seniority of their appointments, as has been accustomed from the time of the establishment of colonial governments in North America, and also to pray that Your Majesty would be graciously pleased to appoint the members of the Legislative Council for life.

And, as in duty bound, will ever pray.

Legislative Council Chambers,
22 March 1834.

(signed) *John Saunders,*
President Leg. Council.

-NEW
BRUNSWICK.

— No. 27. —

(No. 20.)

No. 27.

COPY of a DESPATCH from the Right Hon. *T. Spring Rice* to Lieutenant-governor Sir *A. Campbell*, Bart. G. C. B.

Sir,

Downing-street, 31 October 1834.

I HAVE received your despatch dated the 26th of March last, No. 20, enclosing an address from the Legislative Council of New Brunswick to the King, respecting the relative rank and privileges of the members of the two Councils, and praying his Majesty to appoint the legislative councillors for life.

I have laid this address before his Majesty, and have received his Majesty's commands to return the following answer to it.

The members of the Legislative Council claim to be entitled to take rank, and to succeed in the administration of the government, according to the seniority of their appointments. The claim to precedence, and to succession to the government, rest upon very different grounds, and involve considerations entirely separate from each other. It is not easy to suppose any part of his Majesty's prerogative more entirely beyond the reach of dispute, or one which it is more important to maintain unimpaired, than that by which he determines into what hands shall be delegated the administration of every other branch of his Royal authority in the dependencies of this kingdom. Any claim which derogates from the unfettered right of the King to decide upon whom the government of New Brunswick shall devolve, is the assertion of a right incompatible with the just rights of the Sovereign, and inconsistent also with the public interests. It is impossible, therefore, for his Majesty to relinquish a branch of his Royal authority with which he is invested for the common benefit of his people at large, and the renunciation of which would effect a most dangerous change in the practice and principles of the British Government. Whatever rules therefore may be established, respecting the precedency of the members of the Council of New Brunswick, it may be assumed as a fundamental principle that his Majesty's right of selecting the temporary administrator of the government, in the event of your own absence, will not be dependent upon any such regulations. That trust will always be committed into the hands of the person, whosoever he may be, whom his Majesty may consider as best qualified to discharge it with benefit to the public at large.

It is not necessary for the present purpose that I should examine very closely into the accuracy of the general maxims laid down by the Legislative Council, respecting their own constitution and inherent rights; but the choice of an Executive Council had no tendency to impair, it might indeed rather be said to have strengthened that resemblance to the constitution of the House of Peers on which the address insists. Although in their individual character their Lordships enjoy an ancient and prescriptive right to tender their advice to the King on questions of public interest, yet, in their collective capacity, in which alone the analogy is to be found, the Peers of England have never possessed or assumed the right to act as executive councillors of the King.

The recent change left the Legislative Council unaltered in its constitution, and in all its appropriate functions; it withdrew from them an employment to which they were not considered to be as competent as the body to which it was transferred. That employment was the counselling the Governor in the administration of his executive duties. The right of the King to select the person to whom the exercise of his prerogative is to be delegated, necessarily implies and supposes the right of selecting the persons by whose advice the Governor is to be assisted in the discharge of that trust. In this, as in many other cases, the greater power necessarily involves the less.

To the proposal that the King should constitute the legislative councillors members of that body for life, his Majesty will not be advised to accede; his Majesty will be at all times most ready to receive, and to weigh attentively, any arguments which the Legislative Council of New Brunswick may wish to lay before him; but with respect to the division of the two Councils, it is advisable to state that his Majesty's decision was mainly influenced by the reflection that this new arrangement might enable him to bring the Executive Government of the province into that free communication with the House of Assembly which

is,

is, on every account, so desirable. By calling some members of that House to the Executive Council, a channel for constant and unrestrained intercourse was opened, from which it seemed reasonable to anticipate very considerable public benefit. Nothing has hitherto occurred to shake the foundation on which this opinion proceeded. With regard to the question of precedence between the members of the two Councils, it was certainly thought that, as in the absence of a Governor or Lieutenant-governor, or of an administrator of the government, the succession most properly belonged to the head of the Executive Council, precedence should be conceded to the members of that body. But I am at present disposed to adopt as reasonable the modification suggested in the address, that the ranks of members of either Council should depend upon the seniority of their appointments; not however admitting, but rather denying the consequence, that the succession to the government should be regulated by seniority of rank. The persons selected to advise the Governor in the administration of his office are presumeably the best qualified to succeed, in case of necessity, to the discharge of it.

I have, &c.
(signed) T. S. Rice.

— No. 28. —

No. 28.

(No. 19.)

COPY of a DESPATCH from Lieutenant-governor Sir A. Campbell, Bart. G.C.B. to Lord Glenelg.

Fredericton, New Brunswick,
16 March 1836.

My Lord,

THE documents herewith transmitted may appear to your Lordship to contain some repetitions; but I beg to account for such being the case, by my having made the remarks on the resolutions before the copy of the address was sent to me yesterday from the House of Assembly.

I have, &c.
(signed) Arch. Campbell.

Enclosure in No. 28.

Encl. in No. 28.

EXTRACT from the Resolutions of the House of Assembly, passed March 1836, with Remarks thereon.

Resolution 20.—Resolved, as the opinion of this Committee, that the members of the Executive Council should be increased to no less than nine in the whole, in order that the administration of the government might be enabled at all times, and under every emergency, to derive the best information on every subject affecting the general interest of the Province that may be brought under his consideration.

Remarks.—This arrangement would perhaps be unobjectionable, if persons properly qualified for the office were to be found at the seat of government, or so near to it as to be at the immediate call of the governor whenever required.

Resolution 21.—Resolved, as the opinion of this Committee, that by calling some members of the House of Assembly to the Executive Council, which would not be considered as constituting a reason for vacating the seat of such member, a channel for constant and unrestrained intercourse would be opened, from which very considerable public benefit might be derived; and that it appears from the despatch of Mr. Secretary T. Spring Rice, of October 1834, that His Majesty's decision in dividing the Councils of this Province was mainly influenced by the reflection, that this new arrangement might enable him to bring the Executive Government of the Province into a free communication with the House of Assembly.

Remarks.—An arrangement by which the Executive Government might be brought into a free communication with the House has always been considered desirable, but it was very doubtful whether the mode proposed by the Assembly would succeed. Without adverting to the probability that a party in the House would prevail to vacate the seat of any member of that House on his being called to the Executive Council, such member must take the hazard, upon a dissolution, of being re-elected, when his holding a seat in the Executive Council would be objected against him, and used as a means (without a doubt successfully), to prevent his return, and another member of the Assembly must then be called to the Council. By this mode, the number of executive councillors would soon become too large,

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or the members called must, on failing to be re-elected, resign their seats in the Council. It is hardly to be supposed that men, ambitious of the legislature, would be found to accept a seat upon such doubtful tenure. The only mode, then, by which the object in view could be obtained, appeared to be by passing an Act of the General Assembly, declaring that a member of the Executive Council, to be named by the Governor for the purpose, should have a seat, voice, and vote in the Assembly, and be acknowledged there as the organ of communication between the Executive and the House. The adoption of a measure of this nature was suggested by the Earl of Ripon, in his despatch of 1st May 1832; but the decision of the House of Assembly of Lower Canada at the time, in forcing Mr. Mondelet to vacate his seat in the Assembly on his being appointed to the Executive Council, convinced the Government, together with other local circumstances, of the inutility of their urging the measure here. Now, however, that the House has offered to remove the principal objection, that of not requiring such members as may be called to the Executive Council to vacate their seats, the Government would be glad to see the experiment tried at the next session of the General Assembly, if proper persons can be found to accept of the appointment; and in my selection particular care shall be taken to recommend gentlemen who might be fit and proper to succeed to vacancies or otherwise, as might occur in the effective number of the Legislative Council, should they not be re-elected on a dissolution of the House.

Resolution 22.—Resolved, as the opinion of this Committee, that the instructions given Sir Francis Head, the Lieutenant-governor for Upper Canada, and the extracts of those furnished the Earl Gosford, as recently promulgated relative to the views of the Colonial Government entertained by the Crown, should afford entire satisfaction to the House, except only such part of said instructions as may be construed to affect the independence of members of the legislature who may hold any inferior office or appointment under Government, if the principles upon which they are founded were carried into operation in this Province, and that a reform in the councils of this colony, based upon the said instructions, whereby public officers would be responsible and accountable to the House, in being obliged to prepare and submit their proceedings in detail, as connected with the receipts and expenditures of the King's revenues, in the most explicit and circumstantial manner before the House of Assembly, should be humbly and dutifully asked for from His Majesty.

Remarks.—It must appear very extraordinary that the House of Assembly should attempt to legislate upon instructions to another Province, which were not officially before them, and of which they only had newspaper information. The absurdity of this proceeding is fully shown by the division on the question; but this division does not sufficiently mark the disposition of the House to render all His Majesty's servants in this Province responsible and accountable to it; the exception which they have introduced respecting the independence of members of the legislature was made, because the House affected to consider the instructions as extending to clerks of counties and all other subordinate officers.

Resolution 23.—Resolved, as the opinion of this Committee, that, in accordance therewith, it is highly expedient to bring under the notice of His Majesty's Government the present composition of the Legislative Council, with a view of having excluded from that body such officers as are immediately dependent upon Government, and receive large salaries, in order that so important a branch of the legislature appointed by the Crown may exercise, without embarrassment, a proper discretion upon all matters submitted to them.

Remarks.—This proposal, if complied with, would totally destroy the efficiency of the Legislative Council, by removing from it the chief justice, the attorney-general, and any other lawyer who might receive a salary from the Crown, thus weakening that salutary check and control over the ignorant and unconstitutional proceedings of the Assembly which has hitherto preserved the judicial departments of the Province, and would consequently prove highly injurious. Instead of acceding to this proposition, it would be very desirable to have more men of legal knowledge in the Legislative Council; and it is of vital importance for the preservation of the constitution, and the King's prerogative, that a portion of the Legislative Council should be under the direct influence of His Majesty's Government.

No. 29.

(No. 84.)

— No. 29. —

EXTRACT of a DESPATCH from Lord *Glenely* to Sir *A. Campbell*, Bart. G. C. B. dated Downing-street, 31 August 1836.

July 21.

I HAVE to acknowledge the receipt of your despatch of the 16th March last, No. 19, transmitting the copy of an Address from the House of Assembly of New Brunswick to his Majesty on various subjects connected with the administration of public affairs in that Province. I have since received from Messrs. Crane and Wilmot, the gentlemen deputed by the House of Assembly to represent them in this country, the original Address of the Assembly; and I have also been in communication with those gentlemen, as well on the matters to which the Address adverts, as on others connected with the colony.

I have

I have had the honour of laying at the foot of the Throne the Address of the House of Assembly, and I am commanded to express his Majesty's satisfaction at the spirit and temper in which the House has framed this record of their sentiments on subjects of great constitutional interest and importance.

The Assembly express their approbation of the instructions issued by his Majesty's commands to Sir F. Head and to the Canada Commissioners, and state, that it would afford them entire satisfaction if the principles which they involve were carried into operation in New Brunswick.

It is with great pleasure that I am enabled to give the Assembly the satisfaction which they desire. The principles involved in those instructions are not of limited application; they form the basis of the policy which, in his Majesty's judgment, it is the wisdom of this country to pursue, in reference, not only to the Canadas, but also to all the other states of British North America.

The Assembly next allude to the composition of the Executive Council.

They recommend that the members of the Council should be materially increased, and his Majesty will take this suggestion into consideration, although he is not yet prepared to declare whether it can be carried into effect, still less what should be the extent of the proposed increase.

The Assembly further express their cordial concurrence in the views of Mr. Spring Rice, relative to the summoning to that Board of some members of the popular branch of the Legislature.

On this topic the Assembly have expressed themselves with a just delicacy: declaring their approbation of Mr. Spring Rice's despatch, they yet disclaim any wish to offer an opinion to the King as to the persons whom his Majesty may be pleased to call to fill seats in the Executive Council. It is obvious, indeed, that a peremptory rule on the subject would be inadmissible. At present it is open to the Crown, at its own discretion, to select members for the Executive Council from all descriptions of his Majesty's subjects; the prerogative is unfettered, and it is, in the opinion of his Majesty's advisers, most advantageous for all parties that so it should remain. With respect to the manner in which it shall, in this branch of it, be exercised, his Majesty can give only the general assurance, which he directs me to convey to the House of Assembly, that his selection of persons to sit in the Executive Council will be guided solely by a reference to the permanent interests of the province, and to the qualifications of those whose names may be submitted to him for that distinction.

The composition of the Legislative Council is the next subject alluded to by the House. Admitting that no great public evil has yet arisen from this source, they nevertheless express their apprehension that, according to the principles laid down in the instructions to the Canada Commissioners, those members of the Council who hold office under the Crown could not be expected to exercise an unbiassed judgment on the questions which might come before them.

His Majesty's Ministers entirely agree in the importance of securing the independence of the Legislative Council. They are not indeed prepared, especially after the candid admission of the Assembly as to the working of the present system, to recommend to his Majesty the supercession of any of the present members of the Council; nor do they consider office as of itself a disqualification for a seat in the Council, but they freely admit that the introduction into it of too large a number of persons holding places of emolument under the Executive Government would tend to detract from its weight, as an independent branch of the Colonial Legislature. Lord Ripon, in a despatch, dated the 1st May 1832, observes, that the Legislative Council "should principally consist of gentlemen independent of and unconnected with the Executive Government, and selected from the principal inhabitants of the Province, and those having the greatest stake in its welfare."

To this principle, although it would seem that accidental circumstances have hitherto prevented it from being carried into full effect, his Majesty's Government continue to adhere. Whenever, therefore, it may become your duty to recommend to me, for his Majesty's approbation, the name of any gentleman to be appointed a member of the Legislative Council, you will bear in mind the rule laid down by Lord Ripon, in the words which I have just quoted.

It may be proper to advert in this place to the impression which has been produced on the minds of the Assembly by those clauses of the Instructions to Sir F. Head "which (to use their own language) might be supposed to affect

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the independence of members of the Legislature holding any inferior office or appointment under the Government :” on this subject it is enough to point out to the observation of the Assembly that the clauses in question, in so far as they concern persons holding seats in either House, have reference expressly to “members of the local government :” not to inferior officers, but to those who form an actual portion of the Executive Government, and whose cordial sympathy and co-operation are absolutely indispensable to the existence of any system of administration. With regard to such individuals, I trust the Assembly will admit the justice of the observation which concludes the consideration of this topic in the Instructions to Sir Francis Head: “Unless this course be pursued, it would be impossible to rescue the head of the Government from the imputation of insincerity, or to conduct the administration of public affairs with the necessary firmness and decision.”

No. 30.

— No. 30. —

(No. 85.)

EXTRACT of a DESPATCH from Lord *Glenelg* to Lieutenant-Governor Sir *A. Campbell*, Bart. G.C.B. dated Downing-street, 5 September 1836.

In my despatch of the 31st ult. I have communicated to you the answer which his Majesty has commanded me to return to the Address from the House of Assembly of New Brunswick, of the 14th March last. I have at the same time enclosed, for your information, copies of the correspondence which had passed on the subject of that Address, and on other matters of a public nature, between Messrs. Crane and Wilmot, the gentlemen deputed by the House of Assembly to represent them in this country. Having communicated to Messrs. Crane and Wilmot the draft of my despatch of the 31st ultimo, I have received from them the enclosed observations on it; I have also had with them personal communications on the subject.

31 August.

The first alteration proposed by Messrs. Crane and Wilmot is, that the Executive Council should, in compliance with the wishes of the Assembly, be at once enlarged, without waiting the further deliberation contemplated in my despatch of the 31st ult.

On this point his Majesty, after a due consideration of the arguments urged by the House of Assembly, and of the representations of Messrs. Crane and Wilmot, is prepared to adopt the necessary steps for meeting the wishes of the Assembly. It is unnecessary, on the present occasion, to offer any pledge as to the precise number of which the Executive Council should hereafter consist, nor indeed could an invariable rule be prescribed on that subject without inconvenience; but you will immediately report to me the names of several gentlemen whom you may think most eligible for seats in his Majesty's Executive Council. In making your selection you will not confine yourself to any single class or description of persons, but will endeavour to ensure the presence in the Council of gentlemen representing all the various interests which exist in the province, and possessing at the same time the confidence of the people at large. It may not be possible always to find such persons in the neighbourhood of the capital; but I am assured that there are gentlemen of fortune in the Province, who, if appointed to the Council, would, from public motives, attend to the duty.

Encl. in No. 30.

Enclosure in No. 30.

REMARKS on the Draft of Despatch for the Consideration of Lord *Glenelg*.

1st. On the Addition of Members to the Executive Council :

The Assembly of New Brunswick are desirous that the Executive Council be enlarged. First, because, as it is now composed, a majority of its members has not the confidence of the country; and secondly, because it is expedient that some members should be added thereto, who possess a practical knowledge of the commercial and other great leading interests of the Province.

For these reasons it would afford universal satisfaction to the people of New Brunswick if the Government would order such additions to be made.

(signed)

William Crane.
L. A. Wilmot.

31 May 1836.

— No. 31. —

(No. 56.)

No. 31.

EXTRACT of a DESPATCH from Lieut.-Governor Sir *A. Campbell*, Bart. G. C. B. to Lord *Glenelg*, dated Fredericton, New Brunswick, 17 December 1836.

HEREWITH I have the honour to submit, in obedience to your Lordship's commands, the names of several gentlemen in my opinion eligible and fit to hold seats in the Executive Council, on the contemplated increase of that body.

The respectability of character and hitherto unblemished reputations of these gentlemen, afford me the safest criterion to trust that the selection of them, or of as many of them as your Lordship may deem proper, cannot fail to prove satisfactory to the people at large.

To that list I could add the names of other respectable individuals; but they reside at such a distance from the seat of government, as to preclude their attendance at the ordinary meetings of the Council, which are frequent, and often necessarily at a short notice, and consequently they, as well as most of those now named, could be considered only as honorary members.

— No. 32. —

No. 32.

(No. 2.)

EXTRACT of a DESPATCH from Lord *Glenelg* to Lieutenant-Governor Sir *John Harvey*, K. C. B. dated Downing-street, 6 April 1837.

In my despatch, No. 85, of the 5th of last September, Sir A. Campbell was directed, with reference to the desire of the Assembly for the increase of the Executive Council, to report to me, without loss of time, the names of such gentlemen as should appear to him most eligible for seats in His Majesty's Executive Council. The instructions contained in that despatch I have to desire that you will consider as addressed to yourself. You will accordingly apply yourself without unnecessary delay to a compliance with them in this important respect. In conformity with my directions, Sir A. Campbell transmitted to me, on the 17th December, a list of several gentlemen whom he considered proper objects for the honour of the Executive Council. I request that you will take this list into your consideration in connexion with the whole subject, and will favour me with your observations on the recommendations which it conveys, as well as with your suggestions regarding any other gentlemen in the Province whom you may consider more eligible to be members of the Executive Council.

— No. 33. —

No. 33.

(No. 23.)

COPY of a DESPATCH from Lieutenant-Governor Sir *John Harvey*, K. C. B. to Lord *Glenelg*.

Government-House, Fredericton,
28 July 1837.

My Lord,

IN laying before your Lordship certain resolutions of the House of Assembly of this Province, which have been placed in my hands for that purpose, relative to the present composition of the Executive Council, it is my duty frankly to state to your Lordship, that under the peculiar circumstances in which I find myself placed, I could wish that the Council was differently composed, or that such an extension of it might immediately be made as might give me the benefit of a majority of its members, to whom I could bring myself to give my entire confidence, which I do not conceal from your Lordship it has not been possible for me, as yet, to extend to all the members of the present Board. I do not doubt the integrity of their motives, and I do not deny that a due disposition has been shown by the parties to whom I allude to act cordially with me in matters of detail and of minor importance; but questions must and do arise in which, from the preconceived opinions of those gentlemen known to be

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opposed to those entertained by me, it would perhaps be equally unreasonable and impossible for me to expect their cordial support of or assent to the measures which I may think it my duty to propose.

The interests of the public service may thus suffer. I have, therefore, at an earlier period than I had intended, given my attention to the instructions upon the subject conveyed in your Lordship's despatch to Sir Archibald Campbell, of the 5th September last, No. 35, and with reference to those instructions, have now the honour to submit the names of the following gentlemen, whose appointment to the Executive Council I have reason to believe would be generally acceptable and satisfactory to the Province. From this list I should be glad if the number necessary for increasing the Council to the establishment to which it may be your Lordship's intention to raise it, might at once be selected, as its duties will now become more onerous, in consequence of the transfer to it of much of the duty heretofore performed by the land granting department.

James Simonds, Esq., Speaker of the House of Assembly, a gentleman of wealth, of talent, and of great influence, and of one of the oldest loyalist families in the province. Mr. Simonds having contributed his powerful aid towards the settlement of the great questions which have just been brought to a satisfactory conclusion, has an intention of retiring from the chair of the popular branch of the Legislature. He resides near St. John's, which wealthy and rising commercial capital appears to me scarcely to have received its fair share of such appointments, as that which I now solicit for him. The communication betwixt Fredericton and St. John's is easy and rapid at all seasons of the year; and as I propose to hold "Land Boards" periodically, on stated days, there will be no difficulty in procuring the attendance of members from them at any time when their presence may be thought necessary.

William Crane, Esq., member of the House of Assembly, one of the deputies now in England, a gentleman of large property, and of attainments with which your Lordship is acquainted. Mr. Crane has acquired strong claims upon the respect and confidence of the inhabitants of this Province, and I think upon the Government.

Neville Parker, Esq., K. C., one of the ablest and most rising Chancery barristers in the colony, a gentleman upon whom I have recently conferred the distinction of King's counsel, and whom I have thought of for the office of Master of the Rolls, in the event of the Assembly acceding to the recommendation which I propose to make to that body, in its next session, to provide a suitable salary for such an appointment. Mr. N. Parker is a brother of the judge of that name, and resides at St. John's.

The Hon. A. E. Botsford, a member of the Legislative Council, son of the judge of that name, a highly respectable and popular person, residing in the county of Westmorland.

Hugh Johnston, Esq., a wealthy retired merchant, of excellent family; a gentleman of much ability, particularly as a financier, and one of the most influential members of the House of Assembly.

Hon. Joseph Cunard; was in Sir Archibald Campbell's list; is a member of the Legislative Council; a wealthy and enterprising merchant, largely embarked in the timber trade at Miramichi.

Hon. G. Shore; also a member of the Legislative Council, an old military officer, who served under me during the late war; a mild, discreet, judicious and popular person, possessing a considerable stake in the colony.

Of the whole of the individuals above submitted, only two are in any way connected with or related to the actual members of the Council. Mr. Johnston is very remotely connected with Mr. Frederick Robinson; and Mr. Shore is married to the sister of Mr. Saunders, a circumstance which would have prevented my including his name in the list. But independent of the circumstance of my wishing to give an old brother officer a proof of my confidence and good will, it is necessary that I should have one of the additional members a resident in Fredericton, in order to insure a quorum at all times when the solicitor and advocate-general (Messrs. Street and Saunders) may be absent on circuit, or otherwise, and for the purpose of forming the "Land Granting Committee," excluding therefrom, as I necessarily must do, the Crown Land Commissioner, and on

on this point I ought not to conceal from your Lordship, that I fully concur in the opinion which the House of Assembly has expressed, as to the incompatibility of the office of Commissioner of Crown Lands with that of Executive Councillor.

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I have, &c.
(signed) *J. Harvey,*
Lieut.-governor.

Enclosure in No. 33.

Encl. in No. 33.

House of Assembly, Friday, 21 July 1837.

1. Resolved, as the opinion of this committee, that the House should entertain a deep feeling of gratitude towards the Right Hon. Lord Glenelg, for the highly gratifying manner in which his Lordship has been pleased to express his Majesty's approbation of their proceedings on the subject of the differences which had unfortunately arisen, respecting the enactment of the Civil List Bill, and for the promptness with which the numerous unimportant objections advanced by the Executive of the Province against the completion of this measure were disposed of by his Lordship.

2. Resolved, as the opinion of this committee, that as very great discretionary powers are vested in the Lieutenant-governor and Executive Council, by the Act for the support of the civil government of this Province, that Council should be composed of persons possessing the confidence of the country; and not of those, a majority of whom have evinced a decided hostility to the principles of the late important arrangement.

3. Resolved, as the opinion of this committee, that while the House should repose the most entire confidence in the present Lieutenant-governor, and hail his appointment as an additional proof of his Majesty's paternal solicitude for the welfare of his devoted subjects in this Province, and as auspicious of a more liberal and satisfactory policy than that which characterized the late administration, they should deeply regret that the Executive Council remains unchanged; whereby his Excellency is precluded from obtaining that practical advice and assistance, so essentially necessary to a successful administration of the Government.

4. Resolved, as the opinion of this committee, that the House ought fully to recognise the principle laid down by Lord Glenelg, that the Executive Council should be composed of persons possessing the confidence of the country at large, and that the cordial sympathy and co-operation of that body are absolutely indispensable to the existence of any system of administration; and although the House should repudiate the claim set up by another colony, that the Executive Council ought at all times to be subject to removal on an address for that purpose, from the popular branch of the government, yet they should view the present case as one unprecedented in the annals of colonial history, and which peculiarly calls for the interposition of his Majesty's Government.

5. Resolved, as the opinion of this committee, that independently of other considerations, the great powers vested in the Executive Council for the expenditure of public monies, under the 4th section of the Act for the support of the civil government, make it incompatible for the commissioner of Crown lands (under whose authority a large portion of such expenditure must arise), to hold a place in that body.

6. Resolved, as the opinion of this committee, that the foregoing resolutions should be brought under the consideration of his Majesty's Government, by an address from this House to his Excellency the Lieutenant-governor, praying that his Excellency will be pleased to transmit the same.

(signed) *Charles Simonds,* Speaker.

— No. 34. —

No. 34.

(No. 33.)

COPY of a DESPATCH from Lord *Glenelg* to Lieutenant-Governor
Sir John Harvey, K.C.B.

Sir,

Downing-street, 21 Sept. 1837.

I HAVE received your despatch, No. 23, of the 28th July last, enclosing a series of resolutions adopted by the House of Assembly of New Brunswick, relating to the composition of your Executive Council, and submitting a list of the names of seven gentlemen whom you consider fit to be added to that Board. In answer, I beg to acquaint you that I am happy to have it in my power to give proof of the confidence which I repose in your judgment, by submitting to The Queen, for Her Majesty's sanction, the list of candidates whom you have proposed for admission into the Executive Council. The requisite

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instruments for their appointment will be issued as soon as the necessary official forms can be completed.

I have, &c.
(signed) *Glenelg.*

No. 35.

— No. 35. —

(No. 39.)

EXTRACT of a DESPATCH from Lieutenant-Governor Sir *John Harvey*, K. C. B. to Lord *Glenelg*, dated Government-house, Fredericton, New Brunswick, 15 August 1837.

WITH regard to the immediate calling forward of any additional members to seats in the Executive Council, I do not conceal from your Lordship that it has been represented to me by two of the members of the present Council, Messrs Baillie and Odell, and that their suggestion is supported by the opinion of the attorney-general, (one moreover in which I have no doubt that Mr. Street solicitor-general and a member of the Council, would if present fully concur), that any provisional extension by me of the numbers of its members would not confer upon members so appointed a legal right to vote at that Board. But notwithstanding those suggestions and opinions, I have felt myself justified in having recourse to this measure by the following considerations, viz. :

1st. That the constitution of this Province has undergone such a virtual alteration by the passing of the Civil List Bill, as to render many of the provisions of the commission under which its government has hitherto been administered (that of the Governor-in-chief,) wholly inapplicable to the state of things now subsisting.

2d. That by the first number of your Lordship's despatch to Sir A. Campbell of the 5th September last, the proposition of Messrs. Crane and Wilmot, "that the Executive Council should, in compliance with the wishes of the Assembly, be at once enlarged," without waiting the further deliberation contemplated in your Lordship's despatch of 31st August, is fully conceded.

3d. That it has become the more immediate duty of the Executive Government to exercise a vigilant control and check upon the land granting department, a duty which renders it inexpedient, in my opinion, for two of the present members of the Council to form part of the committee of the Council, to which it appears to me proper to refer for examination and report, all applications for grants of land, licences to cut timber, &c. &c., thus reducing the numbers available for that duty to three, including the solicitor-general, whose frequent and long professional absences may also be considered as excluding him from a seat in a committee which ought to give its steady attention to the important interests intended to be committed to it.

4th. That I am of opinion that such a Board should be composed of individuals possessing the public confidence, and because I coincide in the opinion recently expressed by the popular branch of the Legislature, "that the majority of that Council not only does not possess that confidence, but is positively hostile to the principles of the late important arrangements," and,

5th. That by selecting three individuals from the list of candidates which has been sent forward by me to your Lordship, I believe myself to be acting in reasonable anticipation of your Lordship's sanction and concurrence; and if any question of the legality of those gentlemen's votes or acts, (while provisional members of the Executive Council) be really involved, it would be at once set at rest by their mandamuses being made to bear the same date as those provisional appointments. I have accordingly the honour to request and to solicit that your lordship would be pleased to move Her Majesty The Queen to be graciously pleased to confirm the provisional appointments to seats in the Executive Council of this Province of the following gentlemen, who have been called by me to take their seats at that Board until her Majesty's pleasure is known, and who have accordingly this day taken the prescribed oaths, viz.

George Shore, esq. (a member of the Legislative Council.)
Charles Simonds, esq. (Speaker of the House of Assembly), and
Hugh Johnston, esq. (a member of the Assembly.)

In conclusion I would beg to refer your Lordship to the resolution of the House of Assembly of the 21st ultimo, (copy enclosed) and particularly to the second of those resolutions.

P.S.—With reference to Mr. Shore, who was a very useful member of the former Executive Council, previous to its disseverance, I beg to express my concurrence in the recommendation of Sir A. Campbell that Mr. Shore should be restored to his former rank at that Board.

(signed) J. H.

See Enclosure in
Sir John Harvey's
Despatch, 28 July
1837, p. 71.

— No. 36. —

No. 36.

(No. 34.)

EXTRACT of a DESPATCH from Lord *Glenelg* to Lieutenant-Governor Sir *John Harvey*, K.C.B. dated 21 September 1837.

It remains that I should advert to your proceedings respecting the Executive Council, which you have noticed in connexion with the topics already mentioned.

I think that, under the circumstances of the case, you judged rightly in immediately availing yourself of the services of Messrs. Shaw, Simonds, and Johnston. It was evidently necessary that the Council should be immediately strengthened by their assistance. I concur, however, in the opinion, that, until the proposed alterations have been made in the commission under which you act, those gentlemen cannot strictly be regarded as executive councillors. The Queen in Council was pleased to make the necessary order yesterday for perfecting the Acts required for this purpose; they will be transmitted to you as soon as the official forms can be completed. Mr. Shore will, in deference to the concurrent opinion of Sir A. Campbell and yourself, be authorized by Her Majesty to resume that seniority in the Council which belonged to him under its ancient constitution.

— No. 37. —

No. 37.

(No. 43.)

COPY of a DESPATCH from Lieutenant-Governor Sir *John Harvey*, K.C.B. to Lord *Glenelg*.

Government House, Fredericton,
9 September 1837.

My Lord,

WITH a view to satisfy your Lordship that the provisional addition which I have made to the Executive Council of this Province is a measure highly acceptable to the country at large, I have selected one of the addresses which has been presented to me on this subject; it proceeds from the three counties immediately surrounding this place, and is most numerous and most respectably signed.

I have, &c.
(signed) J. Harvey.

Enclosure in No. 37.

Encl. in No. 37.

TO His Excellency Major-general Sir *John Harvey*, K.C.B. and C.B. Lieutenant-Governor and Commander-in-Chief of the Province of *New Brunswick*.

The humble Address of the undersigned Inhabitants of the Counties of York, Sunbury, and Carleton.

May it please your Excellency:

WE, Her Majesty's dutiful and loyal subjects, inhabitants of the counties of York, Sunbury, and Carleton, in Her Majesty's Province of New Brunswick, beg leave to present to your Excellency our deep and sincere regret at the demise of our Most Gracious Sovereign King William the Fourth, of blessed memory, a Sovereign justly endeared to all his subjects, and whose memory will be long and affectionately cherished.

We at the same time beg to unite most cordially with your Excellency in our congratulations on the accession of Her Most Gracious Majesty Queen Victoria to the Throne of Her ancestors, to whose person and government we feel the most ardent attachment; and we assure your Excellency, as Her representative, of our firm and unalterable determination to support Her Majesty, the constitution, and those enlightened principles of government in which the Province of New Brunswick has largely participated.

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We are all aware of the difficulties which beset your Excellency in assuming the government of this Province at a very important period in its history, and we deeply lament that the course pursued by a majority of your Excellency's official advisers should have been such as to have justly deprived them of the confidence and support of the country, and to have embarrassed your Excellency's government.

But we entertain an unshaken hope that your Excellency will continue fearlessly to discharge the high and important duties devolving upon you with that firmness which has hitherto characterized your Excellency's administration; and we hail with heartfelt satisfaction the long wished for addition which your Excellency has recently made to the Executive Council, a body which, when properly constituted, will doubtless cordially unite with your Excellency in developing the resources and promoting the peace and prosperity of this rising and valuable appendage of the British empire.

Fredericton, 9 September 1837.

— No. 38. —

No. 38.

(No. 48.)

COPY of a DESPATCH from Lord *Glenelg* to Lieutenant-governor
Sir *John Harvey*, K. C. B.

Sir,

Downing-street, 31 October 1837.

WITH reference to my despatches, Nos. 33 and 34, of the 21st ultimo, I have the honour to transmit to you herewith Her Majesty's Letters Patent under the Great Seal of the United Kingdom, for increasing the number of the Executive Council of New Brunswick, together with additional instructions under the Royal Sign Manual, nominating the members of that Council.

I have, &c.
(signed) *Glenelg*.

Enclosure 1, in No. 38.

LETTERS PATENT.

WARRANT, authorizing the passing of Letters Patent under the Great Seal, for increasing the Number of the Executive Councillors in the Province of *New Brunswick*.

VICTORIA R.

OUR Will and Pleasure is, that you prepare a Bill for Our Royal Signature to pass the Great Seal of Our United Kingdom of Great Britain and Ireland, in the Words or to the effect following; viz.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to Our right trusty and right well-beloved cousin and councillor Archibald Earl of Gosford, Captain-general and Governor-in-chief in and over Our province of New Brunswick, greeting: Whereas his late Majesty King William the Fourth, did, by certain letters patent, bearing date at Westminster, the 6th day of July 1831, in the second year of his reign, nominate and appoint Major-general Matthew Lord Aylmer, to be Captain-general and Governor-in-chief in and over the aforesaid province of New Brunswick, and did in and by the said recited letters patent authorize and empower him the said Matthew Lord Aylmer to exercise and perform all and singular the powers and authorities therein contained by and with the advice and consent of the council of the said province: And whereas his said late Majesty did in and by certain other letters patent bearing date at Westminster, the 3d day of December 1832, in the third year of his reign, grant, provide, and declare that from thenceforth there should be within the said province of New Brunswick two distinct and separate councils, to be respectively called the Legislative Council and the Executive Council of the said province, and did further declare that all and every the powers and authorities in the said first recited letters patent contained, and thereby conferred on the Council therein mentioned, so far as respected the enactment of laws for the said province, should from the date of the said last recited letters patent be vested in the said Legislative Council, and that all other powers and authorities in the said first recited letters patent contained should from the date of the last recited letters patent become vested in the said Executive Council; and did further grant and declare that the said Executive Council, should consist of five members, and no more, and that three of such members should constitute and be a quorum of the said Executive Council: And whereas his said late Majesty did by certain other letters patent, bearing date at Westminster, the 1st day of July 1835, in the sixth year of his reign, constitute and appoint you the said Archibald Earl of Gosford to be Captain-general and Governor-in-chief in and over the said province of New Brunswick, and did thereby authorize you the said Archibald Earl of Gosford to do certain acts, and to exercise certain powers therein particularly mentioned, by and with the advice of the said Executive Council of the said province: And whereas we have deemed it expedient to revoke so much of the before recited letters patent of the 3d day of December 1832, as limits to five the number of executive councillors within the said province, and we have further deemed it expedient to abrogate and annul that restriction, and to revise the existing

list

Encl. 1, in No. 38.

No. 1.

No. 2.

list of the said executive councillors: Now know you, that We of Our especial grace, certain knowledge, and mere motion, have revoked and annulled, and by these presents do revoke and annul that part only of the said recited letters patent of the 3d day of December 1832, in so far as the same limits and restrains to five the number of the executive councillors of Our said province, and We do hereby abrogate and annul that restriction and limitation accordingly: And We do hereby appoint and declare that the Executive Council of Our said province shall hereafter consist of such and so many members as shall from time to time for that purpose be nominated and appointed by Us under Our Royal sign manual and signet, or as shall be provisionally appointed by you the said Archibald Earl of Gosford, or by the governor or officer for the time being administering the government of Our said province until Our pleasure therein shall be known: Provided always, that the total number of members of the said Executive Council resident within Our said province shall not at any time by any such provisional appointments be raised to a greater number in the whole than nine. And We do further direct and appoint that the members of the said Executive Council shall hold their places therein during Our pleasure, and not otherwise, and that any two or more of such members whose appointments shall be made by any one and the same instrument, shall between themselves take rank and precedence in the said Council according to the order in which their names shall be inserted in such instrument, and that in all other cases the members of the said Council shall take rank and precedence therein, according to the date and seniority of their respective appointments: And We do further declare Our pleasure to be that the senior member for the time being of Our said Council shall, in the absence of the governor or the officer for the time being administering the government of the said province, preside at all the deliberations thereof: and We do hereby revoke and annul all appointments of members of the said Executive Council heretofore made and now in force; and We declare Our will and pleasure to be that the several persons named for that purpose in Our instructions under Our Royal sign manual and signet accompanying these presents, shall be the first executive councillors of Our said province under these presents, and according to the constitution of the said Executive Council hereby established.

In witness, &c. Witness, &c.
And for so doing this shall be your warrant.

Given at Our Court at Windsor, this 3d day of October 1837, in the first year of Our Reign.

By Her Majesty's Command,

(signed) *Glenelg.*

To Our Attorney or Solicitor-general.

Enclosure 2, in No. 38.

Encl. 2, in No. 38.

ADDITIONAL INSTRUCTIONS to the Earl of *Gosford*, nominating the Members of the Executive Council, in the Province of *New Brunswick*.

VICTORIA R.

ADDITIONAL INSTRUCTIONS to Our Right Trusty and Right well-beloved Cousin and Councillor Archibald Earl of *Gosford*, Our Captain-general and Governor-in-Chief, in and over Our Province of *New Brunswick*; or, in his absence, to Our Lieutenant-governor, or the Officer administering the Government of the said Province for the time being. Given at Our Court at Brighton, the 30th Day of October 1837, in the First year of Our Reign.

WHEREAS by Our letters patent, under the great seal of Our United Kingdom of Great Britain and Ireland, bearing date at Westminster the 19th day of October 1837, We have signified Our will and pleasure that the Executive Council for Our province of New Brunswick should hereafter consist of such and so many members as should from time to time be for that purpose nominated and appointed by Us under Our Royal sign manual and signet, or as should be provisionally appointed in manner therein mentioned; and We have, by the said letters patent, declared Our will and pleasure to be, that the several persons named for that purpose in Our instructions under Our Royal sign manual and signet, accompanying the said letters patent, should be the first executive councillors of Our said province under the said letters patent, and according to the constitution of the said Executive Council thereby established: Now know you, that We, reposing especial trust and confidence in the wisdom, prudence and ability of Our trusty and well-beloved George Shore, Frederick P. Robinson, William Franklin Odell, John Simcoe Saunders, Charles Simonds, Hugh Johnston, William Crane, Neville Parker, A. E. Botsford, and Joseph Cunard, Esquires, do by these Our instructions, issued in pursuance of the said recited letters patent, constitute and appoint them the said George Shore, Frederic P. Robinson, William Franklin Odell, John Simcoe Saunders, Charles Simonds, Hugh Johnston, William Crane, Neville Parker, A. E. Botsford, and Joseph Cunard, to be Our executive councillors of Our said province of New Brunswick, and you are hereby authorized and required to summon them to Our said Executive Council accordingly.

NEW
BRUNSWICK.

No. 39.

— No. 39. —

(No. 57.)

COPY of a DESPATCH from Lieutenant-governor Sir *John Harvey*, K.C.B.
to Lord *Glenelg*.Government House, Fredericton,
7 November 1837.

My Lord,

I do not delay a single moment the grateful acknowledgment of the receipt of your Lordship's despatches, Nos. 33 to 37 inclusive, which, with one marked private, dated 22d September, have reached me this morning by way of New York.

Although I have never shrunk from the assumption of any degree of responsibility which a sense of public duty has at any time appeared to me to impose, yet, deeply impressed as I was with the extent of that responsibility in respect to the matters referred to in these despatches, a responsibility contracted upon my own almost unaided views, inasmuch as not only my official, but my legal advisers, were opposed to those views, your Lordship may more easily conceive than I am able to describe the degree of pleasure and of pride with which I have perused the despatches which it is now my grateful duty to acknowledge. The noble support which your Lordship has given me will place me in such a position with respect to the people of this Province as greatly to enlarge my powers of usefulness. It only remains for me to entreat your Lordship to do me the further favour of laying at the feet of Her Majesty The Queen the homage of my heartfelt gratitude for the cheering expression, so kindly conveyed to me by your Lordship, of Her Majesty's gracious approbation of my humble endeavours to promote the interests of Her Majesty's subjects and service in this Province.

I have, &c.

(signed) *J. Harvey.*

PRINCE EDWARD ISLAND.

— No. 1. —

(No. 76.)

No. 1.

COPY of a DESPATCH from Lieut.-governor Sir *A. W. Young* to the Right Hon. *E. G. Stanley*, M. P.

Sir,

Charlotte Town, 2 April 1834.

I HAVE the honour to transmit an address from the House of Assembly of this island, praying His Majesty to grant to this island a Legislative Council distinct from that of the Executive, to be composed of gentlemen possessing a knowledge of the wants and resources of the colony, and who hold no situation or office of emolument at the pleasure of the Crown, thereby placing it on an equal footing with the sister province of New Brunswick.

I have, &c.

(signed) *A. W. Young*, Lieut.-governor.

Enclosure in No. 1.

Enclosure in No. 1.

TO the King's most Excellent Majesty:

The humble Address of the House of Assembly of Prince Edward Island.

Most Gracious Sovereign,

WE Your Majesty's faithful subjects, the Commons of Prince Edward Island, in Colonial Parliament assembled, impressed with feelings of loyalty and devotion towards Your Majesty's royal person and Government, and being perfectly assured that Your Majesty is ever desirous to know the wants of your people, in order to exercise your royal beneficence in relieving them, beg leave most humbly to address Your Majesty on a subject with which the future welfare of this colony is intimately connected.

That the constitution of Your Majesty's Council in this island, composed as it is of nine gentlemen (six of whom hold situations of emolument at the pleasure of the Crown), who act both in a legislative and executive capacity, and one of whom, at least, is also the legal adviser of Your Majesty's representative, is considered incompatible with the freedom and independence of the second branch of the legislature; and that such extensive powers conferred on so few individuals, however trustworthy or respectable in society, are contrary to the spirit of the British constitution, is what the House of Assembly most humbly submit for Your Majesty's gracious consideration.

Relying with confidence on the paternal regard ever manifested by Your Majesty towards all classes of your loyal and devoted subjects, wherever resident, and Your Majesty's anxious desire to preserve in its greatest purity the true principles of the British constitution in all parts of your extensive dominions, the Assembly most humbly but earnestly pray Your Majesty to grant unto your faithful and attached people of this island a Legislative Council distinct from that of the Executive, to be composed of gentlemen possessing a knowledge of the wants and resources of the colony, and who hold no situation or office of emolument at the pleasure of the Crown; thereby placing them on an equal footing with the sister province of New Brunswick.

(signed) *Wm. McNeill*, Speaker.House of Assembly, Prince Edward Island,
25 March 1834.

— No. 2. —

(No. 7.)

No. 2.

COPY of a DESPATCH from the Right Honourable *T. Spring Rice* to Sir *A. W. Young*.

Sir,

Downing-street, 30 July 1834.

I have the honour to acknowledge the receipt of your despatch, No. 76, of the 2d April last, transmitting an address to His Majesty from the House of Assembly, praying the establishment of two distinct Councils in Prince Edward Island.

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PRINCE
EDWARD
ISLAND.

You will acquaint the Assembly, at their next meeting, that their address has been received and laid at the foot of the Throne; but that, after the fullest deliberation which the subject could receive, I regret that I have not felt myself at liberty to advise His Majesty to accede to their request; you may at the same time point out to the Assembly an error under which they appear to labour, with respect to the composition of the Legislative Council in New Brunswick. From the concluding passage of their address it may be inferred, that they suppose all persons holding official situations to be necessarily excluded from that Council; which is not the case in point of fact, and which His Majesty's Government would deem most objectionable in principle.

I have, &c.
(signed) *T. Spring Rice.*

No. 3.

(No. 3.)

— No. 3. —

COPY of a DESPATCH from Lord *Glencly* to Lieutenant-governor
Sir C. A. FitzRoy.

Sir,

Downing-street, 13 May 1837.

As you are about to proceed to Prince Edward Island to assume the government, I think it right, before your departure, to call your attention to a subject which in the other North American Colonies has latterly engaged much of the public attention; I allude to the composition of the Legislative Council.

It has been stated in some of those colonies that the manner in which selections for the Legislative Council have been made has not been such as to engage for that body the public confidence; that these appointments have in general been too much confined to a particular class of persons, frequently connected together by family ties, and not possessing any essential stake in the welfare of the colony. In other instances it has been represented that a large portion of the members of the Council have been gentlemen holding appointments at the pleasure of the Crown, and therefore destitute of that independence of circumstances which is essential to the due performance of their functions. In all cases where complaints of this nature have been brought before His Majesty's Government, measures have been adopted by them for introducing into the Legislative Councils a greater number of independent gentlemen, on whose character and abilities the public might safely confide.

I am not able to say, on any official authority, whether in Prince Edward Island any ground exists for complaints similar to those which have been received from other quarters; but I beg to direct your early attention to the subject, in order that if any defects in the composition of the Council of that colony should appear to you to weaken that public confidence which ought to attach to it, you may furnish me as early as possible with a full report on the subject, in order that immediate steps may be taken for ascertaining in what manner this evil may be remedied.

I have, &c.
(signed) *Glencly.*

No. 4.

— No. 4. —

EXTRACT of a DESPATCH from Lieut.-governor *Sir C. A. Fitzroy* to Lord *Glencly*; dated Government House, Prince Edward Island, 16 March 1838.

At the request of the House of Assembly, I have the honour to transmit to your Lordship an address to The Queen on the structure of the council of this island, complaining of the limited number of its members, and the undue proportion holding office under the Government, and praying that Her Majesty will be pleased to grant to this colony a similar modification in the form of its local government to that which has recently taken place in Nova Scotia.

I also do myself the honour to transmit an address from the House of Assembly to myself, requesting my influence with your Lordship in furtherance of their object, and expressing the confidence they are pleased to repose in my administration of this government.

On my arrival in this colony I considered it one of my first duties to give this subject the most serious attention, both on account of the instructions I received before I left England in your Lordship's despatch of the 13th May (No. 3.), and also because I very soon became aware that an alteration in the construction of
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the Council was earnestly desired by the inhabitants, a desire which has been much increased by the changes which have recently taken place in the councils of the adjoining province of Nova Scotia.

Your Lordship will perceive that the address prays for "a separation of the Executive from the Legislative Council, and the introduction into those bodies of persons from the several parts of the country, representing its leading interests;" and it is my duty to state, that without this separation takes place, the wishes, not only of the House of Assembly, but of the colony at large, will be disappointed.

Should any changes be decided upon, the present would be the best time for carrying them into effect, as, according to the constitution of the colony, the present House of Assembly must be dissolved before the end of the current year; and that adhering as closely as circumstances will admit to the instructions given by your Lordship to Sir Colin Campbell for effecting the changes in the councils of Nova Scotia, and as the least invidious mode of carrying out the same principle in this colony, authority should be conveyed to me to dissolve the present Council, and to form an Executive and Legislative Council distinct from each other. I would propose that the Executive Council should consist of nine members, as at present; and that the number for the Legislative Council should be 12, in order to meet what appears to me to be the general wish, and with a view to its efficiency; that in forming the Executive Council, six of its present members (including Mr. Brecken, who is not connected with the Government) should be reappointed, and three selected from the House of Assembly; and that in forming the Legislative Council three of the members of the present Council, and officers of the Government, should be appointed to it, and the remaining nine selected according to the prayer of the address from the several parts of the colony, and representing its leading interests, without reference to any particular party or influence.

With regard to the Executive Council, I do not think it would be either advisable or practicable to form it without the number of government officers I have named; for setting aside the necessity that the Lieutenant-governor should be assisted by a sufficient number of heads of departments, and persons conversant with the business of the Government, your Lordship will readily understand that in a new country, where every individual has to gain a livelihood by his own exertions, although a sufficient number of persons may be found willing to give up their time gratuitously to the public during the usual period of the session of the Legislature in the more idle time of winter, yet few or none could afford to or would wish to be called upon to attend the sittings of the Executive Council which occur throughout the year; and this I conceive to be an additional reason for separating the Councils. I have proposed the three members from the House of Assembly, because it would be a great convenience to the government to have some members connected with it in that house who could explain its measures, or correct any mistakes or misunderstandings which might possibly arise, and much time would be saved which is now wasted by the dilatory process of message. I would also suggest to your Lordship, that I should be allowed to select these members after seeing the result of the next elections.

It is proper that I should state that the Council, up to 1836, consisted of 10 members, including the Bishop of Nova Scotia. In that year two vacancies occurred, only one of which was filled up; therefore I trust that nine for the Executive, and 12 for the Legislative Councils, will not be thought too great a number of members; particularly if the Royal Assent is given to the election law recently passed for increasing the representation in the House of Assembly, and which I shall have the honour of transmitting in a separate despatch by the present opportunity

The names of the members of the present Council are as follows:

E. J. Jarvis, Chief Justice.
Bishop of Nova Scotia.
George Wright, Surveyor-general.
Amb. Lane, Town-major.
T. H. Haviland, Treasurer.
Robert Hodgson, Attorney-general.
John S. Smith, Collector of Imposts.
George R. Goodman, Collector of Customs.
John Brecken.

80 CORRESPONDENCE RESPECTING THE GOVERNMENT OF

PRINCE
EDWARD
ISLAND.

Of these I would propose to omit in the Executive Council the Bishop of Nova Scotia, the town-major, and the collector of imposts.

In constructing the Legislative Council, I would retain,

The Treasurer.
The Attorney-general.
The Collector of Customs.
Mr. Brecken.

I have selected the three first officers of the Government, both because I should find it difficult to form an efficient Legislative Council without them; and that possessing much general knowledge and local experience, and being men of independent principles, and much looked up to in the colony, I think their appointment would be generally acceptable.

I would at the same time request your Lordship to confer the same boon on the two gentlemen I propose to omit in both Councils as was bestowed on those under similar circumstances in Nova Scotia, by permitting them to retain their present rank and precedence in the colony.

Waiting your Lordship's further instructions on the subject of this despatch.

Encl. 1, in No. 4.

Enclosure 1, in No. 4.

To the Queen's Most Excellent Majesty.

May it please your Majesty,

We, your Majesty's dutiful and loyal subjects the representatives of Prince Edward Island, in General Assembly convened, humbly beg to represent to Your Majesty that the structure of the council of this island, composed as it is of only eight persons who are, with one exception only, heads of departments holding office under the Government and exercise legislative, judicial, and executive functions, is defective in principle, at variance with the constitution of our common country, and by no means calculated to secure that confidence which the second branch of the Legislature ought to possess, nor to promote the true interests of the inhabitants of this colony.

The House of Assembly having observed with much satisfaction the ready attention and anxious desire graciously manifested by Your Majesty to meet the wishes and to conciliate the affections of the people of Nova Scotia, by granting them such alterations in the institutions of that province as its circumstances required, are thereby encouraged to hope that Your Majesty will be graciously pleased to grant to this colony a similar modification in the form of its local government, by a separation of its executive from the legislative council, and by the introduction into those bodies of persons from the several parts of the country representing the leading interests of this province, as will tend to confer on them a greater claim to the confidence of the community at large.

House of Assembly, 3 March 1838.

(signed) *Geo. Dalrymple,*
Speaker.

Encl. 2, in No. 4.

Enclosure 2, in No. 4.

To his Excellency Sir *Charles Augustus Fitz-Roy*, K. H., Lieutenant-Governor and Commander-in-Chief in and over Her Majesty's Island *Prince Edward* and its Dependencies, Chancellor, Vice-Admiral, and Ordinary of the same, &c. &c. &c.

May it please your Excellency,

THE House of Assembly having prepared an address to Her Most gracious Majesty on the subject of the constitution and structure of the Executive and Legislative Councils of this island, respectfully request that your Excellency will take the earliest opportunity of forwarding the same, to be laid at the foot of the Throne. The House, fully relying on a continuance of that unceasing desire which your Excellency has hitherto on all occasions manifested to advance and promote the welfare of this colony, trust that your Excellency will add the weight of your personal influence to obtain the objects of their address; and should your Excellency be called on to carry into effect any changes which Her Majesty may be pleased to direct, the House of Assembly feel confident that the local knowledge which your Excellency has spared no pains to acquire of the various interests of the inhabitants of this island, will enable you to make such arrangements as will be best calculated to establish a responsibility in the institutions of the colony, and thereby confer a permanent and lasting benefit on all classes of the community.

House of Assembly, 3 March 1838.

(signed) *Geo. Dalrymple,*
Speaker.

— No. 5. —

PRINCE
EDWARD
ISLAND.

Copy of a DESPATCH from Lord *Glenelg* to Lieutenant-Governor
Sir *C. A. FitzRoy*.

No. 5.

Sir,

Downing-street, 4 May 1838.

I HAVE received and have laid before The Queen your despatch of the 10th March, marked separate, enclosing an address to Her Majesty, from the House of Assembly of Prince Edward Island, complaining of the present constitution of the Council, and praying, that in conformity with the course adopted on the same subject in Nova Scotia, the Executive may be separated from the Legislative Council, and that persons from the several parts of the country, and representing its leading interests may be appointed to those Boards.

Her Majesty has been graciously pleased to accede to the wishes of Her faithful subjects in Prince Edward Island, for a separation of the Executive and Legislative Council, and also to approve of your proposition, that the Executive Council should in the first instance consist of nine, and the Legislative Council of twelve members. The necessary instruments for effecting this change will be prepared as soon as you shall have furnished me with a list of the gentlemen who, in your opinion, are most proper to be appointed to the respective Boards.

In preparing that list, you will of course select those who from their character, their attainments, and their standing in society, appear to you most likely to command the public respect and confidence; and you will so govern your selection as to ensure as much as possible the presence in your Councils of members from all parts of the island, and representing its principal interests.

I observe that among those members of the present Council whom you propose to retain in the new Executive Council is the chief justice of the colony; this is inconsistent with the course pursued in the other North American provinces, and with the avowed policy of Her Majesty's Government on the subject.

Fully sensible of the assistance to be derived from the general knowledge and experience of the judges of the respective colonies, Her Majesty's Government have yet felt that this advantage is more than counterbalanced by the inconvenience of involving these officers in the discussion of party politics.

Accordingly, in the late reconstruction of the Councils in New Brunswick and Nova Scotia, and in the renewal, on the demise of the Crown, of the commission of the Governor of Newfoundland, the chief justices, and other judges of those colonies, have been omitted from the Councils; Her Majesty's Government propose to follow the same rule in Prince Edward's Island; but Mr. Jarvis will of course understand that the omission of his name from the list of councillors is unconnected with any reference to himself personally, but is made in deference to a general principle applicable to all the British colonies in North America. At the same time Her Majesty has been pleased to command that the chief justice and other members of the former Council who may be omitted in the new Boards, shall retain the precedence in society, and the titular distinction which they previously enjoyed.

You state that it would be a great convenience to the government to have some members connected with it in the House of Assembly who could explain its measures, and thus save the time now consumed by the dilatory process of message. Her Majesty's Government do not deny the advantage of introducing into the Executive Council some members of the Assembly, and there can be little doubt that if those members were authorised in the Assembly to explain the views of the government, some time might be saved: but there are other objections to such an arrangement, the most important of which you will find stated in the Third Report of the Canada Commissioners. It must therefore be considered as an imperative rule, notwithstanding the presence in the Legislative Council and Assembly of some members of the Executive Council, that all communications from the Governor to either of those houses should be made as now by message.

I have, &c.
(signed) *Glenelg*.

NEWFOUNDLAND.

— No. 1. —

NEWFOUND-
LAND.

(No. 15.)

COPY of a DESPATCH from Lord *Goderich* to Governor Sir *T. Cochrane*.

No. 1.

Sir,

Downing-street, 27 July 1832.

I HAVE the honour herewith to transmit to you His Majesty's Commission under the Great Seal, appointing you Governor of the Island of Newfoundland, together with your General Instructions under the Royal Sign Manual, referred to in that Commission.

As this is the first occasion on which provision has been made for convening a Legislative Assembly for the island of Newfoundland, the importance of that measure requires that I should not limit myself to the merely formal duty of placing you in possession of these instruments, but that I should shortly explain the grounds and the nature of the policy by which His Majesty's Councils on this subject have been directed.

It were superfluous at the present day to inquire into the wisdom of that system which was pursued for so many years towards the ancient colony under your government, the fundamental principle of which was to prevent the colonization of the island, and to render this kingdom the domicile of all persons engaged in the Newfoundland fisheries. The common interest or convenience of those persons virtually defeated the restrictions of the various statutes respecting them, long before Parliament admitted the necessity of repealing those laws. A colony gradually settled itself along the shores of the island, and has of late years assumed a rank of no inconsiderable importance amongst the foreign possessions of the British Crown; but notwithstanding the growing population and the wealth of Newfoundland, no plan has hitherto been adopted for regulating such of the internal affairs of the colonists as demanded the enactment of laws specially adapted to their peculiar situation. Parliament, indeed, contemplated the erection of corporate towns, with the power of making bye-laws, for remedying this inconvenience; but on attempting to carry this design into effect, unforeseen obstacles were encountered. It was found altogether impracticable to reconcile the contradictory wishes and recommendations of the parties who would have been more immediately affected by the measure; and it became evident that the boon which it was proposed to confer would be received by a great body of the inhabitants, not as an act of grace, but as an infringement of their rights, into whatever form the intended charters might have been thrown. The consequence was, that His Majesty became practically unable to execute the trust which Parliament had confided to him.

The necessity of some provision for regulating the internal concerns of Newfoundland by enactments adapted to the peculiarities of their local position became however daily more and more evident. Carrying with them from this kingdom the law of England, as the only code by which the rights and duties of the people in their relations to each other, and in their relation to the State, could be ascertained, it was obvious, as soon as the colony began to assume a settled form, that the adaptation of that code to the various exigencies of the local society was a task demanding the exercise of much reflection and caution; that many of its provisions were entirely inapplicable to the wants of a population so peculiarly situated; and that many more could be applied only by a distant and uncertain approach to the original standard. Hence it occurred that, in the administration of the law, the judges virtually assumed to themselves functions rather legislative than judicial; and undertook to determine not so much what the law actually was, as what, in the condition of Newfoundland, it ought to be. For this assumption of power no censure attaches to those learned persons; without any positive rule of decision, nothing remained for them but to engage in such an inquiry; yet the practical inconvenience was not the less urgent, nor the anomaly the less glaring.

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It was not, however, merely in the absence of rules, which this latitude of judicial interpretation might supply, that the public detriment was sustained; there were still wanting other regulations, which no judge could either invent or enforce. Especially in whatever related to police and internal improvements, demanding the co-operation of different persons, nothing could be carried into effect, which any individual found an adequate reason for opposing, or which he opposed from mere caprice. I find that in a matter so trifling in appearance, and yet affecting the comforts of so many, as the prevention of domestic animals wandering at large through the country, an earnest application was made to His Majesty's Government to obtain an Act of Parliament for the redress of the grievance endured by the colonists. Although it was thought improper to encumber the British statute-book with such provisions, yet it was fully admitted that they could be supplied by no other authority; and the application itself forcibly illustrated the inconvenience of so remote a society being destitute of any local Legislature.

It may seem, however, superfluous to accumulate reasons in proof of the propriety of establishing in Newfoundland that form of constitution which generally prevails throughout the British Transatlantic colonies; the difficulty would consist rather in finding valid arguments for withholding it. The reasonable presumption seems to be, that a system of colonial government which has been attended with so many advantages in British North America, would produce similar benefits at Newfoundland, if transferred to that settlement. I do not indeed mean to deny that some considerable inconvenience has occasionally resulted from the adoption, in those dependencies of Great Britain, of constitutions modelled into a miniature resemblance of our own; but I know not what is the system of which the same might not be truly asserted. It is sufficient to say of the scheme of internal polity in force in Nova Scotia and New Brunswick, that in all the colonies to which it has been extended, it has invariably secured the attachment of the people, by giving them a large share in the management of their own affairs; by affording an open field for the free exercise of talents and public spirit; by providing honourable ambition with a legitimate object and reward; by insuring immediate and careful attention to the various exigencies of society; and by promoting a frugal and judicious administration of public affairs. With the single exception of those colonies in which the people are separated from each other by distinctions analogous to those of caste, representative Assemblies are not only recommended by abstract considerations drawn from the genius and principles of our own Government, but by a long course of experiments pursued under a great variety of circumstances, but still leading to the same general result.

In advising His Majesty to convene an Assembly from among the inhabitants of Newfoundland, I have therefore not yielded myself to the guidance of any improved theory, but have simply extended to another of the colonial possessions of the Crown principles which have been elsewhere brought to the test of repeated and successful experiment. Yet I do not conceal from myself nor wish to deny, that the duty which you will have to perform will be attended with some difficulty, and that you will have large scope for the exercise of circumspection and industry. In the first execution of such a design, many questions will probably arise which it were impossible to anticipate distinctly. From the novelty of the duties cast upon them, and from their inexperience in civil business of that nature, I can foresee that the returning officers, the voters, and the members of Assembly, may all in some instances misapprehend the functions which they will have to discharge, or the proper mode of proceeding for the methodical and accurate discharge of them. Cautiously abstaining from the appearance of usurping any undue authority over matters properly falling within the cognizance of the Assembly, you will yet be prompt to afford to all parties whatever counsel or assistance you can render them, to obviate difficulties of this nature. It cannot be made too apparent that the boon which has been granted is seconded by the cordial goodwill and co-operation of the Executive Government, and that the House of Assembly is regarded, not as a rival power, but as a body destined to co-operate with yourself in advancing the prosperity of the settlement.

For your own guidance it may be right to observe, that colonial assemblies, as they derive their general form from the model of the British House of Commons, so they have drawn their rules and system of procedure from the same source. The distinctions are of course both numerous and important, and grow

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out of the dissimilarity of the circumstances of the representative bodies of a small colony and of an extensive kingdom ; but in general the analogy is maintained, and therefore the laws and rules of Parliament, as modified by the exigencies of the case, may be taken as the safest guide for the conduct of the Council and Assembly, and for your own proceedings towards them.

As soon as conveniently may be after your arrival in Newfoundland, you will convene the Council, according to your general instructions, and arrange with them the whole course of proceedings to be adopted for giving effect to so much of those instructions as relate to the convoking the Assembly. Especially you will consider the proper forms of the writs to be addressed to the returning officers, the proper places for holding elections, the most convenient times at which they can take place, the necessary arrangements for the reception and accommodation of the legislative body at the town of St. John's, the most convenient method of opening the first session of the General Assembly with appropriate and decorous solemnities ; and, above all, the topics to which their attention should in the first instance be directed.

In conformity with the precedents in use on similar occasions, a proclamation has been approved, declaratory of the future system of government to be observed in the colony. This proclamation you will cause to be circulated in the most public manner as soon as conveniently may be after your arrival.

It has for the present divided the country into electoral districts, and has determined the number of members who are to be returned for each. These, however, are topics on which it is very probable that the information I have been able to acquire in this kingdom may be erroneous or defective. Any other division of the country which may be more generally convenient, and any other arrangement of the number of representatives for different districts, which the Council and Assembly may deem more advantageous, will be the fit subject of legislative enactment. No change in the constitution of the House, or in the total number of members, can however be effected, except with His Majesty's previous approbation, and in the manner indicated in your general instructions.

In accordance with the uniform course of precedents, your Commission constitutes a Council which will participate with the Assembly in the enactment of laws. It is not, however, to be denied that this part of the established system of colonial legislation has been practically found to be attended with some serious difficulties. The members of Council, deriving their authority from the Royal Commission, have not seldom been regarded with jealousy and distrust by the great body of the people. Their elevation in rank and authority has but too often failed to induce a corresponding degree of public respect. Even the most judicious exercise of their powers has occasionally worn the semblance of harshness when opposed to the unanimous or the predominant opinions of those to whom the colonists looked with confidence as their representatives. The Councils, it must be confessed, have not uniformly exerted themselves to repel or to abate this prejudice. The acrimony engendered by such disputes has sometimes given occasion to an eager assertion of extreme rights on the part of the Council, and to a no less determined denial of their necessary and constitutional privileges on the part of the Assembly. The Councils have also been employed as instruments for relieving Governors from the responsibility they ought to have borne for their rejection of measures which have been proposed by the other branch of the Legislature ; and have not seldom involved them in dissensions which it would have been more judicious to decline. Some of the principal inhabitants of the colony, as well as the chief officers of the local Government, being usually members of the Council, are removed from the prospect of obtaining seats in the House of Assembly. Even in colonies in which there is a larger society, and a greater number of proper persons to become members of the Legislature than in Newfoundland, considerable inconvenience has been found to result from raising to the rank of councillors the leading members of the Assembly, and thereby losing their services in that body. The want of any member competent to explain or vindicate the course pursued by the executive authorities has been still more severely felt : measures have not unfrequently been misunderstood, and it has happened that a trifling misconception, which a few words of timely explanation would have removed, has grown into a serious and embarrassing controversy. The effect of the institution, therefore, is too often to induce a collision between the different branches of the Legislature, to exempt the Governor from a due sense of responsibility, and to deprive the representative body of some of its most useful

ful members. Yet the compensation which might atone for these evils is not obtained, and the Council does not assume in the colony a position, or an influence analogous to that of the House of Peers, because entirely destitute of that hold on public opinion which the property and independence of its members, as well as the antiquity of the institution itself, confers upon the peerage of this country.

Adverting to these considerations, and to the legislative history of the British North American and West Indian colonies; I should regard with satisfaction any arrangement which should consolidate the Council and the Assembly into a single House, in which the representatives of the people would be met by the official servants of the Crown. An example of this form of government exists in British Guiana, and is found to possess in practice many of the advantages which it promises in theory, by casting upon the Governor an undivided responsibility as often as he adopts or rejects the proposals of the legislative body, and by securing to them all the information and assistance which can be rendered by members officially conversant with the various subjects brought under their consideration. This, however, is a system which prevailed in Guiana before the conquest of that settlement by Great Britain, and which, I apprehend, His Majesty could not establish by the exercise of his prerogative in Newfoundland. If, however, the Council and Assembly, as established by your Commission and instructions, should concur in the view which I have taken of this subject, and should be disposed to pass a Bill for uniting the two Houses, with a clause suspending the operation of the law, for the signification of His Majesty's pleasure, you will, on His Majesty's behalf, assent to any such Bill. Should the design be entertained, I think that the colonial secretary, the attorney-general and the chief officer of customs would be the most proper persons to hold seats in the Assembly, by virtue of their official situations: they would be enabled to explain the views of the Executive Government upon the principal points which could be brought under the consideration of the Legislature; and the introduction of so small a number as three gentlemen nominated by the Crown could not be supposed in any degree to control its deliberations. Upon this point it is only necessary to add, that the Bill should be so framed, as, in depriving the Council of its legislative functions, to allow of its continuance as a body to which the Governor might resort for advice during the intervals between the sessions of the Legislature, and upon other occasions when it might be convenient to him to do so; for this purpose, however, a numerous body is not required, and I have, therefore, at present only recommended to His Majesty one gentleman, not holding any official situation, for a seat in the Council. The gentleman whom I have selected is Colonel Haly, who has been strongly recommended by yourself, and to whom a dormant commission will be granted, authorizing him to assume the government of the colony in the event of your absence, in order that the regular discharge of the duties of the subordinate officers may not be interrupted by their being called upon to assume the temporary administration of the government.

In contemplation of the change which has been effected in the internal government of the colony, it was resolved to apply to Parliament to continue in force the Acts by which the celebration of marriages, the administration of justice, and the conduct of the fisheries are regulated. Bills are now pending for that purpose, and will, I trust, be shortly passed into law. The Marriage and the Administration of Justice Acts, being matters exclusively of local concern, will remain in force until the local Legislature shall see fit to repeal or to alter them. If the Council and Assembly should think that any change is requisite on either of these topics, the remedy will therefore be in their own hands. The Newfoundland Fisheries Act affects interests partly local, and partly co-extensive with the trade and navigation of the empire at large. It will therefore be continued in force for two years. Before the expiration of that time it will be fit that the local Legislature should be invited to consider the subject in all its bearings. So much of that statute as relates to the navigation and commerce of this kingdom may then be revised by Parliament, with the benefit of the assistance to be anticipated from the labours of the Council and Assembly; so much, on the other hand, of the statute as refers to interests properly local may then also be remitted to the local Legislature for their decision.

By one of the two Bills to which I have referred, provision is made for transferring to the Governor, Council and Assembly of Newfoundland the appropriation to the public service of the island of all money levied there under any Parliamentary authority. From his existing revenues His Majesty has reserved

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nothing for his own unqualified disposal, but has placed the whole under the control of the local Legislature, with the exception of a sum which must be applied for the support of the Governor, the judges, the colonial secretary and the attorney-general. This arrangement will, I trust, effectually obviate the difficulties which have been so sensibly felt in other colonies, and satisfy the inhabitants of His Majesty's fixed purpose and earnest solicitude to promote to the utmost of his power a wise economy in the expenditure of the public revenue, and to respect the constitutional rights of the popular branch of the local Legislature.

You will observe that the expense of collecting this branch of the revenue is to be deducted from its gross proceeds, and that these arrangements do not embrace any part of that revenue which accrues to the Crown in virtue of His Majesty's prerogatives. Such, for example, are the rents or the proceeds of the sales of Crown lands, escheats, fines and forfeitures. His Majesty is, however, graciously pleased to authorize you to assure the Council and Assembly that whatever money may accrue to the Crown in the island will always be applied towards the expense of the civil or military government, or towards objects strictly and exclusively local.

I hope shortly to convey to you the authority of the Lords Commissioners of the Treasury for the apportionment of that part of the Parliamentary duties which will be applicable to the support of the public officers already enumerated.

I have, &c.
(signed) *Goderich.*

No. 2.

— No. 2. —

(No. 8.)

(C.)

Copy of a DESPATCH from Governor Sir *T. Cochrane* to Viscount *Goderich.*

My Lord,

Newfoundland, St. John's, 13 Feb. 1833.

As soon as the two branches of the Legislature had made their preliminary arrangements, and were prepared to enter upon business, I transmitted each a copy of your despatch of 27th July last, No. 15, the main object of which was to recommend to their adoption the amalgamation of the two Houses into one body.

This document was laid before the Assembly on the 9th January, and on the following day the House waited on me with their reply to that part of it containing the suggestion before mentioned, a copy of which is annexed, and by which your Lordship will perceive they have at once rejected the recommendation.

Between the period of my return to this Government and the opening of the colonial Parliament, I availed myself of every favourable opportunity to draw the attention of the influential part of the community to the important subject that would attract the early consideration of the Legislature, and the advantages your Lordship anticipated from the union it suggested; and although I was apprehensive that the plan did not meet with general approbation, I certainly was not prepared for the prompt and unhesitating negative which has been given to it; for from all I can learn the question scarcely went through the form of a discussion, having been disposed of on the same afternoon it was submitted to them.

It is not the least singular circumstance attending the general disapprobation the measure of amalgamation has met with, that while all come to the same conclusion, many do so upon diametrically opposite grounds. Those who are considered here as being democratic in their principles reject the measure, because they apprehend that the infusion of officers of the executive government into their Assembly will ultimately give them such an ascendancy over its members, by their superior knowledge and acquirements, as to control their proceedings; while another party, who claim to be more constitutional in their views, are strenuous in their opposition, and maintain that to abolish the Council and place some of its members in the Assembly, would be to establish a democracy, as the voices of the few officers of Government thus introduced, would be at all times borne down by the representatives of the people, who

would not fail to array themselves against those whom they would consider as having no community of interest or feeling with them.

Between the two parties, however inaccurate their conclusions may be, I fear there is not the least prospect of effecting the object your Lordship contemplated; and perhaps your Lordship will think the time arrived for the consideration of the establishment of a permanent Council, as I conclude the existing one has been viewed by your Lordship only as provisional, until the result of your suggestion should be known; indeed the Council, as at present constituted, is at variance with the 63d clause of the Royal Instructions, by which your Lordship will perceive there are many powers which the councillor administering the government in the absence of the Governor cannot execute without the consent of seven, whereas six is the present extent of that body; and it certainly will be very desirable that a few of the principal inhabitants be added to it, to give weight to its proceedings, particularly on any point where the Council may feel it to be its duty to refuse assent to some measure advocated by the Assembly.

I think, making allowance for absentees, that the Legislative Council should not consist of less than 9 or 10, of whom four or five should be selected from the principal inhabitants; and I feel it would be an advantage if the Governor be allowed to have an Executive Council, consisting of the senior member and the officers of Government of the legislative body; for it has always appeared to me an anomaly that the Governor should have to consult upon the propriety of some measure, on which he may entertain considerable doubt as to its expediency, the identically same persons who have already in another place disposed of the question. Indeed, I would further suggest that he may be permitted to call to the Executive Council, either one or two other persons unconnected with either House; such for instance as the High Sheriff, who is always an important person in the colony, and some other individual who, from his station or talent, may be calculated for the situation, but who does not choose to meddle with the politics of the island.

It is, I am aware, the practice in many colonies for the chief judge to be the senior member of the Council; but I believe I am supported by many persons well versed in colonial affairs, in the opinion that it is not advisable he should form a part of any political body; in the first place, it interferes very much with his other important duties; and secondly, the conduct it may lead him to observe in his political capacity, is apt to bring him into collision with the inhabitants, to whom it affords an opening to ascribe improper motives to his conduct on the Bench when it may be at variance with their prejudices and views; and your Lordship will agree with me, that it is of particular importance in a colony, where, unlike the mother country, the judge is personally known to, and more or less brought into contact with the people, that he should stand entirely aloof from every thing but his own particular duties; and I have every reason to believe the present chief judge is of the same opinion. It would, however, be desirable that the Governor may be empowered from time to time to call the chief judge to the Executive Council when any question of law becomes a subject of consideration.

Should your Lordship approve of the suggestions I have had the honour to throw out, the names in the margin are those which I should propose to add to the Legislative Council, which will then be composed of the gentlemen named in the accompanying schedule, of whom I have placed Colonel Haly as senior member, in consequence of his being the oldest landed proprietor in the colony, and who, being entirely free from other engagements, can with more convenience than a government officer devote himself to the constant attendance at the Council required of its senior member.

J. Dunscombe,
W. Thomas,
J. B. Garland,
C. F. Bennett,
J. B. Bland, esqrs.

I have, &c.

(signed) *Thos. Cochrane.*

Enclosure 1, in No. 2.

Encl. 1, in No. 2.

SCHEDULE :

Colonel William Haly, senior member.
The Commandant of the Troops.
The Attorney-general.
The Colonial Secretary.
The Collector of the Customs.

John Dunscombe,
William Thomas,
J. Bingley Garland,
Charles F. Bennett, and
John B. Bland, Esquires.

88 CORRESPONDENCE RESPECTING THE GOVERNMENT OF

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Enclosure 2, in No. 2.

Encl. 2, in No. 2. To His Excellency Sir *Thomas John Cochrane*, Knight, Governor and Commander-in-chief in and over the Island of *Newfoundland* and its Dependencies, &c.

The humble Address of the House of Representatives in General Assembly.

May it please Your Excellency.

YOUR Excellency having been pleased to lay before the House of Assembly a copy of a letter from Viscount Goderich, His Majesty's Principal Secretary of State for the Colonies, dated the 27th day of July 1832, and the attention of the House having been called to that part of the letter which proposes to amalgamate the Legislative Council with the House of Assembly, the House beg leave to state to your Excellency, that having taken the matter into their most serious consideration, they are unanimously of opinion that the measure recommended by the Right Honourable Secretary, not being in accordance with the principles of the British constitution, is in nowise applicable to the circumstances of this colony.

In the House of Assembly, 10 January 1833.

Then passed in the House of Assembly.

(signed) *J. Bingley Garland*, Speaker.

No. 3.

— No. 3. —

(No. 12.)

COPY of a DESPATCH from Governor Sir *T. Cochrane* to Viscount *Goderich*.

Newfoundland, St John's,
12 March 1833.

My Lord,

It is with extreme regret, that in so short a period after the introduction of the new form of government into this island, (and of which I had indulged the hope it would have been in my power soon to have reported favourably of its operation), I find myself under the necessity of communicating to you a sudden and unexpected check that has been given to its proceedings.

From the first opening of the Session, the House of Assembly have been unremitting in their attention to their duty, and with the exception of some trifling occasional ebullition of feeling incident to the first acquisition of power, the proceedings of the House have been marked by a decorum and propriety, as well as a real anxiety to exert themselves for the good of the community, which reflect much credit on so young a body.

Having communicated to them that it would be necessary that they should provide for their own expenses after the 1st of April, and furnished them with an estimate of the probable amount for the current year, they entered upon the consideration of their ways and means, and prepared and passed a Bill laying a duty on wines and spirituous liquors, being the most judicious and least burthensome tax they could impose. This Bill was sent to the Council, and I was not a little surprised to learn from the colonial secretary that there was a probability it would be thrown out.

It may be proper here to acquaint your Lordship, that on the first opening of the session, with the view to facilitate the public business, and that each branch of the Legislature might be aware of my power in assenting to, and, by consequence, their own in enacting Bills, I sent to each a copy of my instructions bearing on that point; and a reference to your Lordship's despatch to me of the 27th July last, No. 16, will bring to your remembrance that a clause prohibiting the taxation of British trade was omitted from my instructions, expressly to remove any doubt its insertion might give rise to; notwithstanding these instructions were in many points obsolete, and more or less deviated from in every colony.

Immediately on being made aware of the proceeding likely to take place in the Council, I read to the colonial secretary your clear and explicit reply to that part of my letter of the 20th of July last, on the subject of import duties, that he might make what use he pleased of it at the Board; but notwithstanding his having communicated its purport, the president and the attorney-general threw out the Bill. My astonishment was the greater at the course these gentlemen had pursued, from its having been wholly unexpected; for although the

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Bill had been in progress for weeks, and its existence well known to every body, not a whisper ever reached me that any exception could or would be taken to it.

Your Lordship will readily imagine that the Assembly were much excited at the rejection of their Bill, and the community at large very indignant; and it was one of my first endeavours to avail myself of any influence I had over the leading men of that body, to moderate their feelings and induce them to maintain that decorum they had, in their discussions on the subject, hitherto observed; and I am happy to say they have on the whole met my expectations. Some few days after the Bill was rejected, the House waited on me with an Address, a copy of which, with my reply, I have the honour to annex.

It is of course out of my power to communicate to your Lordship a detail of the reasons assigned by the president of the Council and attorney-general for their opposition to the Bill, and the former is too tenacious of his privileges for me to think of asking for an account of what he stated in the Council; but the accompanying short report of his speech, I understand from several persons, contains the substance of what he said on the occasion. From the attorney-general I can only learn that he founds his opinion of the incompetency of the local Government to impose duties on articles already taxed by the Imperial Parliament upon general principles, supported by the 6 Geo. 4, c. 114.

If these gentlemen shall be found to have decided correctly, then every Assembly, Council and Governor in every colony will have been acting illegally for the last 100 years, and every Sovereign and Privy Council for the same period will have sanctioned and abetted such illegal acts; for I believe there is not a local legislature that does not impose import duties: and in contradiction to the statement made by Mr. Tucker, that in Nova Scotia they get rid of the difficulty by putting the duties on as an excise, I have now before me the Journal of the Proceedings of the Assembly of that province for the year 1830, in which I not only find they impose duties of excise upon home made articles, and duties upon imports to a large amount, but that in a Council held by His Majesty on the 1st November 1830, of 47 Bills, passed in 1829, and submitted for approval from that province, one is intituled "An Act to alter and continue the Acts now in force to provide for the support of His Majesty's Government in this Province, and for promoting its Agriculture, Commerce and Fisheries, by granting Duties of Import on Wines, Brandy, Gin, Rum and other distilled Spirituous Liquors, Molasses, Coffee, and Brown Sugar;" and another intituled "An Act for the further Increase of the Revenue by imposing a Duty upon Articles Imported from Foreign Countries;" and again in the same Council was submitted one passed in 1828, "An Act intituled an Act to alter and continue the Acts now in force to provide for the Support of His Majesty's Government in this Province, and for promoting its Agriculture, Commerce and Fisheries, by granting Duties of Import on Wine, Brandy, Gin, Rum and other distilled Spirituous Liquors, Molasses, Coffee, and Brown Sugar." All which Acts were confirmed by His Majesty in Council, after having undergone the ordeal of being reviewed by the Lords of the Committee appointed for the consideration of all matters relating to trade and foreign plantations.

Now, my Lord, I think, with such evidence before them, both the president and the attorney-general ought to have had some diffidence of their judgment before they persisted in a measure which has thrown the colony into confusion, and have been satisfied with entering a protest or have referred the question home for their guidance in a future year. Still, if they were fixed in their opinions, although erroneous, and conscientiously considered their duty and the enactment of that Bill at variance, however their decision might be regretted, it would scarcely expose them to censure. But your Lordship will perceive, from a perusal of the report of his speech (the authenticity of which I have no doubt), that Mr. Tucker did not confine himself to the measure before the Board, but commented upon the wisdom of granting that constitution His Majesty had extended to the colony; a line of conduct uncalled for, and which I cannot but view as reprehensible. As a government officer, whatever his impressions were, it was his duty, I conceive, to suppress them the moment the measure was decided on, and to give his countenance and best endeavours to its success; it was the rule I prescribed to myself, and I think ought to have been observed by every other public officer.

Mr. Tucker's refusal to assent to the Bill on the ground of expediency was little less objectionable; for, whether in his opinion the colony could or could not bear

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taxation, it was of little consequence: the people had asked for the local government with the express understanding that they were to maintain it themselves; their representatives had voluntarily and cheerfully imposed the tax, as being the most appropriate and least onerous; and with one exception (and that individual at the time absent from ill health) the Council was composed of Government officers who have no stake in the island, and therefore could not fairly object to the Bill on personal considerations. And as little to be commended is the threat the president held out, that, whatever the fate of the Bill might be with the Council, he would disregard it on the bench; and after having unnecessarily travelled out of his way in discussing the measure before him, Mr. Tucker cannot be surprised if the community have (however unjustly) taxed him with an intention of rendering abortive His Majesty's gracious intentions by the course he has pursued.

Your Lordship will readily feel the very peculiar position in which I now find myself. With the intention of closing my demands on the Treasury for the support of the island on the first of next month, (as from your instructions, and the 2d & 3d of Will., c. 78, I collect, I ought to do), I am precluded from calling upon the House of Assembly to provide means to meet the necessary expenditure, and I understand that after they shall have prepared a memorial to His Majesty, to be forwarded by the conveyance which takes this, that I shall be applied to by them to continue to carry on the financial department until the decision of His Majesty's Government shall be known. The body to whom I should naturally look for advice upon the present occasion is His Majesty's Council; but its conduct has been so decidedly at variance with my opinions, that it would be useless to consult it in the present emergency; which comes so fully within the view I have taken of the question of an Executive and Legislative Council in the communication I had the honour to address your Lordship on the 13th February, that I trust it will have some weight in the decision your Lordship may come to upon it.

In closing this despatch, I think it right to add, that the Assembly were desirous of passing their Revenue Bill with all expedition, knowing that vessels with a quantity of the articles intended to be taxed were daily expected, and there is every reason to believe that, in consequence of the failure of the Bill, the place will soon be overstocked with them, and the loss of at least one twelvemonth's revenue will probably result to the colony.

Your Lordship will readily believe that I shall be most anxious to receive your commands as to my future conduct in the anomalous position in which I am placed; and as vessels almost daily sail from Liverpool for this port after the first of next month, may I request your Lordship will be good enough to forward your despatch through the same channel as those communications you honoured me with in November last, by which means I shall be in possession of your wishes many weeks sooner than I could be through the usual channel of the North American mail.

I have, &c.
(signed) *Thos. Cochrane.*

Encl. in No. 3.

Enclosure in No. 3.

To his Excellency Sir *Thomas John Cochrane*, Knight, Governor and Commander-in-chief in and over the Island of *Newfoundland* and its Dependencies, &c. &c. &c.

May it please your Excellency,

WE the representatives of His Majesty's dutiful and loyal subjects the people of Newfoundland, beg leave at this time humbly to bring to the notice of your Excellency the circumstances of embarrassment in which this colony is placed owing to the rejection by the Legislative Council of the Bill lately passed in the House of Assembly, granting to His Majesty certain duties on all wines, and on all brandy, gin, rum, and other spirituous liquors imported into this island.

In the early part of the Session your Excellency was pleased to lay before us an estimate of the civil establishment, and also a statement of the sum necessary to be raised, in addition to the small amount of revenue at present at our disposal, for the purpose of defraying the charges of the civil establishment for the current year.

After having obtained, through application to your Excellency, those documents and that information requisite to enable us to judge of the necessity and propriety of the supplies to be voted, we did, in due time, take into our mature consideration the ways and means of raising such additional amount of revenue as would meet the public expenses of the

the Government; and in imposing the duties mentioned in the Bill for granting to His Majesty certain duties on all wine, and on all brandy, gin, rum, and other spirituous liquors imported into this island, we not only cautiously avoided interfering with the operation of such Acts of the Imperial Parliament for the regulation of the trade of the British possessions as are now in force, but we also exercised our best judgment in the selection of such articles as we considered legitimate objects of taxation, by imposing those duties upon articles of luxury, carefully abstaining from increasing the price of anything necessary for the support of the poor; and in framing the Bill, we had further in view the collection of the duties imposed by it at the least possible expense.

The Bill, after having passed through the regular stages in the Lower House without a dissentient voice, was subsequently sent to the Legislative Council for concurrence, but to our great surprise and astonishment was rejected by that body, on the ground that the Legislature of this colony does not possess the power of imposing duties upon any article imported into it, already subject to duty under any Act of the Imperial Parliament: and, if the arguments sought to be supported by the Legislative Council can be maintained, such is the nature of the commerce and the circumstances of the people of this island, that it would be impossible for us to raise the monies necessary for the support of the Government and for other public purposes; since, without the power of levying taxes upon articles imported into the island, there is not, in our opinion, any other mode by which a revenue, adequate to the wants of the colony, could be raised.

But notwithstanding the opinion of the Legislative Council to the contrary, manifested by the rejection of the Revenue Bill, we are decidedly of opinion, that we do not only possess the power of raising a revenue, by imposing duties upon the articles mentioned in the Bill which has been lost, but that, in the course which we have on this occasion pursued, we are borne out by the Acts of the Legislatures of the neighbouring colonies, which Acts have been from time to time confirmed and approved of by His Majesty in Council.

It is unnecessary for us to enumerate the evils that must arise from the occurrence of this unfortunate event, which is calculated to create a feeling of discontent and dissatisfaction in the minds of His Majesty's subjects in this colony; and we cannot but view with the deepest regret the conduct of the Legislative Council at this early stage of our proceedings, since, if the power of raising a revenue by the Bill which has been lost, and which they have denied to us, could not be exercised, the benefits which would have accrued to, and which His gracious Majesty intended to confer upon this island, by granting it a legislative constitution, would be lost, the public improvements which we have contemplated must be abandoned, and our endeavours otherwise to ameliorate the condition of the colony would be cramped and frustrated.

Under the present constitution of the Legislative Council, we have also to regret, that it required a majority of three-fourths of the members present to enable the Revenue Bill to be passed through that body; and we cannot but consider the course pursued by the Council as manifesting a feeling more calculated to check the early operations of the Assembly than to promote the best interests of the colony.

Under these circumstances, which we cannot too deeply lament, we deem it our duty to lay our situation before your Excellency, and we humbly request that your Excellency will be pleased to inform us whether you possess any power which will enable your Excellency to relieve us from our present embarrassment.

In the House of Assembly, 4 March 1833.

Then passed in the House of Assembly.

(signed) J. Bingley Garland.

Mr. Speaker, and Gentlemen of the House of Assembly,

It is with deep concern I learn from your Address that any circumstance has occurred to interrupt that perfect good understanding which it is so desirable should exist between the two branches of the Legislature, or that any proceedings on the part of the Council have been such as to lead you to apprehend that they will create feelings of discontent and dissatisfaction in the minds of His Majesty's subjects in this colony.

It is a further source of regret to me to be informed that the Council has felt called upon to refuse a Bill you deem of such importance to the island, and the rejection of which you consider will be injurious to its interests, and those benefits lost, which you had anticipated as the result of the constitution His Majesty had been graciously pleased to extend to this colony; a measure which I feel no doubt has been the source of no less concern to the Council than it has been productive of disappointment to you.

The Bill to which your address alludes not having reached me, I can form no opinion how far it is in accordance with the laws of the Imperial Parliament and the Royal Instructions; but the same desire which (with the view to facilitate the public business) led me in the commencement of the session to send to each branch of the Legislature a copy of that part of my instructions bearing upon this subject, now induces me to state, that on perusing the draft of these instructions, I observed a clause which, it appeared to me, tended to defeat the only means the colony possessed of raising an adequate revenue for the support of its government, that of a tax upon imports; and being most anxious that no obstacle should exist likely to impede the successful operation of the new constitution, I addressed His Majesty's Principal Secretary of State for the Colonies on this point, from whom I received the reply I now read to you.

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"On reference to your instructions you will perceive that the clause prohibiting the Governor from giving his assent to any tax affecting the trade or commerce of the mother country has been omitted. It is, therefore, only necessary for me to desire that you will not assent to any Act imposing discriminating duties on British produce, or taxes for other purposes than those of raising a revenue."

I have only further to acquaint you that, with the reservation above made, I shall have no hesitation in assenting to any Revenue Bill in which the two branches of the Legislature may agree, provided it be such as, in other respects, shall meet with my concurrence. But, under existing circumstances, as represented by you, I can only lament that I possess no power to relieve you from the embarrassment under which you state you at present labour.

— No. 4. —

No. 4.

(No. 13.)

COPY of a DESPATCH from Governor Sir *T. Cochrane* to Viscount *Goderich*.Government-house, St. John's, Newfoundland,
14 March 1833.

My Lord.

I HAVE the honour to transmit the accompanying address to the King from the House of Assembly of this island, on the subject of the rejection by the Council of their Revenue Bill, on the grounds set forth therein, and to request your Lordship will be pleased to lay the same before His Majesty.

I have, &c.
(signed) *Thos. Cochrane.*

Enclosure in No. 4.

Enclosure in No. 4.

To the King's most Excellent Majesty.

The humble Address of the Representatives of Newfoundland, convened at St. John's in General Assembly.

May it please your Majesty,

WE the representatives of your Majesty's faithful Commons of Newfoundland, beg leave most respectfully to express on their behalf to our most gracious Sovereign the sincere attachment felt throughout this island for your Majesty's person and Government.

We also take this early opportunity of tendering to your Majesty, in the name of the inhabitants of this colony, our warmest gratitude for the gracious manner in which your Majesty has listened to the petitions of your dutiful and loyal subjects, and the interest manifested by your Majesty for their happiness and welfare, in granting to this the oldest of your foreign possessions a legislative constitution, similar to that enjoyed by your Majesty's neighbouring colonies. Convened at this time in our legislative capacity, our best endeavours have been and shall be used to ameliorate the condition of our constituents and of the colony at large, by the enactment of those local laws and ordinances, the want of which has been so long and severely felt.

In the early part of the Session his Excellency the Governor, with a view to facilitate the advancement of the public business, laid before us an estimate of the civil establishment of the colony, with a statement of the amount of revenue at present collected under Acts of the Imperial Parliament, and showing the sum yet necessary to be raised to meet the public expenses of the Government. Our attention was also directed to the adoption of some more satisfactory system of administering justice than that now in operation, to the encouragement of the fisheries and agriculture, and to the opening of a more safe and speedy communication between the different settlements of the island by means of roads, as objects of primary importance, and as best calculated to improve the condition of the poorer classes, rendered still more unfortunate by the total failure of the potatoe crop during the last season. For carrying these useful purposes into effect, but more particularly for defraying the charges of the civil establishment, we took into our consideration the ways and means of raising such amount of revenue as, in addition to the sum at present at our disposal, we considered would be required.

On a careful review of the resources of the colony, and the means of raising a revenue, which presented themselves to our minds, we deemed it a duty imperatively incumbent upon us not only to avoid direct taxation, in itself always odious, but carefully to abstain from levying taxes which would in any manner increase the price of articles necessarily consumed by the poor and that class of the hardy inhabitants of the island engaged in the fisheries. In accordance with these views we framed a Bill (a copy of which is hereunto annexed, and to which, for greater certainty, we humbly crave leave to refer your Majesty,) imposing duties on certain articles of luxury, the growth and production of foreign countries, and also a duty upon British spirits, which latter duty, by the operation of an Act of the Imperial Parliament,

Parliament, passed in the sixth year of the reign of his late Majesty King George the Fourth, intituled, "An Act to regulate the Trade of the British Possessions abroad," attaches to and is payable upon foreign spirits, thereby avoiding the imposition of any duty which might have the effect of a discriminating duty. In framing the Bill we had two main objects further in view, first, the necessity of cautiously avoiding any interference with the policy or operation of the Act of the Imperial Parliament above mentioned; and, secondly, the saving of the heavy expense of an excise establishment in the collection by the officers of the customs of the duties imposed in the Bill.

This Bill, after having passed through our branch of the Legislature without a dissentient voice, was in due form transmitted to the Legislative Council for their concurrence; but, to our great surprise and regret, was rejected by that body, for reasons which, if valid, not only deprive us of the power of raising a revenue adequate to the wants of the colony, but which would, in a great measure, destroy a right inherent in us as the representatives of a free people, that of taxing our constituents for the support of the Government.

The objection offered by the Legislative Council to this Bill, and which we are led to believe caused its rejection by that body, is, that the articles mentioned in the Bill having been already subjected to duty by the said Act of the Imperial Parliament for the regulation of the trade of the British possessions abroad, the Act of any colonial Legislature imposing additional duties on the same articles, is repugnant to the Imperial Act, and consequently of no force or effect.

Upon a careful review, however, of the Act of the Imperial Parliament in question, we are at a loss to discover anything therein on which the Legislative Council could have formed such an opinion, and we humbly submit that no part of the Bill which has passed through our branch of the Legislature is repugnant or in opposition to the said Act of Parliament for the following reasons: The Act of the Imperial Parliament in question was passed at the time the Government of the mother country wisely determined upon extending to your Majesty's colonies the privilege of prosecuting a direct trade with foreign countries, and the principal object of the Act, as its title expresses, was the regulation of the trade of the British possessions abroad, and the protection of British manufactures by the imposition of high rates of discriminating duty upon articles of foreign growth or production imported into the colonies. That it was the intention of the Imperial Parliament to levy taxes upon articles consumed in the colonies no further than was necessary for the regulation of trade, clearly appears from the 13th section of the Act, whereby the produce of the duties collected by means of it are directed to be placed under the control of the local Legislatures of the colonies respectively, thus confining the Act within the saving of the declaratory statute passed in the 18th year of the reign of his late Majesty King George the Third, concerning taxation by the Parliament of Great Britain in any of the colonies, provinces and plantations in North America and the West Indies. But we humbly conceive that there is nothing in any of the above-mentioned Acts of the Imperial Parliament which prevents the Legislatures of the colonies from raising a revenue by imposing duties upon articles of foreign growth or production imported into them, provided the same be not discriminating duties.

As a further reason that such could not have been the intention of your Majesty's Government, we would humbly refer your Majesty to an Act of the General Assembly of the Province of Nova Scotia, passed in the year of our Lord 1829, and intituled "An Act for the further Increase of the Revenue by imposing Duties on Articles imported from Foreign Countries," (a copy of which is hereto annexed), whereby certain duties are imposed upon various articles of foreign growth and production, expressly in addition to, and over and above the duties payable upon the same articles by the said Act of the Imperial Parliament for the regulation of the trade of the British possessions abroad. This Act of the Legislature of Nova Scotia we find was afterwards, on the 1st day of November 1830, approved of by your Majesty in Council.

That the Imperial Parliament has itself recognized the power of a colonial Legislature to impose additional duties upon articles already chargeable with duty by the said Act of Parliament for the regulation of the trade of the British possessions abroad, we would humbly call the attention of your Majesty to a statute of the Imperial Parliament passed in the 7th year of the reign of his late Majesty King George the Fourth, intituled "An Act to alter and amend the several Laws relating to the Customs," the 44th section of which recognizes and sanctions a duty imposed by the Legislature of Canada on spirits, in addition to the duty payable thereon under the said first-mentioned Act of Parliament.

But we deem it unnecessary to adduce further arguments in support of a position which admits of so little doubt, for indeed if the construction put upon the Acts of the Imperial Parliament by the Legislative Council could by any means be correct, the Legislature of this colony would be deprived of the power of raising a revenue by imposing duties upon articles of import, as no other means adequate to that purpose are within its power, and the numerous advantages which the colony would have derived from the constitution which your Majesty has been graciously pleased to confer upon it, would be thereby in a great measure lost.

It is to us matter of deep and serious regret that the Legislative Council should have felt itself called upon to reject a Bill, by which we contemplated raising funds at the least sufficient to provide for the support of the civil establishment for the current year. We would here also humbly bring to the notice of your Majesty, the limited number of the Legislative Council, and the fact that during the whole of the discussion on this important Bill, only four of the members of that body were present, who being equally divided upon the question, the Bill was consequently lost. Under the circumstances of embarrassment in

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which we were placed by the loss of the Bill, we made immediate application to his Excellency the Governor, and prayed that he would use such means as might be in his power, to relieve us from our difficulties; but although manifesting every disposition to facilitate the advancement of the public business, his Excellency did not consider that he possessed any power of removing the obstacle which had been opposed to the progress of our legislative labours.

Under these circumstances, which we deeply deplore, and convinced of the paternal care and solicitude of your Majesty for the happiness and welfare of your subjects in all parts of your dominions, we feel that there is no other course left us, than that of making our situation known to your Majesty, assured that it will receive your Majesty's earliest consideration, and that your Majesty will grant us such relief as the nature of our case may require. And since we have been prevented from availing ourselves of the only means by which we deem it prudent or practicable to raise a revenue, we have most humbly to claim the favourable consideration of your Majesty's Government in making provision for the support of the government of the colony for the present year.

In the House of Assembly, 11 March, A. D. 1833.—Then passed in the House of Assembly.

(signed) *J. Bingley Garland*, Speaker.

No. 5.

— No. 5. —

(No. 47.)

COPY of a DESPATCH from Governor Sir *T. Cochrane* to the Right Hon. *T. Spring Rice*.

Government House, St. John's, Newfoundland,

22 September 1834.

Sir,

DURING the two first sessions of the colonial Legislature the Council adhered in all respects to His Majesty's Instructions, and to the usages of the Councils in other colonies; but upon the third session taking place, I unexpectedly found that they had thought proper, first to alter the appellation of the senior member to that of "Speaker;" secondly, to change the quorum from three, as fixed by His Majesty's Instructions, to five; and thirdly, to make it essential that the Speaker should be one of it; and moreover, as I was further given to understand, to make the situation of Speaker elective. I could not but be extremely surprised that they should take upon them so unceremoniously to invade those Instructions to which they owed their existence; and perhaps it would have been the most correct mode of proceeding immediately to have noticed it; but feeling that those who introduced such innovations would in all probability be induced to adhere to them, I preferred allowing them to pass unobserved, and intended to confine myself to communicating the circumstance to you, for your instructions thereon; and I was about to have the honour to address you when it presented itself to me, that although I had a cognizance of what passed, it was not before me in that official and formal shape which might place my assertions, in some part of the detail, beyond contradiction; and to prevent the possibility of any mistake on my part, I directed the letter No. 1, to be addressed to the chief justice (who, arriving in the Colony between the second and third sessions, originated the change in question). In consequence of this answer (No. 2) the letter No. 3 was addressed to the attorney-general, and on receiving his reply (No. 4), a message, of which No. 5 is a copy, was transmitted to the Council, and to which its answer (No. 6) is attached.

I do not pretend to know what are the rights or privileges of the House of Peers with reference to answering any questions His Majesty may think proper to put to it, and on which I conclude the Council now take their stand; but if the latter mean to do more than claim those rights and privileges, so far as the analogy is maintained between their position and that of the Imperial Parliament, it appears to me quite inadmissible.

The House of Peers, I believe, hold whatever privileges they possess by prescriptive right, and not by an authority emanating from the Crown; and whether in the event of their doing anything so extraordinary as to alter their constitution, as well as the name or title of the individual presiding over them, they could also refuse to explain the nature of the transaction to His Majesty, is a point upon which I am neither capable, nor would it be proper in me, to offer an opinion; but with reference to the colonial Council, the case is altogether different; they owe their existence entirely to His Majesty's Instructions, and

No. 1.

No. 2.

No. 3.

No. 4.

No. 5.

No. 6.

and it certainly appears to me not only reasonable, but essential, that in the event of their being supposed to deviate from those Instructions, they should at least explain whether they have done so or not; and I consider that in the mere question of the change of title of the senior member, it would have been fully competent in me to have refused to recognize him by the appellation they have adopted. The Council having, however, declined to afford any explanation as to their proceedings, it remains for me to do so in the most accurate manner my information will permit.

It appears that on the opening of the third Session, Mr. Boulton offered certain rules and regulations for the guidance of the Council, and one of which is, "that four members with the Speaker shall constitute a quorum." He also informed the Council, that they might elect their Speaker, and that he was willing to submit to any choice they might make. But it is rather singular to say that I cannot, from the members of Council individually, ascertain whether they did actually elect a Speaker or not. From one I learn that no election took place; from another, that none actually but one virtually did; and from a third, that he considered an election had taken place; but the facts of the case I believe to lie between them, and that after Mr. Boulton had acquainted the Council with the extent of their right, and their not proceeding to elect any one else in conformity thereto, he took possession of the chair.

It is, however, of minor consequence whether they actually made an election or not, if they consider that power to be vested in them; and that they do so, or rather that Mr. Boulton, the proposer of these alterations, does so, I had from himself; as he explicitly stated to me, that had the House elected another person he would have yielded up the chair; which would go to establish a right exceeding that of the Assembly, who must first be directed to elect their Speaker, and then have him approved, before he can take the chair.

Having drawn your attention to what I consider a decided infringement of His Majesty's Instructions, and an unconstitutional act, even if in other respects an advisable one, I shall have the honour to explain to you the present inconvenience that arises from this arrangement.

By His Majesty's Instructions any three members of the Council, as therein named, can form a quorum, which we found, during the first and second sessions, to be a great convenience when circumstances, on many occasions, prevented the attendance of the senior member. Under the existing rule, however, should the Speaker be unwell, absent on a circuit, or elsewhere, it is impossible to proceed to business, because the Council have placed it out of their power, if they adhere to their own rules, to assemble without him. On stating this difficulty to the chief justice, he considered I might nominate one, as His Majesty would in the absence of the Speaker of the House of Peers; but this power I altogether disclaim, as there is not a vestige of such authority conferred on me by His Majesty's Instructions, consequently the services of the Council might be rendered altogether nugatory.

Having had the honour to lay before you the infringement, on the part of the Council, of the King's Instructions, and the inconvenience arising from it, I may observe that, considering that the Council has been increased to nine, it might possibly be advisable to add one or two to the quorum; nor do I conceive there is any objection; on the contrary, it may be very proper there should be a Speaker whose presence should be necessary on all ordinary occasions to conduct the proceedings; as, although it must be desirable that the public business shall not be obstructed by a continued absence on the part of the presiding member, it may be attended with some inconvenience to the general regularity of their proceedings to have frequent or daily changes of the presiding officer. But any alterations which may be deemed advisable in the constitution of this body must, I apprehend, originate with His Majesty, and be sanctioned by a similar instrument, and under the same forms, as those Instructions which I have the honour at present to hold from His Majesty for my regulation and guidance.

I have, &c.

(signed) *Thos. Cochrane.*

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Enclosures in No. 5.

Enclosures in No. 5.

(No. 1.)

Secretary's Office, 29 Aug. 1834.

Sir,
THE Governor having observed, during the last session of the General Assembly, that the style or title of the member of the Council presiding over its deliberations had been altered to that of "Speaker of the Council," I am to request you will do me the favour to explain, for his Excellency's information, what circumstance has led to this alteration, and whether it is to be understood that it has arisen from the Speaker having been elected or chosen to that office, or whether it is merely an appellation to distinguish the senior member of the Council from the other members of that body.

The Honourable the Chief Justice.

I have, &c.
(signed) *Jas. Crowdy.*

(No. 2.)

St John's, Newfoundland, 29 August 1834.

Sir,
THE subject matter of your letter of this date having a reference solely to the privileges of that branch of the legislature to which I have the honour to belong, I do not feel myself warranted in offering any explanation upon the points, to which, for his Excellency's information, you have adverted.

The Honourable Mr. Secretary Crowdy.

I have, &c.
(signed) *H. J. Boulton.*

(No. 3.)

Secretary's Office, 30 August 1834.

Sir,
I AM directed by the Governor to transmit to you the accompanying copy of a letter from me to the chief justice, with his reply, and to request you will acquaint me with what you may deem the proper and regular course to pursue to attain the information desired.

The Honourable the Attorney-General.

I have, &c.
(signed) *Jas. Crowdy.*

(No. 4.)

Attorney-General's Office, 2 Sept. 1834.

Sir,
I BEG the honour to acknowledge the receipt of your letter of the 30th ultimo, together with copies of the correspondence therein referred to, relating to the alteration adopted in the proceedings of the Legislative Council in respect to the title of the presiding councillor, who is now styled Speaker instead of President, as heretofore, and requesting I will inform you what I may deem the proper and regular course to pursue, in order that his Excellency may be made acquainted with the cause of this alteration.

In answer to which inquiry I beg leave to state that if the journals of the Council do not yield the information required, I am not aware of any more proper method by means of which his Excellency may ascertain the matter than that of his Excellency sending a message requesting to be informed upon the point.

But it appears to me that such inquiry might raise a question of privilege, if such title of President or Speaker remain within the discretion of the Council to adopt at their election, since precedents are to be found in the legislative constitutions of the British colonies.

But if the style or title of the presiding member of the Council be predicated by His Majesty's Instructions relating to the institution of the General Assembly of this colony, any deviation from the style so fixed, may be, I conceive, noticed by his Excellency in the form of a message remonstrating against such deviation, if such alteration do not meet with the concurrence of his Excellency, and such proceeding would, I apprehend, lead to the explanation required.

The Hon. Mr. Secretary Crowdy.

I have, &c.
(signed) *James Simms.*

(No. 5.)

THE Governor having observed in the journals of the Council a rule of that body, which provides "that four members with the Speaker shall constitute a quorum," his Excellency is desirous of calling the attention of the Council to the circumstance of the rule in question being in opposition to that clause in the King's Instructions which fixed any three as the number of the quorum, and also of being acquainted, for His Majesty's information, whether the title of Speaker embraces anything more than another appellation for the senior member present.

Government House, 4 September 1834.

(signed) *Thos. Cochrane.*

(No. 6.)

To His Excellency Sir *Thomas John Cochrane*, Knight, Governor and Commander-in-Chief, &c. &c. &c.

May it please your Excellency,

WE His Majesty's dutiful and loyal subjects, the Legislative Council of Newfoundland, in Parliament assembled, beg leave respectfully to state, in reference to your Excellency's message of Thursday the 4th instant, that under the full impression that your Excellency, in transmitting that message, had no intention of interfering with our privileges, we only deem it proper to acquaint your Excellency that among the necessary privileges incident to this House as a co-ordinate branch of the legislature of Newfoundland, that of freedom from all interrogation as to the reasons or motives which may have led this House to the adoption of any particular course of proceeding is undoubtedly one without which the independence of its character cannot be maintained or its functions efficiently discharged.

Legislative Council, 18 September 1834.

(signed) *H. J. Boulton*, Speaker.

— No. 6. —

No. 6.

(No. 6.)

COPY of a DESPATCH from the Right Hon. *T. Spring Rice* to Governor *Prescott*.

Sir,

Downing-street, 21 October 1834.

I HAVE received Sir T. Cochrane's despatch of the 22d ultimo, No. 47, respecting the pretensions advanced by the Council of Newfoundland acting in their legislative capacity. As the communications which took place between himself and that body were not designed to surmount any practical difficulty which had actually arisen in the administration of the Government, but rather to obviate certain latent and unavowed claims which it was supposed that the Council were about to advance, I am not convinced that the whole discussion might not with more prudence have been avoided. But when I advert to the Address to Sir Thomas Cochrane of the 16th September last, signed by Mr. Boulton, the chief justice of the colony, on behalf of the Council at large, I do not think that it would be possible, with propriety or safety, to pass unnoticed the principles which that Address either asserts or intimates.

The Council decline to answer the inquiries proposed to them by the Governor, on the ground that a freedom from all interrogations as to the motives of their proceedings, is amongst "the necessary privileges incident to this House as a co-ordinate branch of the Legislature." The Address bears the following subscription, "J. H. Boulton, Speaker." It might perhaps seem frivolous to bestow much or any notice on the designations which the Board of Council thus assume for themselves, and for their President, were it not that those expressions are evidently employed in reference to the inquiries which they decline to answer, and as an indirect assertion of the rights of which they refuse, at the Governor's instance, to enter into any explanation. The context thus gives a significancy to the terms they have employed, which might otherwise be altogether wanting.

In the adoption of this language, as connected with the previous messages, may I presume be discerned the purpose of claiming for the Council, in their relations with the Governor of the colony, the privileges which belong to the upper House of Parliament, in the relation borne by their Lordships to His Majesty. Such an analogy, if not urged beyond those limits within which alone it can properly be maintained, may perhaps be admitted; if carried further, the pretension refutes itself by the consequences it involves.

It may not improbably be conjectured that the constant residence of Mr. Boulton in the province of Upper Canada until his transfer to the Bench of Newfoundland, may have induced that gentleman to form, and that his authority may have led others to adopt, views respecting the constitution of the Council, which, however accurate in reference to the Canadian constitution, are inapplicable to the form of civil government which for nearly two centuries has subsisted in the other Transatlantic possessions of the British Crown. The distinction between the office of the Legislative Councils of the Canadas, and that of the Councils of other colonies possessing General Assemblies, is however of too much importance to be overlooked.

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The Canadian Legislative Councils derive their origin from the constitutional Act of 1791. They were bodies formed in avowed imitation of the House of Peers. Their functions were to be exclusively Legislative, and as the seats were to be holden at least for the life of the members, so also provision was made for rendering their seats hereditary, and for connecting them with hereditary titles of honour. On the other hand, the Councils, as they now exist in Jamaica and the other British West India Islands, originated in Royal Commissions, of which that of the Government of Newfoundland is a literal transcript. These Councils were originally designed to fulfil no other function than that of advising the Governor as to the acceptance of laws passed by the House of Assembly, or upon any other question on which, in his administration of the Government, he might have occasion to consult them. The Governor himself was accustomed, until a period of no remote antiquity, to preside at all their deliberations, those connected with the enactment of laws not excepted. The modern though well established practice is, to observe the distinction between the meetings holden for deliberating on Legislative Acts, and those which are holden to advise the Governor when acting in his executive capacity. Still it is one and the same body performing two distinct duties, and not two distinct bodies, each charged with a separate function. The title of "Legislative Council," assumed by the Council of Newfoundland, is a designation to which they have no legitimate claim. They are simply the Board of Council, and, except by His Majesty's express sanction, the Governor cannot recognize them under any other appellation.

The practical importance of the distinctions to which I have been adverting is very considerable. The Canadian Legislative Councils enjoy, as incident to their peculiar character, the right of regulating by their own votes, whatever relates to their internal economy and proceedings. But at the Council Board at Newfoundland, as with the corresponding bodies in other colonies, there are certain internal regulations which it belongs to His Majesty to establish, and to vary at his pleasure. Thus, the King, by his Commission and Instructions to the Governor, has invariably determined what shall be the number of members, how many shall constitute a quorum, by what means seats shall be vacated, and on what member the precedence shall, on every different contingency, devolve. The claim to the title of "Speaker" which Mr. Boulton advances, is altogether inadmissible. By virtue of his office he is, under the King's Commission and Instructions, President of the Council, and nothing more. If it be really true that he claims to act as Speaker under any form of election, such a pretension is not only unfounded, but wholly at variance with the Parliamentary analogy urged in its support. There is no instance of an elected Speaker of the House of Peers. Again, if it be true that the Council have disregarded His Majesty's Instructions respecting the number requisite to form a quorum, and have established a new regulation for their own government in that respect, such a claim is plainly subversive of their own authority, as contradictory to the instrument on which alone that authority rests.

Should it appear desirable to the Council of Newfoundland that any variation should be made in the Royal Instructions which regulate either the proceedings of the Board, or the number of members constituting a quorum, an address to His Majesty praying that the necessary alterations may be made, is the legitimate mode of proceeding. This course you will not fail to recommend to them, and I shall be prepared to lay it at the foot of the Throne, humbly tendering to His Majesty the advice which circumstances may seem to require.

Amongst the duties of the Council, the punctual transmission of their journals through the Governor to His Majesty, is one of the most indisputable. You will, therefore, on the receipt of this despatch, convene a meeting of the Board of Council, and lay before them this communication, and you will intimate to them that His Majesty will expect a due observance of the instructions to which I have last adverted. You will further convey to them the expression of His Majesty's confident hope that those journals, when transmitted, will show that they have steadily adhered to the limits of their constitutional authority, and that the designations assumed in the address of the 18th of September, both for the Council itself, and for their president Mr. Boulton, were not intended as an affirmation of those claims which Sir T. Cochrane attributed to them, claims which it would be the duty of His Majesty to discountenance

discountenance and oppose, if unfortunately they should at any time be advanced by that body, without their having first obtained His Majesty's express sanction to such changes in the constitution of the colony.

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I have, &c.

(signed) *T. Spring Rice.*

— No. 7. —

No. 7.

(No. 10.)

COPY of a DESPATCH from Governor *Prescott* to the Earl of *Aberdeen*.

My Lord, Government House, Newfoundland, 7 April 1835.
I HAVE the honour to transmit herewith an address which has been presented to me by His Majesty's Council.

I have, &c.

(signed) *H. Prescott.*

Enclosure in No. 7.

Encl. in No. 7.

To His Excellency *Henry Prescott*, Esq., Companion of the most Honourable Military Order of the Bath, Governor, &c. &c. &c.

May it please Your Excellency,

WE, His Majesty's dutiful and loyal subjects the Council of Newfoundland in Parliament assembled, having taken into our consideration the despatch from the Right honourable the Secretary of State, dated the 21st October last, No. 6, which was laid before the Council by your Excellency, deem it a duty which we owe no less to His Majesty than to ourselves as a branch of the legislature of the island, to lay before your Excellency, for the information of His Majesty's Government, the following observations thereon.

The Secretary of State, in his despatch, points out four several instances, in which he states that we have departed from the Royal Instructions, and have exceeded the just limits of our constitutional authority, viz.

In assuming the title of "Legislative," when acting concurrently with the Assembly in legislating for the colony.

In the application of the term "Speaker" instead of that of "President" to our presiding member.

In changing the number of members required to form a quorum from three to five, and

In the refusal to answer, on the requisition of Sir Thomas Cochrane, certain interrogatories as to the motives of our proceedings in some particular instances.

The title "Legislative" was used by the Council in their journals from the first opening of the legislature, and so far from being objected to by the Governor, it was applied by Sir Thomas Cochrane in his first message transmitted to the Council after the opening of the legislature, and the same style was generally used by him in his subsequent messages during his administration of this government.

If, therefore, in the assumption of the title "Legislative" the Royal Instructions have been departed from and the limits of the Council's constitutional authority have been exceeded, we must observe that it was an error into which not only the Council but the Governor also naturally fell from the character of the functions we were called upon to discharge.

In the substitution of the term "Speaker" for "President," the Council was influenced by the circumstance of the former appellation being more parliamentary in its signification than the latter; and certainly by no expectation that the change of title would bring with it rights not before enjoyed; or that the person appointed to preside over their deliberations, under whatever title, could derive his authority from any other source than His Majesty; and we beg leave expressly to disclaim all idea of an election having ever been contemplated by us.

The Council further desire to remark, that as the councillor who would administer the Government in the event of the death or absence of the Governor, would do so under the title of "President," the change of term alluded to might, in such case, avoid confusion.

Without a wish or intention to interfere with the Royal Instructions, the Council, in nominating five as a quorum, followed implicitly the spirit of these Instructions; for while the Council consisted of six members, His Majesty declares that three shall be a quorum; when, therefore, four new members were added to their number, the Council, seeing also that the Governor's Commission requires that all laws are to be enacted by the Governor with the consent of the "major part" of the Council and Assembly, did not consider that they were acting in opposition to His Majesty's directions (as gathered from the Commission and Instructions collectively) when they increased the quorum to five, being one-half of the members now composing the Council.

In speaking of the motives which induced the refusal to reply to the interrogatories put to the Council by Sir Thomas Cochrane, we trust that the character of the individuals

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composing the Council, as well as their general conduct as connected with the Government, will shield them from the least imputation of having acted with any desire to embarrass His Majesty's representative, and we beg to assure your Excellency that we were solely and entirely influenced by a wish to maintain those privileges which we conceive to be essential to our character as an independent branch of the legislature, and which is so indispensably necessary to ensure to us the "public respect," and without which the King's service must unavoidably suffer at our hands.

In a conference with the Assembly, the Council asserted the same right of freedom from interrogation which they afterwards claimed from his Excellency the Governor.

If it be true, in the words of Lord Goderich's despatch (copy of which was laid before the Council by Sir Thomas Cochrane), "That the Council does not assume in the colony a position, or an influence, analogous to that of the House of Peers, because entirely destitute of that hold on public opinion which the property and independence of its members, as well as the antiquity of the institution itself confers on the peerage;" then it is equally certain that to maintain that hold on the public opinion which it is essential the Council should possess they must be free and unshackled in their deliberations, whether these have for their end the government of their own body, as a co-ordinate and independent branch of the Legislature, or the providing for the exigencies of the public service and the internal improvement of the colony.

In thus "claiming for the Council, in their relation with the Governor of the colony, the privileges which belong to the Upper House of Parliament, in the relation borne by their Lordships to His Majesty," we trust we have not urged the analogy beyond those limits within which alone it can properly be maintained;" and while we are most anxious to offer every possible respect to the representative of His Majesty, we look with confidence to His Majesty's Government to support this branch of the legislature in those constitutional privileges which will not be denied to the Assembly.

In Lord Goderich's despatch, alluded to in the Governor's message of the 9th January 1833, and sent to the "Legislative Council" for its consideration, his Lordship observes, "For your own guidance it may be right to observe that colonial Assemblies, as they derive their general form from the model of the British House of Commons, so they have drawn their rules and system of procedure from the same source. The distinctions are, of course, both numerous and important, and grow out of the dissimilarity of the circumstances of the representative bodies of a small colony and of an extensive kingdom; but in general the analogy is maintained, and therefore the laws and rules of Parliament, as modified by the exigencies of the case, may be taken as the safest guide for the conduct of the Council and Assembly, and for your own proceedings towards them. In accordance with the uniform course of precedents, your Commission constitutes a Council, which will participate with the Assembly in the enactment of laws. The acrimony engendered by such disputes has sometimes given occasion to an eager assertion of extreme rights on the part of the Council, and to a no less determined denial of their necessary and constitutional privileges on the part of the Assembly. The effect of the institution, therefore, is too often to induce a collision between the different branches of the Legislature.

From these expressions it is evident that Lord Goderich did not consider the Council a mere board for advising the Governor, but in its legislative capacity a co-ordinate branch of the Legislature, equally responsible to the Government and to the colony for the passing of just and salutary laws; and vested with constitutional privileges, and with a legislative authority to enforce due order and regularity while discharging their public duties.

In taking the "Laws and Rules of Parliament" for their guidance, the Council have followed the suggestions of Lord Goderich, and they now respectfully beg leave to submit for His Majesty's inspection a copy of the Rules which they have adopted for the regulation of their proceedings, humbly soliciting His Most Gracious Majesty to recognize the right of the Council to make rules for the government of their legislative proceedings, in the same manner as the Assembly has ever done.

Unless the Council be considered a co-ordinate branch of the Legislature, invested with powers similar to those exercised by the Assembly, and necessary for the support of their constitutional authority; unless they be protected in the free and independent expression of their opinions, they would soon become obnoxious to the colony, and be indeed what Lord Goderich describes, "Instruments for relieving Governors from the responsibility they ought to have borne for their rejection of measures which have been proposed by the other branch of the Legislature."

(signed) *H. J. Boulton.*

Council Chamber, 30 March 1835.

RULES and REGULATIONS to be observed in the Legislative Council of *Newfoundland.*

1. THE members of the Legislative Council are to sit in the order prescribed by His Majesty.

2. The Speaker, when he speaks to the House, is always to be uncovered, and is not to adjourn the House, or do anything else as mouth of the House, without the consent of the members first had, excepting the ordinary things about Bills which are of course, wherein the members may likewise overrule, as for preferring one Bill before another, and such like. And in case of difference among the members, it is to be put to the question; and if the Speaker will speak to anything particularly, he is to go to his own place as a member.

3. That

3. That immediately after the Speaker shall have taken the chair, the doors shall be closed, and the Journals of the preceding day be always read.

4. That any member may at any time desire the House to be cleared of strangers, and the Speaker shall immediately give directions to execute the order, without debate.

5. When the House is sitting, every member that shall enter is to give and receive salutations from the rest, and not to sit down in his place unless he has made his obeisance.

6. The members in the Upper House are to keep their dignity and order in sitting, as much as may be, and not remove out of their places, without just cause; but when they must needs go across the House, they are to make obeisance to the chair.

7. When any members speak, they address their speech to the rest of the members in general.

8. No member is to speak twice to any Bill at any one time of reading it, or to any other proposition, unless it be to explain himself in some material point of his speech, but no new matter, and that not without leave of the House first obtained. Every member speaks standing and uncovered, and names not the members of the House commonly by their names, but "the member that spoke last," "last but two," &c., or some other note of distinction.

9. That such members as shall make protestations, or enter their dissents to any votes of the House, as they have a right to do, without asking leave of the House, either with or without their reasons, shall cause their protestations or dissents to be entered in the clerk's book on the next sitting day of this House, before the rising of the House, otherwise the same shall not be entered; and shall also sign the same before the rising of the House on the same day.

10. That all orders of the day, which by reason of any adjournment shall not have been proceeded upon, shall be considered only as postponed to the next day on which the House shall sit.

11. To prevent misunderstanding, and for avoiding offensive speeches when matters are debating, either in the House or at committees, it is for honour's sake thought fit, and is so ordered, that all personal, sharp, or taxing speeches be forborne, and that whosoever answereth another man's speech shall apply his answer to the matter without wrong to the person; and as nothing offensive is to be spoken, so nothing is to be ill taken, if the party that speaks it shall presently make a fair exposition or clear denial of the words that might bear any ill construction; and if any offence be given in that kind, as the House itself will be very sensible thereof, so it will censure the offender, and give the party offended a fit reparation and a full satisfaction.

12. That for avoiding all mistakes, unkindness, or other differences, which may grow to quarrels tending to the breach of the peace, if any member shall conceive himself to have received an affront or injury from any other member of the House, either in the Parliament House, or at a committee, or in any of the rooms belonging to the Legislative Council, he shall appeal to the House for his reparation; which if he shall not do, but occasion or entertain quarrels, declining the justice of the House, then the member that shall be found therein offending shall undergo the severe censure of the House.

13. That when a question is under debate, no motion shall be received in the House, unless to amend it, commit it, postpone it to a certain day, or for the order of the day, or to adjourn.

14. That all motions deemed special, two days' notice thereof be given to the House; and any motion (with leave of the House) may be withdrawn at any time before amendment or decision.

15. That no motion prefaced by a written preamble shall be received by this House.

16. That when the question hath been entirely put by the Speaker, no member is to speak upon the question before voting.

17. That after a question is put, and the House hath voted thereon, no member shall depart out of his place until the House hath entered upon some other business.

18. That at votes, the contents do rise in their places, and the non-contents continue to sit; and that the contents and non-contents shall be taken and entered on the minutes at the request of any one member.

19. That the clerk is to enter no order until the Speaker first demand the assent of the House; and the clerk is to read every order first in the House, before it be entered.

20. That each member has a right to require that the question, or motion in discussion, be read for his information, at any time of the debate.

21. To have more freedom of debate, and to facilitate business, committees are appointed, either of the whole House, or of individuals; committees of the whole House sit in the House, but then the Speaker sits not in the chair as Speaker.

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22. That when the House shall be put into a committee of the whole House, the House be not resumed without the unanimous consent of the committee, unless upon a question put by the member who shall be in the chair of such committee.

23. That in a committee of the whole House, the rules of the House shall be observed in so far as they may be applicable, excepting the rule limiting the times of speaking; and that no motion for the previous question, or for adjournment, can be received; but a member may at any time move that the chairman do leave the chair, or report some progress made, and ask leave to sit again.

24. That select committees usually meet in one of the committee-rooms, as the members like. The members of the committee speak to the rest uncovered, but may sit still if they please.

25. Every member to sit in his due place when the House is put into a committee.

26. At any committee, members of the House, though not of the committee, are not excluded from coming in and speaking, but they must not vote; they shall also give place to all that are of the committee, and shall sit behind them.

27. When anything that hath been committed is reported, the members of the committee stand up.

28. No man is to enter at any committee or conference, unless it be such as are commanded to attend, but such as are members of the House, upon pain of being punished severely, with example to others.

29. That no message from the Assembly be received in this House, with a Bill or otherwise, unless the object of it be expressed verbally, as hath hitherto been practised.

30. When notice is given to the House by the Usher of the Black Rod, that a message or deputation is sent by the House of Assembly, they attend until the House is prepared to receive them; We being seated, they are then admitted. On their coming up to the bar, with three obeisances, the Speaker goes down to the bar, and receives their message uncovered; the message is then read and delivered to the Speaker by one of the members of the deputation: on their retiring with three obeisances to the House, the Speaker resumes the chair, and, standing uncovered, reports the message for the information of the members: the House then resumes the business it had before it.

31. None are to speak at a conference with the Lower House but those that be of the committee; and when anything from such conference is reported, all the members of that committee present are to stand up.

32. As it might deeply intrench on the privileges of this House for any member to answer an accusation in the House of Assembly, either in person or by sending his answer in writing, or by his counsel there, upon serious consideration had thereof, and perusal of the precedents in the Upper House of the Imperial Parliament, it is ordered, that no member of this House shall either go down to the House of Assembly, or send his answer in writing, or appear by counsel to answer any accusation there, upon penalty of being committed to the black rod, or to prison, during the pleasure of this House.

33. That no member or officer of this House, without leave of this House, shall, by order of the Assembly, go into that House whilst the House, or any committee of the whole House, is sitting there; or appear before any committee of that House, sitting there or elsewhere.

34. That the members of the Assembly be admitted as auditors of the debate of this House, or any other persons introduced by a member of this House.

35. That it is the right of every member of this House to bring in a Bill, and pray that it may be read.

36. Bills are seldom opposed at the first reading, but are generally committed upon motion at the second reading, at which time the principle is usually debated.

37. That no arguments against the principle of a Bill shall be had or admitted in any committee of the whole House upon such Bill.

38. That no Bill shall be read twice on the same day; that no committee of the whole House shall proceed on any Bill on the same day in which the Bill is committed, unless the House, upon motion, shall see special cause for the common utility to change the same course in any particular instance.

39. That in a committee of the whole House, a member may, at any time previous to a Bill being passed entirely, that is to say, all the clauses, preamble and title of the same, move to have any particular clause thereof, that may have been passed, reconsidered.

40. That to annex any clause or clauses to a Bill of aid or supply, the matter of which is foreign to and different from the matter of the said Bill of aid or supply, is unparliamentary.

41. That

41. That proof that notice of the intention of any person or persons to apply to the Legislature, for its interference respecting any local matter, should be given in the "Royal Gazette" of Newfoundland at least once in each month for six months preceding the session in which such application is to be made.

42. That every petition which is brought up shall lay on the table two days before it is read.

43. That the allegations in every petition for a private Bill, meant to originate in this House, shall be first referred to a select committee, and the matter thereof reported upon before the introduction of any such Bill.

44. That every member who shall introduce a Bill, petition or motion, upon any subject which may be referred to a committee, shall be one of the committee without being named by the House.

45. That when a private Bill is brought from the other House, the principle of which is admitted, this House, by message, may either request a communication of the evidence received in proof of the allegations, or matter whereon the Bill is founded, or the committee of this House to whom it may be referred shall examine the said allegations, and on reporting the Bill, state whether the same or matter thereof be founded, and whether the parties concerned in interest or property therein have given the consents to the satisfaction of the committee.

46. That the foregoing be considered a standing instruction at all committees who shall meet upon private Bills; and further, that they require all persons, whose interest or property they shall consider to be affected thereby, to appear in person before them, to give their consent thereto; and if they cannot personally attend, they may send their consent in writing, which shall be proved to the satisfaction of the committee; and that when any committee shall be appointed on a private Bill, notice thereof shall be set up in the lobby of this House seven days before the meeting of the said committee.

47. That when a Bill originating in this House has once passed through its final stage in this House, no new Bill for the same object can afterwards be originated in this House during the same session.

48. That for the future no motion shall be granted for making any order of this House a standing order, or for dispensing with a standing order, the same day it is made, nor before the members of this House in town shall be summoned to consider of the said motion.

49. That four members, with the Speaker, shall constitute a quorum.

50. That any member of this House being desirous to introduce any Bill, shall be at liberty to call upon the Master in Chancery attendant upon this House to digest and draught the same; who shall be allowed as his fee for the same the sum of three guineas.

— No. 8. —

(No. 8.)

No. 8.

COPY of a DESPATCH from Lord *Glenelg* to Governor *Prescott*.

Sir,

Downing-street, 30 June 1835.

I HAVE received your despatch, dated the 7th April last, No. 10, enclosing an address to yourself from his Majesty's Council in Newfoundland, on the subject of the remarks made on their proceedings by Mr. Spring Rice in his despatch of the 21st October last, No. 6.

The claim of the Council to the possession and exercise of powers analogous to those of the House of Peers of Great Britain and Ireland, raises many wide and abstract questions, which I think it unnecessary and inconvenient to discuss. It is sufficient for the present purpose to say that the Council have now afforded those explanations, to their refusal of which is to be attributed the origin of this debate. No practical question remains, for the decision of which it is necessary to engage in so extensive an inquiry.

The alteration of the quorum from three, the number fixed by his Majesty to four, the number substituted by the Council, is defended on the ground that the Governor is required to make laws with the consent of the majority of that body. But the majority of the quorum, on either supposition, will be less than one-half of the whole number of councillors. Consequently the change is not vindicated by the only argument alleged in its defence. Until the rule established by the King shall be altered by his Majesty's authority, it must be considered as binding and as in full force.

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I am happy to learn, on the authority of the councillors themselves, that Sir T. Cochrane was mistaken in supposing that they had claimed a right to elect their president, and that the title of speaker had been bestowed upon him, as indicating that his authority was derived from that source.

I see, however, no reason why the terms which have been in use for the last two centuries in other British colonies, of which the constitution is founded on Royal commissions, precisely similar to that granted to Sir Thomas Cochrane and yourself, should be abandoned in Newfoundland, nor why the president should be designated by any other title, or the Council described by the adjunct of "Legislative." In all your communications with them you will adhere to the ancient formulary.

The correspondence on this subject has now reached a stage beyond which I do not think it could be advantageously pursued.

I have, &c.
(signed) *Glenelg.*

No. 9.

— No. 9. —

(No. 40.)

COPY of a DESPATCH from Governor *Prescott* to Lord *Glenelg.*

Government House, Newfoundland,
18 August 1835.

My Lord,

IN your Lordship's despatch No. 8, dated 30th of June, it is assumed that the number fixed by the Legislative Council as their quorum is four, but it was intended by their 49th Rule that their speaker with four other members should form a quorum, which would of course be a majority of the whole.

When the Council is again assembled in its legislative capacity, I shall transmit them a copy of your Lordship's letter, as being the best mode of setting the question at rest; but unless otherwise directed, I shall alter the passage relating to that part of the subject as follows, "Until the Rule for the quorum established by the King shall be altered by His Majesty's authority, it must be considered as binding, and as in full force."

I have, &c.
(signed) *H. Prescott.*

No. 10.

— No. 10. —

(No. 61.)

COPY of a DESPATCH from Governor *Prescott* to Lord *Glenelg.*

Government House, St. John's, Newfoundland,
22 November 1837.

My Lord,

I HAVE the honour to enclose an Address to Her Majesty from the Legislative Council, with some documents appended thereto.

This Address* gives a complete history of the dispute which has prevented any Appropriation Act being passed for this year.

The passage relating to discrepancies between the estimate for certain items and the sums voted by the House of Assembly will be best explained by the comparative statement which I have annexed; and that your Lordship may be in full possession of particulars, I also enclose copies of messages and addresses between the House and myself, which led to a vote being made of 2,000*l.* "to liquidate outstanding claims, and to defray prospective deficiencies;" but this sum would still have been inadequate.

I do not concur in the observations of the Council respecting the Road Bill, inasmuch as the large sum voted is not necessarily to be expended within the financial

Appendix, No. 1
to 7.

* Registered 2,153.

No. 8, p. 116.
Nos. 9, 10, 11,
p. 119 to 134.

financial year; and I do not foresee any pecuniary inconvenience from that measure.

I enclose likewise a copy of the Bill of Supply, as sent up by the House of Assembly, and rejected by the Council.

I have, &c.
(signed) *H. Prescott.*

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No. 12.

Enclosure 1, in No. 10.

ADDRESS of the Council of *Newfoundland* to Her Majesty, on the Causes which led to the Encl. 1, in No. 10.
Loss of the Supply Bill during the Session of the Local Legislature in 1837.

To the Queen's Most Excellent Majesty.

May it please Your Majesty,

WE, Your Majesty's most dutiful and loyal subjects, the Council of Newfoundland in our legislative capacity assembled, beg leave to approach Your Majesty with sentiments of the most sincere and affectionate attachment to Your Majesty's person and government, and to express our deep regret that, upon the first occasion of our assembling at the commencement of Your Majesty's auspicious reign, circumstances should have occurred to prevent the granting to Your Majesty by the General Assembly of the island the usual and necessary supplies for carrying on Your Majesty's government in this colony; but we indulge the belief, that when we shall have laid before Your Majesty the causes which have led to this untoward result of our labours during a very protracted session of more than four months, Your Majesty will not regard this branch of the Legislature as unmindful of their duty to Your Majesty in declining to become parties to an appropriation of the public revenue which in our consciences we believe would have been as unjust towards many faithful servants of Your Majesty in Newfoundland, as it would have been detrimental to Your Majesty's just prerogative, and subversive of those principles which are essential to the stability of the mixed form of government so happily established in Your Majesty's realm, and under which the dependencies of the British Crown have hitherto been governed and protected.

Without trespassing beyond those limits which our position as a branch of the Legislature would seem to prescribe to animadvert upon the present constitution of the Assembly, which many persons feared would lead to the results which all deplore, we shall confine ourselves to a succinct statement of the facts with which we have had to deal, and of our reasons for adopting the line of conduct in relation thereto, which our duty to Your Majesty and the true interests of the colony impelled us to pursue.

The General Assembly met for the despatch of business on the 3d day of July last, and has continued in session, without intermission, to the present time, although it was not until the 18th day of October, after having been three months and upwards in session, that the bill appropriating the supplies necessary for defraying the charges of administering the civil government of the colony was sent up to us by the Assembly. Upon being read a first time, it was found, that a measure for granting nearly three-fourths of the current year's revenue for making and repairing roads and bridges, which had been the subject of a former bill, but had been thrown out by us for reasons assigned to the Assembly at a conference upon the subject, was nevertheless tacked to the Supply Bill, in order to coerce the Council into its adoption; that several grants of money to individuals not recommended by the Executive Government, and of the propriety of which we were altogether uninformed, together with an appropriation for alleged contingencies of the Assembly more than double the amount which had been found sufficient upon all former occasions, and a very large share whereof was under various pretences awarded to the members themselves, were also included in this one bill; thus comprising in one general appropriation the entire expenditure proposed for the year. Such a course of proceeding we acquainted the Assembly, at a conference, we could not concur in, as it deprived the Council of all opportunity of separately rejecting such grants as we could not approve of.

On the 21st of October the Assembly sent up a new appropriation for roads, which being more in accordance with what we had represented to the Assembly to be our views upon the subject, although still liable to much objection, was nevertheless passed by us without amendment, the Assembly keeping back the Supply Bill until the Road Bill was passed.

Immediately on a message being sent, acquainting the Assembly that the Council had passed the Road Bill, they sent up a second bill, appropriating money for defraying, it is true, the greater portion of the usual charges for conducting the public service; but while some charges were not provided for, others were introduced which were not required by the Government, and several occasional grants, having no reference to the public service, together with the grant for the contingencies of the Legislature, were still included. We

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again requested a conference, and after reiterating our unalterable determination not to concur in any attempt to tack occasional grants or other sums for alleged contingencies to the usual Bill of Supply, for the reasons already stated, we proceeded to enumerate such of the items in that part of the bill which related to the ordinary charges for administering the government, as we thought objectionable, and to point out the necessity of providing for others which had been altogether omitted.

It has been usual in this colony to designate with great minuteness and particularity the precise objects to which the supplies are to be devoted, so much so, that not even a constable receives any stipend not specifically appropriated. The inconvenience of this extreme particularity is most obvious upon the present occasion, and we humbly conceive, that had a different method been pursued, much of the inconvenience now felt would never have existed.

It is undoubtedly the province of the Executive Government to make such a distribution of the supplies granted under the several heads of public expenditure as shall be most conducive to the efficiency of the public service, and, especially, it should be so in all matters relating to the administration of justice. Upon this principle Parliament proceeded when the reservation was made of a sum for paying the salaries of the Governor, Judges, Attorney-general, and Colonial Secretary, the particular distribution being left to the discretion of the Crown. The Legislature, however, have hitherto acted differently, and the specific stipend to each magistrate and constable for each locality is fixed by the Act appropriating the funds necessary for defraying the charge.

In consequence of this system, the individual filling each of these situations is brought under the notice of the Legislature, and any private pique or other cause of dislike, as well as a wish sometimes to advance the interests of a favourite officer, may, under various pretexts, cause attempts to be made for diminishing, abolishing, or increasing the stipend of these humble functionaries as they come under review. Had the appropriation for defraying the stipends of the constables, for example, been granted in one gross sum, it would have remained with the Government to have distributed it as the public service, and a due regard to the claims of public servants, might require; and had the Assembly been disposed to retrench, such retrenchment would not have been at the expense of any individual officer, but upon the gross amount, so that attacks upon individuals could not thus be effected; and should a desire exist to favour any individual, the opportunity would not be afforded, because any increase would go to augment the general fund applicable to that service, and the Legislature would thus be prevented reaching individuals at all, either for good or evil.

In the Supply Bill now under consideration, and which the Council could not concur in, this system was attempted by the Assembly in a manner most unjustifiable; and we beg most respectfully to refer Your Majesty to the accompanying instructions to our conferees upon the occasion, as well as to the Report of the Select Committee upon the subject.

The persons whose stipends were either withheld or diminished were opposed at the late elections to the candidates returned for their respective districts, while those whose stipends were increased were friendly to their return, and otherwise objects of their favour. If such a course of legislation were once allowed to take root, especially where the administration of justice is concerned, it needs no argument to prove to Your Majesty, that a blind subserviency to the members of the Assembly would shortly supersede devotion to Your Majesty's service. We have therefore felt ourselves constrained to resist firmly at the outset all attempts of this nature, even at the hazard of a temporary suspension of the supplies.

We have also felt it our duty uniformly to resist the tacking to the Supply Bill the appropriation for defraying the contingent expenses of the Legislature; and in no instance since the existence of a Legislative Assembly in this colony has such a method prevailed.

The grant for contingent expenses last year was 984*l.* 9*s.* 3*d.*; this session the Assembly have insisted upon granting to themselves a much larger sum, while the entire grant proposed by them for contingencies has increased to the sum of 2,392*l.* 2*s.* 2*d.*, which we look upon as out of all reason and unnecessary; and, consequently, we have insisted that these grants shall come up as heretofore in a separate measure, that we may, without detriment to other questions, discuss this subject unincumbered by other considerations; and the only object for tacking these grants to the Supply Bill is, to constrain us to acquiesce in them rather than lose the supplies. And we humbly submit to Your Majesty, that nothing can be more unconstitutional than for the Assembly to threaten withholding the supplies for defraying the usual charges of administering the government, because they are not allowed to appropriate a large sum to themselves and to those whom they may think proper to patronize.

If they can appropriate to their own use one sum under pretence of privilege, they can take whatever they please; but the Council are of opinion that they would be guilty of a flagrant breach of their duty to Your Majesty and to the public did they allow themselves to participate in such a manifest impropriety.

Whatever contingent expenses are fairly incurred to advance the legitimate interests of the public, or to remunerate individuals, whether members or other persons, who shall have performed any service demanding a fair compensation, will be most favourably considered by us, with every desire to meet the just expectations of the Assembly; but any appropriations of the public revenue which shall, in our judgment, be manifestly and flagrantly improper,

improper, we feel bound as steadily to resist, as tending directly to sap public integrity, and to draw the people into a belief that all preferment must be sought for by propitiating the Legislature, instead of entitling themselves thereto by an honest discharge of their duty to Your Majesty.

In the neighbouring colonies of Nova Scotia and New Brunswick these difficulties are obviated by the Assemblies sending up the resolutions passed in committee of supply to the Councils for their separate concurrence, which being concurred in by them, are frequently included in bills embracing every variety of grant.

In the Canadas, however, several bills are sent up for separate grants, thus, by either mode, affording the Councils an opportunity of discussing each matter by itself, and either concurring in or rejecting it as they shall be advised. The Assembly in Newfoundland refuse to adopt either course, and insist upon tacking all their favourite grants to the Supply Bill; and we humbly submit to Your Majesty that granting the supplies only upon conditions which they know will not be acceded to, is tantamount to refusing them; and although we regret the temporary inconvenience that some of the public functionaries will suffer from the adherence on the part of the Assembly to what we believe to be a most dangerous policy, yet we are fully persuaded that it is absolutely necessary for the protection of the public against the assumption of authority at once arbitrary and unjust, and which, if allowed to establish itself, will very soon concentrate all power in that branch of the Legislature, to the subversion of the just prerogative of the Crown and the liberties of the people.

Lest Your Majesty should deem the sums of money which have been the subject of our anxious deliberations, too insignificant in themselves to call forth so much earnestness on our part, we humbly beg to acquaint Your Majesty, that the net year's revenue, arising from duties paid into the treasury of the island during the year ending the 5th July last, and disposable by the local legislature, only amounts to the sum of 24,974 *l.* 0 *s.* 6 *d.*, upon which there exists a permanent charge, created by colonial enactments, amounting to 2,520 *l.*, besides some small sums not brought into the calculation, thereby reducing the disposable balance of the year's receipts to 22,454 *l.* 0 *s.* 6 *d.* It is true there is a balance remaining from past years of nearly 6,000 *l.*, and there may be perhaps about 1,000 *l.* arising from licences to sell spirituous liquors, giving at the utmost a disposable revenue for the year, of 29,454 *l.*; of this sum, a bill has already passed, as before observed, appropriating 16,801 *l.* for roads, a sum which we thought was far too much to be applied to such a purpose, as its expenditure would reduce the disposable revenue to 12,653 *l.*; but in deference to the earnest desire of the Assembly, we reluctantly yielded our assent thereto.

When, however, the Supply Bill came up, we found that although it contained an appropriation in the aggregate of 19,068 *l.* 2 *s.*, exceeding the revenue by 6,415 *l.*; yet that provision for some important branches of the public service had been either altogether omitted, or so far diminished as to be totally inadequate to the keeping up the efficiency of the service for which it professed to provide. This was especially observable in the appropriations for defraying the various charges connected with the administration of justice. In these particulars the Assembly has applied retrenchment with a most unsparing hand, while in all matters connected with the patronage which they began to exercise in so remarkable a manner on passing the threshold of their chamber, they have exhibited a prodigality and profusion quite inconsistent with the idea, that a wise economy could have influenced the retrenchments subsequently made with so little regard to the efficiency of the departments into which they were carried, or indeed to their being upheld at all.

We humbly desire to lay before Your Majesty some few details, from whence, among others, we have drawn the foregoing conclusions, and trust that Your Majesty will thence perceive how necessary it has been for Your Majesty's Council to perform with firmness and decision a duty, ungracious, perhaps, in appearance, and exceedingly liable to be misconstrued.

Although the last Session of the Legislature, previous to the new elections, occupied nearly the same period of time during which the present General Assembly have been in Session, and although no less than 17 bills received the Governor's assent, and several others were introduced in either House which were not concurred in, yet the contingencies of the Assembly, including 300 *l.* voted to defray the expenses of members attending from the outports of the island, amounted to no more than 984 *l.* 9 *s.* 3 *d.* an ample sum considering the amount of our revenue, and the business accomplished; while the appropriation made by the Assembly for their contingencies this session, exceeds that amount by the large sum of 1,193 *l.* 13 *s.* 3 *d.* exclusive of a grant of 215 *l.* to indemnify such officers and servants of the Assembly, as had been appointed by the Executive Government, at the organization of the Legislature in 1833, but had been excluded from the performance of their duties to make way for persons appointed by themselves, being an excess over the preceding session of 1,408 *l.* 13 *s.* 3 *d.* to which may be added the sum of 500 *l.* voted to three of their own body as delegates, to proceed to England to "treat" with Your Majesty concerning certain alleged grievances, giving a grand total of 1,908 *l.* 13 *s.* 3 *d.* beyond what was appropriated by the former Assembly for their contingencies, the whole of which sum, if real economy were desired, might, without any detriment to the public service, have been applied to other objects, and we do not hesitate to assert that this lavish appropriation of the public money would be in many respects unjust and worse than useless.

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On the other hand, considerable sums which experience had proved to be absolutely necessary for the service of Your Majesty's Government, have been withheld, notwithstanding detailed estimates exhibiting the expenditure of the previous year were early in the session laid before the Legislature.

In the most important branch of the public service, the administration of justice, the utmost parsimony is exhibited. The sum shown in the estimate as necessary for defraying the expense of civil and criminal prosecutions, usually conducted by the Crown, is 900 *l.* this estimate is predicated upon past experience. The sum granted last year was 600 *l.* which was found insufficient, and the further sum of 274 *l.* 17 *s.* 6 *d.* still remains as an outstanding charge against the Government, and yet the Assembly have still further reduced the grant for this service to the perfectly inadequate sum of 500 *l.*

Last session 460 *l.* were granted to defray the expense of the usual circuits, which was found insufficient, and the excess, 105 *l.* 7 *s.* 11 *d.* was defrayed out of a fund devoted to the discharge of unforeseen contingencies; notwithstanding which the Assembly have still further diminished the grant to 400 *l.* which is found to be quite inadequate to defray the expenses of the circuits from whence the judges have just returned.

Again, under the head of gaol expenses, the grant of 700 *l.* was found little more than sufficient to defray the usual charges for prisoners, and yet without any regard to the exigencies of the service, 300 *l.* alone are appropriated for dietry, clothing, and all incidental expenses for prisoners throughout the island; while it is well known, that previous to the establishment of the new regulations of the Supreme Court for the management of the gaols, the charge for prisoners in the gaol of St. John's alone frequently exceeded that amount in six months.

After a careful consideration of the events of the session, we find ourselves reluctantly brought to the belief, that personal antipathy and private feelings have had much more influence in bringing the Assembly to the conclusions at which they have apparently arrived, than a due regard to the public interests.

Council Chamber, 18 Nov. 1837.

(signed)

H. J. Boulton,
President of Council.

Enclosure 2, in No. 10.

Encl. 2, in No. 10.

THE Council has desired this conference upon the bill sent up from the Assembly, intituled, "An Act for granting to Her Majesty a supply of Money for defraying the Expense of the Civil Government of this Colony, for the Year ending the 30th day of June in the Year of our Lord 1838, and for other purposes," to express their regret that at this late period of the session, the House of Assembly should, so soon after holding a conference upon the same subject, have recurred to the method of blending in one bill the supplies necessary for defraying the ordinary charges of administering the Government, with occasional grants of money for totally different and independent objects, and of mingling the grant for discharging the incidental expenses of the Legislature with either.

Had the Assembly adopted the course pursued in the neighbouring colonies of Nova Scotia and New Brunswick, of sending up the resolutions passed by the Assembly in their committee of supply for the concurrence of the Council, and to which method the Council referred at the late conference on Thursday last, although some objections would still have existed to embracing grants requiring certain peculiar provisions for regulating their expenditure, and might therefore be conveniently made the subject of separate bills, yet the Council would have been happy so far to have met the views of the Assembly, and to have acceded to a course not breaking in upon important principles, and would not have felt it imperative upon them to refuse the bill merely on that account, had the various grants contained in it been previously concurred in by the Council in the manner above referred to; but as the Assembly has not adopted that course, the Council are under the necessity of again acquainting that House that they cannot depart from the constitutional principles laid down by them at their late conference, and that they will not be induced by any considerations of temporary expediency to deviate from them.

The Council does, therefore, insist that this bill shall be limited to "granting to Her Majesty a supply of money for defraying the expense of the civil Government of this colony for the year ending the 30th day of June 1838," and that the grants "for other purposes" be excluded; that the grant for defraying the contingent and other expenses of the Legislature be confined to another bill, and that occasional grants be not inserted in the same bill with either.

These being the principles upon which alone the Council will proceed, they desire to confine their objections to such of the details of the bill as have an exclusive reference to the ordinary supplies, not wishing to extend their observations to matters contained in other parts of the bill until they shall come before them in such a shape as that they can be properly discussed.

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The Council perceive that the appropriation for paying the constable at Ferryland and Bay Bulls is reduced from 25*l.* to 12*l.* in each case, and that the salary of the gaoler at Ferryland is reduced from 25*l.* to 20*l.*; while in St. Mary's, being a place of less importance, the salary of the constable is raised in the same proportion, viz. from 12*l.* to 25*l.*; while one constable at Trinity has been struck off altogether, and the salary of another at Cabalina has been doubled, it being raised from 12*l.* to 24*l.*; and at Greens Pond the constable's salary has been reduced from 15*l.* to 12*l.*; while no appropriation at all is made for paying the salary of the constable at Torbay, one of the larger settlements of the central district.

The Council are of opinion that 12*l.* is a sufficient salary for any of the constables at the smaller settlements and outports; and if a salary were about to be granted, for the first time, to a constable at Bay Bulls or Ferryland, for instance, they would concur with the Assembly in deeming that sum sufficient; but then they could not agree to double that amount being given to constables in places of no greater importance; and therefore they deem it unjust to raise one man's stipend at the expense of the salary paid to another person similarly situated.

The individuals receiving these stipends are, it is true, in an humble station of life, and the amount paid to each is inconsiderable; but they ought not on that account to be treated with a less regard to justice, nor ought their claims to be viewed less favourably than if they had it in their power to advance their own pretensions within the walls of the General Assembly of the island.

The remuneration to the medical attendant of the gaol at St. John's is for the first time separated from the general expenses of that branch of the public service, as well as the stipend to the gaol barber. The salary formerly paid to the surgeon out of the general fund appropriated for gaol expenses, it is true, is continued; but it is coupled with a restriction which would deprive him of another situation, that of district surgeon, with a larger stipend; while the remuneration to the barber is raised from 12*l.* (an allowance quite adequate, and which has been apportioned for years past by the Government) to 15*l.* Such a course of proceeding the Council can never consent to become parties to.

The grant for the support of the poor should, in the opinion of the Council, form the subject of a separate bill, inasmuch as certain provisions ought to be contained in such a measure to guard and regulate the expenditure. The Council are of opinion that the bill should ascertain the persons to whom the money is to be dispensed, by some more definite term than that of "the poor," and it ought not to be left to the discretion of the commissioners to dole out the public funds to such persons as they may think proper to bestow it upon; but that a portion of the sum granted should be defined and set apart for the relief of the aged, sick, infirm and impotent poor.

Enclosure 3, in No. 10.

Encl. 3, in No. 10.

HER Majesty's Council have requested this conference, upon the resolution of the Assembly transmitted to them on Monday last, acquainting that House that "Her Majesty's Council had passed the bill sent up from the Assembly, intituled, 'An Act for granting to Her Majesty certain Monies for the making and repairing of Roads and Bridges in the Colony, and to provide Regulations respecting the same,' with some amendments, to be a violation of the privileges of the House of Assembly," and "that that House cannot recognize a right in Her Majesty's Council to make any amendment in a bill granting monies to Her Majesty," for the purpose of acquainting the Assembly that, while the Council has no disposition to interfere with any privilege claimed by the Assembly, so long as that House shall confine its pretensions within reasonable and convenient bounds, yet as the King's letters patent, from whence the powers of legislation are so recently derived to both Houses, confer no especial privilege upon either, the Council cannot permit a mere assumption of privilege as peculiar to the Assembly to be carried to such lengths as would, if acquiesced in, concentrate all power and authority, in matters connected with supply, in the Assembly; depriving the Council of that wholesome and salutary check upon the proceedings of the Assembly which they possess upon those of the Council.

Although there must obviously be a wide and manifest distinction between the privileges incident to or assumed by the House of Commons, as one branch of the British Parliament, exercising from a period of high antiquity supreme authority over a vast empire, and those which are applicable to a subordinate colonial assembly, recently called into existence by Royal authority, yet the Council will cheerfully acquiesce in the exercise by the Assembly of such a modification of the privileges assumed by the House of Commons as shall reasonably be found to comport with the useful development of their legislative powers. Upon this principle, the Council have no hesitation in admitting that all Bills for the granting or appropriating the public money, or for laying any additional burthen upon the people, should naturally originate in the representative branch of the Legislature; but that no amendment can be made by the Council, even in such parts as do not affect the quantum of the supply to be granted or appropriated, would be extending the claim beyond those limits which the Council conceive may safely be conceded without inconvenience to the public service.

During the short period that the Legislature of Newfoundland has existed, many precedents are to be found of amendments being made by the Council in Money Bills, very

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much to the advancement and protection of the public interests; among others which the Council might cite, they desire to call the attention of the Assembly to the amendments made by the Council to the Bill granting an additional sum of money towards the erection of a lighthouse on Harbour Grace Island; which amendment had for its object a very similar end to that hoped for in the amendments now offered to the Road Bill under consideration, namely, the protecting the colony against a wasteful expenditure of the public money. The Council would likewise advert to the very extensive amendments made by them to the Bill for the relief of sick and disabled seamen, fishermen, and other persons, which, being manifestly useful, were substantially acquiesced in by the Assembly.

If positive assertion on the part of the Assembly were sufficient to constitute a right to exclude the Council from all interference with whatever they might think proper to draw within the verge of their assumed privileges, the Council might, at no distant day, be thrust out of all participation in the deliberative duties assigned them by the same authority which enables the Assembly to make so large a claim upon their forbearance.

Should these pretensions of the Assembly be acquiesced in, that House would soon be in a condition to usurp all executive as well as legislative authority in matters of finance, which one clause of the Bill now under deliberation, to a very considerable extent, has for its object, by appointing all the members of the Assembly members of the several boards of commissioners named in the Bill for the expenditure of about three-fourths of the current year's colonial revenue, which, according to their notion of privilege, no one is to presume to interfere with; a pretension quite inconsistent either with the public good or the independent discharge of the trust reposed in the Council, and one which the Council will never yield to.

The Council entertain very serious doubts of the propriety of devoting so very large a proportion of the year's income to one object; and unless all reasonable means should be taken to guard against a lavish and improvident application of it, they would prefer its remaining in the treasury; and they do consequently insist upon the amendments made by them to the Bill in question.

Enclosure 4, in No. 10.

Encl. 4, in No. 10. Mr. Speaker,

HER Majesty's Council, considering that the extreme period to which the present session has been protracted, renders it necessary that every possible effort should be made to bring the business of the Legislature to a close; and that, to avoid as far as possible the necessity of recurring to further conferences upon the subject of the Appropriation Bill, they have adopted the following Resolutions:

Resolved, that Her Majesty's Council will concur with the Assembly in passing a Bill for granting to Her Majesty a supply of money for defraying the expense of the civil government of this colony, for the year ending the 30th day of June, in the year of our Lord 1838, upon the principles stated by the Council at their conference on Friday last.

Resolved, that Her Majesty's Council will concur with the Assembly in passing a Bill appropriating money to defray the usual contingencies of the Legislature; to wit, the stipends to the clerks and writers employed under them, to the master in chancery and solicitor, the usher and serjeant-at-arms, to the door-keepers and messengers of both Houses; all disbursements for stationery and printing of every description, and tradesmen's bills for work done by order of either House, to be paid to the persons entitled to receive the same by warrant from his Excellency the Governor, upon a certificate of the officer under whose direction the charge shall have been incurred.

Resolved, that Her Majesty's Council will concur with the Assembly in appropriating the sum of 1,500*l.* to the district of St. John's, and the further sum of 1,500*l.* for the other districts, as proposed in the last Supply Bill; to be applied by commissioners to be appointed by his Excellency towards relieving the poor, and any further sum which the Assembly may deem requisite for that purpose; the expenditure to be general throughout each district, and not to be confined to the inhabitants of any particular town or place.

Resolved, that with an earnest desire to meet the wishes of the Assembly, Her Majesty's Council will apply their best consideration to the reasons which may move the Assembly to propose any other grant, so soon as they shall be put in possession of the facts and circumstances inducing the appropriation of such further sums.

Resolved, that the Council will concur in a Bill granting to Her Majesty a sum of money for paying 42*l.* to each member of the Assembly, who shall have attended his duty for that number of days during the session, to be certified by the Speaker.

Enclosure 5, in No. 10.

Encl. 5, in No. 10.

Mr. Speaker,

HER Majesty's Council, considering that the extreme period to which the present session has been protracted, renders it necessary that every possible effort should be made to bring the business of the Legislature to a close; and, that to avoid as far as possible the necessity of recurring to further conferences upon the subject of the Appropriation Bill, they have adopted the following resolutions:

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Resolved, that with an earnest desire to meet the wishes of the Assembly, Her Majesty's Council will apply their best consideration to the reasons which may move the Assembly to propose any other grant, so soon as they shall be put in possession of the facts and circumstances inducing the appropriation of such further sums.

Resolved, that the Council will concur in a Bill, granting to Her Majesty a sum of money for paying 42 *l.* to each member of the Assembly who shall have attended his duty for that number of days during the session, to be certified by the Speaker.

Enclosure 6, in No. 10.

HER Majesty's Council has desired this conference with an earnest desire to preserve that good correspondence with the Assembly which the best interests of the colony require should subsist between all branches of the Legislature, and to offer such reasons as have moved the Council to require that the multifarious matters contained in the Bill sent up by the Assembly, intituled, "An Act for granting to Her Majesty a sum of Money for defraying the Expense of the Civil Government of this Colony, and for other purposes, for the Year ending the 30th day of June, in the Year of our Lord 1838, and for the making and repairing of Roads, Highways, and Bridges in this Colony," should be separated and made the subject of distinct Bills. The Council disagree to the innovation of blending in one Bill the ordinary supplies necessary for defraying the charges of administering the government, with occasional grants of money for totally different and independent objects, and to the mingling the grant for discharging the incidental expenses of the Legislature with either.

The Royal Instructions, no doubt, with a view to the avoiding the inconveniences which must naturally arise from a contrary practice, require that as much as possible each different matter be provided for by a different law, without intermixing in one and the same Act such things as have no proper relation to each other, and especially that no clause be inserted in any Act which shall be foreign to what the title to such Act imports.

Such principles the Council consider as of the highest importance to be rigidly adhered to, as not only essential to the preservation of the rightful authority of each branch of the Legislature, in passing or rejecting of such measures as shall come before them, but also to the prevention of that constant resort which must otherwise be had, on the part of the Council, to amendments in money-bills, embracing every variety of object, which the Assembly assume to be an infringement of their privileges.

Whatever may be the private wishes of individuals, it is to be presumed that public bodies are solely actuated by a desire faithfully to discharge the trust reposed in them; a principle applicable alike to each branch of the Legislature, and consequently every measure should be so brought before them that each matter may be separately considered, and either adopted or rejected without prejudice to any other question.

The Assembly claim the privilege of originating all money-bills, and they deny to the Council the right of altering or amending them. It is not necessary that the Council should either acquiesce in or repudiate these pretensions; but it is of the first importance that they should not allow such claims of privilege, on the part of the Assembly, to break down their

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own undoubted right, freely and without restraint, as a co-ordinate branch of the Legislature, to deal with every subject which may come before them, and not to be coerced into the adoption of a Bill, embracing separate and distinct objects, respecting which they may entertain diverse opinions; and, therefore, if the Assembly are anxious that Bills of Appropriation should not be altered or amended in the Council, but simply passed or rejected in the form in which they come up, they must send them up in such a shape that the Council may, without embarrassment, concur in or dissent from each proposition, otherwise they will feel themselves compelled to make such amendments as they may deem essential, as the occasions shall arise; and if such a course shall be in opposition to claims of privilege set up by the Assembly, the blame will be at their own door, for persevering in a course which the Council have an equal right to dissent from; and they take this opportunity distinctly to acquaint the Assembly that they will not be induced, by any considerations of temporary expediency, to deviate from those principles which they deem of such vital importance to the free exercise of an independent judgment upon every question that shall be brought under their deliberation.

The Council have already rejected a Bill for appropriating nearly three-fourths of the colonial revenue, raised during the year, towards the making and repairing of roads and bridges, because no sufficient provision was made in that Bill for guarding against a wasteful and lavish expenditure of so large a sum; a point which cannot be too scrupulously attended to; and now, with a view to constrain the Council to acquiesce in the views of the Assembly, the same appropriation is tacked to the supplies necessary for carrying on the Government; a proceeding which the Council will steadily resist. If by a perseverance in this method of endeavouring to coerce the Council, any inconvenience shall be experienced on account of the usual supplies not being granted for defraying the charges of administering the Government, the responsibility will not rest with the Council, as they are ready to concur with the Assembly in passing the usual Bill for granting those supplies; and it will not shift that responsibility from the Assembly to the Council, their sending up a Bill granting those supplies, with grants of money for other objects tacked to it, avowedly for the purpose of coercing the Council into the adoption of the measure so tacked to the usual Supply Bill, which they would otherwise reject or desire to see modified.

The best parliamentary precedents deprecate the heaping together in one law a variety of unconnected and discordant subjects, as being unparliamentary. But to do this in cases where it is known that one of the component parts of the Bill will be disagreeable to the Crown or to the Lords, and that if it was sent up alone it would not be agreed to; upon this account, and with a view to secure the Royal assent, or the concurrence of the Lords, to tack it to a Bill of Supply which the exigencies of the State make necessary, is a proceeding highly dangerous and unconstitutional.

In the neighbouring colonies of Nova Scotia and New Brunswick, to which the Assembly have so frequently referred for precedents, which they have urged upon the Council as proper to be followed by the Legislature in this island, all the resolutions passed in committee of supply, upon which their Bills of appropriation are afterwards founded, are constantly sent up to the Council for their concurrence, thereby affording the Council the fullest opportunity of either concurring in or rejecting each proposed grant. Had this course been adopted upon the present occasion by the Assembly, there would not have been such strong objections to embracing all the grants in one Bill, although such a course is not usual in those colonies. In the larger provinces of Upper and Lower Canada, a different mode is used, namely, the appropriating particular grants of money for specific objects in separate Bills; thus preserving the spirit of the constitution, which contemplates the free and unfettered exercise of the judgment in each branch of the Legislature, upon every distinct subject brought under deliberation.

In either House of Parliament it is usual to divide a complicated question, to enable those who are in favour of one part of a proposition, but opposed to another, freely to give their vote upon either, and it would be considered as most unfair to frame a complicated question, with a view to deprive members of that method of recording their sentiments.

For these reasons the Council do insist that the matters embraced in this Bill, which are diverse in their nature, shall be separated, and they will not concur in establishing a precedent, that objects so dissimilar may be put together in one Bill; and more especially upon the present occasion will they resist such an attempt, since the grant for making and repairing roads and bridges has already been rejected by the Council, on account of the provisions contained in the Bill appropriating the same having been deemed insufficient, in the opinion of the Council, for guarding against an improvident expenditure thereof.

Until this constitutional question shall have been definitely determined, it is unnecessary to discuss the sufficiency or inadequacy of any particular items of the appropriation proposed, or the propriety of making some of the grants, or of leaving out others equally proper to be made.

Enclosure 7, in No. 10.

REPORT of a Select Committee of Her Majesty's Council of *Newfoundland*, on the Supply Bill.

Encl. 7, in No. 10.

THE Select Committee appointed to take into consideration the Bill sent up to the Council from the Assembly, intituled, "An Act for granting to Her Majesty a sum of Money for defraying the Expense of the Civil Government of this Colony, for the Year ending the 30th day of June in the Year of our Lord 1838, and for other purposes," and to report their observations thereon, and who were empowered to send for persons and papers, and to receive evidence upon the several points requiring explanation, have, pursuant to the order of the Council, examined the matters to them referred, and have agreed to the following report.

In order to present a clear view of the subject, the Committee have thought it desirable to class in a tabular form the various appropriations proposed by this Bill which require observation, under the following heads, viz. No. 1. Ordinary Charges for the Support of the Civil Government. No. 2. Salaries and Incidental Expenses of the Legislature. No. 3. Miscellaneous Grants. These tables are given in the Appendix.

The Council having upon various occasions, during former sessions, as well as recently during the present, expressed their decided disapproval of the course adopted in this Bill, of tacking to the ordinary supplies grants of money for objects having no relation the one to the other, the Committee have not thought it necessary to pursue a subject which may be regarded as settled by the unanimous decision of the whole Council, more than once expressed; and therefore they have contented themselves with merely extracting grants of this description, and exhibiting them for more ready reference in the Table No. 3; and as the Council have expressed a determination not to enter upon the consideration of occasional grants of money so long as they shall continue to be tacked to the ordinary Supply Bill, the Committee has not felt at liberty to enter into any inquiry respecting the utility, justice, or necessity of any of them. For the same reasons they have forborne to enter into any minute consideration of the causes which have led to the very great increase, which they regret to perceive, in the contingencies of the Assembly, although they cannot avoid noticing the fact, that these contingencies amount in the aggregate to 2,393 *l.* 2*s.* 6*d.* being considerably more than double the sum granted for the like purpose last year.

The Committee also desire to draw the attention of the Council to the fact, that while sums far exceeding those granted heretofore for the like services are specifically appropriated for printing the Journals, and other general printing, for the Members' wages, for stipends to the usual servants of the Assembly, as well as those appointed to new situations not heretofore found necessary, yet, that a sum of 699 *l.* in addition is appropriated for contingencies, and although the Committee have desired to examine the votes of the Assembly, to ascertain what charges are included in this sum, the person who acts as clerk of the Assembly refuses to afford the information required.

The Committee have, therefore, endeavoured to procure information elsewhere upon this point, and although not official, yet they have reason to believe it to be tolerably correct. They have ascertained that notwithstanding 588 *l.* have been openly and specifically appropriated to the Members themselves, yet that a very large sum, about 290 *l.* further, is included in this general sum for the like object; which the Committee cannot but express their strong disapproval of. If the Members wish to apply a larger sum out of the public revenue to their own use, surely it should be openly done, so that the public and the Council, whose concurrence is required, should be able to judge of the propriety of the grant.

They have also reason to believe that 50 *l.* is included in this sum to be paid to one of the members as chairman of some committee; and notwithstanding 160 *l.* is granted specifically to R. J. Parsons, the printer of the Patriot, for general printing, while only 49 *l.* was required for that service from another printer last year, yet the Committee believe the sum of 20 *l.* or more is included in this sum of 699 *l.* for printing the speech of one of the Members.

The Committee have also ascertained, to their entire satisfaction, that much larger sums than were formerly granted to the clerk and serjeant-at-arms are also included in this grant, to be paid to persons acting in those capacities, to the exclusion of the officers appointed by the Crown; and that considerable sums are therein voted to increase the stipends specifically granted in the Bill to their other servants, who have been appointed by themselves. Under these circumstances the Committee would strongly urge the rejection of the entire sum of 699 *l.* Formerly the services designated as contingent were set forth in the Journals of the Assembly, together with the sums for defraying such charge; but now that course is not pursued, and all information upon the subject is denied.

To the distribution, however, of the monies granted for defraying the ordinary charges of the civil expenditure of the Government, the Committee have directed their earnest attention, because they are of opinion that principles of the deepest interest and most serious consequence are involved in the consideration of the changes sought to be effected at the sole suggestion of the representative branch of the Legislature.

By our constitution the sovereign is the fountain of justice, and either directly or indirectly, through the higher order of functionaries, appoint to every office connected with its administration, while the Legislature is charged with providing the funds necessary for defraying the expense incurred by such appointment.

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The responsibility of selecting proper persons to fill stations of trust being vested in the executive branch of the Government, it is necessary that these selections should be made fairly and independently, with a view to the efficient discharge of the duties imposed, for which the executive is again responsible. For these reasons the Committee are of opinion, that the method heretofore and now adopted by the Assembly in this colony, of minutely appropriating the various specific sums composing the aggregate of the charge for conducting each branch of the public service, if not productive of the evil which the Committee are about to bring under the notice of the Council, at least affords the opportunity for effecting it. The Legislature has thought it necessary, from time to time, to provide stipends for magistrates and constables to reside at certain places in the different districts of the island. In making this arrangement care should be taken to keep separate the respective functions of the executive and of the legislature, otherwise the latter will be in a condition, in effect, to usurp the functions of the former. If it be thought necessary that there should be 40 constables, for instance, in the outports, at a salary of 10*l.* each, 400*l.* should be granted in gross to meet the charge; and should the legislature, upon any future occasion, be of opinion that the public revenue could not, with due regard to other branches of the public service, bear so heavy a charge, it might be diminished, without affecting exclusively the interests of any one in particular, leaving it to the executive government to distribute the diminished grant in such a manner as should best preserve the efficiency of the department. The police of London is paid by the Government, but it would scarcely enter into the view of Parliament to regulate the particular stipend of each policeman.

The legislature of Newfoundland, however, acting upon this principle, descends to the minutest distribution, and regulates the precise sum to be paid to each individual; the consequence is, that upon every occasion where the supplies are being voted, each member has passed in review before him the individuals of his neighbourhood who are to receive the most insignificant sums, and an opportunity is thereby afforded of making the person, and not the office, the subject of discussion; and should any constable or other functionary have become obnoxious to the members from his quarter of the country, his stipend is scrutinized with the greatest rigour, and perhaps reduced one half, or withheld altogether, while those who have ingratiated themselves with the same persons have their salaries raised without regard to services.

The Committee have examined several witnesses to ascertain if there were any circumstances which could reasonably warrant the changes set forth in the Table No. 1, but have been able to discover none that would warrant an honourable mind in selecting the instances that are there exhibited as proper cases for especial reduction or augmentation, for abolition or introduction.

The constable of Ferryland is a very reputable man, has been in office more than 20 years, resides in what may be called the county town of the district, where the circuit court is held, and where there is more business transacted than in any other place in the southern district of the island, with the exception, perhaps, of Burin; he has received an excellent character from several respectable persons residing there, but it appears from their statements that he is opposed to the Member representing that district, and his salary is reduced from 25*l.* to 12*l.*

The Assembly have assigned in their reasons offered at a former conference on this subject, as the cause of this reduction, that there are three stipendiary constables added to that shore, in order to facilitate the administration of justice, that his duty is consequently diminished.

In the first place, the Committee are of opinion that such salaries should not be granted by the Legislature until the necessity of the appointment were indicated by the Government; but in these instances it will be obvious upon an examination even of the Table now under consideration, that such inconsiderable places as Cape Broyle, Caplin Bay, and Aquafort, all in the immediate neighbourhood of Ferryland, and containing together a population of only 530 souls, cannot require a constable in each, while the Assembly have withheld the salary of the constable at Torbay, where the population amounts to 758 inhabitants, and is much further from St. John's than either of the other places is from Ferryland; but it appears in evidence, that the constable at Torbay was adverse to the present Members during the former elections.

The salary of the constable of St. Mary's has been raised in the same proportion as that of the constable at Ferryland has been diminished, although by the evidence taken by your Committee it would appear he is by no means an efficient officer, and on one occasion he positively refused to do his duty in aiding the constables sent from St. John's in the government yacht to apprehend some of his immediate neighbours for a riot. The ground alleged by the Assembly for raising this constable's salary, viz. that his duties extended throughout a line of coast of 100 miles in extent, is, within the knowledge of your Committee, quite delusive, as it is well known that none of these constables are sent beyond their own immediate vicinity; and they have ascertained that in fact there is little for him to do.

In the case of the constable at Torbay, the Assembly has not hesitated to place the withholding of his salary upon personal grounds, stating that they would "wish to mark their sense of the impropriety in making choice between two honorary constables of passing by the person longest in office, the most respectable and the best conducted."

The Committee have examined witnesses on this point, and find the statement quite unfounded. There has been but one constable at Torbay the last 10 years.

The salary payable to the second constable at Trinity has been withheld, under circumstances of the most crying injustice; and the Committee have clearly ascertained, by indisputable

indisputable evidence, that there is not the slightest foundation for the statement made by the Assembly, at their last conference on the subject, viz. that he holds the sinecure office of gaoler and lives in the gaol.

At Bonavista there are two stipendiary constables receiving $\text{£}2\text{l. } 10\text{s.}$ each; the salary to one of these is withheld, and the amount conferred on the other without any apparent reason. And it is a fact worthy of observation, that while salaries are voted by the Legislature to the constables residing at three small harbours near Ferryland, before referred to, with a population, in all, of 530 souls, the salaries heretofore payable to three out of five constables at Bonavista, Trinity and Torbay, containing together a population of 3,564 souls, have been withheld.

There is also the same appearance of personal feeling manifested in the arrangements attempted to be made in this Bill, relative to the gaol and district surgeon; Dr. Kielley, who is known to be decidedly opposed to the political conduct of the present members of the Assembly, happens to fill both these situations, and with a view to deprive him of one, a proviso is attached to the grant for paying the gaol surgeon, that he shall not hold the situation of medical attendant upon the poor of the district. If the salaries, instead of being 40*l.* for the gaol and 120*l.* for the district, were such as a professional man could be expected to devote his whole time for, there might be some reason for saying that the two were incompatible, since he could not devote his whole attention to two different employments; but this is not the case; and the situations are not in the least incompatible; therefore he ought not to be removed by Legislative exclusion, without complaint and without hearing. The plan for dividing the district into four wards, the Committee are of opinion might be beneficial to the public, and therefore, however it might interfere, in a certain degree, with the present emolument of Dr. Kielley, they would not recommend any opposition to such an arrangement; but they are decidedly of opinion that the interests of the poor would not be consulted by his entire exclusion.

The injustice of withholding any part of the year's stipend to persons fulfilling public situations at fixed salaries, will be still more apparent, when it is recollected that during the present session, the first quarter's salaries have been granted upon the estimate laid before the Legislature by the Governor, and that the officers have continued up to this time (a further period of four months), to discharge their duties under the expectation of being paid as usual; and therefore, whatever may be the decision of the Legislature as to future years, the honour and faith of the Government is pledged to see these persons paid for the present year, if not for a longer period; but the Committee are decidedly of opinion that the reduction, in any branch of the public service, ought to be in the aggregate amount, and not in the detail, which should be regulated upon the responsibility of the Government, and not made the subject of personal favouritism.

After a patient investigation of the whole matter, and after hearing the testimony of the witnesses called before them upon the several points to which they have been examined, the Committee are of opinion that considerations of a personal nature, growing out of political hostility, have had much more influence in dictating the appropriation of public money to the objects referred to by the Committee, than are consistent with a just and impartial administration of those branches of the public service to which the Committee have thought it material, particularly to draw the attention of the Council; and they are fully convinced that nothing can have a more direct tendency to sap the integrity of subordinate public servants, than the constant dread of having their stipends reduced or withheld, or the perpetual prospect being held out to them of their being increased at the mere motion of a popular body; and therefore they do urge upon the consideration of the Council the necessity of using all proper means to prevent the belief gaining ground that the only road to preferment is through the agency of the members of the Assembly, and more especially in matters connected with the administration of justice. During the progress of this investigation the message sent up to the Council on Monday last, upon the subject of this Bill, has been referred to the committee, wherein the Assembly declare that "they are at a loss to conceive how it would be more calculated to advance the business of the Legislature to a close, to have five new Supply Bills originated in the Assembly," in accordance with the resolutions of the Council therein referred to.

The Committee are of opinion that nothing can be more obvious than that by these means the most important grants would thus be at once concurred in, and that others upon which there might be a difference of opinion, would be brought under the consideration of both branches in such a shape that mutual explanations might conveniently be had upon them, and if, ultimately, the Council and Assembly could not agree upon them, they would be rejected without detriment to other matters. In this message, the Assembly endeavoured to throw the responsibility of not granting the ordinary supplies; of withholding the money for the relief of the poor, whom they represent to be upon the verge of starvation; and of refusing to pay the contingencies of the Legislature, upon the Council; but the most superficial view of the subject will be sufficient to correct an error so obvious, and to place the responsibility where the Committee are convinced it will ultimately rest, if the Assembly persevere in their present course; and especially when the determination of the Council upon this subject was made known to the Assembly so long ago as the 19th day of October last.

The Council in their resolutions have expressed their readiness to concur in passing the ordinary Supply Bill, for discharging those expenses of the Civil Government for which the public faith is pledged; that they will concur in paying the usual contingencies, although far exceeding the amount granted for that purpose in former years, together with the vote

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of 3,000*l.* or more if the Assembly desire it, for the poor; and that they will, contrary indeed to their own sentiments, agree to the members receiving 42*l.* each for their attendance during the Session; but this will not suffice; the Assembly insist upon several further sums very nearly approaching 1,000*l.* being given to themselves under various pretences, and to considerable sums being paid to persons selected by the Assembly, whose services the Council are not informed of; and it is thus that the poor are to be left to misery and starvation, because the members of the Assembly are not permitted by the Council to appropriate to themselves and their adherents, so much of the public money as they think proper to take.

The sums appropriated by the present Bill to be paid to the 14 members themselves, who have taken their seats, amount in the aggregate to upwards of 1,500*l.*; last year they were contented with one-fifth of that sum.

Last year the contingencies, including printing and the stipends to every officer and servant connected with the Assembly, amounted to 984*l.* 9*s.* 3*d.*, whilst this year their contingencies amount to 2,178*l.* 2*s.* 6*d.*, exclusive of 500*l.* appropriated by the Bill to defray the expense of three of their own body, as delegates, to treat with Her Majesty's Government on the subject of the administration of justice and other matters, and also exclusive of 215*l.* to the officers and servants of the Assembly appointed by the Crown, whose services the Assembly have refused to receive, whilst they propose to pay other persons for performing their functions, and so increase the charge upon the public by paying two sets of officers instead of one.

Thus it will be seen that the Assembly propose to increase the public expenditure this year over any preceding year, with reference to themselves and their officers, by the addition of the large sum of 1,908*l.* 10*s.* 9*d.*, and with what advantage to the colony the Committee are at a loss to perceive.

Upon a careful review of the whole subject, the Committee are opinion that since the Assembly have, notwithstanding their knowledge of the Council's determination, persisted in comprising in the same Bill appropriations for every description of expenditure; there is no course left for the Council to adopt, consistent with their sense of a just application of the public money, and of their repeated declarations of the principles upon which they must be governed, than to amend the Bill, by rejecting all such portions of it as they cannot, without further information, conscientiously concur in.

APPENDIX.

(No. 1.)

OFFICE.	PLACE.	Present Salary.	Salaries reduced or Augmented, withheld or originated, by the Assembly.	Number of Inhabitants.	No. of Males from 14 to 60 years of Age.
		£. s. d.	£. s. d.		
Constable	Ferryland -	25 - -	12 - -	507	
Gaoler	Ditto -	25 - -	20 - -	—	
Constable	Bay Bulls -	25 - -	12 - -	609	
Ditto	Renewse -	20 - -	12 - -	601	
Ditto	Greenspond -	15 - -	12 - -	734	
Ditto	St. Mary's -	12 - -	25 - -	441	
Ditto	Catalina -	12 - -	24 - -	523	
Ditto	Bonavista -	12 10 -	25 - -	1553	
Ditto	Ditto -	12 10 -	- - -	- - -	
Ditto	Trinity -	12 - -	- - -	1253	3564
Ditto	Torbay* -	18 - -	- - -	758	
Ditto	Cape Broyle† -	- - -	12 - -	210	200
Ditto	Caplin Bay ‡ -	- - -	12 - -	193	70
Ditto	Aquaforte§ -	- - -	12 - -	127	64
Ditto	St. Lawrence -	- - -	12 - -	232	34
Gaol barber	St. John's -	12 - -	15 - -	—	

* 9 miles from St. John's.

† 6 miles from Ferryland.

‡ Under 3 miles from Ferryland.

§ 3 ½ miles from ditto.

(No. 2.)

OFFICE OR SERVICE.	APPROPRIATION.						
	1836.			1837.			
	£.	s.	d.	£.	s.	d.	
COUNCIL:							
Clerk - - - - -	100	-	-	100	-	-	
Usher - - - - -	50	-	-	50	-	-	
Door-keeper - - - - -	35	-	-	35	-	-	
Contingencies of Clerk - - - - -	112	19	7	196	14	1	
Ditto - - of Usher - - - - -	7	11	11				
Master in Chancery - - - - -	100	-	-	100	-	-	
	£.	405	11	6	481	14	1
ASSEMBLY:							
Speaker; new grant, besides pay as a Member - - - - -				200	-	-	
Clerk - - - - -	100	-	-				
Serjeant-at-Arms - - - - -	50	-	-				
Door-keeper, as usual - - - - -	35	-	-	35	-	-	
Two under-doorkeepers, new offices - - - - -				50	-	-	
Messenger, as usual - - - - -	30	-	-	30	-	-	
Assistant ditto, new office - - - - -				20	-	-	
Reporter, ditto - - - - -				50	-	-	
Newspapers, new charge - - - - -				9	2	6	
Newfoundlander, printing journals - - - - -	130	-	-	160	-	-	
R. J. Parsons, proprietor Patriot, general printing - - - - -	49	-	-	160	-	-	
Contingencies - - - - -	190	9	3	699	-	-	
Fourteen members, at 42 l. each - - - - -	300	-	-	588	-	-	
Solicitor - - - - -	100	-	-	100	-	-	
Witnesses examined respecting the conduct of J. Stark, J. P. - - - - -				57	-	-	
Messenger to Harbor Grace, to summon them - - - - -				20	-	-	
	£.	984	9	3	2,178	2	6
Towards compensating Clerk, Serjeant-at-Arms, Door-keeper, and Mes- senger of the Assembly, appointed by the Crown - - - - -				215	-	-	
				£.	2,393	2	6

(No. 3.)

[A] To the representatives of the late Wm. Phipard, in full for all claims on the colony - - - - -	£.	s.	d.
	40	-	-
[A] To Thomas Morton, late a constable in St. John's, for loss of office - - - - -	35	-	-
Towards defraying the expense of a geological survey of the island - - - - -	350	-	-
Towards supporting a grammar school at Carbonear, for three years, each year - - - - -	100	-	-
Towards defraying the expense of three delegates, appointed by the House of Assembly, to treat with Her Majesty's Government in London on the subject of the administration of justice, the agriculture, the fisheries, and the general state of the colony - - - - -	500	-	-
John Efford, (compensation for pulling down his store at Port-de-Grave) - - - - -	20	-	-
James Doyle, (maintaining an orphan from March 1832 to June 1837) - - - - -	36	19	6
James King, (building a bridge over Salmon Cove River) - - - - -	30	-	-
Dr. Walsh, (small pox attendance under board of health) - - - - -	25	-	-
Catherine Walsh, (sending lunatic to Ireland) - - - - -	10	-	-
Mrs. Mulloy, (supporting her husband, Dr. Mulloy, a lunatic) - - - - -	30	-	-
James M'Donald, Harbor Grace, (supporting a deserted child) - - - - -	15	-	-
Robert Tremlett, (supporting and sending to St. John's a blind pauper) - - - - -	15	-	-
Captain Pearl, (conveying petitions) - - - - -	50	-	-

[A] Of these persons, Phipard was high constable, at a salary of 100 l. a year, but withheld by the Legislature, the man being too old and infirm to do his duty; while Morton, a petty constable, was dismissed for misconduct; and yet the estate of the former, after his death, is granted 40 l. for two years' back pay, while the latter gets a year's pay voted at once.

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Enclosure 8, in No. 10.

Encl. 8, in No. 10. STATEMENT (laid before House of Assembly) of Outstanding Claims on the Colonial Government.

ITEMS OF EXPENDITURE.	AMOUNT.			—		
	£.	s.	d.	£.	s.	d.
Printing, stationery, &c. - - - - -	247	4	5			
Prosecutions - - - - -	274	17	6			
Coroners - - - - -	26	16	-			
Fuel and light - - - - -	7	9	9			
Postage and incidentals - - - - -	1	1	7			
Repairs of Gaols - - - - -	53	17	11			
Relief of the poor - - - - -	400	17	5			
Fog-guns - - - - -	88	1	-			
				1,100	5	7
Attorney-general, witnesses - - - - -				90	-	-
				1,190	5	7

COMPARATIVE STATEMENT of Sums estimated for the undermentioned branches of the Public Service (as laid before the House of Assembly by the Governor) and of the Sums voted to defray the same.

ITEMS.	ESTIMATE.			SUM VOTED.		
	£.	s.	d.	£.	s.	d.
Printing, &c. - - - - -	550	-	-	350	-	-
Coroners - - - - -	150	-	-	120	-	-
Fuel and light - - - - -	300	-	-	200	-	-
Repairs of court-houses - - - - -	180	-	-	100	-	-
Postages and incidentals - - - - -	120	-	-	60	-	-
Prosecutions - - - - -	900	-	-	500	-	-
Gaol expenses - - - - -	700	-	-	352	-	-
Circuits - - - - -	560	-	-	400	-	-
Contingencies - - - - -	500	-	-	100	-	-
Fog-guns - - - - -	250	-	-	nil.		
	4,210	-	-	2,182	-	-
	2,182	-	-			
Deficiency - - - - -	2,028	-	-			
Add amount of outstanding claims as above - - - - -	1,190	5	7			
Leaves totally unprovided for - - - - -	3,218	5	7			

Enclosure 9, in No. 10.

Enclosure 9, in
No. 10.THE governor, in the financial statement laid before the House of Assembly at the commencement of the present session, represented that there were outstanding claims upon the Government of 1,100 *l.*, under the following heads.

	£.	s.	d.
Printing, stationery, &c. - - - - -	247	4	5
Civil and criminal prosecutions - - - - -	274	17	6
Coroners - - - - -	26	16	-
Fuel and light - - - - -	7	9	9
Postages and incidentals - - - - -	1	1	7
Repairs of gaols - - - - -	53	17	6
Relief of the poor - - - - -	400	17	5
Firing fog-guns - - - - -	88	1	-

And

And other demands on the Government have at later periods been laid before the House, for which, with the exception of one item, that of fog-guns, no provision seems to have been made.

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His Excellency also forwarded an estimate of the sums requisite for the service of the current year, between which sums and those in the Bill passed by the House of Assembly there appear the following discrepancies.

	ESTIMATE.			SUM VOTED.		
	£.	s.	d.	£.	s.	d.
Printing, &c.	550	-	-	350	-	-
Coroners	150	-	-	120	-	-
Fuel and light	300	-	-	200	-	-
Repairs of court-houses	180	-	-	100	-	-
Postages and incidentals	120	-	-	60	-	-
Civil and criminal prosecutions	900	-	-	500	-	-
Gaol expenses	700	-	-	352	-	-*
Circuits	560	-	-	400	-	-
Contingencies	500	-	-	100	-	-
Fog-guns	250	-	-	nothing.		

* Including surgeon and barber.

The estimate was based upon the experience of former years, and if considered erroneous or excessive, his Excellency would have been and will still be happy to supply any information requested which he may possess upon the subject.

Should the debts continue unpaid, and the sums voted under certain heads be allowed to remain manifestly inadequate to the expense of the current year, not only will the dignity of the Government be injuriously compromised, but the public service must be suspended in some of its most important branches.

With respect to the amount of a vote of credit for unforeseen contingencies, the governor has only to remark that it seems requisite to combine with due caution as to its amount, a consideration of the difficulties in the way of assembling the legislature, arising from the climate and other circumstances, should any emergency call for a sudden and unexpected expenditure.

Government-House, 19 October 1837.

Enclosure 10, in No. 10.

TO His Excellency *Henry Prescott*, Esq., c. b., Governor, &c. &c.

Encl. 10, in No. 10.

May it please your Excellency,

THE House of Assembly, with reference to your Excellency's message on the subject of certain claims upon the Government, and of the estimates for the present year, respectfully inform your Excellency that, in their votes of monies for the service of the current year, they were actuated by a sincere desire to support the dignity of Government, and to give effect to all the necessary branches of the public service, and at the same time to keep the civil and judicial expenditure within those limits of economy which would enable the Assembly to devote as much as possible of the colonial revenues to the permanent improvement of the colony.

That, in the course of their examination of the public accounts, so far as they have been laid before the House of Assembly, they found that various charges had been paid or allowed exceeding greatly charges of a similar character in former years, and that some charges, of a novel description, had crept into the public accounts, which the House of Assembly did not deem it proper to recognize.

That, while the dietary of the prisoners in gaols had been reduced to the lowest scale on which perhaps human nature can in a climate like this exist, a corresponding reduction had not taken place in the gaol expenses; that, under the head of civil and criminal prosecutions, a number of costs and charges have been introduced, with which, waiving any question as to the propriety of prosecuting at all in many of the cases, the public purse under any circumstances ought not to be burthened; for neither in the parent country, nor in the other colonies in general, does the Government defray the expenses of prosecuting for common assaults and other petty misdemeanors; such expenses are either paid by the parties prosecuting, or form a subject for adjudication by the courts before which they may be tried

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With reference to the charges for fuel and light, for public buildings, and printing and stationery, it was discovered that a considerable portion of the former was consumed by the sheriff in his dwelling-house, and a not very trifling part of the expense of the latter incurred in the sheriff's office; and the House of Assembly, conceiving such appropriations to be without precedent elsewhere, and a useless expenditure of public money, made commensurate reductions in the respective votes.

The House of Assembly further beg to intimate to your Excellency, that the sums voted for circuits, and for civil and criminal prosecutions, are of the same amount as the sums voted for similar purposes in 1834, and that the sum voted for printing, &c. exceeds the sum voted last year; and as regards the estimate of charge for firing fog-guns, as it seems to be a general opinion that such expense may be saved without inconvenience, now that two light-houses are established near the port of St. John's, the House of Assembly respectfully request that your Excellency will be pleased to give directions to have the practice of firing fog-guns discontinued.

On a reference to the outstanding claims on the Government, to which your Excellency adverts, the amount charged for repairs of gaols appearing to be principally composed of a charge for the interior fitting up of the sheriff's dwelling-house, and for stoves for the sheriff, the House of Assembly cannot in anyway recognize such charges for the sheriff's house as payable out of the public revenue; nor can they admit the charges of stationery and printing for the sheriff's office, included in the public stationery and printing account, as chargeable upon that fund, and the House of Assembly must firmly dissent from any application of the public monies to either purpose.

Although the House of Assembly have, after a dispassionate consideration of the various estimates and public accounts submitted to them, arrived at the conclusion that considerable reductions might still be made, with advantage to the public, in several branches of the contingent expenses of the Government and courts of justice, yet, influenced by an earnest desire to relieve your Excellency from any embarrassment respecting any fair claims now subsisting against the Government, and to make up any necessary deficiency which may arise in any of the supplies of the present session, the House of Assembly, in order to enable your Excellency to meet these objects, have resolved to place at the disposal of your Excellency a further sum of 2,000 *l.*

(signed) *Wm. Carson*, Speaker.

Encl. 11. in No. 10.

Enclosure 11, in No. 10.

Gentlemen,

As I am in the highest degree unwilling to enter into anything like a controversial discussion with the House of Assembly, I shall abstain from observation on various parts of this Address, and content myself with stating, that the estimates for the current year were prepared with care and attention; they were generally founded upon past experience, and in some particulars, upon prospective increase of expense, in consequence of recent legislative enactments.

I have always been and shall ever be ready to afford The House all the information in my power respecting accounts, and it is my wish to practise as strict an economy as the public exigencies will permit.

With respect to the fog-guns, as they are only fired by day and not by night, they are not rendered less important or necessary by the establishment of light-houses.

Great mischief may arise from their being discontinued, since vessels, relying on the correct computation of their latitude, run boldly for the port in the thickest weather, assured that the warning gun will give them timely notice of their approach to the shore.

I would, therefore, venture to recommend a further consideration of this subject, so important to our commercial interests and to human life.

Government House, 26 October 1837.

Enclosure 12, in No. 10.

Encl. 12, in No. 10.

AN ACT for granting to Her Majesty a Supply of Money for defraying the Expense of the Civil Government of this Colony, for the Year ending the 30th day of June, in the Year of our Lord 1838, and for other Purposes.

May it please Your Excellency,

WE, Her Majesty's dutiful and loyal subjects the Commons of Her Majesty's Island of Newfoundland, have freely and voluntarily resolved to give and grant to Her Majesty a supply to defray certain charges for the support of the Civil Government of the colony, the administration of justice, and the contingent expenses of the Legislature; and do humbly beseech your Excellency that it may be enacted, and—

Be it therefore enacted by the Governor, Council, and Assembly of Newfoundland, that from and out of such monies as from time to time shall be and remain in the hands of the treasurer of this island, and unappropriated, there shall be granted to Her Majesty, her heirs and successors, the sum of 19,068*l.* 2*s.*, which said sum shall be applied in payment of the following charges for the year commencing on the 1st day of July 1837, and ending on the 30th day of June 1838 inclusive, and for the other purposes as hereinafter expressed; that is to say:—

	£.	s.	d.
Towards defraying the salary of the clerk of Her Majesty's Council	200	—	—
Towards defraying the salaries of two clerks in the Secretary's office	400	—	—
Towards defraying salaries of an office-keeper and messenger in Secretary's office	105	—	—
Towards defraying the salary of the clerk of the Northern Circuit Court	200	—	—
Towards defraying the salary of the clerk of the Southern Circuit Court	200	—	—
Towards defraying the salary of the crier and tipstaff of the Supreme Court	60	—	—
Towards defraying the salary of the gaoler of St. John's	50	—	—
Towards defraying the salary of one police magistrate for the district of St. John's	250	—	—
Towards defraying the salary of a second police magistrate for the district of St. John's	250	—	—
Towards defraying the salary of the high constable of the district of St. John's	80	—	—
Towards defraying the salaries of six police constables in the district of St. John's, at the rate of 45 <i>l.</i> each	270	—	—
Towards defraying the salary, office-rent, and all contingencies of the Colonial Treasurer	400	—	—
Towards defraying the salary of one police magistrate at Harbour Grace	150	—	—
Towards defraying the salary of one police magistrate at Twillingate and Fogo	100	—	—
Towards defraying the salaries of three police constables at Harbour Grace; being 35 <i>l.</i> for the high constable, and 25 <i>l.</i> for each of the other two	85	—	—
Towards defraying the salary of the gaoler at Harbour Grace	50	—	—
Towards defraying the salary of one stipendiary magistrate at Carbonear	120	—	—
Towards defraying the salaries of three police constables at Carbonear; being 25 <i>l.</i> each	75	—	—
Towards defraying the salary of one stipendiary magistrate at Brigus	120	—	—
Towards defraying the salary of a constable at Brigus, and the salary of a constable at Port-de-Grave; being 25 <i>l.</i> each	50	—	—
A further sum of 372 <i>l.</i> towards defraying the salaries of gaolers and constables in the following outports; that is to say:—			
A constable at Bay-de-Verds	12	—	—
A constable at Harbour Main	12	—	—
A constable at Cat's Cove	12	—	—
A constable at Western Bay	12	—	—
A constable on the south shore	12	—	—
A constable at Ferryland	12	—	—
A constable at Bay of Bulls	12	—	—
A constable at Toad's Cove	12	—	—
A constable at Cape Broyle	12	—	—
A constable at Caplin Bay	12	—	—
A constable at Aquafort	12	—	—
A constable at Fermuse	12	—	—
A constable at Renew's	12	—	—
A constable at Placentia	25	—	—
A constable at Little Placentia	12	—	—
A constable at Barren Islands	12	—	—
A constable at Merasheen	12	—	—

NEWFOUND-
LAND.

	£.	s.	d.
A constable at Burin	25	-	-
A constable at Saint Lawrence	12	-	-
A constable at Lameline	12	-	-
A constable at Saint Mary's	25	-	-
A constable at Trepassey	12	-	-
A constable at Harbour Britain	12	-	-
A constable at Grand Bank	12	-	-
A gaoler at Ferryland	20	-	-
A gaoler at Placentia	25	-	-
Towards defraying the salary of a stipendiary magistrate at Bay of Bulls	100	-	-
Towards defraying the salary of a stipendiary magistrate at Ferryland	100	-	-
Towards defraying the salary of a stipendiary magistrate at Placentia	100	-	-
Towards defraying the salary of a stipendiary magistrate at Burin	100	-	-
Towards defraying the salary of the stipendiary magistrate at St. Mary's	100	-	-
Towards defraying the salary of the stipendiary magistrate at Harbour Britain	100	-	-
Towards defraying the salary of the stipendiary magistrate at Trinity	120	-	-
Towards defraying the salaries of a gaoler and constable in certain outports; that is to say, a gaoler at Trinity, 25 <i>l.</i> ; one constable at Trinity, 25 <i>l.</i> ; a constable at Catalina, 24 <i>l.</i>	74	-	-
Towards defraying the salary of a stipendiary magistrate at Bonavista	100	-	-
Towards defraying the salaries of constables in the following outports; that is to say:			
A constable at Bonavista	£. 25	-	-
A constable at Greenspond	12	-	-
Three constables at Twillingate and Fogo	49	-	-
A constable at Exploits Bay	12	-	-
A constable at Brigus South	12	-	-
A constable at Witless Bay	12	-	-
A constable at Petty Harbour	20	-	-
A constable at Old Perlican	12	-	-
A constable at Heart's Content	12	-	-
A constable at Hant's Harbour	12	-	-
A constable at New Harbour	12	-	-
	190	-	-
For defraying the Attorney-general's fees, and in lieu thereof	250	-	-
Towards defraying the deficiency arising from an error in the Government estimate of the salaries of six police constables at St. John's, for the quarter ending 30th June 1837	22	10	-
To defray the expense of civil and judicial printing and stationery, exclusive of the sheriff's office	350	-	-
Towards defraying the expense of civil and criminal prosecutions	500	-	-
To defray the dietary, clothing, washing, &c., and for other incidental expenses for prisoners throughout the island	300	-	-
Towards defraying the expenses of the ordinary repairs of court-houses and gaols	100	-	-
To defray the expenses of coroners	120	-	-
To defray the expenses of fuel and light for public buildings, exclusive of the sheriff's house and offices	200	-	-
To defray the salary of the medical attendant of the gaol of St. John's, provided that the medical attendant of the gaol shall not hold the appointment of district surgeon or medical attendant of the poor of the district of St. John's	40	-	-
To defray the salary of the barber of the gaol of St. John's	15	-	-
Towards defraying the salary of the medical attendant of the gaol at Harbour Grace	20	-	-
Towards defraying the expenses of postage, &c.	60	-	-
Towards defraying the expenses of the hiring of vessels, and covering all the other expenses of the judges on the usual circuits	400	-	-
Towards compensating James Blaikie, Esq., for the loss of income produced by the Act for the amalgamation of the office of clerk of the Central Circuit Court with that of the clerk of the Supreme Court, for the year ending 30th June 1838	100	-	-
Towards defraying the expense of removing rocks and obstructions in Quidi Vidi Harbour, to be expended under the same superintendence as last year	200	-	-
Towards defraying the expenses of unforeseen contingencies for the year ending 30th June 1838	100	-	-
As additional remuneration to William Goff, for taking census of St. John's	15	-	-
As additional remuneration to Michael Hayes for taking census of Conception Bay	15	-	-

	£.	s.	d.	NEWFOUND- LAND.
Towards compensating John Efford for his store and stage, containing craft and other property, cut down by order of the magistrates, to save the harbour of Port-de-Grave from being burnt on the night of the 5th January 1837	20	-	-	
Towards compensating James Doyle, of Carbonear, for maintaining an orphan child since March 1832 to 30th June 1837	36	19	6	
Towards defraying the expenses of erecting a grand jury room in Harbour Grace	50	-	-	
Towards remunerating John King for having erected a commodious and useful bridge over Salmon Cove River	30	-	-	
Towards remunerating Dr. Walsh, of Carbonear, for services performed professionally under the board of health during the prevalence of small pox	25	-	-	
As a retiring allowance to John Buckingham, of Carbonear, Esq., in consideration of his past services as a stipendiary magistrate in Conception Bay	60	-	-	
To defray the expenses of a special messenger, and of witnesses examined at the bar of the House of Assembly in the following manner, that is to say: To Thomas Ridley, James Bayly, James L. Prendergast, James Sharp, John Jacob, the representatives of the late James Hippisley, Robert J. Pinsent, William Stirling, Alfred Mayne, and John Fennell, each 5 l.; Thomas Byrne, 1 l.; Thomas Byrne, road-surveyor, 6 l.	57	-	-	
Special messenger	20	-	-	
	77	-	-	
Towards relieving the poor of the outports of this island for the year ending June 30, 1838, provided that the same shall be disbursed by Boards of Commissioners, to be appointed by his Excellency the Governor in the several electoral districts; and the particulars of such disbursements shall be returned to his Excellency half-yearly, in detail, which returns shall be published in some public newspaper in St. John's; and provided further that the said sum shall be appropriated in manner following: that is to say, for the district of Conception Bay, 600 l.; that is to say, to be expended in Carbonear, 200 l.; Harbour Grace, 200 l.; and in Brigus, 200 l.; St. Mary's and Placentia, 150 l.; Trinity, 150 l.: that is to say, 75 l. to be expended at Trinity harbour, and 75 l. at Hants harbour; Burin, 150 l.; Ferryland, 150 l.; Bonavista, 150 l.; Fogo and Twillingate, 150 l.	1,500	-	-	
Towards relieving the poor of the district of St. John's for the same period, provided that the same shall be disbursed by a Board of Commissioners to be appointed by his Excellency the Governor, and the particulars of such disbursements shall be returned to his Excellency half-yearly, in detail; which returns shall be published in some public newspaper in St. John's. And provided further, that his Excellency the Governor be empowered to nominate and appoint four medical practitioners resident within the district, to act as, and be the district surgeons, or medical attendants, of the district of St. John's; and to deduct the sum of 120 l. from the said sum towards defraying the salaries of the four district surgeons of St. John's, being the sum of 30 l. for each for the same period; and a further sum of 40 l. towards the purchase of medicines to be dispensed in the town of St. John's, and that there be called for, by public notice, tenders for the supply and dispensing such medicines, and the lowest tender shall be preferred; and that a further sum of 50 l. be placed at the disposal of the Indigent Sick Society	1,500	-	-	
Towards compensating Matthew Stevenson, late clerk of the peace at Harbour Grace, for the loss of his office	40	-	-	
Towards compensating George Hipplesley, for services performed by him as assayer of weights and measures	15	-	-	
Towards remunerating Thomas Williams, assayer of weights and measures for the district of St. John's, for his services and expenditure as such assayer	50	-	-	
Towards defraying the salary of the stipendiary magistrate at Grand Bank	100	-	-	
Towards compensating Catherine Walsh, of Brigus, for paying the passage of a lunatic to Ireland	10	-	-	
Towards supporting Johanna Armstrong, widow of William Armstrong, late marshal of the Supreme Court	50	-	-	
To defray an addition to the salary of John Howson, office-keeper in the secretary's office	15	-	-	
To the representatives of the late William Phippard, in full for all claims on this colony	40	-	-	
To Johanna Mulloy, wife of Dr. Mulloy, of Harbour Grace, for the support of her husband, being a lunatic	30	-	-	

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	£.	s.	d.
Towards remunerating the chairman of the Central Board of Commissioners of Roads, under Act 6 Will. 4, c. 15, for his services - - -	100	-	-
Towards compensating William Martin, for his past services as high constable of Conception Bay - - - - -	26	-	-
To defray the expenses of the general election of 1837, as follows:—			
Expenses incurred for the election at St. John's, 56 <i>l.</i> 9 <i>s.</i> 7 <i>d.</i> ; returning-officer, 25 <i>l.</i> ; poll-clerk, 10 <i>l.</i> Expenses incurred at Fortune Bay, 1 <i>l.</i> 14 <i>s.</i> 8 <i>d.</i> ; returning-officer, 25 <i>l.</i> ; poll-clerk, 10 <i>l.</i> Expenses incurred at Burin, 14 <i>l.</i> 10 <i>s.</i> 4 <i>d.</i> ; returning-officer, 25 <i>l.</i> ; poll-clerk, 10 <i>l.</i> Expenses incurred at Placentia and St. Mary's, 9 <i>l.</i> 10 <i>s.</i> 8 <i>d.</i> ; returning-officer, 25 <i>l.</i> ; poll-clerk, 10 <i>l.</i> Expenses incurred at Ferryland, returning-officer, 25 <i>l.</i> ; poll-clerk, 10 <i>l.</i> Expenses incurred at Conception Bay, 37 <i>l.</i> 12 <i>s.</i> 8 <i>d.</i> ; returning-officer, 25 <i>l.</i> ; poll-clerk, 10 <i>l.</i> Expenses incurred at Trinity Bay, 1 <i>l.</i> 4 <i>s.</i> ; returning-officer, 25 <i>l.</i> ; poll-clerk, 10 <i>l.</i> Expenses incurred at Bonavista, 3 <i>l.</i> 8 <i>s.</i> 8 <i>d.</i> ; returning-officer, 25 <i>l.</i> ; poll-clerk, 10 <i>l.</i> Expenses incurred at Fogo, 13 <i>l.</i> ; returning-officer, 25 <i>l.</i> ; poll-clerk, 10 <i>l.</i> - - - - -	452	10	7
Towards defraying the salary of the clerk of Her Majesty's Council for the present session - - - - -	100	-	-
Towards defraying the salary of the Master in Chancery attending Her Majesty's Council for the present session - - - - -	100	-	-
Towards defraying the salary of the usher of the black rod - - - - -	50	-	-
Towards defraying the salary of the door-keeper of Her Majesty's Council - - - - -	35	-	-
To the clerk of Her Majesty's Council, to defray the contingent expenses of Her Majesty's Council during the present session - - - - -	196	14	1
Towards defraying the salary of the Honourable the Speaker of the House of Assembly - - - - -	200	-	-
Towards defraying salary of Solicitor of the House of Assembly for the present session - - - - -	100	-	-
To the door-keeper of the House of Assembly for his services during the present session - - - - -	35	-	-
To two under door-keepers of the House of Assembly for their services during the present session, at 25 <i>l.</i> each - - - - -	50	-	-
To the messenger of the House of Assembly for his services during the present session - - - - -	30	-	-
To the assistant messenger of the House of Assembly for his services during the present session - - - - -	20	-	-
To the reporter of the House of Assembly for his services in reporting, &c. of the House of Assembly during the present session - - - - -	50	-	-
To the librarian of the Legislature for her services - - - - -	15	-	-
To the treasurer of this colony for procuring copies of certain public accounts - - - - -	15	-	-
For arrears due to John Shea for printing journals of House of Assembly last session - - - - -	56	16	3
Towards discharging the arrears of expense of firing fog guns from the 1st July 1836 to the 31st December 1836 - - - - -	88	1	-
Towards defraying the expenses under the following general heads, for the quarter ending June 30th 1837, being one-fourth of the several sums voted for those purposes, as hereinbefore mentioned, that is to say: civil and judicial printing, 87 <i>l.</i> 10 <i>s.</i> ; criminal prosecutions, 125 <i>l.</i> ; expenses of prisoners, 75 <i>l.</i> ; repairs of gaols and court-houses, 25 <i>l.</i> ; coroners, 30 <i>l.</i> ; fuel and light, 50 <i>l.</i> ; medical attendant at gaol of St. John's, 10 <i>l.</i> ; ditto at Harbour Grace gaol, 5 <i>l.</i> ; barber at gaol of St. John's, 3 <i>l.</i> 15 <i>s.</i> ; postages, 15 <i>l.</i> ; contingencies, 25 <i>l.</i> ; and also to the poor of St. John's, a further sum of 250 <i>l.</i> ; and to the poor of Outports, 250 <i>l.</i> - - - - -	951	5	-
Towards defraying the expense of a geological survey of this island - - - - -	350	-	-
Towards defraying the fees of the Solicitor-general - - - - -	92	17	-
Towards remunerating James M'Donald, of Harbour Grace, for supporting a deserted child (Thomas Fanning) - - - - -	15	-	-
Towards remunerating Robert Tremlett, of Twillingate, for supporting and transmitting to St. John's a blind pauper - - - - -	15	7	6
To the Hon. the Speaker of the House of Assembly, to defray the expenses of newspapers for the House of Assembly; that is to say, the Patriot newspaper, 1 <i>l.</i> 5 <i>s.</i> ; Royal Gazette, 1 <i>l.</i> 1 <i>s.</i> ; Public Ledger, 1 <i>l.</i> 11 <i>s.</i> 6 <i>d.</i> ; Newfoundlander, 1 <i>l.</i> 1 <i>s.</i> ; Times, 1 <i>l.</i> 1 <i>s.</i> ; Mercury, 1 <i>l.</i> 1 <i>s.</i> ; Star, 1 <i>l.</i> 1 <i>s.</i> ; Sentinel, 1 <i>l.</i> 1 <i>s.</i> - - - - -	9	2	6
Towards compensating Stephen J. Daniel, late of Carbonear, for services performed as assayer of weights and measures - - - - -	15	-	-

	£.	s.	d.	NEWFOUND- LAND.
Towards defraying the charges of registering voters, as follows:—In the district of St. John's, Thomas O'Connor, 2 <i>l.</i> 5 <i>s.</i> ; Robert Holden, 8 <i>l.</i> ; James Finlay, 10 <i>l.</i> ; John M'Lennan, 2 <i>l.</i> 6 <i>s.</i> 1 <i>d.</i> ; John Torr, 1 <i>l.</i> 14 <i>s.</i> 7 <i>d.</i> ; John Freeman, 1 <i>l.</i> 14 <i>s.</i> 7 <i>d.</i> ; William Heaney, 1 <i>l.</i> 14 <i>s.</i> 7 <i>d.</i> ; Thomas Morton, 1 <i>l.</i> 14 <i>s.</i> 7 <i>d.</i> ; Henry Winton, stationery, 9 <i>l.</i> 13 <i>s.</i> 3 <i>d.</i> In Conception Bay: Thomas Danson, 7 <i>l.</i> 7 <i>s.</i> ; John Buckingham, 2 <i>l.</i> 2 <i>s.</i> ; William Stirling, 8 <i>l.</i> 8 <i>s.</i> ; Richard Rankin, 8 <i>l.</i> 8 <i>s.</i> ; James Sharp, 5 <i>l.</i> 5 <i>s.</i> ; Benjamin Rowe, 3 <i>l.</i> 11 <i>s.</i> ; Daniel Bearn, 4 <i>l.</i> 10 <i>s.</i> ; John Barres, 3 <i>l.</i> ; Thomas Butler, 4 <i>l.</i> 10 <i>s.</i> ; William Smith, 2 <i>l.</i> 10 <i>s.</i> ; Robert Connell, 2 <i>l.</i> 10 <i>s.</i> ; William Mullooney, 2 <i>l.</i> 10 <i>s.</i> In Trinity Bay, John Reagan, 8 <i>l.</i> ; James, constable (for 1835), 13 <i>s.</i> 4 <i>d.</i> ; John Collins (1835), 1 <i>l.</i> 6 <i>s.</i> 8 <i>d.</i> ; Martin Ady (1835), 2 <i>l.</i> ; John Randell (1835), 2 <i>l.</i> ; William James, constable, 1 <i>l.</i> ; Thomas Green, for boat-hire, 2 <i>l.</i> 10 <i>s.</i> ; Charles Granger, 2 <i>l.</i> 10 <i>s.</i> ; Benjamin Sweetland, 5 <i>l.</i> In Bonavista Bay, Samson Mifflin, 7 <i>l.</i> 10 <i>s.</i> ; J. L. Oakley, 7 <i>l.</i> 10 <i>s.</i> ; James Allen (1835), 5 <i>l.</i> In Ferryland, William Traynor, 4 <i>l.</i> ; William Sweetland (1835), 3 <i>l.</i> 3 <i>s.</i>	145	16	7	
Towards defraying extra expenditure of James Wiseman, in enumerating the census in Trinity Bay	15	—	—	
To the honourable the Speaker of the House of Assembly, to defray the contingent expenses of the House of Assembly during the present session	699	—	—	
To defray the expenses and remuneration of J. B. Bearn, as assayer of weights and measures at Brigus and Port de Grave, in Conception Bay	15	—	—	
Towards compensating the clerk, serjeant-at-arms, doorkeeper and messenger appointed by the Crown to the House of Assembly; that is to say, Edward Mortimer Archibald, Esq., 100 <i>l.</i> ; Elias Rendell, 50 <i>l.</i> ; John Stephenson, 35 <i>l.</i> ; William Kelly, 30 <i>l.</i>	215	—	—	
To the proprietors of the Newfoundlander, towards defraying the expense of printing the Journals of the House of Assembly for the present session	160	—	—	
To Richard Perchard, housekeeper of the Legislature	10	—	—	
Towards paying the representatives of the following districts, 1 <i>l.</i> per diem each, for 42 days' attendance during the present session; that is to say, the Members for the districts of St. John's, Conception Bay, Bonavista Bay, Trinity Bay, Fogo, Ferryland, Placentia, and St. Mary's and Burin; such sums to be paid on the certificate of the Speaker	588	—	—	
To Robert John Parsons, to defray the expenses of the general printing of the House of Assembly	160	—	—	
Towards defraying the expenses of Captain Pearl, Royal Navy, incurred in conveying petitions to His late Majesty's Government, praying the establishment of a Local Legislature	50	—	—	
Towards defraying the expenses incurred by Thomas Chancey in the fitting up the sessions house of Carbonear	11	2	—	
In addition to the salary of the chairman of the sessions for the district of St. John's	100	—	—	
Towards compensating Thomas Morton for past services	35	—	—	
To the clerk of the peace of Harbour Grace	18	—	—	
For three years from 8th May 1838, towards supporting a grammar school at Carbonear, under the direction of the following board of directors, that is to say, Robert Pack, John Walsh, M.D., William B. Bemister, and Felix M'Carthy	100	—	—	
Towards defraying the expenses of three delegates appointed by the House of Assembly, to treat with Her Majesty's Government in London on the subject of the administration of justice, the agriculture, the fisheries, and the general state of the colony	500	—	—	
To his Excellency the Governor, towards liquidating outstanding claims on the executive, and to meet prospective deficiencies	2,000	—	—	
To remunerate the two clerks in the secretary's office for extra labour arising from the present session having been protracted to a period of four months	50	—	—	

And be it further enacted, that the sums of money hereby granted shall be paid by the treasurer of the colony, in discharge of such warrant or warrants as shall be issued by the Governor, or person administering the government of the colony for the time being, in favour of any person or persons, to be applied to the purposes of this Act; and that it shall not be lawful for the said treasurer to pay any sum or sums of money out of the treasury of the colony, other than such as are expressed and directed in this or some other Act or Acts of the Legislature of this colony.

NEWFOUND-
LAND.

— No. 11. —

(No. 169.)

No. 11.

COPY of a DESPATCH from Lord *Glenelg* to Governor *Prescott*.

Sir,

Downing-street, 1 February 1838.

I HAVE had the honour to lay before The Queen the address from the Council of Newfoundland, in their legislative capacity, which was enclosed in your despatch, No. 61, of the 22d November 1837, on the subject of the questions controverted between that body and the House of General Assembly during the last Session, and I have received Her Majesty's commands to return the following answer.

The Queen deeply regrets the inconvenience to which Her faithful subjects in Newfoundland will be exposed by the loss of the Bill of Supply for the current year, and regards with lively concern the jealousies between the two branches of the local Legislature which led to that unfortunate result. The Queen, however, indulges the hope that Her mediation will be accepted by both the parties to this discussion, and that it will be effectual for re-establishing a good understanding between them, especially as their conflicting claims appear to originate rather in a mutual misapprehension than in any deeper and more settled cause.

The constitution of the Legislature of Newfoundland is avowedly modelled on that of the Imperial Legislature. With regard to money grants, however, a distinction prevails. In the House of Commons no grant of money can be initiated except by the Crown. This rule, practically, does not exist in the House of Assembly, nor, indeed, in the Houses of Assembly of the British Provinces on the continent in North America. In the latter a substitute has been devised, not less effectual in its operation, and more consonant with the general spirit of the provincial constitution. It consists in the practice of either granting the supplies for the year by a series of Bills, each of which is in turn sent up to the Council for acceptance, or in granting the supplies by separate resolutions, in each of which successively the concurrence of the Council is obtained before it is included in the general Appropriation Act. In this respect the Assemblies are subject to a restriction from which the House of Commons is exempt, a restriction which has still in view the same object, that of affording to the people a security against the misuse of that high trust which the constitution commits to their representatives.

If the Assembly should establish and exercise the double right of deciding without intervention of the Crown, first, on the amount of the public expenditure, and secondly, on the specific objects to which it should be applied; and if the only practical check on this power should consist in the right to reject all the votes of the Session collectively, it is plain that a system would be introduced unknown either in the mother country or in the British North American Provinces; and it is equally plain that such a system would be attended with very grave inconvenience. Besides other evil consequences, it would reduce the Council and the Governor to the dilemma of making, with a view to place, concessions disapproved by their deliberate judgment, or of acting on that judgment to the derangement for 12 months of the whole internal economy of the local Government.

Her Majesty is therefore of opinion that the House of Assembly would exercise a sound and enlightened judgment in acquiescing, either in the parliamentary rule which leaves to the Crown the first suggestion of all money grants, or in the rule of the provincial Legislatures, which brings every such grant under the separate revision of the Council; otherwise, the extreme right on the one side, must be encountered by a right equally extreme on the other side, and the contests between the two Houses of Local Legislature must be pursued at the expense of the people.

But although there can be no doubt that the Council should exercise freely and fearlessly the right of rejecting an Appropriation Act, it does not therefore follow that a judicious use was made of this right on the present occasion. Her Majesty having been appealed to by the Council, desires to express, though with every feeling of respect for the Council, a different opinion.

The

The Appropriation Bill appears to have been rejected by the Council because various important services were provided for inadequately; because the supply was voted in such very minute detail as to bring under the revision of the Assembly the case of each public officer, not excepting those who filled the most humble and obscure places; and because the sums voted for contingencies were considered as an unjustifiable diversion of the public revenue from its proper objects to the personal advantage of the individual members of the House of Assembly. However much the deficiency of the supply, or the extreme minuteness of the appropriation might justly be regretted, these circumstances do not seem to afford any valid reason for the rejection of the Bill. The third reason indeed involves so grave an imputation, that it is difficult even to discuss it without touching on the deference due to the Representative Assembly of Newfoundland. Such an imputation, it is clear, ought not to be cast without the utmost caution, and on the clearest proof. It is of course not to be admitted merely on inference and conjecture; nor does the amount of money involved in the question warrant such a conclusion. Considering also that such an unworthy abuse of the most sacred and honourable public trust could hardly fail to be visited with the censure of society at large, the Council might, it should seem, safely refer the offending parties to the tribunal of public opinion, with a reasonable security that at no distant time it would be expressed in unequivocal terms even against those who for the moment might appear to enjoy the most unbounded popularity. If it were necessary to believe that such abuses had been really practised, it might well be doubted whether the authors of them would not derive impunity and encouragement from the public favour so readily bestowed on those who are engaged in a contest, of which popular franchises are at least the invariable pretext. The case therefore ought to be exceedingly clear and strong, which would justify the rejection of a Bill of Supply on the ground of selfish misappropriation of the public money by the House of Assembly.

During a session of four months continuance the sums appropriated under the head of contingencies amounted to 2,393*l.* 6*s.* 3*d.*, a sum considerable, it is true, when compared with the expenditure for other branches of the public service, and probably admitting of some retrenchment in future years; but not so large as to justify the very serious reproach cast on the Assembly, of lavishly voting, for their own benefit as individuals, money which ought to have been applied for the good of the public collectively. The practice of claiming a remuneration for serving on the Assembly, or at least an indemnity against the expenses of such service, cannot reasonably be condemned; it is sanctioned by many precedents, and by many considerations of great weight. In the very delicate office of assessing the amount of their own remuneration, there can hardly be a doubt that the members of the House of Assembly will, on consideration, see the propriety of leaving to the Council a control of the most unfettered kind, and will admit that this is a branch of the public expenditure over which it is emphatically needful that a constitutional jealousy should be exercised.

Adverting to the whole of this subject, The Queen commands me to signify through you to the Council Her Majesty's opinion that, if a Bill of Supply and Appropriation, substantially corresponding with the present, should again be sent up by the House of Assembly, it ought not to be rejected on the grounds assigned by the Council for the rejection of the present Bill.

I have, &c.
(signed) *Glenelg.*

— No. 12. —

No. 12.

EXTRACT of a DESPATCH from Governor *Prescott* to Lord *Glenelg*; dated Newfoundland, 9 December 1837.

I HAVE the honour to enclose an Address to Her Majesty from the House of Assembly of the Island of Newfoundland.

NEWFOUND-
LAND.

Enclosure in No. 12.

Encl. in No. 12. To the Queen's Most Excellent Majesty:—The humble Address of the House of Representatives of the Island of Newfoundland, in General Assembly convened.

May it please your Majesty,

WE, your Majesty's most faithful subjects, the Commons of Newfoundland, in General Assembly convened, most reverently and respectfully approach your most gracious Majesty's throne, and with sentiments of the deepest and most sincere attachment beg leave to offer the humble tribute of our heartfelt sympathy for your Majesty's bereavement, and the national affliction, on the occasion of the departure from this world of our late beloved sovereign, your Majesty's uncle, of glorious and happy memory.

Under the mild and beneficent administration of that great and good monarch, the genius of liberty and reform spread her influence over the land, and wherever she smiled contentment and happiness were awakened, because Government became impartial, and justice accessible to all the people; the fetters fell from the feet of the captive, and he lifted up his hands, unmanacled, in thanksgiving, pouring benedictions upon his royal benefactor. While the encouragement of commerce and industry bespoke a solicitude for national prosperity, the mitigation of the severity of the penal code testified an inherent love of the truly royal attribute of mercy, and the tranquillization of Ireland was commemorative of a love of justice calculated to endear his memory to the latest posterity.

But while your Majesty's loyal subjects of Newfoundland concur in this universal sentiment of grateful remembrance of favours poured upon other countries under the dominion of Britain, their gratitude is particularly called forth by his late Majesty's attention to the interest of this colony, manifested in his graciously according the blessing of self-legislation to a people whose distance from the seat of Government rendered a local legislature necessary to promote their prosperity, and that feeling is peculiarly enhanced by the last act of his Majesty's life, as connected with this island; the opening the prison gates upon electors unjustly condemned to loss of liberty because they had dared to use their franchise freely.

The principal institutions of Newfoundland are young—her courts of justice and her legislature; and they particularly need your Majesty's fostering care to guide them through the difficulties naturally surrounding infant establishments, and your Majesty's people in this distant but important colony therefore hail the commencement of your most august Majesty's reign as bearing auspicious promise of improvement.

Most gracious Queen, permit your Majesty's faithful Commons of Newfoundland to bear to your Majesty their ardent felicitations on your Majesty's happy accession to the throne of your forefathers, and to express an humble but sincere prayer that your Majesty may be destined to bring to maturity all those great measures of improvement which owed their inception to your Majesty's royal predecessors, and to ratify all the fond hopes of your people by a long, a happy, and an illustrious reign.

House of Assembly,
16 October 1837.

(signed) *Will. Carson,*
Speaker.

No. 13.

— No. 13. —

(No. 167.)

COPY of a DESPATCH from Lord *Glenelg* to Governor *Prescott*.

Sir,

Downing-street, 6 January 1838.

I HAVE had the honour to lay before The Queen the address from the House of Assembly of Newfoundland, dated the 16th of October, and enclosed in your despatch, No. 67, of the 9th December last; and I have received Her Majesty's commands to instruct you to inform the House of Assembly that Her Majesty has received with much satisfaction the assurances contained in their address of the attachment of that House to Her person and Government, and to the constitution under which they live; and that the House may be assured that Her Majesty will at all times be ready to co-operate with them in promoting the welfare of that ancient and valuable possession of the British Crown.

I have, &c.
(signed) *Glenelg.*

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