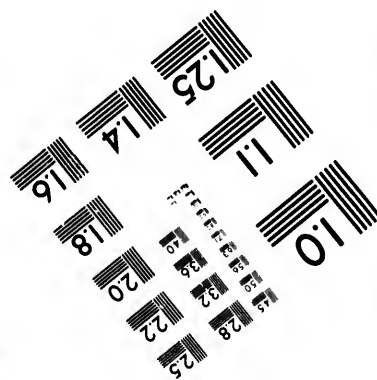
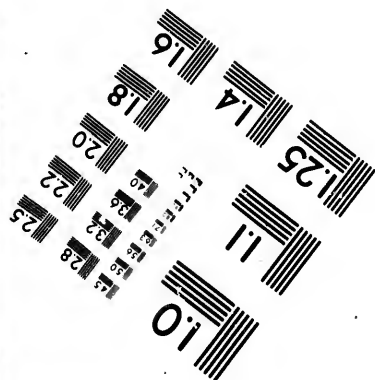
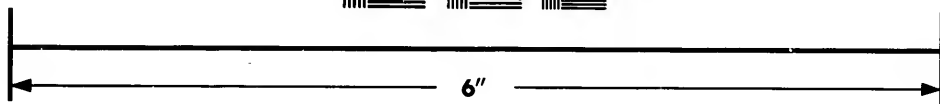
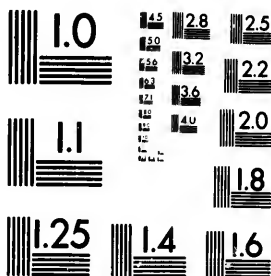


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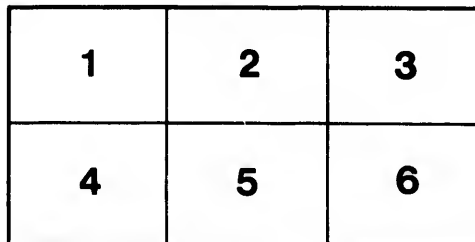
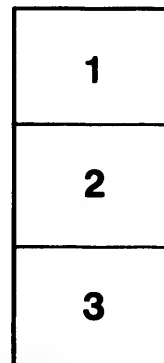
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II

SPEECH

OF THE

HON. W. H. DRAPER, Q. C.

AT THE BAR OF THE

LEGISLATIVE ASSEMBLY OF CANADA,

(FRIDAY, NOVEMBER 21, 1843)

IN DEFENCE OF THE CHARTERED RIGHTS

OF THE

University of King's College.

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AUTHORISED REPORT.  
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TORONTO, CANADA—MDCCCXLIII.

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TORONTO HERALD OFFICE, TYPOG.

SPEECH.



Mr. Speaker—Familiar as the practice of years has made me with the business of courts and with the advocacy of clients' interests, the position in which I now stand before you is at once novel and embarrassing. Novel, because tho' I am here as an advocate retained to defend the rights and interests of my clients, yet I am not at the bar of a tribunal such as those to which I have become habituated. I have not merely to establish what the law has given, but to argue against the power of Parliament to take away. In other courts, if I can shew authorities and decisions to bear out my argument, I may with confidence anticipate the judgment. If I can truly say *ita lex scripta est* the decision I know will accord, for there laws are administered. Even before Election Committees of your hon. House there are rules of practice and of evidence; adjudicated cases whose authority is acknowledged and followed. Here, on the contrary, law is made; the question is not alone how says the law, but how does Parliament will that it shall say? My position is embarrassing because, tho' I appear here to defend, I look in vain on the level where I am placed for my antagonist; I do not perceive him whom I may treat as making the attack. Of the advantage—and it is sometimes no contemptible one—of the *argumentum in personam* I am deprived; I am restricted to the *argumentum in rem*, and with the additional disadvantage of being driven to guess at the reasoning upon which the attack I desire to ward off will be founded. Again, my position is embarrassing because (without, in my present position, presuming to enquire who) I am compelled to believe that a measure introduced into this hon. House has, if not its author, its parent by adoption, as well as its advocates and supporters

within these walls; and when I assail the measure itself—portraying it not perhaps altogether as it has appeared in their favouring eyes—I am unavoidably assailing those who, tho' for all purposes of decision they are judges, may in one sense be deemed the counsel of the cause which I am here to oppose. Deeply desirous to speak only of things—disclaiming all allusions to persons—intending no particular individual even when the forms of speech compel the adoption of terms which point at some unknown antagonist—I have nevertheless abundant reason to throw myself on the indulgence of the House, and to claim, as through you, Mr. Speaker, I do most humbly claim, not only its patient attention, but its most favourable interpretation, asking them to remember that I am here but as an advocate, and entreating them not to permit the goodness of the cause to suffer in their judgment from any indiscretion or fault of mine. And I have, in truth, a reason to ask this favour at their hands which I feel sensible must weigh in my behalf, for notwithstanding the magnitude of the subject, the intricate variety of its details, and the incalculable importance of its possible result, I am, unfortunately for myself, without the aid (which I had at one time hoped for) of an able and learned friend whose keen discrimination, untiring research, and vigorous eloquence, would have added weight to my observations, strengthened what I had endeavoured to maintain, and supplied that which I had omitted to advance. Under all these circumstances I trust, Mr. Speaker, I have made good my claim to all reasonable intendment and indulgence. I propose, in the first instance, to inquire into the character of this bill, as involving several highly important constitutional questions, affecting the preroga-

tive of the Crown, and the legitimate functions and powers of this Provincial Parliament in relation thereto. In treating of prerogative I shall not (even as an advocate using every available resource to fortify the position of my clients) resort to those extreme doctrines which prevailed in ancient times, but which have long since been modified and reduced within more precise limits. I shall, I trust, be able to sustain my argument without contravening the principle that the prerogatives of the Crown are to be exercised for the benefit of the people, though I shall insist that on that very account they are to be maintained, and the rights acquired under them are to be respected. I will resort alone to principles which, tho' of the very highest antiquity, still flourish in fullest vigour; which, tho' venerable for their age like some of those massive structures which adorn the glorious country on which we depend, have survived the shocks and tempests of change and time, and rear their lofty summits towards the sky, proud testimonies alike of the soundness of the rules by which they were constructed—of the imperishable durability of the materials of which they are composed. Principles which belong to our constitution, matured as it is by the experience of ages; and the disregard of which weakens not only our respect for that constitution but even its existence.

The *Jura Coronæ*, according to an ancient writer, so long as they remain attached to the Crown are called prerogatives; when granted to subjects they are termed franchises: of these corporations form a class, and Universities are properly speaking civil corporations. From the earliest periods of our legal history the power of the Crown to erect corporations and the necessity of its consent, express or implied, to their existence has been undoubted. If their origin be traced to a Royal charter, there is the express assent; if to prescription, that implies a previous grant, and equally, therefore, involves the assumption of the assent of the Crown. But, tho' the Crown has then the power to erect corporations, there are limits to the privileges which the Crown itself can give, and a consideration of these limits tends to explain the true nature and character of the prerogative. By the common law the King cannot grant to a corporation the power to imprison, and where it is deemed

proper to confer such powers recourse must be had to Parliament—as in regard to imprisonment, was the case with the College of Physicians and so in other cases, such as conferring an exclusive right to trading on the East India Company, or erecting the courts of the Vice-Chancellors of Oxford and Cambridge, with power to proceed in a mode different from that prescribed by the common law: and Mr. Justice Blackstone states, that till of late years most of those statutes which are usually cited as having erected corporations do either confirm such as have been before created by the King, or they enable the King to erect a corporation in future with such especial power as the statute sets forth. So that in either case the immediate creative act was usually performed by the King alone, in virtue of the prerogative.

It has occurred to me, though I can scarce entertain the supposition, that the restrictive effect of the third clause which in reality gives to the new University a monopoly to confer degrees in Upper Canada may be said to come in some degree within the principle on which, in the foregoing instances, the Legislature have passed acts relative to corporations. It appears to me sufficient for the present to suggest the obvious difference between this provision and the principle I have before referred to, of enabling the Sovereign to grant to a portion of his subjects privileges or rights which, but for the restrictive force of the grant, would be equally open to them all. It will unquestionably involve another and very different consequence, to which, at the proper moment, I shall not fail to allude.

The prerogative of the Crown to erect corporations, of which I have briefly spoken, can still more clearly and forcibly be shewn to be undoubted in reference to Universities. I believe, that neither in England or Ireland, nor yet in Scotland, unless perhaps with one exception, is there a University which has been erected by act of Parliament. The statute regarding the Universities of Oxford and Cambridge, passed in the 13th Elizabeth, treated those corporations as already long pre-existent, for its object is thus recited: "that the ancient privileges, liberties, and franchises heretofore granted, ratified, and confirmed by the Queen's Highness, and her

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most noble progenitors may be held in greater estimation and be of greater force and effect." And the first words of the preamble shew plainly that the act must have been framed by the authority of the Crown, and probably introduced by the Ministers, for the moving cause of its being passed is said to be "*for the love*" that the Queen hath to her Universities of Oxford and Cambridge. Trinity College, Dublin, received its charter from the same Sovereign. A papal bull instituted St. Andrews, in 1413; in 1432 the reigning Monarch ratified its privileges by a charter. Glasgow University was established by papal bull, in 1450, and confirmed by Royal charter, in 1453. The University of Aberdeen (old) commenced under a papal bull, in 1494, and in two years obtained a charter also. The College now called King's College, and I believe the only one in Old Aberdeen, was founded in 1505, and seems to have as it were absorbed the University into it. Marischal College, in New Aberdeen, was created under the Royal authority, in 1593, by the Earl Marischal, and was confirmed and ratified by an act of the Scottish Parliament. It appears to have derived more of its actual privileges from the Legislature than any that I have named. Edinburgh University was founded in 1582, by James I., who increased and confirmed both its property and privileges by successive charters in 1584 and 1612, and in 1621. An act of the Parliament of Scotland was passed confirming various grants of property made to the city of Edinburgh for its support, and ratifying all previous grants and charters. In modern times the same practice has prevailed. The University of Durham owes its existence to a Royal charter in 1837, and the London University to two charters granted in 1836 and 1837. My position will thus be found literally correct, and with regard to the Scotch almost equally so; though even if it were otherwise it could not affect my argument, because that is based not upon the practice in other countries but only where the English common law prevailed. Even in our own local experience, the University of Queen's College, at Kingston, is founded by Royal charter, the act of the Legislature erecting it having been disallowed; and Upper Canada Academy having been incorporated by charter in 1836, was after-

wards by act of the Colonial Parliament erected into a College with University privileges and powers, and thus forms the only case like an exception to the rule I have laid down.

In incorporating this proposed new University—and I take it to be clear that such must be considered the true effect, and operation of this act—I think I have shown, that the Colonial Legislature are assuming to do that which the Parliament of England never did—which the Parliament of Great Britain never did—and which the Parliament of the United Kingdom of Great Britain and Ireland never did. Were the objection, therefore, confined to the exercise of this power in the erection of a new corporation, without Royal charter, and making such new corporation a University, it will be found built on the solid foundation of the undeviating practice of the Legislature of that country from which (as regards Upper Canada) our common law, and as regards the whole Province, our Parliamentary precedents and practice are adopted and derived.

But besides that this bill thus assumes to grant that which should be granted not by Parliament but by the Crown—it is obnoxious to the further objection that it proposes to interfere with and take away privileges, liberties and franchises which the Crown has solemnly granted under the Great Seal of the Empire. This House are asked to declare their will, to exercise their power, to rescind that grant, to abrogate the royal charter, to destroy that to which it has given birth and existence. I have laboured on the one hand to prove that the former will be an act of unconstitutional creation. I shall now endeavour to demonstrate that the latter will be an act of equally unconstitutional deprivation. In fact it would seem not to require much argument to establish that if the erection of an University by the Legislature was unprecedented, because properly a prerogative act, the destruction of one to which the Crown has granted its charter of incorporation must be at least equally open to doubt and objection.

Inasmuch as the King's charter creates corporations, the Crown may mould and frame them in the first instance as it thinks fit. So also the King may, by consent of the corporation, afterwards remodel them or grant additional powers

o. rules for their governance, consistently with the principles of the common law; and this explains why there are so many instances of corporations having several charters. But it is a well settled and established principle, one for which numerous authorities may be cited, that the King cannot, by the mere prerogative, diminish or destroy immunities and privileges once conferred and vested in a subject by royal grant. Even in the case of a new charter to an already existing corporation, it rests in the option of that body to accept or reject such new charter, because the King cannot take away, abridge or alter any liberties or privileges granted by him or his predecessors, without the consent of the individuals holding them. Lord Mansfield, referring to certain new grants made by Queen Elizabeth to the University of Cambridge, says—"the validity of these new charters must turn upon the acceptance of the University." And though no particular form of acceptance be necessary, though exercising any portion of new powers will evidence such acceptance, though even not objecting within a reasonable time may be held to determine the election, yet this does not the less make an express or implied acceptance necessary. The case of King's College and Marischal College at Aberdeen, affords a striking illustration of the correctness of the position. The facts may be thus briefly stated: after the abolition of episcopacy, as a part of the national church of Scotland, Charles the First resolved to apply part of the revenues of the different Sees to the support of the Universities, and he appointed a commission to inquire into the state of those of Old and New Aberdeen. The result of the inquiry was the executing a charter, uniting these two corporations into one University, under the name of King Charles' University of Aberdeen. The two Colleges, however, did not accept this new charter; they continued separate, and were so recognized in an act of the Parliament of Scotland in 1641. A second attempt to form and incorporate them into one University was made about the year 1784, but proved equally ineffectual; nor have the labours of the Royal Commissioner in 1836 and 1837 produced, so far as I have had the opportunity of tracing, any other result. But I venture nevertheless to state my unhesitating conviction, that the Imperial

Parliament has not united these two Universities and Colleges against their will. From these observations, I trust it will appear established that the *Crown* cannot constitutionally by the force of prerogative diminish or destroy franchises once granted. Upon what process of reasoning it can be urged that the *Legislature* can do so, I am at a loss to understand. I am not arguing against the abstract powers of Parliament to do that or any other act, nor even, that some case might not arise requiring and justifying this exercise of the omnipotence of Parliament. My position is this—the *Crown* cannot of its mere prerogative disfranchise—the Legislature of its mere will ought not, and that *ought not* is morally equivalent to *cannot*. Surely the advocates of this bill will not rest their support of it on this foundation "*stet pro ratione voluntas*."

It may be perhaps urged as an argument why the Legislature may deal with this charter, that it has already been the subject of Legislation; and, having been thus brought as it were within the control and under the surveillance of the Legislature, if what had been already done is capable of further improvement, there can be no objection to the completion of what has been thus commenced. I can scarce imagine such an argument will be advanced; because upon that ground, every corporation which had once been before Parliament on any point connected with its charter, would be from thenceforth subject to as many changes as a spirit of experiment could suggest; and with regard more especially to an institution like this, all confidence in its stability and usefulness would be entirely destroyed. Besides the precedent is not applicable; because in the first place the sovereign, the founder and patron of King's College, invited the attention of the Legislature to the improvement of the charter; secondly, because no right, privilege, franchise or property granted by the charter, or vested in the College, was taken away or in any way interfered with or taken away; and lastly, because King's College accepted the amended charter, and went into operation under its provisions. Any right to legislate, which may be advanced on the authority of the former enactment, must therefore, as it appears to me, fail.

I have thus endeavoured to establish: 1. That the Legislature cannot, without infringing on the

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prerogative of the Crown, erect a new corporation with University powers and privileges. 2. That it cannot (excepting as an act of will and power, unsustained by reason or principle) deprive a corporation of the right and franchises which the Crown has legally granted to it, or in any way interfere with them, without the consent of such corporation. I have not laboured to prove what must be apparent to the most cursory observation, that this bill is open to these objections; but I do most earnestly submit that either of them should be deemed sufficient to cause its rejection upon the same principle that the Legislature should not of its own act confer University powers on a corporation of their own creating. They ought not, as it seems to me, to assume to transfer from King's College to this proposed University of Toronto, the franchises given by the King's charter, or the property conferred by the King's grant.

But by this bill almost every power granted to King's College is mutilated in consequence of the controlling force given to the statutes of the University; while all powers to regulate studies necessary to qualify under-graduates to obtain degrees; to determine what degree of proficiency shall be deemed indispensable, or what time shall be passed in a course of preparatory study; the power of conferring degrees; the assemblage in convocation; in a word, every power or privilege which belongs to a University is taken away. Professing to leave to King's College its charter as a College, it makes even this collegiate management secondary and subordinate to the University authority. When the sweeping character of this change is understood—when the remorseless destruction of every thing granted to King's College by George the Fourth's charter is thoroughly appreciated—then let any reflecting man ponder over these words: "We will, that these our letters patent shall and may be good, firm, valid, sufficient and effectual in the law, according to the true intent and meaning of the same, and shall be taken and adjudged in the most favourable and beneficial sense for the best advantage of the said Chancellor, President and Scholars of our said College, as well in our Courts of Record and elsewhere, and by all and singular Judges, Justices, Officers, Ministers, and other subjects whatsoever, of us, our heirs, and

successors;" let him next be reminded that the College to whom these "good, firm, valid, sufficient and effectual" letters patent were granted, has within six months matriculated its first students—that those students are now prosecuting the studies of only its second term—that the buildings for its permanent accommodation are yet incomplete—that however it may have been assailed out of doors, not one application has been made either to the Crown or to those judges who are visitors on behalf of the Crown, to inquire into, check, and remove alleged abuses, if such there be,—that no charge involving the consequence of legal forfeiture has been advanced against either the corporation or its officers—that if any such charge exists, as well the corporation as its officers have, in common with every British subject, the right to defend themselves, before conviction and condemnation, before a jury—and that notwithstanding this, a bill of pains and penalties, of forfeiture and disfranchisement—may I be excused for using such strong terms—of general and individual spoliation, is brought forward against this College—what will he for the future think of the goodness, firmness, validity, sufficiency and stability of a Royal charter, of the respect which it commands in the Legislature of this Province, or of the security of rights and privileges which have that alone for their foundation?

But the attack upon the prerogative of the Crown is not yet done with. The third clause of this bill, to which on another account I have already alluded, contains the assertion of a right in this Legislature, for the future, to prevent the exercise of the Royal prerogative in the institution of any corporation or collegiate body with power to grant degrees. After taking that power from those to whom the Crown had given it, and vesting it in the new University, the bill in express terms declares and enacts that none of the Colleges already established or any hereafter to be established, shall have or exercise this power. A reference to the 30th clause shews that the attempt to restrict the Crown is not unintentional, for there provision is expressly made for incorporating new Colleges with this University, and this is extended to Colleges which may be endowed by Her Majesty, Her Heirs, or Successors, as well as to those which may be endowed by pri-

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vate munificence. I have in other respects endeavoured to shew this to be an unprecedented measure; first, in assuming the initiative in a matter which should emanate from the Crown; second, in diminishing and taking away rights which the Crown has solemnly granted, and now in passing an enactment to deprive the Crown, for all time to come, of the power of chartering another University in Upper Canada, and to limit it to the incorporating endowed Colleges with this new University, provided the Board of Control, which the act creates, is of opinion that the endowment is sufficient; by which is meant, that it shall be of the value of one thousand bushels of wheat per annum. I again fearlessly assert that it is unprecedented, I do not believe it to be constitutional.

Thus far of prerogative and franchise. The next thing assailed is property—and this bill confiscates the whole property of King's College without even the form of a trial—forfeits every thing it possesses ere a judgment has been pronounced. A judgment!—aye, before the accusation is made known to the sufferer. It needs only to read the 36th and 37th clauses of the act to see that the effect is not overstated, and that all the real and personal property of the College is transferred “at one fell swoop” to the University purposes of the newly erected corporation. I have not forgotten the temporary provision of £500 per annum, insufficient for any really useful purpose, for it is too trifling on the one hand to qualify the terms I have used, and it is on the other, not an exception, because it assumes to be given to King's College by force of the act, (not left untouched to it) a miserable shred of the munificent endowment of its founder and patron.

In this disposition of the property it seems to me that the charter of the 15th March, 1828, has been misunderstood, or the true character and effect of it overlooked. It is not the erection of an University, a substantive corporation, to which a College or Colleges might be or were intended to be attached. Not like Oxford or Cambridge where the Universities themselves are distinct corporations, apart from the Colleges, which are also distinct corporations. Here it is KING'S COLLEGE which is incorporated, and to KING'S COLLEGE the powers and privileges of a University are given. An

examination of the charter will make the point clear, and will shew that the erection of a College is the primary object; as a consequence the endowment which came from the same royal source must have been given for that object also. It (the charter) begins with granting that there shall be “at or near our town of York, in our said Province of Upper Canada, from this time, ONE COLLEGE, with the style and privileges of an University, as hereinafter directed, for the education and instruction of youth and students in arts and faculties, to continue for ever” (“To continue for ever,” such was the wish, the hope, the design of the Royal founder,) “to be called King's College.” The incorporation is of the Chancellor “of our said College” the President “of our said College” and the persons admitted as scholars “of our said College.” This corporation was enabled from time to time “to have, take, receive, purchase, acquire, hold, possess, enjoy and maintain, to and for the use of the said College any messuages, lands, &c., in U. Canada, to the yearly value of £15,000 sterling; and moreover, “to take, purchase, acquire, have, hold, enjoy, receive, possess, and retain, all or any goods chattels, charitable or other contributions, gifts, or benefactions whatsoever.” In pursuance of the object of the incorporation, the Crown did grant lands for an endowment, which could only be taken and accepted according to the charter, that is, to and for the use of the College. This must be the legal consequence and effect of every gift or grant to it by its corporate name, and the Venerable Society for the Propagation of the Gospel in Foreign Parts presented £500 worth of books of the standard divinity of the Church of England to the library of this College. This bill, however, takes from King's College all these lands, and gives them to a University (not even a College) of its own creation, a University such as never yet was incorporated by the charter of the Sovereign, and leaves nothing to the College for whose use the grant was made; it takes also from King's College its library, this library of Church of England divinity, with other books, and gives it to a University which is to have no Professor of Divinity, or any lecturer, class, or examination in divinity whatsoever, Can we forbear to put the question “*Hæc utrum lex est an legum omnium dissolutio?*”

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Where can a case parallel to this be found in the annals of constitutional legislation? Not surely in Great Britain. Corporations have been dissolved, and their estates have escheated to the Crown; such was the case on the dissolution of Monasteries by Henry the 8th. If this is to be cited as a precedent it is not very applicable. For upon well understood principles, where a corporation is dissolved, its endowment should revert back to the donor or his heirs, in their default and failure it escheats to the Crown. Here the giant omnipotence of Parliament dissolves the corporation the Crown has created, but will not leave to the Crown the endowment, either as reverting back to it, as the original donor, or as escheating; and with regard to this precedent, a further observation suggests itself. Whatever may be thought of the wisdom, justice, or policy of the proceeding which appropriated estates, set apart for religion or charity, to other uses, the royal grants of these lands have been respected; we do not hear of proposals to deprive the Dukes of Bedford and Devonshire of lands thus acquired. Other forfeitures on legal principles there are many; but no instance can I find which can be quoted as a precedent or authority for this proceeding. True, their lands were once the domain of the crown, so were once all the lands in Upper Canada. But when granted, why is the grant to King's College less sacred and less binding than the grant to U. E. Loyalists, to Militia, to Settlers, or than those large and—as I have not unfrequently heard called and denounced as—improvident grants to Government officers, Executive Councillors and others, in former days, or than grants—of which there have been many—for purposes of a specified and public character. The constitutional right of the Crown to make this grant cannot, at least, be questioned by those who would thus appropriate the lands which have only passed from and out of the Crown by force of the grant. No, Sir, I maintain that in the eye of the law all these grants rest on the same foundation, and are equally to be respected. I ask why they are to be less respected in the eyes of law-makers? True, the grant was for a specific use and purpose, one in which the whole Province is deeply interested. A misapplication of funds belonging to the College might and would render individuals respon-

sible to make it good, as well as have called for and justified their removal. But this would not require an act of Parliament. The power of the Crown and of its Courts is enough, to enquire and to punish. This, if it existed, could not justify legislative deprivation, and (may I use the term which most forcibly conveys my meaning) spoliation, for it would be a strange perversion of justice to disfranchise King's College and take away its property, because some of its officers did not use that property for the best interests and advancement of this College, according to their duty and its charter. It would be as reasonable to dissolve a banking corporation because one of its clerks embezzled a large amount of its property. Besides, no advocate of the bill can support it on this pretext without falsifying the preamble, which, whatever may be the strength of the reasons it advances, does not pretend to justify Parliamentary interference upon any such ground. Again I ask where is there to be found a precedent for legislation of such a character? Again I say not in Great Britain. The proceedings there relative to charitable corporations will not be found to afford it. Time does not permit me more than a passing allusion to them. Two things, however, are to be observed. First, the careful and scrupulous investigation which preceded any action; second, the spirit of justice which pervaded—in relation to the declared objects for which these corporations were instituted—in remedying abuses, restoring to their original and proper uses what had been misapplied,—or where the fulfilment of original uses had become impracticable—the selection of others, the nearest that circumstances permitted, in accordance with the spirit and intention of the founders. Nor will a reference to a neighbouring country weaken my position; State laws which interfered with corporate rights, aye, even corporate rights claimed and enjoyed under royal charters, have been, by the supreme tribunals, declared unconstitutional and void. And though the lands now in question were granted that they might be employed for a purpose beneficial to the people of Upper Canada, though capable of extending the benefit far wider, they are not the only grants for the advancement of religion and science in which other portions of the people of Canada are interested—they rest on the self-same

security, that of the royal and national honor and faith! There is no distinction, in principle, between these lands and the 2,115,178 acres granted by the French Government for such objects. Who can say where the action will stop which this bill threatens to commence? It may require change of times and circumstances ere it can reach to this extent; but if such a wave be once permitted to roll, it will rapidly acquire strength in its progress, and who can dare hope that it will stop short just when it begins to threaten that which he would preserve. Let those who feel an interest in the preservation of what now appears safe, pause ere they give their sanction to such a course, before they establish such a precedent. A day may come when they too will appeal to the protection, the inviolable character which should attend the royal honour, the national faith; let them not now lay the foundation for a future unavailing regret, and have reason then to exclaim, when too late,

"Quam temere in nosmet legem sancimus iniquam."

This bill is open to the further objection that it appropriates all the property thus taken away in a manner which leaves entirely unfulfilled a large part of the objects and intentions of the donor. I have already endeavoured to point out what, in my humble judgment, was the primary object of the charter.—I must now solicit a brief attention to its details. As I understand them, it must have been intended to combine a system of Collegiate domestic discipline with a professional University system of instruction. Among many reasons, which a closer examination will suggest for this opinion, I may notice the incorporation as a *College* with University power, in connection with the power to make bye-laws respecting the salaries, stipends, provision, and emoluments of, and for, the President, Professors, *Scholars*, &c. thereof. Now, it seems to me, that the word *Scholar*, used here, means something different from an ordinary student or under graduate—to, and for whom, it is certainly not usual to provide salary or stipend. I conceive it to be intended that there should become scholarship endowed—on the foundation of King's College—as in Colleges at Oxford and Cambridge, and as Trinity College, Dublin—open to competition; attainable by due proficiency, ascertained by examination; making the successful candi-

date a *Scholar* of King's College, as distinguished from an ordinary student; opening the advantages of the establishment to some who might otherwise be unable to attain it; stimulating youth to exertion by the prospect of honourable reward: thus materially assisting to fulfil the intention of the founder, not as the preamble to this bill professes to explain it, but as he declares it in the opening of the charter, namely, the education of youth in the principles of the Christian religion, and their instruction in the various branches of science and literature which are taught in the Universities in the United Kingdom. The large rental which the college was permitted to enjoy, independently of personal property, £15,000 sterling per annum, gives weight to this construction, and justifies the opinion that this college was designed to afford not a mere place of education, but a continued residence and support to "scholars," whose lives would be occupied in literary and scientific pursuits. It is only by such collegiate establishments that men can be induced to make learning their profession, instead of being a mere auxiliary to other pursuits and occupations. Take away the means of making such a provision,—of affording such a stimulant,—of holding out such an inducement, and you take away the hope of seeing such a class of men grow up among you; you will have to go to other lands for your professors and teachers; you will not rear them at home; and you will find, when too late, how applicable will be the words of Dr. Hackett, in his memorable defence of Cathedral and Collegiate Church establishments, before the Long Parliament in 1641: "Upon the ruins of the rewards of learning, no structure can be raised up but ignorance; and upon the chaos of ignorance, no structure can be built but profaneness and confusion." To hold out such reward, ceases to be possible when the endowment is taken away for *University purposes* exclusively—and thus, I contend, is one principal object of the donor defeated.

Again, the power of granting degrees in divinity, as well as in other faculties and in arts, coupled with the provision that although no religious test or qualification should be required of, or appointed for, any persons admitted or matriculated as scholars within the college, or admitted to any degree in any art or faculty therein,

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et as to divinity, "any persons admitted, within our said college, to any degree in divinity, shall make such and the same declarations and subscriptions, and take such and the same oaths as are required of persons admitted to any degree of divinity in our University of Oxford," shows clearly that among the objects for which this institution was erected—and, consequently, among the use for which the endowment was given—was the establishment of a professor of Church of England divinity for the instruction of such as should desire to graduate in that faculty; and though the amended charter did away with those provisions which gave to the government of the college an exclusive religious cast and character, and did away with all tests for degrees, it neither abrogated the power of granting degrees in divinity, or prescribed any other course of study in that faculty than that which the original charter obviously intended; nor did it alter the powers of the College Council to make statutes for the performance of divine service, and the studies, lectures, and exercises necessary to obtain a divinity degree. Though no test but that of qualification was to be required for any degree, yet, it is obvious, the charter contemplated no divinity but the Church of England, because such being its first intention, no change has been directed or made by the act of amendment. This object will, of course, be defeated by the proposed bill as far as the new University is concerned; it will also be defeated as regards King's College, because the means of effecting it are taken away.

Again, the erection of buildings suitable to the design of the charter, was clearly an object of the endowment. The amended charter is clearly consistent with this design; it does nothing—contains nothing to interfere with it. Collegiate buildings fit for the residence of President, Professors, Tutors, Scholars, and Students, where domestic discipline could be duly enforced, were, evidently, contemplated—not mere halls and lecture rooms, such as a University, strictly speaking, would require—but a College for actual residence. But this bill entirely defeats this object, and deprives King's College of the means granted, among other things, for the express purpose of effecting it.

To say that the mode of employing this en-

dowment, designed by the bill, is a better mode than that proposed in the original charter is, I apprehend, not an argument to be relied upon as a justification for taking away either the powers, privileges, or property which have been given to King's College. It proves too much, and, therefore, proves nothing; for if that be a sound reason for revoking a grant from the Crown, made for one purpose, it ought to have equal force to revoke any grant of which a majority of the Legislature for the time being shall adopt a similar view. And how can it be said that if it be competent for a majority to adopt and carry out their own views this year, or this parliament, it will not be equally competent for a majority next year or in another parliament, again to change that which their predecessors had adopted! Independently of the mischief which such a course must produce to the education of the youth of the country, from the want of confidence which would exist as to the character and stability of its educational establishment, such a course would be not constitutional legislation but arbitrary tyranny—the worst abuse of power which could be inflicted on this or any country. I have already argued that any attempted distinction between property obtained by grant from the Crown or from other sources, is not sustainable; I refer to it, that in considering this part of the question it might be borne in mind. The right thus to interfere with vested privileges and interests is also a widely different thing from the right to see that they are not abused or diverted from their original ends. If the right, asserted by this bill, to alter and take away, exists, with regard to the charter of King's College, so does it exist with regard to those of Queen's College, Victoria College, and Regiopolis College. Either these corporations have assented to the proposed changes or they have not. If it has been felt necessary to apply for, and obtain their assent—or, if it has been given voluntarily and is relied upon as fortifying this proceeding—then is the injustice greater to King's College, which has not assented, though it has the most to lose. Such an assent, too, would prove the opinion of these corporations that without it their charters could not be touched. If they have not assented, then is this bill only the more an invasion of vested rights.

But, while professedly this bill treats the several institutions affected by its provisions alike, it is in reality most unequal in its operation. Queen's College and Victoria College lose, it is true, the University powers and privileges of conferring degrees—Regiopolis College loses not even these, for it never possessed them. But Queen's College has nothing taken from it to assist the funds of the new University. Victoria College retains its College buildings at Cobourg for the accommodation of its Principal, Professors, and Students, with all other its property. Regiopolis College, which has an endowment from the munificence of the late venerable Bishop McDonald, remains intact as to property, though subjected to the legislative controul of this new University—for what reason it is difficult to understand. But land and college buildings, books and furniture, money and securities, all and every kind of property, are taken from King's College and given to the new University for its endowment and support. There can be no other ground for this unequal legislation than an assumed distinction between property, the gift of the Crown, and property, the gift of a subject. I have laboured, let me hope, not altogether unsuccessfully to controvert this distinction—one, which seems to me, so fraught with error and mischief that I would never have attributed it to the framers of this bill if I could discover any other principle on which they are proceeding. The inequality, however, goes farther. Erroneous and unjust as I think this distinction, King's College does not even get the poor measure of protection which an adherence to it would afford. The 36th clause confiscates all its effects, though of its library £500 sterling's worth of books were given it—but not from the Crown. Either it has not been thought worth while to inquire whether King's College owed any of its property to sources other than the royal bounty—or if the inquiry has been made, no consideration of this kind has prevailed in favour of King's College. It is but a trifling consideration; but even of the few things which are deposited in what is intended to be a museum—some may be the gift of individuals to King's College who surely never dreamt of becoming donors, even of trifles, to the University to be created by this bill. Far

be it from me to blame the respect shown to the right and property of these other institutions; long may they retain them; all I urge is, that if this be, as it undoubtedly is, justice to them, then is the injustice to King's College only the more flagrant.

I have thus endeavoured to set forth and sustain principles and arguments, upon some or all of which I humbly conceive the bill should be rejected. Among them I have urged, both on principle and authority, the want of assent on the part of King's College as a fatal objection. I will now briefly endeavour to point out reasons, why—assuming an equal readiness on their part to accept modifications calculated to assist them in fulfilling the great objects of the charter with that they displayed in accepting the amended charter of 1837—King's College cannot nevertheless assent to this bill.

And, first, the proposition contained in this bill, respecting the conferring of degrees in divinity, presents an insuperable objection, for it involves principles which King's College cannot sacrifice; and on this ground, therefore, its assent could never be given.

In allusion to a supposed analogy between the offices of Lord High Chancellor in England, and of Vice Chancellor in Western Canada, the latter has sometimes been jocosely called the keeper of her Majesty's Upper Canadian conscience. The analogy may, perhaps, with equal propriety, be extended to the Chancellor of the University, who may be considered the keeper of the conscience of the proposed University. Of what a precious charge will he not be the custodian! Let us imagine him robed in all the dignity of official costume—surrounded by Doctors and Masters, Bachelors and under graduates—with all academic pomp and attendance presiding in Convocation. For other degrees he collects the "*placets*" and "*non-placets*," and pronounces the result; but the candidates in divinity presenting their certificates of fitness, leave to the Convocation and the Chancellor a ministerial duty only. And first presents himself a Roman Catholic from Regiopolis—place for him, for he believes more than any who are to come after him. His certificate is regular; and the Chancellor dismisses him a doctor, a teacher of theology, carrying the diploma of the University of

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Toronto, certifying to all whom it may concern, his fitness to fulfil that high and holy duty. Scarcely has he gone, when King's College, as remodelled by this bill, sends up her pupil: he has just subscribed the thirty-nine articles, and there are to be found amongst them some not immaterial difference from the faith of the last new-made Doctor: he has just taken the oaths of abjuration and supremacy, which involves sad heresy in the mind of his immediate predecessor. But this matters not to the pliant conscience of our University—*Tros Tyriusae mihi* is her motto; and our Church of England man receives, too, a diploma of his fitness to teach man the road to heaven. Make way for the next—and Queen's College sends up her duly qualified student, believing not in Episcopacy or in the propriety of different orders of ministers; laughing at the idea of an Apostolical succession, and disapproving of liturgies and set forms of prayer, though coinciding with the Church of England in many points of difference from the Church of Rome. On him, too, Alma Mater smiles; on him, too, she confers her diploma; greeting him her son, well beloved as those who have preceded him; equally qualified to be a teacher of divinity. We have not done yet—what is Victoria College about? Oh! here comes from her walls the Wesleyan Methodist: he differs from all who have preceded; with a different Church Government; a difference in some articles of doctrine; a difference with those who would not leave the support of their clergy to the voluntary principle. But to our conscientious University this makes no difference; to him as to all the rest does she proffer the maternal embrace, and alike confers on him the diploma to teach that all who have preceded him are more or less wrong. Unhappy keeper of this expansive conscience! ere you not already debased enough? may you not now descend from your seat of state and hide the shame which you have been writhing under? No, sir, this prostitution has not yet gone far enough; our University, like another *Messalina nondum satiata*, pants, to fold on her ample bosom, more and more divinity lovers, and courts them to her arms, careless of any other qualification but the annual revenue of 1000 bushels of wheat. Hitherto, it may be said, that there has been an agreement on some cardinal points of orthodox

faith; something like a scriptural and christian accordance; but we find the invitation held out to those who confide in the intrinsic merits of their own good works, as superseding a necessity for the mediatorial sacrifice of atonement; who denying the divinity of the son of God would reduce the Saviour of men to their own level; and who reject, because they cannot comprehend, the sacred mystery of the Trinity. Such is the conscience of our University. I will not pursue the mockery—the bitter mockery which this vile prostitution gives rise to. We will break up our fancied convocation and let our unhappy Chancellor depart. But I will ask every man who has heard me if the picture be not truly painted; whether the horror which it excites does not arise from its stern fidelity to its original. Such is the corporate conscience; what must be the individual conscience of those, who on the one hand can sign a diploma conferring such degrees on men whose religious opinions they believe heretical, or on the other receive a diploma from those whose orthodoxy they are bound by their conscientious belief to controvert and deny?

Moreover, it is to the Chancellor and Convocation of this University that power is given, among other things, to legislate concerning the studies, lectures, and examinations, and all matters regarding the same, not merely of the University, but “of the different Colleges.” Such is the enactment of the 15th clause, and a comparison of the 29th and 31st clauses will show that virtually, though perhaps not nominally, the University will possess a legislative power over divinity studies inconsistent with the professed freedom of the different Colleges in this particular.

To a system like this, which confounds truth with error, which neither requires in others nor can itself possess any standard or criterion by which the fitness for Divinity degrees can be determined, King's College cannot assent.

The London University can only confer degrees in arts and the faculties of medicine and law; they have no power to confer degrees in Divinity, and do not therefore profess to teach it. The ground of the entire exclusion of all religious tuition may be inferred from the following anecdote:—When its establishment was proposed and discussed, Mr. Wilberforce, who was referred to in some way about it, suggested the

propriety of making the students read Paley's *Evidences of Christianity*; "my dear Sir, you forget our Jews" was the answer. "Well, then," said Mr. W., "what say you to Paley's *Natural Theology*?" "you do not consider our infidels" was the reply. Bad as is the rejection of all study of Divine knowledge, the indiscriminate adoption, the promiscuous granting of diplomas to believers of all the different systems of theology is worse; the one simply abstains from teaching truth, the other ranks on one common footing and elevates to one common dignity the advocates of truth and the propounders of error.

The representation in the caput provided for each College by the ninth clause assumes the existence of several professors. Now, as the University professors will be the teachers and lecturers in all arts and faculties except Divinity, it appears almost absurd to assume that there will be any other than Professors of Divinity in each College, at least in such as are located near the University, and the more particularly as it is most probable that the fees payable to the University professors, whose income will be partially derived from the endowment, will be much lower than those charged by professors in Colleges who will have nothing else to depend upon. In this view, it is very improbable that there will be more than one theological professor, in the first instance, in any College who would probably be at the same time the president or principal of his College; and the consequence to King's College would be that it would have only one professor to represent and defend its interests in a body authorized to legislate for its affairs, professorships, masterhips, and teachership, the studies, lectures, and examinations, and all other matters relating thereto; and the *number*, residence, and duties of its officers, professors, teachers, scholars, and servants. To this representation in a body clothed with such power and consisting, as regards the University professors, of persons not required to take any religious test whatsoever, King's College could not assent. In addition to her loss of University powers, the power of unfettered legislation in Collegiate matters is also taken away, and she would, or at least might, have only one voice in that body which would control her whole internal economy.

The proposed Board of Control is also another most objectionable feature. It is, for similar purposes, unprecedented; and it requires no great foresight to predict with confidence that it would inevitably destroy the working of the University. It is virtually exempt from responsibility while it is entrusted with powers, on the due existence of which must depend, if not the very existence of the University, certainly its reputation and character for literature and discipline. The functions of this board are partly of a legislative character, and out of the thirty-three members of whom it may consist, there is no assurance that even three will have any knowledge or experience of University matters. They are also to recommend the six examiners, (a number, by the way, infinitely too small) and have no rule or qualification whatever prescribed by which they are to be governed in the selection, nor any apparent means either of knowing what is requisite, or whether a party possessed the useful attainments; though it is obvious the value of the degrees, and the proficiency of candidates for them, will be immeasurably affected by the ability and fitness of the examiners. They are also to recommend candidates to fill the professional chairs; though it may, and frequently will, happen that no really desirable selection can at the particular moment be made within the province. In the absence of any fixed rule or qualification, they will be exposed to canvassing and personal solicitation to obtain from them that recommendation which ought to be given to well-ascertained merit alone; and the people of the most forward habits or who may have the warmest partisans will obtain an advantage over more meritorious but more modest applicants. The only precedent for a Board of Control I can at the moment call to my recollection is that for the affairs of India; and I would earnestly recommend gentlemen to examine for themselves how difficult has the working of that board been found; even with its executive power and support, and all the numerous advantages which its peculiar constitution and position give; and then remembering the nature of the functions assigned to this board, the extent of its power, the absence of the pressure of any sort of responsibility, let them ask themselves what will be the probable result of

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his novel experiment. The best prospect is, that a quorum can never be got together to transact business; the only mischief it will then do, will be to create a temporary hindrance to the working of the institution, which the Legislature would then remove. To the erection of such a Board, King's College could not in my humble judgment assent.

The mode of its construction is also open to most serious objection. It must be remembered that this bill makes King's College a strictly Church of England Theological Seminary—nothing more. It is upon this account that the Lord Bishop of Toronto is made, or rather professed to be made, a member of the Board of Control. Why the title he derives from the Queen's patent should not be given to him, and why a title which does not belong to him and which does not correctly designate him or his office, I confess myself at a loss to understand. He is not the Bishop "of the Protestant Episcopal See of Toronto, in connection with the United Church of England and Ireland." He is a bishop of that united church, appointed by the Queen the temporal head of that church, duly consecrated to the episcopal office in it, taking the oaths required to be taken by every prelate of that Church on his consecration. He is not consecrated under the statute of the 59th George the Third, which confers authority on the Archbishop of Canterbury and other prelates, to consecrate to the episcopal office persons not appointed by the Queen, or taking the oaths of allegiance or supremacy, who are to fill bishoprics in foreign countries, out of the Queen's dominions. He cannot, dare not, desert his own real position and assume the character these words would give him, or recognize the principle they seem to assert, and therefore he never could take a place at the Board of Control, and represent the interests of King's College there. This phraseology introduced for the first time into the Legislature, must have some meaning. My objection to it is not founded on mere verbal criticism: there is a vital principle involved, no less a principle than the Unity of the Church in all parts of the empire, and the authority of the Queen as its temporal head. This is more than a question affecting King's College. It affects every conscientious member of that united

church. It affects the heart and feelings of every English emigrant who has made this country his adopted home. He arrives a stranger—every face, every object, new—the aspect of the country—the climate—all and every thing combine to force on his mind the conviction that he is far from his native home. But he enters the church, and there he finds the same prayer—the same thanksgiving, which from the earliest childhood he has joined in—he kneels at the altar and partakes of the same holy sacrament, which he has so often partaken of ere he became a wanderer in search of a resting place. Here there is no change—here is home again. Thrills not his heart with holy joy as he reflects that he can at the font dedicate his children to God within the pale of his church—the church of his forefathers—the one self same church in whose baptism he was himself baptized—at whose altar he made his renewal of the baptismal vow, and within whose communion he hoped to live and die. Who shall rob him of this his birthright—who shall sever that unity which creates and preserves such holy and happy recollections. This is no question of exclusive claims, of temporal powers or privileges. It affects ourselves and ourselves alone. We are not members of a Protestant Episcopal Church in connection with the United Church of England and Ireland, but members of that very church. Who shall trample on our right to remain so? Who that respects his own church, his own faith, his own religious feelings, will lend his aid to such an attempt? Withered be the heart and hand that would seek even in name to sever the unity of the church to which we belong.

I crave your pardon, Sir, and that of this honble. house, that for a moment I have been hurried away into the expression of individual feelings—that I have exhibited the man when you should have seen only the advocate. My apology is, that I felt what I have spoken, and that for the only time during my address, my personal feeling has led me away from the calm deliberation which belongs to my position. I trust, Sir, I shall stand excused. I have only one further remark to add on this part of my subject. The 73rd clause is obnoxious to the same exception, as well as to the further difficulty that years will clapse before clergymen of the Church of England and *graduates* of the College (University, I suppose is

meant, for King's College could have no graduates) could be found to fill up the seven professorships referred to.

Upper Canada College being an appendage to King's College, it will not, I trust, be deemed travelling out of the record to make some brief observations in regard to the effect this bill will have on that institution. The objections, already urged to the unfitness of the Board of Control to recommend professors, apply to their approval of the vice principal, tutors and masters of the school. The fiftieth clause would, I apprehend, greatly embarrass the efficient management of the institution, for experience has shewn that the power of government over boys, at least, is best exercised when entrusted to one. Divided authority in such a case will diminish, if not destroy the respect and obedience which the head should command. The power given by the fifty-fifth clause to some of the masters to fix their own salaries would, as it appears to me, give rise to endless jealousies and discontent; the more because I feel convinced that the funds provided by the bill would be inadequate to the maintenance and support of the establishment.

The visitorial power which the 24th clause provides for will also, I think, be productive of confusion, and clog instead of facilitating its exercise. The University, erected by this bill, will be, in the words of Lord Mansfield, a lay corporation, with temporal rights; not an eleemosynary foundation as particular colleges are. The University of Toronto will not exist by virtue of a charter from the Crown, but by virtue of this bill; and the visitorial power will not, therefore, arise from the founder and patron's rights, but by force of the common law; and this, I apprehend, must be exercised through some of the Queen's courts of superior jurisdiction, by proceedings regularly and formally instituted. If this view prove, on careful consideration, to be correct, then it appears to me that the combination of all the judges of the superior courts into a body of visitors will lead to great difficulty in the exercise of that power.

I shall content myself with a few passing observations on other provisions, which have appeared to me, tho' of minor consequence, nevertheless to be objectionable.

The ninth clause contains no provisions for

convening the caput, nor any declaration of the number which is to be a quorum.

The nineteenth will render it a matter of far greater delay to pass an University statute than it is to pass a Provincial one.

The twentieth is equally defective as regards the Convocation. Perhaps it was meant to leave these points to be decided by University statutes; but as no statutes can be passed but by the concurrence of these bodies, it seems more convenient that the law should settle them in the first instance.

The twenty-ninth threatens the destruction of the union of the Collegiate and University systems of education and discipline.

The forty-fourth will deprive lecturers of the just reward of diligence and attention, and of a most useful incentive to exert themselves to attract and retain students. I do not find such a practice to prevail in any College I have read of, tho' I cannot positively assert that it does not.

The sixty-fifth clause leaves it doubtful whether the assignment of lands for the appropriate site of any College to be built, is to be confined to lands at the seat of the University.

The eighty-third clause refers to an act as being in force which has been disallowed by proclamation.

The hundred and first clause does not go far enough, tho' just and right in its principle. It should not, I humbly submit, be limited to recent arrivals. There are masters of Upper Canada College who have given up appointments to come out to this country. The highest preferment in that institution was recently surrendered by Dr. McCaul, in order to take a situation in King's College. He had previously resigned preferment in Trinity College, Dublin, in order to take the office of Principal in Upper Canada College.

Lastly, I fear that the statute of Upper Canada 7th William IV., chap. 16, will be inoperative in an important respect, unless an additional provision is introduced into this bill—for the degrees, the attainment of which shortens the necessary period of study for persons desirous of becoming attorneys or barristers from five to three years, are in that act declared to be degrees taken in the Universities of the United Kingdom of Great Britain and Ireland, or in the University of King's College.

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And now, Sir, I have to thank this honourable House for the patient attention with which they have honoured me during this long and I fear tedious argument. It would have been very easy to have said more, but, with every effort at compression, I could not, in saying less, have hoped to present an intelligible outline of the objections to the measure.

In conclusion, let me intreat that, for a few moments, losing sight of the humble individual, who may have wearied you, you will imagine King's College offering this concluding summary in defence of her rights, privileges, and existence.

You are asked to pass a measure which, by the abolition of all tests as regards instructors, treats as a matter of indifference whether the education, the formation and cultivation of the minds of youth, be entrusted to those whose religious feelings will cause them to labour diligently to train them in a right direction; or to those whose total indifference, or total unbelief, may endanger every good and virtuous principle; a measure which treats as equally right those who believe the cardinal fundamental doctrines of Christianity and those who disbelieve them; which rather invites and encourages religious discord than seeks to remove or suppress it. In the name of that God whose truth and whose worship are thus disregarded, I protest against this bill.

You are asked to pass a measure unprecedented in the annals of British legislation; which assumes to exercise the Royal prerogative for this

particular purpose, and to deprive your Sovereign of the right and power ever again to exercise that prerogative for a similar purpose in Upper Canada. In the name of our Queen, to whom you have sworn allegiance, whose prerogative it is your duty to maintain, I protest against this bill.

You are asked to pass a measure, professedly for the advancement of education, the cultivation of science and literature, which will destroy every means of so carrying on the institution as to give to patient industry its cheering prospect, to high attainment its adequate reward; which is so replete with discordant elements that nothing short of a miracle can prevent the establishment from becoming a Babel of confusion, or save it from hopeless ruin which will therefore eventually deprive the Province of the benefit designed by my royal and beneficent founder.—“The education of youth in the principles of the christian religion, and their instruction in the various branches of science and literature which are taught in our Universities in the United Kingdom.” In the name of the country I protest against your depriving me of the means and the power to fulfil the high behest for which I was brought into existence.

For the sake of religion; on every constitutional principle; by every patriotic feeling; in the name of God; your Queen; your country; I call upon you to reject this bill.

