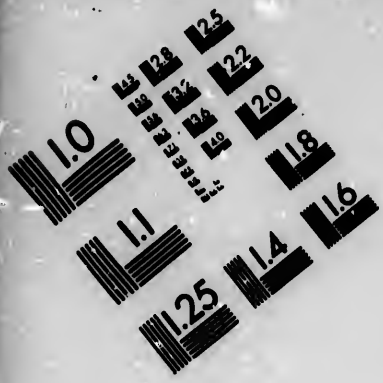

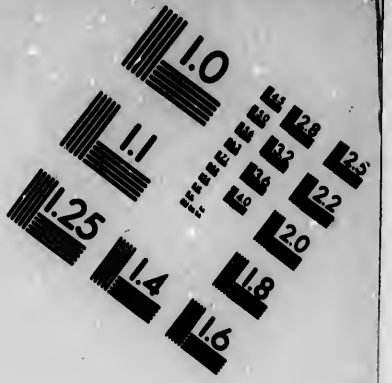

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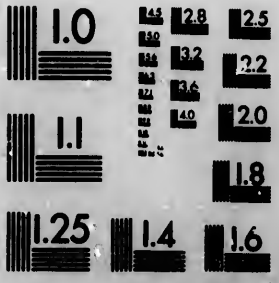

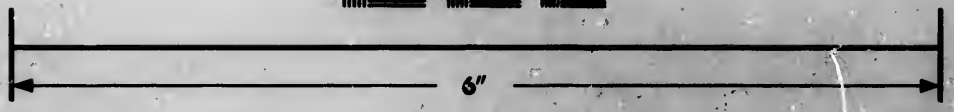

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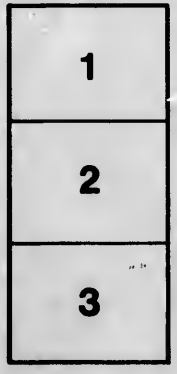

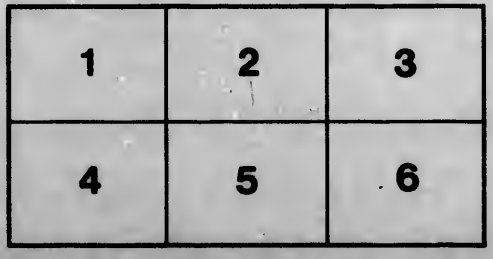

John Neilson Esq
Quebec, with Mr Robert F. Maitland's
Compliments
London 1st April 1838
No 2.

A FEW WORDS

ON THE SUBJECT OF

CANADA.

BY

A BARRISTER. named Charles Clark, who lately wrote a Book on Colonial Law

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" It seems to be the obligation of a general law which affects all these disputes between a popular assembly on the one hand, and the executive on the other, and the course of proceeding which generally takes place strongly impresses this lesson, that popular assemblies are hardly ever wrong in the beginning, and hardly ever right at the conclusion, of these struggles."—LORD JOHN RUSSELL.

LONDON:

LONGMAN, REES, ORME, BROWN, GREEN, & LONGMAN,

PATERNOSTER-ROW.

1837.

LONDON:
WILSON & SON, PRINTERS,
57, Skinner Street.

CANADA.

My object in the following pages has been to endeavour to set right some prejudices which, if not now corrected, may be productive of very mischievous consequences, both to Canada and to England. They may be so to Canada, because improper demands, improperly persevered in, must meet with a refusal; and there are few things more bitter than the disappointment of exaggerated hopes. Defeated in their attainment, the mind that has conceived them has nothing on which to repose for consolation. It cannot look around for sympathy, for others, not directly interested with itself, will see in its disappointment only a just and necessary consequence of its inordinate demands. Enemies will rejoice, friends can hardly sorrow, in its defeat; and it may deem itself fortunate if the effort it has made to gain too much does not produce a reaction to its own disadvantage, by making the concession even of its legitimate demands come rather as a favour generously bestowed, than as an acknowledged right justly conferred. To England these prejudices may be mischievous, because, by encouraging the belief that this great nation is acting unfairly and unjustly to one of its colonies, the moral cha-

racter, and consequently the moral force, of its government, may be shaken; and its own people, ever alive to the contest between the spirit of liberty and slavery—of right and wrong—of justice and injustice—may require for others, what, for their own sakes, it would not be prudent or proper to yield; and may, under a mistaken impression of the fact, be the first to proclaim to the world that their own government is undeserving of their respect and confidence. It will be to me a very great satisfaction if I can in any way prevent the occurrence of such consequences. I come to the task with an impartial and conciliatory spirit. I should wish to be able to point out to the Canadians where they ought to stop; to the King's Ministers and to Parliament, to what point they ought to advance. That in the following pages I shall be inclined less to advocate the claims of the House of Assembly of Lower Canada, than to approve of the recent conduct of the English Government, must not be taken as a proof that I am one of that class now disadvantageously known by the epithet of Obstructives. I am, and always have been, a Liberal in principle; and had I seen the Government unwilling to yield what is just, I should have been among the first to condemn such an unwise resistance.

The question—What must be done with Canada? is now forced upon the attention of the country and the Government. It is no longer a matter for inquiry and investigation, but for decision. The

House of Assembly has refused the supplies, and left the Government of this country, after three years of doubt and indecision, in the predicament of paying the officers of the Government of Lower Canada either from the taxes levied upon the people here, or from the revenues, which, after many generous concessions, still belong, in that Province, to the Crown. Of course the former of these alternatives is out of the question. The House of Assembly demands (see Mr. Roebuck's speech), first, "that the Legislative Council shall be elective; thus making it responsible to the people, and depriving it of that reckless and mischievous character which now distinguishes it. The House of Assembly next proposes to repeal the Canada Tenures Act, and the act creating a Land Company; because such acts interfere with their internal government. And lastly, the House of Assembly requires that the revenues of the Province should be subjected to the control of the Provincial Legislature."

It will be the object of this pamphlet to show that these demands are all, more or less, founded on misconception, and that some of them cannot be granted while Great Britain affects to hold, with regard to Lower Canada, the relation of a superior and protecting state. In order properly to understand the question, it may be necessary first to sum up, in a brief manner, the constitutional history of Canada.

The country on the south-west of the St. Law-

rence, was first discovered by Sebastian Cabot, holding a commission from Henry VII. of England. The English, however, did not make any use of the discovery, but the French began to fish for cod, on the banks of Newfoundland and along the coast of Canada, early in the sixteenth century. The territory now known by the name of Canada, was, until 1759, in the possession of France. Quebec was built about 1605, and in 1629 Canada was conquered by the English; but was then held in little estimation, and was returned to the French within three years afterwards. In 1759 it was again conquered by General Wolfe, and the articles of the capitulation expressly declared that the inhabitants should be considered as British subjects, and their laws, and the free exercise of their religion, were guaranteed to them*. By the treaty of Paris, signed on the 17th of February, 1763, Canada, with all its dependencies, and all the rights of the French Crown over it, was ceded to Great Britain. By the 4th Section of that treaty†, "His

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* The effect of this stipulation should not be mistaken. It never has been taken to mean that the laws of a conquered territory are to be unchangeable: such a meaning would be absurd in itself, and the practice founded on it would be injurious to all parties concerned; for then no laws could be altered to suit the altered condition of the colony in any respect. It means (as stated by Lord Mansfield, in Campbell *v.* Hall, Cowper's Reports, 204) "that the laws of a conquered country continue in force until they are altered by the conqueror."

† Collection of Treatises, vol. ii. p. 275.

Britannic Majesty agreed to grant the liberty of the Catholic religion to the inhabitants of Canada," and to allow them the fullest means of withdrawing, if they so pleased, to any of the dominions of the Crown of France, within a space of time specified in the treaty. On the 7th of April, in the same year, the King issued a proclamation, establishing the English civil and criminal law, and the laws of the Admiralty, in Canada. The trial by jury was to be employed in both civil and criminal cases. In 1774, some of the old French laws were, by the Stat. 14 Geo. III. c. 83, re-established. This act was unfortunately worded in so general a manner, that the Habeas Corpus Act and Trial by Jury were both abolished by it; but these great political advantages were shortly afterwards restored. The Act declared, that "in all matters of controversy relative to property and civil rights, resort shall be had to the laws of Canada, as the rule for the decision of the same." It had, however, this proviso, —that it should not make the laws of Canada affect lands then or thereafter granted in free and common soccage. This act established a legislative council for the government of the Province. In 1791, the act (31 Geo. III. c. 31) was passed for dividing the Province into two parts, to be called Upper and Lower Canada, and for conferring on both representative governments. It may not be amiss to give an outline of its most important sections, some of which seem to be entirely forgotten,

or singularly misapprehended, in the discussions now going on.

The 31 Geo. III. c. 31, by s. 1, repeals so much of the 14 Geo. III. c. 83, as relates to the legislative power of the Council of Quebec. Sec. 2 constitutes the Legislative Council and Assembly. Sec. 6 declares that his Majesty may annex to hereditary titles of honour of such Province, the hereditary right of being summoned to its Legislative Council. This provision of the statute has never been acted on: the reason may probably be guessed, from the answers to the Committee in 1828; from the majority of which, it appears that there are few men of large and long-possessed property in the Province.

By Sect. 33, all laws, statutes, and ordinances, in force on the day of the commencement of this act, shall, unless repealed by this act, continue in force, subject to be hereafter repealed.

By Sect. 36, the Governor may be authorized by the King to make allotments for the support of a Protestant clergy.

By Sect. 43, future grants of lands in Upper Canada shall be in free and common soccage; in Lower Canada they may be so, if required, "subject to such alterations with respect to the nature and consequences of such tenure of free and common soccage, as may be established by any laws which may be made by his Majesty, with the advice, &c. of the Legislative Council and Assembly of the Province."

Sect. 46 recites the 18 Geo. III. c. 12 (the Act disclaiming the exercise of the power of the Parliament to levy internal taxes on the Colonies), and declares, that for the general benefit of the British Empire, it is necessary that the power of regulation of commerce should continue to be exercised by his Majesty and the Parliament of Great Britain, subject, nevertheless, to the condition in the recited Act with respect to the application of any dues which may be imposed for that purpose. It then enacts, "that nothing in this Act contained shall extend or be construed to extend, to prevent or affect, the execution of any law which hath been or shall at any time be made by his Majesty and the Parliament of Great Britain, for establishing regulations or prohibitions, or for imposing, levying, or collecting duties for the regulation of navigation, or for the regulation of the commerce to be carried on between the said two provinces, or between either of them and any other part of his Majesty's dominions, or between either of them and any foreign country or state, or for appointing and directing the payment of drawbacks of such duties so imposed, or to give to his Majesty any power or authority by and with the advice and consent of such Legislative Councils and Assemblies, to vary or repeal any such laws, or any part thereof, or in any manner to prevent or obstruct the execution thereof." This is the Act now referred to by the House of Assembly as the constitution of the Colony.

It had been the wish of the English Government

to abolish the feudal tenures of land in the province of Lower Canada, and to introduce the freehold tenures of England in their stead. Grants of land upon the freehold tenure had been made, and it was with a view to protect them that the provisions of the 9th section of the 14 Geo. III. c. 83 (already referred to) had been introduced. The landed gentry of the lower province were, however, opposed to the change of tenure, affecting, as it did, at once their income and their power; and as soon as they obtained the authority which the new constitution gave them, they returned to the system of feudal tenures, such as it had existed before the conquest. On the other hand, one of the earliest acts of the province of Upper Canada was to adopt the English system of tenures. To this question of the tenures especial attention will be presently directed; for upon this appears to be based the strong spirit of opposition made by the Lower Canadian Assembly to the English Government, and on this are certainly founded the demands of the Assembly as to the repeal of the Canada Tenures Act, and of the North American Land Company's Act. Upon the question of the tenures, the Assembly would probably have had but few supporters, and would certainly have encountered very many and very strong and zealous opponents; and had that matter stood alone, the Ministers would have had but little trouble on the subject of the government of Lower Canada. But, unhappily, the Local Government of this province, like that of some others

of our Colonies, was for many years hardly attended to in England, where the bustle and pressing urgency of European affairs seemed to render Colonial matters only of secondary importance. Such a state of things was of course the best that could be desired by those who wanted to make the Colonies the banks from which their coffers might be officially replenished; and there can be no doubt that by such persons ample advantage was taken of the comparative apathy manifested by England towards the manner in which the Colonies were misgoverned and their revenues misappropriated. In a Colony governed entirely by Orders issued by the King in Council, and where the feelings, wishes, and remonstrances of the people had no legal opportunity of being made known, these abuses might long continue unchecked. But this could never be the case in one where the constitution had secured to the people the advantages of a Representative Assembly. The governors could be called to account, remonstrances made, laws enacted, and supplies withheld. The fear of this latter expedient seems to have been for some time but little before the eyes of the Governors and the Legislative Councils of Lower Canada; but if it was not for some time resorted to, the delay has now been more than amply compensated by the rigor with which the prerogative of the popular Assembly has at last been enforced *. The Legislative Council was appointed

* In this respect the Assembly of Lower Canada has out-

with as little care for the good government of the colony as for the good service of England. In return for their ready and implicit obedience to the wishes of the Government, the members were gratified for themselves and their families and friends with extensive grants of land,—they were installed in places of profit in the colony; and at last one glaring instance occurred of a member for a very considerable time retaining his estate, and sitting at the Council Board, after being a known and a published defaulter in his official accounts. I have no wish to deny that these things have occurred, and assuredly I am not disposed to defend their occurrence. I admit that with respect to them the Assembly of Lower Canada had a good ground of complaint,—that it was its duty to resort to every constitutional means to procure a redress of such grievances. What I wish to submit to the consideration of the advocates of the Assembly, and of impartial men who will have to decide upon its claims, is, whether to these grievances which are real, and which ought to be redressed, the Assembly has not also joined matters which are not grievances, which ought not to be altered, and has not on the

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stripped the anticipations of Dr. Franklin. In his examination on this subject, he said, that such a case could not be supposed as that an Assembly would not raise the necessary supplies to support its own government: "an Assembly that would refuse them must want common sense, which cannot be supposed."

whole made demands, the concession of which would not promote the advantage of this province, and would be injurious to the interests of the adjoining province, and which are therefore incapable of being conceded without a sacrifice on the part of England of her dignity, her duty, her justice, and her honour?

The demands of the Assembly of Lower Canada are thus stated by Mr. Roebuck:—"The House of Assembly proposes to render the Legislative Council elective, thus making it responsible to the people, and depriving it of that reckless and mischievous character which now distinguishes it. The Assembly further proposes to repeal the Canada Tenures Act, and the Act creating a Land Company, because such Acts interfere with the internal government of the province. And lastly, the Assembly requires that all the revenues of the province should be subjected to the control of the Provincial Legislature."

These are the chief points in dispute, the main demands of the Assembly; but connected with them are many others most important in themselves, but somewhat inferior to these, as being matters rather of detail than of principle. In some cases, however, those matters of detail involve principles requiring the most serious attention.

I. The first point, and that on which the House of Assembly seems most determined to insist, is, that the Legislative Council shall be declared elective. Let us examine with what propriety this

demand can be made, and with what propriety it could be conceded.

Canada is still a colony without sufficient wealth or strength to assume the position of an independent state; it depends for its protection from invasion upon a military and naval force furnished by Great Britain, and on the respect which the power and authority of Great Britain impose upon the world at large. Whatever Canada may become in future ages, is not a matter that can affect the question of what privileges it is now entitled to claim and exercise. If the Canadian people were to inflict an injury upon any subject of any power of Europe or America, or to offer an insult to the flag of such power, reparation would be demanded, not from the House of Assembly of Canada, but from the Government of England; and if we can conceive justice to be refused to a well-founded demand of that sort, the offended nation would declare war, not upon Canada, but upon Great Britain. From all these circumstances, it is clear that Canada is in a state of dependence upon Great Britain, and that Great Britain is responsible to the world at large for the behaviour of Canada. Now it is a position which the history of all states, and the condition of all individuals, will alike illustrate, that responsibility for another implies the right of control over him. When the necessity for the first ceases, the justification, and even the practicability, of the other will cease also. Is it possible that this con-

trol could exist as it ought, if the whole legislature of the province should be in every respect independent of the direct influence of the protecting country? It is possible, certainly; but only possible on the supposition that that country could, and would, on every occasion whatever, interfere with the Colonial Government by acts of its own sovereign legislature. It was expressly to avoid such constant interference that the Provincial Legislature was called into existence. The proper duty of a Colonial Legislature is to do, within the bounds of its obedience to the protecting state, all that it can to advance the interests of the colony. But within those bounds it must keep itself. To break through them while still affecting to be a colony, would be to render itself and the protecting state ridiculous. To set them aside when fully able to assert and maintain its own independence, is an incident which must and will happen in the history of all colonies. With the latter of these events we have nothing at present to do.

It is evident, then, upon the slightest consideration of the question, that no colony can exist as such, with a Legislative Council, as well as a House of Assembly, appointed in perfect independence of the influence of the protecting state. Yet an election of any legislative body by the inhabitants of the colony or province, supposes such an independence. It is sufficient if it exists in the popular branch of the legislature. The object of having a Legislative Council is to enable the protecting state

to exercise a direct influence in the legislature of the colony for which it is responsible, which it must protect, and the interests of which, in concurrence with its own and with those of its other colonies, it is bound to promote. It is far better for a colony that its House of Assembly should be freely elected, and that this external, but in a colony necessary, influence, should be maintained by a second legislative body, appointed by the authority of the protecting state, than that the influence of that state should be maintained in a different manner. A pretended representative Assembly, in form elected by the people, but in truth nominated by the Crown, would hardly be palatable. But it is proposed that this direct influence of the Government should be maintained by the Governor alone. There is not a colony belonging to the British empire but would revolt at such a proposal, if attempted to be enforced in practice. There could not be a surer method of creating perpetual dissension. The Governor is the local representative of the King: he is the personification of the principle of executive government, rather than of legislative deliberation. If he by his sole authority attempted to modify or to reject the legislative labours of the House of Assembly, the colony in which he held his office would be in a state of turbulent excitement. How much worse would it be if two distinct deliberative bodies agreed in presenting to him a bill, which, in the discharge of his duty, he felt he could not accept. His refusal to pass such a bill would be attributed to

the worst motives, to secret orders, or to a love of despotic power; and the greatest possible care on his part could not enable him to avoid compromising the safety of the colony in a struggle between what would be deemed legislative freedom and executive tyranny. His slightest mistakes would on every occasion be magnified into absolute crimes; and in determining on his conduct, prejudice the most wilful would appeal to popular sympathies in support of its hasty, erroneous, but unchangeable decisions. On every occasion of disagreement, however trifling, the will of the people, expressed through their representatives, would be ranged on one side, and the authority of the Governor, regarded as the mere instrument of the Government of the protecting state, on the other.

To avoid these constantly recurring occasions of dissension, by interposing between the representatives and the Governor the weight and influence of a body of men, partaking of the nature of a popular Assembly, but less directly influenced by the force of popular excitement, the creation of a second Legislative Chamber, owing its existence to the Crown, has been adopted. To secure the required influence of such a body, it should be appointed from the men of the province the highest in character—the most admired for their talents and attainments—the best known for their judgment and discretion, and the most considerable for their fortune. It was the neglect of this rule of selection that first made the Legislative Council of

Lower Canada inefficient as an instrument of Government, that plunged it into all its faults, and now threatens, as the penalty, the forfeiture of its existence.

The demand to make the Legislative Council elective is probably founded on the demand raised in this country to put an end to the hereditary legislation of the House of Peers. But the difference between the two cases is as great as can well be imagined. In the first place, this country has a class of men from among whom a second Chamber might be elected — namely, the peers themselves—men who, from their ancient rank, their great wealth, and their individual influence, could exercise an independent power, and alike check the forward movement of a popular Assembly, and animate the official inertness of the Ministers of the Crown. It is not more than pretended, hardly indeed so much, by the agents of the Assembly, in their evidence taken before the Committee in 1828, that there is any such body of men in Lower Canada; and the fact that from 1791 to the present time no hereditary title has been created in the province, seems to confirm the inference necessarily arising from the doubtful testimony of these gentlemen. The evidence on the other side is far more precise and positive; and, supported as it is by this absence of hereditary rank, and by the declared opinion of the Commissioners, that the allowance of wages to the members of the Assembly should be continued, because, "in a new country, few people

are found who can afford to give their time to public affairs without remuneration," is entitled to very considerable weight.

It is almost admitted, that there could be no higher class of men selected for the Legislative Council in Lower Canada than those who are now members of the House of Assembly there. To make that Council elective would be, therefore, merely to give the people the trouble of making two elections—to have two bodies of men identical with each other in every possible respect. In what way, then, could these men, in a small community, be a check upon each other? It is absolutely ridiculous to pretend that they could be so. Yet, but for such a purpose, why are they wanted at all? That they are wanted, all the witnesses before the Committee of 1828 fully agreed. But there is another difficulty.

The class of electors who now return the members of the House of Assembly would then have to return the Legislative Council; and thus there would be the same class of electors and of elected, giving to the state two legislative bodies, with no difference whatever but the accident of the name of the body of which they were the members. If it should be said that the members of the House of Assembly might choose the members of the Legislative Council, the absurdity would be just as great, nay, positively greater. For it is barely possible that bodies of tradesmen and farmers, knowing that they had to choose the members of an Upper and a Lower Chamber, whose respective duties would be

to supervise the proceedings of each other, might think it prudent to return to the former the richer, the graver, the older men of the province, and to the latter the less rich, the more active, and the younger men, in the belief that the fire and vigour of these would best originate spirited measures and great designs, while the calmer judgment of those would prevent the execution of them from being made hurtful to the state. But while such might possibly be the conduct of the people at large, if entrusted with the election of an Upper as well as a Lower Chamber, it is manifest that such would not be the conduct of the members of that Lower Chamber, if the election lay with them. Exceptions to the rule there might be; but no one who knows human nature, especially in its political aspect, can doubt that, as a rule, the members of the Lower Chamber would only elect those who would most fully, in the Upper Chamber, carry out their views, and give the impress of authority to their demands and their wishes. It may be said that this is not always the case in the Senate of each state of the American Union; but that instance cannot be adduced as an argument with regard to Lower Canada and England, because each state there forms a part of a whole, can scarcely have any interest separate from the general Union, and sends its own elected representatives to the Legislature of that Union. No one of the states can in any way be compared, with respect to its condition or its rights, to a colony, but more resembles, in both respects, what a county of England would be with a county legislature for local purposes.

Under the circumstances above supposed, the Legislative Council of the colony would be nothing more than a Board, dignified with a higher rank, for the sole purpose of confirming all the advantages which that rank could bestow on the decrees of their constituent masters of the Lower Chamber—decrees to which they must give their assent, and which they must respectfully register, but might never examine, and certainly never would attempt to controvert. This must especially be the case in any small and thinly populated country like Lower Canada, where public opinion can hardly be supposed to exist in sufficient force to protect a man who, however conscientiously, should think fit to resist the mandate of those by whom he had been once placed in the possession of power.

In such a state of things the Governor sent out from the protecting country must either exercise his authority by a despotic appeal to force, or must submit to be the unhappy and despised tool of the men over whom he held the nominal title of Governor, but by whom he would be treated as more deserving that of Slave. What guarantee could, under such circumstances, be afforded to the protecting state for the conduct of the colony, for which it was answerable to all the rest of the world? —None whatever.

Let it not be said that this reasoning proceeds upon the assumption that the people do not know their own interest; in some cases, in this of Lower Canada, that assumption would appear not to be ill-founded, (a word on this point presently), but

suppose them to be well acquainted with their own interests, and to be perfectly uncontrolled in the application of their knowledge, perhaps those interests are not in exact accordance with the interests or the honour of the protecting country, or with the interests of an adjacent colony, equally entitled to its protection and support. In a case of that kind, are the people of the first colony to be allowed to insist on the gratification of their own wishes, at the cost of the interests of the protecting state, or of the adjacent colony? Is this to be the case chosen *par excellence*, where the majority, the great majority, is to give way to the minority? There are few who will venture to lay down, in plain terms, so bold a proposition; but they may assert that, in this particular instance, the people of Lower Canada do really know their own interests, and that those interests are not opposed to, or inconsistent with, the interests of Great Britain or of Upper Canada. Let us see how this proposition is made out. The Assembly demands that the Legislative Council should be elective; but this is only a means to an end. What is that end? We shall see what it is, as we now proceed to consider the other demands of the Assembly.

II. The second proposal of the Assembly is, to repeal the Canada Tenures Act. This Act, even more than the Constitutional Act, seems to be but very partially known to those who have spoken most about it. A short summary of it will assist the proper consideration of the question. Lower Canada, called in 1759 the Province of Quebec, was

governed by the old feudal law of France, with all its accompanying absurdities, the grants of land in the colony, made by the Crown of France, having been made on the principle on which the lands in France were at that time held. This sort of tenure was, and is, strongly objected to, as fettering the transfer of landed property, and rendering it unavailable for the purposes of commerce. The old French law allows, too, of a system badly resembling that of mortgage callled *hypotheque*, which may affect the land in a variety of ways without enabling any one creditor of the owner of the land to know what is passing or has passed between his debtor and any other person. Another objection to it is, that the fines incident to this species of tenure operate as a material check upon the improvement of the country; the value of the fine to the land being increased in exact proportion to the increase in its produce, occasioned by the labour and capital of the tenant*. The interest of the tenant, therefore, induces him to refrain from improving the land, since the increase in the amount of fines to the lord may exactly take away the amount of profit he would receive from the improvement: it is the

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* In the excellent evidence of Mr. M'Gillivray, given before the Committee in 1828, this point is thus forcibly illustrated. "The amount of the fine is, I believe, one-twelfth upon each transfer, and its injurious effect upon property which is improved is manifest at once, because if a man purchases a piece of ground, a mere garden, for £200 or £300, and builds a house worth £10,000 upon it, he pays the fine upon the additional value."

worst principle of the old tithe law of England. The result of this system is observable in the fact that the Agriculture of Lower Canada is much inferior both to that of Upper Canada and of the United States, and the value of similar land is decidedly different in these places*. The British Government thought that it was conferring a great benefit upon the Lower Canadians in proposing to change the tenures, so as to get rid of those circumstances which thus depreciated the value of land and retarded the improvement of Canadian agriculture; all unbiassed men would, and did, agree with the Government on this point. Instead, however, of proceeding as the French Government would have done, had Canada remained a dependency of France—instead of sweeping away by a stroke of the pen all the old laws, and substituting a new system in their place, as France did in the Mauritius with the Code Napoleon—the English Government, from the time of the first Act on the subject, down to the last, did no more than empower his Majesty to change the tenure holden

* Mr. M'Gillivray when asked upon this point, (the superior eligibility of land in those places,) said, "I attribute the superior eligibility of land in Upper Canada over land in Lower Canada to the difference of those institutions under which it is held in the two places, and in corroboration of which I would add, that where there is not much difference of climate, where the land is merely divided by an imaginary line, separating the province of Lower Canada from the States of New York and Vermont, the land in the townships on the Canadian side of the line is, in many places, scarcely saleable at 1s. an acre, and on the other side of the line it is sold at 10s., 12s., and 15s."

of him, at the request of the holder of them, and then enabled the undertenant, if any such there were, to demand from his immediate superior a like commutation of the tenure: all this was to be done on the fairest principle of commutation. So little imperative were these Acts, that the complaint made by all the English witnesses before the Committee of 1828, was, that they were not stringent enough for their intended purpose, (see particularly the evidence of Mr. Ellice,) and this complaint was made after the passing of the 6 Geo. IV. c. 59, the Canada Tenures Act, which is now the special object of dislike with the House of Assembly. As this Act, like the others, seems to have been more impugned than read, it may not be unadvisable to give a summary of its most important sections.

6 Geo. IV. c. 59. by Sec. 1—Provides for the commutation (on request) of the tenures of land held of the Crown.

Sec. 2—Provides that the rights of the seigneur shall not be affected till such commutation is fully made.

Sec. 3—Declares that persons holding lands in fief, and obtaining a commutation from the Crown, shall be bound to grant a like commutation, if required, to those holding under them, for such indemnity as shall be fixed by *experts*, or (Sec. 4) by proceedings in a Court of Law.

Sec. 5—Declares that on such agreement or adjudication the Tenure shall be converted into free and common soccage, but Sec. 6 provides that this

shall not discharge a man of dues or services then accrued to the lord.

Sec. 7—Persons applying for commutation are to give public notice to mortgagees and others having claims on the lands.

Sec. 8—Lands holden in free and common soccage in Lower Canada, are to be subject to the Laws of England.

Sec. 9—"Provided, nevertheless, that nothing herein contained shall extend to prevent His Majesty, with the advice and consent of the Legislative Council and Assembly of the Province of Lower Canada, from making and enacting any such laws or statutes as may be necessary *for the better adapting the before mentioned rules of the Laws of England, or any of them, to the local circumstances and condition of the said Province of Lower Canada, and the inhabitants thereof.*

Such are the provisions of this Act, the repeal of which is so loudly demanded. Let us inquire a little into the reasons put forward for this demand. In the first place it is said that the enacting of this statute is an interference with the internal Legislature of the Province; in the next, it is asserted that this interference is in itself not less foolish than obnoxious, for that it is made in ignorance of the circumstances of the Province, and can only be made with advantage by the Provincial Legislature; and lastly, it is alleged that the change of Tenure would introduce into Canada all the evils of the conveyancing system of England. With respect to the

first of these objections it may be at once admitted that the enacting of this Statute is an interference with the labour of the Provincial Legislature. But the introduction of a new system of tenures was of national importance, and during all the years in which the Colony had possessed a Legislature, no single attempt of this sort had been made. That it was the obvious interest of the Colony to have such a change effected, no impartial man could doubt. The evidence as to the agriculture of Canada, and as to the value of land there, and as to the consequences of the existing system, in checking improvements, puts that matter beyond dispute. Why, then, had no such change been made, or even attempted? And why had the intentions of Great Britain—intentions of the best sort, with respect to the colony, and the enabling statutes passed to effectuate them—been constantly frustrated? Circumstances force the mind to one conclusion, and allow it no chance of adopting any other. The gentlemen of Lower Canada, the Lords of the soil, the feudal seigneurs of the country, derived at once an income and a p er from the French tenures of land, of which they must have been deprived by the change. It is not to be imputed to them as an act of gross corruption or of wicked selfishness, that they should be opposed to such a change; but in looking at what they enjoyed under the old system, and comparing it with what they expected to lose should the proposed change be fully effected, it is impossible to avoid

observing that their interest appeared to be ranged on one side, and the welfare of the Colony and the wishes of the protecting state on the other : under such circumstances the course which they took can surprise no one, but the ingenuity with which they defended their conduct, though the defence itself may not be exactly satisfactory, is entitled to some admiration.

They asserted first, that the change was not required by the people. As to this assertion, the first observation which naturally arises upon it, is, that the change would have been for the interest of the people, and therefore upon the principle loudly insisted on by the House of Assembly itself, must have been desired by them. How was their will to be known? The House of Assembly answers "by the voice of their Representatives expressed in this House." But, alas! the Representatives sent to that House must, under the existing system, be, without exception, men interested in its continuance, and that system itself affords them, in the certainty of their return to the Assembly, the most perfect means of defending its continuance. Who that wished to be listened to for a moment, ever thought of saying that the members for the rotten boroughs in the unreformed Parliament of England were necessarily the true representatives of the wishes of the people on the question of Reform of Parliament. The feudal seigneurs of Lower Canada returned to the House of Assembly by their feudal tenants, who must do their bidding, are, in

the same manner, not exactly the best representatives of the wishes of the people upon the subject of the change of feudal tenures. The Representation of the House of Assembly has been proposed to be enlarged, and as the various witnesses examined on the point shewed the increase would be productive of no other effect than to amuse the inhabitants of the townships, where the land is held upon the tenure of free and common soccage, with the appearance of representation, while in reality it would give additional numbers to the feudal seignories, and extend the power of the feudal Representatives in the House of Assembly. This has been the effect produced by an alteration made in 1829. This fact marks strongly the nature of the contest now carried on upon the subject of the Canada Tenures Act, and may help to explain the conduct of the Assembly upon this as well as upon some other points.

The Members of the House of Assembly, in the second place, defend their demand for the repeal of the Canada Tenures Act, upon the ground that that Act being passed in England, the Legislature here must have proceeded in ignorance, and must therefore have committed many mistakes. Let it be assumed (though it is not admitted), that this was the case. No unprejudiced person, who looks at that Act, can possibly assert that those mistakes could not be rectified without the repeal of the Act itself. The Act is throughout an enabling, not a mandatory Act, and its last clause expressly reserves to the Legislature of Lower Canada the power to pass any

measure which might be necessary to render its operation effectual and beneficial. Can it be said that such an Act was in itself an invasion of the conceded power of the Legislature of Lower Canada. If it was so, that invasion was rendered absolutely necessary, and was therefore perfectly justified by the reluctance of the Assembly to do a great act of justice to the Province. The same necessity justified the Imperial Parliament in passing the Slavery Abolition Act, which certainly was not demanded by the people of our West India Colonies—which certainly did interfere with their internal regulations—but which as certainly, being in itself an act of justice and propriety, did produce from all mankind, except those interested in the continuance of the evils it was intended to remove, the loudest, the warmest, and most cordial expressions of approbation.

The last objection of the Assembly to this Bill is likewise answered by the last clause of the Tenures Act: but upon this point it is necessary to make some further observations. From the time of the 14 Geo. III. c. 83, by which the Legislative Council was established, at the period of the passing of the 31 Geo. III. c. 31, which gave the Colony a Provincial Assembly down to the passing of 6 Geo. IV. c. 59, every Act reserved to the Legislature of the Colony, in whatever way it was constituted, the power of making such law as would be applicable to the circumstances of the province. This indeed is a principle of the law of England with regard to its colonies, limited only by this restriction, that

such laws shall not be absolutely "repugnant to the laws of England*." Even this restriction, however, so generously has England treated Lower Canada, has been withdrawn with regard to that province. The concession first made in the Act of 1774 was followed by others, but doubts having arisen upon them, the statute 1 Wm. IV. c. 20, was passed for the especial purpose of quieting those doubts: this statute, reciting the 31 Geo. III., and the 6 Geo. IV., and the doubts that have been raised with respect to the authority of the King on this point, proceeds to enact, "That it shall and may be lawful for his Majesty to assent to, or authorize his assent to be given to, any Bills which have heretofore been, or which may hereafter be, passed by the Legislative Council and Assembly for regulating the descent, grant, bargain, sale, alienation, conveyance, or disposal of any lands which are now or which may hereafter be holden in free and common soccage within the province of Lower Canada, any repugnancy, or supposed repugnancy, of any such regulations to the law of England, or to any of the provisions in the before-recited Acts of Parliament, or either of them, contained to the contrary, notwithstanding." Lower Canada is the only British colony with respect to which this otherwise universally applicable principle of the law of England has been thus dispensed with. The pre-

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* See "Stokes on the Laws of Colonies," "Summary of Colonial Law," and various Charters of Justice, and Acts of Parliament.

tence, therefore, that the real objection to convert the lands from the feudal into the freehold tenure, was, that the latter would necessarily bring with it all the inconveniences of the English system of conveyancing, ought hardly to have been put forward by any body of men, seeing that it is so completely at variance with the fact. The laws on the subject of Tenures enable the Lower Canadians to enjoy all the best parts of the English and of the old French systems; and if they so please to incorporate with these the improvements introduced by the Code Napoleon, and the recent enactments of the legislature of this country, with regard to the holding and descent of lands here, or to make a system different from all these, having no example, and, if they please, not likely to become one. Yet, notwithstanding all the advantage of this unrestricted legislative power, the old feudal system, with all its inconveniences, is still pertinaciously maintained in Lower Canada; and the existence of the Tenures Act is itself put forward as a positive public grievance. As a part of the proposed improvements respecting the tenures of lands, a general registration has long been demanded by the English settlers and by the commercial interest. An insufficient Registration Act was passed in 1829 (see the General Report of the Canada Commissioners, page 40, par. 11 and 12), and other Acts have since been passed with respect to particular places in the province. The Commissioners observe (p. 41, par. 13), "All these Acts, however, as they are con-

fined to lands held in free and common soccage, go but a small way towards attaining a general system of registration ; and moreover, by a practice too common in this country, they are all temporary, and expire in 1838: so that if the legislation of the province be subjected to the suspension threatened by the recent proceedings of the Assembly, they will fall to the ground. It is needless to point out the confusion which must ensue in the right of property in the townships, should such prove to be the event." To this slight notice of the insufficiency of this local legislation should be added the fact, that the want of a registration is most felt with regard, not to the lands held in free and common soccage, for they, by all the Acts of Parliament affecting them, are at present clearly subject to the laws of England, and consequently cannot be made the objects of secret *hypothèques* (the nature of which will be presently noticed), but with regard to the lands held on the feudal tenure; for these lands are subject, according to the law which governs them, to several burdens, the principal of which are known under the name of legal, called also tacit *hypothèques*. The summary of the law on this point given by the Commissioners is sufficiently full and explicit to render the objections to the system which allows of these hypotheques intelligible to every one. It is in the following terms :—" In this class are comprehended all the obligations upon property that the simple action of the law imposes upon a man as a member of society. The most important of them may be

enumerated as follows—1. The dower of his wife, unless barred by an ante-nuptial contract; 2. Security to his ward in the event of his being appointed guardian to any minor, which he may be without his own consent, the office being in many cases compulsory; 3. The same obligation in the event of his being named curator, that is, trustee or administrator of any interdicted person, which office likewise may be compulsory; 4. The obligation of an heir, entering on his inheritance, to the payment of the debts of the person from whom he received it, or *sans benefice d'inventaire*; 5th, and lastly, The liability of public servants for the due performance of their trusts. The wife's dower, moreover, is the inheritance of the children of the marriage, and consequently an entail is created by it, as well as a life interest. The customary dower is one-half of the real property possessed by the husband at the time of contracting the marriage, and of all that he may acquire by inheritance afterwards. From the preceding review, it is clear that the extent of vague, general, and undetermined hypotheques, is immense, and it seems obvious that the number of husbands, guardians, curators, and persons accountable for public monies, must far exceed borrowers of money upon mortgage." Now it is precisely these "vague" liabilities that most require the check of a registration, and it is precisely these that the Colonial Assembly has thought proper to leave without it.

In another part of the Report (p. 42, par. 20, 21)

the Commissioners advert to two particular objections on the part of the French Canadians to do any thing which shall increase the facilities for the commutation of tenures and the transfer of landed property. The first is "a latent apprehension that the effect of the introduction of Registry offices will be to deprive the present land-holders, of French origin, of a portion of their possessions in the Seigneurial counties, on the banks of the St. Lawrence, and transfer them to British settlers." This apprehension is unreasonable, and might, perhaps, wear away upon a proper examination of the subject, as the French Canadians must then be convinced of the observation made by the Commissioners, "that the inhabitants of the Seigneuries could not fail to derive a benefit from a system that would tend to raise the value of property, to supply the wants of agriculture, and to afford to landholders a prospect of obtaining loans of money at a lower rate of interest." But the next latent ground of opposition to the introduction of the proposed system, or to any thing which may facilitate its introduction, is of a more serious nature. It deserves well to be considered. The Commissioners say (General Report, page 42, par. 21), "There is, however, we must confess, one discouraging feature in the prospect, which we would mention, not for the purpose of exciting ungenerous or unjust suspicions against any class, but as an illustration of the manner in which unequal laws are liable to operate with a like injuriousness to all parts of the commu-

nity, as well to those to whose benefit they might at first sight appear conducive, as to the rest. By the Act of 1774, confirmed in that particular by the one of 1791, Roman Catholics, in all the Seigneuries, are required to pay a tithe to their clergy of one-twenty-sixth of their produce in corn, whilst the Protestants are exempt (partly by the same Acts, and partly by custom) from any payment of tithe whatever. That such an inequality in the law must tend to create a desire, not only on the part of the receiver, but also on the part of the payers of tithes, to keep Protestants out of a parish, is sufficiently obvious; for if half of the lands in any parish were to pass into the hands of Protestants, the support of the Catholic clergy would fall of course with very increased weight upon the occupiers of the other half. Until some alteration be made in this respect, it cannot be expected that any measure will be well received which is supposed to promote the introduction of Protestants into the Seigneuries."

This little incident, very properly noticed by the Commissioners, may well account for what of popular opinion appears to justify the demand of the Assembly for the repeal of the Tenures Act, while the individual interest of the members of the Assembly, in retaining the power, influence, and income which they enjoy, as feudal Seigneurs, will sufficiently explain the bias on their minds which makes them equally blind to all the evils of the existing system, and to all the advantages of its proposed substitute.

III. The repeal of the Canada Land Company's Act is the third head of the demands made by the Assembly. The reasons which apply in answer to this required concession relate also to that which we have just been considering, and need not, therefore, be treated at any length. It is clear, that if the Assembly objects to the introduction of a tenure of free and common soccage, it will for the same reason object to the formation of any Company to facilitate the settlement of the province on tenures of that description. The House of Assembly asserts that the King and Parliament have exceeded their authority, in granting the incorporation of that Company. It would be difficult to shew, by any precedents of constitutional law, that the King could not have granted a charter to any Company of this kind by virtue of his royal prerogative alone*. The grant to the members of the Company would not have been a grant in exclusion of others, but only a grant enabling them to do that which they could not, in form of law, do without its assistance. It is not a monopoly in the strict sense of that term, though even if it were, the opinions f Attorney and Solicitor-General Raymond and Yorke † shew that it is only doubtful whether his Majesty's prerogative would not extend to the granting of such a monopoly in the Plantations.

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* 1 Chalmers' Opinions, 232, 233.

† Ib. 202, 203.

They clearly held that the prerogative would extend to granting whatever was not such a monopoly. But to avoid all possibility of question, and to give to the Company the best legal title, the authority of the imperial Parliament was invoked, and a statute was passed, declaring the Company to be an incorporated Company, allowing it to purchase lands, and binding it to make certain payments, which were expressly declared to be applicable to the purposes of the province. But the Assembly insists that this is an interference with the internal regulations of the province, and that, as such, it is contrary to the Constitution, and to the meaning of the Declaratory Act of 1778*. That Act seems to have been supposed to give up, on the part of this country, all right to make any regulations whatever with regard to the colonies, except so far as they are connected with the universal commerce of the empire†.

As even this Act seems, from many parts of the evidence, to have been known to the witnesses rather by traditional reputation than by actual perusal, it may be as well to give them an opportunity of becoming acquainted with its real language. It begins, then, by reciting, that "taxation by the Parliament of Great Britain, for the purpose of raising a revenue in his Majesty's Colonies in North America, has been found by experience to

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* 18 Geo. III. c. 12.

† But see Lord Chancellor Brougham's denial of this doctrine, Mirr. of Parl for 1833, p. 3694.

occasion great uneasiness among his Majesty's faithful subjects," and then stating, that "it is expedient to declare that the King and Parliament of Great Britain will not impose any duty, tax, or assessment, for the purpose of raising a revenue in any of the Colonies;" it declares, "that the King and Parliament of Great Britain will not impose any duty, tax, or assessment whatever, payable in any of his Majesty's Colonies in North America or the West Indies, except only such duties as it may be expedient to impose for the regulation of commerce; the net produce of such duties to be always paid and applied to and for the use of the colony, province, or plantation, in which the same shall be respectively levied, in such manner as other duties collected by the authority of the respective General Courts, or General Assemblies, of such colonies, are ordinarily paid and applied."

The restriction here placed upon the power of the Parliament is that of levying internal "duties, taxes, or assessments;" and surely no man can pretend that the incorporation of a Company of gentlemen, enabling them to purchase land and make improvements thereon, by means of their joint funds, can truly be said to come under either of these denominations. The demand for the repeal of this Act is founded upon no reasonable ground, and supported by no proof of any tangible evil occasioned by the Act to the Colony. But the demand is itself marked with injustice, for it is totally unaccompanied by any proposal to indemnify

the members of the Company for the money they have already expended, or to secure and confirm the titles of those who have become lessees, or purchasers of land, under them. The Assembly cannot surely expect that a demand thus made can, in neglect or defiance of every fair and honest principle, be conceded; and a charitable observer may see some reason to doubt whether the demand itself was put forth with any other view than that of contributing to a statement of grievances the advantage of an additional item. The Company is, in fact, more entitled to claim a public reward than to suffer a public forfeiture.

In speaking of the Company and its labours, and the effects produced by them, the Commissioners say (General Report, page 22, par. 14), "Since November 1831, the acquisition of land has been much facilitated to the poor emigrant, through the instrumentality of the North American Land Company. The Company will not, as we apprehend, sell cheaper than the Government. On the contrary, it will probably sell much dearer; but it will offer to the settler, and, indeed, does now offer, as we shall have occasion hereafter to explain, advantages of another kind, which the Government never can." Again, directing their attention to the same subject, the Commissioners say (General Report, p. 30, par. 40), "It now remains only for us to speak of the Land Company; and in doing so, we are happy to be able to express an opinion, founded on actual observation,

that it is effecting much good in the country. When we lately visited the scene of its operations, we found that upwards of two hundred families, during the present summer, had been located in one direction; and this number will probably be much increased before the close of the season. The total number of persons settling in the townships, will, it is expected, in this year, exceed 5000, which is a very much greater number than in any preceding year. The Company have adopted the very judicious plan of assisting all settlers willing to work. They assist each settler to clear his land, and build for him, if he choose, a log-house on it, at a fixed charge; and they also provide, and will continue to do so through the winter, all necessary supplies at a reasonable cost. These are the advantages that we had in view when we said, in paragraph 14, that the Land Company would probably continue, for a considerable time, to attract all settlers of the poorer class, as it offered facilities to them which the Government could not: by which, of course, we meant facilities or advantages that it would not be prudent or proper for the Government to offer. Many of its officers were to be entrusted with such discretionary powers as these exercised by the Company, it would be scarcely possible to provide against the abuse, or at any rate against the reputation of the abuse of them. And here, in reference to the objection which has been urged against the erection of a Land Company, that it delegates to private individuals some of the functions which

ought to be exercised by Government, we must observe, that it does not, in our opinion, delegate to others those functions which can, but only those which cannot, be advantageously exercised by the Government." In what manner does the Assembly propose to compensate the Province for the loss of these advantages? or what substitute for them does it offer, in case it should succeed in the attempt to deprive the settlers of their enjoyment?

IV. The Assembly demands that "all the revenues of the Province should be subjected to the control of the Provincial Legislature." In other words, the Assembly requires, with regard to the revenues of the Province, a power at least equal to that which the Parliament of England exercises over the revenues of England. Without doing more than referring to the constantly recurring objection, that a Province is not an independent state, and that consequently the Legislative Assembly of a Province cannot pretend to exercise the rights which the Parliament of an independent and sovereign state ought to enjoy; we may inquire, to what extent that which is thus demanded might be conceded—to what extent it has been conceded, and in what manner the Assembly has used the concession.

The question of the appropriation of the revenues had its origin in the British statute, 14 Geo. III. c. 88. That was entitled, "An Act to establish a Fund towards defraying the Charges of

the Administration of Justice, and the Support of the Civil Government, within the Province of Quebec." After reciting that certain duties on Rum, &c. had been imposed by his Most Christian Majesty, before the Conquest, it repeals them, substitutes others, and, as to the application of these new duties, makes the following provisions: — "And that all monies that shall arise from the said duties (except the necessary charges of collecting, &c.) shall be paid by the Collector of his Majesty's Customs, into the hands of his Majesty's Receiver-General in the said Province for the time being; and shall be applied, in the first place, towards making a more certain and adequate provision towards defraying the expenses of the administration of justice and of the support of the Civil Government in the said Province." Other duties previously imposed by France are continued as formerly. Upon this Act, in connexion with the 18 Geo. III. c. 12, doubts had been expressed as to what revenues the King was entitled to; and upon this subject the opinions of the law officers of the Crown were produced before the Committee of 1828, and that Committee reported as follows:—"Although, from the opinion given by the law officers of the Crown, your Committee must conclude that the legal right of appropriating the revenues arising from the Act of 1774 is vested in the Crown, they are prepared to say that the real interests of the Province would be best promoted by placing the receipt and expenditure of the whole public revenue under the

superintendence and control of the House of Assembly. On the other hand, your Committee, while recommending such a concession on the part of the Crown, are strongly impressed with the advantages of rendering the Governor, the members of the Executive Council, and the Judges, independent of the annual votes of the House of Assembly, for their respective salaries." The Committee afterwards added — "If the officers above enumerated are placed on the footing recommended, they are of opinion that all the revenues of the Province should be placed under the control and direction of the Legislative Assembly."

The question now is, whether in this respect the recommendations of the Committee have not been acted on. The 1st and 2d Will. IV. c. 23 (passed on the 22d September, 1831), sufficiently answers that question. The King's Ministers introduced that Act into Parliament; and with the view of receiving from the province the provision recommended by the Committee, not under a condition, but as a voluntary gift, they anticipated the Legislature of the province, and gave up the claims of the Crown to the revenues in question, without making any stipulation for a permanent appropriation by the House of Assembly of any civil list. The Act which we are now considering recites the 14th Geo. III. c. 88, and also the division, since that time, of the province of Quebec into Upper and Lower Canada, and then enacts, "That it shall and may be lawful for the Legislative Council

and Assembly of Lower Canada, by any Acts to be by them from time to time passed, and assented to by his Majesty, to appropriate in such manner, and to such purposes as to them shall seem meet, all the monies that shall hereafter arise by, or be produced from, the said duties, except so much as shall be necessarily defrayed in the charges of collecting, &c." We shall now see in what spirit this concession has been met in one most important point. As the subject of the independence of the Judges has been connected with the grant of the revenue, it may be proper to observe, that this matter has not been neglected by the Government. Why it has not been satisfactorily settled, the following statement will explain.

The Ministers were desirous to establish the independence of the Judges, and the Governor was instructed to apply to the Assembly to effect that object. A Bill passed the House of Assembly, declaring the tenure of office by the Judges to be during good behaviour (it had formerly been only during pleasure); but the provision for their support was, by the same Bill, made to depend on the annual votes of the House. This was hardly a fair way of dealing with the Crown, or with the Judges. They were to be independent of the Crown by the tenure of office; but they were to be dependent on the House of Assembly by the tenure of their salaries. That House could not, indeed, by this Bill, directly dispossess them of office, but it could dispossess them of the means of living in office—an

effective mode of dismissing a public servant, and exactly answering the expressive phrase which, in the French language, is used to designate a dismissal. The Crown had the mere power to dismiss the Judges upon impeachment; the Assembly was to be able to "*destituer*" the Judges without impeachment, by the easy and summary process of the refusal of a vote of supply. This may appear a popular course of proceeding, but, in reality, it is not so; and if the dignity and honour of the Crown could possibly have suffered such a paramount authority to be exercised by the Assembly over the Judges, the Ministers ought, for popular reasons alone, to have declined to recommend his Majesty to give his assent to the Bill. If a House of Assembly should ever think fit to publish reports impugning the character of any private individual who might provoke its censure, can it be believed that a Judge, who in a moment may be *destitué* by the House of Assembly, would have the firmness to execute the law in his behalf against the agents of that Assembly? If he should possess such firmness, he would indeed exhibit a high and honourable spirit, but one which is not to be expected at all times, and which would be admired most because it was so little to be anticipated. But it is for the public welfare that the pure administration of justice should be beyond all caprices of accident; and there certainly should be no temptation to lead Judges to neglect their duty, or to favour any parties whatever in their discharge of it. If in such a

case as that supposed, the Judge should conscientiously think the party entitled to recover against the agent of the Assembly, every honest and impartial man would, and every selfish man should, wish him to express that opinion fearlessly and without reserve. Every one, therefore, ought to join in placing the Judge in a situation that would put no check on the declaration of his opinion. Yet the Assembly of Lower Canada has not done this. That the Judges of that province have heretofore been too much of political partizans, and have been too closely allied with the executive Government, I may readily concede; and I may do so without imputing blame to the men, of whom I know nothing, but only in censure of the system which placed them in a wrong position with regard to themselves, and a false one with regard to the colony. But now that that evil has been remedied by the Government—now that they have at its desire retired from the Council, and have limited their labours to the discharge of their judicial duties — now that the Crown has dispensed with their political services, and is anxious by all means to make them independent, it surely is a little out of place in the Assembly to say, and such their provisions in the Bill did say in effect, "This House must possess itself of the influence which the Executive formerly possessed, and the independence of the Judges, established by the Crown, must be extinguished by the Assembly." In England we should not permit the House of Commons to usurp a power which, being admitted to be mischievous, ought not to be transferred, but

to be destroyed; and Englishmen will hardly allow a Provincial Assembly to assume privileges which they would not tolerate in their own Parliament.

What, then, is it that I should propose to do with respect to the demands of the Assembly? I should say, first, as to the Legislative Council, that it cannot be elective, but that it should be composed entirely of gentlemen selected by the Governor from the province at large,—men whose age, abilities, character, and fortune, would put them above the influence of the Governor on the one hand, and above that of popular excitement on the other. With regard to the Canada Tenures Act (and of course I include here that part of the Canada Trade Act which relates to tenures of land), I should say, that it ought not to be repealed without a provision was first made for the settling of titles acquired under it, for the easy and perfect registration of land, and for the abolition of the feudal incidents which now check its transfer and diminish its value. With regard to the Land Company's Act, I should refuse its repeal. The objections made against it are obviously too trifling and capricious to produce any impression on an unbiassed mind, and the advantages conferred by the Company upon the settler in Canada, and through them upon the province at large, are such as would justify the Government in purchasing them at some cost. But the Government could not purchase such advantages, and they are now had without cost.

No one can read the evidence without being con-

vinced that the Land Company has become a real blessing to Canada, and that in this instance the ends of private advantage and public benefit have been most fully attained.

As to the question of the revenue, I am more in favour of the demands of the Assembly; but I think that a permanent provision ought to be made for the chief officers of Government, especially for the Judges, before the appropriation of all branches of the revenue is placed, without restriction, under the control of the Assembly. If impartial justice is to be administered in the province, the Judges should be at once liberally provided for, that they may not have an excuse to seek for other means to eke out their incomes; and they should be alike independent of the favour of the Crown and of the Assembly. They should be able to illustrate by their conduct the expressive words of that solemn oath which is taken by the Grand Juries of England; they should judge "no man corruptly, or through envy, hatred, or malice; neither should they leave any man unjudged through fear, favour, affection, gain, reward, or the hope thereof." This can never be the case while the Assembly persists in making the amount and the existence of the Judges' salaries depend on an annual vote. The amount should be permanently voted for the life of the King; that amount would be voted, not for the men, but for the office; and if any of the men should, by gross misconduct, forfeit his just claim to the salary, the same misconduct which deprived him, even for a time, of his right to the income of

his office, should have the like effect with respect to his right to exercise the powers of that office. The Governor might be authorized, on the address of both Houses, to suspend any Judge from the discharge of his duties till the King's pleasure was known, or till an impeachment had been prepared and decided. But this would be the exception to the rule, and the rule should be that the judges should possess a real independence. The arrangement of this matter would be one that if the desire for its settlement was honestly entertained, might be easily and satisfactorily settled. Subject to this condition, there is no objection that a constitutional state like England could entertain, against vesting in the representatives of the people the power of controlling the public expenditure. The King's Ministers have certainly shown every desire to concede this power in the fullest manner to the Canadian Assembly, but unhappily the Assembly has at once disproved Dr. Franklin's theory as to what an Assembly would do, and has met the concession in a spirit which must require a more cautious and less generous treatment in future.

I shall say but one word on the subject of the impeachment of the Judges. The Assembly claims to exercise, in this respect, all the powers now possessed by the Lords and Commons in this country. Such a claim cannot be admitted by the protecting state, which must have, and ought to exercise, the power of affirming, or qualifying, or overruling, all the acts of a Provincial Assembly, relating to the rights of sovereignty. Attorney-General Pratt, Mr.

West, and Attorney and Solicitor-General Murray and Lloyd (all great names, and some among them celebrated for their love of Constitutional liberty), have repeatedly advised against the concessions of claims of this sort*, and have declared that our House of Commons—the Parliament of a sovereign state—" stands upon its own laws, the *lex Parliamentum;* whereas Assemblies in the Colonies are regulated by their respective charters, usages, and the Common Law of England, and will never be allowed to assume those privileges which the House of Commons is justly entitled to here, upon principles that neither can nor must be applied to the Assemblies of the Colonies." The Legislature of Canada might have the power of originating and deciding upon an impeachment; but its decision should be subject to revision here. Its judgment would not on slight grounds be overruled.

To grant all that the Assembly requires, and in the manner required, would be to confer upon the Province of Lower Canada the privileges of a sovereign and independent state, without permitting it to incur the danger, the trouble, or the expense, of supporting that independent sovereignty. The great historian of the Roman Empire says, that " the Emperor Hadrian expressed his surprise that cities which already enjoyed the right of Municipia should solicit the title of Colonies." If the latter participated in all the advantages of Roman citizenship, without suffering from its burdens, the Emperor would not have felt any surprise at the

* 1 Chalmers' Opinions, 232, 263, and 296.

solicitations. A full understanding of the subject will not leave it doubtful, that if, in the present instance, the claims of the Lower Canada Assembly are conceded, that body at least (I say nothing of the people) will be in a more enviable situation than those bodies which compose the Imperial Legislature. I cannot, therefore, see the least reason to doubt the truth of the axiom laid down by Lord John Russell, and quoted as the motto for this pamphlet. I believe that there were originally faults of a serious kind in the administration of the Canadian Government, — that those faults gave to the representatives of the people the right to complain, and imposed complaint as a duty upon them,—but that in the discharge of that duty they have become somewhat enamoured of their task, and have imagined grievances where there are none, and have demanded as justice to themselves that which they have no right to demand on their own account, and that which, if conceded, would be gross injustice to others. The Government of this country has under such circumstances done its duty, and being willing frankly to grant what may be properly asked, has firmly decided to refuse what never should have been required. In this course (well explained in the resolutions moved by Lord John Russell) it will be for the interest and honour of Great Britain, for the benefit of Upper Canada, and, as I hope I have proved, for the advantage of Lower Canada itself, that the Government should be supported by men of all parties, both in and out of Parliament.

WILSON AND SON, Printers, 57, Skinner-Street, London.